

## DRAFT

### NATIONAL UNIVERSITY OF IRELAND, GALWAY

*Faculty of Law, Irish Centre for Human Rights,  
Academic Year 2008/2009*

Module: The Law of the European Convention on Human Rights  
Convener: Dr. K.A. Cavanaugh, Mr. Joseph Powderly  
Day/Time: Monday 2:00-5:00  
Location: Conference Room, Irish Centre for Human Rights  
Office Hours: Kathleen Cavanaugh: Monday 12- 2:00 p.m. Room 202  
Joseph Powderly: by appointment only

This course will critically engage the underpinnings of the Convention and the Strasbourg case law. The course will explore the influence of the Convention as well as the extent to which politics informs the law and law, the politics. Whilst some Convention rights will be dealt with on an article-to-article basis, the methodological leanings of this course will be an examination of rights on an issue-by-issue basis. Students will be required to:

- familiarize themselves with the articles and case law of the European Convention on Human Rights, and the additional Protocols;
- understand the practice and procedure of the European Court on Human Rights;
- understand the Convention approach to the protection of human rights, including the positive obligations under the Convention; and
- review existing literature on the development of Strasbourg case law, and its influence on the legal development of contracting states.

#### **Prerequisites:**

None. Students are expected to be current with reading assignments and, when assigned, to complete the case readings before each class.

#### **Syllabus:**

Convention rights: development, structure and summary; Engagement of Articles; to Derogate or not to derogate?-States of emergency (emergency-normalcy paradigm). Doctrine of a Margin of Appreciation; Right to Fair Trial/Right of Silence.

#### **Introductory Reading:**

The main text for this course will be Alastair Mowbray, *Cases and Materials on the European Convention on Human Rights*. I also suggest buying or getting a loan of DJ Harris, M O'Boyle and C Warbrick's, *Law of the European Convention on Human Rights*, Butterworths (1995). This is an old textbook, but still very good on substantive issues. Additionally, students should refer to the *European Convention on Human Rights* by Francis Jacobs (Oxford 1996) as the alternative text. Students will be expected to read the relevant chapters that coordinate with the lecture topics. Additionally, readings (journal, text and Strasbourg case law) will be assigned during each seminar. Students will be expected to remain current with Court decisions that are available by accessing the ECHR Internet site. Students should also download and print a copy of the ECHR from the website and bring to each seminar.

General Texts:

Beddard, *Human Rights & Europe* (3rd Edition), (Grotius, 1993);

Clements, Mole & Simmons, *European Human Rights: Taking a Case under the Convention*. (2nd ed., Sweet & Maxwell, 1999);

Clapham, *Human Rights in the Private Sphere*. (OUP, 1993);

Dickson (ed.), *Human Rights & the European Convention*. (Sweet & Maxwell, 1997);

Farran, *The United Kingdom before the European Court of Human Rights: Case Law & Commentary*. (Blackstone, 1996);

Gearty (ed.), and the *European Human Rights* (Kluwer, 1997); Berger, *Case Law of the European Court of Human Rights*. Vols 1-3, (Round Hall);

\*Harris, O'Boyle & Warbrick, (2nd. ed.) *Law of the European Convention on Human Rights*. (Butterworth 1995). Lib. Ref. 342.4085 BAR

Heffernan & Kingston (Eds), *Human Rights: A European Perspective*. (Round Hall/ICEL, 1994);

Janis, Kay & Bradley, *European Human Rights Law: Text & Materials*. (OUP, 2000);

\*Jacobs & White, *The European Convention on Human Rights* (3rd Edition), (OUP, 2002)

P. Kempees (Ed), *A Systematic Guide to the Case Law of the European Court of Human Rights*, Vols. 1-4, reference only category (i.e. no loan);

Merrills, *The Development of International Law by the European Court of Human Rights* (Manchester University Press, 1993);

\*A. Mowbray, *Cases and Materials on the European Convention on Human Rights* (Oxford Univ Press 2007);

F. Ni Aolain, *The Politics of Force: Conflict Management and State Violence in Northern Ireland*, 2000

Steiner & Alston, *International Human Rights in Context: Law. Politics. Morals*. (OUP, 1996/2000).

VanDijk & V anHoof, *Theory & Practice of the ECHR* (3rd Edition, Kluwer 1998);

\*Students should purchase one or both of these books whenever possible. They will be the textbooks for the course. Copies of Mowbray and Jacobs & White are available for purchase in the University bookshop. Copies of Harris, O'Boyle and Warbrick (2) as well as Jacobs & White have been put on both 24 hours and 3-hour reserve in the library. There are additional copies available for extended loan.

### **Journals of Interest:**

Journals of primary relevance:

Columbia Human Rights Law Review (342.085 LAW)

European Journal of International Law (341 LAW)

European Human Rights Law Review (342.7 LAW)

Harvard Human Rights Law Journal (341.481 LAW)

Human Rights Quarterly (341.481 LAW)

Human Rights Law Journal (342.7 LAW)

Netherlands Quarterly of Human Rights (341.481 LAW)

*These journals are currently available at the library.*

Other International Law journals currently available from the Hardiman Library:

\*American Journal of International Law (Library class no.341 LAW)

British Yearbook of international law (341 LA W)

\*International Review of Law and Economics

International and comparative law quarterly (341 LA W)

International Law Reports (348.04 LA W)

International Legal Materials (341.1 LA W)

Minority rights group international:

annual report (342.7 Floor 2)

profile (342.7 LAW)

\*these journals are available digitally through the use of JSTOR or Lexis Nexus, which is available by accessing Hardiman Library's home page. An index of available options is listed on left. Select JSTOR/Lexis Nexus and then the journal you wish to electronically read/download.

### **Useful Web Addresses:**

European Court of Human Rights Home Page:

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

European Court of Human Rights HUDOC case search page:

<http://www.dhcour.coe.r/hudocl>

European Court of Human Rights Case-Law Search:

<http://www.dhcour.coe.fr/hudoc/default.asp?Language=en&Advanced=1>

Recent decisions by the European Court are available by accessing HUDOC. Please note, the easiest way to do a text search through HUDOC is to list the respondent (state) and by the main article involved, and then to search by date or alphabetically. The system does not always respond if you list the title. Try a few ways. All texts that are assigned should be available.

### **Seminars:**

The seminars will take place from 2:00 – 5:00 p.m. (approximate) on Mondays in the Conference Room at the Irish Centre for Human Rights. One *1/2-hour* break will be provided during which time the lecturer will be available.

Topic 1\*(Sept 15):      **Introduction to course (2-3:30 p.m.)**

Topic 2 (Sept 22):      **The development and context of the ECHR, Convention Rights: overview.**

#### ***General Recommended readings :***

Basic Legal Texts:

European Convention on Human Rights

Additional Protocols

DJ Harris, O'Boyle, M, Warbrick, C., *The Law of the Convention on Human Rights*, Butterworths, 1995 (use as resource)

Mowbray, *Cases and Materials on the European Convention on Human Rights* (Oxford Univ. Press, 2007), Chapters 1 & 2.

Steven Greer, "Constitutionalizing Adjudication under the ECHR" in OJLS, Vol 23, No. 3 (2003) pp. 405-433.

Topic 3 (Sept 29): **Convention approach to human rights: objects, purpose and limitations. Included in this will be an evaluation to the Court's approach in assessing cases. We will also look at the principle of effectiveness, the dynamic interpretation of the convention, positive and negative rights, and the question of proportionality.** Note that Mowbray covers object and purpose of the ECHR prior to discussing the substantive parts of each right.  
**Joseph Powderly**

***Recommended readings:***

Dickson (ed.), *Human Rights & the European Convention*. (Sweet & Maxwell, 1997); pp 212-225  
G. Letsas, *A Theory of Interpretation of the European Convention of Human Rights* (OUP, 2007), Chapters 2 & 3.  
Jean-Paul Costa, *The European Court of Human Rights and Its Recent Case Law*, 38 *Tex. Int'l L.J.* 455, Available on Lexis Nexis.  
Janis, Kay & Bradley, *European Human Rights Law: Text & Materials*. (OUP, 2000); pp 69-89

**Cases:**

Case of Wemhoff v Germany (1979-80) EHRR 462  
Case of Golder v United Kingdom (1979-80) EHRR 524  
Case of Young, James and Webster v UK  
Case of Artico v Italy (1980)  
Case of Tyrer v. the United Kingdom  
Case of F v Switzerland (1988)  
Case of Open Door Counselling and Well Woman v Ireland (1992)  
Case of Engel & Others v. The Netherlands (1976)  
Case of Young, James & Webster v. United Kingdom (1981)

***In these next series of lectures, we will undertake an examination of the application of Articles 2-6 and Articles 8-15: are they engaged, applied and complied with?***

Topic 4 (Oct 6): **Article 2**  
**Joseph Powderly**

***Recommended readings:***

DJ Harris, O'Boyle, M, Warbrick, C., *The Law of the Convention on Human Rights*, Chapter 2  
A. Mowbray, *Cases and Materials on the European Convention on Human Rights* (Oxford Univ. Press, 2007), Chapter 4  
F. Ni Aolain, *The Politics of Force: Conflict Management and State Violence in Northern Ireland*, 2000, pp 185-217

**Cases:**

Behrami v. France (application no. 71412/01)  
Musayev and Others v. Russia (application nos. 57941/00, 58699/00 and 60403/00)  
Nachova and Others v. Bulgaria (application no. 43577/98) (2005)  
Gongadze v. Ukraine (application no. 34056/02)-admissibility (2005).  
*Case of Finucane v. UK (July 1, 2003)*

Case of McShane v. UK (2002)  
 Case of Shanaghan v. the United Kingdom (2001)  
 Ahmet Özkan and Others v. Turkey (1993)  
*Also see commentary on the decision in 97 A.L.I.J. 168*  
 Case of Kelly and Others v. the United Kingdom (2001)  
 Case of McKerr v. the United Kingdom (2001)  
 Case of Hugh Jordan v. the United Kingdom (2001)  
*Case of McCann v. the United Kingdom (1995)*  
*Case of Osman v. the United Kingdom (1999)*  
 Commission report Osman v. the United Kingdom (1994)  
 Case of Stewart v. the United Kingdom  
 Case of Özalp and Others v. Turkey (2004)  
 Case of Tysiac v. Poland (2007)

Topic 5 (Oct 13):

**Article 3:**

A. Mowbray, *Cases and Materials on the European Convention on Human Rights* (Oxford Univ. Press, 2007), Chapter 5  
 M.D. Evans, 'Getting to Grips with Torture' 51 ICLQ at 365.  
 M. T. Kamminga, 'Is the European Convention on Human Rights Sufficiently Equipped to Cope with Gross and Systematic Violations ? ' (1994) 12 NQHR at 153-164

O'Boyle, 'Torture and Emergency Powers under the ECHR: Ireland v. the United Kingdom, in *American Journal of International Law*, Vo171, Issue 4 (October 1977),674- 706. Available via JSTOR

S. Parmentier, 'Spotlight on Turkey: A Public Statement by the Committee for the Prevention of Torture', (1993) 11 NQHR at 131-136

**Cases:**

*Saadi v. Italy* (application no. 37201/06) \*\*  
 Case of Mamatkulov and Abdurasulovic v. Turkey (2003)  
 Case of M.C. v. Bulgaria (2003)  
 Case of V v. the United Kingdom (December 16, 1999)  
 Case of Ireland v. the United Kingdom (1978)  
 Case of Paez v. Sweden  
 Case of Chahal v. the United Kingdom  
 Case of Baraddar v. the Netherlands  
 Case of Erdagöz v. Turkey  
 Case of Dalia v. France  
 Case of Armed v. Austria  
 Case of H.L.R. v. France  
 Case of Selcuk and Asker v Turkey (1998)  
 Case of Soering v the United Kingdom (1989)  
 Case of Öcalan v. Turkey (2003)  
 Case of Tomasi v. France  
 Case of Tekin v. Turkey  
 Case of Tekin before the Commission  
 Case of Raninen v. Finland  
 Case of Aerts v. Belgium  
 Case of D. v. the United Kingdom  
 Case of Aksoy v. Turkey (1996)  
 Case of Gündem v. Turkey  
 Case of Selçuk and Asker v. Turkey

Case of Kurt v. Turkey  
Case of Aydin v. Turkey  
Public Statement by the CPT concerning Turkey, December 1992  
Public Statement by the CPT concerning Turkey, December 1996  
Report: United Kingdom: Visit 15/05/1994- 31/05/1994

Topic 6 (Oct 20):

**Article 8**

DJ Harris, O'Boyle, M, Warbrick, C., *The Law of the Convention on Human Rights*, Chapter 9  
Mowbray, Cases and Materials on the European Convention on Human Rights (Oxford Univ. Press, 2007), Chapter 10  
"Integrating Environmental Values into the European Convention on Human Rights," in *American Journal of International Law*, Vol 189, Issue 2 (April 1995), 263-293. Available via JSTOR or Lexis Nexis  
V. Samar, 'Family and the Political Landscape for Lesbian, Gay, Bisexual and Transgender People: Gay-Rights as a Particular Instantiation of Human Rights', 64 ALB.L.Rev. 983. Available via Lexis Nexis  
"Lopez Ostra v. Spain " in *American Journal of International Law*, Vol 89, Issue 4 (October 1995), 788- 791. Available via JSTOR

Sonja Starr & Lea Brilmayer, *Family Separation as a Violation of International Law*, 21 Berkeley J. Int'l L. 213, Available via JSTOR

**Cases:**

Üner v. the Netherlands (application no. 46410/99). Case of Leyla Şahin v. Turkey (1998)  
Case of Perry v. U.K. (2000)  
Case of Chalkley v. U.K. (2000)  
Case of Dogan and Others v. Turkey (2004-also Prot 1, Art. 1)  
Case of Ayder and Others v. Turkey (2004 also Art. 3, Prot 1, Art. 1)  
Case of I v. The United Kingdom (2002)  
Lustig-Prean & Beckett v. United Kingdom (Sept. 27, 1999)  
Salgueiro da Silva Mouta v. Portugal (December 21 1999)  
A.D.T. v. United Kingdom, (July 31, 2000)  
Craig v. United Kingdom, (Sept. 5, 2000) admissibility decision  
Case of Niemietz v. Germany  
Case of Marckx v. Belgium (1979)  
Case of Airey v. Ireland  
Case of Young, James and Webster v. the United Kingdom  
Case of X and Y v. the Netherlands  
Case of Lopez Ostra v. Spain (1994)  
Case of Laskey, Jaggard and Brown v. the United Kingdom  
Case of Halford v. the United Kingdom  
Case of X. Y and Z v. the United Kingdom (1997)  
Case of M.S. V. Sweden  
Case of Sheffield and Horsham v. the United Kingdom  
Case of Z v. Finland  
Case of El Boujaïdi v. France  
Case of Bronza v. Italy  
Case of Bouchelkia v. France  
Case of Ahmut v. the Netherlands  
Case of Chappell v. the United Kingdom  
Case of Camenzind v. Switzerland

Case of Kopf v. Switzerland  
 Case of Guerra and Others v. Italy  
 Case of Buckley v. the United Kingdom  
 Case of McGinley and Egan v. the United Kingdom  
 Case of Lambert v. France  
 Case of Valenzuela Contreras v. Spain  
 Tinnelly & Sons and others v. the United Kingdom Report of the Commission  
 Case of Tinnelly & Sons LTD and Others and McElduff and Others v. the  
 United Kingdom  
 Case of Gabriel Tsavachidis v. Greece, Report Of the Commission  
 Case of Council of Ministers and the Internet  
     Council of Europe. Committee of Ministers. Recommendation No R  
 (95) 4 on the protection of personal data in the area of telecommunication  
 services  
 Council of Europe. Committee of Ministers. Recommendation No. R 9  
     18 concerning the protection of personal data collected and processed  
 for statistical purposes

**October 27      READING WEEK**

Topic 7 (Nov 3):      **Article 9**

DJ Harris, O'Boyle, M, Warbrick, C., *The Law of the Convention on Human  
 Rights*, Chapter 10 Article 9 of the ECHR, C. Skakkebaek, (1992) Council of  
 Europe publication  
 A. Mowbray, *Cases and Materials on the European Convention on Human  
 Rights* (Oxford Univ. Press, 2007), Chapter 11  
 W. Edge, *'The European Court of Human Rights and Religious Rights'* 47  
 ICLQ (1998) at 680-687

**Cases:**

Case of Kokkinakis v. Greece (May 1993)  
 Thlimmenos v. Greece, (April 2000)  
 Case of Arrowsmith v. the United Kingdom  
 Case of Buscarini and Others v. San Marino  
 Case of Blume and Others v. Spain  
 Case of Chassagnou and Others v. France  
 Case of McFeeley v. the United Kingdom  
 Case of X v. the United Kingdom  
 Case of Angelini v. Sweden  
 Case of Ahmad v. the United Kingdom (1982)

Topic 8 (Nov 10):      **Article 10**

**Joseph Powderly**

Janis, Kay & Bradley, *European Human Rights Law: Text & Materials*.  
 (OUP, 1995), Chapter 5  
 DJ Harris, O'Boyle, M, Warbrick, C., *The Law of the Convention on Human  
 Rights*, Chapters 8 & 11  
 A. Mowbray, *Cases and Materials on the European Convention on Human  
 Rights* (Oxford Univ. Press, 2007), Chapter 12  
 M. K. Addo, *'Are Judges Beyond Criticism under Article 10 of the European  
 Convention on Human Rights ?'* 47 ICLQ 425-438

Amaya Ubeda de Torres, *Freedom of Expression under the European Convention on Human Rights: A Comparison With the Inter-American System of Protection of Human Rights*, 10 Hum. Rts. Br. 6, Available on Lexis Nexis.

**Cases:**

Case of Handyside v. the United Kingdom A 24 (1979)  
Case of Otto-Preminger-Institut v. Austria A 295-A (1994)  
Case of Sunday Times v. the United Kingdom A 30 (1979)  
Case of Lingens v. Austria A 103 (1986)  
Case of Goodwin v. the United Kingdom (1996)  
Case of Groppera Radio AG and Others v. Switzerland A1733 (1990) Case of Glimmerveen and Hagenback v. Netherlands 18 DR 187 (1979)

**Article 11**

Janis, Kay & Bradley, *European Human Rights Law: Text & Materials*. (OUP, 1995), Chapter 5, pp 217-224  
DJ Harris, O'Boyle, M, Warbrick, C., *The Law of the Convention on Human Rights*, Chapter 12  
A. Mowbray, *Cases and Materials on the European Convention on Human Rights* (Oxford Univ. Press, 2007), Chapter 11

**Cases:**

Case of United Communist Party of Turkey and Others v. Turkey (Jan. 1998)  
Christos Sidiropulos and 5 others v. Greece, Report of the Commission  
Case of Hristos Sidiropulos and 5 others v. Greece (July 10, 1998)  
Freedom and Democracy Party (ÖZDEP) v. Turkey (December 8, 1999)  
Case of The Socialist Party And Others v. Turkey  
Case of Ezelin v. France  
Case of Sigurjonsson v. Iceland (1993)  
Case of Ahmed v. the United Kingdom  
Case of McFeeley v. the United Kingdom (1980)

Topic 9 (Nov 17):

**Article 15-Reservations and Derogations**

DJ Harris, O'Boyle, M, Warbrick, C., *The Law of the Convention on Human Rights*, Chapter 16  
Mowbray, *Cases and Materials on the European Convention on Human Rights* (Oxford Univ. Press, 2007), Chapter 17  
M. El Zeidy, *The ECHR and States of Emergency: Article 15*, 4 San Diego Int'l L.J. 277, Available via Lexis Nexis  
S. Peers, *EU Responses to Terrorism*, ICLQ 52.1 (227), Available via Lexis Nexis.  
Philip A. Thomas, *Emergency and Anti-Terrorist Power: 9/11: USA and UK*, 26 Fordham Int'l L.J. 1193, Available via Lexis Nexis  
F. Ni Aolain, *The Politics of Force: Conflict Management and State Violence in Northern Ireland*, 2000, pp. 17-71 [941.605 NiA]  
Alexander, 'The Illusory Protection of Human Rights by National Courts During Periods of Emergency,' 5 *Human Rights Law Journal* 1994  
O. Gross, "Once More unto the Breach:" The Systematic Failure of Applying the European Convention on Human Rights to Entrenched Emergencies," 23 *Yale Journal of International Law*, 436-501.

### **Cases:**

Case of Lawless v. Ireland (1961)  
Case of Greek Case (1969) 12 Ybk ECHR1  
*Case of Ireland v UK (1978) Series A, Vol. 25*  
Case of Cyprus v Turkey (1982) 4 EHRR 482  
Case of France and Others v Turkey (1984) 6 EHRR 241  
*Case of Brannigan and McBride v UK (1994) 17 EHRR 539*  
*Case of Aksoy v Turkey (1996) 23 EHRR 553*

### **Application of Human Rights**

#### **Cases:**

Case of Loizidou v. Turkey (Dec. 18, 1996)  
*Also see commentary on the decision in 91 A.J.I.L. 532*  
Bankovic, Stojadinovic, Stoimenovski, Joksimovic and Sukovic v. Belgium, The Czech Republic, Denmark, France, Germany, Greece, Hungary, Iceland, Italy, Luxembourg, The Netherlands, Norway, Poland, Portugal, Spain, Turkey and The United Kingdom (December 12, 2001) Admissibility Decision  
Case of Ilascu and Others v. Moldova and Russia (2004)

Topic 10 (Nov 24): **In the interest of State: Doctrine of a margin of appreciation.**

#### **Recommended readings:**

DJ Harris, O'Boyle, M, Warbrick, C., *The Law of the Convention on Human Rights*, pp. 12-15.  
A. Mowbray, *Cases and Materials on the European Convention on Human Rights* (Oxford Univ. Press, 2007), pp. 625-6; 629-33

#### **Cases:**

Case of Handyside v. the United Kingdom (1976)  
Case of Rees v. United Kingdom  
Case of Cossey v. United Kingdom (1990)  
Case of X, Y, and Z v. the United Kingdom  
Case of Sunday Times v. the United Kingdom  
Case of Ireland v. the United Kingdom  
Case of Brogan v. the United Kingdom (1988)  
Case of Brannigan and Others v. United Kingdom (1993)

Topic 11 (Dec 1): A right (?) to silence/Fair Trial (Article 6) and Security and Liberty of Persons (Article 5)

#### **Joseph Powderly**

#### **Recommended readings:**

Reading packet 1 (available for copying in library):  
C Campbell, 'Two Steps Backwards: The Criminal Justice (Terrorism and Conspiracy Act 1996' in *Criminal Law Review*  
Ashworth, 'Article 6 and the Fairness of Trials', *Criminal Law Review*, 261, 1999

A. Mowbray, *Cases and Materials on the European Convention on Human Rights* (Oxford Univ. Press, 2007), Chapters 7 & 8  
The Royal Commission on Criminal Justice, *The Right to Silence in Police Interrogation: A Study of some of the Issues Underlying the Debate*, Research Study No. 10, HMSO 1993  
E. Brems, 'Conflicting Human Rights: An Exploration in the Context of the Right to a Fair Trial in the European Convention for the Protection of Human Rights and Fundamental Freedoms', (2005) 27 *Human Rights Quarterly* 294

**Cases:**

Mamatkulov and Abdurasulovic v. Turkey (application nos. 46827/99 and 46951/99) paras 88 - 110 of the Court's judgment (re Rule 39 Ct's Rules & Article 34).  
Saramati v. France, Germany and Norway (no. 78166/01)  
O'Halloran and Francis v. United Kingdom (application nos. 15809/02 and 25624/02)  
Case of Van Mechelen and others v. Netherlands  
Case of Doorson v. Netherlands  
Case of Murray (John) v. the United Kingdom (1996)  
Case of Barberá, Messegué and Jabardo v. Spain (1988)  
Case of Saunders v. United Kingdom (1997)  
Case of Funke v. France (1993)  
Enhorn v. Sweden (application no. 56529/00) (2005)  
Case of Heaney & McGuinness v. Ireland (2000)

*\*Please note that classes are 3 hours in duration with the exception of the introductory class on September 15<sup>th</sup>, which will be 1½ hours. The exact case studies will be decided, and readings indicated at the beginning of the term, after consultation with the class.*