CONSTITUTIONAL AND ADMINISTRATIVE PROCESSES
Professor M H Sam Jacobson, Fulbright Scholar
Sofia University
Spring 2006

DESCRIPTION OF THE COURSE:

This course will explore constitutional and administrative law processes from comparative and institutional perspectives. From a comparative perspective, the course explores similarities and differences between the American and Bulgarian constitutions and systems of administrative law. From an institutional perspective, this course explores how government structure, determined by the constitution and administrative law, can influence behavior and define behavioral norms, intentionally and unintentionally, using corruption as the primary illustration. While an overview of each substantive area will be established by lecture, the primary methodology for exploring the complexities of each area will be through problem-solving, using realistic and contemporary situations. Students will participate in small group discussions to develop their analysis and arguments concerning the problems.

COURSE REQUIREMENTS:

I will determine your grade for this course based on the following:

75% Portfolio of class and out-of-class assignments
25% Class participation

Portfolio: Each student desiring a grade for the course, must submit a portfolio (or folder) on the last day of class. That portfolio should contain the student’s answers to the problems discussed in classes 2, 3, 4, 6, 7, 8, 9, and 12; and the student’s documentation for the out-of-class assignments from classes 3, 5 and 7. These guidelines might be helpful to you:

1. Your answers to the class problems and to the assignments should be in English, although I understand that the information you request for the assignment for Class 4 will be in Bulgarian.

2. The materials you include in your portfolio may be typed or handwritten.

3. Each problem or assignment should begin on a separate sheet of paper.

4. You should be able to answer the problems for discussion and the out-of-class assignments in two pages or less. This is not a page requirement, only a general “rule of thumb.”

Class participation: For this class to be successful, all students must be prepared for each class and willing to contribute to class discussion. Therefore, a portion of your
grade for the class will recognize your contributions to the class discussion. For this portion of your grade, I will consider the quality of your contributions to the class or group discussions, the comments of your group members about the quality of your contributions to the group discussions and your preparedness, and any other materials you would like me to consider as proof of your being prepared for class, offered contemporaneously with the class that they concern. Absences will adversely affect your class participation grade.

GRADES:

I will determine your grade for the course based on your portfolio and your class participation. I will notify you when I have completed my grading and you can pick up your portfolio, which will include my comments and your grade, from the office of the Law Department.

QUESTIONS:

If you have any questions about the class, you can reach me by email at sjacobso@willamette.edu.
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<thead>
<tr>
<th>Class</th>
<th>Date</th>
<th>Topic</th>
<th>Problem</th>
<th>Assignment</th>
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<tr>
<td>1</td>
<td>March 9</td>
<td><strong>Comparative analysis of government structure</strong>&lt;br&gt;I will discuss the structure of the United States government and compare it with the structure of the Bulgarian government, especially considering the allocation of powers within the branches of government, limitations on powers, balance of powers between branches of government, and the relationship of national government to local government. I will also introduce students to the sources of law, including the common law, in the USA.</td>
<td>Yes</td>
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<td>2</td>
<td>March 16</td>
<td><strong>Administrative powers - judicial</strong>&lt;br&gt;In the first half of the class, I will discuss the scope of judicial authority delegated to administrative agencies, the procedures to be followed, any provisions for agency or judicial review, the precedential value of prior decisions, and managing inconsistency in decisions.&lt;br&gt;&lt;br&gt;In the second half of the class, students will apply this information to resolve the problem provided.</td>
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<td>3</td>
<td>March 23</td>
<td><strong>Administrative powers - legislative</strong>&lt;br&gt;In the first half of the class, I will discuss rule-making, agency interpretations of law and establishment of policy, exercise of agency discretion, and review of an agency’s legislative decisions.&lt;br&gt;&lt;br&gt;In the second half of the class, students will apply this information to resolve the problem provided.&lt;br&gt;&lt;br&gt;Outside of class, students will complete an assignment concerning agency organization, procedures and practices.</td>
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<td>Date</td>
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<td>March 30</td>
<td>Administrative powers - investigative and enforcement</td>
<td>In the first half of the class, I will discuss administrative powers for investigating violations of the law, including the use of reporting requirements, inspections, and other investigative powers; any Constitutional or statutory limits to those powers; and any provisions for agency or judicial review. In the second half of the class, students will apply this information to resolve the problem provided.</td>
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<td>April 6</td>
<td>Accountability - access to records</td>
<td>In the first half of the class, I will compare the laws concerning public access to information for Bulgaria and USA, especially considering the scope of information available, exclusions, who may request them, fees, etc. In the second half of the class, Gergana Jouleva, Executive Director of the Access to Information Program, will discuss the status of the Bulgarian law in practice. Outside of class, students will request information (any written information) under the Bulgaria law.</td>
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<td>April 13</td>
<td>Accountability - access to decision-making and policy-making - Administrative</td>
<td>In the first half of the class, I will discuss how the public can hold the administration of government accountable through rule-making and open meetings. In the second half of the class, students will apply this information to resolve the problem provided.</td>
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<td>7 April 20</td>
<td>Accountability - access to decision-making and policy-making - Parliament</td>
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<td>In the first half of the class, I will discuss the role of the media, open sessions, and lobbying in providing public access to Parliament.</td>
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<td>In the second half of the class, students will apply the information to resolve the problem provided. Outside of class, students will visit the Parliament to obtain information about open meetings and petitions.</td>
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<td>Yes</td>
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<tr>
<th>8 May 4</th>
<th>Accountability - access to decision-making and policy-making - Judiciary</th>
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<td></td>
<td>In the first half of the class, I will discuss public access to the Judiciary, including open court sessions, media, and contact with judges.</td>
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<td>In the second half of the class, students will apply this information to the problem provided to explore further whether ex parte contacts (contacts on behalf of one side without the other side present) should be prohibited.</td>
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<td>Yes</td>
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<tr>
<th>9 May 11</th>
<th>Culture of integrity - management tools, code of ethics</th>
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<td>In the first half of the class, I will discuss various management tools that can be used to create a culture of integrity, including codes of ethics.</td>
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<td>In the second half of the class, students will apply this information to the problem provided, to create a Code of Ethics for professors.</td>
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<td>Yes</td>
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<th>10 May 18</th>
<th>Culture of integrity - complaints</th>
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<td>In the first half of the class, I will discuss laws that provide for citizen complaints, including the Ombudsman law, and that protect the “whistle blower.”</td>
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<td>In the second half of the class, a representative from the Office of the Ombudsman will discuss the status of the law and its implementation in Bulgaria.</td>
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<td>Date</td>
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<td>May 25</td>
<td><strong>Informing the electorate - press, internet</strong></td>
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<td>In the first half of the class, I will discuss various issues</td>
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<td>concerning an effective press, including competition, access to</td>
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<td>information, separation of editorial and marketing functions, and</td>
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<td>other concerns. In addition, I will discuss the significance of the</td>
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<td>internet to informing the electorate.</td>
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<td>In the second half of the class, representatives of the media will</td>
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<td>discuss these issues with the students.</td>
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<td>June 1</td>
<td><strong>Enforcement of rights</strong></td>
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<td>In the first half of the class, I will discuss mechanisms for</td>
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<td>requiring, limiting or stopping government action, including to</td>
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<td>whom they should apply.</td>
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<td>In the second half of the class, students will apply this information</td>
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<td>to resolve the problem provided.</td>
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<td>June 8</td>
<td><strong>Reports on projects</strong></td>
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<td>Students will report on their projects concerning agency organization</td>
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<td>and information under the freedom of information law. Students will</td>
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<td>also submit their portfolios for evaluation and grading.</td>
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<td>Individual portfolios are due in class.</td>
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<td><strong>Optional class:</strong></td>
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<td><strong>Elections:</strong></td>
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<td>In the first half of the class, I will discuss various issues</td>
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<td>concerning elections, including funding, campaigns, remedies for</td>
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<td>election errors, initiative and referendum, and fairness doctrine.</td>
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<td>In the second half of the class, the students will apply this</td>
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<td>information to resolve the problems provided.</td>
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**Bulgarian Law:**

*Law of Integration of People with Handicaps*

Article 44.

(1) People with durable handicaps, according to their needs, shall have the right to supports and alleviations for:

1. the purchase and adapting of a personal motor vehicle, and a place for parking; . . . .

**Facts:**

George permanently injured his leg and had difficulty walking. When he walked, he used a cane to maintain his balance. George applied for and received a special parking permit because of his handicap. He always kept the permit prominently displayed on the dash of his car.

Recently he picked up a friend from the Sofia airport. He parked in the lot at the airport, but when he went to leave, the attendant insisted that he pay for his parking. George protested, saying the law allowed him to park for free. However, the attendant would not raise the gate for George to pass until he paid the parking fee. He told George that if he wanted his money back, he needed to talk with his supervisor.

George wants his money back. What must he do and how successful do you think he will be?

**Discussion:**

1. **Scope of authority:**
   a. Under the law, is George entitled to park for free?
   b. Would your decision be affected by any of the following:
      (1) George was injured in a terrible accident at the airport for which he received no compensation.
      (2) The government employee who issued his parking permit to George told him that now he would not have to pay for parking.
(3) The Constitution states: “All citizens shall be equal before the law. There shall be no privileges or restriction of rights on the grounds of race, nationality, ethnic self-identity, sex, origin, religion, education, opinion, political affiliation, personal or social status, or property status.” Art. 6(1).

2. Agency review:

a. Should George be required to talk to the parking attendant’s supervisor before he can seek a remedy from an administrative court?

b. If the supervisor’s decision is unfavorable, should George be required to seek further review within the agency before he can seek a remedy from an administrative court?

c. If he is not required to appeal within the agency, should he anyway?

d. Would any of these facts, if true, affect your analysis?

(1) The parking fees pay for the salaries of the parking attendants.

(2) His friend, Ivan, told him that he has never had to pay for parking since he got his special handicapped parking permit. However, he had never parked in the lot at the airport.

(3) His friend, Ivan, told him that he never has to pay when he parks in the lot at the airport when he shows his handicapped parking permit.

(4) An recent article in the newspaper reported on the lax enforcement of the laws concerning the handicapped.

3. Judicial review:

a. If George sought judicial review, what remedy could he receive?

b. If the administrative court ruled that George was not entitled to park for free, what remedy does he have?

c. Would any of these facts, if true, affect your analysis?
(1) The parking fees pay for the salaries of the parking attendants.

(2) The fines collected against any one who discriminates against the handicapped go into a fund for the handicapped. [*Law of Integration of People with Handicaps*, Article 55(4)].

(3) His friend, Ivan, told him that he had to pay for parking at the parking lot near the National Assembly, but when he appealed, the judge ruled in his favor.

(4) The judge used to be in Parliament and when he was there, he voted against any proposed laws that gave special benefits to the handicapped.

(5) An recent article in the newspaper reported on the lax enforcement of the laws concerning the handicapped.
CLASS 3 - PROBLEM  
LEGISLATIVE POWERS

Law:

*Law for the Protection of Soil Against Pollution*:

Article 1: This Act shall define the activities for protection of soil against pollution.

Article 2: Pollution of soil shall mean such change of composition, qualities and properties thereof to a degree that renders them unusable or hazardous to people, animals or plants.

Article 3: Ministries, institutions and municipalities shall carry out regular activities to protect the soil against pollution. . . . The Ministry of Agriculture and Forests . . . shall issue rules compulsory for all institutions, organizations and persons and supervise their implementation.

Article 14: Soils for agricultural purposes shall be subject to protection by the Ministry of Agriculture and Forest.

Article 20: A fine of from 40 to 400 levs shall be imposed on the heads of . . . organizations who do not take the necessary measures [to prevent its] . . . waste waters, harmful substances and other wastes from . . . polluting the soil.

Discussion:

Assume that you work for the Ministry of Agriculture and Forests and are responsible for developing the rules that would implement this law.

a. What interpretations of the law or other decisions does the Ministry have to make to apply the law? Make a list of all the information that the Ministry should include in its rules.

b. On what information or sources of information should the Ministry rely in developing its rules?

Assignment:

The purpose of this assignment is to determine how easy or difficult it is for a member of the public to find information on the organization, procedures or practices of a Ministry or other agency. For this assignment, assume these facts:
A neighboring farm has increased the number of pigs it raises on its one hectare from 25 to 250. You believe that raising so many pigs in a relatively small area is polluting the soil in violation of the Law for the Protection of Soil Against Pollution. You want to know who in the Ministry of Agriculture and Forest is responsible for enforcing this law.

Some information about the Ministry of Agriculture and Forests is available in the *Structural Regulation of the Ministry of Agriculture and Forests* and on the Ministry’s website, www.mzgar.govtment.bg. If it is not clear from that information who is responsible for enforcing the law against soil pollution, then you will need to contact the Ministry. Please document how you determined who is the appropriate person or the appropriate office to contact. Also tell me how you think the Ministry could make it easier for the public to find this information.

You will report on your findings in our last class. In addition, you will include your findings in the individual portfolio that you will submit to me on our last class.
Law:

*Law for the Protection of Soil Against Pollution:*

Article 1: This Act shall define the activities for protection of soil against pollution.

Article 2: Pollution of soil shall mean such change of composition, qualities and properties thereof to a degree that renders them unusable or hazardous to people, animals or plants.

Article 3: Ministries, institutions and municipalities shall carry out regular activities to protect the soil against pollution. . . . The Ministry of Agriculture and Forests . . . shall issue rules compulsory for all institutions, organizations and persons and supervise their implementation.

Article 14: Soils for agricultural purposes shall be subject to protection by the Ministry of Agriculture and Forest.

Article 20: A fine of from 40 to 400 levs shall be imposed on the heads of . . . organizations who do not take the necessary measures [to prevent its] . . . waste waters, harmful substances and other wastes from . . . polluting the soil.

Discussion:

1. Assume that you work for the Ministry of Agriculture and Forests and are responsible for enforcing this law.

   a. What information should the Ministry require of owners or users of agricultural land? Make a list of all the information that would be helpful to the Ministry in enforcing this law.

   b. Should the Ministry have the authority to inspect agricultural land to enforce this law? If yes, under what circumstances should the Ministry be able to inspect agricultural land? List the procedures that you think the Ministry should follow before, during and after any inspection of agricultural land for soil pollution.

   c. What should be the consequences of refusing to provide the Ministry with the information that it requests or with access to the land for an inspection?
d. Should the Ministry have other enforcement powers available to it to inspect possible violations of the law? If no, why not? If yes, what other enforcement powers should the Ministry have?

2. Assume that you own agricultural land.

a. Should you be able to refuse to provide the Ministry with information concerning your agricultural land? If yes, under what circumstances? If no, why not? Should the owner or user of agricultural land be entitled to any due process of law? If yes, what?

b. Should you be able to refuse to let the Ministry inspect your agricultural land? If yes, under what circumstances? If no, why not? Should the owner or user of agricultural land be entitled to any due process of law? If yes, what?

c. Should you be able to find out if the Ministry is investigating you? Why or why not?

d. What can you do or what should you be able to do if you believe that:

   (1) the Ministry’s rules are contrary to science;

   (2) the enforcement of the rules unfairly benefit other owners or users of agricultural land over you;

   (3) the enforcement of the rules do not adequately protect the greater public interest;

   (4) the enforcement of the rules is a “fishing expedition” and not based on information of a potential violation; or

   (5) the enforcement of the rules is by a person who is biased against you?
**Class 5 - Assignment**

**Public Access to Government Records**

**Law:**

*Access to Public Information Act* (APIA)
Available online at [www.lex.bg](http://www.lex.bg) (in Bulgarian) or at [www.aip-bg.org/library/laws/apia.htm](http://www.aip-bg.org/library/laws/apia.htm) (in English).

*Law for Protection of Personal Data*
Available online at [www.lex.bg](http://www.lex.bg) (in Bulgarian) or at the Ministry of Interior website, [http://eu.mvr.bg/NR/rdonlyres/A9C8D2F5-582E-4BED-970-E175A9AA087F/0/08_Law_Protection_Personal_Data_EN.pdf](http://eu.mvr.bg/NR/rdonlyres/A9C8D2F5-582E-4BED-970-E175A9AA087F/0/08_Law_Protection_Personal_Data_EN.pdf) (in English).

*Law for the Protection of Classified Information*

**Assignment:**

Request information of your choosing from a government agency. In our last class, you will report on your efforts to obtain this information. In addition, you will include a summary of your efforts in the individual portfolio that you will submit to me on our last class. (Your grade will not be affected if you do not actually receive the information that you requested.)
CLASS 6 - PROBLEM
ACCESS TO DECISION-MAKING
(Rule-making, Open Meetings)

Law:

*Law for the Protection of Soil Against Pollution:*

Article 1: This Act shall define the activities for protection of soil against pollution.

Article 2: Pollution of soil shall mean such change of composition, qualities and properties thereof to a degree that renders them unusable or hazardous to people, animals or plants.

Article 3: Ministries, institutions and municipalities shall carry out regular activities to protect the soil against pollution. . . . The Ministry of Agriculture and Forests . . . shall issue rules compulsory for all institutions, organizations and persons and supervise their implementation.

Article 14: Soils for agricultural purposes shall be subject to protection by the Ministry of Agriculture and Forest.

Article 20: A fine of from 40 to 400 levs shall be imposed on the heads of . . . organizations who do not take the necessary measures [to prevent its] . . . waste waters, harmful substances and other wastes from . . . polluting the soil.

Discussion:

1. Assume that you are a member of the public interested in protecting the soil against pollution.
   a. How will you know what decisions the Ministry is making or has made about implementing this program?
   b. If you wanted to participate in the development of the rules implementing this law, what could you do?
   c. Once the Ministry determines its rules, can you obtain information about what sources of information the Ministry relied on in making its decisions?
   d. What can you do or what should you be able to do if you believe that:
      (1)  the Ministry’s rules are contrary to science;
(2) the rules unfairly benefit one party/faction/company over another;

(3) the rules do not adequately protect the greater public interest;

(4) the rules were developed without gathering adequate information first; or

(5) the rules were developed by a person who is biased?

2. In the process of developing the rules, the Ministry of Agriculture and Forests may meet with other Ministries, other government employees, NGOs, associations/organizations, and owners or users of agricultural land. Should any of those meetings be open to the public in general? If no, why? If yes, under what terms and conditions?
CLASS 7 - PROBLEM
ACCESS TO THE PARLIAMENT

Law:

Constitution of Bulgaria

Article 22: (1) No foreign physical person or foreign legal entity shall acquire ownership over land, except through legal inheritance. Ownership thus acquired shall be duly transferred.
(2) A foreign physical person or foreign legal entity is free to acquire user rights, building rights, and other real rights on terms established by law.

Article 45: Citizens shall have the right to lodge complaints, proposals, and petitions with the state authorities.

Article 150: (1) The Constitutional Court shall act on an initiative from not fewer than one-fifth of all Members of the National Assembly, the President, the Council of Ministers, the Supreme Court of Cassation, the Supreme Administrative Court, or the Chief Prosecutor.

Problem:

You live in the rural village of Djulunitsa. Your family has lived in this village for 8 generations. The history of the region and its prominence during the time of the Thracian empire has always been a great source of pride to all who live in and around this village. However, like most villages these days, many residents have found it difficult to make a living in Djulunitsa, so they have moved to Sofia or other large cities to find work. Since the uncovering of treasures in Thracian tombs, foreigners have been buying properties in Djulunitsa. The sellers were primarily those people who left the village long ago in search of employment in other cities or the young relatives of those people who have died in the village. The long-time residents of the village are very upset over the changes that the foreigners are making to their village, especially because the foreigners are not respectful of the many long traditions of the village.

Discussion:

1. You want to petition the Constitutional Court to have the Court declare the foreign ownership of property in Djulunitsa to be unconstitutional. Does the Constitution allow you to petition the Constitutional Court? Please identify arguments for both sides.
2. If the Constitution must be amended or a new law adopted to give citizens the right to petition the Constitutional Court, what provisions should that new law contain? In determining this, you should consider the interests of the citizenry in petitioning the Court and the interests of the Court in managing its workload and administrative efficiency.

**Assignment:**

I will arrange a visit to the Parliament where you can learn what sessions and meetings of the Parliament are open to the public and which are not, and you can learn the procedure that citizens should follow if they want to petition the government for a change in the law or constitution.
Class 8 - Problem
Access to the Judiciary

Law:

Constitution
Article 121: (1) The courts shall ensure equality and equal conditions for competition of the parties in the judicial trial.
(2) Judicial proceedings shall ensure the establishment of truth.
(3) All courts shall conduct their hearings in public, unless provided otherwise by law.
(4) All court rulings shall be motivated.

Supreme Administrative Court Act
Article 3: The Supreme Administrative Court shall supervise the accurate and uniform application of the laws in administration of justice.

Article 12: Reasons for repeal of administrative acts shall be:
1. incompetence;
2. noncompliance with the established form;
3. substantial breaches of the rules of administrative proceedings;
4. disagreements with provision of material law;
5. noncompliance with the objective of the law.

Article 24: The court may rule for collection of evidence considered necessary. It may collect additional data and explanations of importance for correct adjudication of the case.

Article 25: The parties to the case may put forward new evidence, as well as evidence of newly occurred facts and circumstances of substantial importance to the case.

Problem:

The Ministry of the Environment and Waters revoked a permit to market a particular kind of pesticide because the pesticide might be unsafe. The Ministry can revoke a permit if it causes unreasonable adverse affects on the environment. The company that sells the pesticide, BBG, believes its product is generally safe, even though in a few instances the pesticide has had serious adverse effects. BBG is appealing the Ministry’s decision to the Supreme Administrative Court.
Discussion:

Which of the following contacts with the judges of the court hearing the company’s appeal should be prohibited? Why?

1. The president of BBG lives in the same block of flats as one of the judges on the Supreme Administrative Court. On the elevator, the president tells his wife that the decision to revoke his company’s permit was due to corruption because he has discovered that a similar permit will be issued to a competitor company. The judge, who is also on the elevator, overhears this conversation.

2. The attorney representing BBG has additional scientific evidence that he wants the judges to consider. He delivers the information to the court offices and asks the receptionist to give it to the judges. She does.

3. One of the judges who received the information calls the attorney for BBG to ask some questions about the scientific evidence.

4. The prosecutor for the Ministry heard through friends that the attorney for BBG wanted to submit additional scientific studies to the judges. The attorney called the judges to tell them that the Ministry believed these studies were biased because the research was funded by the pesticide company. The prosecutor encouraged the judges to not consider this information.

5. An employee of BBG goes to the courthouse to talk to the judges handling this appeal, because if BBG is no longer licensed to sell this product, the employee will lose his job. The receptionist said that the judges were busy, but the employee was quite upset, so one of the judges agreed to meet with him. He told the judge how the court’s decision would determine whether or not he and his coworkers would have a job.

6. The prosecutor for the Ministry had lunch with one of the judges, a person who was also a former classmate when they were studying law. He told the judge that winning this case would be a major victory for the Ministry and for the Bulgarian environment, and that he hoped the judge would consider carefully all of the documents provided by the Ministry.

7. The attorney for BBG met with one of the judges to ask that he close the arguments from the media and the public, and to seal all of the legal documents submitted in the case because the release of this information would adversely affect his client’s business.
Assignment:

Your assignment is to develop a Code of Ethics for professors at Sofia University. Since the time you have to do this in class is limited, begin by making a list of the different topics that you think should be included. Then as time permits, you can include more information about each topic or work on organizing the topics. Your Code of Ethics should be in outline format, rather than in narrative format.

Below is an example of a Code of Ethics. Since it is for Bulgarian judges, and not university professors, it only will be helpful generally (e.g., to get some ideas of topics to include or to understand the format). I am certain that you will have many additional ideas about what to include based on your experience as a student. ☺

Example:

**Professional Ethical Rules of the Bulgarian Judges**

*Chapter I
GOALS, SUBJECT AND FUNDAMENTAL PRINCIPLES*

Art.1 The present professional ethical rules of the Bulgarian judges persue the following goals:

1. improvement of the social image of the judge;
2. protection of the person of the judge;
3. general direction of the behavior of the judge;
4. consolidation of the principles of justice and impartiality

to defend the independence of the Judiciary.

Art.2 The rules apply towards all judges in:

1. the Supreme Court of Cassation;
2. the Supreme Court of Administration;
3. the Appellate courts;
4. the Military courts;
5. the District courts;
6. the Regional courts;
7. the special courts under Art. 119, sub.2 of the Constitution of the Republic of Bulgaria.
Art. 3 Fundamental principles of the judicial behavior

1. The judge personalizes the judicial institution and in all his actions will be guided by the principles of justice and impartiality.
2. In the courtroom every judge is a symbol of the law and justice.
3. The judge defends the social prestige and independence of the court.
4. The judge is subject only to the Constitution, the statutes and the rules of justice.
5. The judge observes the Rules in his/her professional and social conduct and in his/her personal life.

Chapter II
RULES FOR PROFESSIONAL BEHAVIOR

Art. 4 Professional behavior of judges

(1) Impartiality and Independence

1. The judge will observe his/her obligations thoroughly and responsibly and will be guided by the principles of no self-interest, independence and impartiality.
2. The judge may not be influenced by any private interest, or any kind of political or social pressure.
3. The judge will not sustain personal relations, capable of rising any reasonable doubts in his/her impartiality, with the parties in the cases he/she is deciding.

(2) Professional Qualification

1. The judge makes constant efforts to improve his/her professional qualification.
2. The judge will not afford his/her professional career to be facilitated by unbecoming personal behavior or by the interference of others.

(3) Opportuneness

The judge will obey his/her professional duties in good faith and will ensure that the legally determined time-terms of the case proceedings and deadlines for the case decision announcement be properly observed.

(4) Judge's attitude towards the persons he/she is in professional relations with

1. The judge will treat the participants in the case with tolerance, respect and politeness and will demand that they observe the same behavior.
2. The judge owes to his/her colleagues respect and understanding and will not allow groundless criticism and personal assessment towards other judges' professional conduct.
3. In his/her cooperation with the jurors, the judge will demand that they observe the professional ethical rules of the judges.
4. The judge will respect the dignity and the profession of the judicial clerks.
5. The judge will demand that the judicial clerks be loyal to the judicial institution and responsible to their professional duties.
6. The judge will demand that the judicial clerks do not express prejudice, neither partiality, whether by words or acts.
7. The judge will take into consideration that his/her appearance in professional situations comply with the requirements of the authority of the profession.

(5) Confidentiality

1. The judge will not disclose any confidential information that has come to his/her knowledge in relation to his/her professional performance.
2. The judge will demand that the confidentiality of information rule be observed by the judicial clerks.

(6) Administrative Obligations

1. The judge will observe his/her administrative duties responsibly, competently and opportunely, and without prejudice or partiality.
2. Judges will cooperate with each other in the case management in court.

Chapter III
RULES FOR PERSONAL BEHAVIOR

Art.5 The personal countenance of the judge is part of the social image of the judicial institution.

(1) The judge will voluntarily accept limits in his/her personal and social status.
(2) The judge may not allow himself/herself any kind of improper personal or social conduct.
(3) The judge may not use the name and the authority of the court to fulfill his/her personal interests or any interest of persons closely related to him/her.
(4) The judge may not accept any kind of gifts, favors or loans, either personally or through another person, if that may cause suspicion in his honesty.
(5) Outside the court building, the judge may behave only in a manner that cannot possibly impair the positive image of the judicial institution.

Chapter IV
RULES FOR SOCIAL BEHAVIOR

Art.6. Relations with the media and organizations of the citizens' society

(1) The judge will respect the freedom of speech and the right of the citizens to be informed.

1. The judge may inform the media only of the facts of his/her activities and may not express preliminary legal opinions.
2. The judge may not publicly discuss cases that are still pending before court.
3. The judge may inform the media about the case management in court.
4. The judge will permit the usage of video and audio recording devices during the court proceedings, provided the rights of the citizens are properly taken care of.
(2) The person of the judge is public. The judge will participate in social life but may not express any preference or prejudice towards any particular part of the society on ethnical, racial, sexual, ideological, religious, cultural or other grounds.
(3) The judge may work in nongovernmental organizations with noneconomic goals, provided this does not conflict with the present Rules.
(4) The judge may participate in charity associations but may not do this on behalf of the court.
(5) In his/her public statements, the judge will be guided by the standards of reason and temperance.

Art. 7 Participation in the improvement of the legal environment of the state

(1) The judge will contribute to the improvement of the legal environment in the state.
(2) The judge may express his/her opinion and to take part in discussions, related to legislative amendments.
(3) The judge may read open lectures, publish papers, teach in educational institutions and participate in non-judicial projects, provided that his/her conduct does not conflict with the Rules.

Chapter V
ADDITIONAL RULES

§. 1 The rules of this Act apply to all cases in which the Judicial Power Act refer to the professional ethical rules of the judges.

§. 2 This Act has been accepted in accordance to Art. 27, sub. 1, p.13 of the Judicial Power Act.

* Professional Ethical Rules of the Bulgarian Judges are drafted by the Bulgarian Judges Association and approved by the Supreme Judicial Council as per article 27, para 1, item 13 and article 12, para 2 of the Judicial System Act.

Source: [http://lex.bg/f/rules_judges.htm](http://lex.bg/f/rules_judges.htm)
1. What remedy is available to force an agency to act?

**Facts:**

The law requires the Ministry of the Environment to establish air quality standards to protect the public health. The law also requires that every five years, the agency perform a thorough review of its standards and revise or issue new standards as appropriate. In 1993, the agency issued air quality standards for lead. However, since then, the agency has not reviewed those standards.

**Discussion:**

Should a member of the public be able to force the agency to act? Would your analysis differ if:

- Current standards meet the minimum requirements of the EU?
- Scientific staff recommend a change in the standards?
- Scientific staff recommend no change in the standards?
- The agency has no funding to complete the review?

2. Who should be able to challenge agency action?

**Facts:**

The law requires that anyone discharging material into a stream or river first obtain a permit. The permit process requires that the agency issuing the permit hold a public hearing on whether the permit should issue. The agency may require the permit applicant to perform certain pre-disposal filtering and treatment before discharging material into the water. The agency may also require that the applicant report quarterly to the agency the results of its pre-disposal filtering and treatment.

The Y river runs through the center of the City of Z. The City recently completed an extensive pedestrian walkway on the east bank of this river; the parkway connects a large urban park at the north end with a residential area at the south end and the downtown shopping area inbetween. This was an expensive project; since local tax revenues were not sufficient to support a project of this magnitude, the City sought
and received substantial funding through an EU grant and through private contributions.

The pedestrian walkway is very popular with local residents and tourists. The park attracts many nature lovers because it is a breeding area for several birds native to the area. Also, many people use the walkway for exercise since it has no car traffic and it is so beautiful next to the river. Because the walkway encouraged so much additional activity, it became a catalyst for many new restaurants and shops.

X Company, located five kilometers north of the City, applied to the Environmental Protection Agency for a permit to discharge its industrial waste into the Y River. Without conducting any independent investigation, the agency granted the permit. Since granting the permit, the river has developed an odor, especially during the hot summer when the water level is lower. A foamy substance collects at the river wall downtown and several people have noticed dead fish in that area. In addition, others have noticed that fewer birds are in the park. As a result of these problems, fewer people are using the pedestrian walkway. The restaurant and shop owners along the walkway complain that their business has declined dramatically.

Discussion:

OPTIONAL CLASS - PROBLEMS

ELECTIONS

Problem 1: What does the principle of one person - one vote mean?

Law:

Constitution

Article 10: All elections and national and local referendums shall be held on the basis of universal, equal, and direct suffrage by secret ballot.

Law for the Election of National Representatives

Article 2: The elections shall be held on the basis of general, equal and direct suffrage by secret voting.

Article 4: (1) Every voter is entitled to one vote. (2) The vote of every elector is equal to the vote of every other voter.

Law for the Local Elections

Article 2: The elections shall be held on the basis of general, equal and direct suffrage by secret voting.

Article 5 The citizens shall have a right of one vote for mayor of the municipality and one vote for the mayor of the region.

Discussion:

What impediments to voting might give more weight to one person’s vote over another? Consider these situations:

1. A person may contribute 10 000 levs and an organization may contribute 30 000 levs to the campaign of a candidate or party. The average annual salary of a Bulgarian is approximately 5 000 levs. Is the vote of the person who gave 10 000 levs to a campaign equal in weight to the vote of the person who gave nothing? Why or why not?

2. Ballots are printed only in Bulgarian. However, some voters are not fluent in Bulgarian, and others, such as the Roma, are often illiterate. Even if accommodations are made for these voters, they might be discouraged from voting because of their problems with the language or with reading.

3. The Bulgarian Constitution provides in Article 63 for 240 elected representatives to the National Assembly. Since the population of Bulgaria is approximately 7.5 million people, theoretically each representative should have a constituency of approximately 31, 250
people. However, the population in one constituency is 27,500, while the population in another constituency is 35,000.

Problem 2: What does it mean to have equal access to the media?

Law:

Law for the Election of Grand National Assembly
Article 49: (1) All candidates shall have equal access to the mass media.
(2) - (4) discuss access to the nationally-owned media.

Law for the Election of National Representatives
Article 55: (1) The citizens, the parties and coalitions, the initiative committees, the nominees and their intercessors shall have freedom of campaigning . . . through the mass media.

Articles 60 - 70 discuss access to the nationally-owned media.

Law for the Local Elections
Article 51: (1) All nominees . . . shall have the right of access to the regional television centers, radio stations, and local radio units.

Law for the Presidential Elections
Article 11: Observed during the election campaign shall be the principle of equality of the candidates in the informational programs of the national mass media.

Articles 11a-11d discuss the terms of access to the media.

Discussion:

1. Do candidates or parties have equal access to the media when one candidate or party is much wealthier than the others and can purchase as much air time it wishes on the privately-owned stations or as much print space as it wants in the print media? Would your decision be different if it was broadcast time versus print media? Why or why not?

2. Does requiring equal access to the media violate the free speech rights of the media? Why or why not?

3. Does the private purchase of broadcast time or print space violate the law concerning access to the media? Why or why not?
4. Would restricting the private purchase of broadcast time or print space violate the private person’s right to free speech? Why or why not?

**Problem 3:** Can campaigning be limited to thirty days (or a similar period) before the election without violating the right to free speech?

**Law:**

*Constitution*

Article 39: (1) Everyone is entitled to express an opinion or to publicize it through words, written or oral, sound, or image, or in any other way.

Article 40: (1) The press and the other mass information media are free and shall not be subjected to censorship.

Article 41: (1) Everyone is entitled to seek, obtain, and disseminate information.

Article 44: (1) Citizens shall be free to associate.

*Law for the Election of National Representatives*

Article 54: The election campaign shall start 30 days before and shall end 24 hours after the election days.

**Discussion:**

Can campaigning be limited to thirty days (or a similar period) before the election without violating the right to free speech? Why or why not?
Problem 4: What effect will private funding of candidates and parties have on the accountability of those elected to the public?

Constitution

Article 11: (1) Politics in the Republic of Bulgaria shall be founded on the principle of political plurality. . . .
(3) All parties shall facilitate the formation and expression of the citizens’ political will. . . .

Law for the Election of National Representatives

Article 71: (1) The election campaign shall be financed by resources of the independent nominees and of the parties and coalitions, as well as by donations of individuals and corporate bodies.
(2) The donations under para. 1 cannot be more than 10 000 levs by one individual and more than 30 000 levs by a corporate body.
(3) Prohibited is the financing of the election campaign by corporate bodies with more than 50 per cent of state or municipal participation.
(4) Prohibited is the financing of the election campaign by foreign individuals and corporate bodies, as well as by joint venture companies with more than 25 per cent foreign participation.

Law on the Political Parties

Article 21: The activity of the political parties shall be funded by own revenues and by state subsidy.

Article 23: (1) Own revenues of political parties shall be the revenues from:
1. membership contribution;
2. own real property;
3. donations and testaments by natural persons;
4. donations by legal persons;
5. interest on money deposits at banks;
6. publishing activities, copyrights and using of intellectual property, as well as from sales and distribution of printed, audio- and audiovisual times of party propaganda content.

Article 24: The political parties may not receive:
1. anonymous donations;
2. donations from one and the same natural person, if they exceed 10 000 BGN within one calendar year;
3. donations from one and the same legal person, if they exceed 30,000 BGN within one calendar year; . . .
7. funds from religious institutions or from non-profit legal persons performing activity in favor of the society;
8. funds from foreign governments or foreign state enterprises, foreign trade companies or foreign non-profit entities.

Discussion:

1. While the Bulgarian Constitution states in Article 67(1) that members of the National Assembly represent the entire nation as well as their constituencies, conflicts arise between the interests of people within those groups. When the interests conflict, to whom will an elected representative or party hold its allegiance: a corporate contributor of 30,000 levs, an individual contributor of 10,000 levs, or a voter who contributed no levs?

2. What affect will it have on the accountability of those elected when corporations for profit can contribute 30,000 levs to a campaign but corporations that are not for profit can contribute nothing? How might this skew the perception of issues of importance?