



FACULDADE DE DIREITO
UNIVERSIDADE DE LISBOA

Curricular unit sheet

Course: Masters in legal science

Curricular unit

Constitutional and Administrative Environmental Law

Theme: **Constitutional and administrative environmental law principles in the era of climate change**

Responsible Academic staff and respective workload in the curricular unit (enter full name)

Heloísa Duarte de Oliveira (2 h/week)

Learning outcomes of the curricular unit

The principles of environmental law – sustainable development, intergenerational solidarity, prevention, precaution, polluter pays, participation – have played an essential role in the development of environmental law. In a legal area characterized by fragmentation and constant evolution, these principles have systematization functions, allowing for a response to complex and new problems, given their genericity, and identifying structural inconsistencies. These principles are structural in constitutional and administrative environmental law, as well as essential to decision-making by public administration and the courts, which progressively use them as a normative parameter to assess the constitutionality and legality of the action of public authorities.

The theme of climate change is particularly useful as a case study in this matter, given the interdependence between fundamental rights and environmental balance and its transversality in the administrative environmental law (biodiversity, water, air, soil). Climate litigation has demonstrated that the fulfilment of State's duties in what concerns mitigation and adaptation to climate change is scrutinized based, among others, on the principles of environmental law that are relevant for the protection of fundamental rights and for environmental impact assessment. The global, diffuse and temporally extended nature of climate change poses new questions to constitutional law and administrative law, such as balancing future and extraterritorial impacts in application of the principle of proportionality. The principle of separation of powers regains its place at the center of this debate, since climate change is a technically and politically complex matter.

The learning outcomes of this course are knowledge on the relevant legal principles that serve as a parameter to control the constitutionality and legality of the action of public authorities and understanding the issues that arise in their application. Since the theme of climate change will be used as a basis for this understanding, it is also intended that students become aware and gain a critical perspective on the issues of constitutional law and administrative law discussed in the case-law of higher courts regarding climate litigation.

Considering the adopted teaching methods, students should also develop skills in terms of researching sources of legal information, research methods in legal science, collaborative work, critical understanding and seeking legal solutions in ruling law to solve problems, as well as logical-argumentative skills in critical and oral expression.



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Syllabus

- 1. Environmental law: object, structure, and characteristics**
- 2. The constitutional and administrative principles of environmental law. Their functions.**
 - 2.1. Principle of intergenerational solidarity
 - 2.2. Principle of sustainable development
 - 2.3. Integration principle
 - 2.4. Principles of prevention and precaution
 - 2.5. Polluter-pays and user-pays principles
 - 2.6. Repair principle
 - 2.7. Principle of participation (procedural, access to information, and access to justice)
- 3. The constitutional and administrative framework of climate change**
 - 3.1. Fundamental rights: guarantee of the minimum; duty to protect; proportionality, separation of powers; future generations; extraterritoriality
 - 3.2. Duties of the State for environmental protection: the environment as a constitutional legal good
 - 3.3. Climate laws: normative parameters of environmental public policies
 - 3.4. Environmental impact assessment: weighing future effects and effects at a distance
- 4. Climate litigation**
 - 4.1. The Bundes-Klimaschutzgesetz case (Germany, 2021)
 - 4.2. The L’Affaire du Siècle case (France, 2021)
 - 4.3. The Climate Ireland case (Ireland, 2020)
 - 4.4. The Heathrow Airport case (UK, 2020)
 - 4.5. The Urgenda case (Netherlands, 2019)
 - 4.6. The Rocky Hills case (Australia, 2019)
 - 4.7. The Asghar Leghari case (Pakistan, 2015)
 - 4.8. The Klimaatzaak case (Belgium, 2015)

Demonstration of the syllabus coherence with the curricular unit’s objectives.

The syllabus addresses and deepens the theme of environmental law principles in the context of climate change in its theoretical and practical dimensions, including a preliminary conceptual analysis, the study of constitutional and administrative principles of environmental law and the legal framework for climate change, using as case studies relevant rulings of higher courts on this subject.

This perspective allows for an in-depth understanding of the intersection between these different themes, allowing for a comprehensive knowledge of the legal system in this matter and the problematization of areas of uncertainty. Along with the adopted teaching methods, collaborative work, and discussion in a seminar format, with the oral and written presentation of a research project and the results of that research, will allow the development of research skills and



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logical-argumentative skills in written and oral expression.

Teaching methods (including evaluation)

Classes will be based on a flipped-classroom model: readings should be carried out before each class; critical analysis of the issues will take place in activities in class, between students and with mediation by the teacher, using the problem and discussion method and the study of case-law, and conceptual and argumentative discussion for theoretical matters. At the end of each class, the teacher will make the conclusive systematization of the readings and the work developed.

Each student will deepen a topic of their choice for the purpose of preparing a research work, which should be developed throughout the semester, with supervision by the teacher. At the end of the first semester, a research project must be presented, orally and in writing; and in the second semester, the research work must be presented, orally and in writing.

The assessment is based on the following elements:

- Participation in classes (20%);
- Research work on the theme of the program (80%).

Demonstration of the coherence between the teaching methods and the learning outcomes

The teaching method is focused on the active development of the student's research skills, on joint work in class with colleagues and the teacher, with prior individual research work. The method allows individualization in the relationship between teacher and student and constant monitoring of developments, as well as flexibility around the preferred themes. It has been demonstrated that collaborative work is the most suitable for the consolidated construction of knowledge by the student and the development of general skills in understanding themes, problem solving and critical analysis, and logical-argumentative skills.

The presentation of the research project will allow for accompanying the development of research skills, giving the necessary feedback for a progressive learning, accompanied towards a progressive autonomy.

Main Bibliography

- Amado Gomes C, *Risco e modificação do acto autorizativo concretizador de deveres de protecção do ambiente* (Coimbra Editora 2007)
- Amado Gomes C, Lanceiro RT e Oliveira H, 'O objeto e a evolução do direito do ambiente' in Amado Gomes, Carla e Heloísa Oliveira (eds), *Tratado de Direito do Ambiente*, vol I (CIDP - Centro de Investigação de Direito Público; ICJP - Instituto de Ciências Jurídico-Políticas 2021)
http://www.icjp.pt/sites/default/files/tratado_de_direito_do_ambiente_cidp-2021.pdf?56
- Benjamin AH, 'Constitucionalização do ambiente e ecologização da Constituição Brasileira' in JJ Gomes Canotilho e José Rubens Morato Leite (eds), *Direito Constitucional Ambiental Brasileiro* (Saraiva 2007)
- Burgers L, 'Should judges make climate change law?' (2020) 9 *Transnational Environmental Law* 55
- Canas V, *O princípio da proibição do excesso na conformação e no controlo de atos legislativos* (Almedina 2017)



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- de Sadeleer N, *Environmental principles: from political slogans to legal rules* (Oxford University Press 2002)
- Dias Garcia M da G e Matias G, 'Anotação ao artigo 66.º' in Jorge Miranda e Rui Medeiros (eds), *Constituição Portuguesa anotada*, Tomo I (2.ª ed., Coimbra Editora 2010)
- Fensterseifer T, *Direitos fundamentais e proteção do ambiente. a dimensão ecológica da dignidade humana no marco jurídico-constitucional do Estado socioambiental de Direito* (Livraria do Advogado 2008)
- Gomes Canotilho JJ e Moreira V, *Constituição Da República Portuguesa anotada*. Vol. I (4.ª ed., Coimbra Editora 2014)
- Krämer L and Orlando E, *Principles of environmental law*, vol VI (Edward Elgar Publishing 2018)
- Oliveira H, 'Princípios de direito do ambiente' in Carla Amado Gomes e Heloísa Oliveira (eds), *Tratado de Direito do Ambiente*, vol I (CIDP - Centro de Investigação de Direito Público; ICJP - Instituto de Ciências Jurídico-Políticas 2021) http://www.icjp.pt/sites/default/files/tratado_de_direito_do_ambiente_cidp-2021.pdf?56
- Pereira da Silva J, *Direitos Fundamentais. Teoria Geral* (Universidade Católica Editora 2018)
- Reis Novais J, *Direitos fundamentais e justiça constitucional em Estado de Direito democrático* (AAF DL 2017)
- Scotford E, *Environmental principles and the evolution of environmental law* (Hart Publishing 2017)
- Silva JP da e Ribeiro G de A (eds), *Justiça entre gerações: perspectivas interdisciplinares* (Fundação Francisco Manuel dos Santos 2017) <https://www.ffms.pt/publicacoes/detalhe/2365/justica-entre-geracoes-perspectivas-interdisciplinares>
- Verschuuren J, 'The State of the Netherlands v Urgenda Foundation: The Hague Court of Appeal Upholds Judgment Requiring the Netherlands to Further Reduce Its Greenhouse Gas Emissions' (2019) 28 *Review of European, Comparative & International Environmental Law* 94
- Wewerinke-Singh M e McCoach A, 'The State of the Netherlands v Urgenda Foundation: distilling best practice and lessons learnt for future rights-based climate litigation' (2021) *Review of European, Comparative & International Environmental Law* <https://onlinelibrary.wiley.com/doi/abs/10.1111/reel.12388>