



FACULDADE DE DIREITO
Universidade de Lisboa

Curricular Unit Sheet

Course - Degree in Law (1st Cycle) (2025/2026)

1. Name of curricular unit:

Fundamental Rights (EN)
(Curricular Unit – 4th Year – 2st Semester – Day)

2. Complementary Information:

Duration: Semester Annual
Working hours: 168
ECTS Credits: 6

3. Responsible Academic staff and respective workload in the curricular unit:

Maria José Rangel de Mesquita - 2 hrs per week

4. Other academic staff and respective workloads in the curricular unit:

Cláudia Monge - 4 hrs per week (2 subclasses); Jorge Silva Sampaio – 4 hrs per week (2 English subclasses); Vasco Becker-Weinberg – 6 hrs per week (3 subclasses)

Afonso Brás – 6 hrs per week (3 subclasses); Gonçalo Fabião – 4 hrs per week (2 subclasses); Tiago Fidalgo de Freitas - 4 hrs per week (2 subclasses); Margarida Sampaio – 4 hrs per week (2 subclasses)

5. Learning outcomes of the curricular unit:

This course aims to provide a comprehensive understanding of the technical legal concepts that form the basis of the jus-constitutional system for safeguarding fundamental rights. It also covers the intricate relationship between this system and the mechanisms for protecting human rights at the European Union and international levels. Additionally, the course equips students with the knowledge of the nature and functioning of these systems, including the judicial and non-judicial procedures available to enforce them. Through critical analysis of domestic, European and International jurisprudence, with a focus on the case-law of the Constitutional Court, the syllabus further enhances students' ability to ensure the effective protection of fundamental rights both nationally and in the European context.

6. Syllabus:

1. Fundamental rights in a global context

1.2 Genesis and historical evolution: brief notes.

1.2 Constitutionalism, the democratic state based on the rule of law, the social state based on the rule of law and fundamental rights: axiology and the dignity of the human person.

1.3 The plurality of sources and catalogs of fundamental rights: domestic law, especially constitutional law, international law, and European Union law.

1.4 The Constitution as a legal parameter for fundamental rights.

1.5 The plurality of levels and systems of judicial protection and guarantee of fundamental rights: national, European, and international.



2. Fundamental rights: concept, classifications, and main types

- 2.1 Fundamental rights as legal norms: meaning and scope.
- 2.2 Concept of fundamental rights and main related figures.
- 2.3 Classifications and main types.
- 2.4 Fundamental rights and duties.

3. The system of fundamental rights in the 1976 Constitution of the Portuguese Republic

- 3.1 Fundamental rights and duties in the Portuguese Constitutions: a historical note.
- 3.2 The constitutional system for fundamental rights: essential features.
- 3.3 The openness of the Constitution in terms of fundamental rights: in particular, the importance of international and European sources.
- 3.4 State obligations concerning fundamental rights: general aspects. The state's duty to protect and the obligations of private entities.
- 3.5 General and specific regimes: rights, freedoms and guarantees and economic, social and cultural rights - duality vs. unity; fundamental rights analogous in nature to rights, freedoms and guarantees.
- 3.6 General regime and common principles.
 - 3.6.1 Universality. 3.6.2 Equality. 3.6.3 Proportionality 3.6.4 Protection of trust and legal certainty. 3.6.5 Reservation of law and determinability. 3.6.6 Access to the law and effective judicial protection. 3.6.7 Non-contractual civil liability of the State.
- 3.7 Specific rules on rights, freedoms and guarantees.
 - 3.7.1 Organic regime: the reserve (absolute and relative) of legislative competence of the Assembly of the Republic - meaning and scope; voting and approval majorities. 3.7.2 Legal force: direct applicability and binding on public and private entities (reference). 3.7.3 The constitutional regime of restrictions on rights, freedoms and guarantees (reference).
- 3.8 Specific regime for economic, social and cultural rights.
- 3.9 Limits to fundamental rights.
 - 3.9.1 Essential content and sphere of protection. 3.9.2 Restrictions and related figures. 3.9.3 Suspension of the exercise of fundamental rights - cases of state of siege or state of emergency. 3.9.4 Limits and weighting: constitutional, legislative and judicial. 3.9.5 Fundamental rights, freedom and self-determination.

4. The European and international (regional) systems for the protection of fundamental and human rights

- 4.1 Non-national catalogs of fundamental rights: meaning and scope in the Portuguese legal system.
 - 4.1.1 Universal international sources. 4.1.2 Regional international sources, in particular the European Convention on Human Rights. 4.1.3 Sources of European Union law, in particular the Charter of Fundamental Rights of the European Union.
- 4.2 Binding the state to non-national sources: meaning and scope.
 - 4.2.1 The status of sources of international law. 4.2.2 Preference in application. 4.2.3 Primacy and sanction of inapplicability. 4.2.4 The regime of Article 8(4) of the CRP and fundamental rights.
- 4.3 Liability for violation of rights provided for in international sources and European Union law.
 - 4.3.1 International responsibility. 4.3.2 State responsibility for breaches of EU law and determining the legislator's margin of discretion.

5. The guarantee and judicial protection of Fundamental Rights: internal, European and international

- 5.1 Non-judicial protection of fundamental rights.
 - 5.1.1 Complaints to the Ombudsman. 5.1.2 Fundamental rights and administrative procedure: the system of invalidity of administrative acts and regulations.
- 5.2 The system for monitoring the constitutionality of rules and guaranteeing fundamental rights.
 - 5.2.1 General features. 5.2.2 The contribution of constitutional jurisprudence to guaranteeing fundamental rights 5.2.3 Critical notes.



5.3 The right of access to the law and the courts as a guarantee of (other) fundamental rights: the role of the courts in the protection of fundamental rights.

5.3.1 Fundamental rights and the scope of jurisdiction of the administrative and tax courts. 5.3.2 Fundamental rights and administrative procedure, in particular administrative action, summons for the protection of rights, freedoms and guarantees and precautionary measures. 5.3.3 *Habeas corpus* for unlawful arrest and detention and compensation for unlawful or unjustified deprivation of liberty, including for violation of Article 5(1) to (4) of the European Convention on Human Rights.

5.4 The right of access to non-national courts (international and EU) to guarantee fundamental rights/human rights by sub-state subjects: essential features.

5.5 The link between international, EU and national judicial guarantees.

5.5.1 Subsidiarity. 5.5.2 Complementarity. 5.5.3 The review procedure: the review of final judgments on the grounds of contradiction with judgments of international and EU courts. 5.5.4 International and EU law liability and liability actions.

6. Fundamental rights and human rights: future prospects

7. Demonstration of the syllabus coherence with the curricular unit's objectives:

The syllabus includes a complete approach to the main aspects of the Portuguese system of fundamental rights from a dual perspective: the perspective of its structuring elements and their implementation by the legislator and constitutional jurisprudence, as well as their critical analysis and the perspective of its relationship with non-national systems and their present and future articulation. This approach enables knowledge of the systems involved to use them to guarantee a high level of protection for fundamental rights. The syllabus also includes a practical approach to the specific means of judicial protection and guarantee of fundamental rights, bearing in mind that the resolution of disputes and the protection of fundamental/human rights today occurs at national and transnational levels - mainly European regional level. This approach allows for an understanding of these relationships to articulate, in each case, the relevant national and transnational means for resolving disputes and protecting human rights.

8. Teaching methodologies:

The teaching methodology is based on two strands: a theoretical introduction to each point of the syllabus through an expository method and the problematization of legal issues; the analysis, debate and critical commentary of national, European and international *case law* and the preparation and resolution of practical exercises - in accordance with the prior indication of the subjects under study and the case law and other documents for class preparation by the students, according to the indicative plan of practical classes. For this purpose, preference is given to using the University of Lisbon's *e-learning* platform, with a page for the course unit.

9. Evaluation:

Method A: articles 11, 1, a) and 15 to 19 of the Regulation for the Assessment of Knowledge of the Degree Course in Law): written test (arts. 15, no. 1, a), and no. 2 and 16 of the AR): 40%; other elements of continuous assessment, including attendance (art. 15, no. 1, b), and no. 2 of the AR): 60% (according to the specification and breakdown on the course unit's page on the Moodle Platform - Indicative practical lesson plan).

Method B: articles 11, 1, b) and 20 to 22 of the Regulations for the Assessment of Knowledge of the Law Degree Course.

10. Demonstration of the coherence between the teaching methodologies and the learning outcomes:

The theoretical introduction and problematization of legal issues enables the acquisition of the technical-legal concepts underlying the national fundamental rights protection system, in its relationship with non-national fundamental rights protection systems and essential knowledge about its nature, characterization and mode of operation, including the means of judicial protection and guarantees available.

The analysis and critical commentary of national jurisprudence, especially constitutional, European and international jurisprudence, allows us in particular to understand how the Portuguese system works in practice - in material and procedural terms - and how it works in practice with non-national systems in order to achieve effective protection of the rights in question.

11. Main bibliography:



In Portuguese (Titles not translated)

Gomes Canotilho, J. J. / Moreira, Vital, *Constituição da República Portuguesa Anotada*, Vol. 1 (4.^a ed., reimpr.), Coimbra, Coimbra Editora, 2014; *Constituição da República Portuguesa Anotada*, Vol. II (4.^a ed., reimpr.). Coimbra, Coimbra Editora, 2014

Miranda, Jorge / Medeiros, Rui, *Constituição Portuguesa Anotada*, Vol. I (2.^a ed.), Lisboa, Universidade Católica Portuguesa, 2017; *Constituição Portuguesa Anotada*, Vol. II (2.^a ed.), Lisboa, Universidade Católica Portuguesa, 2018

Gomes Canotilho, J. J., *Direito Constitucional e Teoria da Constituição* (7.^a ed.). Coimbra, Almedina, 2018 (reimpr. 2021)

Melo Alexandrino, José de, *Direitos Fundamentais – Introdução Geral*, Estoril, Principia, 2015

Miranda, Jorge, *Direitos Fundamentais* (3.^a ed., reimpr.), Coimbra, Almedina, 2020

Novais, Jorge Reis, *Princípios Estruturantes de Estado de Direito* (2.^a ed.), Coimbra, Almedina, 2022 (reimpr. 2023)

Pereira da Silva, Jorge, *Direitos Fundamentais. Teoria Geral*, Lisboa, UCP, 2020

Vieira de Andrade, José Carlos, *Os Direitos Fundamentais na Constituição Portuguesa de 1976* (6.^a ed.), Coimbra, Almedina, 2019 (reimpr. 2023)

Melo Alexandrino, José de, *A Estruturação do Sistema de Direitos, Liberdades e Garantias na Constituição Portuguesa, Volume I – Raízes e Contexto e Volume II – A Construção Dogmática*, Coimbra, Almedina, 2006

Melo Alexandrino, José de, *O Discurso dos Direitos*, Coimbra, Coimbra Editora, 2011

Novais, Jorge Reis, *Direitos Fundamentais e Justiça Constitucional*, Lisboa, AAFDL, 2017 (reimpr. 2019)

Novais, Jorge Reis, *Direitos Fundamentais nas Relações entre Particulares – Do dever de protecção à proibição do défice*, Coimbra, Almedina, 2018 (reimpr. 2019)

Novais, Jorge Reis, *Uma Constituição, dois sistemas? Direitos de liberdades e direitos sociais na Constituição portuguesa*, Coimbra, Almedina, 2020 (reimpr. 2021)

Novais, Jorge Reis, *Direitos Sociais – Teoria Jurídica dos Direitos Sociais enquanto Direitos Fundamentais* (2.^a ed.), Lisboa, AAFDL, 2021

Novais, Jorge Reis, *As Restrições aos Direitos Fundamentais Não Expressamente Autorizadas pela Constituição* (3.^a ed.). Lisboa, AAFDL, 2022

Novais, Jorge Reis, *Limites dos direitos fundamentais – Fundamento, justificação e controlo* (2.^a ed.), Coimbra, Almedina, 2023

Novais, Jorge Reis, *Manual de direitos fundamentais*, Lisboa, AAFDL, 2024

Almeida Ribeiro, Gonçalo de, *Fundamental Rights (Programme, Content and methods of an Innovative Course)*, Lisboa, UCP Press, 2025

Aragão Homem, Filipa *O Tribunal Europeu dos Direitos Humanos e o Sistema de Protecção de Direitos Fundamentais Nacional. Estudo sobre a aplicação do princípio da subsidiariedade no caso português*, Coimbra, Almedina, 2019

Barreto, Irineu, *A Convenção Europeia dos Direitos do Homem* (7.^a ed.), Coimbra, Almedina, 2025

Duarte, Maria Luísa, *União Europeia e Direitos Fundamentais – No espaço da internormatividade*, Lisboa, AAFDL, 2013

Guerra da Fonseca, R., *Protecção Internacional dos Direitos Humanos*, Lisboa, AAFDL, 2018 (reimpr. 2022)

Pinto de Albuquerque, P. (Org.), *Comentário da Convenção Europeia dos Direitos Humanos e dos Protocolos Adicionais, Vol. I, Vol. II e Vol. III*, Lisboa, UCP, 2019 e 2020

Rangel de Mesquita, M. J., *Justiça Internacional. Lições, Parte I – Introdução*, Lisboa, AAFDL, 2010; Rangel de Mesquita, M. J., *Justiça Internacional. Lições. Parte II – Justiça Internacional Regional, Justiça Especial. Justiça Regional especializada em matéria de Direitos Humanos. Introdução. Europa*, Lisboa, AAFDL, 2020

Rangel de Mesquita, M. J., *Introdução ao Contencioso da União Europeia. Lições* (4.^a ed.), Coimbra, Almedina, 2022

AAVV, *Nos 40 anos do Tribunal Constitucional, e-Publica*, Vol. 10-2 (2023)

AAVV, *Estado de Exceção e Crise Epidémica, e-Publica*, Vol. 7-1 (2020)

AAVV, *Pensões, emprego público e Troika, e-Publica*, Vol. 1-1 (2014)

Cardoso da Costa, J.M.M, *A Jurisdição constitucional em Portugal* (3.^a ed.), Coimbra, Almedina, 2019

Almeida Ribeiro, G. de e Pereira Coutinho, L. (coord.), *O Tribunal Constitucional e a Crise. Ensaio Crítico* Coimbra, Almedina, 2014

Revista do Ministério Público, Número especial Covid-19, Junho 2020



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In a foreign language:

Alexy, Robert, *A Theory of Constitutional Rights* (transl. Julian Rivers), Oxford, OUP, 2002 (Paperback, 2009)

Jacobs, Francis G., *et al*, *The European Convention on Human Rights* (8th ed.), Oxford, OUP, 2020

Kellerbauer, M. / Klamert, M. / Tomkin, J. (Eds.), *Commentary of the EU Treaties and the Charter of Fundamental Rights*, 2.^a ed., Oxford, UP, 2024

Shabas, W. A., *The European Convention on Human Rights. A Commentary*, Oxford, OUP, 2017

Sudre, F. *et al*, *Droit européen et International des droits de l'homme* (17.^a ed.), Paris, PUF, 2025

12. Remarks:

An indicative plan of practical classes and additional details can be found on the course page on Moodle Platform.