

AINEKAVA – SYLLABUS

1.	TITLE	Protection of Human Rights under EU Law Inimõiguste kaitse Euroopa Liidu õiguses
2.	FACULTY & DEPARTMENT	Faculty of Law, International and European Union Law, University of Tartu
3.	CREDITS (AP/ECTS)	3 ECTS
4.	DURATION IN SEMESTERS	1
5.	COURSE ASSESSMENT	DIFFERENTIATED EXAM (ESSAY OR MULTIPLE CHOICE TEST)
6.	ÕPPEKAVA	Bachelor's studies, Master's studies
7.	OBJECTIVE IN ENGLISH	The course investigates, whether the citizens of the EU have fundamental rights at the EU level; where do those rights come from and whether and how is protection of those rights possible; how are applied the fundamental rights that a EU citizen has in his/her home state's internal law, EU law, as well as under other international treaties; the developments concerning judicial protection of human rights in the EU.
8.	OBJECTIVE IN ESTONIAN	Uurime, kas EL-i kodanikul on EL-i tasandil põhiõigusi; mis on nende õiguste aluseks; kas ja kuidas on neid õigusi võimalik kaitsta; kuidas kohaldatakse põhiõigusi, mis tulenevad EL-i kodanikule nii siseriiklikust õigusest, EL-i õigusest kui teistest rahvusvahelistest lepingutest, samuti põhiõiguste kohtuliku kaitse arenguid EL-is.
9.	LEARNING OUTCOME IN ENGLISH	You will get to know what are the EU citizen's fundamental rights, how protection of those rights is possible, and the ability to work with the acts that contain such rights.
10.	LEARNING OUTCOME IN ESTONIAN	Te saate teada, millised on EL-i kodaniku põhiõigused, kuidas on neid õigusi võimalik kaitsta ning omandate oskused töötada EL-i

		kodaniku põhiõigusi sisaldavate õigusaktidega
11.	BRIEF DESCRIPTION IN ENGLISH	Important changes are taking place in the area of protection of human rights in the EU - The Charter of Fundamental Rights of the EU entered into force on 1 December 2009; the official talks on the accession of the EU to the European Convention on Human Rights began on 7 July 2010. At present, neither the individuals nor the judges seem to know exactly, which court to approach in the case their human rights seem violated. The course focuses on the problems related to application of human rights, as well as to the relevant changes in Europe.
12.	BRIEF DESCRIPTION IN ESTONIAN	EL-is toimuvad inimõiguste kaitse alased muudatused - 1. detsembril 2009 jõustus EL-i põhiõiguste harta; 7. juulil 2010 algasid Euroopa Komisjoni ja Euroopa Nõukogu läbirääkimised EL-i ühinemiseks Euroopa inimõiguste konventsiooniga. Praegu ent pole ei liikmesriikide üksikisikutel ega kohtunikel alati selge, millise kohtu poole inimõiguste rikkumise juhtumil pöörduda. Kursus keskendub nii inimõiguste rakendamisele kui eespool viidatud muudatustega seonduvatele probleemidele Euroopas.
13.	COURSE PRE-REQUIREMENTS	
14.	ACADEMIC YEAR, SEMESTER, TYPE OF STUDY	2011/2012 autumn, full-time
15.	NUMBER OF PARTICIPANTS	40
16.	LANGUAGES OF TEACHING	English
17.	WORK VOLUMES AND FORMATS	Practice learning: 14 seminars: 12 colloquia: 0 individual hours: 75% e-learning and independent work.
18.	INDEPENDENT WORK	<ul style="list-style-type: none"> • Work with course materials and literature, • Preparation for seminars, • Case presentation.
19.	STUDY PERIOD (IN WEEKS)	

20.	TARGET STUDENTS	Estonian and Exchange students
21.	WEB-BASED	Partially
22.	WEBSITE	STUDY INFORMATON SYSTEM (ÕIS); MOODLE
23.	LIBRARY	COURSE MAP
24.	LECTURERS	Jaanika Erne (
25.	WAYS OF ASSESSMENT AND CRITERIA	After having performed the seminar tasks, you can choose between writing an essay and multiple-choice test.
	EXAM PRE-REQUIREMETS	<ul style="list-style-type: none"> • Case-presentation. • Active participation in seminars. • Performance of seminar tasks.
	COMPOSITION OF THE FINAL GRADE	Work with human rights case law 20% (ECtHR) + 20% (CJEU); Exam (Essay, or multiple-choice test) 60%
26.	SCHEDULE	<p>LECTURES AND SEMINARS:</p> <ol style="list-style-type: none"> 1. Introductory conceptual approach. Human rights and their universal nature. Historical development of human rights in Europe. – 2 L 2. Protection of fundamental rights in the European Court of Human Rights. - 2 S 3. Protection of fundamental rights in the European Union and in the Court of Justice of the European Union. - 2 S 4. Evaluation: Are fundamental rights effectively protected in the European Union? - 2 S 5. Should the European Union accede to the European Convention on Human Rights? - The legal and political implication of such accession. - 2 S 6. The Charter of Fundamental Rights of the European Union - codification, content (incl. general provisions), political and legal status. - 2 S 7. Implementation of human rights. - 2 S

27.	READING LIST	
	COMPULSORY MATERIALS	<ol style="list-style-type: none"> 1. European Convention on Human Rights 2. Treaty on the Functioning of the European Union 3. Treaty on European Union 4. Charter of Fundamental Rights of the European Union 5. Selected cases of the ECtHR 6. Selected cases of the CJEU 7. See esp. also the list of compulsory materials as indicated in the Syllabus under each lecture and seminar!
	OPTIONAL READINGS	Hanski, R., Suksi, M. (eds.). (1999) <i>An Introduction to the International Protection of Human Rights. A Textbook</i> . Turku /Åbo: Åbo Academy University. (Selected Chapters)
28.	<p>CONTENT</p> <p>1. INTRODUCTIVE CONCEPTUAL APPROACH. HUMAN RIGHTS AND THEIR UNIVERSAL NATURE. HISTORICAL DEVELOPMENT OF HUMAN RIGHTS IN EUROPE</p> <p>Human rights and fundamental rights. Defining human rights, their nature. Defining fundamental rights. The democratic imperative - relations between human rights and democratic ideals. The rule of law: access to courts, the legality principle, judicial safeguards. General history of development of human rights: Genesis, The values of a democratic society, The values and the Strasbourg system, The values and the EU. Difference between self-contained regimes, international law and internal law. Law of a self-contained regime takes precedence over general international law? (How) does law of an international organization compete national sovereignty? Constraints to sovereignty under international regimes? Why do states become non-unitary actors? The EU as a non-unitary international actor. Codification history of human rights - from morals to codification.</p> <p>COMPULSORY LITERATURE:</p> <p>M.-B. Dembour (2010), „What Are Human Rights? Four Schools of Thought“ 1 <i>Human Rights Quarterly</i> 1-20; M. Piechowiak (1999), „What are Human Rights? The Concept of Human Rights and Their Extra-Legal Justification“ in R. Hanski., M. Suksi (eds.), <i>An Introduction to the International Protection of Human Rights</i> (Turku/Åbo: Åbo Academy University) 3-14; J. Zajadlo (1999), „Human Dignity and Human Rights“ in R. Hanski., M. Suksi (eds.), <i>An Introduction to the International Protection of Human Rights</i> (Turku/Åbo: Åbo Academy University) 15-24; J. Donnelly (2007), „The Relative Universality of Human Rights“ 2 <i>Human Rights Quarterly</i> 281-306; C. O'Connell (2009), „Human rights and within multi-layered systems of</p>	

constitutional governance: rights cosmopolitanism and domestic particularism in tension“ Research Paper No. 12/2009, *UCD Working Papers in Law*; J. G. Merrills (1999), „Promotion and Protection of Human Rights within the European Arrangements“ in R. Hanski., M. Suksi (eds.), *An Introduction to the International Protection of Human Rights* (Turku/Åbo: Åbo Academy University) 275-286; K. Drzewicki (1999), „Internationalization of Human Rights and Their Juridization“ in R. Hanski., M. Suksi (eds.), *An Introduction to the International Protection of Human Rights* (Turku/Åbo: Åbo Academy University) 25-47; A. Rosas, M. Scheinin (1999), „Categories and Beneficiaries of Human Rights“ in R. Hanski., M. Suksi (eds.), *An Introduction to the International Protection of Human Rights* (Turku/Åbo: Åbo Academy University) 49-62; A. J. Langlois (2003), „Human Rights without Democracy? A Critique of the Separationist Thesis“ *4 Human Rights Quarterly* 990-1019.

Optional Literature: J. G. Merrills (2000), „Human rights and democratic values in the Strasbourg system“ *Thesaurus Acroasium* 37-106; M. E. Winston (1989), *The Philosophy of Human Rights* (California: Wadsworth); J. Robert (1994), „Constitutional and International Protection of Human Rights: Competing or Complementary Systems? General Report to the IXth Conference of European Constitutional Courts“ *1-2 Human Rights Law Journal* 1-15; M. Koskeniemi. (1999) „The Effect of Rights on Political Culture“ in P. Alston et al (eds.), *The EU and Human Rights* (Oxford: Oxford University Press) 99-116; C. Leben (1999), „Is there a European Approach to Human Rights?“ in P. Alston et al (eds.), *The EU and Human Rights* (Oxford: Oxford University Press) 69-98.

2. PROTECTION OF FUNDAMENTAL RIGHTS IN THE EUROPEAN COURT OF HUMAN RIGHTS

Review of Member States' acts adopted in the framework of EU law. Review of Member States' acts outside the scope of EU law (internal exclusive competences). Review of EU acts. Question of responsibility.

COMPULSORY LITERATURE: European Convention on Human Rights and Fundamental Freedoms; P. Leach (2009), „On Reform of the European Court of Human Rights“ *6 European Human Rights Law Review* 725-735; E. Brems (2005), „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“ *1 Human Rights Quarterly* 294-326; J. G. Merrills (1999), „The Council of Europe (I): The European Convention on Human Rights“ in R. Hanski., M. Suksi (eds.), *An Introduction to the International Protection of Human Rights* (Turku/Åbo: Åbo Academy University) 287-306. See also moodle!

3. PROTECTION OF FUNDAMENTAL RIGHTS IN THE EUROPEAN UNION AND IN THE COURT OF JUSTICE OF THE EUROPEAN UNION

The structure of the EU. The judicial structure of the EU. Protection of human rights in the CJEU: Review of the Member States' acts adopted under EU law. Review of the Member States' acts outside the scope of EU law (internal exclusive competences). Review of EU acts. Case-study.

COMPULSORY LITERATURE: C. Kombos (2010), „The Esoteric Dimension of Constitutional Pluralism: EU’s Internal Constitutional Sub-units and the Non-symbolic Cumulative Constitution“ in P. J. Birkinshaw, M. Varney (eds.), *The European Union Legal Order after Lisbon* (Austin, Boston, Chicago, New York, The Netherlands: Kluwer) 291; G. Anthony (2010), „EU Law’s Fundamental Rights Regime and Post-national Constitutionalism: Kadi’s Global Setting“ in P. J. Birkinshaw, M. Varney (eds.), *The European Union Legal Order after Lisbon* (Austin, Boston, Chicago, New York, The Netherlands: Kluwer) 179; S. Carruthers (2009), „The Treaty of Lisbon and the reformed jurisdictional powers of the European Court of Justice in the field of justice and home affairs“ 6 *European Human Rights Law Review* 784-804.

For case study: Case 1/58 Stork [1959] ECR 43, Case 36/75 Rutili [1975] ECR 1219, Case 44/79 Hauer [1979] ECR 3727, Joined Cases 60 and 61/84 Cinéthèque [1985] ECR 2605, Case C-260/89 ERT v. DEP [1991] ECR I-3977. Post-Maastricht: C-368/95 Familiapress [1997] ECR I-3689, C-106/96 UK v. Commission [1998] ECR I-2729. Post-Amsterdam: Case C-60/00 Carpenter [2002] ECR I-6279, Case 112/00 Schmidberger [2002] ECR I-2569, Case C-36/02 Omega [2004] ECR I-9609. Post-Nizza: Case C-341/05 Laval [2007] ECR I-11767, Case C-438/05 Viking [2007] ECR I-10779. Post-Lisbon. See moodle!

Optional Literature: C. Timmermans (2004), „The European Unions’s Judicial System“ *Common Market Law Review* 41, 393–405; P. Alston, J.H.H. Weiler (1999), „An “Ever Closer Union” in Need of a Human Rights Policy: The European Union and Human Rights“ in P. Alston et al (eds.), *The EU and Human Rights* (Oxford: Oxford University Press) 3-67; A. Von Bogdandy (2000), „The European Union as a Human Rights Organisation? Human Rights and the Core of the European Union“ *Common Market Law Review* 6, 1307-1338; I. Cameron (1995), *An Introduction to the European Convention on Human Rights* (Uppsala: Iustus Förlag); T. Eilmansberger (2004), „The Relationship Between Rights and Remedies in EC Law: in Search of the Missing Link“ 41 *Common Market Law Review* 1199–1246; N. Neuwahl, A. Rosas (eds.), (1995) *The EU and Human Rights* (The Hague, London, Boston: Kluwer).

4. EVALUATION: ARE FUNDAMENTAL RIGHTS EFFECTIVELY PROTECTED IN THE EUROPEAN UNION?

What does the “right to a fair trial” mean? Should this right be effectively guaranteed? Is the right effectively guaranteed in the EU? Conditions for more effective protection of fundamental rights in the EU.

COMPULSORY LITERATURE: S. Douglas-Scott (2006), „A Tale of Two Courts: Luxembourg, Strasbourg and the Growing European Human Rights acquis“ 43 *Common Market Law Review* 629-665.

Optional Literature: D. Spielmann (1999), „Human Rights Case Law in the Strasbourg and Luxembourg Courts: Conflicts, Inconsistencies, and Complementarities“ in P. Alston et al (eds.), *The EU and Human Rights* (Oxford: Oxford University Press) 757-780; B. De Witte (1999), „The Past and Future Role of the European Court of Justice in the Protection of Human Rights“ in P. Alston et al (eds.), *The EU and Human Rights* (Oxford: Oxford University Press) 859-898.

5. SHOULD THE EUROPEAN UNION ACCEDE TO THE EUROPEAN CONVENTION ON HUMAN RIGHTS? - THE LEGAL AND POLITICAL IMPLICATION OF SUCH ACCESSION

Does the EU need the ECHR? The question about the competence of the EU to accede to the ECHR. What will change when the EU accedes to the ECHR? Would the accession of the EU to the ECHR mean higher judicial protection of fundamental rights? Whether and how much would the EU lose from its independence if it accedes to the ECHR? Case study.

COMPULSORY LITERATURE: Protocol No. 14 to the Convention for the Protection of Human Rights and Fundamental Freedoms, amending the control system of the Convention. CETS 194. Explanatory Report to Protocol No. 14; L. Šaltinytė (2010), "European Union accession to the European Convention on Human Rights: Stronger Protection of Fundamental Rights in Europe?" 120 *Jurisprudencija* 177-196; J. Callewaert (2009), „The European Convention on Human Rights and European Union law: a long way to harmony“ 6 *European Human Rights Law Review* 768-783. For case study: Opinion 2/94 Accession by the Community to the European Convention for the Protection of Human Rights and Fundamental Freedoms [1996] ECJ I-1759. See moodle!

Optional Literature: G. De Búrca (1993), "Fundamental Human Rights and the Reach of EC Law" 13 *Oxford Journal of Legal Studies* 283-319; I. Canor (2000), "Primus Inter Pares. Who is the Ultimate Guardian of Fundamental Rights in Europe" 1 *European Law Review* 3-21; J.H.H. Weiler, S.C. Fries (1999), "A Human Rights Policy for the European Community and Union: The Question of Competences" in P. Alston et al (eds.), *The EU and Human Rights* (Oxford: Oxford University Press) 147-166.

6. THE CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION - CODIFICATION, CONTENT (INCL. GENERAL PROVISIONS), POLITICAL AND LEGAL STATUS

The historical development of the Charter. The rights written in the Charter. The general part of the Charter. The political and legal status of the Charter – the role of the judicial and administrative practice in shaping the Community acquis. The future status of the Charter. The scope of application of the Charter. The application principles of the Charter. The relation between the Charter and the European Convention on Human Rights. The relation between the Charter and the constitutional law of the Member States. The scope of interpretation of the Charter. Case-study on application of the Charter of Fundamental Rights.

COMPULSORY LITERATURE: Charter of Fundamental Rights of the European Union. O.J. [2010] C-83, pp. 389-403; S. Douglas-Scott (2004) „The Charter of Fundamental Rights as a Constitutional Document“ 1 *European Human Rights Law Review* 37-50; E. O. Eriksen (2003) "Why a Charter of Fundamental Human Rights in the EU?" 3 *Ratio Juris* 352-373. See moodle!

For case study: SELECTIVE COMPULSORY LITERATURE: Case T-54/99 Max.mobil Telekommunikation Service v. European Commission [2002] ECR II-00313; Case T-177/01 Jégo Quéré v. European Commission [2002] ECR II-02365, or other relevant case of the CJEU; Case 00025680/94 I. v. The United Kingdom, judgment of 11 July 2002; Case 00028957/95 Christine Goodwin v. The United Kingdom, judgment of 11

July 2002, or other relevant case of the ECtHR; or relevant Draft Recommendation of the European Ombudsman; or relevant case law of an internal court. See moodle!
Optional Literature: G. De Búrca (2001), "The Drafting of the European Union Charter of Fundamental Rights" *European Law Review* 26, 126-138; G. De Búrca (2001), *The Charter and Beyond*. Harvard Jean Monnet Working Paper Series 10/2001; R. Rack, S. Lausegger (1999), „The Role of the European Parliament: Past and Future“ in P. Alston et al (eds.), *The EU and Human Rights* (Oxford: Oxford University Press) 801-838; J. Wouters (2001), "The EU Charter of Fundamental Rights – Some Reflections on its External Dimension" 1 *Maastricht Journal of European Comparative Law* 3-10; F. M. Besslerink (2000), „The Member States, the National Constitutions and the Scope of the Charter“ 2 *Maastricht Journal of European Comparative Law* 72; J. B. Liisberg (2001), "Does the EU Charter of Fundamental Rights Threaten the Supremacy of Community Law?" *Common Market Law Review* 38, 1171-1199; B. De Witte (2000), "The Legal Status of the Charter: Vital Question or Non-Issue?" 2 *Maastricht Journal of European Comparative Law* 81-89; C. Engel (2001), „The European Charter of Fundamental Rights. A Changed Political Opportunity Structure and its Normative Consequences“ 2 *European Law Journal* 151-170; P. Lemmens (2000), „The Relation between the Charter of Fundamental Rights of the European Union and the European Convention on Human Rights – Substantive Aspects“ 2 *Maastricht Journal of European Comparative Law* 49-67.

7. IMPLEMENTATION OF HUMAN RIGHTS

Case-study on human rights enforcement.

COMPULSORY LITERATURE: M. Scheinin (1999), „International Human Rights in National Law“ in R. Hanski., M. Suksi (eds.), *An Introduction to the International Protection of Human Rights* (Turku/Åbo: Åbo Academy University) 417-428; M. Scheinin (1999), „International Mechanisms and Procedures for Implementation“ in R. Hanski., M. Suksi (eds.), *An Introduction to the International Protection of Human Rights* (Turku/Åbo: Åbo Academy University) 429-452; Case 71503/03 Assanidze v. Georgia, judgment of 08 Aug. 2004. See moodle!

Optional Literature: S. Skogly, M. Gibney (2002), „Transnational Human Rights Obligations“ 3 *Human Rights Quarterly* 781-798.

The Syllabus was created in 2004-2011 and is currently under revision.

Jaanika Erne, 12 February 2023