# Comparative Public Law

## Prof. Renato Balduzzi

***COURSE AIMS AND INTENDED LEARNING OUTCOMES***

The course aims to provide students with knowledge concerning the relationship between the judiciary and politics in some of the contemporary constitutional systems, and precisely it will examine - besides the Italian one used as reference system in the comparison - the United States of America, the United Kingdom, the French Republic, and the Federal Republic of Germany. In each of the systems considered special attention is paid to the study of both the tools aimed at ensuring the independence or, as the case may be, the autonomy and independence of the ordinary judiciary, and the relationship between constitutional judges and politics.

At the end of the course, students will be able to:

1. confidently place each of the systems considered in the traditional categories of form of state, form of government and type of state;
2. identify the features characterising the constitutional position of the ordinary judiciary and compare the different systems considered, depending on whether or not they know an ad hoc body, appointed to ensure the independence of the judiciary and, in some systems, even its autonomy;
3. know the historical evolution of the *judicial review* and the distinctive characteristics of its import into Europe;
4. express institutional evaluations concerning the current tense situation between the judiciary and politics in Italy.

***COURSE CONTENT***

* Definition and lexical premises: form of state, form of government, type of state
* Absolute state, liberal state, democratic-constitutional state: features of evolution in some Western countries
* The importance of the territorial articulation of the State (so-called type of State) and the distribution of powers among the constitutional bodies (form of government)
* The independence of the judiciary
* Origins and development of constitutional justice
* Italy: a) the Constitutional Court: jurisdiction and politics; b) the judiciary: order and power; the role of the CSM (High Council of the Judiciary): the implementation and the enforcement of law n. 71/2022
* The French situation: *Conseil constitutionnel* and *Conseil supérieur de la magistrature*
* United States: *Supreme Court* and *public prosecutors*
* A successful coexistence (so far) between jurisdictional power and political power:

the German case

* The independence of the judiciary in the so-called illiberal democracies
* The role of transnational courts in the rapprochement between legal systems
* and the so-called dialogue between the Courts
* A very peculiar case of tension between the judiciary and politics: the decision of the *Bundesverfassungsgericht* on the so-called Draghi programme.

***READING LIST***

Students will have to prepare the exam using the following textbooks:

1. R. Balduzzi, *Magistratura e politica. Lezioni di diritto costituzionale comparato,* EDUCatt, 2022;
2. R. Balduzzi, *Notazioni introduttive per efficaci riforme del Csm, nel solco del modello costituzionale di magistratura e ordinamento giudiziario*, in Associazione “Vittorio Bachelet”, *La riforma della legislazione sul Consiglio superiore della magistratura. Scritti per il quarantennale dell’Associazione*, a cura di R. Balduzzi, Milano, EDUCatt, 2022, pp. 5-34.
3. R. Balduzzi, *La presidenza del Consiglio superiore della magistratura, tra sobrietà delle norme e importanza della prassi*, in *Il promo mandato di Sergio Mattarella. La prassi presidenziale tra continuità ed evoluzione*, Napoli, Editoriale Scientifica, 2022, pp. 191 ss.

The textbook under point a) is available at the University bookstores; it may also be purchased from other retailers. The textbooks under points b) and *c*) can be consulted at the Faculty Library, and it is possible to borrow a copy, according to current regulation.

***TEACHING METHOD***

Lectures and practical exercises.

***ASSESSMENT METHOD AND CRITERIA***

The assessment consists of an oral exam, during which the students have to demonstrate, in addition to the specific knowledge of the subject and the main characteristics of the constitutional systems considered, the ability to place the identified relationship models between the judiciary and politics within the constitutional dynamics of the individual countries. The assessment of the students’ preparation will particularly consider their ability to historically contextualise the systems and institutions considered. It will also take into account: the relevance of the answers, an appropriate use of legal terminology, the ability to name bodies and institutions in the languages of each of the systems considered, the ability to compare similarities and diversity and to explain the underlying reasons.

***NOTES AND PREREQUISITES***

For a successful attendance of the course, students must have:

1. sufficient knowledge of the political and institutional topicality of the foreign systems considered, which can be acquired through ordinary information channels;
2. knowledge of Italian constitutional history, which can be acquired by reviewing the related parts on the manual studied to prepare for the Constitutional Law exam.
3. knowledge of the constitutional principles of the judiciary and the High Council of the Judiciary; related concepts and issues are investigated in preparing for the examination of Constitutional law.

Further information can be found on the lecturer's webpage at http://docenti.unicatt.it/web/searchByName.do?language=ENG or on the Faculty notice board.