

Scuola Superiore Meridionale
Università degli Studi di Napoli Federico II
PhD course in Law and Organizational Studies for People with Disability
a.y. 2021/22

Introduction to fundamental courses

The courses work of the SSM Area in “Law and Organizational Studies for People with Disability”, from November 2021 to January 2022, consists of some Fundamentals.

Courses are open to all the students of SSM. Thus, cross-disciplinary participation by both Undergraduate and Doctoral students from the different research areas of the School is encouraged.

The aim of these lectures is to introduce students to some theoretical premises of Law and Organizational Studies, in order to acquire some fundamental knowledge and skills that characterizes this LOSPD Area. It is therefore expected that each student would get a conceptual spectrum such rich to consider the Person with disability in its uniqueness and in a multidimensional vision.

All courses have the following common features: the first two introductory lectures will address some epistemological premises to the human and social sciences. For each course these epistemological premises will then be declined in the specific fields of Law and Organizational Studies.

In this way, the premises of philosophy of knowledge that hold together and connect Law and Organizational Studies will be clarified.

Moreover, all lectures follow the same didactic methodology: each lecture includes some mandatory readings for all students that they will have discuss with the teacher during the lessons, following the assigned tasks. Therefore, it is considered essential that students with a juridical background have full ability to manage the contents of organizational studies courses and - seemingly - all students of Organizational studies have full ability to manage the contents of Law courses.

The required standards will be differentiated for undergraduate and doctoral students.

'Protection of human rights: beginning and end of life issues'

Course description

The course is part of the PhD program fundamentals and it is open to all the SSM students. The course aims to address the main challenges posed by biolaw. Starting from the question of whether and how law, as an expression of society, should intervene to organise reality, the course aims to draw the legal boundaries within which to define processes no longer governed solely by natural laws (for example, birth and death) and to critically investigate the legal and private aspects of life sciences and human health care. Special attention will be paid to the individual's rights in his or her dignity, uniqueness and self-determination, especially when conditions of vulnerability are identified.

In particular, the course will address both sensitive issues, like beginning of life issues and embryo protection, gene editing and genetic modification, and those associated with the recognition – in the event of recourse to medically assisted procreation techniques prohibited by our legal system – of the legal bond connecting child and non-biological mother and father. End of life issues, refusal of treatment and euthanasia methods will be analysed.

Aims

At the end of the course, the students will be able to:

- Understand the ethical and legal issues associated with the development of biotechnology
- Read a legal text: interpretation and construction of the legal language
- Identify the problem and find the rules that apply to the problem
- Understand the legal argumentation techniques

Learning methods

- Students will have to read the mandatory study materials before classes.
- Classes will be based on discussions between the professor and students regarding the main issues arising from the background readings.
- All students are expected to actively participate in the debate providing comments and raising questions on the issues discussed in class.
- PhD students will deliver a research project on the topics covered during the course. The work will be presented during the final class.

Course material

The course material consists of books and court cases selected for each lesson. In addition to the material indicated during the course, chapters from books and articles published in scientific journals will be recommended.

Exam & Evaluation

Students will be evaluated based on their constructive participation in class and their final research project.

Course Syllabus

Lesson 1 – Fundamentals of Epistemology in Social Research: Legal Profiles (I)

The course focuses on the fundamental relationship between law and society, referring to law as a social science necessarily linked to the evolution of our society.

Study materials:

- Grossi P., Prima lezione di diritto, Editori Laterza, 2003
- Zagrebelsky G., La virtù del dubbio. Intervista su etica e diritto, Editori Laterza, 2007
- Rodotà S., Il diritto di avere diritti, Editori Laterza, 2020

Lesson 2- Fundamentals of Epistemology in Social Research: Legal Profiles (II)

Today, scientific and technological progress makes it possible to intervene on the human body in different ways, including those processes that regulate human life, such as, for example, birth and death, which may no longer be governed exclusively by natural laws. This raises some fundamental questions on the role of law in a delicate balance between legal requirements and interpretation of the specific case.

Human rights will be analysed focusing on the physical dimension of individuals. Dignity and the right to healthcare will be investigated in the light of the most pressing bio-legal issues.

Study materials:

- P. Grossi, Prima lezione di diritto, Editori Laterza, 2003
- G. Zagrebelsky, La virtù del dubbio. Intervista su etica e diritto, Editori Laterza, 2007
- Rodotà S., Il diritto di avere diritti, Editori Laterza, 2020

Lesson 3 – Legal subjectivity and the beginning of human life – Wrongful birth claims and compensation

As formulated, Article 1 of the Civil Code, according to which the civil legal capacity of an individual shall exist from the time he/she is born, is the subject of a heated debate, not only in terms of legal issues. Defining the beginning of personhood is extremely complex, with obvious repercussions on the legal status to be assigned to the unborn child and the embryo. The importance that the legal system attaches to the legal position of the unborn child also takes into account the right to be born and the right to be born healthy. Focusing on some practical cases, the most recent jurisprudential orientations regarding the configurability of wrongful birth will be discussed during the lesson.

Study materials:

- Law no. 194 of 22.8.1978
- Law no. 40 of 19.2.2004
- Court of Cassation judgement no. 10741 of 11-5- 2009.
- Court of Cassation no. 9700 of 3.5.2011
- Court of Cassation no. 16754 of 2.10. 2012
- Court of Cassation - joint sittings of all divisions no. 25767, 22 December 2015.

Lesson 4 – The legal status of human embryos

The case of non-transferred embryos will be the subject of an in-depth study, since the considerations made regarding the unborn child cannot be applied tout court. During the lesson, we will discuss the most relevant questions raised by assisted reproductive techniques, as well as by gene modification and editing techniques, which require answers aimed at safeguarding the integrity and use of the embryo itself, with a focus on the future of existing and cryopreserved embryos.

Study materials:

- Constitutional Court no. 84, 13.4. 2016
- European Court of Human Rights, 27-8-2015
- Court of Justice C-34/10, 18 October 2011.

Lesson 5 – The legislation on medically assisted procreation

The law on medically assisted procreation (Law no. 40 of 19.2.2004) has been deeply influenced by constitutional jurisprudence; after analysing the law in question, we will discuss in detail the issues addressed in the courts and related to preimplantation genetic diagnosis and access to these procedures by fertile couples, the limits to the creation and selection of embryos, and heterologous fertilization.

Study materials:

- Constitutional Court no. 96, 5.6.2015
- Constitutional Court no. 151, 8.5. 2009
- Constitutional Court no. 97, 12.3. 2010
- Constitutional Court no. 162, 10.6.2014.

Lesson 6 – Filiation and medically assisted procreation

Retracing the history of medically assisted procreation, this technology, which was originally developed for treating infertile heterosexual couples, is becoming a reproduction method used regardless of sexual orientation and the existence of a couple, and, therefore, is changing our idea of family based on traditional roles, that is, a mother and a father.

The perspective revealed by the analysis of Law no. 40/2004, making new forms of parenthood unrelated to natural conception possible, requires, for the protection of the subjects involved, to be coordinated with the tools imagined in 1942 by the legislator on the presumption of paternity and proof of filiation.

The interpretation difficulties are also strongly exacerbated by the diversity with which the phenomenon is regulated in European and non-European countries, which encourages 'reproductive tourism' with the consequent problems of legal recognition.

Study materials:

- Constitutional Court no. 221, 23.10.2019
- Constitutional Court 1st section no. 12962, 22.6.2016
- Constitutional Court 1st section no. 19599, 30.9.2016

- Constitutional Court no. 237, 15.11.2019
- Constitutional Court no. 230, 11.11.2020
- Court of Cassation no. 8028, 22.4.2020.

Lesson 7 – Surrogacy

During the lesson, we will discuss the legal, and above all ethical issues associated with surrogacy. The stigmatization of this technique, which sees the female body as a mere incubator, and the risks associated with the commodification of human life have paved the way for solutions that can be even considered as ‘extreme’ offered in an attempt to put a legal limit to surrogacy. The possibility that parental status is not recognised in the parents’ residence country, in fact, can be an effective deterrent for those who wish to bypass the law and go abroad. All this, however, can certainly be in contrast with the interest of the child who, once born, has the right not to suffer any discrimination in relation to consequences deriving from the unlawful conduct of other people.

Study materials:

- European Court of Human Rights, 26 June 2015 (Mennesson v. France; Labassee v. France)
- Court of Cassation no. 24001, 11.11.2014
- European Court of Human Rights, 27.1.2015 Paradiso and Campanelli v. Italy
- European Court of Human Rights, 24.1.2017 Paradiso and Campanelli v. Italy
- Court of Cassation - joint sittings of all divisions no. 12193, 5.5.2019
- Judgment of the Grand Chamber of the European Court of Human Rights, 10 April 2019.

Lesson 8 – Self-determination and refusal of treatment

The right to self-determination has long been recognised by most of the doctrine and by the Constitution, as well as by the jurisprudence of legitimacy, with regard to both consent to treatment and its refusal as a manifestation of an individual’s personal freedom, in the light of which article 32 of the Constitution should be interpreted. The issue of refusal of treatment will be examined in the light of the recent Italian Law 219/2017.

Study materials:

- Charter of Fundamental Rights of the European Union, Strasbourg 12.12.2007
- Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine, Oviedo 4.4.1997
- Constitutional Court no. 438, 23.12.2008
- Law 219/2017
- Court of Cassation no. 21748 of 16 October 2007
- Constitutional Court no. 242, 22.11.2019.

Lesson 9 – Advance healthcare directives (DATs)

The issue of refusal of treatment is closely related to the issues addressed by Advance Healthcare Directives (DATs), according to which a person has the right to choose among the different treatment options available. Making reference to Law 219/2017, we will discuss the form, the contents, as well as the difficulties associated with the implementation of DATs, also with reference to the role of the trustee.

Study materials:

- Law 219/2017
- Court of Cassation, 1st Section, no. 23707, 20-12-2012.

Lesson 10 – Responsibility in healthcare and violation of patient consent

The final lesson of the course will focus on responsibility in healthcare in the light of legislative reforms, and in particular damage compensation for the violation of patient consent and his or her right to self-determination will be investigated.

Finally, the PhD students will present their works.

Study materials:

- Court of Cassation, 3rd Section, no. 28985, 11 November 2019
- Court of Cassation, 3rd Section, no. 7248, 23.3.2018
- Court of Cassation, 3rd Section, no. 24462, 03.11.2020.