

Academic Year: ( 2023 / 2024 )

Review date: 26-04-2023

Department assigned to the subject: Public State Law Department

Coordinating teacher: SANCHEZ SAUDINOS, JOSE MANUEL

Type: Compulsory ECTS Credits : 6.0

Year : 1 Semester : 2

## OBJECTIVES

The specific aims of the subject constitutional law regarding academic competences, or as regards the acquisition of basic knowledge, are the following:

1. Knowledge of origins, historical development and current meaning of concept of Constitution and its functions in the context of the social and democratic rule of law.
2. Knowledge of the period of political transition processes to democracy and the constituent phase of 1978 Spanish Constitution, as well as the general meaning of the main principles underlying the Spanish Constitution and to be able to observe and distinguish its manifestations in the constitutional text.
3. Knowledge of the nature of supreme norm and founding norm of the order that the Constitution has
4. Knowledge of the importance of constitutional rigidity and procedures for the amendment of 1978 Constitution.
5. Knowledge of the main elements of the constitutional system of law sources.
6. Knowledge of the institutional position of the Constitutional Court as guarantor of the constitutional supremacy.
7. Knowledge of the procedures of the constitutional control of the norms with force of law
8. Knowledge of the system of fundamental rights, constitutionally recognized, and its guarantee mechanisms
9. Knowledge of the legal elements of the process of formation of power in a democracy: the right to vote, election, political parties, direct democracy.
10. Knowledge of constitutional settings of the Crown as head of State.
11. Knowledge of the role of the Cortes Generales as Parliament: mode of election, structure, organization and operation, status of their members, functions.
12. Knowledge of the function of the Spanish parliamentary system: establishment of the Government, parliamentary control, political responsibility requirement, dissolution of the Parliament.
13. Knowledge of the constitutional position of the Government: composition, structure and operation, functions, removal of the Government
14. Knowledge of the role of the judiciary in the constitutional system
15. Knowledge of the main rules of the territorial organization of the State: territorial autonomy, institutional system of the autonomous communities, distribution of powers between the State and autonomous communities, relations between the two, financing of the autonomous communities, as well as the local regime.

## DESCRIPTION OF CONTENTS: PROGRAMME

### CONSTITUTIONAL LAW SYLLABUS

#### 1. THE SPANISH CONSTITUTION OF 1978

- 1.1. The history of Spanish constitutionalism.
- 1.2. The process of the political transition processes to democracy and the drafting of the Constitution. General features and basic contents of the Constitution.
- 1.3. Structural principles of the constitutional order:
  - 1.3.1. The social and democratic State as a form of State.
  - 1.3.2. The parliamentary Monarchy as a form of Government.
  - 1.3.3. The State of Autonomies as a form of territorial organization of power.

#### 2. CONSTITUTION AND LEGAL ORDER

- 2.1. The Constitution as a superior legal norm: supreme norm and founding norm.
- 2.2. The rigidity of the Constitution:
  - 2.2.1. The nature of the constitutional reform; constitutional flexibility and rigidity; the limits to reform.

- 2.2.2. The constitutional reform procedures: the ordinary procedure; the aggravated procedure.
- 2.3. The constitutional system of sources of law.
  - 2.3.1. The constitutional principles of the legal system.
  - 2.3.2. The law as a source of Law; types of laws; the organic law.
  - 2.3.3. The regulatory provisions of the Government with the force of law: the legislative decree; the decree-law.
  - 2.3.4. The parliamentary regulation.
  - 2.3.5. The regulatory power of Government.
  - 2.3.6. The State of Autonomies: state ordering and autonomous suborderings.
  - 2.3.7. International and supranational sources: international treaties; the European legal order.
- 2.4. The jurisdictional defense of the Constitution:
  - 2.4.1. Nature and models.
  - 2.4.2. The Constitutional Court: institutional position, composition, organization and operation, powers.
  - 2.4.3. The control of constitutionality of the norms with force of law: the appeal of unconstitutionality; the question of unconstitutionality; the prior control of international treaties; prior control of autonomy statutes.

### 3. THE SYSTEM OF RIGHTS AND FREEDOMS IN THE CONSTITUTION

- 3.1. Fundamental rights: concept and legal regime.
- 3.2. General overview of the rights and freedoms recognized in the constitutional order.
- 3.3. The system of protection of rights and freedoms:
  - 3.3.1. Regulatory guarantees.
  - 3.3.2. Jurisdictional defense: judicial protection: ordinary jurisdictional protection and preferential and summary appeal; the appeal for amparo before the Constitutional Court; protection at the international level.
  - 3.3.3. Institutional guarantees: the Ombudsman.
- 3.4. The suspension of rights and freedoms.

### 4. THE DEMOCRATIC PRINCIPLE AS BASIS OF THE CONSTITUTIONAL ORGANIZATION OF THE STATE.

- 4.1. The significance of political participation; the right to vote.
- 4.2. The representative democracy; elections: the legal regulation of the electoral process.
- 4.3. The political parties.
- 4.4. The institutions of direct democracy.

### 5. THE ORGANIZATION OF STATE POWERS

- 5.1. The Head of the State: the constitutional setup of the Crown.
  - 5.1.1. The King's personal status.
  - 5.1.2. The functions of the King and the endorsement of the royal acts.
- 5.2. Parliament: the "Cortes Generales".
  - 5.2.1. General characters; composition of the Parliament: the electoral system of Congress; composition and Senate electoral system.
  - 5.2.2. The autonomy of the Chambers; its internal organization and operation.
  - 5.2.3. The statute of parliamentarians; parliamentary groups.
  - 5.2.4. The functions of the Parliament: the legislative function; the budgetary function; the control function of the Government; the political orientation function.
- 5.3. The constitutional position of the Government.
  - 5.3.1. Composition of the Government and statute of its members.
  - 5.3.2. The Government formation process.
  - 5.3.3. Structure and operation of the Government: collegiality and presidentialism.
  - 5.3.4. The functions of the Government: the managerial function; executive function; regulatory power.
  - 5.3.5. The resignation of the Government; the caretaker Government.
- 5.4. Relations between Parliament and Government.
  - 5.4.1. Parliamentary control and political responsibility.
  - 5.4.2. Instruments of parliamentary control.
  - 5.4.3. The requeriment of political responsibility: the motion of censure; vote of confidence.
  - 5.4.4. The dissolution of the Parliament.
- 5.5. The Judiciary:
  - 5.5.1. The notion of the Judiciary; constitutional principles of organization and operation.
  - 5.5.2. The statute of judges and magistrates.
  - 5.5.3. The government of the Judiciary: the General Council of the Judiciary.

### 6. THE TERRITORIAL ORGANIZATION OF THE STATE

- 6.1. The territorial form of the State.
- 6.2. The autonomy of nationalities and regions: the autonomous communities.
  - 6.2.1. Principles of articulation of the autonomous State.

- 6.2.2. The institutional system of the autonomous communities.
- 6.2.3. The distribution of powers between the State and the autonomous communities.
- 6.2.4. The relationship between the State and the autonomous communities.
- 6.2.5. The financing of the autonomous communities.

## LEARNING ACTIVITIES AND METHODOLOGY

**METHODOLOGY:** The methodology is a coherent set of techniques and activities, logically coordinated, to address learning process towards certain aims. The techniques mentioned below, can be used in either of the teaching units or lessons mentioned in the previous paragraph, and the their objectives are specified in line with their descriptions.

**LECTURES:** The lectures are oral presentations by teachers. The lecturers will explain relevant information about the theoretical foundations of lessons of the subject. These classes will be held no notes, and the teacher in advance will indicate some texts or papers that need to be read prior to the class in order to keep exposure adequately.

**SEMINARS:** The seminars are academic sessions in which specific legal problems will be solved. The students must have previously assimilated knowledge related to one or more lessons of the subject if they can be able to solve them.

**DISCUSSION OF WORKING PAPERS:** The main aim of the some class will be to reflect and deepen in the content of working papers related to each lesson. The documents will be listed by the teacher and can be of three types: legislative, jurisprudential or doctrinal documents. To participate in these classes, prior to the each meeting, the student must complete assessable written works point out by the teacher, which show that the student has worked in advance on the document, the oral presentation will be organized and will reflect on it. Work on documents can be performed individually or as group work.

**DISCUSSION:** During the semester, some discussion sessions by teams will be held, the sessions will be related with current issues that they have impact on the lessons of the syllabus (eg. electoral system, position of certain institutions of the State, Government control).

**ORAL PRESENTATION OF RESEARCH PAPERS:** The students may eventually elaborate a small research paper on some of the lessons or the headings of the syllabus. These works, done individually or in groups, will be exposed to the rest of the class.

**TEST OF ALTERNATIVE ANSWERS:** On a regular basis, students may be asked to answer a test of alternative responses on the syllabus content explained in the lectures.

## ASSESSMENT SYSTEM

The acquisition of skills and abilities of the students will be evaluated based on participation in the activities described in the previous section (40% of the final grade). The specific assessment of each of these activities in small group classes will be determined by agreement of all professors teaching of the subject and a part of it may come from the alternative response tests provided in the schedule.

To add to this, the students must pass a final exam (it will have a weight of 60% on the final mark). The final exam will primarily assess the assimilation of theoretical knowledge on the syllabus, which have been object of reflection and work throughout the semester. Final exam will consist of several parts: a first part with short questions or test questions (objective test), to evaluate the assimilation of the basic concepts of the subject; in the second part, the students must develop one or more topics of the subject, in this case, the capacity for synthesis, argumentation and orderly, coherent and profound exposition of a particular issue will be assessed; finally, a practical third part may eventually be carried out in which the students

solve a case study, it will be similar to other studied during the course.

In any case, the students have to get in the final exam more than 4 (or 2,5 on the 6 points -maximum mark of this exam-) to pass the course.

In the extraordinary call, a similar evaluation system will be used, with a double correction by the teacher, from which the student will receive the grade that is most favorable to him: first, in an identical way to the ordinary call, the the extraordinary call will represent 60% of the final mark, which will be added to the 40% of the continuous evaluation; Secondly, an assessment of the exam will be made that represents 100% of the final grade, without taking into account the continuous assessment grade.

<b>% end-of-term-examination:</b>	60
<b>% of continuous assessment (assignments, laboratory, practicals...):</b>	40

## BASIC BIBLIOGRAPHY

- FERRERES COMELLA, V.: "The Constitution of Spain. A contextual Analysis" , Hart, Oxford (Reino Unido) and Portland, Oregon (USA), 2013.
- GAMBINO, S., LOZANO MIRALLES, J., PUZZO, F. y RUIZ RUIZ, J.J.: "The Spanish Constitutional System", Eleven International Publishing, The Hague (Países Bajos), 2018.
- RUIZ ROBLEDO, A.: "Constitutional Law in Spain", Wolters Kluwer, Alphen aan den Rijn (Países Bajos),

