The Common European Asylum System, LW5113

**COURSE OUTLINE 2019-20**

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| **Objective** | To explore, critically analyse and monitor the Common European Asylum System |
| **Lecturer** | **Name** | **Office** | **Ext** | **E-mail** |
| Dr. Ciara Smyth | Law School, Room 414, Floor 2, Tower 2, Main concourse | 2937 | ciara.m.smyth@nuigalway.ie |
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| **Times** | Weeks 9-12, Semester 2, Wednesdays, 10am-1pmSeminar Room, Irish Centre for Human Rights |
| **Learning Outcomes** | At the end of this course you should be able to:* Articulate the scope of the key instruments of the CEAS
* Demonstrate an awareness of how these instruments have been interpreted by the Court of Justice of the EU
* Discuss and critically analyse the proposed changes to these instruments
* Have an informed view of the EU’s response to the so-called ‘refugee crisis’
* Place in the CEAS in broader context by showing how it has influenced international refugee protection
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| **Format** | The course will be taught by way of four weekly seminars, conducted over three hours. Attendance is required. You are hereby given a detailed outline of all the seminars with the assigned readings for the course. You are expected to do the reading in advance and are encouraged to express your understanding/views and engage in active discussion. Guest speakers may contribute to some of the seminars. |
| **Programme(s)** | LL.M in International Migration and Refugee Law and PolicyLL.Ms in the Irish Centre for Human Rights and School of Law |
| **Course Material** | See weekly readings (below) |
| **Core Text** | * Cathryn Costello, *The Human Rights of Migrants and Refugees in European Law*, Oxford University Press, 2017, 9780199644742
* Vincent Chetail, Philippe De Bruycher and Francesco Maiani (eds) *Reforming the Common European Asylum System: the New European Refugee Law*, Brill Nijhoff: Leiden and Boston, 2016, 9789040308657
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| **Supplementary Texts** | Weekly readings (see below) |
| **Assessment** | 2,500 word essay |
| **ECTS** | 5 |
| **Workload**  | 125 hours of student effort |

**USEFUL SOURCES OF INFORMATION AND ANALYSIS**

**Journals**

The principal journals are:

*European Journal of Migration and Law*

International Journal of Refugee Law

Journal of Refugee Studies

Refugee Survey Quarterly

Newsletter on European Asylum Issues for Judges <http://cmr.jur.ru.nl/neais/>

Other relevant journals include:

*American Journal of International Law*

*Cornell International Law Journal*

*European Journal of International Law*

*Fordham University International Law Journal*

*Harvard Journal of Human Rights*

*Harvard International Law Journal*

*Human Rights Law Review*

*Human Rights Quarterly*

*International & Comparative Law Quarterly*

*International Journal of Minorities & Group Rights Law & Contemporary Problems*

Journal of Conflict and Security Law

Leiden Journal of International Law

Michigan Journal of International Law

*Netherlands Quarterly of Human Rights*

*Nordic Journal of International Law*

*Yale Law Journal*

Most of these periodicals are available in the university library. The collection is supplemented with on-line journals available through J-Store and Hein On-Line, to which all registered students have access via the website.

**GENERAL OVERVIEW OF THE COURSE**

# This module examines the evolution of the EU Common European Asylum System (CEAS) from the 1990s to the present, exploring why and how the EU has sought to harmonise the law in this area. The CEAS has developed in phases: Phase One established minimum standards instruments while Phase Two recast those instruments in order to move to a higher level of harmonisation in the form of common standards. However, the legal harmonisation has been patchy and great divergences still exist in the asylum laws, policies and practices of Member States. This undermines the *raison d’etre* of the Dublin Regulation – the instrument that allocates responsibility to one and only one Member States for the processing of any given asylum claim – which is, that it does not matter in which state an asylum claim is processed because the rules and procedures are the same in all Member States. The Dublin Regulation also puts an enormous burden on some Member States and has arguably contributed to the current ‘crisis’ in the Mediterranean, which, in turn has called the viability of the CEAS into question. In response, the EU legislator is currently seeking to renegotiate all the major instruments of the CEAS. In other words, we are entering Phase Three CEAS. This course critically analyses these developments and looks at the contribution, both positive and negative, that the CEAS – including the case-law of the Court of Justice of the EU – has made to international refugee protection.

**SEMINARS AND READINGS**

**Seminar 1 – Introduction to the history and development of the CEAS**

* Ciara Smyth, *European Asylum Law and the Rights of the Child*, Routledge, 2014, Chapter 1
* Rosemary Byrne, Gregor Noll and Jens Vedsted-Hansen, ‘Understanding Refugee Law in an Enlarged European Union’, *European Journal of International Law* (2004) 15(2): 355-379
* Christian Kaunert and Sarah Leonard, ‘European Union Asylum Policy After the Treaty of Lisbon and the Stockholm Programme : Towards Supranational Governance in a Common Area of Protection?’ *Refugee Survey Quarterly* (2012) 31(4): 1-20

**Seminar 2 – Overview of the core instruments of the CEAS:**

* Scrutinise the text of *one* of the following:
	+ The Recast Reception Conditions Directive (2013/33/EU)
	+ The Recast Dublin Regulation (604/2013)
	+ The Recast Qualification Directive (2011/95/EU)
	+ The Recast Asylum Procedures Directive (2013/32/EU)
* Peruse the latest issue of the Newsletter on European Asylum Issues for Judges: <http://cmr.jur.ru.nl/neais/>for case-law on the above instrument of your choice

**Seminar 3 – Focus on the mechanism for allocating responsibility (Dublin):**

* Claire Inder, ‘The Origins of ‘Burden Sharing’ in the Contemporary Refugee Protection Regime’, *International Journal of Refugee Law* (2017) 29(4): 523–554.
* Anna Lübbe, ‘Systemic Flaws’ and Dublin Transfers: Incompatible Tests before the CJEU and the ECtHR?’ *International Journal of Refugee Law* (2015) 27(1): 135–140
* Sílvia Morgades-Gil, ‘The Discretion of States in the Dublin III System for Determining Responsibility for Examining Applications for Asylum: What Remains of the Sovereignty and Humanitarian Clauses After the Interpretations of the ECtHR and the CJEU?’ *International Journal of Refugee Law* (2015) 27( 3): 433–456
* Jan-Paul Brekke Grete Brochmann, ‘Stuck in Transit: Secondary Migration of Asylum Seekers in Europe, National Differences, and the Dublin Regulation’ *Journal of Refugee Studies* (2015) 28(2): 145–162

**Seminar 4 – The ‘refugee crisis’ and the EU response:**

* Geoff Gilbert, ‘Why Europe Does Not Have a Refugee *Crisis’*, *International Journal of Refugee Law* (2015) 27(4): 531–535
* Satoko Horii, ‘Accountability, Dependency, and EU Agencies: The Hotspot Approach in the Refugee Crisis’ *Refugee Survey Quarterly* (2018) 37(2): 204–230
* Danielle Gluns Janna Wessels, ‘Waste of Paper or Useful Tool? The Potential of the Temporary Protection Directive in the Current “Refugee Crisis”’ *Refugee Survey Quarterly* (2017) 36(2): 57–83