

# **Human Rights Course Syllabus**

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*Spring semester 2006, BA on European Studies, Faculty of Philosophy, Sofia University,  
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## ***Aims of the course***

The course provides an introduction to basic human rights philosophy, principles, instruments and institutions, and also an overview of current issues and debates in the field with focus on the problems specific to Bulgaria.

This course aims to explore some aspects of the diverse and increasingly complex body of international law of human rights that has both national and international application. The course also seeks to analyze the ways in which allegations of human rights violations are dealt with in the Bulgarian courts and the impact of human rights discourse on international politics and relations.

## ***Structure of the course***

The course is divided into three parts, as follows:

The **first part** introduces the conceptual foundations of rights from a historical and philosophical perspective. The focus is not only on the Western human rights tradition, but on other sources of human rights, and several alternative philosophical perspectives to human rights, are considered. Also discussed is the concept of "constitutionalism", and its commitment to individual rights and bills of rights as supreme law.

The **second part** covers the International Human Rights movement beginning with its historical origins and examining the key international declarations, agreements and instruments. Our main concern are the means by which human rights norms are implemented and applied by national and international organizations, courts, and other treaty and political bodies. Also covered are economic and social rights, regional human rights systems and the national system for human rights protection.

The **third part** considers selected human rights issues under international and national law. The focus here is on the particular rights that are topical and burning for the Bulgarian society, as well as for the European Union.

The issues raised in all parts of the course will be analyzed in a comparative mode using (1) the standards developed in international human rights law, and (2) the European standards, (3) the practices of various States under their domestic and constitutional systems and (4) the Bulgarian regime.

The class will also explore the position of the Bulgarian Constitution in the system of rights protection, its legal and political significance, as well as the issues of human rights protection and promotion by the local legislative and law enforcement institutions. A further aim is students to learn to relate the universal rights concept, guaranteed by international institutions, to individual rights, established by the Bulgarian Constitution and protected (or not) by the state.

## ***Educational objectives of the course:***

### ***Upon completing this course, students should:***

- understand the key historical, political, legal and moral influences that have shaped the idea of "human rights" and be able to explain the concept of a right, and to analyze the contemporary challenges and trends in human rights theory and practice,

- and to understand the general affinities and divergences in sources, substance and application of rights in international, regional, constitutional and domestic contexts;
- identify the major international declarations, treaties, and covenants governing human rights, and identify mechanisms for monitoring and enforcing human rights standards, they should also have a strong working knowledge of the major human rights conventions, processes and techniques and be able to identify and use the human rights instruments Bulgaria is a party to and apply those mechanisms in concrete situations;
  - know how to research, and where to find, human rights materials and relevant issues that will be necessary to future work in the field, and how to construct and advocate effective legal and policy arguments using international human rights norms and discourse;

### ***Advocacy and Written Argument Skills***

One of the major aims of the course is to equip students with the basic tools necessary to work with the specific sources, methods and institutions of the international human rights system and to apply them in the Bulgarian context.

Implicit in this approach is the assumption that human rights call for legal and other advocacy skills. Accordingly, the course requirements will focus on developing the ability to recognize the factual and the legal problems and to analyze them, the capacity to apply the legal information in practical situations as well as the mastery of the applicable law –knowledge of the applicable law, understanding of the norms, aptitude to interpret and provide a critical analysis of the law, competence to understand the context in which the law exists.

### ***Course Requirements and Grading Policy***

1. Presentation before the class of one of the themes assigned in the first week, classroom participation, and the results after the midterm examination (20%).
2. A written essay /memorial and a subsequent thesis defense, or oral argument before a simulated international treaty body, court, committee, on the basis of selected human rights issues of current controversy and importance: the essay/ memorial should be 10-15 pages and the oral presentation should last 5 minutes for each student (50 %).
3. Final oral examination (30%).

### **Content of the course**

#### **I. Human Rights Ideology – Antecedents, History and Theory**

1. Western Individual Rights Tradition –the road from natural rights to civil rights-theories of rights:

Where do "human rights" come from? What are their philosophical foundations and justifications? What influence have eighteenth century political and moral philosophical conceptions of rights, social contract and "human dignity" had on the modern international rights movement?

*Structure of the course:*

1. *Various historical sources of human rights emergence:*

- *The traditional notion of Justice* [Code of Hamourabi (around 1300 BC in Babylonia); Confucius (551-479 BC in China);, Mahabharata (2<sup>nd</sup> Century BC in India), African Oral Traditions, The Semitic Traditions, Greece, the Sophists (1<sup>st</sup> definition of "natural right"); the Stoics (Zenon, 3<sup>rd</sup> Century BC); Roman Law (Cayus 110-180 – the right of the people); Customary Rural European Law].

- **The progressive Globalization** (contacts between civilizations and societies, equal status between human beings) [Valadolid Dispute (1539); Sal manqué School of Thought, (Francisco Vitoria, Bartholomé Las Casas, Francisco Suárez); Anti-Slavery; République de Haïti (1803); National Independence Movements; Alger Declaration (1960)...];
  - **Confronting power and promoting freedom of conscience** [British legacy - Magna Carta (1215); l' Habeas corpus (1679); School of Natural Rights: (John Locke, The Bill of Rights, Thomas Paine, John Stuart Mill; French legacy – Declaration on the Rights of Man and Citizen, Jean-Jacques Rousseau, Benjamin Constant).
  - **Harm by the Industrial Revolution** [European revolutions (1848); Workers movements (19<sup>th</sup> and 20<sup>th</sup> Century); Russian Revolution (1917); Oil Crisis (1974); Ecologist movements...]
  - **Disasters of two World Wars** [First World war (1914-1918); Second World War (1939-1945)...]
2. Human dignity – as a categorical imperative – Emmanuel Kant
  3. The American experience–rights as constitutional protections - Virginia Bill of Rights, the Declaration of Independence, the US Constitution, the Bill of Rights, Thomas Jefferson, The Federalist Papers.
  4. The Bulgarian experience – The Bogomils (10<sup>th</sup> -12<sup>th</sup> century), the 18<sup>th</sup> -19<sup>th</sup> century national liberation movement legacy (Hristo Botev, Vasil Levski); the Tarnovo Constitution

*Number of classes (lectures & seminars): 6+2*

#### **Working Bibliography:**

1. Aristotle - "Politics"
2. Cicero - "The Laws"
3. John Locke – The Second Treatise of Civil Government
4. Thomas Hobbes – The Leviathan
5. Thomas Paine – The Rights of Man
6. Jean-Jacques Rousseau – On The Social Contract
7. Jean-Jacques Rousseau – Traité sur l'inégalité parmi les hommes
8. John Stuart Mill – On Liberty
9. Madison, Jay, Hamilton – The Federalist Papers
10. The Declaration of Independence
11. The US Constitution and the Bill of Rights
12. The French Declaration of the Rights of Man and of the Citizen
13. Isaiah Berlin – Two Concepts of Liberty, 1950
14. Hannah Arendt – On Revolution, 1994
15. Hannah Arendt – The Origins of Totalitarianism, 1994
16. Immanuel Kant – Foundations of the Metaphysics of Morals, 1992
17. Micheline Ishay, The History of Human Rights : From Ancient Times to the Globalization Era, 2004
18. Patrick Hayden, “The Philosophy of Human Rights (Paragon Issues in Philosophy)”, 2001
19. Yannaras Christos, Human Rights and the Orthodox Church, ©Greek Orthodox Archdiocese of America, 2003.

## **2. Defining the notion of "rights" – conceptual foundations**

What are "rights"? Are there any human rights?

*Structure of the course:*

1. Rights, immunities, privileges; negative or/and positive rights; retained rights; rights defined as being universal, inalienable, imprescriptible, claims upon society, etc;
2. The beneficiary of the rights - individual and collective rights;
3. Constitutional rights - human rights – international or universal rights

*Number of classes: 1+1*

**Working Bibliography:**

1. John Rawls – *A Theory of Justice*
2. Ronald Dworkin -*Taking Rights Seriously*
3. Louis Henkin – *The Rights of Man Today*
4. H.L.A.Hart – *The Concept of Law*
5. Mark Tushnet –*An Essay on Rights*
6. Asbjorn Eide, “International protection of human rights”, Strasbourg, 1995
7. \_\_\_\_\_, \_\_\_\_\_, “\_\_\_\_\_”, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, 1997
8. \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, 1996.
9. \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, 2001.
10. \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, 1994.
11. \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, 2000.
12. \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, 1998.
13. \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, 1992. \_\_\_\_\_.

**3. Generations of rights**

How accurate is the generational metaphor? Do the various groups of rights have different justifications, and how do they differ in their normative elaboration and articulation of the obligation of states to respect such rights? Are economic and social benefits "rights" or "goals"? What is the relationship of group rights with individual rights? What were the historical factors that led to a shift from group to individual rights in the period between the First and Second World Wars and how is the situation different after the events in Kosovo, East Timor, Irak?

**Structure of the course:**

1. The first generation of rights – civil and political rights;
2. The second generation of rights – economic and social rights – Do economic and social benefits qualify as rights?
3. Group rights -the right to self- determination, people's rights and minority rights;
4. Is there a next generation of rights? – right to peace, to a healthy environment, to sovereignty over natural resources, right to development

*Number of classes: 3+1*

**Working Bibliography:**

1. Henry Steiner, Philip Alston - *International Human Rights in Context- Law, Politics and Morals*, 2000
2. Will Kymlicka – Multicultural Citizenship: A Liberal Theory of Minority Rights”, 1996
3. David P. Forsythe – *The United Nations, Human Rights and Development*
4. Martin Scheinin – *Economic and Social Rights as Legal Rights*
5. *Agenda for Development; An Agenda for Peace (A/47/277-S/24111) June 17, 1992.*
6. *An Agenda for Peace, Supplement (A/50/60-S/1995/1) January 3, 1995.*
7. \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, 1994.

**II. From the triumph of human rights after the Second World War to the structure of human rights in the contemporary world**

To what extent does the Charter of the United Nations seek to define and protect human rights? What were the factors that led to the creation of the Universal Declaration of Human Rights? What are some of the "competing ideas" and objections to the idea of Human Rights? Is it possible to maintain the fundamental universality of human rights while still taking into account the historical and cultural particularity of human rights? What are the limits of international accountability? What is the relationship between "representative

government", "democracy", "liberty" and "individual rights"? What is the link between human rights and economic prosperity or political stability?

### *Structure of the course:*

1. The internationalization of human rights and the universalization of human rights –the Universal Declaration of Human Rights – creation, evolution and critiques;
  2. Challenges to the human rights ideology –communitarianism, cultural relativism versus universality of human rights;
  3. Human Rights and Democracy;
  4. International accountability – from Nuremberg to the International Criminal Court;
  5. Human Rights and Globalization – trade, labor, human rights;

*Number of classes: 3+1*

### *Working Bibliography:*



### **III. The Universal Bill of Rights**

What rights are protected and defined in the "International Bill of Rights"? What is the relationship between the rights contained in the Universal Declaration, the ICCPR and, the ICESCR? What are the strengths and weaknesses of the specific human rights conventions, and how could they be reformed to work more effectively? What are the advantages and disadvantages of a regional rather than a universal system? What are the key characteristics and features of each regional system, and what impact these have on the protection of human rights there?

### **Structure of the course:**

## **1. Customary international law of human rights**

- the scope of customary international law of human rights;
  - the conditions to be fulfilled in order to qualify as violations of customary international law;
  - the list of the human rights that achieved the status of customary international law: genocide, slavery or slave trade, the murder or causing the disappearance of individuals, torture or other cruel, inhuman, or degrading treatment or punishment, prolonged arbitrary detention, systematic racial discrimination, and a consistent pattern of gross violations of internationally recognized human rights;

## **2. Peremptory norms of international law - *jus cogens* norms;**

### **3. Traditional canon of human rights law - the UDHR and the Covenants;**

**4. Other human rights instruments:** the Genocide Convention, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination Against Women, the Convention Against Torture and Other Cruel, Inhuman or Degrading Punishment, the Convention on the Rights of the Child, the Convention Relating to the Status of Refugees.

**5. Regional instruments** – the European system, the Inter-American system, the African Charter;

**6. Non-binding instruments** – Helsinki Final Act, Paris Charter for a New Europe;  
Number of classes: 3+3

**Working Bibliography:**

1. Restatement (Third) of the Foreign Relations Law of United States
2. Jack Donnelly - *International Human Rights*-Second Edition,
3. Twenty Five Human Rights Documents – Center for the Study of Human Rights
4. Mark W. Janis – *An Introduction to International Law*
5. Louis Henkin, Gerald Neuman, Diane Orentlicher, David Lebron - *Human Rights*
6. \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, 2002
7. \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, 2001.
8. \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, 1994.

**IV. Implementation, enforcement, remedies of international human rights law**

By its very nature human rights law is vulnerable to non-observance, as a direct challenge to the idea of state sovereignty, though can it be argued that international human rights law is one of the most developed branches of international law? How does the implementation occur? What inducements exist at the international level for states to comply with human rights conventions? Is the UN the appropriate forum for implementing international human rights standards? Can we speak about Kosovo precedent as a law-shaping event?

**Structure of the course:**

1. International enforcement of international law of human rights;
2. International adjudication – the role of the International Court of Justice in the protection of human rights;
3. International political implementation:
  - human rights as obligations between the states;
  - human rights as obligations under the UN Charter – the principle of humanitarian intervention;
  - the General Assembly and the implementation of human rights standards: ECOSOC, the Commission on Human Rights, the Sub-commission on the Promotion and Protection of Human Rights, the UN High Commissioner on Human Rights;
  - the specificity of human rights agreements;
4. International procedures for making human rights complaints within the UN system:
  - The Human Rights Committee – the individual complaint under the Optional Protocol to the ICCPR – who may file and against whom? The subject matter and the procedural requirements.
  - Other treaty bodies and their procedures: the Committee against Torture, the Committee on the Elimination of Racial Discrimination, the Commission on the Status of Women, the Committee on the Rights of the Child.
  - Complaint procedure under the UNESCO 1978 decision.
  - Complaint procedures under International Labor Organization.
  - 1253 Procedure and the resolutions adopted by the Commission on Human Rights.

- 1503 Procedure – structure of the petition-information alleging the existence of a consistent pattern of gross and reliably attested violations.
- UN reform
- Are human rights on the defensive?

*Number of classes: 4+3*

**Working Bibliography:**

1. *Jack Donnelly – Human Rights in Theory and Practice, 2002*
2. *Thomas Meron - Human Rights in International Law*
3. *T. Farer – The UN and Human Rights: More than a Whimper- ASIL 1997*
4. *Hurst Hannum – Guide to International Human Rights Practice*
5. *Jochen Motte/Wolfgang S. Heinz (editors), 2004 Are Human Rights on the Defensive? The Future of the Commission on HR in the UN Human Rights Protection Context, 2004.*
6. \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, “\_\_\_\_\_”, \_\_\_\_\_, \_\_\_\_\_, 2002

## **V. The European Human Rights System**

What is the institutional framework of the European system for the protection of human rights and fundamental freedoms? What are the successes and what are the failures of the European system? What are the rights protected in the European system and what are the mechanisms of protection? What are the substantive and formal requirements when bringing a case before the European Court of Human Rights?

**Structure of the course:**

1. The European Convention for the Protection of Human Rights and Fundamental Freedoms and the additional protocols – the content of the rights protected; individual complaint and inter-state complaint, substantive and formal requirements.
2. The European Social Charter and the Revised European Social Charter;
3. The European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment;
4. European Framework Convention for the Protection of National Minorities;
5. Analysis of the cases against Bulgaria decided by the Strasbourg Court.

*Number of classes: 7+3*

**Working bibliography:**

1. Vincent Berger – *Case law of the European Court of Human Rights*
2. Elspeth Guild – *The European Court of Justice on the European Convention on Human Rights – Who said what when?*
3. Mark Janis – *European Human Rights Law: texts and materials*
4. D.J. Harris – *Law of the European Convention on Human Rights*
5. Karen Reid – *A Practitioner’s Guide to the European Convention on Human Rights*
6. Dr. Borchardt, Klaus-Dieter, ‘The ABC of Community Law’, Office for Official Publications of the European Communities, 2000.
7. *Lammy Betten and Nikolas Grief “EU Law and Human Rights”, 1998*
8. \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, C, “\_\_\_\_\_”, \_\_\_\_\_, 2005.
9. \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, 2001 (European Court of Human Rights. Selected decisions, Sofia, 2001)
10. \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, 2001  
(T. Marincheska “EU policy in Human Rights: Evolution and Challenges”, in: “European Studies Annual, SU 2004 )

## **VI. International Rights in Bulgarian Law - Analyze of some specific rights generating most of the human rights violations in Bulgaria**

What is the position of the international standards for the protection of human rights in the Bulgarian legal system? What are the mechanisms of protection available in the domestic system? When can the rights be forfeited and what are the limits on the limitations? What are the most frequent violations of rights in the Bulgarian society? What are the national and the international provisions provided for the protection of these rights? What are the solutions found in other legal systems for similar violations? What mechanisms can be used in order to redress these specific violations?

***Structure of the course:***

1. National rights, constitutional rights, universal rights;
2. Protection of rights in domestic courts – the jurisprudence of the Bulgarian Constitutional Court and of the Bulgarian Supreme Court;
3. Limitations on and derogations from rights –ICCPR, ICESCR, ECHR, US, Bulgaria;
4. Access to justice – the jurisprudence developed in regard of Art. 5 and 6 of the European Convention on Human Rights;
5. Police brutality;
6. Freedom of Speech – European, American, Bulgarian standards.
7. Religious Freedom – a comparative approach;
8. Women's Rights - The distinction between the public and the private in International Human Rights Law and in domestic law; violence against women - international protections, national compliance?
9. Refugee Rights - Causes of refugee flows; any cures? Is there a viable national program for refugees in Bulgaria? Asylum--an evolving standard; Refugee admissions and detention – national and international standards; Asylum in Bulgaria after 9.11.2001.
10. Minorities' rights – the status of national, ethnic and sexual minorities in Bulgaria.

*Number of classes: 3+1*

***Working Bibliography:***

1. Claude and B.H. Weston, ed. *Human Rights in the World Community: Issues and Actions*.
2. Bulgarian Constitution from 1991
3. Bulgarian Criminal Code
4. Bulgarian Family Code
5. Relevant Bulgarian Legislation
6. Convention to the Elimination of All Forms of Discrimination against Women.
7. United Nations General Assembly Resolution 48/104 Declaration on the Elimination of Violence against Women.
8. Convention Relating to the Status of Refugees
9. Protocol Relating to the Status of Refugees
10. Bulgarian Law on Asylum and Refugees
11. Bulgarian Anti-Discrimination Law
12. Bulgarian Law against Trafficking in Human Beings
13. \_\_\_\_\_ “\_\_\_\_\_”, \_\_\_\_\_ 2001
14. \_\_\_\_\_, \_\_\_\_\_ 2002
15. See the link of the Bulgarian Helsinki Committee: <http://www.bghelsinki.org/>
16. \_\_\_\_\_ - \_\_\_\_\_, - \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_, \_\_\_\_\_, 1994.
17. \_\_\_\_\_, \_\_\_. \_\_\_\_\_ - \_\_\_\_\_, \_\_\_\_\_, 2000.
18. \_\_\_\_\_, \_\_\_. \_\_\_\_\_ - \_\_\_\_\_, \_\_\_. “\_\_\_\_\_”, 1991.