

**POLS 102: INTRODUCTION TO TURKISH CONSTITUTIONAL LAW
SPRING 2022**

(This version: 14 February 2022. Please note: syllabus may be subject to change)

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Office hours:	by appointment		
Class hours:	Wednesdays 14 - 17h		
Location:	NH 105		

COURSE DESCRIPTION

This course provides students with an introduction to constitutional law and familiarises them with legal reasoning. An important component of this course focuses on Turkish constitutional law: its history, the amendments to the Constitutions, its content and its current functioning, including its presidential system and the role of the Turkish Constitutional Court. Particular attention will also be paid to the interpretation and adjudication of fundamental rights as laid down in Part II of the Turkish Constitution. In doing so a comparative perspective is applied. This means that we will also look at and analyse the standard-setting, interpretation and application of these norms in other domestic and international jurisdictions. Close attention will, moreover, be paid to the interplay between the Turkish Constitutional Court (TCC) and the European Court of Human Rights.

COURSE OBJECTIVES

At the end of the course students should be familiar with:

- The basic concepts of law and legal reasoning;
- The nature and content of constitutional law;
- The concept of constitutionalism;
- Constitutional developments in Turkey from Ottoman times to the present day;
- Constitution making & interpretation;
- The function of constitutional courts;
- The practice of the Turkish Constitutional Court (TCC);
- The nature, content and application of fundamental rights;
- The interplay between the TCC and the European Court of Human Rights;
- Critical perspectives of constitutional law.

Students that conclude the course successfully will, moreover, have acquired basic legal skills, including:

- The IRAC-method of legal reasoning;
- Developing and presenting legal arguments;
- Finding, interpreting and applying legal sources to cases;
- Writing basic legal texts.

COURSE MATERIALS

- Syllabus
- Cases & materials pack (Dropbox)

COURSE DELIVERY

This course consists of weekly face-to-face sessions. Regular sessions consist of interactive lectures and seminars. During interactive lectures the instructor explains and illustrates the topic of that week. In the seminar part of the session students are expected to engage with the materials of that week with their fellow students. For example, by way of discussing questions and engaging in group work. Students are expected

to attend the sessions well-prepared, being able to answer any question from the instructor, and engage in class discussions (see *course evaluation*). Besides the regular sessions the course consists of four guest lectures by experts in the field.

Cooperative learning

An important part of this course consists of cooperative learning. Studies have shown that students in cooperative learning settings produce greater academic achievement, reason better, and like the learning tasks more compared to those in individualistic or competitive learning settings.¹ Cooperative learning has two important components: (1) Group interdependence, which means organizing tasks so that members must work together to succeed. And (2) Individual accountability, which is achieved in this course through individualized measures of participation in class discussion and in group work. Methods for cooperative learning applied in this course include classroom discussion, group work and a moot court.

Class etiquette

- Recording class is prohibited.
- Laptop computers and similar devices may be used in class but not for Internet surfing, text messaging, or comparably distracting extracurricular activities.
- All mobile phones must be switched off at the start of each lesson.

COURSE EVALUATION

1. 10% Participation
2. 30% Mid term exam
3. 20% Moot court
4. 40% Final exam

Letter grades will be assigned in accordance with age following overall scores:

AA	90 - 100	CC	70 - 74,99
BA	85 - 89,99	DC	65 - 69,99
BB	80 - 84,99	DD	60 - 64,99
CB	75 - 79,99	F	< 60

1. Participation

Participation in interactive lectures and tutorials makes up 10% of the final grade. Participation means attending the sessions fully prepared, being able to answer questions and contribute to discussions on the basis of that week's course materials. The interactive lectures and tutorials are forms of enhanced learning that complement the course material. When students do not participate they deprive other students of their potential contribution to group work and discussions. Classroom discussion serves, moreover, to develop analytical and oral argument skills. To encourage the development of these skills, every student is expected to have read the essential readings of that week and to be able to participate in the discussions on the basis of these readings. In addition, students will be asked to respond to the claims and arguments of others and occasionally to provide counter-arguments even when it is not an argument that you necessarily support.

Please note that students that do not attend the sessions and/or participate in group work and discussions tend to fail their mid term and final exam. Participation to all sessions and group work is therefore strongly encouraged.

¹ Johnson, D., Johnson, R. & Smith, K. (2014). Cooperative Learning: Improving University Instruction by Basing Practice on Validated Theory. *Journal on Excellence in College Teaching* 25 (3/4), pp. 85 - 118; Johnson, D. & Johnson, R. (2009). An Educational Psychology Success Story: Social Interdependence Theory and Cooperative Learning. *Educational Researcher* 38 (5), pp. 365 - 379.

Participation points are based on the following criteria on a scale from 100 (excellent) to 0 (did not participate and/or prepare for sessions):

- The student attended all sessions fully prepared, having studied all the designated course materials, and actively participated in class discussions;
- The student participated in all seminars and displayed a good comprehension of that week's course materials;
- The student is a team player, who listens to their classmates, grounds their arguments in course material and/or academic literature, is respectful of other students, and works with their team to create an outcome that is shared by the whole group.

Participation is graded with a score between 0 and 100.

2. Mid term exam

The mid term exam takes place on 13 April 2022, 14 - 16h. It is a closed book exam and consists of open and multiple choice questions. The exam will test students' knowledge on the materials studied and the information provided during the interactive lectures and tutorials of the first 7 weeks of the course (calendar weeks 8 - 15). More information about the mid term exam will be provided during the course. The mid term exam is marked with a score between 0 and 100.

3. Moot court

A moot court is a simulation of a court hearing in which participants analyse a problem, research the relevant law, prepare written submissions, and present oral argument. The procedure imitates that followed in real courts: the judge enters, the mooters and the judge bow to each other, the clerk announces the matter, the mooters give their appearances and are then called on in turn to present their submissions, the judge asks questions of the mooters, the court adjourns, and the judge then returns to deliver a brief judgment and some feedback.

Mooting enables students to:

- engage with and think deeply about interesting and topical legal issues;
- enhance their advocacy, legal research and writing skills;
- work closely with and learn from their peers.

For the moot court students are required to work in groups of 3/4 students. These groups have to complete two assignments:

- Write a memorial or a judgment with your group for the moot court case;
- Present oral arguments/act as a judge on a point of law in mock court proceedings.

More information about the moot court will be provided after the mid term exam. Students receive a score between 0 and 100 for their performance in the moot court. The score is based on their written work (memorial/judgement) and their oral arguments/acting as judge.

4. Final exam

The date of the final exam will be set by the University administration and announced in due time. The final exam is a closed book exam consisting of open questions and a case study. The exam is based on all the materials studied during the course, as well as the content of and information provided during the interactive lectures and tutorials. The final exam is marked with a score between 0 and 100.

Fraud

The Department of Political Science and International Relations of Bogazici University has the following rules and regulations regarding academic honesty.

- Copying work from others or giving and receiving answers/information during exam either in written or oral form constitutes cheating;
- Submitting take-home exams and papers of others as your own, using sentences or paragraphs from another author without the proper acknowledgement of the original author, insufficient acknowledgement of the consulted works in the bibliography, all constitute plagiarism. For further guidelines, you can consult https://www.gc.cuny.edu/CUNY_GC/media/CUNY-Graduate-Center/PDF/Policies/General/AvoidingPlagiarism.pdf.

Plagiarism and cheating are serious offenses and will result in:

- I. an **automatic ‘F’** in the assignment or the exam;
 - II. an oral explanation before the **Departmental Ethics Committee**
 - III. losing the opportunity to request and receive any **references** from the entire faculty
 - IV. losing the opportunity to apply in **exchange programs**
 - V. losing the prospects of becoming a **student assistant** or a **graduate assistant** in the department
- The students may further be sent to the **University Ethics committee** or be subject to **disciplinary action**.

TENTATIVE COURSE PROGRAM

	TOPIC
23 Feb. 2022	Law and legal reasoning (<i>Dr. Fleur van Leeuwen</i>)
2 March 2022	Constitutional law & constitutionalism: an introduction (<i>Dr. Fleur van Leeuwen</i>)
9 March 2022	Constitutional history of the Ottoman era & the nation and constitution building process of the young Turkish Republic (<i>Dr. Hakan Yilmaz</i>)
16 March 2022	Political and constitutional developments of the 60s and 70s leading to the military coup of 1980 (<i>Dr. Erdem Demirtas</i>)
23 March 2022	The 1982 Constitution of Turkey: its making and basic characteristics. (<i>Dr. Erdem Demirtas</i>)
30 March 2022	Constitutional Amendments in the 2000s, the presidential system & the separation of Powers in the post-2017 politics. (<i>Dr. Erdem Demirtas</i>)
6 April 2022	NO CLASS
13 April 2022	MID TERM EXAM
20 April 2022	Fundamental rights: nature, restrictions & state of emergency (<i>Dr. Fleur van Leeuwen</i>)
27 April 2022	Fundamental rights adjudication & strategic litigation (<i>Dr. Fleur van Leeuwen</i>)
2 - 6 May 2022	SPRING BREAK
11 May 2022	Fundamental rights: a gender perspective (<i>Dr. Fleur van Leeuwen</i>)
18 May 2022	Moot courts
TBD	Moot courts
TBD	FINAL EXAM

23 February 2022, 14 – 17h

Law & legal reasoning

During this session we delve into the notion of ‘law’: what is law and how do legal rules differ from moral or religious codes? Where do we find ‘law’ and how do we determine what the law is? We look at different methods of interpretation and application of law as well as at different systems of law that exist in the world. The aim of this class is to refresh and build upon the knowledge acquired in AD 131 and to set the ground for the focus of this course: constitutional law.

In the second part of this session, students will work on their legal skills and focus on methods of legal reasoning. Students will work in groups on an assignment that needs to be handed in at the end of the session.

Essential reading

- Aybay, R. (2020) An Introduction to Law, Chapters 1 – 6 (pp. 1 – 58).

Guiding questions

- What are legal syllogisms and can you provide an example?
- What is the main difference between common law systems and civil law systems and what is the role of precedent in both systems?
- What is meant with positive law and how does this differ from natural law?
- Would you categorise European Union law as public or private law? Explain.
- Can you explain the relation between moral and legal rules: how do these two differ and when do they overlap?
- What is meant with a teleological interpretation of law?
- What is legal reasoning based on *argumentum a contrario*? Can you provide an example?

2 March 2022, 14 – 17h

Constitutional law & constitutionalism: an introduction

In our second session we look at the doctrine of constitutionalism and the nature of constitutions and constitutional law. Is any structure that prescribes a set of norms (rules, principles or values) that create, structure, and possibly defines the limits of, government power or authority a constitution? Must a constitution establish a stable framework for the exercise of public power which is in some way fixed or can it be a living entity which grows and develops in tandem with changing political values and principles? We will *inter alia* look at the sources of constitutional law, question the notion of statehood and sovereignty and discuss limitations on state power.

In the second half of the session we will work with sources of law and look specifically at sources of fundamental rights applicable to the Turkish context. Students will work in groups and are to hand in a group report at the end of the session.

Essential reading

- Heringa, A.W. (2017) Constitutional Law. In: Hage, J., Waltermann, A. & Akkermans, B. (eds), Introduction to Law, Springer: Cham.
- Waluchow, W. (2018) [Constitutionalism](#). *The Stanford Encyclopedia of Philosophy*, Zalta, E.N. (ed).

Guiding questions

- What is meant with monist and dualist systems and what is the difference between the two?
- What are the criteria for statehood and does recognition by other states play a role in this? Explain.
- What is meant with *Trias Politica* and how does it relate to constitutional law?
- What is the difference between parliamentary and presidential systems? Explain and give an example of both systems.
- If you want to know what your fundamental rights are, where would you look?
- Must constitutional rules be written rules? Explain.
- Must constitutional limits on a legislative body like Parliament, or an executive body like the President, be subject to interpretation and enforcement by an independent judiciary?
- What does Waluchow mean with *the intergenerational problem* of constitutions and how do living constitutionalists address this issue?
- What is the central argument of what Waluchow calls the *hard critics* of constitutionalism?

9 March 2022, 14 – 17h

Constitutional history of the Ottoman era & the nation and constitution building process of the young Turkish Republic

Guest lecture by Dr. Hakan Yilmaz

Essential reading

- Özbudun, E. (1984). Antecedents of Kemalist Secularism: Some Thoughts on the Young Turk Period. *Modern Turkey: Continuity and Change*. Evin, A. (ed), 25-43.
- Altuğ, Y. (1984). The Development of Constitutional Thought in Turkey. *Modern Turkey: Continuity and Change*. Evin, A. (ed), 131-149.

16 March 2022, 14 – 17h

Political and constitutional developments of the 60s and 70s leading to the military coup of 1980

Guest lecture by Dr. Erdem Demirtas

Essential reading

- Özbudun, E. (2020). Constitutional Law. In: *Introduction to Turkish Law*. Ansay, T., Wallace, D., & Öney, I. (eds).
- Tanör, B. (1994). *İki Anayasa*, pp. 9 – 54.

23 March 2022, 14 – 17h

The 1982 Constitution of Turkey: its making and basic characteristics

Guest lecture by Dr. Erdem Demirtas

Essential reading

- Özbudun, E. (2011). The Basic Characteristics of the 1982 Constitution. *The Constitutional System in Turkey: 1876 to the present*, 19-37.
- Tanör, B. (1994). *İki Anayasa*, pp. 95 – 147.

30 March 2022, 14 – 17h

Constitutional Amendments in the 2000s, the presidential system & the separation of Powers in the post-2017 politics

Essential reading

- Özbudun, E. (2011). The Constitutional Crises of 2007 and its Aftermath and the Search for a New Constitution, *The Constitutional System in Turkey: 1876 to the present*,
- Gözler, K. (2017) 16 Nisan’da oylayacağımız anayasa değişikliği bir ‘suistimalci anayasa değişikliği’ midir? <https://www.anayasa.gen.tr/suistimalci.pdf>.
- Venice Commission, *Turkey - Opinion on the amendments to the Constitution adopted by the Grand National Assembly on 21 January 2017 and to be submitted to a National Referendum on 16 April 2017*, adopted by the Venice Commission at its 110th Plenary Session.

6 April 2022
NO CLASS

13 April 2022, 14 – 16h
MID TERM EXAM

20 April 2022, 14 – 17h

Fundamental rights: nature, restrictions and states of emergency

This session focuses on the nature of fundamental rights and the interplay in respect of the protection of these rights between (domestic) constitutional law and (international) human rights law, in particular the European Convention on Human Rights. Besides the nature of these norms we will question their content and examine if and how these rights can be legitimately restricted.

In the second part of the session we will analyse a case study from a constitutional law (fundamental rights) and human rights perspective. We will focus in particular on the legal justifications for the infringement of these rights.

Essential reading

- Özbudun, E. (2011). Fundamental Rights and Liberties. *The Constitutional System in Turkey: 1876 to the present*, 39-57.
- Bates, E. (2018). History. In: Moeckli, D., Shah, S. & Sivakumaran, S. (eds), *International Human Rights Law*.
- ECtHR, *Leyla Şahin v. Turkey*, Grand Chamber judgment of 10 November 2005 (*Excerpt*).
- TCC, *Case of Tuğba Arslan*, Application no. 2014/256, judgment of 25 June 2014 (*Excerpt*).

Fundamental rights: domestic and international adjudication

- Stone Sweet, A. (2012). Constitutional Courts. *Oxford Handbook of Comparative Constitutional Law*, Rosenfeld, M. & Sajo, A. (eds), 816 - 829.
- Benvenisti, E., & Harel, A. (2017). Embracing the Tension between National and International Human Rights Law: The Case for Discordant Parity. *International Journal of Constitutional Law* 15 (1), 36-59 (*Excerpt*).
- TCC, *Case of Pinar Durko*, Application no. 2015/16449, judgment of 28 June 2018.

11 May 2022, 14 – 17h

Fundamental rights: a gender perspective

Essential reading

- MacKinnon, C. (2012). Gender in Constitutions. *Oxford Handbook of Comparative Constitutional Law*, Rosenfeld, M. & Sajo, A. (eds),
- Siegel, R.B. (2012). The Constitutionalization of Abortion. *Oxford Handbook of Comparative Constitutional Law*, Rosenfeld, M. & Sajo, A. (eds),
- European Court of Human Rights, *A.B.C. v. Ireland*, judgment of 16 December 2010 (*Extract*).
- TCC, *R.G. Başvurusu*, kara tarihi 23 Temmuz 2020 (*Extract*).

18 May 2022, 14 – 17h

Constitutional law moot court

In this session we have the oral hearings of moot court.

TBD

Constitutional law moot court

In this session we have the oral hearings of moot court.