

HUMAN RIGHTS LITIGATION
2014 SUMMER SCHOOL

PROVISIONAL CURRICULUM

MONDAY

Introduction to CEU (09:00 – 9:30, CEU staff)

Objectives. Introduction and welcome to CEU.

Introduction to the Human Rights Litigation Course (9:30 – 11:30)

Objectives. Introduce participants and faculty to each other, provide an overview of the course, and discuss the Justice Initiative's approach to strategic litigation.

Method. Presentation of the objectives and structure of the course; introduction of participants and faculty; overview of the work of the Justice Initiative

Public Interest Litigation (12:30 – 15:00)

Objectives. Participants will obtain an overview of public interest litigation (PIL) and a clear understanding of when to engage in PIL and what it entails.

Curriculum. The session will cover:

- What is PIL: Definition, history, and review of public interest litigation.
- Case Selection: Including issue choice, finding clients, forum choice.
- Elements of PIL: Including research, evidence, fact-finding, drafting, ethics, campaigning, advocacy, communications, client care
- Preparation and Planning: completing a case assessment checklist and an action plan.

Method. Presentation (50) and discussion (40); presentation of case studies by participants (60).

Preparation. Participants will be asked in advance of the course to prepare a case study of an example of PIL that they have been involved in, and to complete a case assessment checklist for that case.

Sample Reading

- PILI, *Strategic Litigation: Bringing Lawsuits in the Public Interest* (2001), Chapter 3.
- Interights, *Chapters 2(Strategic Litigation and Case Selection) and 4Strategic Litigation in Practice*), Strategic Litigation under the Race Directive (2004).
- James A. Goldston & Mirna Adjami, *The Opportunities and Challenges of Using Public Interest Litigation to Secure Access to Justice for Roma Minorities in Central and Eastern Europe*, Draft for ABA World Justice Forum (2008).
- Sarat & Scheingold, *Cause Lawyers and Social Movements* (Introduction)

Further Resources

- Global Rights, *Promoting Justice* (2001).
- *The NAACP's Legal Strategy against Segregated Education* (Introduction and Conclusion)
- Rosenberg, *The Hollow Hope* (Introduction and Chapter 1)
- Epp, *The Rights Revolution* (Introduction and Conclusion)
- Turkusic, *Strategic Litigation and Segregation in the Education System* (2009)

Strategy, Advocacy and Communications (15:30 – 17:30)

Objectives. Participants will examine how litigation fits into a broader strategy, how it must be combined with effective public and elite advocacy in order to effect social change, and will develop their knowledge of the different components of a media strategy and how to effectively communicate.

Participants will have an opportunity to practice and analyse media skills, focusing on how to effectively communicate on camera.

Curriculum. The principles of strategic communication to support social change, including:

- Why communications is important for strategic litigation
- How to identify targets for advocacy and what influences the appropriate targets in a particular case
- Different approaches to communicating with and advocating to various audiences
- Components of a media strategy
- Messaging
- Communications outputs

Method. Initial discussion of the importance of advocacy, and the difference between talking to a Court and talking to other audiences (the media or policy makers), and how to situate your case in current policy debates (30), how to identify the relevant audience or advocacy targets (30), and practical discussion of techniques in dealing with journalists and other message carriers (60). Participants will have an opportunity to develop and implement these principles in the workshops the following afternoon.

Sample Reading

- Open Society Foundations, *Media Guide* (2009).
- Frameworks Institute, *Framing Public Issues* (2002).
- Open Society Foundations, *Web Style Guide* (2010).

- Center for Community Change, *How to Tell and Sell Your Story: A Guide to Media for Community Groups and Other Non-Profits* (1999).
- The [Strategic Communications Resource Library](#)

TUESDAY

Human Rights Courts and Tribunals (9:30 – 11:00)

Objectives. Participants will review the regional and sub-regional tribunals and UN treaty bodies, discussing the history, structure and procedure of each, as well as the practical considerations of litigating before each one.

Curriculum. This session will cover:

- Inter-American Court of Human Rights
- European Court of Human Rights
- African Court of Human and Peoples' Rights and major sub-regional systems
- UN Human Rights Committee and Committee Against Torture

Method. Structured presentations by teams of participants who practice before each of the relevant human rights bodies (60), followed by moderated discussion on comparative procedure and challenges / opportunities in each (30).

Legal Drafting (11:15 – 13:15)

Objectives. Participants will discuss the process of legal drafting and best practices for drafting human rights filings.

Curriculum. An overview of strategies for effective legal writing, including:

- Stages of legal drafting
- Structuring your document
- Introductions and lead paragraphs
- Presenting the facts
- Drafting legal arguments and using different sources of law
- Discussion of useful sources and techniques for legal research
- Effective review and editing

Method. Presentation on best practices with interactive discussion (90), with discussion of two in-class drafting exercises (2 x 15)

Preparation. Read and prepare draft answers to the two drafting exercises on Moodle (lead paragraphs; topic sentences).

Sample Reading

- Pamphlet: Three Approaches to the Drafting Process [includes Betty Flower's *Madman, Architect, Carpenter and Judge* story; Section 1.8 from the *British Bar Course Drafting book*; Pages 42-51 of *The Lawyer's Guide to Writing Well*]
- *Chapter 8: Writing the Lead*, *The Lawyer's Guide to Writing Well*
- *The Human Rights Research Guide* distributed in class *Chapter 9: Form Structure and Organization*, *The Lawyer's Guide to Writing Well*
- *Chapter 11: Revising your Prose*, *The Lawyer's Guide to Writing Well*
- ECHR Practice Direction on Written Pleadings

Advocacy Workshops: using the tools of advocacy and media (14:00 – 16:30)

Objectives. Participants will put the principles discussed in Monday's session into practice. Half will attend the media session and half the advocacy session for 60 minutes each; then they will swap.

Method. Brief discussion about techniques to apply the principles of advocacy and communication to the particular audience or environment (15), followed by simulated pitches by participants and feedback from faculty (45).

WEDNESDAY

International Remedies (9:30 – 11:00)

Objectives. Participants will learn about the important of, and methods for, requesting proper remedies.

Curriculum. Overview of available remedies, including:

- Types of remedies that can be ordered
- Damages awards
- Approaches the remedies in the different tribunals
- Innovative approaches to remedies for systemic violations
- Interim remedies

Method. Presentation on remedies (50) followed by participant discussion of the remedies they sought in existing cases, why, results, and alternative approaches (40).

Sample Reading

- Shelton, *Remedies in International Human Rights Law* (2nd edition), Chapters 1 (Concepts and Theories of Remedies) and 6 (Procedural Issues)
- *Open Society Justice Initiative*, Pamphlet on Remedies in Human Rights Law
- ECHR Practice Direction, *Just Satisfaction Claims*
- *Khodorkovskiy v Russia*, ECHR Judgment of 31 May 2011, paras. 269-271
- ECHR Information Sheet, *Interim Measures*
- ECHR Information Sheet, *Pilot Judgment Procedure*
- "Schedule of Article 41 Awards in Selected ECHR Judgments, 2001-2004" (from Leach, *Taking a Case to the ECHR*)

Advocacy to Implement Human Rights Judgments (11:30 – 13:00)

Objectives. Participants will discuss key challenges in the implementation of international and regional human rights decisions, and will learn the skills and tactics necessary to develop political advocacy (lobbying) for more implementation of judgments and achieving concrete policy or practical changes as a result of litigation.

Curriculum. Discussion of implementation issues and domestic/international models and strategies for addressing them, including:

- International and domestic (legislative, judicial, political, ombudsperson) models of implementation.
- Strategies to promote implementation.
- Briefing papers: identifying leverage, targets and messengers.
- UN Advocacy: the Human Rights Council and beyond.
- Advocacy in the European Union.

Method. Brief presentation on problems with implementation of human rights judgments (20), discussion of challenges faced and advocacy techniques deployed by participants (20), presentation of effective and practical advocacy in support of litigation (50). Participants will have an opportunity to further discuss advocacy opportunities in their specific cases during the discussion groups each evening.

Sample Reading

- Fenton Communications, *Now Hear This: The Nine Laws of Successful Advocacy Communications* (2009).
- OSJI, *From Judgment to Justice: Implementing International and Regional Human Rights Decisions* (2010), Executive Summary.
- Save the Children, *Advocacy Toolkit* (2007).
- WaterAid, *The Advocacy Sourcebook* (2007).
- Open Society Institute Local Government and Public Service Reform Initiative, *Writing Effective Public Policy Papers* (2002).
- Caci and Bruch, *Monitoring the Implementation of Judgments of the ECHR – a handbook for NGOs* (2011)
- Council of Europe – Parliamentary Assembly, *States with major structural/systemic problems before the European Court of Human Rights: statistics* (2011)

[Afternoon: Specialist Seminars from 14:00 – 16:30]

THURSDAY

Evidence Workshop – taking witness statements (09:30 – 11:00)

Objectives. Participants will review best practices for collating and using witness statements, including how statements in support of litigation are different to those collected for other purposes.

Curriculum. The session will cover:

- Principles and best practices in taking witness statements
- Planning statement taking
- Options for taking large numbers of statements
- Working with interpreters
- Practical considerations (logistics, safety)
- Other forms of client evidence
- Ethical considerations in taking witness statements

Method. Presentation and discussion on taking witness statements (60) and interactive exercise (30).

Sample Reading

- EHRAC, *Guide to taking a witness statement*.
- Guzman, *Getting the Facts Down Documenting Human Rights Violations* (1997)
- IBA, *Human Rights Fact-Finding Some Legal & Ethical Dilemmas* (2010)

Ethics & Client Care (11:30 – 13:00)

Objectives. Participants will learn about ethical issues encountered in strategic human rights litigation through a discussion of relevant standards and practical problems that arise.

Curriculum. The session will cover:

- Client care, including the professional duties of zealous advocacy, communication, and confidentiality of information
- Duty of diligence and record-keeping
- Ethical standards for counsel appearing before international human rights courts and tribunals
- Conflicts of interest in strategic litigation; lawyering for a cause and for a client

Method. Moderated discussion with hypothetical scenarios.

Sample Reading

- International Bar Association (IBA), *International Code of Ethics* (1998).
- *Hague Principles on Ethical Standards for Counsel Appearing before International Courts and Tribunals* (2010).
- Benedict Kingsbury, *Representation in Human Rights Litigation* (2000).

- Council of Bars and Law Societies of Europe (CCBE), *Charter of Core Principles of the European Legal Profession and Code of Conduct for European Lawyers* (2008).
- Jenia Iontcheva Turner, *Legal Ethics in International Criminal Defense* (2010).

[Afternoon: Specialist Seminars from 14:00 – 16:30]

FRIDAY

Litigating Human Rights in National Courts (9:30 – 11:00)

Objectives. Participants will discuss the particular challenges of litigating human rights issues before national tribunals, strategies to address these challenges, and briefly review the obligation to exhaust domestic remedies.

Curriculum. The session will cover:

- Applicability of human rights law at the national level
- How to frame human rights claims in domestic terms
- Standing to bring human rights claims in domestic courts: NGO claims, group claims, victim status
- How to use regional or comparative law in domestic claims
- Accountability vs. redress for human rights violations: how to establish the responsibility of offenders as well as seeking compensation or restitution for victims.
- Other venues for domestic human rights claims: NHRIs and ombudspersons.
- The importance of raising all human rights claims domestically: the obligation to exhaust domestic remedies (including in situations of delay, ineffective remedies, and ongoing violations)

Method. Discussion of the principles which apply when litigating human rights issues before national courts (45), review the requirement to exhaust domestic remedies for admissibility purposes (15), and participants identify challenges which they have faced in raising human rights claims domestically and strategies to address these (30).

Sample Reading

- Reid, *A Practitioner’s Guide to the European Convention on Human Rights*, “Section I(B): Admissibility Checklist” (pp. 23-36).

Evidence Workshop – building a documentary record (11:30 – 13:00)

Objectives. Participants will review best practices for collating and using documentary and other non-witness evidence. Covers how evidence can be used to support a human rights case, and the options available to a human rights activist.

Curriculum. The session will cover:

- Forms of evidence that have been accepted in different tribunals
- Difference between gathering documentary evidence for use in litigation and for other purposes (e.g. report writing)
- Using NGO and other human rights reports in support of litigation
- Statistical evidence
- Monitoring and research
- Empirical testing
- How to present documentary evidence in litigation

Method. Presentation on documentary evidence (20), discussion of the different sources (20), best practices in gathering non-witness evidence (20), and how to most effectively use and present documentary evidence (30).

Sample Reading

- IBA, *Guidelines on International Human Rights Fact-finding* (2009).
- Guzman, *Getting the Facts Down Documenting Human Rights Violations* (1997)
- Orentlicher, *Bearing Witness The Art & Science of Human Rights Fact-Finding* (1990)

Conclusion: putting the principles into practice (14:00 – 16:30, Rupert Skilbeck)

Objectives. Participants will discuss the key points which they have learned from the course, techniques for implementing these in their practice, and the challenges and opportunities that they see in putting these principles into practice.

Method. Interactive discussion of the key points from the course (30), particular challenges and opportunities which the participants perceive in putting these points into practice (60), and specific technique and strategies to assist the participants in maximising those opportunities and minimising or overcoming the challenges (60).

Closing and Evaluation (17:00 – 18:00, Rupert Skilbeck)

Participants will complete a survey and discuss in small groups what they gained during the course, and what feedback they have for OSJI/presenters, and how to continue to collaborate after the conclusion of the course.

SPECIALIST SEMINARS

Three sessions will take place concurrently on Wednesday and Thursday afternoon from 2 pm to 4.30pm. Participants will attend one each day, and will be asked to rank the specialist seminars in order of preference, with placements made accordingly. The final schedule of the specialist seminars will be determined based on participant preferences and availability of faculty.

Specialist Seminar: Litigating Arrest Rights

Objectives. Participants will learn about recent developments in the protection of rights of people accused or suspected of crimes, and how strategic litigation can be used to effectively litigate for change in their home countries.

Curriculum. The session will cover:

- Recent developments in arrest rights and early access to a lawyer
- The various sources and standards of arrest rights: UN Standards; ICCPR; Human Rights Commission; European Convention and Court; Inter-American and African systems; European Commission Roadmap; Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
- The practical implementation of arrest rights and early access to a lawyer
- A review of the varying levels of protection provided around the world
- Using strategic litigation domestically and internationally
- Case studies on how litigation has been recently used in various European countries

Method. Presentation and discussion (80); case studies (30); participant presentations (20), exercises (20)

Preparation. Before the Summer School commences, participants will be requested to fill out a short questionnaire on the right to early access to counsel in their country.

Sample Reading

- OHCHR, *Chapter 5: Arrest Rights and Pre-Trial Detention*, Manual on Human Rights (2003): <http://www.ohchr.org/Documents/Publications/training9chapter5en.pdf>
- ECHR Factsheet, *Police arrest / assistance of lawyer* (February 2011): http://www.echr.coe.int/NR/rdonlyres/1DA09157-E81D-4DAF-A378-956F2A3BBB79/0/FICHES_Garde_à_vue_EN.pdf
- Justice Initiative Template Brief #1: *The Right to Early Access to Legal Assistance*
- Justice Initiative Template Brief #2: *The Right to Information*
- *Chapter 2, Effective Criminal Defence in Eastern Europe*
- Resolution of the Council of the European Union on a *Roadmap for Strengthening the Procedural Rights of Suspected or Accused Persons in Criminal Proceedings*: <http://register.consilium.europa.eu/pdf/en/09/st15/st15434.en09.pdf>

Specialist Seminar: Discrimination

Objectives. Participants will broaden their knowledge of various aspects of discrimination, discussing what anti-discrimination entails and sharing experiences from various legal systems.

Curriculum. The session will cover:

- International standards
- Direct and indirect discrimination
- Evidence in support of discrimination
- Grounds of discrimination
- Comparators
- Burden of proof
- Litigation in Europe under the Gender Equality Directive and the Race Equality Directive.
- Litigation against discrimination before the European Court of Human Rights using Article 14 and Protocol 12.
- Litigation against discrimination before the UN HRC and UN CERD
- Use of soft law processes to develop UN standards

Method. Initial 45 min presentation followed by discussion of participant case studies.

Sample Reading

- OHCHR, *Chapter 13: Non-Discrimination in the Administration of Justice*, Manual on Human Rights (2003).
- James A. Goldston, *The Struggle for Roma Rights: Arguments that Have Worked*, Human Rights Quarterly, Volume 32, Number 2 (May 2010), pp. 311-325.
- FRA and the European Court of Human Rights, [*Handbook on European non-discrimination law*](#) (2011).
- Interights, [*Non-Discrimination in International Law: A Handbook for Practitioners*](#) (2005).

Specialist Seminar: Freedom of Information & Expression

Objectives. Participants will learn about how to promote the right of access to information, and protect the rights of journalists and others whose freedom of expression is attacked.

Curriculum. The session will cover:

- comparative discussion of FoE and FoI guarantees in the various regional systems
- basic principles: protection of core political speech
- reconciling free speech with the right to reputation

- the Internet: free speech “regardless of frontiers”
- recognition of the right of access to government information

Sample Reading

- Overview of freedom of expression guarantees under international human rights law (comparative chart).
- Interights, *Freedom of Expression Under the European Convention on Human Rights (Article 10)* (October 2009), Chapters 1, 2 and 5.
- Eduardo Bertoni, *The Inter-American Court of Human Rights and the European Court of Human Rights: A Dialogue on Freedom of Expression Standards* (EHRLR, 2009)
- *Yildirim v. Turkey*, ECHR (2011): Justice Initiative third-party [brief](#) and [case summary](#) (blocking of Internet sites).
- *Pauliukiene v. Lithuania*, ECHR (2009): Justice Initiative et al, third-party [brief](#) and [case summary](#) (right to reputation).
- *Bubon v. Russia*, ECHR (2010): Justice Initiative third-party [brief](#) and [case summary](#); see also *Claude Reyes v. Chile* (2006) [case summary](#) (access to government information).
- Stijn Smet, *Freedom of Expression and the Right to Reputation: Human Rights in Conflict* (2011) ([link](#) to summary of argument)

Specialist Seminar: Economic, Social and Cultural Rights

Objectives. Participants will review the justiciability of economic, social and cultural rights in national and international fora, and will discuss examples of attempts to litigate these rights.

Curriculum. The session will cover:

- justiciability of economic, social and cultural rights
- forums for litigating economic, social and cultural rights
- specific challenges in litigating economic, social and cultural rights
- remedies and implementation in the context of economic, social and cultural rights

Method. Initial presentation (30), discussion of examples and case studies (60), discussion of specific challenges and strategies raised (60).

Sample Reading

- Amnesty International. *Make our Rights Law: Enforce Economic, Social and Cultural rights*. (2010)
- International Commission of Jurists (ICJ). *Courts and the Legal Enforcement of Economic, Social and Cultural Rights. Comparative Experiences of Justiciability*, 2008, Human Rights and Rule of Law Series n° 2
- Alston, Philip. *Establishing a Right to Petition under the Covenant on Economic, Social and Cultural Rights*, in: Henry Steiner, Philip Alston and Ryan Goodman, *International Human Rights in Context. Law, Politics, Morals*, Oxford University Press, 2008.
- Hunt, Paul. *Taking Economic, Social and Cultural Rights Seriously*. (speech delivered during an event organized by Human Rights Now, Tokyo, Japan - January, 9th, 2009).

- Porter, Bruce. *Justiciability of ESC Rights and the Right to Effective Remedies: Historic Challenges and New Opportunities*, in: Economic, Social and Cultural Rights and the Optional Protocol to the ICESCR, (Chinese Academy of Social Sciences), Beijing, 2008.
- General Comment n° 9 of the Committee on Economic, Social and Cultural Rights, "The domestic application of the Covenant", [03/12/98 E/C.12/1998/24, CESCR](#)
- Maastricht Guidelines on Violations of Economic, Social and Cultural Rights, Maastricht, January 22-26, 1997

Specialist Seminar: Torture and Deaths in Custody

Objectives. Participants will review the legal standards that apply in cases involving torture and deaths in custody, and examine examples of litigation in different situations that arise in practice.

Curriculum. Overview of the latest legal developments and litigation strategies/tactics that work, including:

- Legal standards against torture
- Definition of torture
- Safeguards that prevent torture.
- The investigative duty: Prompt, Impartial, Effective.
- Non-legal initiatives that work
- Pressure points that are effective in bringing an end to torture

Method. Initial presentation on legal standards (20); presentation and case study discussions on types of cases.

Sample Reading

- Manfred Nowak, *Report of the Special Rapporteur on Torture: study on the phenomena of torture, cruel, inhuman or degrading treatment* (2010), Sections II and III.A.
- Amnesty International, *Combating Torture: A Manual for Action* (2002).
- Amnesty International, *Monitoring and Investigating Deaths in Custody* (2000).
- Manfred Nowak, *Report of the Special Rapporteur on Torture: study on the phenomena of torture, cruel, inhuman or degrading treatment* (2010).

Specialist Seminar: Migrants and Human Rights

Objectives. Participants will discuss the range of human rights violations which affect migrant communities or which are often associated with aggressive responses to migration, both legal and illegal.

Curriculum. The session will cover:

- Trends in national and international responses to migration
- Human rights violations associated with legal and illegal migration

- Particular challenges involved in litigating migration-related violations

Method. Presentation on the interaction of migration with human rights and the clusters of human rights violations often associated with migration (60) followed by discussion of case studies which raise intersection of migration and human rights (90).

Sample Reading

- Cox, *Overview of Human Rights Dimensions of Migration* (2012)
- International Commission of Jurists, *Practitioners Guide No. 6: Migration and International Human Rights Law*
- Grant, *International migration and human rights*, Global Commission on International Migration (2005).
- Council of Europe Commissioner for Human Rights, *Criminalisation of Migration in Europe: Human Rights Implications* (2009)
- Report of the High Commissioner for Human Rights on the Economic, Social and Cultural Rights of Migrants (2010)
- International Council on Human Rights Policy, *Irregular Migration, Migrant Smuggling and Human Rights: Towards Coherence* (2010)

ADDITIONAL WORKSHOPS AND DISCUSSION GROUPS

On Tuesday, Wednesday and Thursday afternoons, additional workshops will be held to allow participants to practice their skills in small, hands-on groups and to discuss the concrete cases that they are working on with faculty and colleagues in small litigation “surgeries”. Each participant will be assigned to one drafting workshop, one case discussion group, and one advocacy discussion group.

Drafting Workshops

Objectives. Participants will apply the skills they have discussed in the drafting and evidence sessions to practical exercises.

Method. Moderated group discussion of drafts which the participants have produced / edited prior to the workshop (60).

Resources. Drafting assignment distributed prior to the course.

Case Discussion Groups

Objectives. Participants will identify, explain and receive feedback on specific challenges in cases they are litigating, and will contribute to solving challenges experienced by their colleagues.

Method. Moderated group discussion of concrete cases which they are litigating, specific challenges in those cases, and potential solutions (60).

Resources. Case summaries prepared by participants, including specific questions identified by each participant in advance for discussion.

Advocacy Discussion Groups

Objectives. Participants will identify advocacy opportunities and potential strategies in the cases they are litigating, and will contribute to solving challenges experienced by their colleagues.

Method. Moderated group discussion of the advocacy objectives, opportunities and strategies in the concrete cases which they are litigating (60).

Resources. Case summaries prepared by participants.