



SAPIENZA
UNIVERSITÀ DI ROMA

Sapienza Law School
Master Programme in European Studies (LM-90)

Fall Term 2021

Comparative and European Administrative Law

Prof. Marco D'Alberi – Prof. Alfredo Moliterni

Class meets:

on Wednesday at “Calasso” Room (1.15 p.m. – 3 p.m.)

(<https://uniroma1.zoom.us/j/85220329924?pwd=ekhTUzdLU1VTaGh4bGFUazA0MnllUT09>)

on Thursday at Room 7 (1.15 p.m. – 3 p.m.)

(<https://uniroma1.zoom.us/j/98477250579?pwd=RnNlMGpmamp3QjdZUXJkUXVYU0JFdz09>)

1. Course Objectives

The Course intends to:

- Clarify object and tools of legal comparison in administrative law
- Study the origins and transformations of public administration and administrative law
- Analyze the concrete functioning of various administrative law systems, mainly but not only in Europe and E.U.

2. Course Structure

The Course deals with the main features of European Administrative Law and examines both the principles and rules of administrative law that are provided for by EU Law, and the comparison among administrative laws of the member States of the Union; attention will be paid to the global context as well.

The Course is structured into the following main topics:

- Units and methods of comparison
- Evolution of Administrative law in a comparative perspective
- European Administrative Law: foundation and principles
- Rule of Law and European legal order
- Public Administrations and Administrative Agencies in a comparative perspective
- Public administration and agencies in E.U.
- Administrative decisions and rules
- Administrative procedures: function, structure and models
- Participation and “administrative democracy”
- Transparency and Freedom of information
- Judicial review of Administrative action: deference vs. hard look?
- Principle of effective judicial protection in Europe
- Liability of Public Administration
- Public services and regulation of markets

- Environmental protection and ecological transition
- The future of Administrative law

3. Teaching method

The lessons are based on a dialectic approach, interactive and dynamic, able to actively involve students. Particular emphasis will be given to the case-law approach, including through the examination of national and supranational judgments.

Attendance to classes is not mandatory, although strongly recommended.

Students attending the Course will be offered the opportunity to present cases and discuss judgments of national and supranational Courts, including through a “Mock Trial” simulation.

Students can write independent papers in English on topics related to the lectures, and eventually present and discuss them in class.

4. References and Materials

4.1. Course material

Students will receive in advance selections of articles and papers on the most relevant topics, as well as selections of EU Court of Justice judgments and other materials.

All materials will be uploaded on the e-learning platform of Sapienza. To view course information and receive materials students shall follow the steps below:

- Visit the website <https://elearning.uniroma1.it>
- Login with your username and password (both used for Infostud)
- Search the course “Comparative and European Administrative Law 2021/2022”
- Enroll with password: comparative2021

4.2. Textbook

S. Rose-Ackerman, P. L. Lindseth, B. Emerson (eds.), *Comparative administrative law*, II ed., Cheltenham (UK)-Northampton (USA), Edward Elgar Publishing, 2017.

Mandatory chapters are:

1. B. Sordi, *Révolution, Rechtsstaat and the Rule of Law: historical reflections on the emergence and development of administrative law* (ch. 1).
2. P.L. Strauss, *Politics and agencies in the administrative state: the U.S. case* (ch. 3).
3. M. D’Alberti, *Transformations of administrative law: Italy from a comparative perspective* (ch. 7).
4. M. Shapiro, *A comparison of US and European independent commissions* (ch. 14).
5. J. Mashaw, *The rise of reason giving in American administrative law* (ch. 16).
6. J. Barnes, *Three generations of administrative procedures* (ch. 18).
7. C. Donnelly, *Participation and expertise: judicial attitudes in comparative perspectives* (ch. 22).
8. P. Craig, *Judicial review of questions of law: a comparative perspective* (ch. 23).
9. J. Mathews, *Proportionality review in administrative law* (ch. 24).
10. P. Cane, *A framework for historical comparison of control of national, supranational and transnational public power* (ch. 36).

4.3. Further readings

For those students who wish to deepen the knowledge of certain subjects, specific research topics will be suggested, and further readings will be recommended.

By the way, the following books could give students a wider knowledge on European and Comparative Administrative Law:

- P. Cane, H.C.H. Hofmann, E.C. Ip, and P.L. Lindseth, *The Oxford Handbook of Comparative Administrative Law*, Oxford, Oxford University Press, 2021.
- P. Craig, *European Administrative Law*, III ed., Oxford, Oxford University Press, 2018.
- P. Cane, *Controlling Administrative Power. An Historical Comparison*, Cambridge, Cambridge University Press, 2016.
- C. Harlow, P. Leino, G. della Cananea, *Research Handbook on EU Administrative Law*, Cheltenham (UK)-Northampton (USA), Edward Elgar Publishing, 2017.
- S. Cassese (ed.), *Research Handbook on Global Administrative Law*, Cambridge, Cambridge University Press, 2015.
- P. Craig, *UK, EU and Global Administrative Law. Foundations and Challenges*, Cambridge, Cambridge University Press, 2015.
- M. D'Alberti, *Diritto amministrativo comparato. Mutamenti dei sistemi nazionali e contesto globale*, Bologna, il Mulino, 2019.
- Zhu G., *Deference to the Administration in Judicial Review: Comparative Perspectives*, Cham (Switzerland), Springer International Publishing, 2019.
- J.B. Auby, *Comparative Law of Administrative Procedure*, Bruxelles, Bruylant, 2015.
- H.J. Blanke - R. Perlingeiro (eds.), *The Right of Access to Public Information. An International Comparative Legal Survey*, Berlin, Springer, 2018.
- M. Ruffert (ed.), *The Transformation of Administrative Law in Europe*, München, Sellier European Law Publishers, 2007

4.4. Internet resources include:

- Max Planck Encyclopedia of Comparative Constitutional Law (<https://oxcon.ouplaw.com/home/mpeccol>)
- Jstor database (<https://www.jstor.org>)
- Heinonline database (<https://home.heinonline.org>)
- Social Science Research Network database (<https://www.ssrn.com/index.cfm/en/>)

5. Final examination

The final exam is oral and will be aimed at verifying the achievement of the educational objectives and the adequate understanding of the main issues of European and comparative administrative law.

Students attending the course will have the opportunity to be periodically evaluated through the presentation of relevant cases and judgments that will be previously charged - for each teaching module - on the E-learning platform. In presenting judgments and cases students should demonstrate an adequate critical capacity.