LLM Programmes at
the Irish Centre for Human Rights 2019/2020

European Migration Law (LW5109)
5 ECTS, 4 Seminars

Thursday 7th, 14th and 28th November
3:00 pm – 6:00 pm
Monday 25th November 11:00 am – 2:00 pm
Location: Seminar Room, ICHR

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Course description
The engagement of European courts and human rights bodies with migration and asylum has spiked over the last twenty years (Baumgartel, 2019), even though they have often come under criticism for adopting certain restrictive decisions vis-à-vis the needs of protection and promotion of the rights of vulnerable migrants (Dembour, 2015). This seminar-based module allows LLM students to learn how the major European legal frameworks regulate the status and the rights of people that move within and across European borders, both regularly and irregularly. Students are expected to pursue individual study and take part in different types of discussions on substantive standards and procedural issues of European Union Law (EU law) and European Human Rights Law (EHRL) around migration. This means navigating the tension that exists between sovereign immigration enforcement and the elaboration of human rights standards for vulnerable collectives like migrants. Although classifying people on the move is not an easy task, European standards that specifically apply to involuntary migration and asylum seekers are not covered in this module but are the core subject of the complementary elective module LW5113 (The Common European Asylum System), which is run in Semester 2.

Learning outcomes

• Analyse and critically evaluate the clashes of norms that supra-national or international regulation of immigration and migrant rights can generate
• Distinguish between different legal regimes that govern immigration and the rights of migrants in Europe
• Analyse and evaluate the contribution of EU law and European conventional law in the field of migration
• Critically evaluate and discuss pieces of European legalisation and case-law about migration from a human rights-based and a vulnerability approach
• Explore and formulate legal arguments on European migration law and human rights law

Course materials

• The syllabus section below provides information on the required and recommended readings;
• Audio-visuals and PowerPoint presentations will be posted on Blackboard, the online learning platform, immediately before/after every seminar;
• References to late-breaking developments and further readings will be circulated in class and on Blackboard. It is recommended that students check Blackboard regularly for updates on reading assignments;
• Students are required to discuss the assigned readings and the topic of each seminar in class. Specific activities include student-led sessions and a moot-court.

Core texts

The following texts and monographs are excellent starting points to approach European Migration Law. During the first seminar, I may indicate alternative suggested texts.


Useful journals

Below is a non-exhaustive list of academic journals that are available in either hard copy in the library or on-line through the NUI Galway library website

• Citizenship Studies
• European Journal of Migration and Law
• Migration Studies
• International Migration
• Journal of Ethnic and Migration Studies
• International and Comparative Law Quarterly
• European Public Law
• European Journal of International Law
• European Law Journal
• Common Market Law Review
• European Human Rights Law Review
• International Journal of Human Rights
• Netherlands Quarterly of Human Rights
Preparation and participation in structured discussions

There is a high level of in-class participation expected from students and for this, students will need to draw on their notes, electronic documents and other resources an on-going basis. It is recommended therefore to bring a laptop along to seminars. The mooting exercise will take place on Thursday 28th November 2019 (4th session) and will entail: 1. Preliminary allocation of different roles (to groups of students) to recreate a fictional ‘collective complaints session’ before the European Committee on Social Rights (the monitoring body of the European Social Charter); 2. Groups will prepare either written submissions / summary of parties’ arguments / draft-decision; 3. Performing oral submissions / communication of the decision.

Participation in the exercise (which includes the submission of the written documents to the lecturer) is mandatory and will account for 20% of the final grade (10% written documents of the group and 10% individual oral communication and argumentation). This particular activity aims to help students to practice and enhance their communication techniques and team building skills and exercise original legal arguments of European human rights law on migrant rights.
Assessment

The final grade for this course is based on a 2,500/3,000 essay (including footnotes, but excluding bibliography) on a topic previously agreed with the course instructor (80%) and the participation in the moot court exercise (20%).

Students are to submit their essay in hard copy and via Turnitin on Blackboard no later than 4 p.m. on 11 December 2019. Hard copy (2 copies) are to be left in the submission box located outside the enquiries office. Unjustified late submissions will result in 1% penalty p/day. Please see ‘Guidelines for LLM students’, also in relation to ‘plagiarism’.


Attendance

This module is composed of 4 interactive seminars. Students are expected to attend every class. Students are required to inform the lecturer in advance if they cannot attend a seminar.

Office hours

Mondays 5:00 – 6:30 pm, by appointment. To schedule an appointment, please drop me an email.
To discuss the essay topic, students are required to schedule an appointment by the end of the 4th week of November.

Inclusion statement

The Centre recognizes that we all have a personal history and identity and has a strong tradition of making sure everyone feels part of the learning community by respecting diversity. Our classroom is dedicated to providing an empowering learning space and experience for everyone, regardless of gender, gender identity and expression, age, sexual orientation, disability, physical appearance, body size, race, ethnicity, religion (or lack of it). The well-being of students is of primary importance and we all learn differently. If there are elements of this course that exclude you or do not work for you, or you are facing any challenges related to your physical or mental health, or obstacles like food or housing insecurity, please do not hesitate to get in touch to discuss ways we can support you to get the best out of your experience.
Syllabus

Although I may always indicate additional or further optional readings, below is the structure of the module:

Seminar 1/
7th November 2019
3:00 - 4:30 pm

European Migration Law: Structural Issues, Categorizations and Conceptual Tensions

The first part of this seminar offers an overview of those structural features of EU law and EHRL, that so greatly affect their normative contribution to the rights of migrants. Furthermore, it constitutes a platform for discussion on the concepts of citizenship and migration statuses, as well as on the priorities and core principles of European migration law.

Documents:

Readings:

Suppl. Readings:
Julia Mourão Permoser, ‘Redefining Membership: Restrictive Rights
and Categorisation in European Union Migration Policy’ (2017)
Journal of Ethnic and Migration Studies 43(15) 2536-2555.
Christof Van Mol and Helga de Valk, ‘Chapter 3. Migration and
Immigration in Europe: An Historical and Demographic
Perspective,’ in Blanca Garcés-Mascareñas and Rinus Penninx
(Eds) Integration Processes and Policies in Europe. Contexts,
Levels and Actors (Springers 2016) 31-55.

4:40 - 6:00 pm

**Freedom of Movement of EU Citizens and the members of their Family**
During the second part of this seminar students will engage with one
of the pillar of EU law: the right of EU citizens to freely move and
establish themselves in other EU countries, and the conditions for
the exercise of these rights. By analysing pieces of EU legislation and
case law we examine how free movement and EU citizenship have
been elaborated and interpreted, also for the benefits of the Non-EU
family members of EU nationals and ‘static’ EU citizens.

**Documents:**
Consolidated version of the Treaty on the Functioning of the
European Union OJ C 326 (2012), Articles 18, 20, 21, 45, 49,
56.

**Cases** for legal analysis will be communicated in due course, before
the course begins.

**Readings:**
Pieter Boeles, Maarten den Heijer, Gerrie Lodder and Kees Wouters,
European Migration Law (2nd Edn, Intersentia 2014) ‘Chapter
1’ or
Catherine Barnard, ‘Free Movement of Natural Persons and
Citizenship of the Union’, in Catherine Barnard and Steve Peers
(eds) European Union Law (2nd Edn, Oxford University Press)
369-408.
Fulvia Staiano, ‘Derivative Residence Rights for Parents of Union
Citizen Children under Article 20 TFEU: Chavez-Vilchez

**Seminar 2/**

**Regular Migration in EU Law. Family Migration between
EU law and EHRL.**

14th November 2019
This seminar provides a bird’s eye view of EU attempts to harmonise
the law on regular or lawful admission of third-country nationals,
whereby different Directives containing different rights govern
different categories of migrants. The focus primarily falls on family
migration and on the regimes that the Family Reunification Directive
and ECtHR have contributed to create, to their scope, potential use
or interpretative limitations.

3:00 - 4:40 pm

**Docs:**
Consolidated version of the Treaty on the Functioning of the European Union OJ C 326 (2012), Articles 77, 79.


**Readings:**


*Or alternatively*


4:50 - 6:00 pm

**Key EU Legislation on Irregular Migrants and their Fundamental Rights**

In this session we switch our attention to European policy on irregular migration, an analysis which continues during the following seminar. After an overview of existing programmatic and legislative instruments, we will focus on the text and scope of the 2008 Return Directive and the 2018 draft-recast Return Directive. These instruments, and the applicable case-law of the Court of Justice of the European Union are examined for their impact on the human rights of the people on the move.

**Documents:**


Cases: CJEU, C-61/11 PPU - *El Dridi*; C-290/14 – *Celaj*; C-82/16 *K.A. and Others*; C-562/13 – *Abdida*.

Readings:


Suppl. Readings:


**Seminar 3/**

**The Externalisation and the Securitisation of Border Control in the European Union**

25th November (Guest speaker: Noemi Magugliani, PhD candidate Irish Centre for Human Rights)

1:00 - 2:30 pm Although bordering processes are not novel in the history of the European Union, the perceived migration crisis has led to an expansion of EU borders beyond the physical territory of the Union – from Turkey to Libya through the Balkans. Some have argued that, by seeking to contain migration flows, the EU turned its south-eastern region into a fortified borderland. The implications of this process are discussed and analysed in this seminar, focusing in particular on the situation in the Mediterranean region.

Readings:


Anja Palm, ‘The Italy-Libya Memorandum of Understanding: The baseline of a policy approach aimed at closing all doors to Europe?’ (EU Migration Law Blog, 2 October 2017).

Cases:
Hirsi Jamaa and Others v Italy App no 27765/09 (ECHR 2012)
Khlaifia and Others v Italy App no 16483/12 (ECHR 2016)
S.S. and Others v Italy App no 21660/18 (Communicated ECHR 2018) - only available in French

2:40 - 4:00 pm

What ‘Balance’ between Sovereignty and Vulnerability Does the ECtHR realise?

The legal arguments of both ECtHR’s judgements and separate/dissenting opinions bring to the fore the tense relationships, in the context of migration, between restrictive state measures and the special attention that the rights of vulnerable people should deserve. With this in mind, the module instructor will guide students to explore selected ECtHR cases that concern the legitimacy and the conditions of migration detention for migrant adults and children, as well as those touching ‘severe health conditions’ as circumstances that prevent migrant deportation.

Cases:
Saadi v the United Kingdom App no 13229/03 (ECHR 2008)
Popov v. France App nos 39472/07 39474/07 (ECHR 2012) for French readers also Rahimi v Greece App no 8687/2008 (ECHR 2011)
Paposhvili v Belgium App no 41738/10 (ECHR 2016)
Readings:


Suppl. Reading:

Seminar 4/
The Socio-Economic Rights of Irregular Migrants in Europe

28th November
Regardless of the international commitment to equally realise all human rights, with progressive and immediate measures, European states set up normative and monitoring systems that do not place the same emphasis on civil liberties and on social rights, of all people that are present in their jurisdictions. The purpose of this seminar is to overview these conceptual and practical hesitations, as well as the practical attempts to overcome them. This analysis will be complemented by a moot-court exercise on the formal restraints and the interpretative potential of European Social Charter’s system with regards to the socio-economic rights of irregular migrants.

3:00-5:00 pm
Documents:

Cases for the Moot-Court:
Conference of European Churches (CEC) v the Netherlands Com no 30/2013 (ECSR decision on immediate measures 2013)
Conference of European Churches (CEC) v the Netherlands Com no 30/2013 (ECSR 2014)
Defence for Children International (DCI) v Belgium Com no 69/2011 (ECSR 2012)
Defence for Children International (DCI) v the Netherlands Com no 47/2008 (ECSR 2009)
European Committee for Home-Based Priority Action for the Child
and the Family (EUROCEF) v France Com no114/2015 (ECSR 2018)
European Federation of National Organisations working with the Homeless (FEANTSA) v the Netherlands Com no 86/2012 (ECSR decision on immediate measures 2013)
European Federation of National Organisations working with the Homeless (FEANTSA) v the Netherlands Com no 86/2012 (ECSR 2014)
International Commission of Jurists (ICJ) and European Council for Refugees and Exiles (ECRE) v Greece Com no 173/2018 (ECSR decision on admissibility and on immediate measures 2019)

Readings:


Suppl. Readings:


The facts of the case, questions to handbooks and instructions for the preparation of the moot-court activity will be communicated during the first seminar in early November.

5:00-6:00 pm

3-minute presentations: ‘An outline of my essay’. 2-min peer-feedback (ungraded, informal and exploratory activity)