

European Migration Law (LW5109)

Academic Year 2024-25

5 ECTS, 4 Seminars

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Course Description

Every day, people are on the move across borders to and within Europe. Some are travelling for work, others move to study abroad, and still others move to be with family members, or to experience a new culture and context. Some move in exercise of their free movement rights to pursue a new opportunity, while others are seeking protection, having been displaced from their homes, or exploited. The engagement of European courts and human rights bodies with migration and asylum has spiked over the last twenty years (Baumgartel, 2019), even though some of their decisions have come under criticism for adopting restrictive approaches vis-à-vis the needs of protecting and promoting the rights of vulnerable migrants (Dembour, 2015). This seminar-based module allows LLM students to learn how migration is approached in European Union (EU) law and European Human Rights Law (EHRL). The focus is on how these frameworks regulate the migratory 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 structured discussions on how migratory phenomena are treated in both EU law and EHRL. This means navigating the tension that exists between sovereign immigration enforcement and the enjoyment of human rights standards for everyone, including migrant workers. Although classifying people on the move is not an easy task, the European standards that specifically apply to people seeking asylum and refugees in Europe are not covered by the scope of this module but are the core subject of the complementary course LW5113 (The Common European Asylum System).

Learning Outcomes

At the end of the course, students should be able to:

- distinguish between different legal regimes that govern migration (and human rights) law in Europe.
- assess the normative clashes that the regulation of immigration and migrant rights can generate at different levels of governance.
- explore EU free movement law and analyse the contribution of EU legislation to the regulation of regular and irregular migration.
- discuss the normative contribution of European human rights law (EHRL) to the regulation of migration, in the light of scholarly debates.

Course Material (preliminary information)

- The syllabus section (below) provides information on the required and recommended readings.
- Readings that are not accessible via Library website will be uploaded by the lecturer on Blackboard, our online learning platform.
- Audio-visuals and PowerPoint presentations will be posted on Blackboard, after every seminar.
- References to emerging developments and further readings will be circulated on Blackboard before the beginning of the teaching period. It is recommended that students check Blackboard regularly for updates on any assignments.
- Students are required to engage in classroom discussions on the assigned material.

Core texts

The following texts are excellent starting points to study European Migration Law (EML). Students are not required to read them entirely, but they should feel free to explore them and familiarise themselves with key issues. Mandatory readings are indicated below in the syllabus section, as 'core readings'. During the first seminar, I may indicate alternative suggested texts.

- Pieter Boeles, Maarten den Heijer, Gerrie Lodder and Kees Wouters, *European Migration Law* (2nd edn, Intersentia 2014).
- Cathryn Costello, *The Human Rights of Migrants and Refugees in European Law* (OUP 2015).
- Marie-Bénédicte Dembour, *When Humans Become Migrants. Study of the European Court of Human Rights with an Inter-American Counterpoint* (Oxford University Press 2015).

Additionally, reading from textbooks on human rights law and European Union law may be helpful to situate the scope of EML. For example:

- Daniel Moeckli and others (eds), *International Human Rights Law* (3rd edn, OUP 2018).
- Catherine Barnard and Steve Peers (eds), *European Union Law* (2nd edn, OUP 2017).
- Vincent Chetail, *International Migration Law* (OUP 2019).

Useful resources

Journals

Below is a non-exhaustive list of academic journals that are available online through the NUI Galway library:

- *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*
- *European Human Rights Law Review*
- *International Journal of Human Rights*
- *Netherlands Quarterly of Human Rights*
- *Human Rights Law Review*
- *Human Rights Quarterly*

Websites

- Council of Europe: <https://www.coe.int/en/web/portal>
- Council of Europe – Migration: <https://www.coe.int/en/web/commissioner/thematic-work/migration>
- Court of Justice of the European Union (for Annual Reports, Digest, Case-law): https://curia.europa.eu/jcms/jcms/Jo1_6308/fr/
- European Union: https://europa.eu/european-union/index_en
- EU Treaties: <https://eur-lex.europa.eu/collection/eu-law/treaties/treaties-force.html>
- EU commission Migration and Home Affairs: https://ec.europa.eu/home-affairs/index_en
- European Court of Human Rights (for Factsheets and Case-law): <https://echr.coe.int/Pages/home.aspx?p=home>
- HUDOC (official browser to the case-law of the ECtHR) (<https://hudoc.echr.coe.int/eng#%7B%22documentcollectionid%22:%5B%22GRANDCHAMBER>

[%22,%22CHAMBER%22}}](#)

- European Social Charter <https://www.coe.int/en/web/european-social-charter>
- HUDOC-ESC (official browser to the jurisprudence of the European Committee of Social Rights)
[https://hudoc.esc.coe.int/eng#{%22ESCDcType%22:\[%22FOND%22,%22Conclusion%22,%22Ob%22\]}](https://hudoc.esc.coe.int/eng#{%22ESCDcType%22:[%22FOND%22,%22Conclusion%22,%22Ob%22]})
- European Database of Asylum Law (EDAL), <https://www.asylumlawdatabase.eu/en> (also for cases in the field of immigration law)
- Migration Policy Institute – Europe: <https://www.migrationpolicy.org/programs/mpi-europe>
- Centre for Migration Law – Radboud University <https://www.ru.nl/law/cmr/>

Blogs

- European Migration Law: <http://www.europeanmigrationlaw.eu/en>
- EU Law Analysis: <http://eulawanalysis.blogspot.com/>
- EU Immigration and Asylum Law and Policy: <https://eumigrationlawblog.eu/>
- Opinio Juris: <https://opiniojuris.org/>
- EJIL Talk: <https://www.ejiltalk.org/>
- Strasbourg Observers: <https://strasbourgobservers.com/>

Assessment

The final grade of this module is based on a 2,500 essay (excluding footnotes and bibliography) on an assigned topic (80%) and a group presentation exercise (20%).

Students are to submit their essay via CANVAS by **Friday 15th December 2023 4pm, as indicated on the guidelines for LLM students at the Irish Centre for Human Rights.**

Penalties for Late Submission of Essays And / Or Thesis

Up to and including 7 days late:

- Where course work, essay(s) or minor thesis are submitted up to and including 7 days late, 5% will be automatically deducted from the mark achieved.

Up to and including 14 days late:

- Where the work is submitted up to and including 14 days late, 10% will be automatically deducted from the mark achieved.

More than 14 Days Late:

Please see ‘Guidelines for LLM students’, also in relation to the importance of academic integrity and avoiding ‘plagiarism’.

<https://www.universityofgalway.ie/irish-centre-human-rights/currentstudentinformation/generalinformation/>

Guidelines for legal writing and referencing are available at <http://www.nuigalway.ie/business-public-policy-law/school-of-law/students/legal-writing/>.

Attendance

This module is composed of 4 interactive 3-hour seminars. Students are expected to attend every class and, exceptionally, can be authorised not to attend (by informing the lecturer in advance).

Office hours

TBD.

Inclusion statement

The Irish Centre for Human Rights and NUI Galway have a strong tradition of making sure everyone feels part of the learning community by respecting diversity. We recognise that we all have a personal history and identity. Our classroom is dedicated to providing an empowering learning space and experience for everyone, regardless of sex, 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

Seminar 1

Introduction to European migration Law (history, applicable legal frameworks and institutions, categorizations, and normative tensions)

It is important, at the outset, to understand that the applicable law is elaborated and interpreted in different institutional frameworks which have different legal mandates, scopes of application and normative priorities. Indeed, EU law and European Human Rights Law (EHRL) can respectively contribute, although limitedly, to the normative development of the rights of migrants. In this seminar, we will explore the broader context of European Migration Law, and some of the key underpinning principles, such as state sovereignty, citizenship, free movement, and migration statuses. We will also explore the main applicable legal and institutional frameworks, namely the European Union (EU) and the Council of Europe (CoE).

Core Readings

- Daniel Thym, *European Migration Law* (Oxford University Press 2022) ‘European Migration Law as a Field of Inquiry, European Migration Law’.
- Marie-Bénédicte Dembour, *When Humans Become Migrants. Study of the European Court of Human Rights with an Inter-American Counterpoint* (Oxford University Press 2015) ‘Chapter 2. The Alien in the Social Imagination of the Founding Texts’ (only pp. 35-51).
- Spijkerboer, T, ‘The Global Mobility Infrastructure: Reconceptualising the Externalisation of Migration Control’ (2018) 20 *European Journal of Migration and Law* 452
- Achiume ET, ‘Migration as Decolonization’ (2019) 71 *Stanford Law Review* 1509
- Vincent Chetail, *International Migration Law* (OUP 2019) ‘Chapter 1. History of International Migration Law’.

Further Readings (optional)

- Bruno de Witte, ‘EU Law: Is It International Law?’, in Catherine Barnard and Steve Peers (eds), *European Union Law* (2nd edn, Oxford University Press) 177-197.
- Ayelet Shachar, ‘Children of a Lesser State: Sustaining Global Inequality Through Citizenship Laws’, *Jean Monnet Working Paper* 2/03.
- Christof Van Mol and Helga de Valk, ‘Chapter3. 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* (Springer 2016) 31-55.

Seminar 2

Regular migration to and within Europe: Freedom of movement of EU citizens (and members of their families), regular migration of third-country nationals in EU Law, regular migration in Europe beyond the EU-27

In this seminar, we will explore ‘regular’ migration in the EU and Europe more broadly. In particular, we will focus on the right of EU citizens to move and reside in other EU countries, and the conditions for the exercise of such rights. By reading pieces of EU legislation and cases of the European Court of

Justice, we will examine how free movement and EU citizenship have been elaborated and interpreted, also to the benefit of non-EU family members of EU nationals and ‘static’ EU citizens. We will also explore the law on regular migration channels to the EU for third-country nationals, and will look beyond the EU, particularly on the impact of Brexit on free movement rights.

Treaties and Legislation

- Consolidated version of the Treaty on the Functioning of the European Union [2012] OJ C326/47, articles 18, 20, 21, 45, 49, 56, 77, 79.
- Parliament and Council Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC [2004] OJ L229/35 (Citizenship Directive).
- Council Directive 2003/86/EC on the right to family reunification [2003] OJ L251/12.
- Parliament and Council Directive 2016/801/EU on the conditions of entry and residence of third-country nationals for the purposes of research, studies, training, voluntary service, pupil exchange schemes or educational projects and au pairing (recast) [2016] OJ L132/21 (Students and Researchers’ Directive).

Core 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.
- Ciara Smyth, ‘A turn towards fundamental rights or just a swerve? The jurisprudence of the CJEU on family reunification for static Union citizens and third country national immigrants’ (2019) 33(4) *Journal of Immigration, Asylum and Nationality Law* 283.
- Lucia Della Torre and Tesseltje de Lange, ‘The “importance of staying put”: third country nationals’ limited intra-EU mobility rights’ (2018) 44(9) *Journal of Ethnic and Migration Studies* 1409.
- Colin Yeo and CJ McKinney (eds), *Settled Status Handbook: Applying to the EU Settlement Scheme* (Free Movement 2019), available at: <https://freemovement.org.uk/downloads/settled-status-handbook/>.

Further 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.
- Pieter Boeles, Maarten den Heijer, Gerrie Lodder and Kees Wouters, *European Migration Law* (2nd edn, Intersentia 2014) ‘Chapter 4’.

For a very comprehensive overview, see: Cathryn Costello, *The Human Rights of Migrants and Refugees in European Law* (OUP 2015) ‘Chapter 4. Human Rights to Family Life and Family Migration’.

Seminar 3

The other side of freedom: the limits of status, border control, irregular migration between criminalisation and externalisation

This seminar will be dedicated to the European policy/law on irregular migration and external borders. We will start by focussing on irregular migrant rights in the EU legal edifice and in particular on the Return Directive. Further we will reflect on the EU Visa policy and analyse CJEU's cases on the Schengen Border Code. We will also address measures to address human trafficking and protect trafficked persons. Finally, we will explore current migration routes into Europe and examples of border externalisation, assessing the jurisprudence of the CJEU and European Court of Human Rights (ECtHR) and the extent to which EHRL constrains State action in this regard.

Treaties and Legislation

- Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) (ECHR), articles 1, 3, 4.
- Parliament and Council Directive 2008/115/EC on common standards and procedures in Member States for returning illegally staying third-country nationals [2008] OJ 348/98 (Return Directive). See also: Draft Recast Return Directive (COM(2018) 634 final).
- Parliament and Council Directive 2009/52/EC providing for minimum standards on sanctions and measures against employers or illegally staying third-country nationals [2009] OJ L168/24 (Employers Sanction Directive)
- Council Regulation (EU) 2016/399 of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code) [2016] OJ L771.
- Parliament and Council Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA [2011] L101/1 (Trafficking Directive).
- Council Directive 2004/81/EC on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities [2004] OJ L261/19.

Cases

CJEU

- Case C-61/11 *PPU – El Dridi*, [2011] ECR I-0000.
- Case C-290/14 – *Celaj* [2015] ECLI:EU:C:2015:640.
- Case C-82/16 *K.A. and Others v Belgische Staat* [2018] ECLI:EU:C:2018:308.
- Case C-562/13 *Centre Public d'Action Sociale d'Ottignies-Louvain-la-Neuve v Moussa Abdida* [2014] ECLI:EU:C:2014:2453.

ECtHR

- *Hirsi Jamaa and Others v Italy* App no 27765/09 (GC ECtHR, 23 February 2012).
- *Khlaifia and Others v Italy* App no 16483/12 (GC ECtHR, 15 December 2016).
- *N.D. and N.T. v Spain* App nos 8675/15 and 8697/15 (GC ECtHR, 13 February 2020).
- *V.C.L. and A.N. v The United Kingdom* App nos 77587/12 and 74603/12 (GC ECtHR, 15 February 2021).
- *M.N. and Others v Belgium* App no 3599/18 (GC ECtHR, 5 May 2020).
- *S.S. v Italy* App no 21660/18 (Communicated ECtHR 2018) - only available in French.

Core Readings

- Alan Desmond, 'The Development of a Common EU Migration Policy and the Rights of Irregular Migrants: A Progress Narrative?' (2016) 16(2) *Human Rights Law Review* 247.
- Silvia Bartolini, '[Return Directive or Criminal Law? The next episode of the series is called Arib](#)' (*EU Migration Law Blog*, 24 July 2019)
- Galina Cornelisse & Madalina Moraru, '[Judicial dialogue about the Return Directive: Which role for courts in an era of executive governance?](#)' (*EU Migration Law Blog*, 1 September 2020).
- Violeta Moreno-Lax V and Maria Giulia Giuffrè, 'The Rise of Consensual Containment: From "Contactless Control" to "Contactless Responsibility" for Forced Migration Flows' in Satvinder Singh Juss (ed), *Research Handbook on International Refugee Law* (Edward Elgar 2019), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3009331.
- Alice Bosma and Conny Rijken, 'Key Challenges in the Combat of Human Trafficking: Evaluating the EU Trafficking Strategy and EU Trafficking Directive' (2016) 7(3) *New Journal of European Criminal Law* 315.
- Adel-Naim Reyhani, '[Expelled from Humanity: Reflections on M.N. and Others v Belgium](#)' (*Verfassungsblog*, 6 May 2020) <https://verfassungsblog.de/expelled-from-humanity/>

Further Readings

- Jonathan Zaragoza-Cristiani, 'Containing the Refugee Crisis: How the EU Turned the Balkans and Turkey into an EU Borderland' (2017) 52(4) *The International Spectator* 59.
- Katja Franko Aas and Helene O I Gundhus (2015) 'Policing Humanitarian Borderlands: Frontex, Human Rights and the Precariousness of Life', 55(1) *The British Journal of Criminology* 1.
- Daniel Ghezelbash, Violeta Moreno-Lax, Natalie Klein and Brian Opeskin, 'Securitization of Search and Rescue at Sea: The Response to Boat Migration in the Mediterranean and Offshore Australia' (2018) 67 *International and Comparative Law Quarterly* 315.
- Human Rights Watch, 'Italy Shares Responsibility for Libya Abuses against Migrants', available at <https://www.hrw.org/news/2019/11/13/italy-shares-responsibility-libya-abuses-against-migrants> (and joint Human Rights Watch and Amnesty International submission to the Court).
- Efthymios Papastavridis, 'The European Convention of Human Rights and Migration at Sea: Reading the "Jurisdictional Threshold" of the Convention Under the Law of the Sea Paradigm' (2020) 21(3) *German Law Journal* 417.

Seminar 4

Migration rights in the case law of the European Court of Human Rights: at the intersection of the tension between state sovereignty and protection.

The attentive reading of ECtHR's judgements (and some separate/dissenting opinions) on migration brings to the fore several conflicts between state and individual interests. In this session, we will focus on ECtHR jurisprudence on various aspects of EHRL in the context of migration. Students will be divided in groups and will be asked to read a judgment of the ECtHR and present the facts, findings and key issues in class. The module instructor will guide students to analyse these normative tensions (e.g. between equality, non-discrimination, vulnerability v. state margin of appreciation/sovereignty) in selected ECtHR cases on migrant detention (conditions), children's rights, collective expulsions and social rights to understand what lies behind the maxims of a judgement.

Sample Key Cases (groups will be assigned a case to analyse prior to the session)

- *Ilias and Ahmed v Hungary* App no 47287/14 (GC ECtHR, 21 November 2019).
- *Khlaifia and Others v Italy* App no 16483/12 (GC ECtHR, 15 December 2016).
- *M.A v Denmark* App no 6697/18 (GC ECtHR, 9 July 2021).
- *M.K. and others v Poland* App nos 40503/17, 42902/17, and 43643/17 (ECtHR, 23 July 2020).
- *M.N. and Others v Belgium* App no 3599/18 (GC ECtHR, 5 May 2020).
- *N.D. and N.T. v Spain* App nos 8675/15 and 8697/15 (GC ECtHR, 13 February 2020).
- *Paposhvili v Belgium* App no 41738/10 (GC ECtHR, 13 December 2016).
- *Popov v France* App nos 39472/07 39474/07 (ECtHR, 19th 2012).
- *Rantsev v Cyprus and Russia* App no 25965/04 (ECtHR, 7 January 2010).
- *Saadi v the United Kingdom* App no 13229/03 (ECtHR, 29 January 2008).

Core Readings

- Moritz Baumgartel, *Demanding Rights* (Cambridge University Press 2019) ‘Chapter 7. Migrant Rights as Existential Commitments’.
- Galina Cornelisse, ‘A New Articulation of Human Rights, or Why the European Court of Human Rights Should Think Beyond Westphalian Sovereignty’ in Marie-Bénédicte Dembour and Tobias Kelly (eds), *Are Human Rights for Migrants? Critical Reflections on the Status of Irregular Migrants in Europe and the United States* (Routledge 2011).
- Anne Neylon, Producing Precariousness: ‘Safety Elsewhere’ and the Removal of International Protection Status under EU Law (2019) 21(1) *European Journal of Migration and Law* 1.
- Jessica Greenberg, ‘Counterpedagogy, Sovereignty, and Migration at the European Court of Human Rights’ (2021) 46(2) *Law and Social Inquiry* 518.

A finalised reading list will be confirmed prior to the commencement of the module.

Reflective questions on each week’s readings will be uploaded on blackboard a week before the beginning of the module.