

# European and Italian Public law

a.y. 2023/2024

Teach. Cristina Napoli

**3 October 2023, 2.00pm-6.00pm, Faculty of Law, Public Law section (first floor), Seminar room – *Religious freedom* (seminar organized with the collaboration of PhD Student Neri Bini Smaghi, Sapienza University of Rome)**

Links to materials for preparing for the discussion:

1. Lautsi v. Italy

[https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwjg\\_Obn3r2BAxXHR\\_EDHQmFAD0QFnoECB8QAQ&url=https%3A%2F%2Fhudoc.echr.coe.int%2Fapp%2Fconversion%2Fpdf%2F%3Flibrary%3DECHR%26id%3D001-104040%26filename%3D001-104040.pdf&usg=AOvVaw2VNZnB\\_-xJAXfftKe41K\\_u&opi=89978449](https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwjg_Obn3r2BAxXHR_EDHQmFAD0QFnoECB8QAQ&url=https%3A%2F%2Fhudoc.echr.coe.int%2Fapp%2Fconversion%2Fpdf%2F%3Flibrary%3DECHR%26id%3D001-104040%26filename%3D001-104040.pdf&usg=AOvVaw2VNZnB_-xJAXfftKe41K_u&opi=89978449)

2. Freedom of Religion Crucified?

<https://www.cairn.info/revue-politique-europeenne-2013-3-page-12.htm>

3. Freedom Of Religion And From Religion

<https://digitalcommons.maine.maine.edu/mlr/vol65/iss2/20/>

4. Neutrality In The Classroom

<https://academic.oup.com/icon/article/11/1/200/776146>

5. Lautsi: A Reply

<https://academic.oup.com/icon/article/11/1/230/776244>

Questions for discussion:

- 1) Why did the Italian Constitutional Court refuse to rule on the constitutionality of the crucifix in public schools?
- 2) What did the Italian administrative courts (Tar and Consiglio di Stato) say about the meaning of the crucifix in public schools?
- 3) Which principle has been used differently by the II Chamber and Grand Chamber?
- 4) What is the difference between secularism and neutrality for the European Court of Human Rights?
- 5) What is the position of the scholars?

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**17 October 2023, 2.00pm-6.00pm, Faculty of Law, Public Law section (first floor), Seminar room – *The rights of prisoners* (seminar organized with the collaboration of PhD Luca Mariantoni, Sapienza University of Rome)**

Links to materials for preparing for the discussion:

**Case Of Kafkaris v. Cyprus**

[https://hudoc.echr.coe.int/eng#{%22appno%22:\[%221906/04%22\],%22itemid%22:\[%22001-85019%22\]}](https://hudoc.echr.coe.int/eng#{%22appno%22:[%221906/04%22],%22itemid%22:[%22001-85019%22]})

[https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22002-2237%22\]}](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22002-2237%22]}) (extract)

**Case Vinter Et Autres v. Royaume-Uni**

[https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-122694%22\]}](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-122694%22]})

[https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22002-7652%22\]}](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22002-7652%22]}) (extract)

[https://www.echr.coe.int/w/vinter-and-others-v.-united-kingdom-no.-66069/09-130/10-et-3896/10-?p\\_1\\_back\\_url=%2Fsearch%3Fq%3Dvinter%26categorymemberstates%3D623138](https://www.echr.coe.int/w/vinter-and-others-v.-united-kingdom-no.-66069/09-130/10-et-3896/10-?p_1_back_url=%2Fsearch%3Fq%3Dvinter%26categorymemberstates%3D623138)

(Grand Chamber hearing 28 November 2012)

**Case Of Hutchinson v. The United Kingdom**

[https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-170347%22\]}](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-170347%22]})

**Case Öcalan v. Turquie (No 2)**

[https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-142086%22\]}](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-142086%22]})

**Case Viola v. Italy**

<https://www.coe.int/en/web/execution/-/italy-reform-of-review-mechanism-of-whole-life-sentences-aiming-at-aligning-with-echr-judgment> (Italian achievement)

[1459th meeting \(7-9 March 2023\) \(DH\) - H46-13 Marcello Viola v. Italy \(No. 2\) \(Application No. 77633/16\) \(coe.int\)](https://www.coe.int/en/web/execution/-/italy-reform-of-review-mechanism-of-whole-life-sentences-aiming-at-aligning-with-echr-judgment)

<https://archiviodpc.dirittopenaleuomo.org/upload/3037-judgment-marcello-viola-v.-italy-no.-2---irreducible-life-sentence-breached-the-convention-1.pdf> (extract)

Questions for discussion:

- 1) What are the principles established in the case of Vinter v. United Kingdom?
- 2) What are the principles affirmed in the case of Kafkaris v. Cyprus?
- 3) What are the safeguards for detainees in Italy?
- 4) What are the principles established in Viola v. Italy? Has Italy implemented the judgment?

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**7 November 2023, 2.00pm-6.00pm, Faculty of Law, Public Law section (first floor), Seminar room – *Abortion* (seminar organized with the collaboration of PhD Student Lidia Blumetti, Sapienza University of Rome)**

Links to materials for preparing for the discussion:

**1. Italian Constitutional Court - decision n. 27/1975**

<https://www.biodiritto.org/Dossier/Lost-found-in-translation/Italian-Constitutional-Court-decision-n.-27-1975-voluntary-termination-of-pregnancy>

**2. Constitutional Tribunal of the Republic of Poland – decision 22 October 2020**

<https://trybunal.gov.pl/en/news/press-releases/after-the-hearing/art/11299-planowanie-rodziny-ochrona-plodu-ludzkiego-i-warunki-dopuszczalnosci-przerywania-ciazy>

**3. U.S. Constitutional Court - Dobbs v. Jackson Women's Health Organization**

[https://www.law.cornell.edu/wex/dobbs\\_v.\\_jackson\\_women%27s\\_health\\_organization\\_%282022%29](https://www.law.cornell.edu/wex/dobbs_v._jackson_women%27s_health_organization_%282022%29)

**4. U.S. Constitutional Court – Roe v. Wade**

[https://www.law.cornell.edu/wex/roe\\_v.\\_wade\\_%281973%29](https://www.law.cornell.edu/wex/roe_v._wade_%281973%29)

**5. European Court of human rights – Case of A, B and C v. Ireland (Grand Chamber)**

[https://hudoc.echr.coe.int/fre#{%22itemid%22:\[%22002-680%22\]}](https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22002-680%22]}) (extract)

**6. European Court of human rights – Case of R.R. v. Poland**

[https://hudoc.echr.coe.int/fre#{%22itemid%22:\[%22002-518%22\]}](https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22002-518%22]}) (extract)

[https://hudoc.echr.coe.int/fre#{%22itemid%22:\[%22001-104911%22\]}](https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22001-104911%22]}) (full sentence)

Questions for discussion:

1. Why does the Italian Constitutional Court declare Article 546 of the Penal Code unconstitutional? Which constitutional principles are involved in the issue of voluntary termination of pregnancy?
2. What does the Constitutional Tribunal of the Republic of Poland say about the rights of an unborn child?
3. What does the U.S. Constitutional Court say about the right to abortion? What are the implications of the ruling?
4. What are the principles established in Judgment A, B and C v. Ireland? What is the difference between the appeals filed by A and B and the one filed by C?

5. What are the principles established in case R.R. v. Poland? Why does European Court of human rights declare that in that case there was a violation of art. 3 CEDU?

6. In your opinion, taking into account the cases examined, what factors influence states' regulation of voluntary termination of pregnancy?

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**21 November 2023, 2.00pm-6.00pm, Faculty of Law, Public Law section (first floor), Seminar room – *Parliamentary immunities and the relationship between politics and judiciary* (seminar organized with the collaboration of PhD Student Gianpiero Gioia, Sapienza University of Rome)**

Links to materials for preparing for the discussion:

CJEU, Bruno Gollnisch v. European Parliament, T-346/11 and T-347/11, EU:T:2013:23  
<https://eur-lex.europa.eu/legal-content/GA/TXT/?uri=CELEX:62011TJ0346>

CJEU, Patriciello, C-163/10, EU:C:2011:543  
<https://eur-lex.europa.eu/legal-content/IT/TXT/?uri=ecli%3AECLI%3AEU%3AC%3A2011%3A543;>

CJEU, Case C-502/19, Junqueras, ECLI:EU:C:2019:1115  
<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62019CJ0502;>

ECtHR Cordova v Italy (no. 40877/98) and (no 45649/99), 30 January 2003  
<https://hudoc.echr.coe.int/app/conversion/pdf/?library=ECHR&id=001-60914&filename=001-60914.pdf>

ECtHR Belpietro v. Italy (no. 43612/10);  
<https://hudoc.echr.coe.int/app/conversion/pdf/?library=ECHR&id=002-9038&filename=002-9038.pdf>

[Report on the scope and lifting of parliamentary immunities adopted by the Venice Commission at its 98th plenary session \(Venice, 21-22 March 2014\)](#)

Questions for discussion:

1. What are the primary purposes of parliamentary immunity, and how does it impact legislative functions in a democratic society?
2. How do you perceive the balance between providing lawmakers with immunity and ensuring accountability for their actions within the legal system?
3. In what ways does the interaction between parliamentary immunity and the judiciary influence public trust in political institutions within the European Union?
4. What reforms or changes could be implemented to enhance the effectiveness of parliamentary immunity while ensuring fairness and justice in legal proceedings?
5. How does the concept of parliamentary immunity differ between various European nations, and what are the implications of these differences?
6. What ethical considerations should be taken into account when discussing the limits and applications of parliamentary immunity?

7. How might the relationship between parliamentary immunity and the judiciary evolve in the future, especially within the European legal landscape?
8. What role do you think the media plays in shaping public perception regarding parliamentary immunity and its impact on governance?
9. How does the understanding of parliamentary immunity contribute to citizen engagement and awareness of their rights and responsibilities in a democratic society?

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**5 December 2023, 2.00pm-6.00pm, Faculty of Law, Public Law section (first floor), Seminar room – *Evolution of the relationship between EU and the Italian legal system* (seminar organized with the collaboration of PhD Student Riccardo Guiglia, Sapienza University of Rome)**

Links to materials for preparing for the discussion:

Judgment of the Court of Justice of the European Communities of 15 July 1964. Flaminio Costa v E.N.E.L. Case 6-64.

<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A61964CJ0006>

Judgment of the Court of Justice of the European Communities of 9 March 1978. Amministrazione delle Finanze dello Stato v Simmenthal SpA. Case 106/77.

<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A61977CJ0106>

Judgment of the Constitutional Court of Italy no. 348 of 2007

[https://www.cortecostituzionale.it/documenti/download/doc/recent\\_judgments/S348\\_2007\\_Eng.pdf](https://www.cortecostituzionale.it/documenti/download/doc/recent_judgments/S348_2007_Eng.pdf)

Judgment of the Constitutional Court of Italy no. 349 of 2007

[https://www.cortecostituzionale.it/documenti/download/doc/recent\\_judgments/S349\\_2007\\_Eng.pdf](https://www.cortecostituzionale.it/documenti/download/doc/recent_judgments/S349_2007_Eng.pdf)

Judgment of the Constitutional Court of Italy no. 269 of 2017

[https://www.cortecostituzionale.it/documenti/download/doc/recent\\_judgments/S\\_269\\_2017\\_EN.pdf](https://www.cortecostituzionale.it/documenti/download/doc/recent_judgments/S_269_2017_EN.pdf)

Questions for discussion:

1. Which are the most important differences between the starting perspectives of the European Court of Justice and the Italian Constitutional Court?
2. How much the European concept is it likely to have an impact on the sovereignty of the Italian State?
3. How does the hierarchy of sources change if we compare the relationship between Italy and the European Union with the relationship between Italy and the European Convention on Human Rights?
4. Is the level of the Italian Constitution higher in the cases of the European Court of Justice, or in the cases of the European Court of Human Rights?
5. Considering the phases of current evolution of European integration, which can be the possible scenarios?