

Constitutional Law II: fundamental right and guarantees system

Academic Year: (2022 / 2023)

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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's 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

The acquisition of skills and abilities of the students will be evaluated based on participation in the activities described in the previous section (40% of the final grade).

The specific assessment of each of these activities in small group classes will be determined by agreement of all professors teaching of the subject, but a very important part of the specific assessment will be the test of alternative responses provided in the schedule.

To add to this, the students must pass a final exam (it will have a weight of 60% on the final mark). The final exam will primarily assess the assimilation of theoretical knowledge on the syllabus, which have been object of reflection and work throughout the semester. Final exam will consist of several parts: a first part with short questions or test questions (objective test), to evaluate the assimilation of the basic concepts of the subject; in the second part, the students must develop one or more topics of the subject, in this case, the capacity for synthesis, argumentation and orderly, coherent and profound exposition of a particular issue will be assessed; finally, a practical third part may eventually be carried out in which the students

solve a case study, it will be similar to other studied during the course.

In any case, the students have to get in the final exam more than 4 (or 2,5 on the 6 points -maximum mark of this exam-) to pass the course.

In the extraordinary call, a similar evaluation system will be used, with a double correction by the teacher, from which the student will receive the grade that is most favorable to him: first, in an identical way to the ordinary call, the extraordinary call will represent 60% of the final mark, which will be added to the 40% of the continuous evaluation; Secondly, an assessment of the exam will be made that represents 100% of the final grade, without taking into account the continuous assessment grade.

% 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 (2ª edición).