

Course Title	Comparative Constitutionalism in Post-Socialist Countries
Lecturer	Dr. Elena Makarova
Institution	Law School, Novgorod State University
Country	Russia

SYLLABUS

Introduction:

Course is planned for 44 academic hours including 30 lecture hours and 14 seminar hours.

This course “Comparative Constitutionalism in Post-Socialist Countries” is an elective course for the 3rd year students of Law School when students already had heard several theoretical subjects as *Theory of State and Law and Foreign Legal History*, which provide the necessary base for successful learning of our course. At the previous year students has studied course of *Constitutional Law* which had characterized constitutional system of Russia and was an essential stipulation for successful comparison between systems of constitutional sources, institutions and norms of Russia and foreign countries. The studies of *Comparative Constitutionalism in Post-Socialist Countries* are advanced by simultaneous studies of *Politics* subject.

Course Description:

The basic problem we shall be dealing with in this course is the constitutional changes and the prospect of the constitutionalism in East and Central European countries on the way from totalitarian regime to democracy. The stability of regimes and the constitutionalism could be research on the concept of the legitimacy deriving mainly from culture, constitutional making and the effectiveness. We can discuss the relationships between constitutional changes and consolidation of democracy.

The course begins from the analysis of the understanding of constitutionalism and rights in post-socialists Eastern and Central Europe. In *first* block we should think

about the relations between constructions “constitution” and “constitutionalism” and how they related to the rule of law (from the view of democracy). For the future lawyers one of the important thing is definition of the level of effectuality and the problem of realization if different legal norms which direct on the foundation of democratic and legal society.

The *second* part of the course is concerning the problem of foundation and function of state and municipal power. We should research the mechanism of institutionalization of political-legal system (inside system of the separation of power) democratization and modernization the separate elements of modern electoral system of these countries, the role of the municipal government in the state structure of power. The separation of powers, role of constitutions and the rules for its adoption and amendment as well as the protection of constitutions by judicial review, are the most important.

Constitutional courts are playing an increasingly important role in advanced democracies. In the *third* part of our course we will explore the role of constitutional courts in the democratization of post-socialist Europe, the interactions between constitutional courts and the elected branches. We will spend the bulk of the course analysing the origins and role of courts with constitutional review powers (we compare models of constitutional justice in western established democracies and in the Eastern and Central European transitional democracies and we close with reflections on the possibilities and limits of realizing democratic justice through the courts).

Course Requirements:

Students are expected to attend all course sessions and come prepared to discuss the materials (lectures and seminars). Seminars provide an opportunity to review materials covered in lecture and to explore variation and alternative views to those covered in lecture. Discussion sections are integral part of this course. For every seminar students have to choose 2-3 readings from the reading list.

Students are expected to complete one written assignment. Detailed research proposal (likely length of about 20 pages) is outlining a plan for dealing with one of the issues raised in the course. (It should be set out a problem to explore or a hypothesis to text, and in the process review the relevant literature, identify the central issues to be explored, locate the project in a larger theoretical context, and set out the expected findings. That research paper on a topic to be determined in the consultation with the lecturer. It should be typed up, submitted by) three weeks before the final exam, placed on the department of theory and history of state and law of Law School.

Grading will be broken down into the following components:

-class participation 30%

-final essay	30%
-final exam	40%

Section I: Democratization and Constitution-Making

Week one. Introduction lecture. Choices for the New Democracies: Constitutional view (4 hours)

- Lijphart A., “Constitutional Choices for New Democracies,” *Journal of Democracy* 2, Winter 1991.
- Jon Elster, “Constitution-Making in Eastern Europe: Rebuilding the Boat in the Open Sea,” *Public Administration*, Vol. 71, No. 1-2, March 1993, pp. 169-217.
- K. Wolczuk, *The Moulding of Ukraine: The Constitutional Politics of State Formation*, CEU Press, 2001.
- Preuß U.K. “Constitutional Powermaking of the New Polity: Some Deliberations on the Relations Between Constituent Power and Constitution”; in: M.Rosenfeld (ed.), *Constitutionalism, Identity, Difference and Legitimacy*, Durham and London, 1994, pp. 143-165.
- H.Arendt, *On Revolution*, Harmondsworth, 1973, p. 141-185
- Kis J, “Between Reform and Revolution”, *East European Politics and Societies*, 2/1998.

Week two. Similar or different? Why did countries in Eastern Europe and the FSU adopt different constitutional pathways? (4 hours)

- Alfred Stepan and Cindy Skach, “Constitutional Frameworks and Democratic Consolidation: Parliamentarianism versus Presidentialism,” *World Politics*, Vol. 46., No. 1, October 1993, pp. 1-22.
- Arend Lijphart, “Democratization and Constitutional Choices in Czecho-Slovakia, Hungary, and Poland 1989-1991,” *Journal of Theoretical Politics*, Vol. 4, No. 2, 1992, pp. 207-223.
- Istvan Pogany, “Constitutional Reform in CEE: Hungary’s Transition to Democracy,” *International and Comparative Law Quarterly*, Vol. 42, No. 2, April 1993, pp. 332-355.
- Andrew Arato, “Refurbishing the Legitimacy of the New Regime: The Constitution-Making Endgame in Hungary and Poland”, in: A. Arato, *Civil Society, Constitution and Legitimacy*, New York, 2000

Week three. Does the declaration of the democratic principles in the constitutional acts mean the democratic reality? (4 hours)

- Donald Robinson, "The Comparative Study of Constitutions: Suggestions for Organizing the Inquiry," *Political Science and Politics*, Vol. 25, No. 2, June 1992, pp. 272-280.
- Inga Markovits, "The Death of Socialist Law?" *Annual Review of Law and Social Science*, Vol. 3, 2007, pp. 233-253.
- Rett R. Ludwikowski, *Constitution-Making in the Region of Former Soviet Dominance: With Full Texts of all New Constitutions Ratified through July 1995*, Durham, Duke University Press, 1996. [first half of book; second half contains texts of constitutions]
- Robert Haydan, "Democracy without a Demos? The Bosnian Constitutional Experiment and the Intentional Construction of Nonfunctioning States," *East European Politics and Societies*, Vol. 19, No. 2, May 2005, pp. 226-259.

Section 2. Institutional Design in Post-Socialist Societies

Week one. Separation of Power: Parliamentary v. Presidential Government?

- M. Steven Fish, *Democracy Derailed in Russia. The Failure of Open Politics*, Cambridge: University Press, 2005, pp. 193-246
- S. Holmes, "Superpresidentialism and its Problems", *EECR*, 4-1993-1/1994.
- M. Steven Fish, "Stronger Legislatures, Stronger Democracies," *Journal of Democracy*, Vol. 17, No. 1, 2006, pp. 5-20.
- Alfred Stepan and Cindy Skach, "Constitutional Frameworks and Democratic Consolidation: Parliamentarism versus Presidentialism," *World Politics*, Vol. 46., No. 1, October 1993, pp. 1-22.
- A. Lijphart (ed.), *Parliamentary Versus Presidential Government*, New York: Oxford University Press, 1992.
- Giovanni Sartori, *Comparative Constitutional Engineering: An Inquiry into Structures, Incentives and Outcomes*, London: Macmillan, 1994.
- Anders Fogelklou, "Constitutionalism and the Presidency in the Russian Federation," *International Sociology*, Vol. 18, No. 1, 2003, pp. 181-198.
- Ned Walker, "The Politics of Blame and Presidentialism in Russia's New Constitution," *East European Constitutional Review*, vol. 2, no. 4, Winter 1993.

Week two. Election: Democracy with (without) a Demos?

- M. Steven Fish, *Democracy Derailed in Russia. The Failure of Open Politics*, Cambridge: University Press, 2005, pp. 30-82

- Robert Haydn, "Democracy without a Demos? The Bosnian Constitutional Experiment and the Intentional Construction of Nonfunctioning States," *East European Politics and Societies*, Vol. 19, No. 2, May 2005, pp. 226-259.
- Maria Popova, "Watch Dogs or Attack Dogs? The Role of the Russian Courts and the CEC in the Resolution of Electoral Disputes," *Europe-Asia Studies*, Vol. 58, No. 3, May 2006.
- Abakumova M, "Vybory nachalis' so skandala", *Vremia-Moskovskie novosti*, October 19, 2001

Any other three newspaper's articles about the elections of March, 2008

Week three. The Prospects for Federalism in Russian Constitutional Politics: Symmetry or Asymmetry?

- Robert Sharlet, "The Prospects for Federalism in Russian Constitutional Politics," *Publius*, Vol., 24, No. 2, Spring 1994, pp. 115-127
- Steven D. Roper, "Federalization and Constitution-Making as an Instrument of Conflict Resolution," *Demokratizatsiia*, Fall 2004.
- Nicholas J. Lynn and Alexei V. Novikov, "Refederalizing Russia: Debates on the Idea of Federalism in Russia," *Publius*, Vol. 27, No. 2, Spring 1997, pp. 187-203.
- Jeffrey Hahn, *Federalism, Democratization, and the Rule of Law in Russia*, Oxford: Oxford University Press, 2002.
- C. Ross, "Putin's Federal Reforms and the Consolidation of Federalism in Russia: One Step Forward, Two Steps Back!," *Communist and post-Communist Studies* (36) 2003, pp. 29-47
- Ned Walker, "The Neglected Dimension: Russian Federalism and Its Implications for Constitution-making," *East European Constitutional Review*, vol. 2, no. 2, 1993.

Section 3: Comparative Constitutional Justice

Week one. Constitutional Courts in Democratic Systems of Government: Speedy, Just and Fair?

- Schwartz, Herman, *The Struggle for Constitutional Justice in Post-Communist Europe*, Chicago: University of Chicago Press, 2000.
- Lee Epstein, Jack Knight, and Olga Shvetsova, "The Role of Constitutional Courts in the Establishment and Maintenance of Democratic Systems of Government," *Law and Society Review*, Vol., 35, 2001, pp. 117-163.
- Shannon Ishiyama Smithey and John Ishiyama, "Judicial Activism in Post-Communist Politics," *Law and Society Review*, Vol. 36, No. 4, 2002, pp. 719-742.
- H.Schwartz, *The New East European Constitutional Courts*, in: D.Howard (ed.), *Constitution-Making in Eastern Europe*, Washington, 1993, p. 163-207.

Week two. Shall We Go the Different Way? (Comparative Analysis of the East European Models of Constitutional Justice)

- Robert Sharlet, "The Russian Constitutional Court: The First Term," *Post-Soviet Affairs*, Vol. 9, No. 1, 1993.
- Peter Krug, "Departure from the Centralized Model: The Russian Supreme Court and Constitutional Control," *Virginia Journal of International Law*, Vol. 37, 1997, pp. 725-787.
- Kim Lane Sheppelle (1999) "The New Hungarian Constitutional Court," *East European Constitutional Review* 8(4), 1999, pp. 81-87.
- Herman Schwartz, "Eastern Europe's Constitutional Courts," *Journal of Democracy* 9, 1998, pp. 100-114.
- Hristo Dimitrov, "The Bulgarian Constitutional Court and its Interpretive Jurisdiction," *Columbia Journal of Transnational Law*, 1999, Vol. 37, pp. 459-505.
- Mark F. Brzezinski, "The Emergence of Judicial Review in Eastern Europe: The Case of Poland," *The American Journal of Comparative Law*, Vol. 41, No. 2 Spring 1993, pp. 153-200.
- Stephen Holmes, "What Russia Teaches us Now," *The American Prospect*, July-August 1997.
- Igor Trochev, "Implementing Russian Constitutional Court Decisions," *Eastern European Constitutional Review*, Vol. 11, No. 1/2, Winter/Spring 2002, pp. 95-103.

Week three. Legal or Political: The Relationship Between Independence and Judicial Review in Post-Socialist Courts

- Alexei Trochev, "Less Democracy and More Courts: A Puzzle of Judicial Review in Russia," *Law and Society Review*, Vol. 38, No. 3, September 2004, pp. 513-548.
- Erik Herron and Kirk Randazzo, "The Relationship between Independence and Judicial Review in Post-Communist Courts," *Journal of Politics*, Vol. 65, No. 2, May 2003, pp. 422-438.
- Kathryn Hendley, "Rewriting the Rules of the Game in Russia: the Neglected Issue of the Demand for Law," *East European Constitutional Review* 8:4 (Fall 1999).
- Peter Krug, "Departure from the Centralized Model: The Russian Supreme Court and Constitutional Control," *Virginia Journal of International Law*, Vol. 37, 1997, pp. 725-787.
- Kim Lane Sheppelle, "Declarations of Independence: Judicial Reaction to Political Pressure," in Steven Burbank and Barry Friedman (eds) *Judicial Independence at the Crossroads*, 2002, pp. 227-279.

- Peter Solomon, Jr., "Putin's Judicial Reform," *East European Constitutional Review*, Vol. 22, No. 1/2, Winter/Spring 2002, pp. 117-124.
- Peter Solomon, Jr., "Threats of Judicial Counter-reform in Putin's Russia," *Demokratizatsiia*, Vol. 13., No. 3, Summer 2005, pp. 325-345.