



DEPARTMENT OF INTERNATIONAL AND EUROPEAN LAW

EUROPEAN HUMAN RIGHTS LAW

Spring 2021

3 credits

Language of the course: English

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Office hours: by appointment

Lectures: 7 (14 hours)

Tutorials: 8 (16 hours) (2 groups)

Individual work: 60 hours

Assessment: written test (заяик)

## I. COURSE DESCRIPTION

Human rights law has become an indispensable part of legal education. European Convention on Human Rights forms part of Ukraine's legal system and pervades its many areas. It is therefore essential for any lawyer practicing in Ukraine, be it in private or public sector, to be familiar with the European system of human rights protection.

The European Human Rights Law course focuses largely, but not exclusively, on the European Convention on Human Rights and the jurisprudence of the European Court of Human Rights. It offers an opportunity to study the basic rights and freedoms guaranteed in the European Convention on Human Rights and the mechanism of their protection. This course is an opportunity not only to gain theoretical knowledge about the European system of human rights protection, but also to learn how to prepare an application to the European Court of Human Rights and to analyse domestic legislation and practices in light of the European human rights law standards. In this course, seminars are organised in the form of discussions, moot court, practical assignments, during which topical issues related to the application of the European Convention on Human Rights law in Ukraine are addressed.

The course is taught in English. This presents a great opportunity for students to improve their speaking and legal writing skills. The course is accompanied by the European Human Rights Law Lecture Series organised to allow students to meet and network with practitioners in human rights law.

## II. TEACHING METHOD

The course is taught in the form of lectures and seminars. **Lectures** will be held in a teacher-led format with an interactive element, students' participation during lectures is highly encouraged.

**Seminars** are held in an interactive format in the form of the dialogue between students and the teacher and **student-led** learning (group discussions, discussions and presentations in groups, moot court exercise). Students are expected to have read the required reading material and have studied in detail the relevant cases in advance of the seminars. For the seminars, students must be prepared:

- to present their analysis of relevant law (relevant provisions of the ECHR, relevant cases of the ECtHR)
- to examine the law critically and form their own opinion on the relevant legal issue
- to actively engage in the discussion and challenge the views of their fellow students in the class.

Seminar assignments will be communicated in advance via email. Most of the **reading materials** will be made available to students on DistEdu. Students are expected to conduct their own search of the assigned cases on [www.hudoc.echr.coe.int](http://www.hudoc.echr.coe.int)

The course is taught entirely online owing to the COVID-19-related measures. For this reason, lectures and seminars will be held via **MS Teams**. Invitation to join the course group on MS Teams will be sent by email in due course.

Students must sign up for the course on **DistEdu**. The syllabus, power point presentations used during lectures, recommended reading materials as well as students' grades will be made available through DistEdu.

## III. GRADING SYSTEM & ASSESSMENT CRITERIA

Students will be graded in line with the ECTS standards (A, B, C, D, E, F) using 100 points scale. Grading will be based on three forms of work: (I) class participation (which includes discussions in class, group presentations and moot course exercise), (II) written tests and assignments, and (III) final exam. The detailed break down of the grading system is as follows:

### I. Class participation (8 seminars) – max 30 points

1. Moot court exercise (seminars no 6&7) – max 10 points
2. Group presentations (seminar no 8) – max 5 points
3. Participation in the other 5 seminars – max 15 (3 points per seminar)

The grade for class participation will be based on student's performance during the whole semester. To receive the top grade students are expected to attend all the classes, to participate actively in the discussion during seminars and in other forms of work (group discussions and presentations, moot court exercise), to complete the reading assignments, to demonstrate the ability not only to recount the read material but also to identify contentious legal issues and analyze reading material independently and

critically, to engage in the discussion with and challenge arguments of the fellow students.

## **II. Written tests and assignments – max 40 points**

1. Test 1 (in class) – max 10 points (10 questions 1 point each)
2. Test 2 (in class) – max 6 points (3 questions 2 points each)
3. Home assignment no 1 – max 16 points
4. Home assignment no 2 – max 8 points

The course includes two written tests conducted in class and two written home assignments.

Tests are conducted in class during the seminars through DistEdu. **Test 1** consists of 10 open-ended questions on Articles 2 and 3 of the European Convention on Human Rights and the relevant case-law of the ECtHR. **Test 2** relates to Article 6 ECHR and consists of three questions based on certain factual scenarios. Students will be asked to identify specific aspects of the right to a fair trial embodied in Article 6 ECHR that are relevant to these scenarios.

Students will have to prepare two written home assignments. **Home assignment no 1** requires students to assess whether certain provisions of Ukrainian legislation are compatible with the ECHR and the relevant case law. The length of the assignment should not exceed 1 000 words (approximately two pages). It must be correctly and consistently footnoted and properly formatted (Times New Roman 12-Point font, 1.5 line spacing, standard margins). To obtain the top grade for this assignment students should correctly identify the legal problem, relevant provisions of the ECHR and ECtHR case law, provide analysis of the domestic legislation in light of the ECHR standards and substantiate their arguments as to the compliance or non-compliance of the domestic legislation with the ECHR standards. Works containing only a descriptive overview of the ECHR cases without any analysis or argumentation will not be graded highly. Details of the assignment, including the topic and the deadline for its submission will be communicated to students in due course.

**Home assignment no 2** consists in preparation of an application to the ECtHR based on a factual scenario provided by the lecturer in due course.

## **III. Final exam – 30 points**

1. Test – 15 points (15 questions 1 point each)
2. Essay question – max 15 points

Final exam consists of a test of 15 multiple choice questions and one essay question based on hypothetical factual scenario (max 15 points). The answer to the essay question should not exceed 500 words (1 page). Grade for the final essay will reflect student's ability to identify, address and analyze in a comprehensive manner all the relevant legal issues raised in the scenario and to support arguments with references to the correct provisions of the European Convention on Human Rights and the relevant case-law of the European Court of Human Rights.

**NB!** Written work must be appropriately referenced. **Plagiarism** constitutes breach of academic ethics and will not be tolerated.\* **Works containing plagiarism will be graded at zero points, students engaging in plagiarism will not be permitted to redo the assignment and will not be permitted to sit the exam.** Cheating, for instance copying another student's work, allowing your work to be copied by other students, presenting written work that is essentially a copy-paste of a textbook or judicial decision, will not be tolerated and will also be graded at zero points. Substantially similar written assignments submitted by two or more students will not be accepted either. Cheating students will not be permitted to sit the exam.

#### IV. COURSE STRUCTURE

##### TOPIC 1. European Convention on Human Rights. An introduction.

###### Lecture 1

1. Convention for the Protection of Human Rights and Fundamental Freedoms 1950 (European Convention on Human Rights) and the Protocols to the Convention
  - a. Historic background
  - b. Rights and freedoms guaranteed in the ECHR
  - c. Interpretation of the ECHR as a 'living instrument'
2. ECHR and Ukraine
3. European Court of Human Rights (ECtHR, the Court)
  - a. Overview of the Court's history. Reforms of 1998 and 2010.
  - b. Inter-state and individual applications to the ECtHR
  - c. Admissibility criteria

###### Seminar 1

1. Discussion based on topic of Lecture 1.
2. Particular attention will be paid to the following questions:
  - a. Admissibility criteria in Articles 34 and 35 of the ECHR
    - i. Difference between individual and interstate applications
    - ii. Rule of exhaustion of domestic remedies and exceptions to it
    - iii. Continuing situation and application of six-month rule
  - b. Conditions of incompatibility with the provisions of the ECHR
    1. *Ratione materiae* (subject-matter jurisdiction)
    2. *Ratione temporis* (temporal jurisdiction)
    3. *Ratione loci* (territorial jurisdiction)
    4. *Ratione personae* (personal jurisdiction)
  - c. Jurisdiction of the ECtHR in Article 1. Extraterritorial application of the ECHR.

###### Required reading

1. European Convention on Human Rights, Articles 1, 33, 34, 35
2. Rules 39 and 47 of the Rules of the European Court of Human Rights

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\* See <https://www.plagiarism.org>. For NaUKMA rules on academic ethics, see [https://www.ukma.edu.ua/index.php/about-us/sogodennya/dokumenty-naukma/doc\\_view/577-polozhennia-pro-akademichnu-dobrochesnist-zdobuvachiv-osvity-u-naukma](https://www.ukma.edu.ua/index.php/about-us/sogodennya/dokumenty-naukma/doc_view/577-polozhennia-pro-akademichnu-dobrochesnist-zdobuvachiv-osvity-u-naukma)

3. The admissibility of an application (Council of Europe/European Court of Human Rights, 2015)
4. William Schabas, *The European Convention on Human Rights. A Commentary* (Chapters on Article 1, 34-35)
5. Watch this 15-min film about the ECHR: <https://youtu.be/EPWGDhgQlgk>
6. Watch this 15-min video on admissibility criteria and preparing an application to the ECtHR available at <https://youtu.be/--PSjlgLm1I>

#### Recommended reading

1. Караман І. В., Козіна В. В., Європейський суд з прав людини, Європейська конвенція з прав людини та індивідуальні заяви: перше знайомство (Київ 2015)
2. Practical Guide on Admissibility Criteria (European Court of Human Rights, updated August 2019)
3. Severin Meier, 'Reconciling the Irreconcilable? – The Extraterritorial Application of the ECHR and its Interaction With IHL' (2019) 9 (3) *Goettingen Journal of International Law* 395 (particularly pages 400-405)
4. Işıl Karakaş and Hasan Bakırcı 'Extraterritorial Application of the European Convention on Human Rights' in Anne van Aaken and Iulia Motoc (eds) *The European Convention on Human Rights and General International Law* (Oxford University Press 2018)
5. George Letsas, 'The ECHR as a Living Instrument: Its Meaning and its Legitimacy' (14 March 2012) (particularly pages 1-12) <http://ssrn.com/abstract=2021836>
6. Extra-territorial jurisdiction of States Parties to the European Convention on Human Rights (Factsheet, European Court of Human Rights, July 2018) [https://www.echr.coe.int/Documents/FS\\_Extra-territorial\\_jurisdiction\\_ENG.pdf](https://www.echr.coe.int/Documents/FS_Extra-territorial_jurisdiction_ENG.pdf)

## TOPIC 2. Right to Life. Prohibition of torture.

### Lecture 2. Right to Life

1. Prohibition on intentional deprivation of life
  - a. Use of force by state agents
  - b. Death penalty
  - c. Right to life and prohibition of extradition or expulsion
  - d. Death in custody
  - e. Forced disappearances
2. Positive obligation of the state to protect life
3. Article 3 of the ECHR. Prohibition of torture.
  - a. Definitions: torture, inhuman treatment or punishment, degrading treatment or punishment
  - b. Conditions of detention
  - c. Forced disappearances
  - d. Discrimination
4. Positive obligation of the state to protect from torture
5. Procedural obligation to conduct effective investigation under Articles 2 and 3

## Seminar 2

1. Discussion on the right to life in Article 2 ECHR and prohibition of torture in Article 3 ECHR (covered in Lectures 2 and 3)
2. Test 1

## Required reading

1. European Convention on Human Rights, Articles 2, 3
2. William Schabas, *The European Convention on Human Rights. A Commentary* (Chapters on Articles 2 and 3)

## Recommended reading

1. Guide on Article 2 of the European Convention on Human Rights (European Court of Human Rights, updated on 31 August 2019)
2. Aisling Reidy, 'A guide to the implementation of Article 3 of the European Convention on Human Rights' (Council of Europe, Human rights handbooks, No. 6) (2003)

## **TOPIC 3. Right to liberty and security. Right to a fair trial**

### Lecture 3.

1. Article 5 of the ECHR. Right to liberty and security
  - a. Scope of Article 5: Right to liberty and security and prohibition of deprivation of liberty (Art 5§1)
  - b. Exceptions to prohibition of deprivation of liberty (Art 5§1(a)-(f))
  - c. Guarantees accompanying deprivation of liberty (Art 5§§2-5)
2. Scope of the right to a fair trial in Article 6 of the ECHR
  - a. Civil limb of Article 6
  - b. Criminal limb of Article 6
  - c. Excluded matters
3. General fair trial guarantees
  - a. Access to court
  - b. Enforcement of domestic judgments
  - c. Respect for finality of the domestic decisions
  - d. Procedural equality, adversarial proceedings and access to evidence
  - e. Reasoned judgments
  - f. Presence in person
  - g. Effective participation
4. Guarantees in Article 6§1
  - a. Public hearing
  - b. Public pronouncement of the judgment
  - c. Reasonable time requirement
  - d. Independent and impartial tribunal established by law
5. Guarantees in Article 6§§2-3

## Seminar 3

1. Discussion on right to liberty and security guaranteed in Article 5 of the ECHR

2. Particular attention is paid to Article 5 §§ 1 and 3 ECHR. The groups will conduct analysis of several provisions of the Code of Criminal Procedure of Ukraine 2012 (CCP) as regards their compatibility with the standards developed by the ECtHR under Article 5 §§ 1 and 3. Information about the specific articles of the CCP and the relevant ECtHR case law will be communicated in due time.
3. After the seminar, students will be expected to prepare a one-page written analysis of the issue based on the discussion that takes place during the seminar (home assignment no 1)

#### Required reading

1. European Convention on Human Rights, Article 5
2. William Schabas, *The European Convention on Human Rights. A Commentary* (Chapters on Article 5)\*

#### Seminar 4

1. Discussion on the right to a fair trial guarantees in Article 6 of the ECHR
1. Test no 2: Students are expected to identify particular aspects of the right to a fair trial concerned in the case and to substantiate their opinion as to whether the right was breached or not.

#### Required reading

3. European Convention on Human Rights, Article, 6
4. William Schabas, *The European Convention on Human Rights. A Commentary* (Chapters on Article 6)

#### Recommended reading

1. Guide on Article 5 of the European Convention on Human Rights, Right to liberty and security (European Court of Human Rights, updated 31 August 2019)
2. Monica Macovei, 'A guide to the implementation of Article 5 of the European Convention on Human Rights' (Council of Europe, Human rights handbooks, No. 5) (2002)
3. Guide on Article 6 of the European Convention on Human Rights, Right to a fair trial (criminal limb) (European Court of Human Rights, updated 31 December 2019)
4. Guide on Article 6 of the European Convention on Human Rights, Right to a fair trial (civil limb) (European Court of Human Rights, updated 31 August 2019)
5. Nuala Mole and Catharina Harby, 'A guide to the implementation of Article 6 of the European Convention on Human Rights' (Council of Europe, Human rights handbooks, No. 3) (2006)
6. Dovydas Vitkauskas and Grigoriy Dikov, 'Protecting the right to a fair trial under the European Convention on Human Rights' (Council of Europe human rights handbooks, 2012)

### **TOPIC 4. Rights and freedoms guaranteed in Articles 8-11 of the ECHR**

#### Lecture 4

1. Scope of the rights and freedoms guaranteed in Articles 8-11 of the ECHR
  - a. Right to respect for private and family life
  - b. Freedom of thought, conscience and religion
  - c. Freedom of expression
  - d. Freedom of assembly and association
2. Limitations on the rights and freedoms in Articles 8-11 of the ECHR
  - a. Requirement of the legal basis for the interference
  - b. Existence of legitimate aim
  - c. The limitation must be necessary in a democratic society
3. Positive obligation of the state to guarantee rights and freedoms in Articles 8-11 of the ECHR

#### Seminar 5.

1. At this seminar we will look at how to fill in an application to the ECtHR.
2. Students will be given a factual scenario on the basis of which they must prepare an application to the ECtHR (home assignment no 2)
3. Students must watch this brief video on lodging an application available at [https://youtu.be/mA\\_iGhvxYFM](https://youtu.be/mA_iGhvxYFM)

#### Required reading

1. European Convention on Human Rights, Article 8-11
2. William Schabas, *The European Convention on Human Rights. A Commentary* (Chapters on Articles 8-11)

#### Recommended reading

3. Guide on Article 8 of the European Convention on Human Rights, Right to respect for private and family life, home and correspondence (European Court of Human Rights, updated 31 August 2019)
4. Ivana Roagna, 'Protecting the right to respect for private and family life under the European Convention on Human Rights' (Council of Europe human rights handbooks, 2012)
5. Guide on Article 9 of the European Convention on Human Rights, Freedom of thought, conscience and religion (European Court of Human Rights, updated 31 August 2019)
6. Jim Murdoch, 'Protecting the right to freedom of thought, conscience and religion under the European Convention on Human Rights' (Council of Europe human rights handbooks, 2012)
7. Monica Macovei, 'A guide to the implementation of Article 10 of the European Convention on Human Rights' (Council of Europe Human rights handbooks, No. 2, 2004)
8. Guide on Article 11 of the European Convention on Human Rights, Freedom of assembly and association (European Court of Human Rights, updated 31 December 2019)

### **TOPIC 5. Certain rights guaranteed in Protocols No 1 and 4 to the ECHR. Prohibition of discrimination.**

#### Lecture 5



1. Article 1 of Protocol No. 1: Protection of property
2. Article 2 of Protocol No. 1: Right to education
3. Article 2 of Protocol No. 4: Freedom of movement
4. Prohibition of discrimination in Article 14 and Protocol No. 12 to the ECHR

#### Seminars 6&7

1. At seminar 6 students will work in groups to prepare for the moot court exercise.
2. Moot court exercise will be held at seminar 7. Relevant materials will be communicated to students in due course.

#### Required reading

1. Protocol No. 1 to the European Convention on Human Rights, Articles 1 and 2
2. Protocol No. 4 to the European Convention on Human Rights, Article 2
3. European Convention on Human Rights, Article 14 and Protocol No. 12 to the European Convention on Human Rights, Article 1
4. William Schabas, *The European Convention on Human Rights. A Commentary* (Chapters on Article 14 ECHR, Articles 1 and 2 of Protocol No. 1, Article 2 of Protocol No. 4 and Article 1 of Protocol No. 12)

#### Recommended reading

1. Guide on Article 1 of Protocol No. 1 to the European Convention on Human Rights, Protection of property (European Court of Human Rights, updated 31 August 2019)
2. Aida Grgic, Zvonimir Mataga, Matija Longar and Ana Vilfan, 'The right to property under the European Convention on Human Rights' (Council of Europe Human rights handbooks, No. 10, 2007)
3. Guide on Article 2 of Protocol No. 1 to the European Convention on Human Rights, Right to education (European Court of Human Rights, updated 31 August 2019)

### **TOPIC 6. Enforcement of ECtHR judgments. Other European fora for human rights protection.**

#### Lecture 6

1. Enforcement of the ECtHR judgments
  - a. Remedies under Article 41 of the ECHR
  - b. Obligation to execute the ECtHR's judgment under Article 46 of the ECHR
  - c. Role of the Council of Europe's Committee of Ministers
2. Council of Europe and role of its bodies in human rights protection
3. Other European fora for human rights protection

#### Required reading

1. European Convention on Human Rights, Articles 41 and 46
2. William Schabas, *The European Convention on Human Rights. A Commentary* (Chapters on Articles 41 and 46)

#### Seminar 8

1. Group presentations on Council of Europe bodies and mechanism for human rights protection

### **TOPIC 7. Application of the ECHR in times of armed conflict**

Guest lecture by Lieutenant Colonel Nathalie Durhin (NATO) on the topic of inter-action between human rights law and international humanitarian law.

### **V. GENERAL LIST OF HANDBOOKS SUITABLE FOR THE COURSE**

1. William Schabas, *The European Convention on Human Rights. A Commentary* (Oxford University Press 2015) (relevant chapters are available on DistEdu)
2. Bernadette Rainey, Elizabeth Wicks, and Clare Ovey, *Jacobs, White, and Ovey: The European Convention on Human Rights* (7th edn, Oxford University Press 2017)
3. David Harris, Michael O'Boyle, Ed Bates, and Carla Buckley, *Harris, O'Boyle, and Warbrick: Law of the European Convention on Human Rights* (4th edn, Oxford University Press 2018)
4. Pieter van Dijk, Fried van Hoof, Arjen van Rijn, Leo Zwaak, *Theory and Practice of the European Convention on Human Rights* (5th edn, Intersentia 2018)
5. Дудаш Т.І. Практика Європейського суду з прав людини: навч. посібн. – К. : Алерта, 2016. – 413 с.