

Advanced Master in Legal Sciences 2016-2017	
Course: European Constitutionalism and Fundamental Rights	Term: 1
	Number of Credits: 4
	Language: English
Instructor: Alejandro Saiz Arnaiz and Aida Torres Pérez	
Office hours: Wednesday, 17:00-18:00, 40.229 and 40.1E18	
Email: alex.saiz-arnaiz@upf.edu , aida.torres@upf.edu	

Course Description
<p>In Europe, the enactment of the European Convention on Human Rights in 1950 (ECHR) and the process of economic and political integration in the European Union (EU) over the second half of the twentieth century have contributed to create multiple spheres of rights' protection on the basis of state constitutions, the ECHR, and the EU Charter of Fundamental Rights. The ultimate interpreters of these declarations of rights are, respectively, Constitutional or Supreme Courts, the European Court of Human Rights (ECtHR), and the Court of Justice of the European Union (CJEU). The dialogue among these courts has given rise to the so-called European <i>ius commune</i> in the field of fundamental rights. The plurality of rights and courts offers new opportunities for the protection of fundamental rights, but it also poses many challenges from a structural and political perspective. This course will analyze the dynamic interaction between the constitutional, supranational, and international legal orders for rights' protection in Europe.</p>

Prerequisites
None

Methodology
<p>The sessions will consist of an introduction of the topic and main issues by the professor, followed by a class discussion on the basis of the readings assigned. The readings will include doctrinal articles as well as judgments of the ECHR and the CJEU. Students shall read the materials in advance. The doctrinal articles will be posted in the Aula Global. The students shall look for the judgments in the respective websites of the ECtHR and the CJEU. Active participation in class is required.</p> <p>By the end of the course, students should have acquired a thorough understanding of the European systems of rights' protection and their mutual interaction. They are expected to develop skills for analytical reasoning and critical thinking regarding the problems of interpretation and judicial protection of fundamental rights in a plural context.</p> <p>Attendance is required to at least 80% of the sessions.</p> <p>Every student is expected to spend at least 4 hours per week in the preparation of the classes. They will need to devote at least 20 hours to the final essay.</p>

Assignments and Evaluation

Students are expected to read the materials and actively participate in class. By the end of the course, they shall submit a final essay. They will be asked to analyze two judgments of the ECtHR and the CJEU and answer several questions. Students will need to show that they acquired the expected knowledge and skills.

Participation in class discussions will correspond to 20% of the grade and the final essay to 80%.

In case of failing the course, students will have the opportunity to be re-evaluated by submitting an essay and two reading notes.

Schedule and Work Plan

SESSION 1

The Plural System of rights' protection in Europe

The European Convention on Human Rights and the Charter of Fundamental Rights of the European Union. The Courts, individuals, and mechanisms.

Readings:

- European Convention on Human Rights
- EU Charter of Fundamental Rights
- R. Schütze, "Three 'Bills of rights' for the European Union", *Yearbook of European Law*, Vol. 30, No. 1, 2011

SESSION 2

On reading the European Convention (I)

The language of rights and the role of the Court.

Readings:

- Case of *Mamatkulov and Askarov v. Turkey*, GC, 4 February 2005
- Case of *Schalk and Kopf v. Austria*, 24 June 2010
- Case of *S.A.S. v. France*, GC, 1 July 2014

SESSION 3

On reading the European Convention (II)

The techniques used by the Court: national margin of appreciation, European consensus, living instrument, other international documents.

Readings:

- D. Spielmann, "Allowing the Right Margin the European Court of Human Rights and the National Margin of Appreciation Doctrine: Waiver or Subsidiarity of European Review?", CELS Working Paper Series, February 2012, 30
- Case of *Demir and Baykara v. Turkey*, GC, 12 November 2008
- J.E. Helgesen, "What are the limits of the Evolutive Interpretation of the European Convention on Human Rights?", *Human Rights Law Journal*, December, 2011, pp. 275-281.

SESSION 4

The Effects of Judgments and Decisions of the European Court of Human Rights

What the Convention says, what the Court does, what the States do.

Readings:

- D. Spielmann, “Jurisprudence of the European Court of Human Rights and the Constitutional Systems of Europe”, in *The Oxford Handbook of Comparative Constitutional Law*, May 2012, pp. 1231-1252
- Case of *Verein Gegen Tierfabriken Schweiz (VgT) v. Switzerland* (n. 2), GC, 30 June 2009

SESSION 5

The scope of application of the EU Charter to the Member States

The limited scope of application of the Charter: understanding the notion of “implementing” EU law. Free movement and fundamental rights. Rights attached to the status of EU citizenship.

Readings:

- K. Lenaerts and J.A. Gutiérrez-Fons, “The Place of the Charter in the EU Constitutional Edifice”, in S. Peers, T. Hervey, J. Kenner, A. Ward (eds.), *The EU Charter of Fundamental Rights*, Hart Publishing, 2014, pp. 1559-1571
- Case C-617/10, *Åkerberg Fransson*, 26 February 2013
- Case C-304/14, *CS*, 13 September 2016

SESSION 6

Levels of protection

The Charter as a minimum or a maximum standard of protection? The role of Constitutional Courts as guardians of fundamental rights. Potential conflicts between standards of protection.

Readings:

- B. de Witte, “Level of Protection”, in S. Peers, T. Hervey, J. Kenner, A. Ward (eds.), *The EU Charter of Fundamental Rights*, Hart Publishing, 2014
- A. Torres Pérez, “*Melloni* in Three Acts: From Dialogue to Monologue”, *European Constitutional Law Review*, 10, 2014
- Case C-399/11, *Melloni*, 26 February 2013
- Case C-168/13, *Jeremy F*, 30 Mayo 2013

SESSION 7

The Rome Convention, the Strasbourg Court, National Constitutions and Constitutional (Supreme) Courts of States parties to the Convention

“Dialogues” and reciprocal influences. Roma (Strasbourg) locuta causa finita?

Readings:

- B. Hale, “Argentoratium Locutum: Is the Strasbourg or the Supreme Court Supreme?”, *Human Rights Law Review*, 3, 2013, pp. 65-78
- H. Keller and A. Stone Sweet, “Assessing the Impact of the ECHR on National Legal Systems”, in Keller and Stone Sweet eds., *A Europe of Rights*, pp. 677-710

SESSION 8

Criticism and the future of the conventional system

Readings:

- Lord Hoffmann, "The Universality of Human Rights"
- R. Spano, "Universality or Diversity of Human Rights?", *Human Rights Law Review*, 2014

SESSION 9

The accession of the EU to the ECHR

The dialogue between Luxembourg and Strasbourg. Reasons for the accession: the accession agreement. The co-respondent mechanism. The prior involvement of the CJEU. The failure of the accession after the CJEU Opinion 2/13.

Readings:

- B. de Witte and Šejla Imamović, "Opinion 2/13 on Accession to the ECHR: Defending the EU Legal Order against a Foreign Human Rights Court", 40 E.L. Rev. 2015
- P. Eeckhout, "Opinion 2/13 on EU Accession to the ECHR and Judicial Dialogue – Autonomy or Autarky?", Jean Monnet Working Paper Series JMWP 01/15
- CJEU Opinion 2/13, 18 December 2014

SESSION 10

Judicial dialogue

Forms of judicial interaction: from comparative reasoning to judicial dialogue.

Readings:

- A. Rosas, "The European Court of Justice in Context: Forms and Patterns of Judicial Dialogue", *European Journal of Legal Studies*, 1, 2007

SESSION 11

Constitutional identity (Prof. Carina Alcoberro)

SESSION 12

Constitutional pluralism (Prof. Rafael Bustos)

Old and (not so) new concepts. Forms of constitutional pluralism. Constitutional conflicts.

Bibliography/List of readings and materials

Required Readings (in alphabetical order)

P. Eeckhout, "Opinion 2/13 on EU Accession to the ECHR and Judicial Dialogue – Autonomy or Autarky?", Jean Monnet Working Paper Series JMWP 01/15

B. Hale, "Argentorum Locutum: Is the Strasbourg or the Supreme Court Supreme?", *Human Rights Law Review*, 3, 2013, pp. 65-78

J.E. Helgesen, "What are the limits of the Evolutive Interpretation of the European Convention on Human Rights?", *Human Rights Law Journal*, December, 2011, pp. 275-

Lord Hoffmann, "The Universality of Human Rights"

H. Keller and A. Stone Sweet, "Assessing the Impact of the ECHR on National Legal Systems", in Keller and Stone Sweet eds., *A Europe of Rights*, OUP 2008, pp. 677-710

K. Lenaerts and J.A. Gutiérrez-Fons, "The Place of the Charter in the EU Constitutional Edifice", in Steve Peers, Tamara Hervey, Jeff Kenner, Angela Ward (eds.), *The EU Charter of Fundamental Rights*, Hart Publishing, 2014, pp. 1559-1571

A. Rosas, "The European Court of Justice in Context: Forms and Patterns of Judicial Dialogue", *European Journal of Legal Studies*, 1, 2007

R. Schütze, "Three 'Bills of rights' for the European Union", *Yearbook of European Law*, Vol. 30, No. 1, 2011

R. Spano, "Universality or Diversity of Human Rights?", *Human Rights Law Review*, 2014

D. Spielmann, "Allowing the Right Margin the European Court of Human Rights and the National Margin of Appreciation Doctrine: Waiver or Subsidiarity of European Review?", CELS Working Paper Series, February 2012, 30

D. Spielmann, "Jurisprudence of the European Court of Human Rights and the Constitutional Systems of Europe", in *The Oxford Handbook of Comparative Constitutional Law*, May 2012, pp. 1231-1252

A. Torres Pérez, "Melloni in Three Acts: From Dialogue to Monologue", *European Constitutional Law Review*, 10, 2014

B. de Witte, "Level of Protection", in S. Peers, T. Hervey, J. Kenner, A. Ward (eds.), *The EU Charter of Fundamental Rights*, Hart Publishing, 2014

B. de Witte and Šejla Imamović, "Opinion 2/13 on Accession to the ECHR: Defending the EU Legal Order against a Foreign Human Rights Court", 40 *E.L. Rev.* 2015

Further readings:

Harris, O'Boyle and Warbrick, *Law of the European Convention on Human Rights*, 3rd. edition, OUP, 2014

V. Kosta, N. Skoutaris, V. Tzevelekos, *The EU Accession to the ECHR*, Hart Publishing, 2014

S. Douglas-Scott, "A Tale of Two Courts: Luxembourg, Strasbourg and the Growing European Human Rights *Acquis*", *Common Market Law Review*, 43, 2006

F. Fontanelli, "The Implementation of European Union Law by Member States Under Article 51(1) of the Charter of Fundamental Rights", *Columbia Journal of European Law*, 20, 2014

A.Torres Pérez, *Conflicts of Rights in the European Union: A Theory of Supranational Judicial Adjudication*, OUP, 2009