

Security law and constitutional protection

Syllabus 2023/2024

Week	Days	Teacher	Content
Week 1	Tuesday 12 September 14.00-15.00 (online)	Bifulco/Griglio	Introduction to the course The tension between security, fundamental rights and the separation of powers. A legal approach to the notion of security.
	Friday 15 September 10.45-12.45	Griglio	The security and intelligence sectors in the constitutional separation of powers. (I) The tension between confidentiality of security/intelligence policies and democratic accountability: an overview. (II) Security and the issue of accountability in European forms of government ECtHR, Al Nashiri v. Poland , No. 28761/11, 16 February 2015
Week 2	Tuesday 19 September 14.00-15.00 (online)	Griglio	(III) Security issues vs public accountability in the US Supreme Court jurisprudence, a presidential perspective US Supreme Court, Trump vs Mazars , 9 July 2020
	Friday 22 September 10.45-12.45	Bifulco	Security, emergency, and fundamental rights in national constitutions. Derogation to International Human Rights in times of emergency: Art. 15 ECHR. Basic Law for the Federal Republic of Germany

			<p>French Constitution of October 4, 1958.</p> <p>ECtHR, Lawless v. Ireland (No. 3), 1 July 1961</p>
Week 3	Tuesday 26 September 14.00-15.00 (online)	Griglio	<p>The fight against internal terrorism in the Spanish Constitution</p> <p>(I) History and main constitutional issues at stake (freedom of expression/association in political parties vs security)</p>
	Friday 29 September 10.45-12.45	Griglio	<p>(II) The national jurisprudence</p> <p>Tribunal constitucional, STC 6/2004, 16 January 2004, Herri Batasuna</p> <p>(III) The supranational jurisprudence</p> <p>ECHR, Herry Batasuna and Batasuna v. Spain, n. 25803/04, 25817/04, 30 June 2009</p>
Week 4	Tuesday 3 October 14.00-15.00 (online)	Bifulco	<p>The State of emergency in France</p> <p>(I) History and regulation</p>
	Friday 6 October 10.45-12.45	Bifulco	<p>(II) The role of the Conseil constitutionnel</p> <p>(III) The preventive turn of criminal law</p> <p>Conseil constitutionnel:</p> <p>Decision no. 2015-527 QPC of 22 December 2015 (House arrest in the event of a state of emergency)</p> <p>Decision no. 2016-535 QPC of 19 February 2016 (Policing of meetings and public places during a state of emergency)</p> <p>Decision no. 2016-536 QPC of 19 February 2016 (Administrative searches and seizures in the event of a state of emergency)</p>

			<p>Decision no. 2017-635 QPC of 9 June 2017 (Refusing entry or stay in the event of a state of emergency)</p> <p>Decision no. 2017-677 QPC of 1 December 2017 (Identity verification, searching of bags and vehicle inspections under the state of emergency)</p> <p>Decision no. 2016-611 QPC of 10 February 2017 (Offence of habitually accessing terrorist websites)</p> <p>Decision no. 2017-682 QPC of 15 December 2017 (Offence of habitually accessing terrorist websites II)</p>
Week 5	Tuesday 10 October 14.00-15.00 (online)	Bifulco	<p>Citizens and aliens in the fight against terrorism</p> <p>(I) Deprivation of citizenship as a counterterrorism measure</p> <p>Conseil constitutionnel, Decision no. 96-377 DC of 16 July 1996 ; and Decision no. 2014-439 QPC of 23 January 2015 - Mr Ahmed S. [Revocation of citizenship]</p> <p>ECtHR, Ghoumid and others v. France, Judgment of 25 June 2020</p>
	Friday 13 October 10.45-12.45	Bifulco	<p>(II) The principle of non-discrimination</p> <p>ECtHR, GC, A. and others v. the United Kingdom, Judgment of 19 February 2009</p>
Week 6	Tuesday 17 October 14.00-15.00 (online)	TA	Preparation to mid-term assessment (how to draft a legal opinion)

	Friday 20 October 10.45-12.45	TA	Mid-term assessment (drafting of a legal opinion)
Week 7	Tuesday 24 October 14.00-15.00 (online)	Griglio	The US Supreme Court post 9/11 jurisprudence (I) The Habeas corpus US Supreme Court, Rasul v. Bush , 542 U.S. 466 (2004)
	Friday 27 October 10.45-12.45	Griglio	(II) The due process US Supreme Court, Hamdi v. Rumsfeld , 542 U.S. 507 (2004) US Supreme Court, Hamdan v. Rumsfeld , 548 U.S. 557 (2006) US Supreme Court, Boumediene v. Bush , 553 U.S. 723 (2008)
Week 8	Tuesday 30 October 14.00-15.00 (online)	Griglio	Targeted v. mass surveillance – legislative regulation in Europe (I) An overview of the main legal challenges posed by targeted and mass surveillance
	Friday 3 November 10.45-12.45	Griglio	(II) Democratic safeguards against targeted surveillance ECHR, Leander v. Sweden , 26 March 1987 (III) Extraterritorial responsibility for foreign surveillance by intelligence services BVerfG, Judgment of the First Senate of 19 May 2020, - 1 BvR 2835/17 - (Federal Intelligence Service – foreign surveillance)

Week 9	Tuesday 7 November 14.00-15.00 (online)	Bifulco	Mass surveillance (I) Digital Rights Ireland Court of Justice of the EU, Judgment of 8 April 2014 , Joined Cases C-293/12 and C-594/12, <i>Digital Rights Ireland</i>
	Friday 10 November 10.45-12.45	Bifulco	(II) Zakharov v Russia ECtHR, Zakharov v Russia , Judgment of 4 December 2015 (III) Big Brother Watch ECtHR, GC, Big Brother Watch and others v the United Kingdom , Judgment of 25 May 2021
Week 10	Tuesday 14 November 14.00-15.00 (online)	Bifulco	Balancing human life (I) The ticking bomb scenario: Public Committee against torture Supreme Court of Israel (sitting as the High Court), Public Committee Against Torture v. Israel , Judgment of 6 September 1999
	Friday 17 November 10.45-12.45	Bifulco	(II) Human dignity and the downing of aircraft: the Aviation Security Act BVerfG, Judgment of the First Senate of 15 February 2006 - 1 BvR 357/05
Week 11	Tuesday 21 November 14.00-15.00 (online)	Griglio	Economic sanctions (I) Economic sanctions and the democratic guarantees related to the separation of powers US Supreme Court, Dames&Moore v. Reagan (1981)

	Friday 24 November 10.45-12.45	Griglio	(II) Fighting terrorism in a multilevel system of human rights protection Court of Justice of the EU, GC, judgment of 3 September 2008 , in Joined Cases C-402/05 P and C-415/05 P, <i>Kadi and Al Barakaat</i> Court of Justice of the EU, Judgment of 30 September 2010 , in Case T-85/09, <i>Kadi v Commission</i> (Kadi II)
Week 12	Tuesday 28 November 14.00-15.00 (online)	TA?	(II) The legal regime of economic sanctions in the context of the war in Ukraine (preparing for class debate)
	Friday 1 December 10.45-12.45	Bifulco/Griglio	Class debate Security and fundamental rights after the 2022 invasion of Ukraine Or Witnesses from selected experts
Assesment Method			Assessment consists of: <ul style="list-style-type: none"> • an intermediate test (legal opinion) – 30% of the final mark • participation in class debates: 20% of the final mark • oral examination at the end of the course: 50% of the final mark Compulsory attendance (75% of classes) Extra-readings/written paper for non-attending students