

The Legal Framework for Migrations (31122)

6th edition, 2014-2015

Aida Torres Pérez

40.1E18

aida.torres@upf.edu

Sílvia Morgades Gil

40.1E30

silvia.morgades@upf.edu

Teaching language: English

ECTS credits: 5

Term: First

1. Presentation and Description of the Course

The goal of this course is to analyze the legal framework of immigration in Spain and the European Union. The first part of the course (topics 1 to 5) will critically examine the current constitutional and legislative framework from the perspective of the fundamental rights of immigrants. The analysis will be developed from the standpoint of the principle of equality: to what extent the distinction between citizens and foreigners regarding the exercise of fundamental rights be justified? The discussion will focus on individual rights, social rights, and political rights. Special attention will be devoted to the right to private and family life in connection with the right to family regrouping and the Detention Centers for Immigrants.

The second part of the course (topics 6 to 10) will deal with the legal situation of third country nationals in the European Union area. First of all, the context and the main features of the European Union area of Freedom, Security and Justice and of the Common European Policies on Migration and Asylum will be addressed. Three sessions will be aimed at analysing and discussing the three main situations of third country national's *vis-à-vis* the Schengen area by analysing the International, the EU and the Spanish legal framework: crossing borders and entrance into the Schengen area; stay and residence of foreigners; and the return to the country of origin. Finally, the main aspects of the legal regime on refugees and asylum at International, European, and Spanish level will be introduced.

2. Prerequisites

There are no prerequisites required.

3. Skills and competences

See Annex 1 for General Skills (Instrumental, Interpersonal and Systemic).

Specific Skills: Comprehension of legal materials; legal analysis; resolution of cases by applying International Law, EU Law and Spanish law.

4. Contents.

- 1. The constitutional status of foreigners in Spain: equality and discrimination**
The multilevel system of rights' protection in Europe. The tripartite classification of fundamental rights. Discrimination on grounds of nationality. Constitutional and legislative framework: evolution
- 2. The fundamental rights of foreigners after LO 2/2009 and the impact of the crisis**
Rights to reunion, association, demonstration, education, health and housing
- 3. Political rights**
Nationality, citizenship and representative democracy. The debate on extending political rights to foreigners. The right to vote and to stand as candidate in Spain in comparative perspective.
- 4. Family reunification**
Family reunification as a fundamental right. The impact of the European Court of Human Rights. Directive 2003/86 on the right to family reunification and its implementation in Spain.
- 5. Detention Centers for Immigrants**
Detention Centers in Spain. Causes and process for detention. Fundamental rights in detention centers.
- 6. The European area of Freedom, Security and Justice: Framework of the European Policies on Migrations and Asylum**
Origins, evolution, and European basic rules for the achievement of an area of Freedom Security and Justice. The Schengen agreements. From the Tampere's (1999) to the Stockholm Program (2010) and beyond. The external dimension of the Common European Policies on Migration and on Asylum.
- 7. Crossing borders and acceding to one country of the common European area of free movement**
Crossing borders and acceding to the frontiers: entrance conditions (SIS); European visa policy; carrier sanctions. Borders management at the European Union level: Schengen Borders Code; FRONTEX. The entrance of third country nationals in Spain.
- 8. The stay, residence and integration legal regime**
Legal basis and EU rules on residence and integration of foreigners: citizens and its families; long term residence permit; *blue card*; students and volunteers; victims of

trafficking or smuggling; the common set of rights for third country workers in the European Union. Stay, residence and work permits in Spain.

9. Return, expulsion and the sanctions system of the Migration's legal regime

Fighting illegal migration: common rules on the return of irregular migrants. Limits to the expulsion of migrants from the European territory arising from the European Convention on Human Rights: leading cases. The sanctions system for fighting irregular migration in Spain.

10. Forced migrations: International refugee regime and European and Spanish rules on asylum

Refugees and asylum seekers in International Law. The second phase of the Common European Asylum Policy in the European Union: Dublin system; harmonised rules on the definition of refugee and status of protection; reception of asylum seekers; and procedures on asylum. The asylum legal system in Spain.

5. Methodology

The sessions will consist of an introduction of the topic and main issues by the professor, combined with class discussion on the basis of the readings assigned. The materials for the course will include International, European and Spanish legal texts; relevant judgments decided by the European Court of Justice, the European Court of Human Rights and the Spanish Constitutional Court; and scholarly writings published in books and scientific journals, and expert reports.

6. Evaluation

Throughout the course, students will be asked to submit two written assignments on a topic indicated by the professor. Active participation in class discussions will be expected. Class assignments and participation will correspond to 30% of the final grade.

In the final essay, students will need to show that they have acquired the expected knowledge and skills to be able to develop legal arguments and analyze the current socio-political reality from a legal perspective. The final essay will correspond to 70% of the course grade.

7. General Bibliography

- Topics 1 to 5:

EUROPEAN UNION AGENCY FOR FUNDAMENTAL RIGHTS, *Fundamental rights of migrants in an irregular situation in the European Union*, 2011

S. GARCIA VAZQUEZ, *El estatus jurídico-constitucional de los extranjeros en España*, Tirant lo Blanch, Valencia, 2007

K. GROENENDIJK, *Local voting rights for non-nationals in Europe*, Migration Policy Institute, 2009

R. JOVER GÓMEZ FERRER, C. ORTEGA CARBALLO, S. RIPOL CARULLA, *Derechos Fundamentales de los extranjeros en España*, Lex Nova, Valladolid, 2010

D. THYM, "Respect for private and family life under Article 8 ECHR in immigration cases: a human right to regularize illegal stay?" *ICLQ*, 57, 2008

C. VIDAL FUEYO, *Constitución y Extranjería*, CEPC, Madrid, 2002

R. ZAPATA-BARRERO AND J. ZARAGOZA, *Political rights of immigrants in Spain*, Emilie WP, 2009

- TOPICS 6 a 10:

D. BOZA; F. J. DONAIRE; D. MOYA (coords.), *La nueva regulación de la inmigración y la extranjería en España*, Tirant lo Blanch, Valencia, 2011.

G. CLAYTON, *Textbook on Immigration and Asylum Law*, 6^a ed., Oxford University Press, Oxford, 2014.

G. GOODWIN-GILL; J. MCADAM, *The Refugee in International Law*, 3^a ed., Clarendon Press-Oxford University Press, New York, 2007.

E. HADDAD, *The Refugee in International Society. Between Sovereigns*, Cambridge University Press, Cambridge, 2008.

J.C. HATHAWAY, *The Rights of Refugees under International Law*, Cambridge University Press, Cambridge, 2005

S. PEERS, *EU Justice and Home Affairs Law*, 3^a ed., Oxford University Press, Oxford, 2011.