Course Syllabus
Constitutional law of the Kyrgyz Republic

Instructor: Saniia Raatbekovna Toktogazieva, L.L.M. and S.J.D. Candidate

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Semester: Spring 2016
Class meeting hours: Tuesday 9.25, Thursday 9.25, 10.50
e-course site:
Consultations: for an appointment you may contact the instructor via email at toktogazieva_s@auca.kg

I. General Description of the Course

Current Course aims at equipping students with essential knowledge of constitutional order, governance, adjudication and the protection of constitutional rights in the Kyrgyz Republic. It will introduce students to such fundamental concepts as rule of law, democracy, system, type, form of governance, protection of rights and SOP. Furthermore it will provide students with the insights on how the limitation of constitutional rights is regulated and intersect with each other. Finally, the course will encourage students to challenge existing provisions of the current constitution and to comparatively analyze them with the provisions of the world leading constitutions, per say of US, Germany and South Africa.

II. Learning outcomes

Upon the completion of the course students will be able to gain following skills and substantive knowledge:

- Identify different types of Constitutions
- Clearly define the powers of all branches of government
- Identify the historical stages of development of the Kyrgyz Constitution
- Assess critically the constitutional adjudication procedure
- Clearly identify groups of rights protected by the Kyrgyz Constitution
- Ability to work with complex legal documents and comparatively analyze them
- Detailed understanding of the stages of constitutional adjudication

III. Content of the Course:

NB: The instructor reserves the right to introduce changes to the syllabus. Any changes will be announced during class.
## Course Content

### Class 1
**January 19:** Introduction to the course and organizational matters

Basics of Constitutional law as a science, discipline and branch of law
- Why is it important
- Sources of Constitutional law
- Form of government, type of government and system of government


### Class 2
**January 21:** Constitution-making and the era of constitutionalism.
- Types of Constitutions: Written v. Unwritten/ Rigid v. Flexible


### Class 3
**January 26:** History of Constitution-making in post-communism and Kyrgyzstan
- Constitution of the Kyrgyz Republic
- Historical Development of the Kyrgyz Constitution
- Constitutional amendments and re adoptions

Readings: *Declarations of Independence of the Kyrgyz Republic, Declaration on national sovereignty, Elster, Offe, Preuss: Constitutional Politics in Eastern Europe (1998)*

Homework: (Compare the constitutions of Soviet Kyrgyzstan and independent Kyrgyzstan, highlight the major differences)

### Class 4
**January 28:** System of Separation of Powers in Kyrgyzstan
- Horizontal separation of powers
- Institutions under the Kyrgyz Constitution
- Semi-Presidential v. Parliamentary republic. Differences?


Homework: Compare Constitutions of the KR as of 2010 and 2005 what are the main differences in terms of Separation of Powers.

### Class 5
**February 2:** Constitutional Status of the President of the Kyrgyz Republic
- Status of the President and his place in the system of SOP
- Major duties and obligations
- What does head of state and garant of the Constitution mean?
- Prescribed v. implied powers

**KR on Presidential elections. Russian Constitutional Court decision on Chechnya**

Homework: Does president of the KR have implied powers?

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### Class 6
**February 4: The scope of war powers of President of the KR**
- Commander-in-chief
- Emergency situations and armed conflict
- Declaration of war
- War against terrorism


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### Class 7-8
**February 9,11: Powers and Confrontations. The KR Presidential powers constraining the Parliament and beyond. Parlaimentarism, what is it?**
- Veto power and their types
- Parliamentary Dissolution powers
- Presidential decrees and their Status

Readings: *Relevant Chapters of Constitution of the KR, German Dissolution cases I and II, Russian Constitutional Court decision on presidential decrees, Alexei Trochev “Judging Russia”*

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### Class 9
**February 16: Constitutional basis of electoral system and political process in the Kyrgyz Republic**
- Electoral system, elections and the rights to vote in the KR (electoral system and their types, principles of election law)
- Constitutional status of political parties in the Kyrgyz Republic
- Constitutional status of church (religion in the KR)


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### Classes 10
**February 18: Legislative branch: Parliament of the KR**
- Basic duties and responsibilities
- Constituent v. Legislative powers
- Status of deputies and structure of the Parliament
- Parliamentary majority v. minority

### Class 11
**February 25: Legislative process**
- Legislative initiative
- Parliamentary hearings and adoption of the Bill

Readings: *Law of the KR on the Regulation of the Jorogku Kenesh*

### Classes 12-13
**March 1-3: The executive: Government of the KR**
- Structure of the government
- Organs of local self-governance
- Main functions of the Government
- Prime Minister of the KR


### Class 14
**March 10: Other state authorities**
- Prosecutor office
- Local self-governance
- National Bank
- Central Election Commission

Readings: Excerpts from laws regulating other branches of government.

### Class 15
**March 15: Review Session**

### Class 16
**March 17: Mid-term Exam!!!!!**

### Class 17
**March 29: Individual meetings on the results of the mid-term**

The list will be posted on the e-course

### Classes 18-19
**March 31, April 5: Least dangerous branch of law? Judicial system of the Kyrgyz Republic**
- Status of the Judges
- System of the Judiciary of the KR
- Judicial independence, legitimacy and neutrality
<table>
<thead>
<tr>
<th>Class 20-21</th>
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<tbody>
<tr>
<td>April 7, 12: Constitutional Courts. Constitutional review and its types</td>
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<tr>
<td>- Centralized v. decentralized models</td>
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<td>- Abstract v. Concrete constitutional review</td>
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<td>- Difference between judicial review and constitutional review</td>
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<tr>
<td>Readings: Comella, The Rise of Constitutional Courts (Dorsen, 153 - 161), Marbury v. Madison (1803) (Stone), Mizrahi case (Dorsen)</td>
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<thead>
<tr>
<th>Class 22</th>
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<td>April 14: Standing, political question</td>
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<th>Classes 23-24</th>
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<tbody>
<tr>
<td>April 19, 21: Constitutional Review in the Kyrgyz Republic</td>
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<td>- First Constitutional Court of the KR and its legitimacy</td>
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<td>- &quot;Tulip revolutions&quot; and suspension of the Court</td>
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<td>- Constitutional Council, composition and its status</td>
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<td>- Jurisdiction of the court</td>
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<tr>
<td>Readings: Report of the Venice Commission on Kyrgyzstan, Constitutional law of the Kyrgyz Republic on Constitutional Chamber of the Supreme Court, Alexei Trochev &quot;Judging Russia&quot;</td>
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| Homework: KR is democratic, social, secular, republic governed by rule of law. Define each term and be ready explaining them in 1-2 sentences. |

<table>
<thead>
<tr>
<th>Class 25</th>
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<tbody>
<tr>
<td>April 26: Legal status of individuals and citizens under the constitution of the Kyrgyz Republic.</td>
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<tr>
<td>- Defining Constitutional status of individuals: structure and principles</td>
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<td>- Defining citizenship: the procedure of acquirement and annulment</td>
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<td>- Fundamental Rights and freedoms of individuals and citizens.</td>
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<td>- Classification and three generations of rights</td>
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<thead>
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<th>Classes 26</th>
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<td>April 28: Limitations of Constitutional Rights in Kyrgyzstan</td>
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<td>- Limitation clause of the Constitution</td>
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<td>- Applicability of the test and their types: proportionality v. scrutiny</td>
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<tr>
<td>Readings: Decision of the Constitutional Court of the KR on Sultanalieva, Decision of the Constitutional Court of the KR on Osh TV and Mezon TV, Decision of the Constitutional Court on National Laguage, Plessy v. Ferguson, Brown v. Board of Education, United Colors of Benetton Case</td>
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**IV. Course Materials**

Course materials come from following sources:

- Stone, Seidman, Sunstein, Tushnet “Constitutional law” third Edition
- Dorsen, Rosenfeld, Sajo and Baer's Comparative Constitutionalism: Cases and Materials, 2nd edition, 2010
- Michel Rosenfeld, Andras Sajo “The Oxford Handbook of Comparative Constitutional law”, 2013
- Aharon Barack “Proportionality, Constitutional Rights and their Limitations” (Cambridge studies in Constitutional law, 2012)
- Constitution of the Kyrgyz Republic as of 1993, 2009 and 2010
- Law of the Kyrgyz Republic on Referendum
- Law of the Kyrgyz Republic on Normative Legal Acts
- Constitutional law of the Kyrgyz Republic on Status of Judges
- Constitutional law of the Kyrgyz Republic on Constitutional Chamber of the Supreme Court
- Law of the Kyrgyz Republic on Council for Selection of Judges
- Electoral Code of the Kyrgyz Republic
- Law of the Kyrgyz Republic on Political Parties
- Law of the Kyrgyz Republic on Mass Media
- Constitutional Law of the Kyrgyz Republic on Government
- Law of the Kyrgyz Republic on Supreme Court
- Declaration on National Sovereignty of the Kyrgyz Republic
- Declaration of Independence of the Kyrgyz Republic
- Constitution of the USA
- Constitution of the Federal Republic of Germany
- Report of the Venice Commission on Kyrgyzstan

**V. Teaching Methods**
The class will meet twice a week. Students must pay attention to the discussion conducted in the class. I will call on students randomly. **Students will be expected to know the material that is given them before hand.** Students are expected to prepare the readings and participate in discussions. Students will be assigned to read theoretical and case materials for each class. Students are expected to be prepared for classes to discuss rules, theory of the subject, and to review assigned questions.

**VI. Academic Conduct/ Course Policies**

(1) Students are expected to BE ON TIME for classes. If instructor marked the student absent in case that the student is late for the class, he is considered to be absent for the whole class, unless excused by instructor.

(2) The student has to follow ACADEMIC HONESTY code. All types of cheating (plagiarism etc.) are strictly prohibited. If a student fails to observe this requirement, instructor may give from an “F” for the work up to an “F” for the whole course depending on the type of assignment and other circumstances.

**VII. Grading**

1. Grading will be based on following components:

<table>
<thead>
<tr>
<th>a)</th>
<th>Class participation and Attendance</th>
<th>20.00%</th>
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<tbody>
<tr>
<td>b)</td>
<td>Mid Term Exam</td>
<td>30.00%</td>
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<td>c)</td>
<td>Final Exam</td>
<td>30.00%</td>
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<td>d)</td>
<td>Constitutional Council trial simulation</td>
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<tr>
<td></td>
<td>- Written component</td>
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<td></td>
<td>- Oral component</td>
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**a) Class participation** can be defined as following: constant attendance and participation in class, which shows his or her preparation for the class with either the use of and/or citation to the home material assignment that the student was assigned to read or to prepare. It also includes the participation during seminar classes by presenting assigned work. Each student is expected to give a presentation on material covered during the lecture for 5-10 minutes. Presentations shall be constructive and clear. **If student misses more than 4 class meetings then he/she will automatically get 0 for class participation and attendance.**

**b) Mid-term and Final Exam** will be combination of short essay questions, definition type questions, multiple-choice questions and questions based on hypothetical situations. When students are asked short essay questions in 5-10 sentences they need to briefly explain the concept by reflecting the most important and fundamental elements of it. Definition types questions require students to provide a definition of a particular term in 1-2 sentences. Multiple-choice questions require students to choose the best answer out of provided ones. Questions based on hypothetical situations will require students to
write a legal analysis of a given situation. It can be the critical assessment of the decision of Constitutional court or students can be asked to write their own decisions by following the structure and the content of the constitutional adjudication.

c) **Constitutional Council trial simulation**: At the end of the semester students will be involved in the constitutional trial simulation exercise. It will consist of written and oral components. Students will be divided into groups of petitioners and respondents. Based on the roles assigned for them they will be asked to prepare written pleadings and also present them during the oral argumentation.

### VIII. Grading Criteria

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<thead>
<tr>
<th>Grade</th>
<th>Percentage</th>
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<tr>
<td>A</td>
<td>94-100%</td>
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<td>A-</td>
<td>90-93%</td>
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<td>B+</td>
<td>86-89%</td>
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<td>B</td>
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<td>D</td>
<td>54-59%</td>
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<td>F</td>
<td>below 50%</td>
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