

COURSE OUTLINE

MIDDLE EAST TECHNICAL UNIVERSITY

FACULTY OF ECONOMIC AND ADMINISTRATIVE SCIENCES

DEPARTMENT OF POLITICAL SCIENCE AND PUBLIC ADMINISTRATION

For

2015 Spring Semester

The ECHR System and Turkey

Protection of Fundamental Rights and Freedoms under the European Convention on Human Rights System

Instructor: Denge Akal Ardıçođlu

Course Description

This course aims to provide an overview of the protection mechanisms of the European Convention on Human Rights (ECHR/"Convention") system and is designated to give students a sufficient knowledge about the procedure before the European Court of Human Rights (ECtHR/"Court"). The Course will focus on ECHR as an international treaty that is signed and ratified by Turkey and the protection mechanisms and the procedural law aspects including but not limited to application procedures, admissibility, hearings and impact of the ECtHR decisions from Turkish Law point of view. The lecturer, based on her earlier experience (as a legal expert involved in cases before the ECtHR at the Turkish Ministry of Foreign Affairs) will intend to lead the students to explore and understand the implications of the judgments of the Court from national law point of view. In view of its importance, a further part of the course will address the envisaged EU accession to the ECHR and recent developments thereof.

Throughout the term the jurisprudence of the Court, with examples from the earlier and recent case law will be studied. Thus the Convention text, its Additional Protocols and main principles laid down by the case-law of the ECtHR will constitute the main and primary source and subject of the Course. In addition to the above, domestic remedies, as to the protection of fundamental rights and freedoms at national level, especially in relation with the

recently introduced individual application procedure before the Turkish Constitutional Court, will also be part of the course.

Upon completion of the Course, students are expected to gain a considerable degree of knowledge and awareness on the structure and functioning of the ECtHR and the protection mechanisms provided under the ECHR and also understand the significance of the impact of the decisions of the ECtHR as administrators to be.

Scope

The content of the Course will consist mainly of the following topics to be elaborated throughout the Term. In addition to the case law examples that will be referred for each of the substantive rights, case law examples to be dealt with thoroughly together with the students in order to guide them to make a case analysis (review), will also be selected as to the interests of the students.

Reference Material

Relevant material for each class will be indicated or made available by the lecturer in advance. Legal texts, decisions and judgments are available through

- the Council of Europe portal <http://www.coe.int>
- The ECtHR portal <http://www.echr.coe.int/>
- the Ministry of Justice portal <http://www.inhak.adalet.gov.tr/hudoctr.html>
- the Constitutional Court portal <http://www.anayasa.gov.tr/>

Brems E., Gerards J., Shaping rights in the ECHR: the role of the European Court of Human Rights in determining the scope of human rights, Cambridge University Press, 2014

Durmaz C., Ekinci H., Çınar İ., Sağlam M., Baysal M., Bireysel Başvuru, Anayasa Mahkemesi Yayınları, 2013

Gözübüyük Ş., Gölcüklü F., Avrupa İnsan Hakları Sözleşmesi ve Uygulaması, Turhan Kitapevi, 2013

Harris D., O'Boyle M., Bates E. and Buckley C., Law of the European Convention on Human Rights, Oxford University Press, 2014

İnceođlu S., İnsan Hakları Avrupa Sözleşmesi ve Anayasa, Beta, 2013

Mowbray A., Cases, Materials, and Commentary on the European Convention on Human Rights, Oxford University Press, 2012

Özmen M., AİHM'ye bireysel başvurunun Önemi, Ankara Barosu Yayınları, 2013

However the assigned course book is Philippe Leach, Taking a case to the European Court of Human Rights, Oxford University Press, 2011

Weekly Plan

WEEK I : The Council of Europe (COE)

Historical background as to the COE's foundation, institutions and monitoring bodies and policies, Conventions of the COE

Reading:

Bond, M., The Council of Europe: Structure, History and Issues in European Politics, 2012

WEEK II : ECHR and the ECtHR

Institutional framework of the ECHR, main principles and key concepts
The procedure before the ECtHR

Reading:

Leach P., Taking a case to the European Court of Human Rights, Oxford University Press, 2011, pp.1-16 and 159-178

WEEK III : Individual application procedure and Admissibility Criteria Overview of the Additional Protocols

Reading:

Leach P., Taking a case to the European Court of Human Rights, Oxford University Press, 2011, pp. 16-78 and 107-159

WEEK IV : The EU and ECHR

Relations with the COE, envisaged accession of the EU to the ECHR

Reading:

Craig P. P., "EU Accession to the ECHR: Competence, Procedure and Substance", *Fordham International Law Journal*, vol.36, no. 1115, 2013, pp: 1114-1150

WEEK V : Protected Rights

Article 1 Obligation to Respect Human Rights

Article 2 Right to life (*McCann and others v. the United Kingdom*, 27 September 1995, *Öneriyildiz v. Turkey*, 30 November 2004),

Article 3 Prohibition of Torture (*İzci v. Turkey*, 23 July 2013, *Abdolkhani and Karimnia v. Turkey*, 22 September 2009)

WEEK VI : Protected Rights

Article 4 Prohibition of Slavery and Forced Labour (*C.N. v. the United Kingdom*, 13 November 2012)

Article 5 Right to Liberty and Security of Person (*Şener v. Turkey*, *Şık v. Turkey*, 8 July 2014)

WEEK VII : Protected Rights

Article 6 Right to a fair trial (*Göçmen v. Turkey*, 17 October 2006)

Article 7 No punishment without law (*Öztürk v. Turkey*, 4 October 2005)

WEEK VIII : Protected Rights

Article 8 Privacy, Family, Home and Correspondence (*Mentes and Others v. Turkey*, 28 November 1997, *Özpınar v. Turkey*, 19 October 2010)

Article 9 Freedom of Thought, Conscience and Religion (*Işık v. Turkey*, 2 February 2010, *Arslan and Others v. Turkey*, 23 February 2010, *Güler and Uğur v. Turkey* 2 February 2014, *Ülke v. Turkey*, 24 January 2006)

WEEK IX : Protected Rights

Article 10 Freedom of Expression (*Falakaoglu and Saygili v. Turkey*, 19 December 2006, *Vural v. Turkey*, 21 October 2014)

Article 11 Freedom of Assembly and Association (*Demir and Baykara v. Turkey*, 12 November 2008)

Article 12 Right to Marry (*O'Donoghue and Others v. the United Kingdom*, 14 December 2010)

WEEK X : Protected Rights

Article 13 Right to an effective remedy

Article 14 Prohibition of discrimination (*Boyraz v. Turkey*, 2 December 2014, *Opuz v. Turkey*, 9 June 2009)

The right to peaceful enjoyment of property Article 1 of Protocol No. 1

(Fener Rum Erkek Lisesi Vakfi v. Turkey, 9 January 2007; Turgut and others v. Turkey, 8 July 2008)

WEEK XI : Protected Rights and Protocols No. 4, 6, 7 and 13

The right to education (*Zengin v. Turkey, 9 October 2007*)

The right to free elections by secret ballot (*Söyler v. Turkey, 17 September 2013*)

WEEK XII : Execution of the Judgments

Procedures and working methods of the Committee of Ministers, Contracting states' responsibilities, compliance with judgments

Reading:

Leach P., *Taking a case to the European Court of Human Rights*, Oxford University Press, 2011, pp. 78-106

Hillebrecht, C., "The power of human rights tribunals: Compliance with the European Court", *European Journal of International Relations*, vol. 20, no.4, 2014, pp: 1100-1123

WEEK XIII : Impact of the ECHR in National Law

The status of the ECHR in Turkish Legal System, effects and outcome of cases for Turkey problems and issues arising from the implementation of the decisions of the ECtHR in the Turkish Legal System

Reading:

Forst D., "The Execution of Judgments of the European Court of Human Rights Limits and Ways Ahead", *Vienna Journal on International Constitutional Law*, vol. 7, no.3, thesis 2013

Elisabeth Lambert Abdelgawad, *Avrupa İnsan Hakları Mahkemesi Kararlarının İnfazı*, Avrupa Konseyi, 2012

WEEK XIV : Individual application to the Turkish Constitutional Court

Reading:

Ural, S., *Hak ve özgürlüklerin Korunması Bağlamında Bireysel Başvuru*, Seçkin, 2013, s. 281-314