

Ficha de unidade curricular

Curso de Mestrado em Direito e Ciências Jurídica

Unidade curricular

Direito Constitucional

Docente responsável e respetiva carga letiva na unidade curricular (preencher o nome completo)

Domingos Miguel Soares Farinho - 120 minutos por semana

Outros docentes e respetivas cargas letivas na unidade curricular

N/A

Objetivos de aprendizagem (conhecimentos, aptidões e competências a desenvolver pelos estudantes)

Tema: Direito Constitucional e Internet

O Direito Constitucional tem, à semelhança de todos os demais ramos do Direito, sofrido a influência da Internet. O propósito deste seminário é estudar as inter-relações entre estas duas realidades, de modo a perceber que questões coloca a Internet ao Direito Constitucional e que respostas dogmáticas podem e devem ser dadas.

Conteúdos programáticos

1. Estado e Internet: o nascimento de Estados Digitais?
2. Jurisdição dos Estados vs. Jurisdição sobre a Internet: a questão dos limites constitucionais da governance da Internet
3. Constituição, Internet e interpretação: a evidência do actualismo
4. Direito de acesso à Internet como direito fundamental
5. Princípio da igualdade e Internet: o caso da neutralidade no acesso à Internet
6. Direitos Fundamentais e Internet: o princípio da proporcionalidade e o problema da ponderação no ciberespaço
 - 6.1. Liberdade de expressão
 - 6.2. Direito à privacidade
 - 6.3. Liberdades económicas
7. A regulação da Internet
 - 7.1. Regulação da estrutura física;
 - 7.2. Regulação do código
 - 7.3. Regulação de conteúdos
8. Um constitucionalismo digital? Uma esperança para o direito constitucional global?

Demonstração da coerência dos conteúdos programáticos com os objetivos da unidade curricular

Com os conteúdos previstos estudam-se e aprofundam-se os principais aspectos que concorrem para a relação entre o Direito Constitucional e a Internet, bem como para a reflexão sobre os seus casos difíceis e inovadores.

Metodologias de ensino (avaliação incluída)

1. Análise, individual e conjunta, de diplomas legais e administrativos;
2. Comentário e discussão sobre jurisprudência
3. Estudo de casos
4. Apresentações individuais dos alunos
5. Realização de um relatório final

Demonstração da coerência das metodologias de ensino com os objetivos de aprendizagem da unidade curricular

A metodologia apresentada permite, num primeiro momento a criação das bases de conhecimento para uma reflexão individual e em grupo, avançando depois para a produção de pensamento e trabalho próprio sobre o Direito Constitucional e a Internet

Bibliografia elementar:

Monografias e periódicos:

Belli, Luca, *De la Gouvernance à la Régulation de L'Internet*, Boulogne-Billancourt, Berger-Levrault, 2016 (§1)

Benkler, Yochai, *The Wealth of Networks - How Social Production Transforms Markets and Freedom*, New Haven, Yale University Press, 2006

Callamard, Agnes, "Are courts re-inventing Internet regulation?", *International Review of Law, Computers & Technology*, 31, 3, pp. 323-339.

Citron, Danielle Keats, *Hate Crimes in Cyberspace*, Harvard University Press, 2014 (§6.1)

Eriksson, Johan/Giacomello, Giampiero, *Who Controls the Internet? Beyond the Obstinacy or Obsolescence of the State in International Studies Review* (2009) 11, p. 205–230 (§2)

Farinho, Domingos Soares, *Delimitação do espectro regulatório de redes sociais* in Nery, Nelson; Abboud, Georges; e Campos, Ricardo, "Fake News e Regulação", São Paulo, Thomson Reuteurs - Revista dos Tribunais, 2º edição, 2020.

Fontanelli, Filippo, *The Court of Justice of the European Union and the illusion of balancing in internet-related disputes* in Pollicino, Oreste/Romeo, Graziella, *The Internet and Constitutional Law - The protection of fundamental rights and constitutional adjudication in Europe*, London, Routledge, 2016 (§6)

Graber, Christoph B., *Bottom-Up Constitutionalism: The Case of Net Neutrality*, i-call working paper, no. 2017/01, Zurich, Switzerland: University of Zurich, forthcoming (2017) *Transnational Legal Theory*, (2017) 7 (04), pp. 524–552 (§5)

Helm, Rebecca; Nasu, Hitoshi, "Regulatory Responses to 'Fake News' and Freedom of Expression: Normative and Empirical Evaluation", *Human Rights Law Review*, 2021, 21, pp. 302–328.

Hoboken, Joris van and Fathaigh, Ronan, "Regulating Disinformation in Europe: Implications for Speech and Privacy", *UC Irvine Journal of International, Transnational, and Comparative Law*, 9, 2021, pp. 9-36.

Lessig, Lawrence, *Reading the Constitution in Cyberspace* in *Emory Law Journal*, n. 3, 1996, p. 1-44 (§3)

Marsden, Chris; Meyer, Trisha and Brown, Ian, "Platform values and democratic elections: How can the law regulate digital disinformation?", *Computer Law & Security Review*, 36, 2020, p. 1-18.

Pollicino, Oreste/Romeo, Graziella, *The Internet and Constitutional Law - The protection of fundamental rights and constitutional adjudication in Europe*, London, Routledge, 2016 (§6)

Redeker, Denis, et al., *Towards digital constitutionalism? Mapping attempts to craft an Internet Bill of Rights*, the *International Communication Gazette* 2018, Vol. 80(4) 302–319 (§7)

Roques-Bonnet, Marie-Charlotte, *La Constitution et l'Internet*, Tese de doutoramento, 2008 (edição adaptada: *Le droit peut-il ignorer la révolution numérique?*, Paris, Michalon, 2010) (§4)

Suzor, Nicolas, *Digital constitutionalism and the role of the rule of law in the governance of virtual communities*, Doctor of Philosophy thesis, School of Law Queensland University of Technology, June 2010, available at: https://eprints.qut.edu.au/37636/1/Nicolas_Suzor_Thesis.pdf (§7)

Teubner, Gunther, *Horizontal Effects of Constitutional Rights in the Internet: A Legal Case on the Digital Constitution in The Italian Law Journal*, Vol. 03, No. 01, p. 193-205 (§6)

Tribe, Laurence, The Constitution in Cyberspace: Law and Liberty Beyond the Electronic Frontier, American Humanist Association, 1991 (§1)

Jurisprudência

Tribunal Europeu dos Direitos Humanos

Ahmet Yildirim c. Turquia, no 3111/10, 18 de março de 2013 (§4)

Delfi AS c. Estónia [GC], no. 64569/09, 16 de junho 2015 (§6)

Satakunnan Markkinapörssi Oy e Satamedia Oy c. Finlândia, no. 931/13, 27 junho 2017 (§6)

Conseil Constitutionnel francês

2010-45 QPC du 6 octobre 2010, JO du 7 octobre 2010 (§4)

Supremo Tribunal Federal norte-americano

582 U. S. ___ (2017) *Packingham v. North Carolina* (§6)

587 U. S. ___ (2019) *MANHATTAN COMMUNITY ACCESS CORP. ET AL. v. HALLECK ET AL.* (§1)



Tribunal de Justiça da União Europeia

C-101/01 Lindqvist [2003] (§6)

C-131/12 Google Spain [2014] (§6)

C-18/18 Glawischnig-Piesczek [2019]





NOTA: este mapa é preenchido tantas vezes quantas as necessárias para descrever as diferentes unidades curriculares.

Curricular unit sheet

Course
Master in Law and Legal Science

Curricular unit

Constitucional Law

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

Domingos Soares Farinho - 2 hours/week

Other academic staff and respective workloads in the curricular unit

N/A

Learning outcomes of the curricular unit

Subject matter: Constitutional Law and the Internet

Constitutional Law has been subjected, like all fields of law, to the influence of the Internet. The aim of the present seminar is to study the relationship between these two realities, in order to understand what challenges are presented to Constitutional Law and which answers can and should be given.

Syllabus

1. States and the Internet Estado e Internet: the rise of digital states
2. State's Jurisdiction vs. Jurisdiction over the Internet: the question of constitutional limits to Internet Governance
3. Constitution, Internet and Interpretation: the case for "living constitutionalism"
4. Right of access to the internet as a fundamental right
5. The equality principle and the Internet: the case of net neutrality
6. Fundamental Rights and the Internet: the principle of proporcionality and the problem of balancing in cyberspace
 - 6.1. Freedom of expression
 - 6.2. Privacy
 - 6.3. Economic freedoms
7. The regulation of the Internet
 - 7.1. Regulation of the physical structure;
 - 7.2. Code regulation
 - 7.3. Content regulation
8. Digital constitutionalism? A new hope for global constitutional law?

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

The foreseen syllabus allows for the study and strengthening of key aspects that make the body of knowledge on Constitutional Law and the Internet and the questioning of its most hard and innovative cases.

Teaching methodologies (including evaluation)

1. Analysis, both individually and in group, of legal and administrative statutes;
2. Commentary and discussion on case law
3. Case study
4. Individual presentations by students
5. Final report

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

The presented methodology allows, from the start, for the creation of a basis of knowledge upon which to reflect, both individually and in group, on the subject of constitutional law and the internet and moving to the production of own research and findings.

Main Bibliography

1. Basic readings:

Books and articles

- Belli, Luca, *De la Gouvernance à la Régulation de L'Internet*, Boulogne-Billancourt, Berger-Levrault, 2016 (§1)
- Benkler, Yochai, *The Wealth of Networks - How Social Production Transforms Markets and Freedom*, New Haven, Yale University Press, 2006
- Callamard, Agnes, "Are courts re-inventing Internet regulation?", *International Review of Law, Computers & Technology*, 31, 3, pp. 323-339.
- Citron, Danielle Keats, *Hate Crimes in Cyberspace*, Harvard University Press, 2014 (§6.1)
- Eriksson, Johan/Giacomello, Giampiero, Who Controls the Internet? Beyond the Obstinacy or Obsolescence of the State in *International Studies Review* (2009) 11, p. 205-230 (§2)
- Farinho, Domingos Soares, Delimitação do espectro regulatório de redes sociais in Nery, Nelson; Abboud, Georges; e Campos, Ricardo, "Fake News e Regulação", São Paulo, Thomson Reuteurs - Revista dos Tribunais, 2º edição, 2020.
- Fontanelli, Filippo, *The Court of Justice of the European Union and the illusion of balancing in internet-related disputes* in Pollicino, Oreste/Romeo, Graziella, *The Internet and Constitutional Law - The protection of fundamental rights and constitutional adjudication in Europe*, London, Routledge, 2016 (§6)
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- Helm, Rebecca; Nasu, Hitoshi, "Regulatory Responses to 'Fake News' and Freedom of Expression: Normative and Empirical Evaluation", *Human Rights Law Review*, 2021, 21, pp. 302-328.
- Hoboken, Joris van and Fathaigh, Ronan, "Regulating Disinformation in Europe: Implications for Speech and Privacy", *UC Irvine Journal of International, Transnational, and Comparative Law*, 9, 2021, pp. 9-36.
- Lessig, Lawrence, *Reading the Constitution in Cyberspace* in *Emory Law Journal*, n. 3, 1996, p. 1-44 (§3)
- Marsden, Chris; Meyer, Trisha and Brown, Ian, "Platform values and democratic elections: How can the law regulate digital disinformation?", *Computer Law & Security Review*, 36, 2020, p. 1-18.
- Pollicino, Oreste/Romeo, Graziella, *The Internet and Constitutional Law - The protection of fundamental rights and constitutional adjudication in Europe*, London, Routledge, 2016 (§6)
- Redeker, Denis, et al., Towards digital constitutionalism? Mapping attempts to craft an Internet Bill of Rights, *the International Communication Gazette* 2018, Vol. 80(4) 302-319 (§7)
- Roques-Bonnet, Marie-Charlotte, *La Constitution et l'Internet*, Tese de doutoramento, 2008 (edição adaptada: *Le droit peut-il ignorer la révolution numérique?*, Paris, Michalon, 2010) (§4)
- Suzor, Nicolas, Digital constitutionalism and the role of the rule of law in the governance of virtual communities, Doctor of Philosophy thesis, School of Law Queensland University of Technology, June 2010, available at: https://eprints.qut.edu.au/37636/1/Nicolas_Suzor_Thesis.pdf (§7)
- Teubner, Gunther, Horizontal Effects of Constitutional Rights in the Internet: A Legal Case on the Digital Constitution in *The Italian Law Journal*, Vol. 03, No. 01, p. 193-205 (§6)
- Tribe, Laurence, *The Constitution in Cyberspace: Law and Liberty Beyond the Electronic Frontier*, American Humanist Association, 1991 (§1)

Case-law

European Court of Human Rights

Ahmet Yildirim c. Turquia, no 3111/10, 18 de março de 2013 (§4)

Delfi AS c. Estónia [GC], no. 64569/09, 16 de junho 2015 (§6)

Satakunnan Markkinapörssi Oy e Satamedia Oy c. Finlândia, no. 931/13, 27 junho 2017 (§6)

Court of Justice of the European Union

C-101/01 Lindqvist [2003] (§6)

C-131/12 Google Spain [2014] (§6)

C-18/18 Glawischnig-Piesczek [2019]

French Conseil Constitutionnel

2010-45 QPC du 6 octobre 2010, JO du 7 octobre 2010 (§4)



NOTE: this map can be filled in as many times as necessary to describe the different curricular units.