

## 刑事訴訟法專題研究一、二、三、四

104 年度科目：刑事訴訟法專題研究一/二/三/四 ( 碩士論文指導 )

開課學期 104-1

開課系所 法律所 碩士班

授課教師 林鈺雄

課程編號 A21 M8610 / A21 M8620/ A21 M8630/ A21 M8640

學分 2

全/半年 半年

必/選修 選修

上課時間 星期三 34 ( 共同研討發表時間另定 )

### 課程概要：

本課程挑選與國際人權具有相關性的刑事法議題，作為深入研討的重心。本學期子題如下述，但學期第一週將視修課同學之情形而調整所有子題並重新排定報告順序。This course focuses on criminal issues regarding international human rights. The following subjects are some representative issues upon which the course may discuss, and all participants shall be reminded that the topics and its representation date may be rearranged depend on class situations.

PS：此外，本課程設定對象僅限於撰寫相關碩士論文議題的研究生，其他同學請改選修下學期研究所開設之刑事程序與國際人權課程。

### 課程目標：

本學期將以迄今為止堪稱( 區域性 )國際人權公約典範的歐洲人權公約(EConHR)，作為和我國法相關議題發展 ( 尤其是我國的司法院解釋 ) 的比較對象。

By researching on the leading cases of EConHR and ECHR, the course primarily aims to discuss the development of international human rights in order to provide a comparative view to domestic practices and legislators.

### 課程要求：

本課程進行方式，如其他研究所課程，由修課同學擔任報告主軸。修課同學需挑選一子題言詞報告，事先一星期並應提出書面報告，此外，所有修課同學有出席義務及參與討論義務，列入評分項目。此外，本課程時間因為有一天半的聯合發表論壇，時間於第一次上課時協調，論壇曠課者以不及格論，未能配合者請勿修課。

外文資料以英文或德文為主，例示如下之參考文獻。

As far as the seminar is concerned, all participants are required to make an oral presentation and submit a written-form assignment in advance. Furthermore, attendance and discussions are both essential to the course, therefore, those who are unable to meet the requirements and absent from classes for more than two times will be graded as disqualification. Please deliberate whether or not you can comply with above conditions before taking the course.

### 報告題目：

週	報告子題	ECon HR	ECHR 相關案例法	釋字
1	課程概述 Introduction			
2	人身自由剝奪與提審 Habeas corpus I/ The right to liberty and security of person	Art. 5	Guzzardi v. Italy Raimondo v. Italy	392
3	人身自由剝奪與提審 Habeas corpus I/ The right to liberty and security of	Art. 5	Guzzardi v. Italy Raimondo v. Italy	392

	person			
4	人身自由剝奪與提審 Habeas corpus I/ The right to liberty and security of person	Art. 5	Guzzardi v. Italy Raimondo v. Italy	392
5	人身自由剝奪與提審 Habeas corpus I/ The right to liberty and security of person	Art. 5	Guzzardi v. Italy Raimondo v. Italy	392
6	隱私保障與通訊監察 Surveillance in criminal procedure	Art. 8	Chalkley v. UK P.G. and J.H. v. UK Perry v. UK	631
7	隱私保障與通訊監察 Surveillance in criminal procedure	Art. 8	Chalkley v. UK P.G. and J.H. v. UK Perry v. UK	631
8	隱私保障與通訊監察 Surveillance in criminal procedure	Art. 8	Chalkley v. UK P.G. and J.H. v. UK Perry v. UK	631
9	隱私保障與通訊監察 Surveillance in criminal procedure	Art. 8	Chalkley v. UK P.G. and J.H. v. UK Perry v. UK	631
10	集會遊行與國家積極義務 Freedom of assembly and the positive obligations	Art. 11	İzci v. Turkey	445, 718
11	集會遊行與國家積極義務 Freedom of assembly and the positive obligations	Art. 11	İzci v. Turkey	445, 718
12	集會遊行與國家積極義務 Freedom of assembly and	Art. 11	İzci v. Turkey	445, 718

	the positive obligations			
13	集會遊行與國家積極義務 Freedom of assembly and the positive obligations	Art. 11	İzci v. Turkey	445, 718
14	無罪推定原則與偵查不公開 The presumption of innocence and pre-trial publicity	Art. 6 II	Allenet de Ribemont v. France	
15	無罪推定原則與偵查不公開 The presumption of innocence and pre-trial publicity	Art. 6 II	Allenet de Ribemont v. France	
16	無罪推定原則與偵查不公開 The presumption of innocence and pre-trial publicity	Art. 6 II	Allenet de Ribemont v. France	
17	無罪推定原則與偵查不公開 The presumption of innocence and pre-trial publicity	Art. 6 II	Allenet de Ribemont v. France	
18	綜合討論 Discussions			

參考文獻 ( 各主題不同，僅例示共同之基本外文文獻 ):

Reference books may varies with each chosen topic, below are some examples of common applicable reference books for the seminar.

Alston, P. (1999). *The EU and human rights*. Oxford & New York: Oxford University Press.

Ambos, K. (2002). *Europarechtliche Vorgaben für das (deutsche)*

- Strafverfahren – Teil I: Zur Rechtsprechung des EGMR von 2000–2002.  
*Neue Zeitschrift für Strafrecht* 2002: 628-633.
- Ambos, K. (2003). Europarechtliche Vorgaben für das (deutsche) Strafverfahren – Teil II: Zur Rechtsprechung des EGMR von 2000–2002.  
*Neue Zeitschrift für Strafrecht* 2003: 14-17.
- Ambos, K., & Ruegenberg, G. (2000). Rechtsprechung zum internationalen Straf- und Strafverfahrensrecht. *Neue Zeitschrift für Strafrecht – Rechtsprechungs-Report Strafrecht* 2000: 193-208.
- Ashworth, A. & Redmayne, M. (2005). *The criminal process* (3. Ed.). Oxford & New York: Oxford University Press.
- Esser, R. (2002). *Auf dem Weg zu einem europäischen Strafverfahrensrecht – Die Grundlagen im Spiegel der Rechtsprechung des Europäischen Gerichtshofs für Menschenrechte (EGMR) in Straßburg*. Berlin: De Gruyter Recht.
- Europäische Anwaltsvereinigung(2005). *Das faire Verfahren nach Art. 6 EMRK*. Köln: Verlag Dr. Otto Schmidt.
- Grabenwarter, C. (2012). *Europäische Menschenrechtskonvention*. 5. Aufl., München: Verlag C.H.Beck.
- Meyer-Ladewig, (2011). *EMRK – Europäische Menschenrechtskonvention, Handkommentar*, 3. Aufl.
- Mowbray, A., & Harris, D. (2004). *Cases and materials on the European Convention on Human Rights*. Oxford: Oxford University Press.
- Satzger, H. (2013). *Internationales und Europäisches Strafrecht*, 6. Aufl.
- Thaman, S. C. (2002). *Comparative criminal procedure – A casebook approach*. Durham, NC: Carolina Academic Press.