

Year : 2017/18

8075 - Master in European and Global Law 32165 - Law and Gender Policies

Syllabus Information

Academic Course:	2017/18
Academic Center:	807 - Official Postgraduate Programme in Law
Study:	8075 - Master in European and Global Law
Subject:	32165 - Law and Gender Policies
Credits:	4.0
Course:	1
Teaching languages:	Theory: Grupo 1: Pending
Teachers:	Consuelo Chacartegui Javega, Maria Luisa Iglesias Vila
Teaching Period:	Quarterly

Presentation

Gender inequality is a complex social problem presenting multiple challenges from the political, economic, and legal point of view. This course offers conceptual tools to understand this phenomenon in depth, combining philosophical discussion with issues of institutional design. Students will study the basic elements of a gender perspective and examine the most relevant feminist debates and normative proposals for the social advancement of women. Students will learn how to use a gender perspective to assess the current institutional mechanisms which are working to obtain equality. The course will look beyond traditional academic information and will include the study of legal measures and policies at the global, European and national levels.

Associated skills

Students will also gain the following capabilities and skills detailed below:

1. The ability to identify situations of discrimination and measure the impact of institutional action in different contexts.
2. Skills to approach the phenomenon of inequality through a global perspective, systematic and interdisciplinary.
3. Critical analysis of existing standards and the ability to develop legal policies on equality. Looking at the requirements of equality in the labor market: in particular the application and evaluation of plans of equality in the workplace.
4. To understand in depth the application of jurisprudence of equality and nondiscrimination.
5. To be able to do audits of equality and nondiscrimination. Identifying situations of discrimination in collective bargaining, in job training and in wage structures and to articulate equality policies.

Learning outcomes

The course will serve to acquire the following knowledge:

1. Fundamental morals and policies of the principle of equality. Judicial equality, equality of opportunities and

affirmative action.

2. The problem of structural inequality: institutional planning and protection of vulnerable groups. The causes of discrimination contemplated in the judicial system: gender, racial origin or ethnicity, religion or conviction, disabilities, age and sexual orientation.
3. Equality in the work place. Mechanisms of protection against discriminatory behavior. The legal nature and content of company plans for equality. The fight against assault because of gender and sexual assault as new forms of eliminating discrimination in the workplace.
4. Make proposals on labor conditions and gender and on the balance of work and family life, especially in regard to a new organization of working hours.

Prerequisites

It is important to be familiar with the constitutional theory of fundamental rights and with concepts such as equal treatment, non discrimination, and affirmative action.

Contents

FIRST SECTION: Gender, Law and Equality: Theoretical Framework

TOPIC 1: Gender, Anti-discrimination Law and Structural Injustice

- a) Gender Inequality as a Social Problem
- b) The Social Construction of Gender
- c) Anti-discrimination Law and Structural Inequality

TOPIC 2: Gender, Equal Opportunities and Positive Action

- a) Equality of Opportunity and Equality of Outcome
- b) Positive Action and its Discontents
- c) Subordination and the Distributive Paradigm

TOPIC 3: Gender, Social Inclusion and Policy Transformation

- a) The Sameness/Difference Debate
- b) Assimilation v. Inclusion. Power and Non-Domination
- c) Transformative policies. From Affirmative Action to Gender Mainstreaming?

TOPIC 4: Justice, Gender and the Family

- a) Is the Family beyond Justice?
- b) Gender Inequality and the Public/Private Dichotomy

c) The Personal as Political

SECOND SECTION: Part II: Gender Discrimination in the Workplace

TOPIC 1: Equality, Human Social Rights and Gender in the Era of Globalization [1st & 2nd session]

- a) Equality and Non-Discrimination Regulations in the Workplace: a Multilevel Perspective
- b) Decent work, Dignity and Gender
- c) The Main Principles in the Treatment of Gender Discrimination at Work: Gender Mainstreaming and Empowerment
- d) Formal Equality and Substantial Equality. The implications in the Workplace

TOPIC 2: The Forms Discrimination in the Workplace [3rd & 4rd session]

- a) Gender Discrimination and Multiple Discrimination
- b) Direct and Indirect Discrimination at Work
- c) Sexual Harassment and Gender in the Workplace
- d) The Instruments Against Gender Discrimination at Work: the Equality Plans

TOPIC 3: Caregivers and Domestic Work from a Gender Perspective [5th session]

- a) Corresponsibility versus Reconciliation
- b) Family Care in Europe: Mediterranean and Nordic Models
- c) Maternity Leaves and Social Benefits
- d) Domestic Workers and Gender.

TOPIC 4: Women Workers and Gender Issues on Occupational Health [6th session]

- a) Gender, Work and Health from a Holistic Perspective

b) Women's Health and Reproductive Issues in the Workplace

c) Gender and Occupational Health in the European Union

TOPIC 5: Working Hours, Rational Use of Time and Gender [7th session]

a) Rational Use of Time: the Position of the International Labour Organization

b) Telework and Labour Conditions in Women

c) Flexitime Measures versus Part-time Work: a Gender Perspective

Teaching Methods

The course will combine theoretical sessions where students will put in common ideas from the readings with more practical sessions where they will critically analyze different normative tools and judicial decisions at the global, regional and local level.

Readings will encourage active participation and will show the correlation between lectures and practical application of law in terms of equality and non discrimination on the grounds of gender.

Evaluation

Item	%	Notes
Continuous	40%	First section: Gender, Law and Equality. Theoretical Framework (attendance, participation, and a final short essay between 3,000 and 6,000 words)
		Second section: Gender and Labor Relations (attendance, participation, and a final short essay between 3,000 and 6,000 words)
Second chance evaluation: Mechanism by which the student will be able to be re-evaluated again in the case of having failed the first evaluation: an exam with 5 questions about topics related to the required readings. It's prohibited to have any material or reading to answer the exam. It's only possible to attend this exam if the student has followed the course according to the previous general rules of participation in the ordinary course. The exam will be in the date fixed by the Department.		

Bibliography and information resources

Part I: Gender, Law and Equality: Theoretical Framework

TOPIC 1: Gender, Anti-discrimination Law and Structural Injustice

- Nicola Lacey, "Legislation Against Sex Discrimination: Questions from a Feminist Perspective", *Journal of Law and Society*, v. 14, n. 4, 1987, pp. 411-421 (available online).
- Iris Marion Young, "Equality of Whom? Social Groups and Judgments of Injustice", *The Journal of Political Philosophy*, v. 9, n.1, 2001, pp. 1-18, esp. 9-18 (available online).
- *Legal Documents*: Cadman Decision, ECJ, Case C-17/05 (2006); Gruber Decision, ECJ, Case C-249/97 (1999) (all available online)

Further reading:

- Mari Mikkola, "Feminist Perspectives on Sex and Gender", *The Stanford Encyclopedia of Philosophy*, Stanford University, 2011 (available online).
- Sandra Fredman, "Substantive Equality Revisited", *International Journal of Constitutional Law*, v. 12, n. 3, 2016, pp. 712-738 (available online).
- Rosemary Hunter, "Analysing Judgments from a Feminist Perspective", *Legal Information Management Journal*, v. 15, Issue 1, 2015, 8-11

TOPIC 2: Gender, Equal Opportunities and Positive Action

- Iris M. Young, "Affirmative Action and the Myth of Merit", in *Justice and the Politics of Difference*, Princeton University Press, 1990, esp. pp. 192-206 and 210-214 (available online).
- Louis Pojman, "The Case against Affirmative Action", *International Journal of Applied Philosophy*, Vol. 12, Issue 1, 1998, 97-115 (available online).
- Jude Browne, "The Critical Mass Marker Approach: Female Quotas and Social Justice", *Political Studies*: 2013, 1-16.
- *Relevant Legal Documents*: Kalanke Decision, ECJ, Case C-450/93 (1995); Marschall Decision, ECJ, Case C-409/95 (1997); Abrahamsson Decision, ECJ, Case C-407/98 (2000); Badeck Decision, Case C-158/97, 2000; Art. 141 Amsterdam Treaty; Directives 2002/73/EC and 2006/54/EC; Proposal for a Directive on improving the gender balance among non-executive directors of companies listed on stock exchanges and related measures, European Commission, 14/11/2012.

Further readings:

- Owen Fiss, "Affirmative Action as a Strategy of Justice", *Philosophy & Public Policy*, 1997, n. 17, 37-38 (available online).
- Julie O'Brien, "Affirmative Action, Special Measures and the Sex Discrimination Act", *University of New South Wales Law Journal*, v. 27 (3), 2004, pp. 840-848 (available online).

TOPIC 3: Gender, social Inclusion and Policy Transformation

- Catherine Mackinnon, "Difference and Dominance: On Sex Discrimination", in *Feminism Unmodified*, Harvard University Press, pp. 32-45 (available online)
- Emanuela Lombardo and Petra Meier, "Gender Mainstreaming in EU. Incorporating a Feminist Reading", *European Journal of Women's Studies*, v. 13, 2006, pp. 151-166. (available online).
- Maria Stratigaki, "Gender Mainstreaming vs. Positive Action. An Ongoing Conflict in EU Gender Equality Policy", *European Journal of Women's Studies*, v. 12, 2005, pp. 165-186 (available online).

Further Readings:

- Alison Jaggar, "Sexual Difference and Sexual Equality", in A. Jaggar (ed.) *Living with Contradictions*, Westview Press, Boulder, 1994, pp. 18-27 (available online).
- *Gender Mainstreaming. Conceptual framework, methodology and presentation of good practices*, Directorate General of Human Rights, Council of Europe, Strasbourg, 2004, pp. 1-24 (available online).
- Iris Marion Young, *Inclusion and Democracy*, Oxford University Press, 2000, pp. 133-153 (available online).

TOPIC 4: Justice, Gender and the Family

- Susan M. Okin, *Justice, Gender and the Family*, Basic Books, 1991, pp. 89-109 and 124-133 (available online).
- Anne Marie Slaughter, "Why Women Still Can't Have It All", *The Atlantic*, July/August 2012, pp. 85-102. (available online).

Further readings:

- Carole Pateman, "Feminist Critiques of the Public/Private Dichotomy" in *The Disorder of Women: Democracy, Feminism, and Political Theory*, Stanford University Press, Stanford, 1989, pp. 118-136 (available online)
- Rosemarie Tong and Nancy Williams, "Feminist Ethics", *The Stanford Encyclopedia of Philosophy*, Stanford University, 2009 (extract available online)

Part II: Gender Discrimination in the Workplace

TOPIC 1: Equality, Human Social Rights and Gender in the Era of Globalization

Basic Readings

-Directive 2006/54/EC, of the European Parliament and of the Council, of 5 July 2006, on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast)

-European Commission, Staff Working Document - Strategic engagement for gender equality 2016-2019 [Brussels, 3.12.2015-SWD(2015) 278 final]

Further reading:

Lewis, J., Campbell, M. & Huerta, C. (2008). Patterns of paid and unpaid work in Western Europe: gender, commodification, preferences and the implications for policy. *Journal of European Social Policy*, Vol 18(1): 21-37.

TOPIC 2: The Forms Discrimination in the Workplace

Basic Readings:

-Judgment of the Court (Grand Chamber) of 14 March 2017 (request for a preliminary ruling from the Hof van Cassatie — Belgium) — Samira Achbita, v G4S Secure Solutions NV (Case C-157/15)

-Commission Decision of 26th April 2006, on the European Commission policy on protecting the dignity of the person and preventing psychological harassment and sexual harassment, Brussels, 26th April 2006, C(2006) 1624/3

Further reading:

-Judgment of the Court (Eighth Chamber), 22 November 2012, Case C-385/11

-Chacartegui Jávega, C. (2010). "Gender and sexual orientation in women: the double discrimination", *US-China Law Review*, David Publishing Company, vol. 7, num. 11.

TOPIC 3: Caregivers and Domestic Work from a Gender Perspective

Basic Readings

-Council Directive 2010/18/EU, of 8 March 2010, implementing the revised Framework Agreement on parental leave concluded by BUSINESSEUROPE, UEAPME, CEEP and ETUC and repealing Directive 96/34/EC

-Judgment of the Court (Fourth Chamber) of 16 July 2015 (request for a preliminary ruling from the Symvoulio tis Epikrateias (Greece) — Konstantinos Maïstrellis v Ypourgos Dikaiosynis, Diafaneias kai Anthropon Dikaiomaton (Case C-222/14)

-López López, J., Chacartegui Jávega, C., Gonzalez Cantón, C., (2013). "Social Rights in Changing Labor Markets: Caring for Caregivers in the European Union", en AA.VV. (dir. STONE, K., and ARTHURS, H.), *Rethinking Workplace Regulation: Beyond the Standard Contract of Employment*, New York, Russel Sage Foundation.

Further reading:

-Bird, Marian and O'Brien, Margaret (2015). "Dynamics of parental leave in Anglophone countries: the paradox of state expansion in liberal welfare regimes". *Community, Work & Family*, 18:2, 198-217.

-Lester, Gillian (2005). *A Defense of Paid Family Leave*, 28 *Harvard J.L. & Gender* 1.

TOPIC 4: Women Workers and Gender Issues on Occupational Health

Basic Readings:

-Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding (tenth individual Directive within the meaning of Article 16 (1) of Directive 89/391/EEC)

-European Agency for Safety and Health at Work, *Mainstreaming Gender into Occupational Safety and Health*. Proceedings of a seminar organised in Brussels on the 15 June 2004 by the European Agency for Safety and Health at Work.

Further reading:

-Forastieri, V. (2010). Women Workers and Gender Issues on Occupational Safety and Health, International Labor Office.

TOPIC 5: Working Hours, Rational Use of Time and Gender

Basic Readings:

-International Labor Organisation (2007). Decent Working Time: Balancing Workers' Needs with Business Requirements. Conditions of Work and Employment Programme (TRAVAIL)

Further reading:

-Smith, B. (2002). Time Norms in the Workplace: Their Exclusionary Effect and Potential for Change, 11 Columbia Journal of Gender & Law 271

-Hill E.J., Grzywacz J., Allen S., Blanchard, V., Matz-Costa C., Shulkin S. & Pitt-Catsouphes M. (2008) Defining and conceptualizing workplace flexibility, Community, Work & Family, 11:2, 149-163.