

Asst. Prof. Dr. Ebru KARAMAN

Beykent University, Faculty of Law
Department of Constitutional Law

HUMAN RIGHTS LAW



CONTENTS

PREFACE	VII
CONTENTS.....	IX
LIST OF ABBREVIATIONS	XV

SECTION I General Principles Of Human Rights

A. Concept and Definition of Law.....	1
1. Positive Law and Natural Law.....	1
2. Written Law and Unwritten Law.....	2
B. Other Social Rules	3
1. Moral Rules.....	4
2. Religious Rules	4
3. Customary Rules	5
C. Legal Rules.....	6
1. Functions of Legal Rules	6
a. Social Order.....	7
b. Legal Security.....	7
c. Social Peace.....	7
d. Equality.....	8
e. Justice	9
2. Characteristics of Legal Rules	10

a.	Normativity	10
b.	Sanctions	10
(1)	Concept of Sanction.....	10
(2)	Historical Evolution of Sanctions	10
(3)	Types of Sanction	11
(a)	Public Law Sanctions.....	11
(b)	Private Law Sanctions	14
c.	Sovereignty	17
d.	Human Behaviors.....	18
D.	Place of Human Rights Rules.....	18
1.	Human Rights Law in Public Law.....	18
a.	Constitutional Law	21
b.	Administrative Law	25
c.	Criminal Law.....	25
d.	Public International Law	27
e.	Procedural Law	27
2.	Sources of Human Rights Law	30
a.	Main Sources.....	30
(1)	Constitution.....	30
(2)	International Conventions	31
(3)	Customary Law.....	32
(4)	General Principles of Law.....	33
b.	Complementary Sources.....	34
(1)	Declaration of Human Rights	35
(2)	Jurisprudence	35
(3)	Doctrine	36
E.	Concepts and Definition of Human Rights.....	36
1.	Human Rights.....	37
2.	Human Dignity.....	38
3.	Fundamental Rights – Public Rights.....	39
4.	Civil Rights	40

5.	Liberties	40
6.	Public Liberties.....	41
7.	Duties	42
8.	Democracy.....	43
F.	Historical Development of Human Rights	45
1.	Historical Development of Human Rights in International Law	46
2.	Historical Development of Human Rights in National Law.....	51
G.	Characteristics of Human Rights Rules	53
1.	Universalism	54
2.	Acquired with Birth.....	56
3.	Individualism	56
4.	Inviolability	57
5.	Inalienability and Indispensability	58
6.	Superiority and Binding Force	59
7.	Legality	63
H.	Classification of Human Rights.....	64
1.	Negative-Positive and Active Status Rights.....	65
2.	First-Second and Third Generation Rights	65
3.	Individual and Collective Rights.....	66
4.	Civil-Political-Economic-Social and Cultural Rights	68
5.	Public Law and Private Law Rights.....	73

SECTION II

Subjects of Human Rights And Freedoms

A.	Major Subjects of Human Rights and Freedoms	75
1.	Individual Rights.....	75
a.	Right to Life.....	75
b.	Prohibition of Torture	78
c.	Prohibition of Slavery and Forced Labour.....	83

d.	Right to Liberty and Security.....	85
e.	Right to Fair Trial.....	89
f.	Right to Respect for Private and Family Life.....	93
g.	Freedom of Thought, Conscience and Religion	96
h.	Freedom of Expression	99
i.	Freedom of Assembly and Association.....	103
j.	Freedom of Residence and Movement	107
k.	Right to an Effective Remedy.....	109
l.	Prohibition of Discrimination.....	109
2.	Economic Rights	112
a.	Protection of Property.....	112
b.	Freedom of Work, Contract and Private Enterprise.....	113
3.	Social Rights.....	114
a.	Right and Duty to Work.....	114
b.	Right to Social Security	115
c.	Rights of Collective Labor Agreement and Collective Agreement.....	116
d.	Right to Health and Patient Rights	117
e.	Environmental Rights	119
4.	Political Rights.....	121
a.	Citizenship Right	121
b.	Right to Elect, Be Elected and Right to Engage in Political Activity	122
c.	Right of Petition and Right to Information	124
5.	Cultural Rights	125
a.	Right to Education	125
b.	Freedom of Mass Communication.....	127
c.	Freedom of Science and the Arts	128
6.	New Rights.....	129
a.	Right to Development	129
b.	Right to Peace	130

c.	Children's Rights	131
d.	Women's Rights	133
e.	Refugee Rights	134
f.	Minority Rights	135
B.	Restrictions of Human Rights and Freedoms	136
1.	Restrictions in Ordinary Period	136
2.	Restrictions in Martial Law and State of Emergency	138

SECTION III

Protection of Human Rights

A.	Protection of Human Rights on National Law	145
1.	Foundations	145
a.	Institutions Displaying Activity Under the Legislative Organ.....	146
(1)	The Human Rights Inquiry Committee of the Turkish Grand National Assembly.....	146
(2)	The Ombudsman Institution	148
b.	Institutions Displaying Activity Under the Executive Organ.....	152
(1)	The High Council of Human Rights.....	152
(2)	The Advisory Council of Human Rights.....	153
(3)	Committees for Investigation of Human Rights Violation Claims.....	155
(4)	The Human Rights Training Ten Year National Committee	156
(5)	Provincial and District Human Rights Boards	157
(6)	The Human Rights Institution of Turkey	159
2.	Individual Application to Turkish Constitutional Court	161
a.	Protection of Fundamental Rights in Constitutional Jurisdiction.....	161

b.	Working Method of the Constitutional Court.....	164
c.	Decisions Which May be Given by the Constitutional Court	170
B.	Protection of Human Rights on International Law	172
1.	The Universal Declaration of Human Rights	172
2.	The European Convention on Human Rights	174
a.	Place of the Convention in Municipal Law	175
b.	Characteristics of the Convention	176
c.	Organs of the Convention	177
d.	Individual Application to the European Court on Human Rights.....	180
	BIBLIOGRAPHY.....	183
	ANNEXE I: Constitution of the Republic of Turkey.....	189
	ANNEXE II: The European Convention on Human Rights.....	293
	ANNEXE III: The Universal Declaration of Human Rights.....	339