

UČNI NAČRT PREDMETA / COURSE SYLLABUS

Predmet: Primerjalno ustavno pravo
Course title: Comparative Constitutional Law

Študijski program in stopnja Study programme and level	Študijska smer Study field	Letnik Academic year	Semester Semester
Pravo – 1. stopnja		3	2
Law – 1st degree		3	2

Vrsta predmeta / Course type

Izbirni / Optional

Univerzitetna koda predmeta / University course code:

Predavanja Lectures	Seminar Seminar	Vaje Tutorial	Lab. vaje Laboratory work	Teren. vaje Field work	Samost. delo Individ. work	ECTS
20	0	10	0	0	120	6

Nosilec predmeta / Lecturer:

Prof. em. dr. Arne Marjan Mavčič

**Jeziki /
Languages:**

**Predavanja /
Lectures:** Slovenski jezik /Slovenian
Vaje / Tutorial: slovenski jezik /Slovenian

Pogoji za vključitev v delo oz. za opravljanje študijskih obveznosti:

Izpolnjevanje pogojev za vpis v 1. letnik.

Vsaj 80% prisotnost na predavanjih in vajah.

Prerequisites:

Eligibility for enrollment in the first year.

At least 80% attendance at lectures and tutorials.

Vsebina:

Vsebina je prilagojena konkretni stopnji študija. Predmet omogoča študentom temeljno znanje o ustavnih oziroma pravnih sistemih v svetu. Kot nadgradnja študija o nacionalnem ustavnem oziroma pravnem sistemu primerjalna metoda seznanja študente z ureditvami drugih držav, izhajajoč iz posebnosti po posameznih svetovnih regijah in upoštevajoč značilne tipe pravnih oziroma ustavnih sistemov.

Content (Syllabus outline):

The content is adapted to the specific level of study. Furthermore, the course enables students to a basic knowledge of the constitutional and legal systems in the world. As an upgrade study of the national constitutional and legal system based on the comparative method, making students familiar with legal systems of other countries, drawing on features for individual world regions and taking into account specific types of legal and constitutional systems.

I. Prvi blok:

Prvi del

Ideja konstitucionalizma (elementi konstitucionalizma, klasični sistemi konstitucionalizma, ustavne reforme – posebej v novih demokracijah)

Drugi del

Sodna in ustavnosodna presoja ustavnosti (judicial and constitutional review), sistemi in modeli.

1. Pojem in razvoj presoje ustavnosti (pojem presoje ustavnosti, razvoj presoje ustavnosti v svetu, opredelitev ustavnega sodstva, pomen sodne presoje ustavnosti, primerjalna ureditev ustavnega sodstva)
2. Sistemi presoje ustavnosti (zunajsodni in sodni sistem, ameriški model, evropski model, mešani model, francoski model, New Commonwealth model, drugi modeli presoje, sistemi brez sodne presoje ustavnosti)
3. Oblike presoje ustavnosti (preventivna in represivna presoja, konkretna in abstraktna presoja, vrste in pravna narava ustavnosodnih odločitev, federalizem in ustavno sodstvo)
4. Mednarodne povezave organov sodne presoje ustavnosti

II. Drugi blok:

Prvi del

1. Zgodovinsko poreklo ustavnih sistemov
2. Razvoj
3. Materialni pojem pravnega oziroma ustavnega sistema
4. Socialno ekonomski vzroki nastajanja pravnih sistemov in nastajanja ustavnih sistemov v obliki pisanih ustav

I First block:

The first part

The idea of constitutionalism (elements of constitutionalism, classical systems of constitutionalism, constitutional reforms - especially in new democracies)

The second part

1. Judicial and constitutional review of the constitutionality (judicial and constitutional review), systems and models, the concept of assessment of the constitutionality and the development of the constitutional review in the world, the definition of the constitutional judiciary, the importance of judicial review of constitutionality, comparative view on constitutional justice)
2. Systems of the constitutional review (extrajudicial and judicial system, the U.S. model, the European model, the mixed model, the French model, the New Commonwealth model, other models of constitutional and judicial review).
3. Forms of the constitutional and judicial review (preventive and repressive review, concrete and abstract review, the type and nature of constitutional decisions, federalism and the the constitutional justice)
4. International associations of bodies of judicial and constitutional review.

II. Second block:

The first part

1. Historical origins of constitutional systems
2. Development

5. Posamezne skupine sistemov
 - 5.1 Zgodovinska razvrstitev
 - 5.2 Geografska razvrstitev in geografski poreklo sistemov
 - 5.3 Temeljne značilnosti posameznih sistemov
 - 5.3.1 ZDA
 - 5.3.2 Velika Britanija
 - 5.3.3 Nemčija
 - 5.3.4 Švica
 - 5.3.5 Nove demokracije
 - 5.3.6 Afrika
 - 5.3.7 Azija
 - 5.3.8 Srednja in Južna Amerika
 - 5.3.9 Avstralija
6. Metode pri proučevanju sistemov
 - 6.1 Pravni pristop
 - 6.2 Sociološki pristop
 - 6.3 Zgodovinski razvoj: stare in nove primerjalne študije, proces globalizacije, vplivi preobrazbe pravnih sistemov v devetdesetih letih 20. stoletja)
7. Vrste sistemov, s posebnim ozirom na strukturo sistema
 - 7.1 Pisane in nepisane ustave
 - 7.2 Pisane in dokumentarne ustave
 - 7.3 Kodificirane in nekodificirane ustave
 - 7.4 Čvrste in gibke ustave
 - 7.5 Teritorialna organizacija oblasti v državah z unitarno in federativno strukturo
8. Kompleksno gledanje na ustavo
9. Kršitve ustave, ustavne tranzicije, prevzemanje ustavnih besedil kot vzorcev in transplantacije ustav
10. Prelomni trenutki in tranzicija
11. Utrjevanje sistema: sodišča in demokracija

Drugi del

1. Nacionalna pravna oziroma ustavna ureditev in njene sestavine, primerjalne

3. Material term of the legal and constitutional system
4. Socio-economic causes of the formation of legal systems and the emergence of the constitutional systems in form of a written constitution
5. Particular groups of systems
 - 5.1 Historical ranking
 - 5.2 Geographical classification and geographic origin of the system
 - 5.3 Basic features of individual systems
 - 5.3.1 U.S.
 - 5.3.2 United Kingdom
 - 5.3.3 Germany
 - 5.3.4 Switzerland
 - 5.3.5 New Democracies
 - 5.3.6 Africa
 - 5.3.7 Asia
 - 5.3.8 Central and South America
 - 5.3.9 Australia
6. Methods for studying systems
 - 6.1 The legal approach
 - 6.2 The sociological approach
 - 6.3 Historical development: old and new comparative studies of the globalization process, the effect of transformation of legal systems in the nineties of the 20th century)
7. Types of systems, with particular reference to the structure of the system
 - 7.1 Written and unwritten constitution
 - 7.2 Colorful and documentary Constitution
 - 7.3 Codified and non codified constitution
 - 7.4 Firm and flexible constitution
 - 7.5 Territorial authorities in the organization of unitary and federal structures
8. Complex vision in the Constitution
9. Violation of the Constitution, constitutional transition, usage of

- relacije do tujih sistemov
2. Posebnosti posameznih tipov ureditev
 - 2.1 Materialni vidik (vsebinske posebnosti urejanja posameznih ustavnih institutov v nacionalnih sistemih)
 - 2.2 Formalni vidik (posebnosti oblike ustavnih besedil)
 3. Sistem in ustava v formalnem smislu
 4. Odstopanje od elementov ustave v formalnem smislu
 5. Viri ustavnega prava
 - 5.1 Nacionalni viri
 - 5.2 Mednarodni viri
 - 5.3 Hierarhija: ustava, ustavni zakon, zakoni in drugi splošni akti, mednarodni dokumenti, sodna praksa, ustavne tradicije in običaji, teorija, splošna pravna načela, morala.
 6. Oblikovanje ustavnega besedila, koncepti, modeli (Blaustein, www.oefre.unibe.ch/law/icl/index.htm)

III. Tretji blok:

1. Človekove pravice s primerjalnega vidika
2. Nacionalno varstvo.
 - 2.1 Formalno varstvo (redno sodstvo, posebno sodstvo, ustavno sodstvo).
 - 2.2 Neformalno varstvo (ombudsman, nevladne organizacije itd.)
3. Mednarodno varstvo:
 - 3.1 Univerzalno varstvo (Organizacija združenih narodov).
 - 3.2 Regionalno varstvo (Evropska konvencija o človekovih pravicah, Evropsko sodišče za človekove pravice, Listina o temeljnih pravicah Evropske unije, Interameriško sodišče za človekove pravice; Afriško sodišče za človekove pravice; Mednarodno sodišče za človekove pravice po

- constitutional texts as models and transplantation of constitutions
10. Critical moments and transition
 11. Hardening system: courts and democracy

The second part

1. National legal and constitutional system and its components, comparison with foreign systems
2. Specialities of particular systems
 - 2.1 Material aspects (contents of regulation of particular constitutional institutions in national systems)
 - 2.2 Formal aspects (specific forms of constitutional texts)
3. System and the constitution in the formal sense
4. Deviation of elements of the constitution in the formal sense
5. Sources of Constitutional Law
 - 5.1 The National Resources
 - 5.2 International sources
 - 5.3 Hierarchy: constitution constitutional law, laws and other general acts, international documents, jurisprudence, constitutional traditions and practices, theory, general principles of morality.
6. The creation of a constitutional text, concepts, models (Blaustein, [www.oefre.unibe.ch / law / ICL / index.html](http://www.oefre.unibe.ch/law/ICL/index.html)).

III. block:

1. Human rights from a comparative perspective
2. National protection.
 - 2.1 Formal protection (ordinary judiciary, special judiciary, constitutional justice).
 - 2.2 Informal protection (Ombudsman, NGOs, etc.).

Daytonskem sporazumu (BiH)

4. Vpliv mednarodnega varstva na nacionalno varstvo

IV. Četrty blok:

1. Primerljivost pravnih oziroma ustavnih sistemov
2. Raven primerljivosti pravnih oziroma ustavnih sistemov
3. Primerjalne metode:
 - 3.1 nižje ravni: empirični opis, zgodovinska razlaga.
 - 3.2 višje ravni: tematska primerjava.
4. Zgodovinska metoda: Pravni/ustavni sistemi so produkt zgodovine in jih je mogoče razložiti le s številnimi zgodovinskimi faktorji.
5. Institucionalna metoda: Pravni/ustavni sistemi so kvalificiran politično pravni pojav.
6. Ideološka metoda: Sisteme je mogoče ocenjevati na podlagi bolj ali manj skladnega zbira vrednot in norm.
7. Funkcionalna metoda: Sistemi so eden od številnih pojavov v družbi in so hkrati element sociološko političnega sistema.
8. Strukturalno funkcionalna metoda: Kot drugi pojavi, so sistemi eden od determinant strukture družbe in hkrati je tudi struktura ena od determinant sistemov.
9. Sistemska metoda: se ukvarja s problemi političnih in pravnih relacij v okviru konkretnih sistemov.

3. International Protection:

- 3.1 Universal protection (United Nations).
- 3.2 Regional Protection (European Convention on Human Rights, European Court of Human Rights, the Charter of Fundamental Rights of the European Union, the Inter-American Court of Human Rights, the African Court on Human Rights, the International Court of Human Rights based on the Dayton Agreement (BiH))
4. Impact on the international protection of national protection

IV. block:

1. Comparability of legal and constitutional systems
2. Level of comparability of legal and constitutional systems
3. Comparative method:
 - 3.1 lower levels: an empirical description of historical explanation.
 - 3.2 higher level: a thematic comparison.
4. Historical Method: The legal / constitutional systems are a product of history and can be only be explained by a number of historical factors.
5. Institutional Method: The legal / constitutional political systems are qualified legal phenomenon.
6. Ideological method: The systems can be evaluated on the basis of more or less coherent collection values and norms.
7. Functional Method: Systems are one of many phenomena in society and at the same time elements of the socio political system.
8. Structurally functional method: Like other phenomena, the systems are one of the determinants of the society structure and at the same time also the structure is one of the determinants of

the systems.

9. Systemic method: dealing with the problems of political and legal relations in the context of particulare systems.

Temeljna literatura in viri / Readings:

1. Mavčič, Arne, Primerjalno ustavno pravo – pravo človekovih pravic, založba Pasadena, Ljubljana, 2002.
2. MAVČIČ, Arne (urednik). *Constitutional review systems around the world*. Lake Mary: Vandeplass, 2018. 713 str. ISBN 978-1-60042-297-3. [COBISS.SI-ID [2053248694](#)]

Internet:

1. www.concourts.net s povezavami/with links
2. Zbirka ustav/Collection of Constitutions:
3. <https://www.constituteproject.org/>
4. CODICES baza Beneške komisije Sveta Evrope: www.venice.coe.int
5. www.us-rs.si s povezavami/with links

Cilji in kompetence:

Študenti bodo razvili splošne kompetence: temeljno znanje o veljavnih ustavnih oziroma pravnih sistemih.

Objectives and competences:

Students will develop general competencies: basic knowledge of the constitutional and legal systems in force.

Predvideni študijski rezultati:

Znanje in razumevanje:
Obveznost sodelovanja na informativnih predavanjih in vajah.
Opraviti seminarsko nalogo.

Intended learning outcomes:

Knowledge and understanding:
Compulsory participation in informative class discussions.
A written seminar paper.

Metode poučevanja in učenja:

Predavanja temeljijo na prikazu materije s sodobnimi računalniško podprtimi vizualnimi sredstvi.

Vaje: primerjava strukture Ustave RS s strukturami tujih ustav (www.concourts.net; www.oefre.unibe.ch/law/icl/index.html); primerjava odločitve v postopku ustavne pritožbe Ustavnega

Learning and teaching methods:

Lectures are based on the presentation of matter with modern computer-based visual means.

Tutorial: Comparing the structure of the Constitution with the structures of foreign constitutions (www.concourts.net; www.oefre.unibe.ch/law/ICL/index.html), a comparison of the decision in the proceedings

sodišča Slovenije (www.us-rs.si) s sorodno odločitvijo tujega ustavnega sodišča in Evropskega sodišča za človekove pravice (www.echr.coe.int)

of the constitutional complaint before the Constitutional Court of Slovenia (www.us-rs.si) with a related decision from particular foreign constitutional courts and the European Court for Human Rights (www.echr.coe.int)

Načini ocenjevanja:	Delež (v %) / Weight (in %)	Assessment:
Seminarska naloga	100%	Written coursework

Reference nosilca / Lecturer's references:

Zasluzni profesor Arne Marjan Mavčič je diplomiral na Pravni fakulteti Univerze v Ljubljani leta 1970. Po končanem študiju na ljubljanski in zagrebški Pravni fakulteti je doktoriral leta 1979. Od leta 1970 do 1973 je bil pravni svetovalec v tedanjem slovenskem parlamentu, od leta 1974 do 1977 predstojnik Mednarodnega oddelka tedanje Republiške zdravstvene skupnosti. Od leta 1978 do 2002 je bil predstojnik Pravnega informacijskega centra Ustavnega sodišča Republike Slovenije, po letu 2002 do 2009 pa je bil na istem sodišču predstojnik Službe za analize in mednarodno sodelovanje. Je višji znanstveni svetnik Pravne fakultete ljubljanske univerze in redni profesor za področje pravnih znanosti ter predava na Fakulteti za podiplomske državne in evropske študije in Evropski pravni fakulteti. Deloval je kot oficir za zvezo za Slovenijo pri Beneški komisiji Sveta Evrope in pri Frankofonski zvezi ustavnih sodišč, kot ekspert EU in Sveta Evrope za področje ustavnega sodstva in človekovih pravic, zastopal je Slovenijo v Mreži EU neodvisnih ekspertov za človekove pravice, deloval je kot član Mednarodne zveze za ustavno pravo, Mednarodne zveze pravnikov itd. Kot Fulbrightov štipendist je predaval v ZDA, na seminarjih, konferencah in delavnicah v številnih evropskih in zunaj-evropskih državah. Deluje kot nacionalni avtor pri Kluwerjevi Enciklopediji ustavnega prava. Njegova bibliografija zajema več kot 500 enot knjig, člankov, mentorstev in drugih strokovnih del v slovenskem in v tujih jezikih, predvsem s področja primerjalnega ustavnega prava, ustavnega sodstva in človekovih pravic (www.concourts.net).

Professor Emeritus Arne Mavčič, completed his Bachelor of Law at the University of Ljubljana Law School, Slovenia in 1970, from which, after having completed his post-graduate studies in civil law at the Universities of Zagreb and Ljubljana Law Schools, he was awarded a Doctorate of Law in 1979. From 1970 to 1973 he was legal advisor to the Slovenian Parliament; from 1974 to 1977 he was Head of the International Department of the Slovenian Health Insurance Association. From 1978 to 2002 he was the Director of the Legal Information Centre of the Constitutional Court of the Republic of Slovenia, since 2002 until 2009 he was a Head of the Analysis and International Cooperation Department of the Constitutional Court of the Republic of Slovenia, a Senior Expert Councilor to the University of Ljubljana Law School, specializing in legal information systems and constitutional law, and a Full Professor of Human Rights Law at the Faculty for State and European Studies and at the European Law School.

Dr. Mavčič was the liaison officer for Slovenia on constitutional law and legal information systems to the (Venice) Commission for Democracy through Law under the Council of Europe, was the national correspondent for Slovenia on constitutional law and legal information systems to the ACCPUF Paris, and, a national member for Slovenia of the EU Network of Experts of Human Rights, a member of the International Constitutional Law Association, a member and the national President for Slovenia of the World Jurist Association, was a Fulbright Scholar, an editor of the Collected Slovenian Constitutional Case-Law series, national editor of the East European Case Reporter of Constitutional Law and currently he is a national author for Slovenia of Kluwer's Encyclopedia of Constitutional Law. His bibliography includes more than 500 units of books, articles, mentorships and other professional works in Slovene and foreign languages, mainly in the field of comparative constitutional law, constitutional justice and human rights (www.concourts.net).