

# LEGAL RELATIONSHIP BETWEEN THE LAW OF THE EUROPEAN UNION AND THE NATIONAL LEGAL SYSTEM

Curso 2016/2017

(Código: 2660250-)

## 1. PRESENTACIÓN

In the frame of the subject "Legal relationship between the Law of the European Union and the national legal system", the legal systems for reception of Community law in the domestic Law are analyzed, as well as the implementation and monitoring European production of law, which can lead to situations of conflict or doubt, particularly in relation to the primacy of European law over national law.

In this sense, it is particularly interesting to analyze the evolution of this field in Spain, as well as the attitude of the Spanish courts and of the Spanish Constitutional Court regarding this issue.

This course attempts to explore these issues, analyzing the national courts' (ordinary and constitutional) case-law and the ECJ's case-law, and, as appropriate, decisions by the constitutional courts of other EU countries.

## 2. CONTEXTUALIZACIÓN

This Official Master on the European Union offers students a high-level academic education that allows them to achieve optimum conditions to develop their professional and academic career. It is intended to provide students with a high-level training that will place them in optimal conditions to work in professional or academic environments.

The fundamental role of this type of degrees in European Union countries is a consequence of the central place a college education must have for a better understanding of the process of integration. For this reason, the different degrees in European Union Studies are a priority for the European institutions and Member States, among which UNED is not an exception.

## 3. REQUISITOS PREVIOS RECOMENDABLES

- a) Those established for the admission to the Master and specifically for the itinerary in English.
- b) For the analysis of foreign documents, knowledge of any of the official EU languages will be an asset.
- c) Generally, in this speciality in Law it is helpful if the student is familiar with the terms (glossary) that are commonly used in the European Union, which will allow more and better understanding of the information.
- d) It is equally relevant in this course that students have basic computer skills, since such skills are needed to follow their course. Students need to access learning materials and other information through these systems.

## 4. RESULTADOS DE APRENDIZAJE

To get to know the incidence of the European Union in the Spanish legal system; the European Union legal system; the direct effect and primacy of European Union law and the channels for resolving conflicts between domestic law and EU law.

To get knowledge on the application of EU Law by the ordinary courts in the Member States.

Aim of this course is also to learn about the Spanish case in particular about the position of the Spanish Constitutional Court towards EU Law.

## 5. CONTENIDOS DE LA ASIGNATURA

### 1. EUROPEAN UNION LAW AND SPANISH LEGAL SYSTEM

- 1.1. The incidence of the European Union in the Spanish legal system
- 1.2. The European Union legal system
- 1.3. Direct effect and primacy of European Union law.
- 1.4. The channels for resolving conflicts between domestic law and EU law.

### 2. APPLICATION OF EU LAW BY THE ORDINARY COURTS IN SPAIN.

- 2.1. Introduction.
- 2.2. Application by national judges of EU law and the jurisprudence of the ECJ.
- 2.3. Application of this case-law in Spain.
- 2.4. Possible direct application of EU directives.

### 3. THE POSITION OF THE SPANISH CONSTITUTIONAL COURT

- 3.1. Potential conflicts between internal and EU rules.
- 3.2. The prejudicial question.
- 3.3. The possibility that the Constitutional Court raises the prejudicial question to the ECJ.

## 6. EQUIPO DOCENTE

- [CRISTINA ELIAS MENDEZ](#)
- [AMALIA BALAGUER PEREZ](#)

## 7. METODOLOGÍA

This subject will be taught according to the distance education methodology that characterizes the UNED. Thus, students face a self-learning process but assisted by the teacher. The education process is articulated through various communication distance learning systems. Within these systems, the Master in European Union is provided with support in a virtual interactive platform where the student finds both basic materials and supplementary teaching materials, information, news, exercises and is also trained to perform the evaluation for different subjects. More specifically, the virtual platform will

contain: legislation, case law, internet links, a glossary of terms, teaching materials, exercises.

## 8. BIBLIOGRAFÍA BÁSICA

Comentarios y anexos:

If necessary, the basic bibliography will be updated at the beginning of the academic year.

Main bibliography:

Craig, P. and De Burca, G., EU Law: Text, Cases, and Materials, Oxford University Press, latest edition.

Tajadura Tejada, J. (coord.), Justicia Constitucional y Unión Europea, CEPC, Madrid, 2008.

English bibliography:

Cartabia, M., The Italian Constitutional Court and the Relationship between the Italian Legal System and the European Community; 12 Mich. J. Int'l L. 173 (1990-1991).

Cartabia, M., Europe and Rights: Taking Dialogue Seriously, European Constitutional Law Review (2009), 5 : pp 5-31.

Horspool, M., European Union Law, Oxford University Press, 2006.

Kumm, M., The Jurisprudence of Constitutional Conflict: Constitutional Supremacy in Europe before and after the Constitutional Treaty, European Law Journal, Volume 11, Issue 3, pages 262–307, May 2005.

Oppenheimer, A. (ed.), The Relationship between European Community Law and National Law, Cambridge University Press, 2003 (2 volumes).

Pollicino, O., The New Relationship between National and the European Courts after the Enlargement of Europe: Towards a Unitary Theory of Jurisprudential Supranational Law?, 2. Yearbook of European Law (2010) 29 (1): 65-111. doi: 10.1093/yel/29.1.65, <http://yel.oxfordjournals.org/content/29/1/65.full>

Slaughter A.M., The European Court of Justice and National Courts: Doctrine and Jurisprudence Legal Change in Its Social Context, Hart Publishing, 1998.

Stiernstrom, M., The Relationship Between Community Law and National Law (University of Miami, Jean Monnet/Robert Schuman Paper Series Vol.5 No. 33. , October 2005), available at: <http://aei.pitt.edu/8162/1/Stiermstromfinal.pdf>

Von Bogdandy, A., Pluralism, direct effect, and the ultimate say: On the relationship between international and domestic constitutional law. Int J Constitutional Law (2008) 6 (3-4): 397-413.

Spanish bibliography:

Aguilar Calahorro, A., La primera cuestión prejudicial planteada por el Tribunal Constitucional al Tribunal de Justicia de la Unión Europea – Auto del Tribunal Constitucional 86/2011, de 9 de junio, Revista de Derecho Constitucional Europeo, núm. 16, 2011, <http://www.ugr.es/~redce/REDCE16/articulos/12AAguilar.htm>

Alonso García, R., El Juez español y el Derecho Comunitario, CGPJ, Madrid, 2003.

Azpitarte Sánchez, M., El Tribunal Constitucional ante el control del Derecho comunitario derivado, Civitas, Madrid, 2002.

Ragone, S., Las relaciones de los Tribunales Constitucionales de los Estados miembros con el Tribunal de Justicia y con el Tribunal Europeo de Derechos Humanos: una propuesta de clasificación, Revista de Derecho Constitucional Europeo, núm. 16, 2011, <http://www.ugr.es/~redce/REDCE16/articulos/02SRagone.htm>

Vidal Prado, C., El impacto del nuevo Derecho europeo en los Tribunales constitucionales, Colex, Madrid, 2004.

## 9.BIBLIOGRAFÍA COMPLEMENTARIA

## 10.RECURSOS DE APOYO AL ESTUDIO

Websites:

Useful information is available to students at:

[http://www.uned.es/dpto\\_con/](http://www.uned.es/dpto_con/)

Links:

[http://europa.eu/index\\_es.htm](http://europa.eu/index_es.htm)

<http://curia.europa.eu/es/index.htm>

<http://www.coe.int/>

<http://www.boe.es>

<http://www.la-moncloa.es>

<http://www.congreso.es>

<http://www.senado.es>

<http://euro.ucl.ac.be/bede/>

<http://www.consejo-estado.es>

<http://www.poderjudicial.es>

<http://www.tribunalconstitucional.es/>

<http://www.poderjudicial.es/eversuite/GetRecords?Template=cgpj/ts/principal.htm>

<http://www.cepc.es>

<http://www.un.org/spanish/>

## 11.TUTORIZACIÓN Y SEGUIMIENTO

Prof. Dr. Carlos Vidal Prado

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It is highly advisable that students contact the teacher by e-mail.

Prof. Dr. Cristina Elías Méndez

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It is highly advisable that students contact the teacher by e-mail.

## 12.EVALUACIÓN DE LOS APRENDIZAJES

The specific methodology of UNED allows students to be evaluated through presential exams performed in the network of Associate Centers of UNED in Spain and abroad, or to be evaluated at "distance" through the virtual platform that provides support to education.

Accordingly, the teaching team determines each academic year under the rules adopted by

the UNED the student's assessment of the subject, by one or more of the following systems:

- a) In person through tests performed in the associated centers of UNED.
- b) Conduct of a research.
- c) On-line test.
- d) Writing of essays.
- e) Case Studies.
- f) Analysis of case law.

### 13.COLABORADORES DOCENTES

Véase equipo docente.