



# 31851 – A Europe of Rights: the European Convention on Human Rights and the EU Charter of Fundamental Rights

## Syllabus Information

<b>Academic Course:</b>	2019/20
<b>Academic Center:</b>	807 - Official Postgraduate Programme in Law
<b>Study:</b>	8071 - Legal Sciences - LLM
<b>Subject:</b>	31851 - European Constitutionalism and Fundamental Rights
<b>Credits:</b>	4.0
<b>Course:</b>	1
<b>Teaching languages:</b>	Theory: Group 1: English
<b>Professors:</b>	Alejandro Saiz Arnaiz, Aida Torres Pérez
<b>Teaching Period:</b>	Quarterly

## Presentation

In Europe, the enactment of the European Convention on Human Rights in 1950 (ECHR) and the process of economic and political integration in the European Union (EU) over the second half of the twentieth century have contributed to create multiple spheres of rights' protection on the basis of state constitutions, the ECHR, and the EU Charter of Fundamental Rights (CFR). The ultimate interpreters of these declarations of rights are, respectively, Constitutional or Supreme Courts, the European Court of Human Rights (ECtHR), and the Court of Justice of the European Union (CJEU). The dialogue among these courts has given rise to the so-called European *ius commune* in the field of fundamental rights.

The plurality of rights and courts offers new opportunities for the protection of fundamental rights, but it also poses many challenges from a structural and political perspective. This course will analyze the dynamic interaction between the constitutional, supranational, and international legal orders for rights' protection in Europe.

The course is structured as follows:

- Four common-group sessions (a total of 8 hours): two initial sessions and two concluding sessions. The four sessions address the role and interdependence of both CFR and the ECHR.
- Eight small group sessions (a total of 16 hours) in two itineraries: CFR itinerary or ECHR itinerary. Each itinerary goes in detail in the analysis of the CFR and the ECHR.

Students enrolled in the course must attend the four common-group sessions (8 hours) and then they can choose to follow either the CFR itinerary (16 hours) or the ECHR itinerary (16 hours) in line with their interests. They must choose the itinerary before the starting of the course by an e-mail to the Secretary of the MACJ ([macj.dret@upf.edu](mailto:macj.dret@upf.edu)) or MEGL ([megl.dret@upf.edu](mailto:megl.dret@upf.edu)).

## Prerequisites

None

## Contents

**COMMON-GROUP SESSION 1.** Reconstructing Europe after the II World War: a Europe of rights

**COMMON-GROUP SESSION 2.** The three levels of protection: post-second world war European constitutionalism, the Council of Europe and the European Union.

## **EUROPEAN CONVENTION ON HUMAN RIGHTS ITINERARY**

SESSION 1. The beginning. The drafting of the Convention and the seminal Judgments of the Court.

SESSION 2. The legitimacy of the Court. How are Judges selected? Which is their status? How does the Court work?

SESSION 3. How to read the Convention? The role of the ECtHR. Autonomous concepts, margin of appreciation, evolutive interpretation, comparative reasoning and other international instruments (I).

SESSION 4. How to read the Convention? The role of the ECtHR. Autonomous concepts, margin of appreciation, evolutive interpretation, comparative reasoning and other international instruments (II).

SESSION 5. How to read the Convention? The role of the ECtHR. Autonomous concepts, margin of appreciation, evolutive interpretation, comparative reasoning and other international instruments (III).

SESSION 6. Are precedents binding in the conventional system? Res interpretata and other reasons.

SESSION 7. The European Convention, the Judgments of the Court and the National Legal Systems. Which is the impact of the ECtHR interpretation of fundamental rights on other European Courts?

SESSION 8. Sovereignty and Authority. Criticism and the future of the Convention.

## **EU CHARTER OF FUNDAMENTAL RIGHTS ITINERARY**

SESSION 1. The EU Charter of Fundamental Rights: drafting, content and structure.

SESSION 2. The Court of Justice of the European Union and the preliminary reference: a human rights court?

SESSION 3. The limited scope of application of the Charter to the Member States: implementing EU law and EU citizenship

SESSION 4. The challenges of the economic crisis for the EU Charter

SESSION 5. Rule of law backsliding and the role of the Court of Justice: the principle of judicial independence

SESSION 6. Potential conflicts between levels of protection: the Charter as a minimum or maximum standard of protection?

SESSION 7. The role of constitutional courts as guardians of fundamental rights: constitutional identity as a limit to European integration

SESSION 8. The (failed) accession of the EU to the European Convention on Human Rights.

**COMMON-GROUP SESSION 1.** Constitutional pluralism: the multilevel protection of rights in Europe

**COMMON-GROUP SESSION 2.** Judicial dialogue: the interaction between Strasbourg, Luxembourg and constitutional courts

### **Teaching Methods**

The sessions will consist of an introduction of the topic and main issues by the professor, followed by a class discussion on the basis of the readings assigned. The readings will include doctrinal articles as well as judgments of the ECHR and the CJEU. Students shall read the materials in advance. The doctrinal articles will be posted in the Aula Global. The students shall look for the judgments in the respective websites of the ECtHR and the CJEU. Active participation in class is required.

By the end of the course, students should have acquired a thorough understanding of the European systems of rights' protection and their mutual interaction. They are expected to develop skills for analytical reasoning and critical thinking regarding the problems of interpretation and judicial protection of fundamental rights in a plural context.

Attendance is required to at least 80% of the sessions.

Every student is expected to spend at least 3 hours per week in the preparation of the classes. They will need to devote at least 20 hours to the final essay.

### **Evaluation**

Students are expected to read the materials and actively participate in class. By the end of the course, they will face an in-class exam. They will be asked to analyze two judgments of the ECtHR and the CJEU and answer several questions.

Students will need to show that they acquired the expected knowledge and skills.

In case of failing the course, students will have only one opportunity to be re-evaluated by facing an in-class exam with the same format as the ordinary exam.





