

Constitutional Law II: fundamental right and guarantees system

Academic Year: (2021 / 2022)

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Department assigned to the subject: Public State Law Department

Coordinating teacher: SANCHEZ SAUDINOS, JOSE MANUEL

Type: Electives ECTS Credits : 6.0

Year : 4 Semester :

REQUIREMENTS (SUBJECTS THAT ARE ASSUMED TO BE KNOWN)

Constitutional Law

OBJECTIVES

Students should acquire a reasonable level of knowledge regarding:

- a) the general outlook of the Spanish fundamental rights and public liberties, and its guarantees system
- b) brief analysis of these rights and liberties

DESCRIPTION OF CONTENTS: PROGRAMME

CONSTITUTIONAL LAW II: FUNDAMENTAL RIGHTS AND CONSTITUTIONAL GUARANTEES

A. BASIC CONCEPTS AND GUARANTEES SYSTEM

Lesson 1.- Fundamental rights in the Spanish Constitution

1. Meaning and function of fundamental rights; Title I of the Constitution and its effectiveness.
2. Typology of fundamental rights; in general and especially in the Spanish Constitution
3. Structure of the fundamental rights norms.
 - 3.1. Object and content of fundamental rights.
 - 3.2. Ownership and exercise of fundamental rights: age, nationality; natural persons and legal persons.
 - 3.3. Limits of fundamental rights.
4. Interpretation of fundamental rights; Article 10.2 of the Constitution.

Lesson 2.- Guarantees of fundamental rights

1. Regulatory guarantees.
 - 1.1. Direct applicability.
 - 1.2. The reserve of law
 - 1.3. Respect for essential content
2. Institutions for the protection of fundamental rights: the Ombudsman.
 - 2.1. Nature and functions of the Ombudsman.
 - 2.2. The Ombudsman as a National Mechanism for the Prevention of Torture.
3. Jurisdictional guarantees: judicial protection:
 - 3.1. Ordinary jurisdictional protection.
 - 3.2. Preferential and summary jurisdictional protection.

Lesson 3.- Constitutional Jurisdiction as guarantor of fundamental rights

1. Constitutional jurisdiction and the protection of fundamental rights in its objective and subjective dimension.
2. The constitutional protection: characteristics; typology of amparo resources.
3. The standing to appeal and the requirements for filing the appeal.
4. Procedural phases and sentence.

Lesson 4- Supranational protection of fundamental rights

1. The constitutional opening to international and European human rights law.
2. Guarantees in the international arena:
 - 2.1. United Nations: the High Commissioner and the Human Rights Council.
 - 2.2. Council of Europe:
 - 1.2.1. The European Convention on Human Rights and the activity of the ECHR.
 - 1.2.2. The European Social Charter.
 - 2.3. European Union: the Charter of Fundamental Rights.

Lesson 5.- Suspension of rights

1. The right of exception in the Constitution.
2. The exceptional states:
 - 2.1. The state of alarm.
 - 2.2. The state of exception.
 - 2.3. The state of siege.
3. The individualized suspension of fundamental rights

B. FUNDAMENTAL RIGHTS ANALYSIS

Lesson 6.- Equality and non discrimination

1. Meaning of the equality clause.
2. Equality in the application of the law.
3. Equality in the law: the requirement of objective and reasonable justification of the differentiated treatment; positive discrimination.

Lesson 7.- The rights of the personal sphere

1. Right to life and physical and moral integrity.
2. Ideological freedom and religious freedom.
3. The rights of privacy:
 - 3.1. The right to privacy
 - 3.2. The right to one's own image.
 - 3.3. The right to honor.
 - 3.4. The inviolability of the home.
 - 3.5. The secret of communications.
 - 3.6. The protection of personal data.

Lesson 8.- The rights of freedom

1. Freedom of residence and movement.
2. Liberty and personal security:
 - 2.1. Preventive detention and provisional detention; the "habeas corpus" procedure.
 - 2.2. The principle of legality in relation to criminal sanctions and the sanctioning power of the Administration.
3. Freedom of expression and right to information.
 - 3.1. The free communication of facts and opinions: nature, content and limits.
 - 3.2. The legal regime of the media.

Lesson 9.- Political rights

The public freedoms of assembly and association

1. Right of assembly: characteristics and conditions of exercise; requirements and limits of the right to demonstrate.
2. Right of association.
 - 2.1. Positive and negative freedoms in relation to the creation, organization and exercise of associative activities.
- 2.2. The legal status of political parties.
3. The right to political participation: the right to participate in public affairs.
 - 3.1. Direct and indirect political participation; the right to vote.
 - 3.2. Right to access public positions and functions under conditions of equality.
 - 3.2.1. The conditions of access and permanence in elective public offices: the "status" of the representatives.
 - 3.2.2. The conditions of access to the public function.
 - 3.3. The right of petition.

Lesson 10.- The right to effective judicial protection

1. Access to jurisdiction.
 - 1.1. The right to be part of a process.
 - 1.2. Access to jurisdictional resources.
 - 1.3. The right to the execution of judicial decisions.
2. General guarantees of the process.
 - 2.1. The impartial judge predetermined by law.
 - 2.2. Legal assistance.
 - 2.3. The right to use the relevant evidence.
 - 2.4. The right to a trial without undue delay.
3. Specific guarantees of the criminal process, especially those derived from the presumption of innocence and the accusatory principle

Lesson 11.- Economic and social rights

1. Right to education and freedom of education.
2. Labor rights: right to work and duty to work; right to strike and freedom of association.
3. Property rights
4. Guiding principles of social and economic policy: legal value and link with the social state clause.

Lesson 12.- Constitutional duties

1. Notion of constitutional duty.
2. Military duties and conscientious objection; other duties and benefits to do.
3. Tax duties.

LEARNING ACTIVITIES AND METHODOLOGY

The program of this course will be developed in lectures and they will be held in large group sessions. Other types of activities will be carried out in small groups. Activities like the resolution of cases studies, based mostly in the Spanish Constitutional Court's cases or the European Human Rights Court' cases, exhibitions of the students, discussions of the work documents... Periodical controls about the subject matter developed in the semester will also be carried out.

The aim of this combination of work's methods is the develop of the capacities and the competences identified between the Bachelor's degree characteristics.

ASSESSMENT SYSTEM

In order to assess students' knowledge it will be taken into account:

- a) The works and activities developed in class during the semester (minimum 40% of the total final mark)
- b) A supplementary examination or final exam that will take place at the end of the semester (minimum 40% of the final mark).

In any case, the students have to get in the final exam more than 33% on the maximum mark of this exam, to pass the course.

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

BASIC BIBLIOGRAPHY

- FERRERES COMELLA, V.: "The Constitution of Spain. A contextual Analysis", Hart, Oxford (Reino Unido) and Portland, Oregon (USA), 2013.
- GAMBINO, S., LOZANO MIRALLES, J., PUZZO, F. y RUIZ RUIZ, J.J.: "The Spanish Constitutional System", Eleven International Publishing, The Hague (Países Bajos), 2018.
- RUIZ ROBLEDO, A.: "Constitutional Law in Spain". , Wolters Kluwer, Alphen aan den Rijn (Países Bajos), 2018.