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NEDLEGGING AV JUS297-2-A OG OPPRETNING AV JUS2317 COMPARATIVE EUROPEAN CONSTITUTIONAL LAW OG JUS3517 COMPARATIVE EUROPEAN CONSTITUTIONAL LAW

Bakgrunn

I sak 76/22 til fakultetsstyret 27.9.2022 vedtok fakultetsstyret ny modell for engelskspråklege emne ved fakultetet der dei engelskspråklege emna som hovudregel skal finnast i to variantar med ulike emnkodar: Den eine versjonen av emnet skal ha læringsutbyteskildring i samsvar med bachelornivået i nasjonalt kvalifikasjonsrammeverk, og den andre versjonen av emnet skal ha læringsutbyteskildring i samsvar med masternivå i nasjonalt kvalifikasjonsrammeverk.

Som oppfølging av dette vedtaket har dei emneansvarlege for engelskspråklege spesialemne blitt bedne om å utarbeida nye emneskildringar.

Emneansvarleg Eirik Holmøyvik og undervisar Axel Jonsson har utarbeidd dei to emneskildringane som ligg ved.

Som vedlegg følgjer saka slik ho vart presentert for studieutvalet, inkludert ei oppsummering av skilnadene på bacheloremnet og masteremnet, samt emneskildringar for begge emna.

Handsaming i studieutvalet

Studieutvalet handsama saka i sitt møte den 26.01.2023 og oversender saka til fakultetsstyret med følgjande uttale:

«Studieutvalet oppfordrar fakultetsstyret til å leggja ned emnet JUS297-2-A Comparative European constitutional law etter studieåret 2022/2023 og i staden oppretta JUS2317 Comparative European Constitutional Law og 3517 Comparative European Constitutional Law som skal undervisast første gong haustsemesteret 2023, og til å vedta overgangsordningar og tal på vurderingsforsøk som skildra.»

På denne bakgrunn blir det sett fram følgjande:

forslag til vedtak:

1. JUS297-2-A Comparative European constitutional law blir lagt ned etter studieåret 2022/2023.
2. Emna JUS2317 Comparative European Constitutional Law og 3517 Comparative European Constitutional Law blir oppretta og skal undervisast første gong haustsemesteret 2023

3. Overgangsordning for studentar som treng å gjennomføra vurdering i gamalt JUS297-2-A Comparative European constitutional law etter studieåret 2022/2023: Studentane avlegg i staden eksamen i nytt emne 3517 Comparative European Constitutional Law.
4. Studentar har tre vurderingsforsøk samla både for det gamle JUS297-2-A Comparative European constitutional law i kombinasjon med eitt av dei to nye emna, og samla for dei to nye emna i kombinasjon.

Karl Harald Søvig
dekan

Øystein L. Iversen
fakultetsdirektør

30.01.2023
INTØ

Vedlegg:

1. Sak 3/23-10 til Studieutvalet
2. Emneskildring JUS2317 Comparative European Constitutional Law
3. Emneskildring 3517 Comparative European Constitutional Law

Nedlegging av JUS297-2-A Comparative European Constitutional Law og oppretting av JUS2317 Comparative European Constitutional Law og 3517 Comparative European Constitutional law

I sak 76/22 til fakultetsstyret 27.9.2022 vedtok fakultetsstyret ny modell for engelskspråklege emne ved fakultetet der dei engelskspråklege emna som hovudregel skal finnast i to variantar med ulike emnkodar: Den eine versjonen av emnet skal ha læringsutbyteskildring i samsvar med bachelornivået i nasjonalt kvalifikasjonsrammeverk, og den andre versjonen av emnet skal ha læringsutbyteskildring i samsvar med masternivå i nasjonalt kvalifikasjonsrammeverk.

Som oppfølging av dette vedtaket har dei emneansvarlege for engelskspråklege spesialemne blitt bedne om å utarbeida nye emneskildringar. Emneansvarleg Eirik Holmøyvik og undervisar i emnet Axel Jonsson har utarbeidd dei to emneskildringane som ligg ved, og som er sett opp side ved side. Skilnadene mellom bacheloremnet og masteremnet er markert med gul markering i masteremnet.

Mål og innhald er i hovudsak likt i dei to emna, men med nokre tillegg for inngaldet i masteremnet. Forventa læringsutbyte er tilpassa høvesvis studentar på 3. studieår (bachelornivå) og studentar på 5. studieår (masternivå).

Bacheloremnet har ingen obligatoriske arbeidskrav, medan studentane i emnet på masternivå skal arbeida med ei obligatorisk oppgåve gjennom store deler av semesteret. Det vil vera obligatorisk å levera eit tidleg utkast av oppgåva. Ein skal så kommentera medstudentar sine utkast og få kommentarar til eiga oppgåve frå både medstudentar og undervisar, før den endelege oppgåva til slutt blir levert. Vurderingsforma i begge emna er ein heimeeksamen.

SU vil sjå frå følgjeskrivet frå Holmøyvik og Jonsson at dei alternativt kunne tenka seg at den obligatoriske oppgåva var ein teljande heimeeksamen, som saman med den allereie føreslåtte heimeeksamenen i emnet utgjorde ein heimeeksamen i to delar. I dialog med dei emneansvarlege har ein kome fram til at ein i denne omgang let oppgåva som skal arbeidast med gjennom semesteret ha status som ei obligatorisk kursoppgåve.

Dei emneansvarlege har allereie utarbeidd framlegg til litteraturlister for dei to emna, men etter gjennomgang som del av saksførebuinga ser ein at desse må arbeidast meir med før dei samsvarar med sidetalsnorma som er vedteken av studieutvalet¹. Emneansvarlege har fått tilbakemelding og tilrådingar for justering av mengd litteratur. Justerte framlegg til litteraturlister vil bli lagt fram for SU i tide til fristen for publisering av litteraturlister for haustsemesteret 2024.

Overgangsordning og tal på eksamensforsøk

§3-2-4 i Forskrift om opptak, studier, vurdering og grader ved Universitetet i Bergen (UiB-forskrifta) seier: «Ved nedlegging av studieprogram, studieretninger og emner skal vedtaksorganet fastsette overgangstid for undervisning og vurdering. Studenter som er tatt opp til studieprogram som vedtas nedlagt, har rett til å fullføre dette i samsvar med vedtak om overgangstid. Ved nedlegging av emner skal det normalt avholdes vurdering i emnet i ett eller to påfølgende semestre etter siste undervisningssemester.»

I dette tilfellet er emna på masternivå så like at studentar som treng å gjennomføra vurdering i gamalt emne JUS297-2-A etter haustsemesteret 2024, i staden vil bli viste til å avlegga eksamen i nytt emne JUS3509 Comparative European constitutional law.

§ 6-8-1 i UiB-forskrifta seier følgjande om antall vurderingsforsøk: «Ved Universitetet i Bergen gjelder det ordinært en øvre grense på tre vurderingsforsøk for det enkelte emne. Begrensningen i antallet vurderingsforsøk gjelder også dersom emnet har skiftet emnekode, inngår med ulik kode i flere studieprogrammer eller inngår i ny form i et studieprogram i tilknytning til en overgangsordning.

I medhald av dette gjeld at studentar har tre vurderingsforsøk samla både for det gamle emnet JUS297-2-A og kvart av dei to nye emna, og samla for dei to nye emna i kombinasjon. Ein student som tidlegare har nytta alle vurderingsforsøka i emnet på 3. studieår, kan ikkje få nye høve til å greia emnet ved å i staden melda seg til den andre utgåva av emnet på 5. studieår.

SU uttalar:

Studieutvalet oppfordrar fakultetsstyret til å leggja ned emnet JUS297-2-A Comparative European constitutional law etter studieåret 2022/2023 og i staden oppretta JUS2317 Comparative European Constitutional Law og 3517 Comparative European Constitutional Law som skal undervisast første gong haustsemesteret 2023, og til å vedta overgangsordningar og tal på vurderingsforsøk som skildra.

Vedlegg: Emneskildringar

4.

New Course Descriptions for JUS2317/JUS3517 Comparative European Constitutional Law

In the following, new suggestions for course descriptions for the current JUS297-2-A Comparative European Constitutional Law are presented, for bachelor and master level respectively.

The proposed bachelor course description is built upon the existing course description. The course has only been taught twice, in 2021 and 2022, with around 60 students starting the course and 45 students taking the final exam. According to surveys made among the students of the course, a vast majority (2021: 75 %, 2022: 79 %) of the respondents (27 in 2021 and 38 in 2022) had completed 2 or 3 years of legal studies prior to the course. Only around a fifth (26 % in 2021 and 24 % in 2022) of the respondents had studied law for 4 or more years. After teaching the course for two years, the overall experience among the lecturers is that the level of the course corresponds well to the prior knowledge of most students and provide for adequate challenges the broad majority. Consequently, the new bachelor course could build on the old course, with some adjustments lowering the learning outcomes slightly.

To provide a proper master course, the faculty should add some more advanced elements. Aiming at a higher-level training in elaborating further on comparative constitutional theory and methodology in a European context, we propose the following three additions affecting only the master course:

- Two extra lectures (masterclasses) and an increase of mandatory readings regarding theory and methodology in the field of comparative constitutional law. Requiring more self-studying would be appropriate for master students. These additional elements could be kept as optional for interested bachelor students.
- An extra mandatory 5000-word paper, training the students in planning and conducting a short comparative constitutional study. This task would require the master students to make independent use of theory and methodology discussed in class and in the readings. Students should work on the assignment during most of the course. To add an element of formative assessment, students should receive feedback on an early draft from other master students and finally a lecturer, inspired by the successful peer review model used for our 3rd year for in house students. The final paper could preferably be graded and considered in the final assessment besides the home exam.
- An adjustment of the learning outcomes, to reflect a higher degree of theoretical and methodological understanding and abilities to make informed and independent choices regarding how to conduct comparative legal study.

These additions, as implemented in the course description, are highlighted in yellow below, illustrating the differences between the proposed bachelor and master courses.

Axel Jonsson and Eirik Holmøyvik 08.01.2023

BACHELOR

Objectives and Content

The aim of this course is two-fold: Firstly, the course aims to provide students with an overview of the European constitutional order on both the domestic and the international level. Secondly, the course aims to provide students with the knowledge of and skills to apply prevailing comparative legal methods in developing, interpreting and evaluating constitutional norms, institutions and systems. Both the expansion of transnational constitutional law and the increased attention being paid to national constitutional identities have stressed that comparative perspectives are an inevitable part of modern constitutional law. Thus, the relationship between European constitutional standards and national constitutions is the focal point of the course.

While constitutional law has traditionally been considered a fundamentally domestic legal discipline, the last few decades has seen a certain convergence of constitutional law in Europe through a combination of supranational legal orders such as the ECHR and the EU, long-standing development and promotion of common European "soft law" standards on the rule of law, as well as increased communication between apex courts in different countries. For example, the concept of judicial independence, guaranteed by national constitution, can no longer

MASTER

Objectives and Content

The aim of this course is two-fold: Firstly, the course aims to provide students with an overview of the European constitutional order on both the domestic and the international level. Secondly, the course aims to provide students with the knowledge of and skills to apply prevailing comparative legal methods in developing, interpreting and evaluating constitutional norms, institutions and systems. Both the expansion of transnational constitutional law and the increased attention being paid to national constitutional identities have stressed that comparative perspectives are an inevitable part of modern constitutional law. Thus, the relationship between European constitutional standards and national constitutions is the focal point of the course.

While constitutional law has traditionally been considered a fundamentally domestic legal discipline, the last few decades has seen a certain convergence of constitutional law in Europe through a combination of supranational legal orders such as the ECHR and the EU, long-standing development and promotion

be interpreted without considering the same concept on the European level and interpreted by the European Court of Human Rights and the Court of Justice of the European Union. In Europe, the interdependence of national constitutional law and international law of constitutional character has intensified the development of comparative legal methods. The ECHR, the Treaties of the EU (TEU) and the EU charter of fundamental rights are to be applied equally to all citizens despite their differing national contexts.

At the same time, one can recognize tensions between national constitutional institutions (such as constitutional courts and legislators) and the ECJ and the ECtHR. Different strategies can be identified to regulate the relationship between the national and supranational constitutional orders. Some institutions prefer cooperation while others attempt to refine and delimit the national constitutional domain from the international constitutional order.

To maintain legal certainty and foreseeability, European courts and monitoring institutions as well as national courts, legal scholars and legislators are required to critically compare constitutions in an increasingly pluralistic legal space. The EU is obliged to respect the "national identities" of the Member states as stated in Article 4.2 TEU and consider the legal definition of fundamental rights as general principles of law, partly resulting from "the constitutional traditions of the Member States" in Article

of common European "soft law" standards on the rule of law, as well as increased communication between apex courts in different countries. For example, the concept of judicial independence, guaranteed by national constitution, can no longer be interpreted without considering the same concept on the European level and interpreted by the European Court of Human Rights and the Court of Justice of the European Union. In Europe, the interdependence of national constitutional law and international law of constitutional character has intensified the development of comparative legal methods. The ECHR, the Treaties of the EU (TEU) and the EU charter of fundamental rights are to be applied equally to all citizens despite their differing national contexts.

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6.3. Consequently, comparative constitutional analysis is a pre-requisite when applying EU-law in constitutional matters. Within the Council of Europe legal order too, comparative law plays a key role in developing both the ECHR as well as "soft law" constitutional standards. All in all, changing narrative from the people to the peoples is necessary to understand competing constitutional structures, principles, and limitations - beyond the framework of legal sources produced within the nation state.

Using an institutional approach, this course introduces the students to a series of common classic constitutional challenges, illustrated with case-law from the European Court of Justice and the European Court 13 of Human Rights and reports from the Venice Commission of the Council of Europe. By studying the problems and the comparative legal methods of the institutions, students are trained initially to critically examine how these similar problems are addressed in European constitutional settings, then to explain why differences and parallels appear. At the same time, students learn how common constitutional structures among states can be systematized and - by distinguishing categories from others - to describe archetypes of European constitutions and their relationship to international standards. The aim is that the students deepen their insight into substantive constitutional challenges facing a contemporary policymaker, judge or academic

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Using an institutional approach, this course introduces the students to a

and learn how the same challenges can, and cannot, be resolved through comparative reasoning. Considering the historical influence of European constitutional theory, these understandings should have global relevance.

Firstly, the students will be introduced to the following theoretical background:

- Common constitutional traditions: the emergence of transnational European constitutionalism
- National constitutional identity, subsidiarity, the impact of constitutional legal culture
- Possibilities and limitations of comparative constitutional law: general methodological considerations
- Interpreting, and evaluating different approaches towards *lex superior*: comparative legal methods practiced in courts, supervisory institutions, and legislative assemblies in Europe.
- Institutional rules, and human rights: dichotomy or structurally connected

Secondly, the above-mentioned framework is used to comparatively analyze and discuss contrasting national answers to specific substantive constitutional problems. The problems are selected in consideration of the origin of participating students,

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who are encouraged to bring questions and examples to class. Even though the structural focus is put on European constitutions, complementary perspectives from countries outside the Europe and the EU are welcome. This course will cover several fundamental constitutional topics such as but not limited to:

- National and transnational constitutional norm production
- Preventing concentration of power: institutional structure and separation of powers
- Parliamentary and judicial control of the executive
- Judicial independence
- Supervising the legislature: constitutional review, electoral law, freedom of expression and information
- Transferring constitutional norm production to international bodies: domestic impact of the ECHR and the EU/EEA
- Avoiding majority dictatorship: minority protection
- Emergency powers and derogation

Learning Outcomes

Knowledge

After this course, students should be able to give account of the fundamentals of comparative law theory, vocabulary, and method. Furthermore, the students should

Firstly, the students will be introduced to the following theoretical background:

- Common constitutional traditions: the emergence of transnational European constitutionalism
- National constitutional identity, subsidiarity, the impact of constitutional legal culture
- Possibilities and limitations of comparative constitutional law: general methodological considerations
- Interpreting, and evaluating different approaches towards lex superior: comparative legal methods practiced in courts, supervisory institutions, and legislative assemblies in Europe.
- Institutional rules and human rights: dichotomy or structurally connected
- National constitutions and transnational European law: monism, dualism, pluralism, and fragmentation
- Special considerations regarding a European comparative

have detailed knowledge of characteristics of constitutional systems in Europe, how common standards are set by the EU and the ECHR, and of comparative legal methods used in both European and national institutions.

Abilities

Having learnt to apply comparative methods as used in European and national institutional practice, students should have the ability to complete a comparative constitutional investigation in English. Students should know how to identify, exemplify, assess, and explain common constitutional problems in Europe. This includes an ability to use constitutional legal material from one state and relate it to a given European standard.

General competence

By relating constitutional solutions to both their respective national and their common broader European context, the students are trained to reach insights which should provide the student with relevant tools to normatively discuss how constitutional, and other, problems could and should be solved. The students will enhance their abilities to present, discuss and analyze constitutional issues in English and within the framework of academic standards.

constitutional methodology

Secondly, the above-mentioned framework is used to comparatively analyze and discuss contrasting national answers to specific substantive constitutional problems. The problems are selected in consideration of the origin of participating students, who are encouraged to bring questions and examples to class. Even though the structural focus is put on European constitutions, complementary perspectives from countries outside the Europe and the EU are welcome. This course will cover several fundamental constitutional topics such as but not limited to:

- National and transnational constitutional norm production
- Preventing concentration of power: institutional structure and separation of powers
- Parliamentary and judicial control of the executive
- Judicial independence
- Supervising the legislature: constitutional review, electoral law, freedom

Required Previous Knowledge

Two years of law studies

Recommended Previous Knowledge

A basic course in national constitutional law

Good level of English language.

Credit Reduction due to Course Overlap

Combined with JUS297-2-A Comparative European Constitutional Law or JUS3517 Comparative European Constitutional Law, this course will generate no new credits.

The course combines well with

- JUS2301/JUS3501 Free movement under EU and EEA market law
- JUS2313/JUS3513 Human Rights and Welfare Policies
- JUS2304/JUS3504 Comparative Private Law
- JUS23XX/JUS35XX International Civil Procedure
- JUS2308 Constitution, courts and Politics

of expression and information

- Transferring constitutional norm production to international bodies: domestic impact of the ECHR and the EU/EEA
- Avoiding majority dictatorship: minority protection
- Emergency powers and derogation
- National limitations on European constitutional legal development
- Legislative procedure and process based judicial review

Learning Outcomes

Knowledge

After this course, students should have advanced knowledge of comparative law theory, vocabulary, and methodology with special regard to constitutional law. Furthermore, the students should have detailed knowledge of characteristics of constitutional systems in Europe, common standards set by the EU and the ECHR, and of comparative legal methods used in both European and national institutions.

- JUS23XX Comparing Legal Cultures in Europe

Access to the Course

The course is available for the following students:

- Admitted to the five-year master programme in law
- Granted admission to elective courses at the Faculty of Law
- Exchange students at the Faculty of Law

The pre-requirements may still limit certain students' access to the course.

Teaching and learning methods

Lectures and seminars.

Students may be asked to prepare group presentations and students are encouraged to bring examples and perspectives from their home countries. Lecturers from at least three different legal systems will hold a panel discussion to which the students are instructed to bring questions of their own interest.

Compulsory Assignments and Attendance

None

Forms of Assessment

Abilities

Having learnt to apply and evaluate comparative methods as used in European and national institutional practice, students should have the ability to independently plan and complete a comparative constitutional investigation in English. Students should know how to identify, exemplify, assess, and explain common constitutional problems in Europe, based on their own independent choices of theory and method. This includes an ability to choose relevant constitutional legal material from a states and relate it to European standards, as well as to foreign national law.

General competence

By relating constitutional solutions to both their respective national and their common broader European context, the students are trained to reach insights which should provide the student with relevant tools to normatively discuss how constitutional, and other, problems could and should be solved. The students will enhance their ability to present, discuss and analyze constitutional issues in English and within the

<p>Home exam</p> <p>Examination Support Material</p> <p>Open book</p> <p>Grading Scale</p> <p>A-E for pass. F for fail</p> <p>Assessment Semester</p> <p>Autumn.</p> <p>Reading List</p> <p>The reading list will be ready 1 July for the autumn semester.</p> <p>Course Evaluation</p> <p>According to the administrative arrangements for course evaluation at the Faculty of Law</p> <p>Programme Committee</p> <p>The Academic Affairs Committee (Studieutvalget) at the Faculty of Law is responsible for ensuring the material content, structure and quality of the course.</p> <p>Course Coordinator</p> <p>Professor Eirik Holmøyvik</p> <p>Course Administrator</p>	<p>framework of academic standards.</p> <p>Furthermore, students are fostered to self-critically and independently evaluate their own applied methods and understandings by relating to general possibilities and limitations of using comparative legal methods when making, applying, and invoking constitutional law in Europe. The student should be able to take advantage of these skills in other legal and scientific disciplines.</p> <p>Required Previous Knowledge</p> <p>Three years of law studies</p> <p>Recommended Previous Knowledge</p> <p>A basic course in national constitutional law</p> <p>Good level of English language.</p> <p>Credit Reduction due to Course Overlap</p> <p>Combined with JUS297-2-A Comparative European Constitutional Law or JUS2317 Comparative European Constitutional Law, this course will generate no new credits.</p>
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The Faculty of Law's section for students and academic affairs (Studieseksjonen) is responsible for administering the programme.

The course combines well with

- JUS2301/JUS3501 Free movement under EU and EEA market law
- JUS2313/JUS3513 Human Rights and Welfare Policies
- JUS2304/JUS3504 Comparative Private Law
- JUS23XX/JUS35XX International Civil Procedure
- JUS2308 Constitution, courts and Politics
- JUS23XX Comparing Legal Cultures in Europe

Access to the Course

The course is available for the following students:

- Admitted to the five-year master programme in law
- Admitted to the two-year master programme in law
- Admitted to the Master of Laws (LLM) in EU and EEA Law
- Granted admission to elective courses at the Faculty of Law
- Granted additional right to study following completed master's degree in Law at UiB
- Exchange students at the Faculty of Law

The pre-requirements may still limit certain students' access to the course.

Teaching and learning methods

Lectures and seminars.

Students may be asked to prepare group presentations and students are encouraged to bring examples and perspectives from their home countries. Lecturers from at least three different legal systems will hold a panel discussion to which the students are instructed to bring questions of their own interest.

Compulsory Assignments and Attendance

Students will work on a 5000-word paper throughout the course. An early draft of the paper must be submitted by a given deadline, students must then comment on, and give feedback to, an assigned number of fellow students' papers, before the final paper is to be submitted.

Students who fail the paper will be given one opportunity to resubmit.

Participation in the master classes is mandatory.

Forms of Assessment

Home exam.

Examination Support Material

Open book

Grading Scale

A-E for pass. F for fail

Assessment Semester

Autumn.

Reading List

The reading list will be ready 1 July for the autumn semester.

Course Evaluation

According to the administrative arrangements for course evaluation at the Faculty of Law

Programme Committee

The Academic Affairs Committee (Studieutvalget) at the Faculty of Law is responsible for ensuring the material content, structure and quality of the course.

Course Coordinator

Professor Eirik Holmøyvik

Course Administrator

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