

Academic Year: ( 2021 / 2022 )

Review date: 24-05-2019

Department assigned to the subject: Criminal Law, Procedural Law and History Law Department

Coordinating teacher: ALCOCEBA GIL, JUAN MANUEL

Type: Compulsory ECTS Credits : 4.0

Year : 1 Semester : 1

**REQUIREMENTS (SUBJECTS THAT ARE ASSUMED TO BE KNOWN)**

It is recommended to have completed courses related to the procedural law institution

**OBJECTIVES**

Specific to the course:

- ¿ Own and master:
  - o The different procedural guarantees of our legal system in order to protect fundamental rights
  - o Essential legislation, judgement and jurisprudence existing about the matter
- ¿ Be able to:
  - o Identify and consult to relevant and specialized information sources including jurisprudential doctrinal as well as legal when facing the need to address the jurisdictional protection of fundamental rights.
  - o Choose, criticize and apply the doctrinal works of this matter
  - o Structure and plan a research about the protection of Human Rights in the procedural field.
  - o Communicate developing the legal oratory and dialectics in the procedural field
  - o Use accurately the legal procedural terminology

**DESCRIPTION OF CONTENTS: PROGRAMME**

1. Protection of the right of living and personal integrity:
  - 1.1 Positive measure to protect life
  - 1.2 Prohibition of being subject to torture, inhuman or degrading behavior.
  - 1.3 Procedural law content
  - 1.4 Willfulness of statement as a valid principle
2. Instrumental Guarantees of the right to freedom and security:
  - 2.1 Right of being judged in a reasonable period or being released
  - 2.2 Temporary imprisoning regime in Spain
  - 2.3 Prohibition of secret detention in the Convention in order to protect everybody from enforced disappearing.
  - 2.4 Enforced detention in Spain
3. The alleged indemnity of the body as investigation object
  - 3.1 The account of the body
  - 3.2 Protection of physical intimacy
  - 3.3 Investigation based on the genetic profile of the suspect
4. Limits on investigations based on several principles of secret protection
  - 4.1 Family secrecy
  - 4.2 Medical confidentiality
  - 4.3 Attorney confidentiality
5. Protection of private life and massive data control:
  - 5.1 Communications surveillance in Germany and Spain
  - 5.2 Surreptitious taking of images with an investigation purpose
  - 5.3 Intimacy protection in the labor environment
  - 5.4 Legal regime of undercover investigations
6. Freedom of the press and process
  - 6.1 Limits to the press justice principles
  - 6.2 Secrecy in summary proceedings and closed door trials
  - 6.3 Presence of informants in public trials

- 6.4 Protection of the public interest in receiving information about a prosecution
- 6.5 Press right to not reveal their sources
- 7. Essential elements of the notion of a fair process in criminal order I:
  - 7.1 Guarantees from the judiciary: independence and impartiality
  - 7.2 Legal regulation of the prosecuted, the right to not self-incriminate and the right of silence crisis
  - 7.3 Prohibition of *¿inquisitio generalis¿*
- 8. Essential elements of the notion of a fair process in criminal order II:
  - 8.1 The right to a legal process with all guarantees of the Spanish Law and the Comparative Law
  - 8.2 The presumption of innocence as a trial basis
  - 8.3 Free evidence assessment and private certainty from the Court
  - 8.4 Guarantee of the contradictory in the obtaining of evidence
- 9. Unfitness of the illicit evidence in Spain and the United States: an example of convergence
  - 9.1 The concision of the guarantee and its foundation
  - 9.2 The positivization of the constitutional guarantee
  - 9.3 The constitutionalisation of the derivative effect and the modulation of the exclusionary law

## LEARNING ACTIVITIES AND METHODOLOGY

Learning activities:

- Case law analysis
- National and foreign legislation analysis in evidentiary subject
- Analysis of reports of international institutions
- Case study on assignation of judicial competences

## ASSESSMENT SYSTEM

- Attendance and participation in the in-person activities related to the subject (40%)
- Final test or final paper (60%))

<b>% end-of-term-examination:</b>	60
<b>% of continuous assessment (assignments, laboratory, practicals...):</b>	40

## BASIC BIBLIOGRAPHY

- GASCÓN INCHAUSTI EL CONTROL DE FIABILIDAD PROBATORIA: PRUEBA SOBRE LA PRUEBA EN EL PROCESO PENAL, REVISTA GENERAL DE DERECHO, 1999
- GONZÁLEZ-CUELLAR SERRANO Proporcionalidad y Derechos fundamentales en el proceso penal, COLEX, 1990
- GUZMÁN FLUJA ANTICIPACIÓN Y PRECONSTITUCIÓN DE LA PRUEBA EN EL PROCESO PENAL, TIRANT LO BLANCH, 2006
- MIRANDA ESTRAMPES EL CONCEPTO DE PRUEBA ILÍCITA Y SU TRATAMIENTO EN EL PROCESO PENAL, JM BOSCH, 2004
- MONTAÑÉS PARDO La presunción de inocencia. Análisis doctrinal y jurisprudencial, ARANZADI, 1999
- SOLETO MUÑOZ, H LA IDENTIFICACIÓN DEL IMPUTADO, TIRANT LO BLANCH, 2009
- SOLETO MUÑOZ, H (DIRECT) MEDIACIÓN Y RESOLUCIÓN DE CONFLICTOS. TÉCNICAS Y ÁMBITOS, TECNOS, 2013
- SOLETO MUÑOZ, H; GARCIA DÍAZ GONZÁLEZ, P(Direct.) SOBRE LA MEDIACIÓN PENAL, ARANZADI, 2012