BEST PRACTICES IN TEACHING EU LAW
CABUFAL

NAJBOLJE PRAKSE U PODUČAVANJU PRAVA EU
CABUFAL

Publisher / Izdavač - Faculty of law UoM / Pravni fakultet UCG

Printing / Štampa - Grafo group

Circulation / Tiraž - 300

June 2019

Co-funded by the
Erasmus+ Programme
of the European Union

Introduction

This collection of essays is published at a time when the European Union is facing one of its most crucial junctions since its very modest inception back in the 1950s. After decades of rapid expansion, and deepening the relations between members states moving towards a closer union, the EU seems to reach its first existential crisis, may be its apex. For the first time in its short history a member state has voted to leave, other challenge the very basic tenets and values of the European project, the and others who aspired in the past to join it reconsider whether this serves their interests best. From its very humble beginnings in the 1950s, the EU has evolved into a mega-experiment in international relations, with the goal of achieving collective security through economic prosperity and the removal of psychological barriers as much as physical ones. The European project has shifted the energy of peoples and nations away from devastating military conflicts toward constructive, peaceful economic competition and cooperation.

This exercise in international social engineering, which (still) includes 28 countries and comprises more than half a billion people, has had tremendous success in averting conflict and bringing prosperity to every member country, in almost every region. It has created employment, educational and cultural opportunities for millions, from all segments of society, young and old, that had never before been available. However, this also turned out to be threatening for those who either did not experience the direct benefits of being part of the EU, or who saw their social and economic landscapes change at a pace they found too rapid.

At this watershed of one of the most daring political, economic and social experiments in the history of international affairs and human kind, it is worth remembering that from the outset, back when the Steel and Coal agreement was signed, it was not about just managing commodities and goods, as important as they were, but it was first and foremost a vehicle to foster peace and democracy across Europe. And it has done it very successfully, though not without challenges and setbacks. In terms of social experimentation, a continent that was the cradle of nationalism, including its vilest forms, has been attempting to develop a mixed model of governance in which diverse nation states move steadily toward some sort of federal system, with a European identity in harmony with the natio-

nal identities of its few dozen member states. These ideas have now been stretched near to breaking point in several parts of the EU and for it to survive and prosper it needs to adhere to the four freedoms of movement — for goods, services, capital and people — without it the EU cannot be what it set out to be.

The rule of law is the cement the glues the different parts of the EU together and is paramount is keeping it together. Adhering to the same legal standards across Europe guarantees everyone's rights and obligations and protects citizens from governments' arbitrary. It is almost impossible to over-emphasise the importance of European legislation and the role of the European Court of Justice as the guardian of law and justice. This collection of articles is an important contribution to the education of European Law in terms of disseminating knowledge about what it is, its origins and best practices in the pedagogy of it, which is very valuable for students to scholars, lawyers, judges and practitioners.

Prof Yossi Mekelberg

Professor of International Relations &
Faculty Lead on Outreach Projects
Regent's University London

Uvod

Ova zbirka eseja objavljena je u vrijeme kada se Evropska unija suočava sa jednim od svojih najvažnijih spojeva od svog vrlo skromnog osnivanja 1950-ih. Nakon decenija brzog širenja i produbljivanja odnosa između država članica koje kreću ka bližem savezu, čini se da je EU dostigla prvu egzistencijalnu krizu, možda i njen vrhunac. Prvi put u svojoj kratkoj istoriji država članica glasala je za odlazak, druge osporavaju vrlo osnovne principe i vrijednosti evropskog projekta, a drugi koji su se u prošlosti nadali da će joj se pridružiti preispitaju da li to najbolje služi njihovim interesima. Od svojih vrlo skromnih početaka 1950-ih, EU se razvila u mega-eksperiment u međunarodnim odnosima, čiji je cilj postizanje kolektivne sigurnosti ekonomskim prosperitetom i uklanjanjem psiholoških barijera koliko i fizičkih. Evropski projekat je energiju naroda i nacija preusmerio od razornih vojnih sukoba ka konstruktivnoj, mirnoj ekonomskoj konkurenciji i saradnji.

Ova vježba u međunarodnom društvenom inženjeringu, koja (još uvijek) obuhvata 28 zemalja i obuhvata više od pola milijarde ljudi, imala je ogroman uspjeh u sprječavanju sukoba i donošenju prosperiteta u svakoj zemlji članici, u skoro svakom regionu. Stvorena je mogućnosti za zapošljavanje, obrazovanje i kulturu za milione, iz svih segmenata društva, mladih i starih, koje nikada ranije nisu bile dostupne. Međutim, pokazalo se da to predstavlja prijetnju i za one koji ili nijesu doživjeli direktne koristi od članstva u EU, ili koji su vidjeli da im se socijalni i ekonomski pejzaži mijenjaju tempom koja oni smatraju prebrzim.

Na ovom slivu jednog od najhrabrijih političkih, ekonomskih i društvenih eksperimenata u istoriji međunarodnih poslova i ljudske vrste, vrijedi zapamtiti da se od samog početka, kada je potpisan sporazum o čeliku i uglju, nije radilo samo o upravljanju artikala i roba, koliko god bili važni, ali je prije svega bilo sredstvo za podsticanje mira i demokratije širom Evrope. I to je uspjelo vrlo uspješno, mada ne bez izazova i zapreka. U pogledu društvenog eksperimentiranja, kontinent koji je kolijevka nacionalizma, uključujući njegove najslavnije oblike, pokušava da razvije mejšoviti model upravljanja u kojem se različite nacionalne države stabilno kreću ka nekom saveznom sistemu, sa evropskim identitetom u

harmoniji s nacionalnim identitetom nekoliko desetina država članica. Ove ideje su se protegle do granica pucanja u nekoliko djelova EU i da bi preživjela i napredovala, potrebno je da se pridržava četiri slobode kretanja - za robu, usluge, kapital i ljude - bez nje EU ne može biti ono što je postalo.

Vladavina zakona je cement koji drži različite delove EU zajedno i najvažnije je njihovo držanje zajedno. Pridržavanje istih pravnih standarda širom Evrope garantuje svima jednaka prava i obaveze i štiti građane od proizvoljnih vlada. Gotovo je nemoguće pretjerano naglasiti značaj evropskog zakonodavstva i ulogu Evropskog suda pravde kao čuvara zakona i pravde. Ova zbirka članaka važan je doprinos obrazovanju evropskog prava u smislu širenja znanja o onome što je, o njegovom porijeklu i najboljim praksama u pedagogiji istog, što je veoma dragocjeno za studente, naučnike, pravnike, sudije i praktičare.

Prof Yossi Mekelberg

Professor of International Relations &
Faculty Lead on Outreach Projects
Regent's University London

TABLE OF CONTENTS

SADRŽAJ

Thomas Giegerich*

ANTI-DISCRIMINATION LAW: GLOBAL AND EUROPEAN PERSPECTIVES

The lecture "Anti-Discrimination Law: Global and European Perspectives" is - as the title suggests - a multi-level discussion of the fundamentals of antidiscrimination law.

Addressing the applicable global legal framework (particularly the UN Conventions, e.g. ICCPR[1], ICERD[2], ICESCR[3], CEDAW[4], CRPD[5]) is imperative from two points of view. First, it allows for a better understanding where the European Convention on Human Rights (ECHR) and European Union (EU) law systems draw their inspiration from and second, it aids in comprehensively dealing with the key concepts used in anti-discrimination discourse. In addition, the global vs European approach permits analysing the jurisprudence of international human rights bodies (e.g. CERD[6], CESCR[7]) and the two European Courts – the European Court of Human Rights (ECtHR) and the Court of Justice of the European Union (CJEU) – in a comparative manner, underlining critical tangency and divergence points. This provides an added value to the students as it helps them gain a clearer understanding when the concept of discrimination is to be interpreted in a broader or narrower sense, which comparators, stan-

* Univ.-Prof. Dr. iur. Thomas Giegerich LL.M, Chair for European law, Public international Law and Public Law, Jean Monnet Chair for European Law and European Integration and Director of the Europa-Institut of Saarland University.

[1] International Covenant on Civil and Political Rights, adopted by GA Resolution 2200A (XXI) of 16/12/1966, entered into force 23/03/1976.

[2] International Covenant on the Elimination of All Forms of Racial Discrimination, adopted by GA Resolution 2106 (XX) of 21/12/1965, entered into force 04/01/1969.

[3] International Covenant on Economic, Social and Cultural Rights, adopted by GA Resolution 2200A (XXI) of 16/112/1966, entered into force 03/01/1976.

[4] Convention on the Elimination of All Forms of Discrimination against Women, adopted by GA Resolution 34/180 of 18/12/1979, entered into force 03/09/1981.

[5] Convention on the Rights of Persons with Disabilities, adopted by GA Resolution 61/106 of 13/12/2006, entered into force 03/05/2008.

[6] The Committee on the Elimination of Racial Discrimination monitors implementation of the ICERD.

[7] The Committee on Economic, Social and Cultural Rights monitors implementation of the ICESCR.

dards for justification and states' margin of discretion are employed by the discussed bodies and courts, etc.

Going beyond engaging with the concepts of equality and discrimination on a mere general level, the lecture delves into selected areas of antidiscrimination law as the prohibition of discrimination based on sex, sexual orientation, age, disability or religion and belief, amongst others, which are considered in greater detail. Such examination looks into the specific legal bases, the definitions of relevant concepts as well the leading case-law on all levels of inquiry: global / Council of Europe (CoE) / EU law.

The main takeaways for the students from the first part of the lecture – prohibition of discrimination on a global level – should broadly lie along the following lines. First, international human rights instruments typically contain two types of provisions protecting equality: (i) provisions on prohibition of discrimination in the enjoyment of rights provided by the respective instrument[8] that have an *accessory character* and (ii) provisions on a general requirement of equality before the law and equal treatment[9] that have an *independent character*.

Second, the majority of such instruments operate with the same definition of discrimination, understanding it as "any distinction, exclusion, restriction or preference which is based on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms".[10]

Third, upon analysis of the practice of the human rights supervisory bodies, it becomes clear that not all distinctions in treatment constitute discrimination. In the words of the Human Rights Committee, "the enjoyment of rights and freedoms on an equal footing does not mean identical treatment in every instance".[11] Clear criteria have been developed to establish when distinctions amount to discrimination and when they do not, as "not every differentiation of treatment will constitute discrimination, if the criteria for such differentiation are reasonable and objective and if the aim is to achieve a purpose which is legitimate under the Covenant". [12]

[8] E.g. Art. 2 ICCPR, Art. 2(2) ICESCR.
[9] E.g. Art. 26 ICCPR, Art. 5(1) CRPD).
[10] CCPR General Comment No.18 adopted by the Human Rights Committee (HRC) on 10/11/1989, para. 7.
[11] CCPR General Comment No. 18, (fn. 10), para. 8.
[12] *ibid*, para. 13.

Lastly, the practice of various supervisory bodies clearly demonstrates that the list of prohibited grounds of discrimination enshrined in the majority of instruments is non-exhaustive; other similar grounds are covered by the catch-all criterion "other status".

Turning to the second part of the lecture – prohibition of discrimination at European level – it should be noted that both the Council of Europe and the European Union adhere to and try to implement the principle of equal rights and non-discrimination for all. Their respective efforts reinforce and complement one another. Since 1950, Art. 14 of the ECHR has set out an accessory prohibition of discrimination based on a non-exhaustive list of problematic grounds. The exact content of this provision has been clarified by numerous decisions[13] of the ECtHR. All the EU Member States are bound by the ECHR whose provisions are used by the CJEU as a means to interpret EU law. It took the CoE Member States fifty years to draw up an independent and comprehensive prohibition of discrimination which is included in Protocol No. 12 of 2000. While the Protocol has meanwhile entered into force, only a minority of the Convention States (and only ten of the EU Member States) have ratified it. Apparently, many of them are disinclined to give the ECtHR the final say on whether or not distinctions they make in their laws are "reasonable". The European Union is about to accede to the ECHR, but not Protocol No. 12.

The anti-discrimination law of the EU, as opposed to that of the CoE, reaches much further and is much better implemented. The Treaties as such have always included prohibitions of discrimination on grounds of nationality that are directly applicable in national court proceedings and override contrary national legislation. Their exact scope has been clarified by the case-law of the CJEU that tends to be strict.

With the entry into force of the Treaty of Lisbon, the Charter of Fundamental Rights of the EU (CFR) was promoted to the rank of primary EU law, on a par with the Treaties and to be enforced by the CJEU. The Charter includes several provisions on equality before the law and non-discrimination (see Arts. 20 – 26). Where these correspond to rights guaranteed by the Treaties, they shall be exercised und the conditions and within the limits defined therein (Art. 52 (2) CFR). Where the Charter rights correspond to rights guaranteed by the ECHR, their meaning and scope shall be no less extensive than those laid down by the Convention

[13] See, in particular, ECtHR, no. 40892/98, *Koua Poirrez v. France*, judgment of 30/09/2003, paras. 36, 39; and ECtHR, no. 27996/06, *Sejdić and Finci v. Bosnia and Herzegovina*, judgment of 22/12/2009, para. 39.

(Art. 52 (3) CFR). It must always be remembered, however, that the Charter rights are primarily addressed to the institutions, bodies, offices and agencies of the EU. The Member States are only subject to those rights where they are implementing Union law (Art. 51 (1) CFR).

The Treaty of Amsterdam of 1997 introduced the provision now contained in Art. 19 (1) of the Treaty on the Functioning of the EU (TFEU). That provision does not as such prohibit discrimination based on other grounds than nationality which are set forth in an exhaustive list including the most problematic grounds (such as sex, racial or ethnic origin and sexual orientation). It only identifies kinds of discrimination that deserve to be combated and empowers the Council of the EU and the European Parliament jointly to enact secondary legislation for that purpose. The fact that any legislation based on Art. 19 (1) TFEU requires unanimity in the Council (consisting of a minister from each Member State) shows that the Member States wanted to keep EU anti-discrimination under their control.

Meanwhile, several anti-discrimination directives[14] have been enacted on the basis of Art. 19 (1) TFEU or other Treaty provisions. The Council has, however, not yet been ready to pass a general directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation which the European Commission proposed[15] already in 2008.

It should also be remembered that there are further anti-discrimination provisions in various treaties concluded by the EU with third States[16]. Those provisions prohibit discrimination of third-state

[14] Directive 2000/43/EU implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, OJ L 180 of 19/07/2000 (Race Equality Directive), Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation, OJ L 303 of 02/12/2000 (Framework Directive), Directive 2004/113/EC implementing the principle of equal treatment between men and women in the access to and supply of goods and services, OJ L 373 of 21/12/2004 (Goods and Services Directive), Directive 2006/54/EC on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast), OJ L 204 of 26/07/2006 (Equal Treatment Directive), Directive 2010/41/EC on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity, OJ L 180 of 15/07/2010.

[15] Proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation, presented by the European Commission on 02/07/2008 – COM(2008) 426 final – but never enacted due to lack of unanimity in the Council.

[16] See for instance, the Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the Republic of Albania of the other part, of 12/26/2006, OJ L 2009 of 28/04/2009, Art. 46. Corresponding provisions

nationals on grounds of nationality. According to the case-law of the ECJ, they are usually directly applicable and override both contrary secondary EU law and national law.

Within this section, the definition of discrimination[17], the grounds for justification of distinctions[18], the state's margin of appreciation when restricting rights[19], as well as the burden of proof[20] of alleged discrimination cases, amongst others, are to be analysed by extensive reference to the jurisprudence of the ECtHR and the CJEU. Given the many overlaps and complementary areas of the ECHR and EU law systems, it is particularly useful for students if a visual comparison (for instance, in the form of a table) of the approaches of the two European courts is presented.

Once the general antidiscrimination framework has been discussed on global and European levels, the third part of the lecture looks more specifically at particularities and case-law relating to selected grounds of differentiation (sex, sexual orientation, age, religion or belief, disability, race, ethnicity, colour or membership of a national minority). This segment of the lecture is an excellent opportunity to examine the anti-discrimination framework at the three levels (global / CoE / EU) concurrently and is

in Art. 49 of the Stabilisation and Association Agreement with the Republic of Montenegro of 15/10/2007, OJ L 2010 29/04/2010.

[17] See, amongst others, ECtHR, no. 57325/00, *D.H. et al v. The Czech Republic*, judgment of 13/11/2007, para. 175; ECtHR, no. 58641/00, *Hoogendijk v. The Netherlands*, para 2, decision on admissibility of 06/01/2005; ECtHR, no. 29865/96, *Ünal Tekeli v. Turkey*, judgment of 16/11/2004, para. 49; CJEU, case C-279/93, *Finanzamt Köln Altstadt v. Schumacker*, ECLI:EU:C:1995:31, para. 30; CJEU, case C-303/06, *Coleman v. Attridge Law*, ECLI:EU:C:2008:415, para. 38; CJEU, case C-54/07, *CGKR v. Firma Feryn NV*, ECLI:EU:C:2008:397, para. 25; CJEU, case C-237/94, *O'Flynn v. Adjudication Officer*, ECLI:EU:C:1996:206, paras. 19-21.

[18] See, amongst others, ECtHR, no. 40892/98, *Koua Poirrez v. France*, judgment of 30/09/2003, para 46; ECtHR, no. 65731/01, *Stec et al v. The United Kingdom*, judgment of 12/04/2006, para. 51; CJEU, case C-285/98, *Kreil v. Germany*, ECLI:EU:C:2000:2, para. 20; CJEU, case C-409/95, *Marschall v. Land Nordrhein-Westfalen*, ECLI:EU:C: 1997:533, paras 31-33.

[19] See, amongst others, ECtHR, no. 9214/80, *Abdulaziz et al v. The United Kingdom*, judgment of 28/05/1985, para. 78; ECtHR, no. 20458/92, *Petrovic v. Austria*, judgment of 27/03/1998, para. 37; ECtHR, no. 34462/97, *Wessels-Bergervoet v. The Netherlands*, judgment of 04/06/2002, para. 49; CJEU, case C-83/94, *Leifer et al*, ECLI:EU:C:1995: 329, para. 35; CJEU, case C-273/97, *Sirdar v. The Army Board and Others*, ECLI:EU:C: 1999:523, para. 28.

[20] See, amongst others, ECtHR, no. 55762/00 et al., *Timishev v. Russia*, judgment of 13/12/2005, para. 57; ECtHR, no. 57325/00, *D.H. et al v. Czech Republic*, judgment of 13/11/2007, paras. 178, 187; ECtHR, no. 58641/00, *Hoogendijk v. The Netherlands*, decision on admissibility of 06/01/2005.

designed to help students integrate the concepts previously learned and apply them to a specific type of discrimination.

The ultimate goal of the lecture and the ensuing assessment is that students are able to critically work with selected case-law. The presentations and the discussions to follow should demonstrate that the students have accurately understood the legal framework, the key concepts, the practice of the human rights supervisory bodies and the jurisprudence of the two European Courts and that they can convey and analyse them freely and convincingly.

Suggested Literature:

- Arnardóttir, Oddný Mjöll, Equality and Non-Discrimination under the European Convention on Human Rights, 2003
- Carlson, Laura, Comparative Discrimination Law, 2017
- Chalmers, Damian/Davies, Gareth & Monti, Giorgio, European Union Law: Text and Materials, 3rd ed. 2014, Chapter 13: Equal Opportunities Law and Policy, pp. 569 et seq.
- Collins, Hugh/Khaitan, Tarunabh (eds.), Foundations of Indirect Discrimination Law, 2018
- De Schutter, Olivier, International Human Rights Law, 2nd ed. 2014, Chapter 7: The prohibition of discrimination, pp. 632 et seq.
- Dovidio, John F. and others (eds.), The SAGE Handbook of Prejudice, Stereotyping and Discrimination, 2013
- Ellis, E. & Watson, P., EU Anti-Discrimination Law, 2nd ed. 2012
- Freeman, Marsha A., Chinkin, Christine and Rudolf, Beate (eds.), The UN Convention on the Elimination of All Forms of Racial Discrimination: A Commentary, 2013
- Givens, Terry/Case, Rhonda Evans, Legislating Equality: The Politics of Antidiscrimination Policy in Europe, 2014
- Handbook on European non-discrimination law – 2018 edition (co-published by the European Union Agency for Fundamental Rights and the Council of Europe), available at https://www.echr.coe.int/Documents/Handbook_non_discri_law_ENG.pdf (accessed on 27 March 2018)
- Harris, O'Boyle & Warbrick, Law of the European Convention on Human Rights, 3rd ed. 2014 (by David Harris, Michael O'Boyle and others), pp. 783 et seq.
- Hellman, Deborah/Moreau, Sophia (eds.), Philosophical Foundations of Discrimination Law, 2013
- Hellum, Anne/Sinding Aasen, Henriette (eds.), Women's Human Rights: CEDAW in International, Regional and National Law, 2013
- Mulder, Jule, EU Non-Discrimination Law in the Courts, 2017
- Peers, Steve/Hervey, Tamara/Kenner, Jeff/Ward, Angela (eds.), The EU Charter of Fundamental Rights: A Commentary, 2014, pp. 563 et seq. (Art. 20), pp. 579 et seq. (Art. 21), pp. 605 et seq. (Art. 22), pp. 633 et seq. (Art. 23)

- Solanke, Iyiola, Discrimination as Stigma: A Theory of Anti-Discrimination Law, 2017
- Thornberry, Patrick, The International Convention on the Elimination of All Forms of Racial Discrimination – A Commentary, 2016
- Tobler, Christa, Equality and Non-Discrimination under the ECHR and EU Law – A Comparison Focusing on Discrimination against LGBTI Persons, Zeitschrift für ausländisches öffentliches Recht und Völkerrecht (Heidelberg Journal of International Law) 74 (2014), pp. 521 et seq.
- Verbist, Valérie, Reverse Discrimination in the European Union, 2017
- Wintemute, Robert, 'Within the Ambit': How Big *Is* the 'Gap' in Article 14 European Convention on Human Rights?, European Human Rights Law Review vol. 9 (2004), pp. 366 et seq.
- Wintemute, Robert, Filling the Article 14 'Gap': Government Ratification and Judicial Control of Protocol No. 12 ECHR, European Human Rights Law Review vol. 9 (2004), pp. 484 et seq.

Module 5: European and International Protection of Human Rights	
Course	Anti-Discrimination Law: Global and European Perspectives
Lecturer	Prof. Dr. Thomas Giegerich, LL.M. (Univ. of Virginia)
Frequency	Annually
Duration of Course	1 Term
Admission limited to	Enrolled students in the Master's Program "European and International Law"
Curriculum	Elective course
Credit Points	3
Work Load (h)	Course Time: 16h Independent Study Time: 34h Presentation: 40h Total Study Time: 90h
Course Type	Lecture
Max. No. of Students	20 participants
Assessment	Oral presentation of a case and discussion. Group and individual work required.
Course-specific Objectives / Intended learning Outcomes	The lecture discusses the fundamentals of antidiscrimination law on both global and European levels. Its aim is to get the students acquainted with the relevant legal framework (UN Conventions, the ECHR, primary and secondary EU law), key concepts used in antidiscrimination discourse, as well as pertinent practice of international human rights bodies (e.g. CERD, CESCR) and the jurisprudence of the two European courts (ECtHR and CJEU). To ensure the students acquire an enhanced understanding of the topic, certain areas of antidiscrimination law, such as the prohibition of discrimination based on sex, age or religion, amongst others, are dealt with in greater detail. The ultimate goal of the lecture and the ensuing assessment is that students are able to critically work with selected case-law. The group presentations and the discussions to follow should demonstrate that the students have accurately understood the legal framework, the key concepts, the practice of the human rights supervisory bodies and the jurisprudence of the two European Courts and that they can convey and analyze them freely and convincingly.

Syllabus Plan	**A. Antidiscrimination law – global perspective** **I. General Legal Bases** **1. UN level** a. General Human Rights Documents (UN Charter, Universal Declaration of Human Rights, ICESCR, ICCPR, Convention on the Rights of the Child, International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, CRPD) b. Antidiscrimination Documents (ICERD, CEDAW) **2. Regional level** American Convention on Human Rights (ACHR), African Charter on Human and Peoples' Rights, Revised Arab Charter on Human Rights (ACHR), Association of Southeast Asian Nations (ASEAN) Human Rights Declaration **II. Definition of Discrimination** (e.g. CCPR, General Comment No. 18) **III. States' Obligation to "Guarantee" Non-Discrimination in the Exercise of Covenant Rights** (e.g. CESCR, General Comment No. 20) **B. Antidiscrimination law – European perspective** **I. General Legal Bases** **1. Council of Europe** ECHR (particularly Art. 14, Art. 1 Protocol No. 12), European Social Charter (Revised), Framework Convention for the Protection of National Minorities, European Convention on Nationality, Convention on Human Rights and Biomedicine, Convention on Preventing and Combating Violence against Women and Domestic Violence **2. EU** **a. Primary law** TEU, TFEU, Charter of Fundamental Rights **b. Secondary law** Directive 2000/78/EC (Framework Directive), Directive 2000/43/EC (Race Equality Directive), Directive 2004/113/EC (Goods and Services Directive), Directive 2006/54/EC (Equal Treatment Directive) **II. Definition of key concepts** (e.g. discrimination, harassment, instruction to discriminate, victimization, direct and indirect discrimination, positive action) by referring to their legal bases + ECtHR and CJEU applicable jurisprudence **III. State's Margin of Appreciation / Discretion** (CoE/EU) **IV. Burden of Proof** (CoE/EU) **C. Particularities and Case-Law relating to certain grounds of differentiation** (e.g. sex, sexual orientation, age, religion or belief, disability, race, ethnicity, colour or membership of a national minority) at global/CoE/EU levels, by examining the specific legal bases, the relevant definitions and leading case-law.
Miscellaneous	Working Language: English Bibliography: Students will be provided with a reader and the power point presentation prepared by the lecturer. Learning-/Teaching methods: Students may use all devices they deem necessary and helpful for their presentations, such as Power Point Presentations, Overhead Projector, White Board, Flip Chart, Handouts.

Mireille Hebing*

WOMEN AND INEQUALITY BEFORE THE LAW

Women and the Law

The lecture 'Women and the Law' is part of an undergraduate module titled *Politics of Gender*, which is a core module for students on the Political Science major of the BA Liberal Studies at Regent's University London. The overall narrative of this module constitutes a critical appraisal of women's experiences in the public and the private sphere, at national, regional and global level. It introduces the concepts of sex, gender, feminism, masculinity and femininity as they relate to understanding issues of identity, inequality, society, law, politics and policy. The module examines the gendered experiences and agency of men and women by engaging with topics such as gender and feminism, human rights, gender-based violence, sexual violence, rape as a weapon of war, gender and asylum, and contemporary gender politics. Students will gain the theoretical knowledge and investigative tools necessary to critically analyse the gendered power structures that shape the experiences of men and women in politics and society by applying a feminist perspective. They will develop a deep understanding of different theories of gender and explore the impact of gender on national, regional and global politics.

Following the first lecture of the module 'Exploring Concepts: Sex and Gender' the lecture 'Women and the Law' is held in week two. It focuses on how the origin of the law and legal institutions in Europe, and the UK in particular, is rooted in the patriarchal values that are enshrined in Enlightenment thought and the origins of liberal democracies.

Despite many positive changes across many EU member states in the last fifty years, it remains problematic for women to access and be protected by the law. For example, in the UK, the number of rape cases reported to the police more than tripled between 2009 and 2017. In 2009 the number reported was 13,096; this increased to 20,751 in 2014, and in

* Interim Head of Programmes International Relations, Politics and Law, Regent's University London, Inner Circle, Regent's Park, London NW1 4NS, 020 2487 7652, hebingm@regents.ac.uk

2017, 41,186 rape cases were reported to the police[1]. Yet the number of convictions for rape do not follow the same pattern. In 2009/2010 the rape cases that resulted in conviction of the perpetrator was 2,270, increasing to 2,348 convictions in 2013/2014. However, by 2016/2017 the number of convictions in rape cases was 2,991, a mere 721 more than in 2009/2010[2], demonstrating that whilst the number of rape cases recorded by the police increased dramatically, many of these cases never make it to trial[3].

Domestic violence follows a similar pattern, over the last ten years there has been a significant increase in reporting, the police on average receive over 100 calls relating to domestic abuse every hour in England and Wales[4]. Yet, prosecution rates for domestic abuse cases remains notoriously poor; this is partly because domestic abuse is not a criminal offence in itself, but 'rather a range of behaviours which may constitute any number of offences depending on the perceptions of the police'[5].

To have some understanding of how gender inequality before the law persists, it is useful to examine the historical origins and development of the law and legal institutions. The nature of law in liberal democratic societies emerged from eighteenth century Enlightenment principles, which included the values of liberty, equality, and a firm focus on the rights of the individual, a central characteristic in the rule of law. However, modernity generated societies that are patriarchal in nature, which means that activities in the public sphere such as politics, law and work were designed for and dominated by men. Women in this context were obliged to remain in the private sphere, taking on the caring role in the home, subordinate to their husbands, looking after children and the elderly.

Contemporary societies have evolved within this liberal democratic model of law as a just, neutral, impartial, objective and intellectually rigorous system for resolving conflicts, which is supposed to be underpinned by the value of equality of all before the law, irrespective of gender, class, race or religion. In this perspective, the role of criminal

[1] Office of National Statistics https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/ articles/ sexualoffencesinenglandandwales/ yearendingmarch2017#sexual-offences-recorded-by-the-police

[2] Crown Prosecution Service https://www.cps.gov.uk/publication/rape-prosecutions-key-facts

[3] Kennedy, H.(2018) *Eve Was Shamed: how British Justice is Failing Women* London: Chatto and Windus

[4] Her Majesty's Inspectorate Constabulary https://www.justiceinspectorates.gov.uk/hmicfrs/wp-content/uploads/increasingly-everyones-business-domestic-abuse-progress-report.pdf

[5] Kennedy, H. (2018) p90

law is to arbitrate conflicts between the state and the citizen through 'due process', that is according to legal rules and procedures known as fair and seen to be just, weighted neither against the accused nor in favour of those with power. The role of civil law is to resolve disputes between individual citizens, again following legal rules that guarantee fairness and equality. Like criminal law, civil law has developed through a mixture of common law or 'judge made' law; that is by following 'precedent' as settled by senior judges in previous cases and statute law made by elected politicians in parliament.

Although the law seems to be based on principles of equality and fairness, in reality, during the 18th and 19th centuries, legal systems operated following sexist principles, maintaining male interests, often to the detriment of women. Male dominance of the law and of the public sphere was absolute, as women had no legal entitlements, such as the right to property, the right to their own salary, the right to divorce or to their children. In addition, the law did not protect women from violence. During the twentieth century women gained some ground in acquiring rights and having their voices heard, but until the 1970s this remained extremely limited, and in many European countries it remains difficult for women to access the law and legal processes, especially in the areas of domestic abuse and sexual violence[6].

Critical feminist perspectives of classical liberalism attempt to explain how the law has dealt with issues in women's lives. Feminists turned their focus to the law through the activism of the Woman's Movement during the 1970s, as part of the struggles for equality for women and justice and protection in respect of domestic and sexual violence. This struggle formed the basis of a feminist jurisprudence, which examined the ways in which gender power relations, in addition to those of race and class, are embodied in the law. Women's studies during this period began to focus on the nature and extent of sexual and domestic violence and considered the law complicit through its failure to respond. Feminist scholars and activists tried for women's voices to be heard and women's situations and circumstances to be recognised in law. Historical studies exposed the hidden nature of the legal struggles of earlier generations of women.

Feminist jurisprudence emerged in response to gender inequality before the law, and theorised women's relationship to the law in general. Liberal feminists focused on challenging male bias in law, specifically by

[6] Harne, L. and Radford, J. (2008) *Tackling Domestic Violence: theories, policies, practice* Maidenhead: Open University Press

critically examining assumed values fairness and neutrality. They argued that to counteract the fact that male dominance of the law had been absolute, more women needed to work within the law.

However, in reality this solution has not been successful in all EU member states. For example, statute law is made through the Parliamentary political process. Through the 20th century women have been entering their various national governments as MPs. In the UK, out of 650 Members of Parliament (MPs) overall, in 2010 143 were women, increasing to 208 female MPs in 2017[7]. Although this is an improvement, British Parliament, and therefore the British law making process remains predominantly male. This gender imbalance is similar in the area of common law, which is law made by judges: Across Europe the ratio of female to male judges is 51%, however in the UK in 2015, 25% of judges were female, which increased to 28% in 2016[8]. Despite legislation promoting gender equality and challenging gender discrimination, in the UK neither in government nor in the law has gender equality been achieved.

More radical forms of feminism have argued that the notion that more female law makers will change the gender imbalance in law is based on liberal feminist assumptions. Instead they suggest that male dominance not only permeates the making and applying of law, but that the law and legal institutions are rooted in a strong traditional masculine culture. In this setting, neutrality and objectivity are ideology rather than reality, and governed by paradigm of masculine dominance. Legislation designed to protect women fails and reproduces women's experiences of oppression rather than changing them, thereby legitimating male control over the lives of women. Victims of rape, domestic violence or prostitution continue to have difficulty in being protected by the law, as it remains more concerned with preserving a culture of masculinity instead of ensuring women's safety.

The issue of gender inequality before the law has become an issue of ferocious global political debate, especially since the Harvey Weinstein scandal, and the subsequent #metoo campaign in October 2017. Sexual harassment, sexual violence and other forms of gender equality have become increasingly prominent on the political agenda, which will continue to have an impact on the law at national, regional and global levels.

[7]Parliament UK (2019) https://www.parliament.uk/business/publications/research/key-issues-for-the-new-parliament/the-new-parliament/characteristics-of-the-new-house-of-commons/

[8] Guardian (2016) https://www.theguardian.com/law/2016/oct/06/proportion-of-women-judges-in-uk-among-lowest-in-europe

This lecture provides a solid platform from which to explore the remaining topics in the module, including human rights, violence against women and girls, asylum, prostitution, sex trafficking, rape and domestic violence.

Suggested Readings:

Anand, D, 'Anxious sexualities: Masculinity, nationalism and violence' in The British Journal of Politics and International Relations, 92, pp.257-269, 2007
Asylum Aid (2003) Women Asylum Seekers in the UK: a gender perspective, some facts and figures, Refugee Women's Resource Project and Asylum Aid, 2003
Asylum Aid, Researching Country of Origin Information on Gender and Persecution in the context of asylum and human rights claims, Asylum Aid and Refugee Women's Project, 2007
Bloom, M, 'Bombshells: Women and terror' in Gender Issues, 281-2, pp.1-21, 2011
Bryson, V, Feminist Political Theory (2nd Ed), 2003
Butler, Judith, Gender Trouble, 1990
Cohn, Carol, (ed), Women & Wars, 2013
Connell, R.W. and Messerschmidt, J.W. Hegemonic masculinity rethinking the concept in Gender & society, 196, pp.829-859, 2005
De Beauvoir, S, The Second Sex Trans. H. M. Parshley, 1986
Crawley, H, Refugees and Gender: Law and Process, 2001
Crawley, H, 'Engendering the State in Refugee Women's Claims for Asylum' in Jacobs, S. et al (eds) (2000) States of Conflict: Gender, Violence and Resistance, 2000
Enloe, C. H, Bananas, beaches and bases: Making feminist sense of international politics, 2000
Enloe, C, Maneuvers: The international politics of militarizing women's lives, 2000
Haywood, C. and Mac an Ghaill, M, Men and Masculinities, 2003
Harne, L. and Radford, J, Tackling Domestic Violence: theories, policies and practice, 2008
Higate, P, 'Peacekeepers, masculinities, and sexual exploitation' in Men and Masculinities, 101, pp. 99-119, 2007
Hill Collins, P. and Bilge, S, Intersectionality, 2016
Kennedy, H, Eve was Shamed: how British Justice is failing women, 2018
Kilby, J. and Ray, L. Violence and Society: towards a new sociology, 2014
Kirby, P, 'How is rape a weapon of war?: feminist international relations, modes of critical explanation and the study of wartime sexual violence' in European Journal of International Relations, p.1-25, 2012
Kofman, E., Raghuram, P. and Merefield, M, Towards Gender Sensitive Policies in the UK, 2005
Kofman, E, et al, Gender and International Migration in Europe: employment, welfare and politics, 2000
Leatherman, Janie L, Sexual Violence and Armed Conflict, 2011
Mackay, F, Radical Feminism, 2015
MacKinnon, C. A, Are Women Human? And Other International Dialogues, 2007
Marcus, S, Girls to the Front: The True Story of the Riot Grrrl Movement, 2010
Refugee Women Resource Project, Gender Issues in Assessing Asylum Claims: spreading good practice across the European Union, 2005
Robinson, V. and Richardson, D, Introducing Gender and Women's Studies, 2015
Murphy, P, Feminism and Masculinities, 2004
Sjoberg, L, Gender, War & Conflict, 2014
Tickner, A, Gendering World Politics: Issues and Approaches in the Post-Cold War Era, 2001
True, J, The Political Economy of Violence Against Women, 2012
Walby, S, The future of feminism, 2011
Weber, C, Queer International Relations, 2016
Woodiwiss, A, Human Rights, 2005

Week Two: Women and the Law	
Module	POL501 Politics of Gender
Lecturer	Dr Mireille Hebing (Regent's University London)
Frequency	Annually
Duration of Course	12 weeks (one term)
Admission	Level 5 students BA Liberal Studies
Curriculum	Core
Credit Points	12
Work Load (h)	Course Time: 36 Independent Study Time: 36 Assessment: 48 Total Study Time: 120
Course Type	Lectures and Seminars
No. of Students	Maximum of 20 participants
Assessment	Essay (50%) and Final Exam (50%)
Course-specific Objectives / Intended learning Outcomes	Effectively define a broad range of relevant information, demonstrate understanding through applying relevant gender concepts and theories. Successfully identify a range of relevant information relating to gender and conflict and be able to discuss them constructively in classroom discussions and assignments. Systematically search a wide variety of resources with critical judgement. Organise and present an argument clearly and in a manner which anticipates opposing positions, using reliable, relevant and multi-perspective-based evidence. Frequently and effectively articulate module material in classroom discussions and assignments. Demonstrate a professional attitude in the classroom and in assignments, through active organisation, effective time-management and appropriate devotion to understanding the module material. Demonstrate active reflection on the concepts and contexts covered in the module.
llabus Plan	Week One: Concepts: Sex and Gender Week Two: Women and the Law; Enlightenment and Establishing Patriarchy Week Three: Gender in International Law and Human Rights Discourse Week Four: Early Feminism: Mary Wolstonecraft; Suffragette Movement and the Right to Vote Week Five: Second Wave Feminism (1960s/1970s); Third Wave and Contemporary Feminism Week Six: Masculinities Week Seven: Violence Against Women and Girls (for example rape as a weapon of war, female genital mutilation). Week Eight: Gender and Asylum: Refugee and Migrant Women Week Nine: Gender and Crime I: Prostitution and Sex Trafficking Week Ten: Gender and Crime II: Rape, Domestic violence, Sexual Harassment Week Eleven: #metoo: Future of Gender and Feminism Week Twelve: Course Overview/Exam Preparation

Damian Bielicki*

PUBLIC INTERNATIONAL LAW

The International Law module will provide students with an in-depth introduction to the principles and functioning of the international legal order from a multidisciplinary perspective. Topics will include: historical background, sources of international law, states, the United Nations system, diplomatic and consular law, human rights, international humanitarian law of armed conflicts, space and cyber law, international criminal law, environmental law and many more.

The module will provide students with the ability to learn, understand, explore and acquire an understanding of the many issues that fall under the umbrella of the area of socio-legal studies known as Public International Law. Critical approach to legal education will be considered involving multidisciplinary nature of international law, with studies ranging from law, politics, history, science, philosophy, sociology, economy, to ethics and international relations. Moreover, we will look into international law from the national, regional and global perspective. It will help students describe, analyse and evaluate different issues, and to look beneath the surface of laws and regulations, to see the 'bigger picture'. The selected topics already had, have or will have a direct impact on our lives, making it very practical.

The module will cover the fundamental knowledge of how international law system works and what is the role of lawyers, politicians, diplomats, and other professionals on the international arena. Practical cases will be given in order to connect the law with real life scenarios. The module is a rare opportunity for students, allowing them critically evaluate ongoing developments in international law theory and practice, and recognise how these developments relate to one another.

Learning outcomes:

On completion of this module, the students should be able to:

- Demonstrate in-depth knowledge of international law from a multidisciplinary perspective.

* Dr Damian Bielicki is a Visiting lecturer at Regent's University London.

- Identify and critically evaluate current issues, developments, knowledge, evidence and arguments relating to theory and practice in a range of topics in international law.
- Demonstrate skills in critical awareness and originality of thought in dealing with complex issues and developments of international law.
- Demonstrate an ability to challenge and debate theory and practice of international law – *de lege lata* and *de lege ferenda* (Latin: the law as it exists and what the law should be).
- Demonstrate an ability to retrieve, synthesize and assimilate a range of complex works in any specialist area within international law and construct a coherent argument.
- Identify and develop oral and written communication skills in the context of individual assignments, group work, moot courts, debates or problem solving exercises.
- Engage in clear and effective communication of ideas and arguments both orally and in writing to an international and diverse audience.
- Show the ability to work independently with confidence, taking the initiative to read, research and proactively seek out new skills and knowledge.
- Demonstrate the ability to challenge orthodox and established views and to think originally.

Suggested Literature:

- Shaw, Malcolm N., *International Law*, Seventh Edition, 8th Ed., Cambridge University Press 2017
- Crawford James, *Brownlie's Principles of Public International Law*, Oxford University Press 2012
- Aust, Anthony, *Handbook of International Law*, 2nd ed. Cambridge University Press 2010
- Dinstein Yoram, *War, Aggression and Self-defense*, latest edition.
- Shelton Dinah, *The Oxford Handbook of International Human Rights Law*, Oxford University Press 2015

Additional Resources:

- International Court of Justice – Cases http://www.icj-cij.org/docket/index. php?p1=3

- European Court of Human Rights http://www.echr.coe.int/Pages/home.aspx?p=home
- Inter-American Court of Human Rights http://www.corteidh.or.cr/index.php/en
- International Criminal Court – Cases https://www.icc-cpi.int/en_menus/icc/situations%20and%20cases/cases/Pages/cases%20index.aspx
- International Humanitarian Law – Treaties, documents and commentaries https://ihl-databases.icrc.org/ihl
- United Nations – General Assembly Resolutions http://www.un.org/en/sections/documents/general-assembly-resolutions/index.html
- United Nations – Security Council Resolutions http://www.un.org/en/sc/documents/resolutions/
- United Nations Treaty Collection https://treaties.un.org/pages/cumulativeindexes.aspx

Syllabus Plan
Session 1: An introduction to international law *(Historical development, basic terminology and principles)* **Session 2: Sources of International Law** *(Focus on art. 38 of the Statute of the ICJ and the sources not mentioned in the Statute)* ***Session 3: The subjects of international law*** *(States, international inter-governmental organisations, NGOs, non-state actors, the concept of international legal personality)* ***Session 4: Territory in international law*** *(The concept of territory in international law, terrotorial sovereignty and integrity, means of acquisition of territory etc.)* ***Session 5: The United Nations*** *(The UN System, the UN Charter, the UN bodies etc.)* ***Session 5: The Settlement of disputes*** *(Diplomatic and judicial methods of dispute settlements; the role of international institutions and organisations in dispute settlements etc.*) ***Session 6-7: Human Rights Law***

(International and regional protection of human rights) ***Session 7-8: International Humanitarian Law of Armed Conflicts*** *(Historical background, the illegality of war, exceptions to the prohibition of the use of force etc.)* ***Session 9: Technological development and international law*** *(Air Law, Space Law, Cyber Law)* ***Session 10: Environmental Law*** *(Historical background, current legal regime)*
Working Language: English Bibliography: Students will be provided with a reader and the power point presentation prepared by the lecturer. Learning-/Teaching methods: Students may use all devices they deem necessary and helpful for their presentations, such as Power Point. Presentations, Overhead Projector, White Board, Flip Chart, Handouts.

Vasilka Sancin[*] and Maša Kovič Dine[**]

TEACHING EU LAW AS PART OF INTERNATIONAL LAW SYLLABI

1. Introduction

This chapter offers a perspective on teaching European Union (EU) law as part of public international law programme at the Faculty of Law, University of Ljubljana (the Faculty).[1] The experience of the Faculty's Department of International Law shows that fundamentals, as well as some selected EU law aspects can be effectively taught as part of international law courses, both at bachelor, as well as at Masters level of legal studies. Among others, such approach enables the students to connect EU law topics with other legal fields and gives them a broader vertical and horizontal understanding of the functioning of the EU legal system.

Since the late 1990s, some fundamental characteristics, as well as selected topics of EU law are being regularly taught as part of an obligatory Public International Law course in the 4th year of studies at the bachelor level, as well as within courses at Masters level, currently, particularly within a course entitled Selected chapters of International Law, available as an obligatory course of the International Law Module at the Bologna Masters level at the Faculty.

Within the **Public International Law course** (10 ECTS, 150 hrs in total – 90h lectures, 60 hrs practical exercises analysing jurisprudence of international courts and tribunals) – which is currently part of the 1st Bologna cycle studies – EU law is mainly discussed in the introductory part (Winter Semester), where basic relationships between different legal orders, *i.e.* domestic law – EU law – international law, are explained, also

[*] Vasilka Sancin, PhD, Associate Professor of International Law and Head of the Department of International Law at the Faculty of Law, University of Ljubljana, Director of the Institute for International Law and International Relations Poljanski nasip 2, Si-1000 Ljubljana, Slovenia, e-mail: vasilka.sancin@pf.uni-lj.si; telephone: +38614203129.

[**] Maša Kovič Dine, PhD, Assistant Professor of International Law at the Faculty of Law, University of Ljubljana, Poljanski nasip 2, Si-1000 Ljubljana, Slovenia, e-mail: masa.kovic-dine@pf.uni-lj.si; telephone: +38614203116.

[1] The education and training in EU law at the Faculty of Law, University of Ljubljana, as part of the law of Slovenia, are presented in the chapter of this book titled *Education and Training in EU Law at the Faculty of Law of University of Ljubljana* by Ana Vlahek.

by referring to theories of monism, dualism and coordination (approximately 3hrs of lectures and 2 hrs of practical exercises discussing the jurisprudence of the Court of Justice of the EU (CJEU)). There are also other instances where EU law is invoked during discussion of fundamental rules and principles of international law, such as conditions for recognitions of States, where EU seems to have added some conditions for recognition of new States, including after the dissolution of former Yugoslavia, or when looking at various sanctions mechanisms introduced by the EU law to either fight terrorism or respond to illegal use of force, among others.

Much stronger focus on and a detailed study of the interplay between public international law and EU law is however ensured within the International Law module of the 2nd Bologna cycle studies offered at the Faculty since 2009. The main obligatory course of the module, entitled **Selected Chapters of International Law** (8 ECTS, 90 hrs in total – 60hrs lectures, 30 hrs practical exercises) is specifically so designed as to analyse the subject matter of each course's chapter from both, international law and EU law, perspectives. This approach is further explained in the following part of this chapter.

Since many years, the EU law has been a subject of specialized moot court competitions. Nevertheless, it is not unusual that the EU law and jurisprudence are referred to also within student **moot court competetions** in the field of public international law (*e.g.* Philip C. Jessup International Law Moot Court Competition, Frankfurt Investment Arbitration Moot Court Competition, Manfred Lachs Space Law Moot Court Competition), in which the Faculty's teams regularly participate and achieve remarkable results.

In addition to teaching of EU law within the Faculty's Department of International Law, there are also numerous **theses** (formerly - before Bologna reform - at the bachelor level (until these were replaced by two additional elective courses), at Masters level as well as in doctoral studies) focusing on various EU law issues, while the students can engage also in numerous Department's **research projects**, tackling also aspects of EU law.

2. Expanding Knowledge of EU Law within the Masters Studies of International Law

Already in the 2001 programme of the, then scientific, Masters studies in international law (pre-Bologna studies), the curricula included a special mandatory course entitled *International Legal Aspects of the European Union*. The course with 20 hrs of lectures tackled various EU law

issues, such as history of EC/EU integrations, legal personality of the EC and EU, institutional structures, conclusion of treaties, foreign affairs of the EU, legal aspects of EU association and membership processes and ensuing institutional and normative matters. The course was designed with the purpose to educate and prepare individuals involved in the process of Slovenia's preparations for the future EU membership, as well as those who needed to be aware of EU normative and institutional framework as part of their jobs even prior to Slovenia's EU membership attained in 2004.

However, after the Bologna reform and the unfortunate abolition of the scientific Masters studies in Slovenia, the Faculty's Department of International Law decided, as indicated above, to include in its international law module of the 2nd bologna cycle, an obligatory course entitled Selected Chapters of International Law. The course's syllabus consists of the following main topics: the relationship between international law and national law, the relationship between international law and EU law, protection of minorities, diplomatic protection, international investment law, international environmental law and peaceful dispute settlement. While the focus on EU law is crucial within the topic on the relationship between international and EU law, all the other topics contain also important EU law elements, as will be presented in the following parts. EU law units are presented to the students in varying ways, through specifically focused lectures on EU topics, through comparisons of EU law with international law rules or though the study of the CJEU decisions and opinions or other practical examples from EU practice.

2.1. The Relationship between International Law and EU Law

As illustrated above, the EU law topics are significantly intertwined with the international law topics, even more so for EU Member States (MS). Hence, it is necessary for the students to learn about the relationship between international law and EU law. The course Selected Chapters of International Law thus dives into the complexities of division and sharing of competences between the EU and its MS in relation to their legal rights and obligations under international law. In particular, the students are expected to gain an in-depth knowledge of the position of international law within the EU law. The fundamental aspects of EU competences are already discussed at undergraduate (bachelor) level (1st

Bologna cycle), as for example, the case of *MOX plant*[2] and mixed international agreements is studied as part of the practical exercises within the course of Public International Law. The issue of the relationship between the EU law and international law, as two separate legal systems, is however further elaborated with the study of the *Kadi case*[3] and the EU Courts' decisions at all levels, as this is one of the cornerstone cases for the illustration of the relationship between the EU law and international law. The students are required to read in detail the decisions of all the Courts' instances and are encouraged to discuss all the possible outcomes of the decisions. Within this, the course addresses also the issues of the protection of fundamental human rights at the EU level. The basic textbook for this part of the course is Sancin, V., Mednarodno pravo v hierarhiji pravnih virov EU in njenih članic (International Law in the Hierarchy of Legal Sources of EU and Its Member States), Uradni list Republike Slovenije, Ljubljana, 2009.

2.2. Protection of minorities

The minority protection is an EU priority area especially in the enlargement process.[4] While the legal framework for minority protection within the EU is rather weak, there are other European regional documents and monitoring mechanisms that offer protection to ethnic, linguistic and religious minorities in EU MS. The syllabus of the course among the general topics on the development of minority protection and protection of minorities under the United Nations system, also covers minority prote-

[2] Commission of the European Communities v Ireland, Judgment of the Court (Grand Chamber) of 30 May 2006, Case C-459/03.

[3] Yassin Abdullah Kadi v the Council of the European Union and European Commission, Judgment of the Court of First Instance (Second Chamber, extended composition) of 21 September 2005, Case T-315/01; Yassin Abdullah Kadi and Al Barakaat International Foundation v the Council of the European Union and European Commission, Judgment of the Court (Grand Chamber) of 3 September 2008, Joint cases C-402/05 P and C-415/05 P; Yassin Abdullah Kadi v European Commission, Judgment of the General Court (Seventh Chamber) of 30 September 2010, Case T-85/09; European Commission and Others v Yassin Abdullah Kadi, Judgment of the Court (Grand Chamber), 18 July 2013, Joined Cases C-584/10 P, C-593/10 P and C-595/10 P.

[4] Towards a Comprehensive EU protection system for minorities, Directorate-General for Internal Policies, Policy Department C, Citizens' Rights and Constitutional Affairs, PE 596.802 (2017), < http://www.europarl.europa.eu/RegData/etudes/STUD/ 2017/596802/ IPOL_STU(2017)596802_EN.pdf> (14.4.2019).

ction under the Council of Europe and its leading document European Convention of Human Rights and Fundamental Freedoms (ECHR), as well as under the system of the Organization for Economic Cooperation and Development (OECD). These multiple documents and their monitoring mechanisms are best presented through a case study of an example of a national minority. Hence, the examples of the position and struggles of the Slovenian minorities in neighbouring countries, all EU MS, are studied by the students through the latest reports of the abovementioned monitoring bodies. The issues of fulfilment by the states of residence of the respective minorities and their options for legal redress are discussed. In light of the later, the students become familiar also with the position of EU and measures at its disposal to react to abuses of minorities rights in its MS.

2.3. Diplomatic Protection and International Investment Law

These two titles of the syllabus again call for study of the EU legal regulation on the topic of investment law and more specifically investment arbitration and other forms of dispute resolution. Various topical investment cases are studied and their impact on EU law. Among those are the *Yukos case*[5], especially due to the related human rights violations and proceedings before the European Court of Human Rights (ECtHR) and the issues related to the enforcement of the award before the courts of EU MS, as well as the *Achmea judgment*[6] on incompatibility od intra-EU investment agreements with EU law, and the Opinion 1/17[7], in which the CJEU confirmed the CETA's Investment Court System's compatibility with EU Law.

2.4. International Environmental Law

Special focus in the course is also given to the study of the European Environmental Law and its enforcement. As the environmental law cases studied have an important implication on EU law and national environmental law regulation and implementation, these implications are

[5] PCA Case No. AA 226 Hulley Enterprises Limited (Cyprus) v. The Russian Federation, PCA Case No. AA227 Yukos Universal Limited (Isle of Man) v. The Russian Federation, PCA Case No. AA 228 Veteran Petroleum Limited (Cyprus) v. The Russian Federation, 13 July 2014, https://pca-cpa.org/en/cases/61/ (14.4.2019).

[6] Slowakische Republik v Achmea BV, Judgment of the Court (Grand Chamber) of 6 March 2018, Case C-284/16.

[7] EU-Canada CET Agreement, Opinion of the Court (Full Court) of 30 April 2019, Opinion C-1/17).

discussed as a consequence of the international law case-law. One of such cases is the already mentioned case of the MOX plant, that addresses the relationship between international law and EU with mixed agreements. Furthermore, the issue of the competences between EU institutions and MS is discussed, as this affects the MS' obligations in fulfilling international environmental law agreements. In areas where international law lacks regulation for environmental protection, such as the field of protection of forest and deforestation, EU law regulation is presented as the relevant regulation limiting states' sovereignty over natural resources and determining their management. In the case of deforestation the ECJ case *C-441/17 European Commission against Poland*[8] is studied and discussed in detail. Further attention is also given to the issues of litigation in environmental matters and the EU fora as some of the possible alternatives are looked at.

2.5. Peaceful dispute settlement

For EU MS, various EU mechanisms and fora for dispute settlement, present a viable option for resolving a plethora of inter-State disputes. As the international options are often limited, due to restricted standing requirements or lack of jurisdiction or inadmissibility, the EU mechanisms open numerous avenues for redress that would otherwise not be available to EU MS or private disputing parties. Among the inter-State disputes discussed in the course is also the dispute between Slovenia and Croatia, that was brought by the former before the CJEU in 2018.

3. Conclusion

The EU Law, from its inception as a special branch of international law, gradually evolved into an independent *sui generis* legal order, mostly as a result of its progressive interpretation by the EU courts. However, its umbilical cord with international law has never been fully cut. There are thus many reasons why EU law shall be studied also within the public international law curricula, in addition to its incorporation in other legal courses. Let us name just a few. The fundamental EU treaties, such as the Lisbon Treaty, maintain the quality of treaties under international law, for which the interpretative rules of the Vienna Convention on the Law of Treaties apply. Moreover, the EU has become a party to a number of

[8] European Commission against the Republik of Poland, Judgment of the Court (Grand Chamber) of 17 April 2018, Case C-441/17.

multilateral treaties in place or in addition to its MS, and is thus bound by such international legal obligations, which need to be honoured within the international legal system. Finally, yet importantly, the CJEU has been using international law in exercising its judicial function since its inception, and is thus importantly contributing to the phenomenon of *Europeanisation* of international law.

All of the above and more, have led some to argue that 'the European Union's legal system has become the most effective international legal system in existence, standing in clear contract to the typical weaknesses of international law and international courts'[9].

[9] Karen J. Alter, Establishing the Supremacy of European Law, The Making of an International Rule of Law in Europe, Oxford University Press, 2001.

Ana Vlahek*

EDUCATION AND TRAINING IN EU LAW AT THE FACULTY OF LAW OF UNIVERSITY OF LJUBLJANA

1. INTRODUCTION

University of Ljubljana is the oldest and largest higher education and scientific research institution in Slovenia. It was established in 1919, the Faculty of Law being one of its founding members. In 2019, when both the University and the Faculty are celebrating their 100th anniversary, Slovenia is marking 15 years of its membership in the EU. EU law, however, started to be taught at Faculty of Law in Ljubljana much before Slovenia entered the EU in 2004. Regular study programmes covering EC law date back to late 1980s and the beginning of 1990s when various types of courses on EEC/EC law were offered to bachelor and masters students. The majority of these activities were performed within one of the Tempus projects. It is noteworthy that at the time (i.e. in the period of Slovenia's path to independence from the former Yugoslavia), many law faculties from the EU Member States had not yet offered elective, let alone obligatory, courses in EEC/EC/EU law. The motor behind this modern and visionary movement was undoubtedly Professor Peter Grilc[1] of the Faculty's Department for Private Law[2] who was aware of the importance of Slovenia's membership in the EC and the knowledge required by legal practitioners, judges and businesses before and upon joining the EU.

* Ana Vlahek, PhD (Ljubljana, Slovenia), Associate Professor at University of Ljubljana, Faculty of Law, Poljanski nasip 2, Si-1000 Ljubljana, Slovenia, e-mail: ana.vlahek @pf.uni-lj.si; telephone: +38614203154. This chapter discusses education and training in EU law at the Faculty of Law, University of Ljubljana, as part of the law of Slovenia, while the chapter by Sancin and Kovič Dine addresses the inclusion of EU law topics in international law courses.

[1] http://www.pf.uni-lj.si/en/faculty/teachers-and-researchers/peter-grilc-phd-professor/ (28/2/2019).

[2] http://www.pf.uni-lj.si/en/faculty/departments/department-of-civil-law/ (28/2/2019).

2. TEACHING EC/EU LAW AT FACULTY OF LAW IN LJUBLJANA

2.1. The beginnings (1980s and 1990s)

The beginnings of the introduction of EEC/EC/EU law to educational activities of the Faculty of Law in Ljubljana date back to late 1980s when Professor Peter Grilc (researcher and teaching assistant at the Faculty of Law in Ljubljana at the time) returned from internship at the European Commission in Brussels. Inspired by the ideas of European integration and the functioning of the common market and conscious of both, the importance of Slovenia's trade with the EEC Member States, as well as the alignment of Slovenian legal order to *acquis communautaire*, required for the future EEC membership, he succeeded in organizing various EEC law related summer schools and other extra-curricular activities. With the support from his mentor Professor Emeritus Bojan Zabel,[3] he eventually also succeeded in enlisting a new course on *EC Law* (Sl. *Pravo Evropske skupnosti*) among the elective courses of the last, fourth year of bachelor studies. The course outline represented the framework for all later courses covering EC/EU law and consisted of the following topics: historical overview, EC institutions, EC legal sources, judicial remedies, characterristic of EC law, free movement of goods, EC competition law, free movement of person and services, economic and monetary union, the protection of environment, foreign policy, Slovenia and the European communities. It required studying the ECJ's case law and reading existent foreign literature on the functioning of the EC, as well as the first Slovenian work on EC law, i.e. a casebook of 1984 titled *Legal Regulation of the EEC* by late Professor Mirko Ilešič of University of Maribor, Faculty of Law.

Shortly thereafter, Professor Grilc became a member of Tempus project JEP 07783/94 performed within the Trans-European cooperation scheme for higher education between Central/Eastern Europe and the European Community.[4] The project titled *Introduction of European law into university programmes and extra-university education in Slovenia* was aiming at introducing and/or restructuring and modernizing EU law courses at law faculties in Ljubljana and Maribor including the development of a postgraduate Masters course in European law and the creation of an inte-

[3] http://www.pf.uni-lj.si/en/faculty/teachers/bojan-zabel-phd-professor-emeritus/ (28 / 2 / 2019).

[4] *European Commission*, Tempus, Compendium, Academic Year 1994/95, Brussels, Luxembourg, 1994, http://aei.pitt.edu/91970/1/1994-95.pdf (28/2/2019).

rnational summer school in European law.[5] The EC financed the introduction of EC law courses into the curricula of Slovenian law faculties whereas the latter obliged to perform the courses on a regular basis and finance them. The project provided for cooperation of universities of Maribor (Professor Mirko Ilešič), Ljubljana (Professor Peter Grilc), Graz (Professor Posch), Trieste (AvD. Mansi) and Amsterdam (Professor Jan H. Jans and Professor Edmond L.M. Völker).

One of the most important results of the project activities at the Faculty of Law in Ljubljana was the introduction of an obligatory course titled *EC Law* in the last, fourth year of undergraduate programme. As was the case with the pre-existent elective course, *EC Law* consisted of 90 hrs and was taught by Professor Grilc and Professor Podobnik[6] (a teaching assistant at the time) throughout both the winter and the spring semester. In addition, a novel elective course *The Law of International Economic Integrations* covering predominantly EC law was introduced within the scientific masters studies of civil and commercial law. As teaching EC law at the faculty started so many years ago, there is actually no evidence available of the exact academic year in which the elective and the obligatory courses on EC law within undergraduate and postgraduate studies were launched. Undergraduate study programmes stored in the faculty archives date back to 1996/7, while some older ones that are available are not dated.[7] According to the memories of Professors Grilc and Podobnik, the undergraduate elective course started in the beginning of 1990s while its obligatory counterpart sometime in the middle of 1990s during the implementation of the Tempus project. According to the faculty books and old programme booklets, courses covering EC law in postgraduate studies were offered in 1993/94 at the latest.

Within the Tempus project, Professors Grilc and Podobnik also organized two summer schools in European law that took place at the Faculty of Law in Ljubljana in 1997/8 and 1998/9. Various case-books on EC law were also issued at that time as a result of the project activities.[8]

---

[5] See *Fašink*, Tudi to je lažja pot do znanja, Pravna praksa, no. 3, 1995, p. 28.

[6] http://www.pf.uni-lj.si/en/faculty/teachers-and-researchers/klemen-podobnik-phd-associate-professor/ (28/2/2019).

[7] I would like to thank our colleagues from the students' office for their help in the research of the study programmes archives.

[8] *Ilešič, Grilc, Brinar*, Pravo Evropske skupnosti, praktikum, Pravna fakulteta v Mariboru, 1996; *Ilešič, Grilc, Knez*, Pravo Evropske skupnosti, Del 2, Primeri iz prakse sodišča Evropske skupnosti, Pravna fakulteta v Mariboru, 1997; *Ilešič et al.*, Pravo Evropske skupnosti: študijsko gradivo in sodna praksa, Pravna fakulteta v Mariboru, 1998.

A couple of years before Slovenia joined the EU, Professors Grilc and Podobnik wished to upgrade all these activities by instituting a new faculty Department of European Law and/or a faculty Institute for European law that are typical in the EU Member States and a *conditio sine qua non* for intensive scientific research of EU law. Their ideas were unfortunately not implemented. This was surely one of the barriers to additional intensification of research of EU law at the Faculty. Another reason for deficiency in EU law research activities on the turn of the century and onwards, have been the everlasting poor employment possibilities at the Faculty, resulting in the lack of young researchers and teachers, coupled with overburdening of the existent staff, who cannot focus solely on researching EU law (let alone a specific topic within EU law), but are too often required to cover a variety of courses within different legal fields. Having regard to these circumstances, the results of those teaching and researching EU law have been quite formidable. The quality of teaching and research of EU law is best measured by the successes of University of Ljubljana teams on EU moot court competitions and our graduates on their Erasmus, postgraduate or PhD studies abroad providing feedback on how excellent is their knowledge of EU law gained at the Faculty, as well as by the number of successful conferences organized and projects covering topics of EU law performed by the Faculty staff.

2.2. Courses on *EC/EU Law* of the pre-Bologna system (mid-1990s – 2009)

Course titled *EC Law* has been one of the focal obligatory courses at the Faculty of Law in Ljubljana since the middle 1990s. As was the case with the elective course on the *EC Law*, that was added to the curriculum a couple of years earlier, this course, too, covered both general constitutional and procedural topics, as well as substantive topics such as the four freedoms and EC/EU competition law. It was structured as follows: The evolution of the European economic integration; EC Institutions; Judicial remedies in the EC; EC legislation and political decision-making; Nature of EC law: direct and indirect effect; Application of EC law: remedies before national courts; Relationship between EC law and national law: priority; General principles; Free movement of goods; Free movement of workers (and beyond); Freedom of establishment and offering services; Public policy exceptions; Guaranteeing equality; Competition law; IP law; The State and the common market; Common market: ideas for finalisation;

Protection of environment; Foreign policy; Slovenia and the EC. The course syllabus had for years remained more or less the same. It had only been slightly restructured and written in more detail, some aspects of EU law (e.g. EU consumer law and the novelties brought by the new treaties) were also added.

The course hours were divided into lectures and seminars (2 hrs of lectures plus 1 hr of seminar per week in both winter and spring semesters). What we can detect as still being a best practice in teaching EU law at our faculty is the integration of case law studies in the lecturing system. From the outset, the topics on EC/EU law have been explained by analysing the relevant ECJ/CJEU cases. Some of the focal topics and cases used to be additionally analysed in depth at the seminars, which were performed in smaller groups of students. These days, the seminars may as a rule be performed only in one group of students, and the exercises can hardly be organized due to the fact that the Faculty is understaffed, which is why all the activities (*ex chatedra* lectures, discussions, analysis of CJEU cases etc.) take place during the "lectures".

As at the time, no case law was available in Slovenian language, the cases were read and analysed in English (or other available language chosen by the students) which enabled the students to practice foreign languages and legal terminology. The students were also encouraged to use foreign literature on EC/EU law (e.g. Craig & deBurca, Mathijsen, Brown & Jacobs, Harding & Sherlock, Emmert, Opperman, Steiner & Woods etc.) which remained the focal literature set out in the study programmes even after the first Slovenian book on EU law was published in 2001. *The Law of the EU* (Sl. *Pravo Evropske unije*) written by Peter Grilc and Tomaž Ilešič, was comprised of two parts, the first covering the general topics of EU law (history, principles, judicial remedies, legal acts, decision-making etc.),[9] and the second, the substantive law of the EU, mainly the law on the four freedoms and competition law.[10] The book was modelled on the existent foreign books on EC law and has for many years remained the only Slovenian monograph on EU law.

Before Slovenia entered the EU, other bachelor programme courses, be it obligatory or elective, did generally not cover any EU law topics while afterwards, selected aspects of EU law have slowly begun to

[9] *Grilc, Ilešič*, Pravo Evropske unije, 1. knjiga, Zbirka Pravna obzorja 17, Cankarjeva založba, Ljubljana 2001.

[10] *Grilc*, Pravo Evropske unije, 2. knjiga, Zbirka Pravna obzorja, 17, Cankarjeva založba, Ljubljana 2001.

be analysed within labor law, social security law, private law, corporate law, criminal law, and other undergraduate courses.

In the pre-Bologna system, the Faculty of Law in Ljubljana offered also accredited scientific masters and PhD programmes. Within the Civil and Commercial Modules of the Masters programme, elective course on *The Law of International Economic Integrations* was performed at least from 1993/94 onwards. Apart from the WTO, it covered mostly the functioning of the EEC. This course was later (possibly in 1996/7) transformed and renamed to *EC Law* and later to *EU Law*. Another elective Masters course covering EEC/EC/EU law was *Competition Law* where EEC/EC/EU competition law was intensively analysed due to the fact that Slovenian competition law was already at the time based on that of the EU. Some EU law related topics were lectured also within the obligatory masters course on *Private law* and the elective courses on *Consumer Law*, *Corporate Law*, This required those who had not yet studied EC/EU law during their undergraduate studies or have not decided to enrol in the EC/EU related elective courses, to grasp the basics of the functioning of the EC/EU. Professors Grilc and Podobnik who were the driving force behind these curricula, had also encouraged the students to write their masters and PhD thesis on selected topics of EU law.

Even after Slovenia joined the EU, teaching EU law for Masters students unfortunately continued solely within the *Civil and Commercial Module* of the masters studies where only an elective course on *EU Law* was offered. No EU module was launched.

In the years right before and after Slovenia joined the EU, a lot of students nevertheless recognized the importance and advantages of research and knowledge of EU law and decided to write their diploma and Masters thesis on various topics of EU law. During this period, the first student teams of the Faculty started to participate at European law moot court competitions, first at the Central and East European Moot Court (CEEMC) and later at the European Law Moot Court (ELMC), where they have instantly started achieving formidable results. The Faculty staff members, active in the research of EU law, have at the time also started to participate in various European projects and research groups.

2.3. The Bologna reform of 2009

In 2009, the so-called Bologna reform was implemented at the Faculty. Major and much criticized restructuring of the studies had taken

place as a result.[11] The traditional four years of pre-Bologna university bachelor studies with an additional year for finalizing the exams and writing the final diploma thesis were replaced by a combination of four years of 1st cycle bachelor studies (that at the beginning required a defense of a shorter diploma thesis, which was later replaced by two additional elective course exams),[12] and of one year of 2nd cycle Masters studies, ending by a masters diploma thesis defence.[13] An extra year for finalizing the exams and/or writing a thesis can be added to both the four bachelor years and the one Masters year.

The bachelor course on *EU Law*, too, underwent changes with the Bologna reform. Instead of one core obligatory course on EU law in both semesters of the final, fourth year, two obligatory courses on EU law are now part of the 1st cycle studies: *European Constitutional Law* comprising 60 hrs (4 ECTS) in the spring semester of the first year, and *EU Law* comprising 120 hrs (8 ECTS) in the winter semester of the second year. Within *European Constitutional Law* (covering both EU and the Council of Europe), the basics of the functioning of the EU are presented (the legal nature of the integration, general principles, decision-making, institutions), while the judicial remedies and the four freedoms are taught within the course *EU Law*. Initially, the Bologna EU law course of the second year was titled *EU Law and Economics,* as it covered also selected topics on economics of EU law. Upon the retirement of the professor covering these, the substance of the course was restructured back to the traditional one and the course was renamed back to *EU Law*.

As the course was moved from the fourth to the first and second year, where the students are lacking basic knowledge of corporate law, commercial law, national procedural law etc., it is impossible to provide an in-depth analysis of a series of focal issues of the functioning of the EU and its internal market. That is why, some of the topics that were initially foreseen to be covered within the *EU law* course (e.g. EU competition law) had to be omitted and are now covered within other obligatory and elective courses of the 3rd year of undergraduate studies (*Commercial Law*, *Corporate Law*, *European Private Law*) and of Masters studies (*Commercial Law and Procedure, International Commercial Law*, *Private Interna-*

[11] See *Kranjc*, Bolonjska reforma kot priložnost ali kot nepotrebna nadloga?, Pravna praksa, GV Založba, y. 24, no 20 (19 May 2005), pp. 6-8; *Kranjc*, (Bolonjska) reforma pravnega študija, y. 25, no. 28 (20 July 2006), p. 18; *Žužek Leskovšek*, Bolonjska reforma: od ideje do izvedbe, MA thesis, Univerza v Ljubljani, Pravna fakulteta, 2018.
[12] http://www.pf.uni-lj.si/en/1st-cycle/ (28/2/2019).
[13] http://www.pf.uni-lj.si/en/2nd-cycle/ (28/2/2019).

tional Law etc.). Learning on the functioning of the internal market should be reserved for the last years of legal studies after the students have already grasped the basics of corporate law, commercial law and economics, various national judicial and administrative procedures, and have a better understanding of the functioning of the State, the EU and the economy. Extra hours available within the *EU Law* course (that were somewhat lacking in the pre-Bologna era having regard to the variety of topics covered in the course programme) are dedicated to in-depth analysis of the cases that are relevant for Slovenia, be it within the analysis of the judicial structure in the EU or the four freedoms. This way, the students have a clearer idea of how the EU is functioning and how EU law and the CJEU's judgments affect them. Students are presenting Slovenian preliminary ruling cases, actions against Slovenia at the Court, Slovenia-related nullity actions etc. Selected substantive issues that are in the forefront in Slovenia are also being discussed. Such cooperation among students and professors has been perceived as having synergetic effects on the understanding of EU law.

The Bologna 2nd cycle Masters study programme allows the students to decide between five study-orientation modules (general, commercial law, civil law, international law, state law). Unfortunately, no European or EU law module exists. Apart from obligatory courses of the commercial law module titled *Economic Analysis of the Functioning of the EU market and undertaking* and *International and European Social Security Law*, no obligatory or elecetive course on EU law is available. Otherwise, EU law is taught only if the topics covered within the available modules and courses are connected to EU law.

2.4. Erasmus courses

The Faculty has concluded exchange agreements within the Erasmus+ Programme with more than 90 universities from nearly all of Europe.[14] First Erasmus courses for incoming students were offered more than a decade ago and their number grew each year. Today, various courses covering EU substantive and procedural law are offered in English and are very popular among Erasmus students: *European Constitutional Law*, *Judicial Remedies in the EU, Internal Market of the EU, European Private Law*, *International and European Social Security Law*, *Judicial Cooperation in Civil Matters*, *Public Services in EU Law*, etc.

[15] http://www.pf.uni-lj.si/en/international-program/erasmus-108/ (28/2/2019).

3. THE IMPORTANCE OF MOOT COURTS FOR GAINING ADVANCED KNOWLEDGE IN EU LAW

The Faculty takes special pride in the fact that one of the most developed (extra-)curricular activities offered to the students is the participation in national, regional and international moot court competitions.[15] Our students started participating in moot courts in the beginning of the 1990s and have since then positioned University of Ljubljana as one of the leading universities in moot courting in the world. Moot courts are recognized by the Faculty and the University as an extremely important part of legal education and preparation for the future legal profession, as well as an opportunity for the students to gain advanced knowledge of law and terminology, research and rhetorical skills and team work.[16] That is why recently ECTS have been assigned to moot courts enabling the students to replace one of the elective courses by active participation in a faculty acknowledged moot court team.[17]

Since 1999, Faculty teams have been participating at a regional moot court competition on EU law - *Central and East European Moot (CEEMC)*[18] that is organized by British Law Center under the auspices of the CJEU and University of Cambridge.[19] In 2000, 2003, 2012, 2014 and 2015 the Faculty won the competition, scored 2nd in 2004, 3rd in 2005 and 2017, and received multiple prizes for best speakers and best memoranda. Teams taking part in the *European Law Moot Court (ELMC)*[20], organized by the ELMC Society and the CJEU, too, have always been very successful in their participation in the competition, having always qualified for the oral phase and scoring well at Regional Finals.[21] They have also qualified three times to the All-European Final in Luxembourg. In 2004, the

[16] See *Škrubej*, Moot court tekmovanja – tekmovanja v simuliranih obravnavah pravnih primerov, http://www.pf.uni-lj.si/mednarodno-sodelovanje/mednarodna-studentska-tekmovanja/ (28/2/2019).

[17] *Vlahek*, Sodelovanje študentov Pravne fakultete Univerze v Ljubljani na mednarodnih študentskih *moot court* tekmovanjih, in: *Kambič et al.*, Liber Amicorum Janez Kranjc, Pravna fakulteta Univerze v Ljubljani, Ljubljana 2019, in print

[18] *Ibid*.

[19] https://www.ceemc.co.uk/, http://www.pf.uni-lj.si/mednarodno-sodelovanje/mednarodna-studentska-tekmovanja/central-and-east-european-moot-court-ceemc/

[20] *Ibid.*.

[21]https://www.europeanlawmootcourt.eu/,http://www.pf.uni-lj.si/mednarodno-sodelovanje/mednarodna-studentska-tekmovanja/european-law-moot-court-competition/

[22] For details on the results of University of Ljubljana teams on the ELMC, see *Aleksovski et al.*, Ljubljana regional final booklet: ELMC 2018/2019 Ljubljana regional final, 31 January - 3 February. University of Ljubljana, Faculty of Law, Ljubljana 2019.

Faculty's team won the All-European Final in the AG category, while in 2006, scored second in this category. In 2016, the Faculty's team won the All-European Final in the team category while in 2017, one of the students received the Ole Due Best Speaker Award. These achievements are undoubtedly a result of intense studying of EU law during undergraduate and postgraduate studies at the Faculty, as well as of extremely intense and enthusiastic, though oftentimes *pro bono,* coaching by mostly junior academic staff and/or former mooties.

4. THE FUTURE OF EU LAW AT FACULTY OF LAW IN LJUBLJANA

Detecting the pitfalls of the reformed "Bologna system", the Faculty is now planning to reform its study programme, so as to re-establish uniform, 5-year legal studies without any distinction between 1st and 2nd cycles. Analysis of the planned draft study programme shows that while *European Constitutional Law* remains in the 1st year with 60 hrs of lectures (4 ECTS), the core obligatory *EU Law* course is losing 30 hrs of lectures (2 ECTS) leaving it with only 90 hrs (6 ECTS). A good decision though, was to move it from the second to the third year, when the majority of the relevant topics required for understanding the functioning of the internal market are already explained within other courses.

Despite this unreasonable cut in the amount of lectures dedicated to the core EU law course, accompanied by other already existent inefficiencies of EU law education and research at the Faculty, the amount of knowledge and the proficiency of our students in EU law, will surely not decrease as they have a multitude of other curricular and extra-curricular options to learn EU law, in particular within moot court and thesis research activities. Hopefully, the enthusiasm of the students and academic staff and their passion for EU law will remain the true driving force behind the faculty's EU research and teaching activities and successes.

Mihovil Škarica*

EUROPEAN DIMENSION OF TEACHING PUBLIC ADMINISTRATION AT THE UNIVERSITY OF ZAGREB – FACULTY OF LAW

1. EUROPEAN ADMINISTRATIVE SPACE IN THE CURRICULUM OF LEGAL STUDIES

European Union does not have the competence to directly regulate institutional or organizational issues of member states' public administrations as constitutional texts of the EU do not provide for a specific model of public administration. Nevertheless, during the years, an acquis regarding public administration, both formal and informal, has emerged. European administrative space (EAS) is a concept that refers to a common set of principles and standards for an action within public administration. It is founded on several widely accepted key standards: rule of law, openness and transparency, accountability, efficiency and effectiveness, but also on proportionality, subsidiarity, participation and coherence. European Union attracted the attention of public administration scholars not only as a source of influence on domestic administrative institutions, but also as a specific institutional system as well, whose administrative bodies represent a complex and unique network. The issue of administrative capacity was especially highlighted prior to the accession wave of ex-communist countries in 2004 and was recognized even in 1995 by the Madrid EU accession criteria. These developments became relevant when Croatia started its EU accession negotiations and were soon reflected in the adjustments of legal studies' curriculum.

Faculty of Law at the Zagreb University offers several undergraduate, graduate, postgraduate and doctoral study programmes in law, public administration and social work. The modernization and Europeanization of its curricula began at the beginning of this century when Bologna reform was implemented. It changed the structure of the law study program and

* *Assistant professor at the Chair for Administrative Science*, Faculty of Law, University of Zagreb, Trg Republike Hrvatske 14, Tel: +38514895742, E-mail: mskarica@pravo.hr

prolonged it to 5 integrated years[1]. EAS concepts and issues are primarily taught through the course of Administrative science, an obligatory subject at the third year of integrated programme in law. However, besides legal studies' graduate curriculum, EAS is singled-out and offered as a separate course in undergraduate programme of public administration studies (obligatory course on 2nd year), postgraduate and doctoral legal studies (optional course). There are several optional courses offered in curriculum of law that also deal with the European dimension of public administration: *Comparative public administration*, *Reforming public administration in European context* and *European administrative law*. Several other obligetory courses grasp some of the elements of EAS: *Administrative Law*, *European public Law* etc.

2. EUROPEANIZATION OF ADMINISTRATIVE SCIENCE SYLLABUS AND TEACHING PRACTICES

Administrative science is an obligatory subject of the third year of integrated study programme in law. It has traditionally been oriented towards empirical, organizational and positivist approach to public administration, not neglecting its legal and normative dimension. Administrative science is the core subject within the curriculum in which European administrative space is presented, analysed and taught. European orientation in teaching public administration is even reflected in the title of the handbook that was published and introduced as obligatory in 2014: *Administrative science: public administration in European context*, authored by professors at the Chair of Administrative Sciences: Ivan Koprić, Gordana Marčetić, Anamarija Musa, Vedran Đulabić and Goranka Lalić Novak[2]. Until its publication, European dimension of public administration was presented by several texts that were compiled in a textbook. Although this subject is not conditioned by passing another (previous)

[1] During the reform of the then/pre-Bologna university program into a five-year integrated model, the most important external stakeholders of the legal profession endorsed the new integrated study program as the optimal model, considering that all the activities seeking legal education require five years of education, and that the labor market does not recognize the concept of a bachelor's degree in the field of Law (www.pravo.unizg.hr).

[2] The book is 384 pages long and it is divided into nine chapters: 1. Public administration – basic concepts and notions; 2. Public administration in society and in politico-administrative system; 3. Administrative organization and public management; 4. Human resources management in public administration; 5. State administration; 6. Public services – services of general interest; 7. Local and regional self-government; 8. European administrative space; 9. Reforms and modernization of public administration.

course, majority of the enrolled students have passed subjects that are vital prerequisites for understanding public administration in European context – Constitutional Law and European Public Law, both of them being studied at the second year of the integrated legal program. Although arguably most important, European Union is not the only source of Europeanization influence on domestic institutions. Accordingly, adequate attention is devoted to other associations and subjects such as Council of Europe. European legal texts are mostly introduced in seminars. Seminars are separate form of teaching process and is not linked with the core subject itself. It offers separate ECTS credits (2) and is not conditioned by passing the core subject or *vice versa*. Among other legal documents that are necessary for the passing of seminar exam, students are obliged to study *Charter of Fundamental Rights of the European Union* and *The European Code of Good Administrative Behaviour*.

2.1. EU topics in Administrative science

Two different and complementary approaches regarding EU topics are present during the course and are reflected in the structure of the handbook. Lectures on European administrative space are systemized in a separate chapter of the handbook and are taught as such in 12 hours of lessons. Furthermore, some of the EU-related topics are scattered throughout the textbook and referred to in specific thematic parts. First of all, Europeanization and the process of European integration are analysed as important contextual circumstances in public administration contemporary development. As a part of lectures on civil service system, students are introduced to European standards and principles of civil service system that were primarily developed by the Sigma (*Support for Improvement in Governance and Management*) as criteria for EU accession.

The chapter and lectures on services of general interest (SGI) offer an extensive analysis of the EU approach to these issues and of the influence of EU law and policies on the development of SGI which is framed with several trends: liberalization, privatization, deregulation, commercialization and re-municipalization. The section which discusses financing of the public services heavily relies on EU-based distinction between state aid and public service compensation. The application of EU legislation on domestic public services depends on their nature and respective classification within the EU acquis which distinguishes services of general interest, services of general economic interest, network indu-

stries and social services of general interest. Besides legal instruments of SGI regulation (regulations, directives and judgments of ECJ), students are introduced to soft-law documents published by EU institutions that are relevant to this field as well: *Green Paper on Services of General Interest* (2003), *White Paper on Services of General Interest*, *Communication on services of general interest* (2007), *Quality Framework for Services of General Interest* (2011) etc.

Section on local and regional government incorporates Europeanization topics in two different, yet intertwined streams. Firstly, the lesson on harmonization and convergence of local government systems in Europe recognizes the role of European associations in setting common standards and promoting values of democracy, decentralization and rule of law in local government. Harmonization process is predominantly influenced by the activities and documents of the Council of Europe, several of which are the most important: *European Charter of Local Self-Government* (1985), *European Outline Convention on Trans-frontier cooperation between Territorial Communities or Authorities* (1980) with three additional protocols, *Convention on the Participation of Foreigners in Public Life at Local Level* (1992) etc. Other stream of Europeanization topics focuses on the influence of European Union on regional and urban governance and development in member states, mostly through the instruments of EU regional policy, NUTS classification and structural funds.

Chapter and lectures on European administrative space systemize and analyse the most important aspects of Europeanization process regarding national public administration systems. It discusses the idea of *administrative convergence* – harmonization of different national administrative models conditioned by EU legislation and policies. Factors that contribute to the creation of EAS are analysed and ranked. The influence of the EU (process of Europeanization) on national political and administrative institutions is classified along three dimensions; a) *policy dimension* (objectives and principles of public policies); b) *polity dimension* (administrative structures) and c) *politics dimension* (political processes). Second part of this chapter (second lecture on EAS) presents several individual European administrative standards in different policy sectors: right to good administration, European youth policy, European standards of administrative procedure, information society policy and e-administration (governance). All of the topics are discussed on the basis of relevant EU legislation or policy (soft-law) documents. Chapter is concluded with a section on coordination structures of EU policies and institutions, both at the EU and domestic level.

2.2.Syllabus of Administrative science

Title of the course:		Administrative science		
Course Code	Course status	Semester	No. of ECTS credits	Hours
36590	Obligatory	6	8	90
Study Program: Integrated undergraduate and graduate study programme in Law				
Condition: It is not conditioned by passing another course				
General description: Fundamental conceptual questions of public administration. Development of public administration studying. Public administration in society. The position and the role of public administration within the political system. Administrative organization and public management. Human resource management in public administration. Civil se-rvice system in Croatia. Organization and competences of state administration in Croa-tia. Services of general interest. Local and regional government. European administrative space. Europeanization of national bureaucracies. Administrative moderni-zation and public administration reforms.				
Content of individual weekly lectures:				

1. Week	Introductory lecture (6h): Basic concepts in public administration; Administrative systems; History of studying and teaching public administration, Legal regulation of public
2. Week	Societal context of public administration (6h): Trends in societal and administrative development; Main European models of public admini-stration; Citizens and public
3. Week	administration – transparency and openness of PA Public administration in a political system (6h): Historical development of political systems; The position of public administration within different political regimes; Political
4. Week	supervision and the accountability of public administration. Organizational aspect of public administration (6h): Development of organizational
5. Week	theories; Basic organizational variables Public management (6h): Traditional approach to public management; Modern accents of
6. week	public management. Civil service system (6h): Human component in public administration; Professionalization
7. week	and merit in public administration; Civil service system in general and in Croatia; Human resources management in public administration (6h): Methods and instruments of human resources management in public administration; Models of human resources
8. week	management; In-service training and development of human resources State administration in Croatia (6h): The influence of political institutions on state administration in Croatia (Parliament, President, Government); Organization and
9. week	competences of state administration in Croatia Fragmentation and coordination in administrative system (6h): Diversification of state administration: public agencies and the process of agencification; Structures and
10. week	instruments for effective coordination Services of general interest (6h): The concept and classifications of public services; contemporary trends of development; services of general interest in the EU law and
11. week	policies; Framework for public services in Croatia Local and regional government I (6h): Concepts and models of local government; Territorial organization of local government; Harmoni-zation of local government systems
12. week	in Europe; Urban and regional policy Local and regional government II (6h): Local and regional scope of affairs; Local political
13. week	and administrative institutions; Central-local relations; Decentralization policies European administrative space I (6h): The concept of EAS; Europeanization and
14. week	administrative convergence; Basic principles and factors of EAS European administrative space II (6h): European administrative standards; The right to good administration; Charter of fundamental rights in EU; European standards for
15. week	administrative procedure; Croatian administration within the EU system of governance Modernization and reforms of public administration (6h): Classifications of administrative reforms; New public management, Neo-Weberian State, Good governance; Administrative modernization in the context of EU accession; Modernization of public administration in Croatia

Literature:Koprić, I., Marčetić, G., Musa, A., Đulabić, V., Lalić Novak, G. (2014): Upravna znanost – Javna uprava u suvremenom europskom kontekstu (*Administrative science – Public Administration in Contemporary European Context*). Pravni fakultet Sveučilišta u Zagrebu

Suggested reading:

- Cardona, F. (2005) Assesing the Approximation of Administrative Principles and Practices among EU Member States. OECD Sigma.
- Heidbreder, E. G. (2009) Structuring of the European Administrative Space: Channels of EU Penetration and Mechanisms of National Change
- Hoffman, H. (2015) Current Debates in European Administrative Law – Background and Perspectives. In: Auby, J. B., Perroud, T (eds.) Droit de Procedure Administratif. Bruylandt.
- Koprić, I (2017) European Administrative Space – myth, reality, and hopes. In: Ivan Koprić, Polonca Kovač (ur.) European Administrative Space: Spreading Standards, Building Capacities. Bratislava: NISPAcee.
- Koprić, I., Musa, A., Lalić Novak, G. (2012) Europski upravni proctor. Institut za javnu upravu.
- Musa, A. (2016) Good Local Governance in Europe: Influences and Standards. In: Lhomme, D., Musa, A., de la Rosa, S. (eds.) Good local governance, pp. 37-59. Bruylandt.
- Nemec, J. (2016) Europeanization in Public Administration Reforms. NISPAcee Press.
- De la Rosa, S. (2016) Local Autonomy and EU Procurement Law. In: Lhomme, D., Musa, A., de la Rosa, S. (eds.) Good local governance, pp. 79-95. Bruylandt.

Ksenija Grubišić*

IMPLEMENTATION OF EUROPEAN QUALITY ASSURANCE STANDARDS IN HIGHER EDUCATION AT THE FACULTY OF LAW IN ZAGREB

1. EUROPEAN STANDARDS OF QUALITY ASSURANCE IN HIGHER EDUCATION

Internal quality assurance and the Standards and Guidelines for Quality Assurance in the European Higher Education Area (ESG) - The ESG is a set of standards and guidelines for internal and external quality assurance in higher education. The ESG are not standards for quality, nor do they prescribe how the quality assurance processes are implemented, but they provide guidance, covering the areas which are vital for successful quality provision and learning environments in higher education. The ESG should be considered in a broader context that also includes qualifications frameworks, ECTS and diploma supplement that also contribute to promoting the transparency and mutual trust in higher education in the EHEA.

The ESG standards have the following purposes: a) they set a common framework for quality assurance systems for learning and teaching at European, national and institutional level; b) they enable the assurance and improvement of quality of higher education in the European higher education area; c) they support mutual trust, thus facilitating recognition and mobility within and across national borders; d) they provide information on quality assurance in the EHEA.

Considerations for higher education institutions:

Policy for quality assurance - standard: Institutions should have a policy for quality assurance that is made public and forms part of their strategic management. Internal stakeholders should develop and implement this policy through appropriate structures and processes, while involving external stakeholders.

Design and approval of programs - standard: Institutions should have processes for the design and approval of their programs. The programs should be designed so that they meet the objectives set for them, including the intended learning outcomes. The qualification resulting from

* Ksenija Grubišić, Ph. D., Assistant Professor, Faculty of Law, University of Zagreb, Trg Republike Hrvatske 14, Zagreb; ksenija.grubisic@pravo.hr

a program should be clearly specified and communicated, and refer to the correct level of the national qualifications framework for higher education and, consequently, to the Framework for Qualifications of the European Higher Education Area.

Student-centred learning, teaching and assessment - standard: Institutions should ensure that the program are delivered in a way that encourages students to take an active role in creating the learning process, and that the assessment of students reflects this approach. This standard encourages the use of flexible learning paths, different modes of delivery, a variety of pedagogical methods, and giving a sense of autonomy to each student. Since digitizing content alone does not lead automatically to a successful educational setting, institutions may wish to design their curriculum in such a way so as to stimulate and engage students in the learning process (a step which may help prevent undesired dropouts), and to reflect best practices and research in teaching and learning.

Student admission, progression, recognition, and certification - standard: Institutions should consistently apply pre-defined and published regulations covering all phases of the student "life cycle", e.g. student admission, progression, recognition and certification.

Teaching staff - standard: Institutions should assure themselves of the competence of their teachers. They should apply fair and transparent processes for the recruitment and development of the staff.

Learning resources and student support - standard: Institutions should have appropriate funding for learning and teaching activities and ensure that adequate and readily accessible learning resources and student support are provided.

Information management and public information - standard: Institutions should ensure that they collect, analyze and use relevant information for the effective management of their programs and other activities. Institutions should publish information about their activities, including programs, which is clear, accurate, objective, up-to-date and readily acessible.

2. Quality assurance at the Faculty of Law in Zagreb

Over the course of almost two and a half centuries, the University of Zagreb, Faculty of Law has amassed a considerable amount of Knowledge and experience gained during its long history. The Faculty of Law has, at the same time and since the very beginning, been a stakeholder in the process of the development of legal education in the wider European co-

ntext, in which it has been recognized as a centre of excellence with a distinct identity and well developed international collaboration.

The Faculty's management bodies are Dean and the Faculty Council. The organizational units of the Faculty are chairs, institutes, the Centre of Social Work, the Study Centre of Public Administration and Public Finances, the Publishing Department, the Information Technology Department, the Library and the Secretariat. Chairs are the basic organisational units of the teaching and scientific research activities conducted at the Faculty. Institutes are organisational units comprising several chairs. The Faculty's institutes organise and conduct scientific research and professional work in their respective scientific fields. All teachers and associates employed at the Faculty are involved in the work of chairs and institutes, although often – so as to encourage excellence and quality assurance in terms of the Faculty's teaching, scientific research and profession-related activities – external stakeholders are also involved: law practitioners, such as judges, attorneys, notaries public, different public administration employees, social workers, etc. Apart from external stakeholders, the work of the Faculty's chairs is also contributed significantly to by the Faculty's best students who, in the capacity of student assistants, contribute to the teaching, but also – and increasingly so – to both the professional and scientific research activities of the departments. An important role in the work of the Faculty is played by the Faculty's permanent and temporary committees and the Faculty Council's boards, such as the Study Programmes Improvement Board, the Quality Management Committee, the Postgraduate Study Programmes Council, the Library Board, the Alumni Board, etc. In addition to Faculty employees, members of committees and boards also include student representatives elected by the students themselves, and lately the Faculty Council has been giving an increasingly important role to external stakeholders in contributing to the work of individual committees and boards.

The mission and vision of the Faculty are defined in the *Development Strategy of the University of Zagreb, Faculty of Law*. The mission of the Faculty is to train top experts in the fields of Law, Social Work and Public Administration who will use their knowledge and skills so as to enhance and interconnect practice, education, scientific research and professional work in the said fields. Promoting the culture of quality in all aspects of the Faculty's activities (i.e., teaching, scientific research and profession-professional activities), international recognizability, the popularization of the profession, and strengthening the Faculty's recognizability in society have always been important in defining and steering the

Faculty's activities – now and in the future. Additionally, one of the Faculty's important strategic objectives is intensifying its collaboration with society at large: the private sector/the business sector OR businesses, public institutions, public authorities, etc., at national and wider regional level.

Documents containing the strategy and procedures for the assurance of quality:

1. Development Strategy of the University of Zagreb Faculty of Law,
2. Regulation on the Quality Assurance System at the University of Zagreb Faculty of Law,
3. Quality Assurance Guidelines of the University of Zagreb Faculty of Law,
4. Quality Policy,
5. (Annual) Reports and action plans showing the level of implementation of certain activities achieved in specific periods.

The first Quality Management Committee at the Faculty was appointed and began operating on 24 October 2007, that is, two years before the enactment of the law regulating the matter. The enhancement of the quality assurance system which later followed at the Faculty ensued from legal regulations and other relevant documents. These are the Act on Quality Assurance in Science and Higher Education from 2009 (*Official Gazette*, no. 45/09), the Regulation on the Quality Assurance System at the University of Zagreb from 2011, and the Standards and Guidelines for Quality Assurance in the European Higher Education Area from 2005, which specify in detail the main features of the key components of quality assurance systems at universities and their constituents. Improving the quality assurance system at the Faculty has developed in line with the quality policy defined in the documents adopted by the Faculty Council. These documents set out activities for the purpose of achieving the following objectives: 1. Extension of the organisational structure of the quality management system to all the areas of activity of the Faculty; 2. Developing mechanisms for quality assurance; 3. Informing stakeholders about the programmes and projects conducted, and the qualifications acquirable at the Faculty; 4. Intensifying collaboration with graduates (alumni).

The Regulation on Quality Assurance at the University of Zagreb Faculty of Law, adopted on 25 April 2012, lays down the areas of quality assurance: rules of and procedures for quality assurance at the Faculty; application of the system to all levels of internal and external quality control; study programmes; teaching and the evaluation of teachers; studying

and the assessment of students; learning resources and student support; teaching, scientific research and profession-al resources; scientific research activities; professional activities; International collaboration and mobility; Faculty's information technology system; publicness of the Faculty's activities.

In the middle of the academic year 2011/12, the Faculty Council appointed the new Quality Management Committee in accordance with the new legal framework and the University's 2011 Regulation. The Regulation on Quality Assurance at the University of Zagreb, Faculty of Law prescribes the competencies, scope of work and specific tasks of the Committee:

1. Encouraging development programmes with the purpose of assuring quality in accordance with Faculty, University, national and international standards;
2. Proposing measures for the assurance of quality in individual areas to the governing bodies of the Faculty;
3. Planning and implementing processes of the internal quality assurance system in accordance with the decisions of the Faculty;
4. Monitoring and encouraging the involvement of students and other stakeholders in the process of quality assurance;
5. Monitoring the effectiveness of the quality assurance system;
6. Conducting other activities in accordance with the decisions of the Faculty.

However, certain areas of quality assurance have, for many years already, been the responsibility of the Faculty's other boards as well. The Faculty recognized the need for an ongoing and systematic quality assurance of teaching at the Faculty many years before the introduction of the Bologna Process. Quality assurance was, at the time, considered to be the responsibility of the Vice Dean for Education and the Teaching/Study Programs/Teaching and Study Programs Improvement Board, the Postgraduate Study Programs Council, the Student Excellence Promotion Committee (Committee for Promotion of Student Excellence), the Library Board, etc. Some of the quality assurance procedures have to date remained within the scope of responsibilities of the said bodies. The Teaching/Study Programs/Teaching and Study Programs Improvement Board continually monitors the implementation of study programs and their amendments by proposing new courses and new forms of teaching, the development of curricula and all other documents required for quality assurance in teaching. As a rule, the Teaching/Study Programs/Teaching and Study Programs Improvement Board meet once every two months or more often if

necessary. In the past five years, the Board has worked continuously and, in the academic year 2013/14 alone, the Board prepared a new Regulation on the Organization of Study, introduced amendments to the Regulation on Student Awards initiated by student representatives, proposed the introduction of new elective courses and ERASMUS courses for exchange students, etc. All the proposals put forward by the Teaching/Study Programs/Teaching and Study Programs Improvement Board were adopted by the Faculty Council. The Committee for Promotion of Student Excellence typically meet once a year for the purpose of proposing/nominating students for University and Faculty awards and recognitions. The work of the Alumni Board has been unsatisfactory in terms of continuity. The Faculty's current management has been trying to define the Alumni Board's core activities and objectives in line with the strategic document of the Faculty, with the help of which the Alumni Board would be able to improve collaboration with the Faculty's alumni and make it more systematic. The Postgraduate Study Programs Council continuously monitors the implementation of postgraduate study programs and oversees quality assurance procedures. In the past five years, the Council would generally convene once a month.

The main strategic goals of the Faculty are:

1. Ensure high quality of the educational process through a synergy of the teaching, scientific research and professional work, encourage the mobility of teachers and students alike, develop joint study programmes with foreign universities, encourage participation in international scientific research projects and international associations.
2. Further encourage the interactivity and practical orientation of a part of teaching, particularly seminars, exercises and practical work experience at judicial institutions, administrative bodies and the social care system, or create conditions for the involvement of as many students as possible during their studies in programmes that facilitate the gaining of practical work experience in all aspects of the legal and social work professions, public administration and tax legislation bodies/the tax profession.
3. Encourage the development of postgraduate specialist study programmes in accordance with the needs of the profession / the labour market and encourage the development of lifelong learning. Satisfying the needs of the profession / the labour market in a quality way is hindered due to difficulties in establishing systematic co-

mmunication channels with external stakeholders, employers hiring our students and our alumni.
4. Increase the quantity/range/volume and quality of scientific research conducted at the Faculty, affirm the Faculty as a leading scientific research institution in the fields of Law, Social Work, Social Policy, Public Administration and Tax Legislation in the region, and increase the Faculty's recognisability and visibility in the European Research Area.
5. Invest further work in optimising the Faculty's enrolment policy, which means that the Faculty's admission quotas should be balanced against (social needs)/the needs of the labour market, and achieve an optimal student-teacher ratio.
6. Further develop policies related to improving the quality of student life and promote student involvement in cultural and sports activities (the work of student associations, Students' Union, *Capella Juris*, sports activities, charity work, etc.).
7. Improve and modernise working conditions at the Faculty.

3. Recommendations for improvement of quality to the Faculty of Law in Podgorica

Management and Quality Assurance: 1. Develop a detailed strategic plan for the Faculty that includes research and teaching goals, staff recruitment strategies, and the financial approaches needed to meet the goals. In the development of the strategic plan, stakeholders should be more closely involved: 2. Promote excellence in teaching and research by developing additional mechanisms to recognize and reward the excellent performance of staff; 3. Collection and analyses of relevant data (e.g. teaching hours, research quality) should be improved; 4. Modify the existing staff development programs carried out at the Faculty, and introduce a career tracking system that meets the specific needs of non-academic staff; 5. The Faculty should develop and maintain an Alumni network to help build up contacts for placements and careers advice to current students etc. The Faculty should also collect and analyze data on graduates employyment trajectory to feed back into course design and enrolment practices. Information on employability should be included on the website.

Study Programs: 1. Learning outcomes of courses should be explicitly matched to learning outcomes at the study program level, formulated in terms that rely on Bloom's taxonomy and tested systematically (i.e. through the introduction of a 'testing matrix'); 2. Develop end

learning outcomes that clarify its institutional mission, help superintend curricular monitoring and support an outcome-based evaluation of program effectiveness; 3. It should be clear and transparent how the actual work load for students matches the number of ECTS allocated to a certain course; 3. Possibilities for practical learning should be facilitated to a greater degree, should be integrated into the program and, most importantly, should be made accessible to all students; 4. Maintaining contact with and tracking of alumni should be carried out in a more systematic manner; 5. Faculty should regularly review its programs with a view to streamlining and to ensure the curriculum content is kept up to date. It should ensure mechanisms for research-led teaching: 6. The Faculty should look for best practices in estimating demand and should implement its plans for tracer survey of graduates, and develop an alumni network; 7. The Faculty could draw on its alumni network to develop a program of internships and placements for students; 8. Continuous evaluation of the quality of the new study program (student surveys and teacher surveys).

Students: 1. Creation of an information package on a new study program in accordance with *The Standards and guidelines for quality assurance in the European Higher Education Area* (ESG) - http://www.enqa.eu/wp-content/uploads/2015/11/ESG_2015.pdf**;** 2. The alumni database should be used for data collection regarding the current occupation of the former students.

Expand the Alumni association's scope of action, including more meaningful projects for Faculty development such as the follow-up of former students to assess program effectiveness and networking with higher education institutions and facilities; 3. Increase promotion of the public image of the Faculty through an improved website and other public relations mechanisms.

Teachers: 1. Recommend that jobs in which teaching in English is possible (e.g., international law, EU law) should also be advertised in English on international websites and should be disseminated via different mailing lists in Europe; 2. The Faculty is strongly recommended to establish a continuing Lifelong Learning Programs; 3. To establish a more quality based evaluation system of both research and teaching**;** 4. Inequalities in teaching load should be minimized; 5. Reduce the huge degree of teaching activities and allow more time for research.

Scientific and Professional Activity: 1. Number of publications in internationally acclaimed law journals should be substantially increased; 2. Administrative help should be secured for project applications; 3. Staff should be more actively encouraged to acquire external funding; 4. Deve-

lop a detailed strategic research agenda to maintain and build around Faculty priority areas; 5. Develop a system for making research staff aware of national and international granting schemes and providing personalized guidance in applying for those schemes**;** 6. Where possible, the Faculty should engage with industry on potential collaborations and partnerships.

International Cooperation and Mobility: 1. more ambitious plan of action for greater engagement with European projects should be implemented; 2. Dedicated financing for the law department's Erasmus students should be secured; 3. The faculty should seek to secure funding from European and international sources; 4. Measures should be taken to ensure that the full breadth of Erasmus places (both incoming and outgoing) are subscribed to, in particular through raising greater awareness of the benefits thereof; 5. To establish conditions that enable 10% or more of the teaching staff to spend at least 6 months abroad within the next five years, and that this mobility be implemented as a prerequisite for advancement in a teacher's career; 6. Promote publishing of research in journals with high impact factor from more research groups, in part by increasing the publication impact requirements for career progression; 7. Develop programs to attract foreign teachers, possibly by providing short courses in English and summer schools. These programs could benefit from existing international scientific collaborations among Faculty researchers; 8. Develop a strategic plan for inter-institutional and international collaboration, in part by upgrading existing research group collaborations to institutional collaborations.

Recommended Documents / Literature:

- Standards and Guidelines for Quality Assurance in the European Higher Education Area from 2005. - https://enqa.eu/index.php/home/esg/ (14/4/2019).
- The Standards and guidelines for quality assurance in the European Higher Education Area (ESG)-http://www.enqa.eu/wp-content/uploads/2015/11/ ESG_ 2015.pdf (15/4/2019).
- The Act on Quality Assurance in Science and Higher Education from 2009 (*Official Gazette*, no. 45/09)
- Standards for the evaluation of quality of universities and university constituents in the procedure of re-accreditation of higher education institutions - https:// www.azvo.hr/images/stories/novosti/ENG_STANDARDS_FOR_THE_EVALUATION_OF_QUALITY_-_UNIVERSITIE S.pdf

- Procedure for the re-accreditation of higher education institutions - https://www.azvo.hr/images/stories/vrednovanja/Procedure_for_the_re-accre ditation _of_HEI.pdf (11/4/2019).
- Quality Assurance and Learning Outcomes - https://enqa.eu/indirme /papers-and-reports/workshop-and-seminar/WSR%2017%20-%20Final.pdf (16/4/ 2019).
- The Regulation on the Quality Assurance System at the University of Zagreb from 2011.- http://www.unizg.hr/fileadmin/rektorat/O_Sveucilistu/Dokumenti_javnost/Propisi/Pravilnici/15052018-FINAL-Pravilnik_o_sustavu_osiguravanja_kvalitete_-_SENAT_lektorirano.pdf (11/4/ 2019).
- Development Strategy of the University of Zagreb Faculty of Law - https://www.pravo.unizg.hr/fakultet/upravljanje_kvalitetom/dokumenti (11 / 4 / 2019).
- Regulation on the Quality Assurance System at the University of Zagreb Faculty of Law - https://www.pravo.unizg.hr/fakultet/upravljanje _kvalitetom/dokumenti (11/4/2019).
- Quality Assurance Guidelines of the University of Zagreb Faculty of Law – h ttps://www.pravo.unizg.hr/fakultet/upravljanje_kvalitetom/ dokum enti (11 / 4 / 2019).
- Quality Policy -https://www.pravo.unizg.hr/fakultet/upravljanje_ kvalitetom /dokumenti (11/4/2019).
- (Annual) Reports and action plans showing the level of implementation of certain activities achieved in specific periods - https://www.pravo. unizg.hr/fakultet/ upravljanje _kvalitetom/dokumenti (11/4/2019).

Arsen Bačić*

EUROPEAN INTEGRATIONS AND EU INSTITUTIONS

The College of European Integration and European Union Institutions is included in the program of the Degree Program in Administrative Studies at the Law Faculty in Split as an elective course of the fourth semester in second year of studies, and has 6 ECTS points. Class load is 45 hours of lectures and 15 hours of seminars, or 60 hours of teaching in total. The final grade consists of a combination of practical assignments (50%) and written exam (50%).

Students should be given thorough and comprehensive Knowledge of European integrations and EU institutions. Institutions and EU law have not only changed the political, social and economic map of member states, but also global international relations. The main obje-ctives of the course are therefore to familiarize students with EU institu-tions and their mutual relations, pointing out the special character of EU law in comparison with international and national law, encouraging students to explore the effects of EU institutions and rights in other areas of international relations, developing critical thinking about others courses related to political science and international relations. The process of enlargement of the Union and integrations of the new member states is being considered in particular, with the greatest ate-ntion being paid to the accession of the Republic of Croatia and analysis of the effects of its membership in the European Union.

The student will be able to: 1) identify and name basic concepts related to the stages of European integration and institutional structure of the European Union, 2) single out and explain relevant documents, legal principles and principles of the organization of EU authorities, 3) link and adapt general knowledge on EU law and procedures of Euro-pean institutions and the process of accession of the Republic of Croatia to the European Union, 4) analyze the relevant documents of European public law and case-law of the European Court of Justice, 5) conclude on the influence and contribution of European institutions and European legal system to the development of the national legal system and the situation of Croatian citizens.

* Academician Arsen Bacic is a full professor with a permanent title at the Faculty of Law - University of Split.

Special attention is given to the development of the terrorist framework on practical examples, and the very fact that the Republic of Croatia started the accession negotiations with the European Union in 2005 and becoming a member of the European Union in 2013 has opened up the possibility for a case study which is extremely interesting and encouraging for students.

There is a need for the explanation of the comparative problem of constitutional changes initiated by the EU enlargement process, dialogue on constitutional changes which in European countries were initiated by the need for ratification of European documents (most notably the Maastricht Treaty), and the process of successive enlarge-ment to new members, whose number is projected to grow year after year.

We are also asking a question about the extent to which the national state is open to reflecting readiness and response to the two challenges of understanding and practice of modern state governance: namely, to processes of globalization and functional differentiation, on a constitutional plan because the theory and practice of the contempo-rary state is increasingly pointing to the fact that these long-term trends bring the nation state under such pressure that sooner or later necessarily requires adaptation of traditional political and institutional arrangeme-nts. It is also about the consequences of the European integration process, which, as **J.H.H. Weiler** points out, more than any other pro-cess illuminates all the possible weaknesses of certain key concepts of constitutional and democratic thought outside the context of relatively homogeneous national states, and constitutional changes sooner or later necessarily are on the agenda of national politics.[1]

The phenomenon of constitutional changes that have the cause in the complex political and legal process of the emergence, enlarge-ment and maturity of the European Union touches not only the founders of classical democracies but also the founders of new democracies that are also covered by the EU enlargement issue. Where they are at work or are only expected, those changes are a necessary and integral part of the EU enlargement complex, EU constitutionalization, or harmonizati-on, or communitarization of national policies within an increasingly co-nnected world of European politics and law.

Issues that are open to the new wave of rationalization of Euro-pean constitutions and above all those countries belonging to the Euro-

[1] Weiler J.H.H., Constitutionalism and Democratic Representation in the European Union, p. 3; available at: https://eif.univie.ac.at/downloads/projekte/ResearchProgramme Constitutionalism.pdf

pean founders of the European Union are extremely important. In this period, called "the age of integration", ***F. Venter*** says, the force of various classical notions of constitutional law is provoked. Among the-se concepts, the first is about the very nature of the state, foundations of the constitution, center of state power, and horizontal and vertical bala-ncing of power. These challenges have arisen not only for the "process of supranational organization, which has the most developed example in the EU, but also as a result of the globalization of politics, trade, communication and life style".[2]

Dialogue between the development of European treaties and national constitutions was opened in 1992 after *the Maastricht Treaty* (*Le Traite de Maastricht*). And that the Treaty of Maastricht was in fact a turning point shows the fact that in the period between 1951 and 1992, which is forty years of "European construction", a question of any inco-mpatibility between the new legal order and traditional national consti-tutions was never raised. When that debate was opened, the political will which did not want any constitutional obstacles to the creation of the United European states had suddenly ended. That is why the Treaty of Maastricht in the true sense of the word turned a new page of European dialogues. New controversies emerged as a result of its ado-ption, primarily because of the provisions relating to the voter rights of citizens of non-EU countries, or for monetary policy, etc. In that sense, all the signatory states of the Treaty of Maastricht were obliged to observe the contents of the Treaty and confront it with the content of their own constitutions. This act should be a preliminary step before the ratification of this treaty in twelve EU member states.

The story of the negotiations on the enlargement of the European Union is in fact a story of imposing the obligation to accept the whole spectrum of principles, measures, laws, practices, obligations and goals that have been harmonized and accepted within the Union, what is called *acquis communautaire;* it seems more than obvious that today that the burden of EU adaptation is on the part of the countries joining the community. Given the fact that the political and economic systems of the countries concerned are still in the transition process, the question arises as to whether the process of enlargement and require-ments that arise will lead to a change in the constitution that was adopted, even before thinking of inclusion in such a demanding structure of the European Union?

[2] Venter F., Constitution Making and the Legitimacy of the Constitution, u Jyranki A. (ed.), National Constitutions in the Era of Integration, Kluwer Law International, 1999., p. 9

Constitutional changes that have taken place so far in the EU member states, according to some analysts, reproduce "a rationalized variant of the action of a constituting authority enabled by contempo-rary constitutions".[3] In most of these states, constitutional courts' decisi-ons and judgments regarding the compliance of founding laws with the founding treaties constitute an obligatory element of the ratification procedure. Moreover, in Germany and France, these courts intervened before and after constitutional amendments concerning the context of ratification of European law. While the ratification in Denmark, Ireland and France itself took place in the dramatic circumstances of the natio-nal referendum, this process of ratification took place somewhere in the quite admirable atmosphere of the national parliaments where the decision was made by the qualified majority.

At the moment of Croatia's preparations for EU membership, the Croatian negotiator states that "adaptation to Europe requires a reform of the whole country". One of the first steps is the establishment of a new Parliamentary Committee for European Integration, which, according to team leader of Croatian negotiators N. Mimice, will "eva-luate all regulations and laws that carry the dimension of alignment with European legislation".[4] Did this survey refer to the Constitution of the Republic of Croatia? And did the 'rating' actually mean another (new) change in the Croatian Constitution?

The classic and contemporary constitutional legal theory is based on the view that constitutional provisions that serve to change the constitution are not merely technical means. These are provisions that can change the results of the (constitutive) authority that created the constitution. In this sense, constitutional changes mean revision and rewriting of the fundamental act. The constitutional review provi-sions therefore embody the 'compromise between the tendency towa-rds social and political innovation, which results in the adaptation of the political system to new circumstances".[5]

In what way the EU constitutional evaluation in the Republic of Croatia will be realized, of course, depends on Croatia's ability to solve the most crucial issues of its further perspectives and development. Although

[33] Tanchev E., The Current Constitutional debate and the implications of Bulgaria's accession to the European union, p. 9; available at: https://www.nato.int/acad/fellow/97-99/tanchev.pdf

[4] Croatia's preparations for the EU - a 'red light' for the legislative adjustment to the European Union is turned on in the autumn, in: Jutarnji list

[5] Elster J. et al., Institutional design in post-communist societies – rebuilding the ship at sea, Cambridge university Press, Cambridge, 1998. p. 105

the quality and quantity of issues in this evaluation is almost intimidating (the Republic of Croatia has been confronted with the fact that the *acquis communautaire* is complete, consisting of fundamental treaties, secondary legislation, international agreements of Union's institutions, jurisprudence of European courts, etc.) it is essentially aga-in the question of dealing with choice and solving the classic dilemma: whether to choose Hobbes' or Locke's constitutional option? While Hobbes' social dilemma, backed by 'benevolent dictators', leads to transformation of conflicts into a shorter period, only Locke's concept of constitutionalism creates a 'protective' and 'productive' constitution-nal-democratic state. However, the task of 'constituting the transnatio-nal regulatory powers', and hence the resolution of the above-mentioned dilemma, seeks once again and more deeply the conceptualization of constitutional traditions and concepts that have prevailed over the constitutional and political development of the Republic of Croatia. Perhaps the very possibility of joining the Republic of Croatia the EU was the best opportunity for such a 'general' constitutional tradition and concepts that, as the fruit of the nation-state, were created at a time when international relations were primarily based on power and war politics.

The Republic of Croatia signed the Stabilization and Associati-on Agreement with the European Union on October 29, 2001. Of course, the Croatian path towards full membership started even earlier. Thus, in May 1999, the European Commission proposed the opening of the Stabilization and Association Process for Albania, Bosnia and Herzegovina, Croatia, Macedonia and FR Yugoslavia, and in June the Stability Pact was agreed in June as a political document whose strategic goal is stabilization in Southeastern Europe by bringing the countries of the region closer to the Euro-Atlantic structures and strengthening their mutual cooperation. On February 15, 2000, the Joint Consultative Working Group of the Republic of Croatia was establi-shed, and in May of that same year, the European Commission public-shed a positive report on the beginning of negotiations on the conclusion of the Stabilization and Association Agreement. The Summit in Zagreb held in November 2000 marked the beginning of negotiations between the Republic of Croatia and the EU on the conclusion of the agreement, which was finally ratified by the Croatian Parliament on December 5, 2001, and was then endorsed by the European Parliament on 12 December of the same year.

Croatia submitted its application for EU membership on 21 February 2003, and in April of that year, the EU Council mandated the European Commission to draft an opinion on Croatia's application for

membership. The European Commission submitted to Croatia on 10 July 2003 a questionnaire with 4560 questions, and Croatia responded to it three months later - October 9, 2003.

Accession negotiations between the Republic of Croatia and the EU were open on October 3, 2005, after which an analytical review process of screening of Croatian legislation with the acquis commenced. The first Intergovernmental Conference on the level of Deputy Head of Delegations / Chief Negotiators agreed on principles and procedural arrangements for conducting accession negotiations, and an initial work program based on the screening plan for certain negotiating chapters was held on 28 October 2005. Thirteen meetings of the Intergove-rnmental Conference on the Accession of the Republic of Croatia to the European Union at the ministerial level were held and the negotiations were formally completed on 30 June 2011 by closing all 35 negotiating chapters. However, in order for Croatia to do just that, it was necessary to adapt its constitutional framework.

All changes to the Constitution that were implemented and previously contained in the Proposal for the Amendment of the Constitution can be systematized into two groups. For the subject of our interest, the first group of amendments to the Constitution of the Republic of Croatia is important, which sets out a valid constitutional and legal basis for Croatia's accession to the European Union and for the effective functioning of the Republic of Croatia in the European Union: a) Constitutional issues arising from the individual chapters of the negotiations with the European Union (independence of the Croatian National Bank and the State Audit Office, active and passive voting rights of EU citizens residing in the Republic of Croatia, strengthening of the independence, impartiality and professionalism of the judiciary, effective implementation of the EU Council Framework Decision on a European Arrest Warrant); b) Constitutional issues that are not directly related to certain chapters of the negotiation but relate to the modalities of the accession and functioning of the Republic of Croatia in the European Union (constitutional basis for EU accession, referendum on Croatia's EU membership, transfer of constituteonal powers, participation in EU institutions, effect and application of EU law, relationship between legislative, executive and judiciary authorities after the full EU membership and position of EU citizens in the Republic of Croatia and assurance of their rights).

Thus, the former constitutional norm, and the constitutional basis for the accession of the Republic of Croatia to the EU, which foresees the implementation of the referendum, constituted a special challenge for the

creator of the constitution and future of project European Croatia. Namely, this constitutional norm for a positive outcome of the referendum demanded a very strong majority - most of the votes of all voters in the state. Such an expression creates a situation in which any failure to make a referendum (abstinence) is a "no" vote. Bearing in mind a large number of Croatian citizens enrolled in voter lists that do not live in the Republic of Croatia, and given the high percentage of electoral abstention of such voters, there was a danger that a referendum that would be organized on the basis of the existing constitutional norm would not provide a realistic image of the will of the electorate and that the number of voters who did not respond to the referendum greatly influenced its outcome.

The referendum on accession must ensure the legitimacy of such a decision as the basis for EU membership. Therefore, it was necessary to ensure that the referendum actually expresses the will of the electorate. It is concluded that the goal can be ensured by prescribing the lowest limit of the lowest voter turnout that guarantees the legitimacy of the referendum. Therefore, the proposed and adopted solution is to set the lower threshold as "the majority of voters who have showed up in the referendum“.

Furthermore, the Constitution has been supplemented by the new Chapter VIII - THE EUROPEAN UNION, which regulates specific issues of EU membership. Such special parts of the constitution of a dedicated EU are also found in the constitutions of other states, such as France and Germany.

Article 143 of the Constitution lays down the goals and values of the European community that the Republic of Croatia accepts as the basis of EU membership. It expresses the idea that the Republic of Croatia does not join any kind of organization, but rather the one that honors and protects these values and is based on them. Membership in the EU requires the transfer of certain constitutional powers to joint institutions, as stipulated in Article 139 of the Constitution. The EU is a limited-power organization and has only the powers conferred on it by the founding Treaties and their amendments by the Member States. This article is also relevant for future amendments to the EU framework.

Article 144 of the Constitution clarifies the democratic dimension of the EU. Part of the constitutional powers is transferred to European insti-tutions, and the democratic principle is ensured in the European Parlia-ment. Paragraphs 2, 3 and 4 of this Article provide the constitutional basis for the adoption of an appropriate law and amendments to the Rules of Procedure of the Croatian Parliament, which will regulate the manner

of participation of the Croatian Parliament in the legislative procedure of the European Union and supervision of the activities of the Government in the institutions of the European Union. Paragraph 5 stipulates that the Repu-blic of Croatia will be represented in the Council and European Council, in accordance with their constitutional powers, by the Government and President of the Republic of Croatia.

Article 145 of the Constitution regulates the protection of subjective rights of citizens before Croatian courts. It is a "direct effect" of EU law as one of the fundamental characteristics of EU law. Courts do not just have the obligation to apply EU law, but also other subjects. Here is the principle of equivalent legal protection. National law must not make the exercise of subjective rights arising out of EU law excessively difficult or almost impossible. This standard is addressed to all state authorities, including courts. EU law is part of the national legal order and courts are obliged to deliberate by applying it. If the norm of national law is contrary to EU law norms, the national court must exempt national law from applying the national legal norm and directly apply the EU law norm. Paragraph 4 states the principle of administrative direct effect, that is, the obligation of all state authorities / public administrations to apply EU law.

Article 146 of the Constitution stipulates that citizens of the Republic of Croatia are citizens of the EU and enjoy the rights guaranteed to them by the acquis communautaire. All rights are exercised in accordance with the terms and conditions laid down in the treaties on which the EU is founded and measures adopted under these agreements. Paragraph 3 guarantees that all rights guaranteed by the EU acquis in the Republic of Croatia are exercised by all EU citizens. European citizenship is a fundamental status enjoyed by citizens of EU Member States. It carries a number of rights listed in this article and are guaranteed by the Founding Treaties. They belong to all citizens of the EU, and upon accession of the Republic of Croatia to the EU they will also belong to Croatian nationals in all member states and nationals of other Member States in the Republic of Croatia.

The amendment of the Constitution of the Republic of Croatia came into force on the day of its proclamation (16 June 2010), except: Art. 9 (2) (in the part relating to the execution of decisions on surrenders issued in accordance with the acquis communautaire), Art. 133 (4) (right to local and regional self-government, i.e. right of the electorate to be exercised in the Republic of Croatia by citizens of the European Union too), and the aforementioned Articles. 144, 145 and 146, which entered into force on

the day of the accession of the Republic of Croatia to the European Union 1 July 2013.[6]

<table>
<tr><td colspan="2">NAME OF THE COURSE</td><td colspan="6">European integration and institutions of the European Union</td></tr>
<tr><td>Code</td><td></td><td colspan="2">Year of study</td><td colspan="4">II</td></tr>
<tr><td>Course teacher</td><td>Dr.sc. Arsen Bačić, F.C.A.</td><td colspan="2">Credits (ECTS)</td><td colspan="4">6</td></tr>
<tr><td rowspan="2">Associate teachers</td><td rowspan="2">Dr. sc. Petar Bačić, Associate Professor</td><td colspan="2" rowspan="2">Type of instruction (number of hours)</td><td>L</td><td>S</td><td>E</td><td>F</td></tr>
<tr><td>45</td><td>15</td><td></td><td></td></tr>
<tr><td colspan="2">Status of the course</td><td>Elective</td><td colspan="2">Percentage of application of e-learning</td><td colspan="3">-</td></tr>
<tr><td colspan="8">COURSE DESCRIPTION</td></tr>
<tr><td>Course objectives</td><td colspan="7">Predmet studentima treba dati temeljita i cjelovita znanja o europskim integracijama i institucijama Europske unije. Institucije i pravo Europske unije nisu izmijenili samo političku, socijalnu i ekonomsku kartu država članica, već i globalne međunarodne odnose. Glavni ciljevi predmeta su stoga upoznavanje studenata s institucijama Europske unije te njihovim međusobnim odnosima, ukazivanje na specijalni karakter EU prava u usporedbi s međunarodnim i nacionalnim pravom, poticanje studenata na istraživanje efekata EU institucija i prava na drugim područjima međunarodnih odnosa, razvijanje kritičkog mišljenja glede drugih predmeta povezanih s političkim znanostima i međunarodnim odnosima. Posebno se razmatra proces proširenja Unije i integracije novih država članica, pri čemu se dakako najviše pažnje posvećuje pristupanju Republike Hrvatske te analizi efekata njenoga članstva u Europskoj uniji.</td></tr>
<tr><td colspan="2">Course enrolment requirements and entry competences required for the course</td><td colspan="6">For enrollment students must meet the general requirements for admission to the second year of study.</td></tr>
<tr><td>Learning outcomes expected at the level of the course (4 to 10 learning outcomes)</td><td colspan="7">Students will get the ability to: 1) identify and indicate basic principles and concepts related to the european integration process and EU institutional structure; 2) isolate and explain relevant instruments and principles related to the organization of government at EU level; 3) combine and accommodate basic knowledge on EU law and procedures of EU institutions as well as on the accession of the Republic of Croatia to the EU; 4) analise relevant EU documents as well as the case law of the European Court of Justice; 5) deduce on influence and contribution of EU law and EU institutions regarding the development of national law and legal status of Croatian citizens.</td></tr>
<tr><td>Course content broken down in detail by weekly class schedule (syllabus)</td><td colspan="7">I.History of european integration:
1) An introduction; 2) European Coal and Steel Community; 3) European Economic Community, European Atomic Energy Community (Euratom); 4) Merger Treaty; 5) Enlargement of EU membership; 6) Accession of the Republic of Croatia to the EU .
II. Founding treaties;
1)The Single European Act; 2) The Treaty of Maastricht; 3) The Treaty of Amsterdam; 4) The Treaty of Nice; 5) The EU Constitution; 6) The Lisbon Treaty.
III. EU institutions:
1) 1) The European Commission, 2) The European Parliament, 3) The European Council, 4) The Council of Ministers, 5) The Court of Justice of the European union.
IV. Sources and principles of european law:
1) primary sources, secondary sources, soft law, 2) the principle of supremacy, 3) the principle of direct effect, 4) the principle of non-discrimination, 5) the principle of limited powers, 6) the principle of subsidiarity, 7) the principle of proportionality, 8) the principle of loyalty, 9) the principle of state liability, 10) protection of fundamental rights.
V. The Republic of Croatia in the European Union.</td></tr>
<tr><td></td><td colspan="3">☒ lectures</td><td colspan="4">☐ independent assignments</td></tr>
</table>

[6] Ustav RH (pročišćeni tekst), Narodne novine br. 85/2010

<table>
<tr><td>Format of instruction</td><td colspan="3">☒ seminars and workshops
☐ exercises
☐ on line in entirety
☐ partial e-learning
☐ field work</td><td colspan="3">☐ multimedia
☐ laboratory
☐ work with mentor
☐ (other)</td></tr>
<tr><td>Student responsibilities</td><td colspan="6">Students are expected to attend all forms of studying (lectures, seminars, tests). Students are expected to write an essay (practical assignment). Students must pass the oral exam.</td></tr>
<tr><td rowspan="6">Screening student work (name the proportion of ECTS credits for each activity so that the total number of ECTS credits is equal to the ECTS value of the course)</td><td>Class attendance</td><td></td><td>Research</td><td></td><td>Practical training</td><td></td></tr>
<tr><td>Experimental work</td><td></td><td>Report</td><td></td><td>(Other)</td><td></td></tr>
<tr><td>Essay</td><td></td><td>Seminar essay</td><td></td><td>(Other)</td><td></td></tr>
<tr><td>Tests</td><td></td><td>Oral exam</td><td></td><td>(Other)</td><td></td></tr>
<tr><td>Written exam</td><td></td><td>Project</td><td></td><td>(Other)</td><td></td></tr>
<tr><td colspan="6"></td></tr>
<tr><td colspan="2">Grading and evaluating student work in class and at the final exam</td><td colspan="5">Different forms of engagement (class attendance, essays, practical assignments) 50%. Oral examination 50%</td></tr>
<tr><td rowspan="4">Required literature (available in the library and via other media)</td><td colspan="4">Title</td><td>Number of copies in the library</td><td>Availability via other media</td></tr>
<tr><td colspan="4">1. Bačić Arsen i Bačić Petar, Europsko pravo – studijski izvori, Pravni fakultet, Split, 2007.</td><td>20</td><td></td></tr>
<tr><td colspan="4">2. Europska unija i Lisabonski ugovor - dodatak knjizi Europsko pravo (priredio dr. sc. Petar Bačić), 2010.</td><td>20</td><td>WEB</td></tr>
<tr><td colspan="4">3. Republika hrvatska i institucije Europske unije - dodatak knjizi Europsko pravo (priredio dr. sc. Petar Bačić), 2013.</td><td></td><td></td></tr>
<tr><td>Optional literature (at the time of submission of study programme proposal)</td><td colspan="6">1. Josipović T, Načela europskog prava, Narodne novine, Zagreb, 2005.
2. Bačić Petar, Ustav za Europu i značaj konstitucionalizacije ljudskih prava, Zbornik Pravnog fakulteta u Splitu, br. 1-2/2005., str. 105. – 119.
3. Rodin S. et al., Reforma Europske unije - Lisabonski ugovor, Narodne novine, Zagreb, 2009.</td></tr>
<tr><td>Quality assurance methods that ensure the acquisition of exit competences</td><td colspan="6">Students will have the option of permanent communication with the teacher through consultations and correspondence via e-mail.
List of essay topics will be delivered to students. Students will also be provided with adequate literature as well as guided by teachers while writing an essay.</td></tr>
<tr><td>Other (as the proposer wishes to add)</td><td colspan="6"></td></tr>
</table>

Petar Bačić*

PROTECTION OF HUMAN RIGHTS IN EUROPEAN AND COMPARATIVE PERSPECTIVE / EU Human Rights Law in a Nutshell

Protection of Human Rights in European and Comparative Perspective is an elective, 6 ECTS credit points course, taught in the 9th semester of the fifth year of law studies at the Faculty of Law in Split. During 9th semester there are 60 teaching hours and 15 hours of seminars i.e. 75 hours in total. The final grade is formed out of practical assignment (60%) and oral exam (40%).

The course Protection of Human Rights in European and Comparative Perspective should give a profound and comprehensive knowledge on human rights and fundamental freedoms and on systems created for their protection. This course offers thorough analysis of human rights protection at different levels - national, supranational and international, as well as of examples of judicial activism in the field of human rights. Main goals of this course are providing students with basic information on the documents that guarantee human rights on European and national level and on corresponding systems for their protection, as well as knowledge on judicial institutions whose main tasks are protection of human rights at national and european level and of their practice i.e. relevant case-law of the European Court of Human Rights and Court of Justice of the European Union (CJEU/ECJ).

After the completion of the course students should get the ability to: 1) identify and indicate basic concepts related to the protection of human rights and fundamental freedoms and its development; 2) isolate relevant principles related to the human rights protection as well as national and comparative documents and institutions; 3) explain functioning of systems for protection of human rights on different levels; 4) combine and accommodate basic knowledge on human rights documents, institutions and systems of protection of human rights; 5) analyse relevant national and european documents, mechanisms and institutions for human rights protection; 6) deduce on influence and contribution of practice of national and european institutions of human rights protection.

* Prof. dr. sc. Petar Bačić is a Vice-Dean and Full Professor at the Faculty of Law - University of Split.

An essential part of the course is dedicated to the topic of Human Rights Protection in the European Union. Studying CJEU's approach to human rights issues represents one of the finest examples of judicial activism in comparative perspective and it offers an opportunity to engage in discussion with students about justifications of judicial activism and rising phenomena of judicialisation and juristocracy. That is the main reason why I have decided to elaborate the topic of human rights protection in the European Union as an example of good teaching practice in the field of EU Law.

EU HUMAN RIGHTS LAW in a Nutshell

The original founding treaties - Treaty of Paris (1951) establishing the European Coal and Steel Community, Treaties of Rome (1957) establishing the European Economic Community and the European Atomic Energy Community - in time of their adoption were classical international treaties and three communities were ordinary international organizations. In other words, those Treaties definitely weren't considered to be "constitutional Treaties", nor it was the intention of the States that signed them. Furthermore, three Communities were not created to deal specifically with human rights issues. So, unlike the Council of Europe's model of integration whose primary goals - international guarantees of human rights and the achievement of peace in Europe - were organically linked, EU model of integration was based on other grounds. 'Founding fathers' of the European Union were concentrated on the integration of the limited but important economic cross-border cooperation between Member States. Therefore the original founding Treaties were primarily to achieve the realization of the common (internal, single) market that seeks to guarantee the free movement of people, goods, capital and services (four freedoms).[1]

In the same time, the original founding treaties had no direct reference regarding human rights. There were some provisions in EEC Treaty however, such as the prohibition of discrimination on grounds of nationality or the principle of equal pay for men and women, but such rights were only protected to the extent necessary for the pursuit of

[1] Lenaerts K. & Van Nuffel P., CONSTITUTIONAL LAW OF THE EUROPEAN UNION, Sweet and Maxwell, London, 1999., p. 3 et passim

economic integration. Furthermore, for a long time the EU didn't have a comprehensive, constructive policy on human rights protection at all.[2]

But still, from the very beginning of EU's operation there was an obvious need to provide protection against the violation of those rights (primarily economic and social rights) arising from the provisions of the founding treaties, that is from the process of economic integration. Over time it was the European Court of Justice (ECJ) that assumed role and task of the human rights guardian at the EU level. Therefore, the elements of human rights protection at the level of the European Union emerge gradually, before all through ECJ's case law. But, as we already pointed out, the founding treaties had no direct reference regarding human rights protection. There was no EU catalogue of rights either. So, where to start or what to start with?

ECJ & Human Rights. Well, in fact it all started at the begginning of 1960-s with two famous Cases - first is *Van Gend en Loos*, and the other one is *Costa v. ENEL*. After the decisions in these two Cases, a legal and political imperative to find the way for protecting human rights at the EU level was created.

Namely, the very idea that the Founding Treaties are in fact different from classical international treaties was introduced and recognised by the ECJ in *Van Gend en Loos* (1963). In that Case the Court stated that "the Treaty is more than agreement which merely creates mutual obligations between the Contracting States". Furthermore, the Court stated that "the Community constitutes a new legal order of international law, for the benefit of which the states have limited their sovereign rights"; and that new legal order creates rights and obligations not only for the Member States, but more importantly for their nationals. These rights thus become "part of their legal heritage".[3]

A year later, in *Costa v. ENEL Case* (1964) the Court stated that the "limitations of States' sovereign rights are permanent" and that the Community law "because of its special and original nature" cannot be "overriden by national legal provisions". Not even by the national constitutions. These are the famous principles of supremacy and direct effect of EU law. There's no sign of them in the founding Treaties. These principles are pure

[2] Alston P. & Weiler J.H.H., AN 'EVER CLOSER UNION' IN NEED OF A HUMAN RIGHTS POLICY: THE EUROPEAN UNION AND HUMAN RIGHTS, JMWP Working Papers, Jean Monnet Center, NYU School of Law, 1999., p. 3-68.

[3] Van Gend and Loos v. Nederlandse Administratie der Belastingen, no. 26/62 (1963), ECR 1

creation of the ECJ and it's exactly through these principles that the process of constitutionalization of Treaties began.[4]

To successfully defend such enormous constitutional power ECJ simply had to revise the Treaties through its case law in order to secure the protection of human rights at the EU level. Although reluctant at first, as for example in *Stork Case* (1959), ECJ soon started to change the direction. First reference to human rights can be found in *Stauder Case* (1969), where the Court stated that the "fundamental rights are enshrined in the general principles of EU law and protected by the Court". The *Stauder Case* thus confirmed the existence of fundamental rights in EU law.[5] Then in famous *Internationalle Handelsgesellscahft Case* (1970) the Court moves on and, after reaffirming the Stauder Case, specifies that "the protection of fundamental rights is inspired by the constitutional traditions common to the member States", and adds that their protection "must be ensured within the framework of the structure and objectives of the Community". The primary source of fundamental rights is therefore in the constitutional traditions of the member States.[6] In equally famous *Nold Case* (1974) a secondary source of fundamental rights is identified by the Court - these are international human rights treaties. The Court stated that: "international treaties for the protection of human rights on which the member States have collaborated, or of which they are signatories, can supply guidelines which should be followed within the framework of EU law".[7] After this decision the Court repeatedly referred explicitly to the ECHR in first place, as well as to other treaties though to a lesser extent (for example, ECHR is used as guideline in *Hauer Case, Rutili Case* or *National Panasonic Case*; on the other side, the judgement in second *Defrenne Case* was inspired by the European Social Charter and International Labour Convention concerning Discrimination in Respect of Employment and Occupation).

It is also important to emphasize that in *Nold* Case the Court stated that "it would strike down any provisions of EU legislation which are incompatible with fundamental rights recognized and protected by the constitutions of member States". This was in fact very clever move by the Court, although it wasn't completely voluntary. Namely, it followed after the famous *Solange I Case* (1974) in which the German Constitutional Court opposed the ECJ's standpoint expressed in Internationale Handelsge-

[4] Costa v. ENEL, no. 6/64 (1964), ECR 585. Bačić P., Konstitucionalizam i sudski aktivizam, Pravni fakultet, Split, 2010., p. 296 et passim.
[5] Stauder v. Stadt Ulm, no. 29/69 (1969), ECR 419
[6] Internationale Handelsgesellschaft v. EVGF, no. 11/70 (1970), ECR 1125
[7] Nold v. Commission, no. 4/73 (1974), ECR 491

sellscahft Case concerning the supremacy of EU law over the fundamental rights guaranteed by the German Constitution (Basic Law). German Constitutional Court stated that, although it generally accepts the supremacy of EU law, it can not accept its supremation over fundamental rights protected by the German Constitution for "as long as the EU law doesn't include precise catalogue of fundamental rights". So, basically, for as long as such situation exists, German courts have right to review all the EU legislation to ensure the same level of protection of fundamental rights as it is guaranteed by German Constitution. Later, in *Solange II Case* (1986) the German Constitutional Court affirmed the significant improvement of human rights protection at the EU level and reversed its stance. It stated that - again - "as long as EU treaties guarantee the same level of protection of fundamental rights as the German Constitution" there is no need for German courts to review the EU legislation.[8]

After these early decisions, the development continued and the protection field expanded. For example, after *Wachauf Case* (1989) the Court started to supervise the member States' action in implementing the EU legislation. In other words, fundamental rights guaranteed by the EU legislation are also binding on the member States when they act in the scope of EU law, when they implement EU rules.[9] The judgement in *ERT Case* (1991) first reaffirms Wachauf, and than even further extends the ECJ's jurisdiction – it's now extended over the national measures taken in the exercise of discretionary powers foreseen by Community law. As a conclusion: although not mandated by the Founding Treaties and without any EU human rights catalogue, the ECJ established a competence for human rights issues within its case law. How? Simply by declaring human rights to be a general principle of Community law, which the Court saw itself obliged to ensure. To do so, the ECJ drew on the constitutional traditions common to all Member States as well as on the international human rights instruments ratified by all Member States, especially the ECHR.

EU Primary Law & Human Rights. Human rights were formally mentioned for the first time in the preamble of the Single European Act (1987) - it declared that the Community is "determined to work together to promote democracy on the basis of the fundamental rights recognized in the constitutions and laws of the Member States, in the Convention for the

[8] Bačić A. & Bačić P., Eruopsko pravo – studijski izvori, Pravni fakultet, Split, 2007., p. 269-270.
[9] Wachauf v. Germany, no. 5/88 (1989), ECR 2609

Protection of Human Rights and Fundamental Freedoms and the European Social Charter, notably freedom, equality and social justice". After the Single European Act, the EU's human right commitment becomes more and more emphasized with every constitutional treaty to follow.

The Maastricht Treaty (1992) converted the obligation to respect human rights expressed in ECJ's case law into a Treaty obligation, thus making it essential part of EU constitutional law. The Maastricht Treaty formally codified the standard set by ECJ case law with the introduction of Art. F (later Art. 6) TEU, which confirmed that: "The Union shall respect fundamental rights, as guaranteed by the European Convention on Human Rights and Fundamental Freedoms (...) and as they result from the constitutional traditions common to the Member States, as general principles of Community law". Furthermore, the Maastricht treaty includes respect for human rights and fundamental freedoms among objectives of the EU common foreign and security policy, and introduces the EU citizenship.

The Amsterdam Treaty (1999) strengthened the EU's commitment to human rights. It added to Art 6. an explicit statement: the Union "is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to the Member States". Furthermore, it laid down a specific procedure - sanctions may be imposed on a Member State in cases "of serious and persistent breach" of Art. 6. The Council may, unanimously and with the assent of the EP, "determine the existence of a serious and persistent breach" (Art. 7.1) and decide to suspend some of the state's rights. Finally, Art. 46 explicitly extends the powers of the ECJ to Article 6. in order that it obtained the power to decide whether the institutions have failed to respect fundamental human rights.

The Treaty of Nice (2000) improves the sanctioning mechanism established at Amsterdam - if the member states see that there is a clear risk of a serious breach, they may address recommendations to the state and ask a group of independent experts for a report. Furthermore, in Nice the presidents of the European institutions (Council, Parliament and Commission) also proclaimed, for the first time, a Charter of Fundamental Rights. Nevertheless, the Charter wasn't incorporated into the Treaty of Nice and therefore it did not become legally binding. That question was to be resolved through further negotiations. Thus the Laeken Declaration (2001) included this task on the agenda of the Convention on the Future of Europe.

The Treaty establishing a Constitution for Europe (EU Constitution, 2004) indeed incorporated the Charter of Fundamental Rights. However, the fate of the EU Constitution is well known. Its eventual adoption would have granted binding force to the Charter. But, the failure of the ratification process meant that the Charter remained a declaration of rights with no binding force.[10]

Finally, with the coming into force of the Lisbon Treaty in 2009 the Charter becomes legally binding. Although the Lisbon Treaty did not incorporate the Charter like EU Constitution did, it stipulates the following: "The Union recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union of 7 December 2000, as adapted at Strasbourg, on 12 December 2007, which shall have the same legal value as the Treaties".

The Charter of Fundamental Rights. The Charter sets out the basic rights that must be respected both by the European Union and the Member States when implementing EU law. Regarding structure and content of the Charter, it is divided into seven titles, six of which are devoted to specific types of rights. It is therefore possible to argue that rights are brought together or assembled around six fundamental values, which are: I - Dignity, II - Freedoms, III - Equality, IV - Solidarity, V - Citizens' Rights, VI - Justice. The last, seventh title (VII - General Provisions Governing the Interpretation and Application of the Charter)) clarifies the scope of application of the Charter and the principles governing its application. First important and specific characteristic of the Charter is therefore that it abandons traditional division of rights between civil and political rights on one side, and the economic, social and cultural rights on the other side. Another important characteristic of the Charter is that it introduces some innovative, postmodern rights – such as the right to the protection of personal data (Art. 8),[11] prohibition of reproductive humane cloning and the prohibition of eugenic practices (Art. 3),[12] or the right to good and transparent

[10] Schimmelfennig F. & Schwellnus G., THE CONSTITUALIZATION OF HUMAN RIGHTS IN THE EUROPEAN UNION: HUMAN RIGHTS CASE STUDIES AND QCA CODING, http://www.eup.ethz.ch/research/constitutional/fs-gs-dossier.pdf

[11] Art. 8 - Protection of personal data. 1. Everyone has the right to the protection of personal data concerning him or her. 2. Such data must be processed fairly for specified purposes and on the basis of the consent of the person concerned or some other legitimate basis laid down by law. Everyone has the right of access to data which has been collected concerning him or her, and the right to have it rectified. 3. Compliance with those rules shall be subject to control by an independent authority.

[12] Art. 3 - Right to the integrity of the person. 1. Everyone has the right to respect for his or her physical and mental integrity. 2. In the fields of medicine and biology, the following

administration (Art. 41).[13] The Charter in fact entrenches all the rights found in the case law of the Court of Justice of the EU, the rights and freedoms enshrined in the European Convention on Human Rights, as well as other rights and principles resulting from the common constitutional traditions of EU countries and other international instruments.[14]

According to its Art. 51 the Charter applies primarily to the institutions and bodies of the European Union, in compliance with the principle of subsidiarity, while the same requirement is binding on the Member States when they act in the scope of Union law (as it follows from the ECJ's case-law). It's also important to emphasize that the Charter is consistent with the European Convention on Human Rights; moreover, according to Art. 52/3/ when the Charter contains rights that stem from this Convention, their meaning and scope are the same ("In so far as this Charter contains rights that correspond to rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, the meaning and scope of those rights shall be the same as those laid down by the said Convention")**.** The reference to the ECHR covers both the Convention and the Protocols to it. Furthermore, the meaning and the scope of the guaranteed rights are determined also by the case-law of the European Court of Human Rights. However, this provision doesn't prevent EU law providing more extensive protection.[15]

Although the Charter was only solemnly proclaimed by the EU institutions and not included in the Treaty of Nice, the Court of Justice as

must be respected in particular: a) the free and informed consent of the person concerned, according to the procedurs laid down by law; b) the prohibition in eugenic practices, in particular those aiming at the selection of persons; c) the prohibition on making the human body and its parts as such a source of financial gain; d) the prohibition of reproductive cloning of human beings.

[13] Art. 41 - Right to good administration. 1. Every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions, bodies, offices and agencies of the Union. 2. This right includes: a) the right of every person to be heard, before any individual measure which would affect him or her adversely is taken; b) the right of every person to have access to his or her file, while respecting the legitimate interests of confindentiality and of professional and business secrecy; c) the obligation of the administration to give reasons for its decisions. 3. Every person has the right to have the Union make good any damage caused by its institutions or by its servants in the performance of their duties, in accordance with the general principles common to the laws of the Member States. 4. Every person may write to the institutions of the Union in one of the languages of the Treaties and must have an answer in the same language.

[14] Europa-Institut of Saarland University (ed.), EUROPEAN LAW – SELECTED DOCUMENTS, 2nd revised and extended edition, Verlag Alma Mater, Saarbrücken, 2014.

[15] http://ec.europa.eu/justice/fundamental-rights/charter/index_en.htm

well as Advocates General almost immediately started to make reference to its provisions. Thus, until 2009 when Charter acquired legally binding force, the Charter was already referred to in 59 judgments of the Court. However, most of these references, as indicated by Grainne De Burca, were 'made only in passing and did not entail serious engagement with Charter provisions'.[16] I find it also interesting to point out that in the same period the Court referred to the ECHR in 81 judgments. Nevertheless, since Charter acquired legally binding force, number of referrences to its provisions has risen significantly. One might therefore conclude that the European Court of Justice has evolved from an institution primarily concerned with economic matters and just occasionaly dealing with human rights issues, to the one that now has clear competence in dealing with cases concerning with human rights, though in comparison with specialized human rights court such as the ECtHR it still lacks experience as well as expertise.

Further reading:

Alston P. & Weiler J.H.H., An 'Ever Closer Union' in need of a Human Rights Policy: The European Union and Human Rights, JMWP Working Papers, Jean Monnet Center, NYU School of Law, 1999.

Bačić P., Konstitucionalizam i sudski aktivizam – ustavna demokracija između zahtjeva za vladavinom većine i protuvećinskiog argumenta, Pravni fakultet, Split, 2010.

Douglas-Scott S. & Hatzis N. (ed.), Research Handbook on EU Law and Human Rights, Edward Elgar Publishing, Cheltenham, 2017.

Europa-Institut of Saarland University (ed.), European Law – Selected Documents, 2nd revised and extended edition, Verlag Alma Mater, Saarbrücken, 2014.

Grainne de Burca, After the EU Charter of Fundamental Rights: The Court of Justice as a Human Rights Adjudicator, 20 Maastricht J. Eur. & Comp. L. 168 (2013)

Peers S. et al. (ed.), The EU Charter of Fundamental Rights – A Commentary, Hart Publishing, Oxford and Portland, Oregon, 2014.

European Court of Justice

Costa v. ENEL, no. 6/64 (1964), ECR 585

Internationale Handelsgesellschaft v. EVGF, no. 11/70 (1970), ECR 1125

Nold v. Commission, no. 4/73 (1974), ECR 491

Stauder v. Stadt Ulm, no. 29/69 (1969), ECR 419

Van Gend and Loos v. Nederlandse Administratie der Belastingen, no. 26/62 (1963), ECR 1

Wachauf v. Germany, no. 5/88 (1989), ECR 2609

CJEU Opinion 2/13 pursuant to Article 218(11) TFEU, 18. December 2014, ECLI:EU:C:2014:2454 (...)

[16] Grainne de Burca, After the EU Charter of Fundamental Rights: The Court of Justice as a Human Rights
Adjudicator, 20 Maastricht J. Eur. & Comp. L. 168 (2013)

<table>
<tr><td>NAME OF THE COURSE</td><td colspan="7">Protection of Human Rights – European and Comparative Perspective</td></tr>
<tr><td>Code</td><td colspan="2">PR5ZLJP</td><td>Year</td><td colspan="4">5</td></tr>
<tr><td>Course teacher</td><td colspan="2">Dr. sc. Petar Bačić, Associate Professor</td><td>ECTS</td><td colspan="4">6</td></tr>
<tr><td rowspan="2">Associate teacher</td><td colspan="2" rowspan="2"></td><td rowspan="2">Lecture hours per semester</td><td>P</td><td>S</td><td>V</td><td>T</td></tr>
<tr><td>60</td><td>15</td><td></td><td></td></tr>
<tr><td colspan="2">Status of the course</td><td>Elective</td><td colspan="3">E-learning percentage</td><td colspan="2">/</td></tr>
<tr><td colspan="8">OPIS PREDMETA</td></tr>
<tr><td>Course objectives</td><td colspan="7">The course Protection of Human Rights in European and Comparative Perspective gives a profound and comprehensive knowledge on human rights and fundamental freedoms and on systems created for their protection. This course offers thorough analysis of human rights protection at different levels - national, supranational and international, as well as of examples of judicial activism in the field of human rights. Main goals of this course are providing students with basic information on the documents that guarantee human rights on European and national level and on corresponding systems for their protection, as well as knowledge on judicial institutions whose main tasks are protection of human rights at national and european level and of their practice i.e. relevant case-law of the European Court of Human Rights and Court of Justice of the European Union (CJEU/ECJ).</td></tr>
<tr><td colspan="2">Course enrolment requirements and entry competences required for the course</td><td colspan="6">For enrollment, students must meet the general requirements for admission to the fifth year of study.</td></tr>
<tr><td>Learning outcomes expected at the level of the course (4 to 10 learning outcomes)</td><td colspan="7">Students will get the ability to: 1) identify and indicate basic concepts related to the protection of human rights and fundamental freedoms and its development; 2) isolate relevant principles related to the human rights protection as well as national and comparative documents and institutions; 3) explain functioning of systems for protection of human rights on different levels; 4) combine and accommodate basic knowledge on human rights documents, institutions and systems of protection of human rights; 5) analyse relevant national and european documents, mechanisms and institutions for human rights protection; 6) deduce on influence and contribution of practice of national and european institutions of human rights protection.</td></tr>
<tr><td>Course content broken down in detail by weekly class schedule (syllabus)</td><td colspan="7">I. AN INTRODUCTION TO HUMAN RIGHTS 1. Basic concepts; 2. Development of human rights protection in historical perspective; 3. Theory and ideology of human rights; 4.Human rights protection and the role of the judiciary; 4. Distinctive models of human rights protection: american model and its variants; 5. Distinctive models of human rights protection: Westminster model; 6. Protection of human rights in european regional organizations.
II. LIMITATIONS OF HUMAN RIGHTS PROTECTION: 1. Judicial protection of socioeconomic, cultural and minority rights; 2. Constitutional protection of human rights 3. International law on human rights – COE & ECHR; 4. EU & human rights – EU Charter of fundamental rights.
III. SUBSTANTIVE PROTECTION OF HUMAN RIGHTS: 1. Right to privacy (case law of US and German courts, ECHR & CJEU case law, right to privacy before Croatian courts); 2. Right to life (definitions, pro life - pro choice debates, ECHR & CJEU case law, right to life before Croatian courts), 3. Right to liberty (habeas corpus and national laws, derogations, ECHR & CJEU case law, right to liberty before Croatian courts), 4. Right to a fair trial (right to a fair trial in national laws, right to an effective remedy, ECHR &</td></tr>
</table>

<table>
<tr><td></td><td colspan="6">CJEU case law, right to a fair trial before Croatian courts), 5. Freedom of speech (freedom of speech in national laws, censorship, hate speech, defamation, protection of rights on the internet, ECHR & CJEU case law, freedom of speech before Croatian courts) 6. Right to equality and non-discrimination (historic development, ECHR & CJEU case law, right to equality before Croatian courts), 7. Political rights (political parties and regulations of political party funding, ECHR & CJEU case law, political rights before Croatian courts), 8. Bioethics and human rights.</td></tr>
<tr><td>Format of instruction</td><td colspan="3">☒ lectures
☒ seminars, workshops
☐ vježbe
☐ on line u cijelosti
☐ mješovito e-učenje
☐ terenska nastava</td><td colspan="3">☐ samostalni zadaci
☐ multimedija
☐ laboratorij
☐ mentorski rad
☐ (ostalo upisati)</td></tr>
<tr><td>Student responsibilities</td><td colspan="6">Students are expected to attend all forms of studying (lectures, seminars, tests). Students are expected to write an essay (practical assignment). Students must pass the oral exam.</td></tr>
<tr><td rowspan="5">Screening student work (name the proportion of ECTS credits for each activity so that the total number of ECTS credits is equal to the ECTS value of the course)</td><td>Pohađanje nastave</td><td></td><td>Istraživanje</td><td></td><td>Praktični rad</td><td></td></tr>
<tr><td>Eksperimentalni rad</td><td></td><td>Referat</td><td></td><td>(Ostalo upisati)</td><td></td></tr>
<tr><td>Esej</td><td></td><td>Seminarski rad</td><td></td><td>(Ostalo upisati)</td><td></td></tr>
<tr><td>Kolokviji</td><td></td><td>Usmeni ispit</td><td></td><td>(Ostalo upisati)</td><td></td></tr>
<tr><td>Pismeni ispit</td><td></td><td>Projekt</td><td></td><td>(Ostalo upisati)</td><td></td></tr>
<tr><td colspan="2">Grading and evaluating student work in class and at the final exam</td><td colspan="5">Attending classes and writing an essay (practical assignment) 60%. Oral exam 40 %.</td></tr>
<tr><td rowspan="2">Required literature (available in the library and via other media)</td><td colspan="4">Naslov</td><td>Broj primjeraka u knjižnici</td><td>Dostupnost putem ostalih medija</td></tr>
<tr><td colspan="4">1. Bačić Petar, Zaštita prava čovjeka u europskim organizacijama, Pravni fakultet, Split, 2007.</td><td>15</td><td></td></tr>
<tr><td>Optional literature (at the time of submission of study programme proposal)</td><td colspan="6">1. Bačić Petar, Konstitucionalizam i sudski aktivizam, Pravni fakultet, Split, 2010.
2. Douglas-Scott S. & Hatzis N. (ed.), Research Handbook on EU Law and Human Rights, Edward Elgar Publishing, Cheltenham, 2017.
3. Greer S., The European Convention on Human Rights – Achievements, Problems and Prospects, Cambridge University Press, Cambridge, 2006.</td></tr>
<tr><td>Quality assurance methods that ensure the acquisition of exit competences</td><td colspan="6">Students will have the option of communication with the teacher through daily consultations. Students have open access to e-mails of the teachers and departments. Students are provided with instructions on how to write essays. Essay topics will be available to students at the beginning of semester. Teachers will guide them through the preparation of essays and studying the teaching material.</td></tr>
<tr><td>Other (as the proposer wishes to add)</td><td colspan="6"></td></tr>
</table>

Goran Koevski*

SYLLABUS FOR THE COURSE INTERNATIONAL COMMERCIAL LAW AT FACULTY OF LAW „JUSTINIJAN PRVI“OF ST. CYRIL AND METHODIUS UNIVERSITY IN SKOPJE, REPUBLIC OF NORTH MACEDONIA

The course International Commercial Law is taught in the 8th semester in master's studies of law, business law department. The aim of this narrative part of the text is to analyze the content of the existing syllabus for the course International Commercial Law. The analysis has imposed an inherent need in order to (re) examine the conformity of course with EU law on one side, but also to identify the content that should be amended and supplemented, on the other. The analysis of the syllabus was made for the needs of the CABUFAL project (Capacity Building of the Faculty of Law), whose main initiator is the Faculty of Law, University of Podgorica, Montenegro.

By the conclusion of the Agreement in Prespa and its ratification by the Greek and Macedonian parliaments, at the beginning of 2019, the biggest obstacle for the start of negotiations for membership of the Republic of Northern Macedonia into the European Union has been removed. In this process, the active role of the academic community will be necessary, especially in the part of refreshing the content of existing syllabi for courses already taught at faculties of law. This will not be a one-time job, but the need to revise existing silabuses will be imposed when opening and negotiating each new chapter in accession negotiations with the European Union. In that sense, this will require additional and deeper understanding of the *acquis communautaire*, but also its gradual transposition in syllabi of courses covering different legal areas.

The key principles on which the European Union is based are the freedoms of movement of goods, services, capital and people. These freedoms can only be achieved through the formal and factual overcoming of all obstacles that occur in the process of their exercise. Overcoming these barriers within the EU contributes to an increase in the volume of economic exchange, which in turn has a positive impact on the development of the

* Prof. dr Goran Koevski is a Full Professor at Faculty of Law, University Ss. Cyril and Methodius.

entire European economy. We are witnesses today that the process that started as a customs union is gradually turning into a single European market, and it is more regulated by the Treaty on the Functioning of the European Union - TFEU.

In general, all syllabi represented within the accredited study programs at Faculty of Law "Justinijan Prvi" include the basic concepts of EU law, but also other sources of international character. This, of course, applies to the course International Commercial Law. In this regard, the syllabus covers the main contents reflecting its international character. Thus, the syllabus includes: principles of international commercial law; the latest tendencies in the harmonization and unification of international commercial law; new lex mercatoria and its role in the harmonization and unification of international commercial law, primarily through increasingly used instruments of soft law and optional instruments. Likewise, the review and analysis of the main international sources of law relating to international commercial law: principles of European contract law (Lando Principles); regulations and EU directives in the field of contractual and other business transactions; role and main documents of the United Nations Commission on International Commercial Law (UNCITRAL) in the harmonization and unification of international commercial law; role and main documents of the International Private Equity Institute (UNIDROIT); role and main documents of the International Chamber of Commerce (ICC) in the harmonization and unification of international commercial law, etc.

The potential membership of the Republic of Northern Macedonia to the EU, of course, requires that all previously mentioned trends in the development of international commercial law be taken into account. In that case, the syllabus of the course international commercial law should show and reflect the medium and long-term vision of law graduates in the field of business law. Quite justly, we can expect that Macedonian law graduates, within a reasonable time, will be faced with the need to practice EU law as their national law.

It must, however, be known that EU law is an autonomous legal system. It requires its own methodology for studying the basic sources of this law, interpretation of primary and secondary legislation, specificity of general principles, and the like. Good knowledge of the case law of the European Court of Justice will greatly assist in the application of EU law and its methods to national context and national legal traditions. Finally, students who study the course International Commercial Law must be able

to develop special skills in the search, primarily digitally accessible databases (legislative, official publications, ECJ practices, etc.).
Syllabus proposal with supplemented material[1]:

SYLLABUS FOR THE COURSE INTERNATIONAL COMMERCIAL LAW

I. Data on the course teachers:

Name and surname: Goran Koevski, Darko Spasevski,	Teaching and Academic designations and Titles: Full professor, PhD.; Associate professor, PhD.

II. Data on the teaching assistants and other lecturers:

Name and surname of the teaching assistant/s:	Teaching and Academic Designations and titles:
Other lectures and experts from the practice:	

III. Basic information about the course programme and materials:

Course title: INTERNATIONAL COMMERCIAL LAW	
Course Code:	Number of credits earned: 6
Number of course classes/hours: 52	Number of pages of obligatory course materials: 330
Year of Study: 4TH YEAR	Semester of Study: 8TH SEMESTER

IV. Course description and key words and terms:

Course description:
This course content is defining the position of the international commercial law in the national legal system by determining its notion and scope. Further, the course is describing the role of international organizations in the field of international commercial law and the legal acts and documents they create as a main source of law in this area of law. Particular attention is paid to the activities of the European Union in the field of international commercial transactions. The most important commercial agreements which are relevant for international trade are presented in much detail. Part of the course is dedicated to the mechanisms for dispute resolution arising from international commercial transactions.
Course materials key words and terms:
International commercial contracts, unification and harmonization of commercial law, *lex mercatoria*, international sources of commercial law, resolving commercial disputes

V. Course goals and results:

Course goals and results:
The students will acquire wider knowledge in international commercial transactions. The main focus is put on understanding of the legal rules governing international commercial contracts, sources of international commercial law and significance of unification and harmonization of international commercial law. Upon successful completion of the course, students will be able to demonstrate detailed knowledge for key principles of international commercial law, as well as to demonstrate an ability for practical analysis and critical thinking for specific aspects in international commercial law.

VI. Teaching methodology:

The course international commercial law is conducted through interactive lectures, comparative analysis, case-law analyses, workshops and debates. It will ensure active involvement of students in teaching and exercises by preparing presentations, debate and preparation of practical

[1] Osvježeni dijelovi nastavnih planova i programa su u okviru prve tri sedmice nastave, a relevantni tekst označen je italic bold fontom.

exercises. Students will be provided with basic skills in navigating the vast databases of official publications, legislation and case law.

VII. Detail structure of the course syllabus:

Course week no. 1	Number of course hours: 3.5
Study unit: THE CONCEPT OF INTERNATIONAL COMMERCIAL LAW	Obligatory course materials:
Detail description of the study unit: - Historical development of international commercial law; - International commercial law as part of the other branches of law; - International commercial law as separate branch of law; - Principles of international commercial law; - Contemporary trends in the process of unification and harmonization of international commercial law - *The Beginnings of EU contract law* - *The competence of the EU - Treaty on the Functioning of the European Union* - *EU contract law as an instrument for harmonization of the internal market*	
Course week no. 2	Number of course hours: 3.5
Study unit: APPROACHES FOR UNIFICATION AND HARMONIZATION OF INTERNATIONAL COMMERCIAL LAW	Obligatory course materials:
Detail description of the study unit: - The new *Lex Mercatoria* and its role in the unification and harmonization of international commercial law; - *EU contract law instruments:* - *The Draft Common Frame of Reference and the effort to introduce the Common European Sales Law as an optional instrument* - *Codification of EU Contract Law* - *Values of the EU Contract Law* - Principles of European Contract Law (Lando principles); - Directives of the European Union in the field of international commercial transactions; - Introduction to competition law and its connection with international commercial law	
Course week no. 3	Number of course hours: 3.5
Study unit: INTERNATIONAL GOVERNMENTAL AND NON-GOVERNMENTAL ORGANIZATIONS PARTICIPATING IN THE CREATION OF INTERNATIONAL COMMERCIAL LAW PRINCIPLES AND RULES	Obligatory course materials:
Detail description of the study unit: - *The role of European Parliament, European Court of Justice and the European Commission* - *The case-law of the European Court of Justice* - *The relations between the national courts of Member States and the European Court of Justice* - *The role of European Regulatory Authorities* - UN Commission on International Trade Law UNCITRAL - Tasks, methods and composition of the UNCITRAL; - UN Convention on Contracts for the International Sale of Goods; - International Institute for Unification of Private Law UNIDROIT; - International Chamber of Commerce ICC; - International contractual clauses and model contracts (ICC Standards, ICC Model contracts, ICC Model Clauses, ICC Rules, COMBITERMS, Institute Cargo Clauses); - International regulation of e-commerce	
Course week no. 4	Number of course hours: 3.5

Study unit: DEFINITION AND STRUCTURE OF THE INTERNATIONAL COMMERCIAL TRANSACTIONS	Obligatory course materials:
Detail Description of the study unit: - Concluding contracts with international element - Structure of international commercial contracts - Phases of concluding international commercial contract - Negotiation and *culpa in contrahendo* - Offer for concluding contract - Acceptance of the offer - Time and place of concluding of the contract - Concluding a contract electronically, by telephone, by teleprinter, by fax or by other means - Impact of administrative permits and approvals on international commercial contracts - Form of international commercial contracts	
Course week no. 5	Number of course hours: 3.5
Study unit: CONTRACT FOR INTERANTIONAL SALE OF GOODS	Obligatory course materials:
Detail description of the study unit: - Sources of law and form of contract for international sale of goods and services - Concluding and performance of contract for international sale of goods and services - Obligations of the seller - Obligations of the buyer - Avoidance of the contract	
Course week no. 6	Number of course hours: 3,5
Study unit: INCOTERMS	Obligatory course materials: Nikolovski d-r Aleksandar, „International commercial law", Skopje
Detail description of the study unit: - Transfer of risk and cost in international sale of goods - Contract for the international sale of investment equipment	
Course week no. 7	Number of course hours: 3.5
Study unit:INTERNATIONAL COMMERCIAL CONTRACTS (first part)	Obligatory course materials:
Detailed description of the study unit - Commercial agency contract - Brokerage contract - Commission contract - Contract for carriage of goods	
Course week no. 8	Number of course hours:
Study unit: INTERNATIONAL COMMERCIAL CONTRACTS(second part)	Obligatory course materials:
Detailed description of the study unit: - Leasing contract with international element - Know-how - Factoring contract - Forfeiting contract - Distribution contract - Franchise contract	
Course week no. 9	Number of course hours: 3.5
Study unit: INTERNATIONAL COMMERCIAL CONTRACTS (third part)	Obligatory course materials:
Detailed description of the study unit: - Contract for freight forwarding - Contract for long-term cooperation	

- Contract for bank transfer - Letter of credit	
Course week no. 10	Number of course hours: 3.5
Study unit: METHODS OF PAYMENT IN INTERNATIONAL COMMERCE	Obligatory course materials:
Detailed description of the study unit: - Introduction to the payment methods in international trade: electronic money transfer, credit cards, - Contract for documentary letter of credit, - Legal relations between the parties participating in documentary letter of credit - Types of documentary letter of credit - Duties and liabilities of the bank in documentary letter of credit transactions	
Course week no. 11	Number of course hours: 3.5
Study unit: CONTRACT FOR BANK GUARANTEE	Obligatory course materials:
Detailed description of the study unit: - Domestic and international legal framework related to bank guarantee - Legal relations established by bank guarantee - Types of bank guarantee	
Course week no. 12	Number of course hours: 3.5
Study unit: DISPUTE RESOLUTION ARRASING FROM INTERNACTIONAL COMMERCIAL TRANSACIONS	Obligatory course materials:
Detailed description of the study unit: - Sources of law, methods of dispute resolution and their institutionalization - Judicial and arbitration protection - Types of arbitration and jurisdiction - Mediation, negotiation and alike alternative dispute resolution methods	

VIII. Activities involving other institutions

Study visits to outside institutions
N/A

IX. Course materials and literature

Obligatory course materials:
Коевски Горан, „Водич за алтернативните извори на финансирање”, Здружение на правници на Република Макеоднија, 2007 Николовски Александар, „Меѓународно трговско право”, Скопје, стр. 7-53; 133-222; 356-377; 403-434; 443-460; 508-511 и 517-523
Further study material: Перовић Јелена, Међународно привредно право, Београд, 2016 Перовић Јелена, Стандардне клаузуле у међународним привредним уговорима, Београд, 2012 Caric Slavko, Vilus Jelena, Sogorov Stefan, „Međuanrodno privredno pravo”, Centar za privredni konsalting, Novi Sad, 2001; Houtte Van Hans, „The Law of International Trade”, Sweet & Maxwell, London, 1995; Ramberg Jan, „International Commercial Transactions”, ICC, Kluwer law International, Norstedts Juridik AB, 2000; Schmitthoff M. Clive, „Schmitthoffs export trade – The Law and Practice of International Trade”, ninth edition, Steven&Sons, London, 1990; Tomič Deša Miklton, „Pravo međuarodne trgovine”, školska kniga, Zagreb, 1999; Whaley J Douglas, „Problems and Materials in Commercial Law”, eight edition, Aspen publishers, 2005

Jadranka Dabović - Anastasovska[*]
Neda Zdraveva[**]

CONSUMER LAW COURSE AMENDMENT IN LIGHT OF THE DEVELOPMENT OF EU CONSUMER ACQUIS

The course on consumer protection has been introduced in the curriculum of the Iustinianus Primus Law Faculty since the academic 2005 / 2006. The course, titled Consumer Law, has been delivered as an elective course, for the 2nd seme-ster of the Master studies in Civil Law, module Civil Substantive Law and as an optional course for the other master programs. Most of the students that have elected/opted the course come from the Civil Law master studies.

The existing course focuses on the issues of the consumer protection from national perspective. The course provides insight into the national regulation of the relations to where consumer is a party and the mechanisms provided for protection of consumers.

In terms of the latest 2018 county report of the European Commission for the Republic of Macedonia,[1] the state is moderately prepared in the area of consumer protection. Further, no progress has been observed in the area of consumer protection. As for the legal framework, it is stre-ssed that it does not fully align with the *acquis* on consumer rights. Traditionally, the report identifies the weakness in the system of support of consumer organizations, the lack of administrative resources and the lack of availability of the existing mediation scheme for consumers, particularly in terms of costs. The main recommendation refers to the align the legal framework with the acquis on consumer protection and strengthening of the operational structures serving consumer protection.

[*] prof. dr Jadranka Dabović - Anastsovska is rofessor at University "Ss.Cyril and Methodious", Faculty of Law "Iustinianus Primus" – Skopje.
[**] prof. dr Neda Zdraveva is Associate Professor at University "Ss.Cyril and Methodious", Faculty of Law "Iustinianus Primus" – Skopje.

[1] European Commission, The former Yugoslav Republic of Macedonia 2018 Report, SWD (2018) 154 final (Strasbourg, 17.4.2018).

In regard to the legal framework, the main weakness can be found in the technical inconsistency of the Law on Consumer Protection[2] whose several amendments have resulted in the lack of transparency for consumers and their rights. In terms of alignment with EU law, it can be said that the LPC is harmonised only in general terms with the provisions of the directives that are commonly treated as a part of the consumer rights *acquis*:

1. Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts;
2. Directive 98/6/EC of the European Parliament and of the Council of 16 February 1998 on consumer protection in the indication of the prices of products offered to consumers;
3. Directive 1999/44/EC of the European Parliament and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees;
4. Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market;
5. Directive 2006/114/EC of the European Parliament and of the Council of 12 December 2006 concerning misleading and comparative advertising;
6. Directive 2009/22/EC of the European Parliament and of the Council of 23 April 2009 on injunctions for the protection of consumers' interests; and
7. Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights.

Traditionally, the LPC also regulates issues covered by the following directives:

1. Council Directive 85/374/EEC of 25 July 1985 on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products; and
2. Directive 2008/122/EC of the European Parliament and of the Council of 14 January 2009 on the protection of consumers in respect of certain aspects of timeshare, long-term holiday product, resale and exchange contracts.

As mentioned, the LPC is only aligned in general terms with the rules of said directives, or of their predecessors, while two general inconsi-

[2] Official Gazette of the Republic of Macedonia, no. 38/04, 77/07, 103/08, 24/11, 164/13, 97/15 and 152/15 (LPC).

stencies can be identified. The first refers to the general technical inconsistency of the LCP, as stated above. The second relates to the partial harmonisation, to a greater degree, particularly with the provisions of Council Directive 85/374/EEC of 25 July 1985 on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products,[3] Directive 2008/122/EC of the European Parliament and of the Council of 14 January 2009 on the protection of consumers in respect of certain aspects of timeshare, long-term holiday product, resale and exchange contracts and Directive 2009/22/EC of the European Parliament and of the Council of 23 April 2009 on injunctions for the protection of consumers' interests.

In terms of legal framework, there is also the need for a so-called horizontal harmonisation of legislation, particularly in terms of the following directives:

1. Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce. The relevant subject matter is covered by the provisions of the Law on Electronic Commerce;[4]
2. Directive 2002/65/EC of the European Parliament and of the Council of 23 September 2002 concerning the distance marketing of consumer financial services. The relevant subject matter is covered by the provisions of the Law on Distance Marketing of Consumer Financial Services;[5]
3. Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market. This directive is not implemented into Macedonian law;
4. Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers. The relevant subject matter is covered by the provisions of the Law on Consumer Protection in Consumer Credit Contracts.[6]
5. Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on alternative dispute resolution for co-

[3] It should be stated that the rules of this directive are also implemented in the Law on Obligations, Official Gazette of the Republic of Macedonia, no. 38/04, 77/07, 103/08, 24/11, 164/13, 97/15 and 152/15 (LO).
[4] Official Gazette of the Republic of Macedonia, no. 133/07, 17/11, 104/05 and 192/15.
[5] Official Gazette of the Republic of Macedonia, no. 158/10 and 153/15.
[6] Official Gazette of the Republic of Macedonia, no. 51/11, 145/15 and 23/16.

nsumer disputes. This directive is not implemented into Macedonian law;

6. Directive 2014/17/EU of the European Parliament and of the Council of 4 February 2014 on credit agreements for consumers relating to residential immovable property. This directive is not implemented into Macedonian law;
7. Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market. This directive is not implemented into Macedonian law. There is also the issue on the relevancy of the provisions of Regulation (EU) 2015/751 of the European Parliament and of the Council of 29 April 2015 on interchange fees for card-based payment transactions; and
8. Directive (EU) 2015/2302 of the European Parliament and of the Council of 25 November 2015 on package travel and linked travel arrangements. This directive is not implemented into Macedonian law. The relevant subject matter is covered by the provisions of the LO and the Law on turism.[7]

The subject matter of so-called public services is, in terms of its legal nature, sectorial.

Finally, as for the actual operationalisation of consumer protection, several main weaknesses can be identified. At first, the system of supervision by inspection authorities regulated by the provisions of the LPC and the Law on State Market Inspectorate[8] is inconsistent and rather diffused. Secondly, there is a lack of procedural mechanisms for the protection of consumers' collective rights and/or interests, bearing in mind the provisions of the Law on Contentious Procedure.[9] The third inconsistency lies in the mechanism for alternative resolution of consumer disputes, bearing in mind also the provisions of the Law on Mediation.[10]

Having in mind these issues, we propose amendments on program of Consumer Law course. The aim of the amendments are to increase the level of study of the EU Consumer Law, how it develops and how it influences the national Consumer Law. Such shift in the paradigm will affect the methodology of the delivery of the course. The students will be

[7] Official Gazette of the Republic of Macedonia, no. 62/04, 89/08, 12/09, 17/11, 47/11, 53/11, 123/12, 164/13, 27/14, 116/15, 192/15 and 53/16.
[8] Official Gazette of the Republic of Macedonia, no. 24/07, 81/07, 152/08, 36/11, 18/13, 164/13, 41/14, 33/15, 61/15, 152/15 and 53/16.
[9] Official Gazette of the Republic of Macedonia, no. 79/05, 110/08, 83/09, 116/10 and 124/15.
[10] Official Gazette of the Republic of Macedonia, no. 188/13, 148/15, 192/15 and 55/16.

more involved in research and analysis. Special attention will be paid to the analysis of the case law of the European Union Court of Justice.

Consumer Law, as a legal discipline studies the the manners in which the contracts and transactions are concluded by individual consumers as participants in the trade, that is, as users of the services. In accordance with the latest trends in the European Union and the world, consumer law regulation is gaining momentum in the legal systems of developed countries, and lately in developing countries. On the market, consumers engage in an enormous number of contractual relationships on a daily basis, thus creating an appropriate need for legal shaping of the area and profiling professional staff in it. The subject program covers content from both the domestic legislation and the directives and regulations of the European Union for consumer protection. The course, in particular, focuses on the mechanisms for protecting the rights of consumers in everyday life, presenting the necessary knowledge necessary for efficient application of the regulations in the area.

<table>
<tr><td colspan="6">Title of the course: Consumer Law</td></tr>
<tr><td>Course Code</td><td>Course status</td><td>Semester</td><td colspan="2">No. of ECTS credits</td><td>Classes</td></tr>
<tr><td></td><td>Elective/Optional</td><td>2nd or 3rd</td><td colspan="2">6</td><td>3.5L+1,2R</td></tr>
<tr><td colspan="6">Study Program for: Second Cycle – Master Studies</td></tr>
<tr><td colspan="6">Condition: It is not conditioned by passing another course</td></tr>
<tr><td colspan="6">The purpose of the course is to enable students to independently asses the relations between consumers and traders and to understand the significance of state intervention in the creation and ongoing development of consumer protection. The course is based on the regulation of the consumer protection area by the European Union. Special attention is paid on how the EU rules in the field (EU Consumer Acquis) is implemented in the national legislation.
The main tasks of the curriculum are:
1. To contribute students to understand the impact of European law and non-governmental organizations in the development of consumer protection legislation
2. Encourage students to critically analyse the application of consumer protection rules
3. Develop students' practical approach in finding solutions to violations of consumer rights
It is expected that after completing the curriculum, students will be able to:
1. Analyse European Law in the field of consumer protection
2. Asses the level of harmonization of the national law to the EU Consumer Acquis
3. Understand the application of consumer rights protection legislation
4. Identify the instruments for protection of individual consumer's rights
5. Demonstrate skills in addressing specific cases of violation of consumer rights</td></tr>
<tr><td colspan="6">Name and Surname of the teacher(s): Prof.dr Jadranka Dabović – Anastasovska
Assoc. Prof.dr Nenad Gavrilović
Assoc. Prof.dr Neda Zdraveva</td></tr>
<tr><td colspan="6">Teaching Method: The material is divided into 12 thematic units. Within each thematic unit, the questions will be analysed from a theoretical and practical point of view. The students will be encouraged for independent and team research work, mentored by the subject teachers and associates, which will enable them to gain in-depth knowledge and skills development. Students will be divided into smaller groups of teams of 3-5 students who will jointly prepare more complex research projects.
Teaching will be carried out by interactive lectures, through which students will be encouraged to come to their own conclusions based on analysis of specific issues.
Practical lessons: practical exercises through which student skills will be developed, simulations and case analysis, video presentations, visiting relevant institutions, role playing, and through lectures by practitioners in the field. The practicum will be carried out by study visits to relevant bodies and organisations.</td></tr>
</table>

I week	Introduction to Consumer Law: subject matter, place, role, significance of consumer law and development of consumer law.
II week	International and EU sources of Consumer Law: Consumer protection under UN, emergence and development of the consumer protection at EU Law level.
III week	National Sources of Consumer Law: Law on Consumer Protection, Law on Obligations, Laws in specific areas of consumer protection.
IV week	The right of the consumer to be informed: specifics of the consumer's right to be informed about the terms of the sale of products and the provision of services; regulation of advertising in the EU and the national law.
V week	Product Safety, Liability for Defective Products: requirements for product safety (general product safety, technical requirements, safety of children's toys, food safety and agricultural products); liability for a defective product in the EU and the
VI week	national law.Consumer Contracts and specific rules on consumer's' contracts: notion of consumer contract, conclusion of consumer contracts, unfair contract
VII week	terms and consequences of unfair contract terms in the EU and the national law. Financial Services to Consumers: Banking services, in particular consumer loans, collateral, payments; insurance services; investment services in the EU and the
VIII week	national law. Consumers, electronic commerce and door-to-door sales: consumer protection in the e-commerce (distance contracts, specific rules on conclusion and execution of distance contracts), contracts concluded out of the trader's premises and specific
IX week	rules in the EU and the national law. Consumer Protection in Tourism: specific aspects of protection of consumers as travellers including travel contracts, package arrangements, time sharing,
X week	passengers' rights in air travel in the EU and the national law. Consumers as Users of Services: public services provided to consumers, protection of vulnerable consumers in provision of public services; consumers as users of medical services (patients' rights) in the EU and the national law.
XI week	Enforcement of Consumers' Rights: civil and administrative protection of the consumers' rights including scope of protection, methods of protection, imposed prohibitions; mediation of consumer disputes; collective redress in the EU and the national law.
XII week	Consumers' Organizations: International, EU and national system of consumers' organizations; the role of consumer organizations in the exercise and in the protection of consumer rights.
XIII – XV week	Consumers' Protection Practicum: visit to relevant bodies and organisations, clinical program

Student's Workload	
Weekly	In semester
6 credits x 50/30 = 10 hours Structure: 3,5 hours lecture 1,2 hours research 5,3 hours individual work	Lecture: (3.5 hours) X 15 = 52,5 hours Research: (1,2 hours) X 15 = 18 hours Individual work including administrative tasks, preparation of exams etc.: (5,3 hours) X 15 = 79,5 hours

Students' tasks: Regular attendance at classes, participation in practicum, preparation of research papers, participation in debates, case-studies, role plays.

Literature: Obligatory: Галев, Г. и Дабовиќ-Анастасовска, Ј., Облигационо право, трето издание, Просветно дело, Скопје, 2012
Relevant laws: Law on Obligations; Law on Consumer Protection; Law on Consumer Protection in Contracts on Consumer Loans; Law on Protection of Patients' Rights; Law on Product Safety; Law on Food Safety; Law on Leasing; Law on Energy; Law on Electronic Commerce; Law on Electronic Communications; Law on Tourism; Law on Housing; Rulebook on Children's Toys Safety.
Additional Literature: Fairgrieve D.,Product Liability in Comparative Perspective, Cambridge, 2005
Askaham & Nebbia, EU Consumer Law, Oxford, 2004

Grading: Final Exam up to 70 points, Research Paper up to 20 points Activities at class up to 10 points

Name and surname of the teacher(s) who prepared the form: Prof.dr Jadranka Dabović – Anastasovska
Assoc. Prof.dr Nenad Gavrilović
Assoc. Prof.dr Neda Zdraveva

Note: all additional information may be obtained during classes, consultations or at www.pf.ukim.edu.mk
Comparative: Belgrade: http:/www.ius.bg.ac.rs Maribor: http:/www.pf.um.si/sl

Biljana Đuričin*

CIVIL PROCEDURE LAW - MODIFICATION OF THE SYLLABUS IN TERMS OF HARMONIZING THE CURRICULUM WITH EU LAW-

1. INTRODUCTION

In 2012 Montenegro began preparations at all levels for joining the European Union. Major preparations are being carried out in the legal field: judiciary, legislation and education. Changes in education are aimed at acquiring new, both theoretical and practical knowledge of EU law of future law graduates. Through the changes we have made, our legal system becomes aligned with EU law, and in this way service-oriented judiciary will be complemented that ensures rule of law and legal state, as well as creates new generations of future law graduates who will be able to develop critical and creative thinking, as well as legal skills. Those who are involved in the judiciary are expecting new temptations towards the realization of the rule of law in which legal rules are respected, or as Hegel said, "the law is taking effect".

On the path to the European Union, a significant role in the process of harmonization with EU law belongs to the Faculty of Law of the University of Montenegro. It is a course that should provide a powerful contribution to the many changes expected in the legal field and which, as experience confirms, has this capacity. In order to strengthen its position regarding the education of future law graduates, the Faculty of Law applied and got a project called the Capacity Building of the Faculty of Law (hereinafter referred to as CABUFAL) within the Erasmus + program of the European Union including two judicial institutions from the judiciary, the Judicial Council and Centre for Training of the Judiciary and State Prosecution in Montenegro. The partner institutions in this project are: Regent University from London, University of Ljubljana, Zagreb and Split (all from EU Member States) and University of Skopje. These institutions, through the

* Biljana Đuričin, PhD, is a Full Professor at the Faculty of law University of Montenegro.

Project, have demonstrated exceptional entrepreneurship and through study visits, guest lectures and lectures by eminent experts, logistical assistance, donations in quality books and the like, have helped the staff at the Faculty of Law to get acquainted with their curricula and harmonize curricula of the Faculty of Law in Podgorica with EU law. There is a deep appreciation for all participants in CABUFAL for extremely fruitful and useful cooperation.

The main expectations of this project have already been achieved, both for the Faculty of Law and other institutions participating in it.

The project will leave a deep recognition in legal education in Montenegro, especially considering the fact that it is a faculty where most students in Montenegro are enrolled. In this sense, future law graduates will receive new theoretical and practical knowledge and learn the skills that academic staff summed up through CABUFAL. Through new curricula, extended and new courses, which are in line with EU law, future law graduates will become active bearers of change not only in institutions where they are employed, but also in a broad sense for the needs of Montenegro and the society as a whole.

It should be emphasized that the Center for Training of the Judiciary and State Prosecution and Judicial Council benefit a great deal from CABUFAL, which carry out numerous theoretical and practical education, bar exams, numerous checking of future judges and prosecutors. Through these institutions, and thanks to CABUFAL, courses on the implementation of EU law will be organized, which will be a priority at this time in line with the progress of Montenegro in the negotiations.

2. DE LEGE LATA.

Civil Procedure Law at the Faculty of Law at the University of Montenegro is studied in third year of studies in the 6th semester and has 6 ECTS credits (4 + 1). The objectives of studying this course are to familiarize students with the concept, method, organiza-tional and functional procedure law and their institutes. Students connect knowledge in this field with knowledge gained from other areas of substantive law in order to train them for practical work and application of acquired knowledge. The course is taught at the national level. After a student passes this exam he/she is able to: define the forms of protection of individual civil rights and recognize preconditions for admissibility of a claim and presumption of passing a judgment on matter; distinguish civil cases from

criminal and administrative procedure proceedings; learn about the principles of organization and work of the judiciary; name the subjects of civil proceedings and define individual litigation actions of the courts and parties; describe the course of civil proceedings and activities of process entities in litigation; explain capacity to be a party to legal proceedings and litigation and forms of representation in litigation; identify the sources of Montenegrin civil litigation procedure law and basic principles of procedure law in certain legal provisions; distinguish: civil from civil procedure law, contentious from non-contentious proceedings, regular civil proceedings from special civil proceedings, as well as civil proceedings from other (alternative) means of resolving disputes; explain the procedure before the second instance courts; explain the procedure for extraordinary legal remedies; explain specific contentious proceedings; explain non-contentious proceedings; identify special non-contentious proceedings; explain the enforcement procedure; identify and understand the role of public enforcement officers in enforcement as new judicial authorities; critically respond to the existing solutions in the positive legal regulation.

The CABUFAL project provides that the curriculum of this course be harmonized with the law of the European Union. The harmonization has passed through the following stages:

1. Changing the structure of the existing curriculum;
2. Introduction of new teaching units related to EU law;
3. Adding a new bibliography related to EU law and
4. Complementing the objectives, outcomes, content and comparability of the course.

4. DE LEGE FERENDA.

The model for changing the existing and introducing new curricula in the curriculum of Civil Procedure Law was the curriculum of the Faculty of Law in Ljubljana, Zagreb, Split, Skopje and Regent University of London, their suggestions and remarks that these are countries that are EU members, except Macedonia. The proposed changes have been carried out through:

1. Review of valid legal sources and activities of European legislation in the area of European civil procedure law. [1]

[1] When Montenegro becomes a member of the EU, it is necessary to consider a new course European Civil Procedure Law which would be taught on a private module and provide a

2. Study and practical application of unified European special procedures - European Enforcement Order on Uncontested Claims, European Payment Order, European Small ClaimS Procedures and European Procedure for the Protection of Collective Interests and Rights.[2]

3. Study and practical application of the regulation on the implementation of judicial cooperation within EU member states.

Changes proposed under item 2, relating to the European Small Claims Procedures (EU Regulation 861/2007) and European Payment Order (EU Regulation 1896/2006) were proposed as amendments to the Civil Procedure Law (Government proposal of 20 December 2018) and their adoption in Parliament is expected. EU regulations are binding legal acts that are applied in the territory of EU Member States. This is why it is necessary to create all the necessary conditions for their application in Montenegro after its accession to the European Union. The European Small Claims Procedure allows creditors to collect claims in civil and commercial matters in cross-border cases where the value of claims does not exceed 2000 euros. The European Payment Order allows creditors to collect uncontested monetary civil and commercial claims in cross-border cases. Otherwise, Regulation 1896/2006 applies in all EU countries except Denmark. The study and practical application of these two regulations is within the framework of the civil procedure law curriculum and teaching unit: *Special civil procedure*. Compliance with Regulation EC 805/2004, which refers to the European enforcement order for uncontested claims, was carried out in the Law on Enforcement and Security. This Regulation sought to create a unified procedure in which a certificate on the execution of a court decision, settlement or public document on uncontested claims and allowing their unhindered flow in EU Member States was issued. The subject matter will be studied within the teaching unit: *Enforcement procedure.*

Through the CABUFAL project, it was suggested that the procedure for the protection of collective interests and rights be included as a special teaching unit which is recognizable in countries of the European Union. It is mostly about consumer protection procedures, as well as prohibition of discrimination. Our civil procedure law has not yet regulated the general framework for initiating this procedure, which by its nature would be lex generalis. The consumer protection procedure and the

broader understanding of European civil procedure institutes, as it was done at the Faculty of Law in Ljubljana.

[2] Course Private International Law at the Faculty of Law in Podgorica deals with study and practical consequences of the Brussels I Regulation.

prohibition of discrimination were harmonized with EU law through the Consumer Protection Act[3], i.e. the Law on Prohibition of Discrimination[4], which were adopted as a result of the European acquis communitaire in Montenegrin law. Otherwise, in the curriculum of the Law Faculty, there are special courses dealing with the issue in question in Master's studies.

The need for a claim, which the procedure implies, for the protection of collective interests and rights must be found in the amendments to the Civil Procedure Law. In civil proceedings, protection is provided for violated and threatened individual rights. This protection is primarily directed towards individual rights. However, in the modern legal system, it is necessary to meet the provision of legal protection in disputes in which the interests of many individuals have been violated or threatened and when there is the same or similar factual or legal basis of their claims. In theory, this is so called mass harm situation[5]. The claim, that is, the procedure for the protection of collective interests and rights would include those branches of law in which the common interests and interests of the common good are emphasized rather than individual interests, such as consumer rights, anti-discrimination, social interests, environmental protection, and the like.

The study and practical application of the claim on the protection of collective interests and rights is within the framework of the civil procedure law curriculum and the teaching unit: *Special civil procedure*. Of course, the practical application of this procedure will only be possible when this claim gets its full affirmation in practice.

Changes proposed under item 3 refer to the delivery of judicial and extrajudicial documents in civil and commercial matters in EU Member States (EU Regulation 1293/2007) and cooperation of the courts of Member States in the presenting of evidence in civil and commercial matters (EC Regulation 1206/2001). The Regulations became part of the amendments to the Civil Procedure Law, which is in the process of making. The delivery regulation applies in all Member States of the European Union. The Regulation provides the modalities of sending and delivering documents. The sending bodies are responsible for sending judicial and extrajudicial letters which must be delivered to another Member State. The receiving bodies are responsible for receiving judicial and non-judicial letters from another country. The central body is responsible for delivering

[3] Published in "Official Gazette of Montenegro", no. 002/14, 006/14 and 043/15.
[4] Published in "Official Gazette of Montenegro", no. 046/10, 040/11, 018/14 and 042/17.
[5] See, Fairgrieve et al., Collective Redress Procedures – European Debates, 2009, Internatonal and Comparative Law Quarterly 58 (2), p. 379-409.

data to the sending bodies and resolving possible difficulties when sending a letter to delivery. The Regulation on the Taking of Evidence in Civil and Commercial Matters enhances, simplifies and accelerates cooperation between the courts in the taking of evidence. The Regulation applies in all Member States, except in Denmark. The Regulation provides for two ways of taking of evidence between the Member States: the taking of evidence through the requested court and the immediate taking of evidence by the referring court. The referring court is the court in which court proceedings are initiated or unfolded. The requested court is the court of another Member State competent to produce evidence. The central body is responsible for providing information and seeking solutions to the difficulties that may arise in connection with the request. The incorporation of these two Regulations was necessary in order to make the litigation procedure more efficient and provide better legal protection to the entities seeking it. The curriculum of Civil Procedural Law will be taught in teaching units: *Delivery,* or *Taking of Evidence.*

Methods of learning and teaching Civil Procedure Law have also been supplemented. In addition to teaching, exercises, seminars, consultations, discussions and practical case handling and analysis of Case Study CJEU and ECHR, which can be found in ECLI[6], will have a special place when it comes to the institutes of the EU.

Exercises from course Civil Procedure Law are directed to the practical application of the institute of Montenegrin civil procedure. Students learn how to deal with specific legal disputes by summarizing a factual situation under an appropriate standard of substantive law, as well as preparing for writing various types of submissions, claims, remedies and court decisions, i.e. judgments and decisions. Students are required to spend two weeks in practice at the Basic Court in Podgorica, where they complete their gained theoretical knowledge with practical knowledge.

The bibliography for course Civil Procedure Law is domestic and foreign. The foreign bibliography is, thanks to the CABUFAL project, supplemented, in particular, with books related to European civil procedure law,[7] which relate to institutes studied within the course.

All the above changes will also condition changes in the contents of the course.

Attendance of course Civil Procedure Law in basic studies of the Faculty of Law in Podgorica will enable students to get to know the sources, basic institutes, legislation and practice of European civil proce-

[6] Example can be found at http://eur-lex.europa.eu/LexUriserv/LexUriServ.do?

[7] See the ECTS catalogue for Civil Procedure Law for the supplemented bibliography.

dure law. In this way, students will be able to actively participate in changes in our legal system at the moment when Montenegro becomes a member of the European Union, which, of course, implies their practical work in this domain.

Learning outcomes of Civil Procedure Law have also been supplemented. A student who passes this exam will be able to:

1. Understand the EU, sources of European civil procedure law;
2. Understand European legislation and its importance in the application of EU civil procedure law;
3. Analyze case law through court judgments in the EU;
4. Critically refers to the existing solutions in the positive legal regulation and possibly propose solutions;
5. Prepare for professional training in the judiciary of those structures that need to be familiar with EU standards and recommendations.

5. CONCLUSION.

Thanks to CABUFAL, the curriculum of Civil Procedure Law has been substantially amended in line with EU standards and standards related to that course. The educational character of CABU-FAL has enabled the exchange of knowledge and practice with partners, and therefore, a better education of future law graduates. Let's hope that the new curriculum will be a recognizable feature of the Faculty of Law of the University of Montenegro in the future. All the preconditions for the realization of a high quality and useful legal education were made through Cabufal.

INFORMATION FOR STUDENTS AND CURRICULUM-PODGORICA

COURSE TITLE:			*CIVIL PROCEDURE LAW*	
Course code	*Course status*	*Semester*	*Number of ECTS credits*	*Class load*
	Compulsory	V	6	4 L + 1
Study program: Academic basic study program of the Faculty of Law (studies last 6 semesters, 180 ECTS credits)				
Prerequisites: None				
Course objectives: Introduction to the concept, method, organizational and functional procedure law and their institutes. Linking knowledge in this field with knowledge acquired from other areas of substantive law in order to train for practical work and the application of acquired knowledge				
First and last name of the teacher and teaching assistant: Biljana Đuričin, PhD, Full Professor				
Teaching methods: Lectures, consultations, exercises, seminar papers, case analysis with special emphasis on EU law, written examinations and final exam				
CURRICULUM				
Week and date	*Name of method units for lectures (L) and exercises (E)*			
Preparatory week	Introduction, preparation and enrolment of the semester.			

I	*L/E*	Object, structure, procedure rights as a manifestation of rights, form and formalism, organizational and functional procedure law, method, sources, norms and their validity, goal, organization of courts, constitutional principles on the organization of courts
II	*L/E*	Civil proceedings, litigation proceedings - litispendence, nature of litigation, procedure presumption, relation between civil and criminal procedure, relation between civil procedure law and administrative procedure law
III	*L/E*	Jurisdiction – subject-matter and territorial
IV	*L/E*	Principles of litigation, litigants, real credentials, proxies, proceedings regarding claims and its submittance, delivery with emphasis on submission under the regulation on the delivery of judicial and extrajudicial letters in civil and commercial matters in member states.
V	*L/E*	Preliminary hearing, defense of the respondent, time of proceedings, plurality of subjects, participation of third parties in the proceedings, plurality of claims, withdrawal of claims, alteration of claims, counter claim, identical claims, restitution
VI	*L/E*	Previous question, main hearing, delay in proceedings, court settlement
VII	*L/E*	MID-TERM EXAM
VIII	*L/E*	Taking of evidence, specifically the means of evidence with emphasis on: the taking of evidence according to the Regulation on cooperation between the courts of the Member States with regard to the taking of evidence in civil and commercial matters
IX	*L/E*	Types of decisions, appeal against the judgment, finality of the judgment, extraordinary legal remedies, costs of proceedings
X	*L/E*	Special civil proceedings with a view to: protection of collective rights proceedings, European Small Claims Procedure, European Payment Order
XI	*L/E*	MAKE-UP MID-TERM EXAM
XII	*L/E*	Non-contentious procedure, principles, decisions, special non-contentious procedures
XIII	*L/E*	Enforcement procedure, with special emphasis on the European enforcement order for uncontested claims
XIV	*L/E*	Public enforcement officers
V	*L/E*	Security procedure
11 June 2018		Final exam
25 June 2018		Make-up exam

Students' obligations: Students are required to attend classes, trainings and take exams.

Consultations: Thursdays from 12 pm to 1 pm

Student workload in hours:

Weekly	In semester
Structure:	Total course workload: Structure:Classes and final exam: Necessary preparations before the beginning of the semester (administration, enrollment, verification): Supplementary work for preparing and taking the make-up exam:

Literature / Domestic:
1.Đuričin, Građansko procesno pravo, Podgorica, (2019)
2.Đuričin, Zakon o parničnom postupku sa objašnjenjima, Podgorica, (2004)
3.Zakon o posredovanju, Podgorica, (2009)
3.Đuričin, Utvrđivanje istine u parničnom postupku, Podgorica, (1998)
Foreign:
1.Triva i ostali, Građansko parnično procesno pravo, (2004)
2.Poznić, Vodinelić, Građansko procesno pravo, (1999)
3.Starović, Keča, Građansko procesno pravo, (2004)
4.Galič, Beteto, Evropsko civilno procesno pravo I, GV, Ljubljana, (2011)
5.Storskrubb, Civil Procedure and EU Law: A PolicyAreaUncovered, Oxford Studies in European Law, Oxford University Press (2008).
6.Lenearts and All, EU Procedural Law, Oxford University press, (2014)
Laws:
1. Amendments to the Law on Civil Proceedings, Official Gazette of MNE, no. 48-2015
2.Law on Non-Contentious Proceedings, Official Gazette of MNE, no. 48-2015
3.Law on Public Enforcement Officers, Official Gazette of MNE, no. 61-2011
4.Law on Execution and Security, Official Gazette of MNE, no. 36-2011, 28-2014 and 20-2015
Additional literature for seminar papers can be obtained from the teacher.

Forms of assessment: Grades are:

- Mid-term exam with up to 45 points, final exam with up to 50 points
- Successfully defended seminar paper graded with up to 5 points
- No prerequisites for taking the exam

The passing grade is obtained if at least 50 points are scored cumulatively.

Grade	*A*	*B*	*C*	*D*	*E*
Points	*90-100*	*80-89*	*70-79*	*60-69*	*50-59*

Note: The curriculum lists the titles of the units that are taught, while within them there are specific sub-titles, which will be studied and are integral parts of the units.

Additional information on the course: All additional information can be obtained in consultations and via email: djuricin@t-com.me

Name of the teacher who prepared the information: Biljana Đuričin, PhD, Full Professor

Dragan Radonjić*

COMMERCIAL LAW AND POSSIBILITIES OF ITS EUROPEANIZATION

1. STANDARDIZATION AND EUROPEANIZATION OF THE CURRICULUM THROUGH THE CABUFAL PROJECT

The curricula of individual courses at the Faculty of Law of the University of Montenegro over the past 15 years have been subject to significant reforms. Redesigning the curriculum was mainly inspired by the need for standardization in the spirit of the Bologna Process and Europeanization in the context of the increasing representation of EU rights in program contents, as part of the country's aspiration to join the European Union.

The CABUFAL project, within its key objectives, includes evaluation and suggestions for the potential refreshment of a new accredited general curriculum of 2016. Also, the significant objective of this project is to provide confirmation that syllabi of various courses, already dominant or partly related to different aspects of EU law, are designed in a manner that is equal to that applied to such courses in the Member States of the European Union. This enables an active and responsible relationship between the Faculty of Law in the process of accession negotiations with the EU, in which the harmonization of rights with the Acquis Communautaire, as well as a number of the most important chapters in the accession negotiations related to legal aspects. This creates conditions for Montenegro to be more prepared to effectively implement EU law when it becomes a member state.

The report on evaluation of the accredited curriculum and syllabi at the Faculty of Law of the University of Montenegro, compiled by the partner institutions within the CABUFAL project, represents a new impetus for the innovations of the general curriculum in basic studies and programs of individual courses. In this paper we will consider suggestions related to the course program of Commercial Law.

* Dragan Radonjić, PhD, is a Full Professor at the Faculty of law University of Montenegro.

2. FROM BUSINESS LAW TO COMMERCIAL LAW

Historically, the legal regulation of trade in goods (contracts in the economy and securities) has traditionally been studied in our educational system within Business Law, which as a whole covered the status part devoted to the entities of business law, and the obligatory part dealing with legal transactions which these entities make in the trade of goods and services. Certain discontinuity in this treatment of the subject matter was present at the Faculty of Law of the University of Montenegro in the period from 1974 to 1992, when the subject matter of business entities was studied within the special teaching discipline in second, and trade in goods in fourth year of studies. The reasons for this approach were ideological and motivated by the socialist understanding of the organization of the economy and property.[1] Therefore, this approach was temporary, and after leaving the socialist organization of the society, both subject matters were integrated into Business Law, which remained a continuous tradition at other faculties of law in the region.

The re-separation of the subject matter of trade in goods from the corpus of Business Law into a special teaching discipline was imposed by reforms of the education system on the principles of the *Bologna Declaration* (1999), which brought a new organization of teaching and study regimes. The same program content of *Business Law* due to the scope of the course, could not find an adequate place in the one-semester organization of teaching and reduced class load. That is why it was natural for its content to be condensed into and organized differently, that is, the units, which were already clearly defined within it, were clearly distinct and independent, and treated, in the new curriculum, as a special teaching discipline. So, In 2004, following the adoption of the new Law on Higher Education in Montenegro (2003), new courses with "old" content were created by dividing *Business Law*: *Company Law* in the V semester with class load 3l + 1e (in the new accredited program *Company Law - IV sem. 4l + 1e*) and *Trade in Goods* (in the new accredited program *Commercial Law - V sem. 4l + 1e*).

The subject matter covered by Commercial Law is indispensable in the education of law graduates in basic studies. In any case, it covers the obligatory part of business law, that is, the legal transactions that are

[1] In the concept of the socialist organization of society in the SFRY, economic entities (formerly organizations of associated labor, later social enterprises) were largely owned by the society, and their organization was based on the concept of self-government, which also made the then creators to have the status part of Business Law studied within a course named as *Social Property and Self-Management*.

entered into, within trade in goods, by economic entities, on which the name of the present course is based. *Trade in Goods* included contracts in the economy as basic legal transactions, as well as individual securities as unilateral statements of will. These legal transactions are by their nature different, the methods of their regulation are not the same, and are regulated by various special sources of law. Also, the scope of this subject matter was not in line with student load in semester. Thus, in the next iteration of changes of the curriculum subject matter of securities was singled out in a separate course in specialist studies in *Business-legal Department*, while in *Trade in Goods Department* there was a chapter that deals with general issues of securities (concept, characteristics, types and nature) types of legal transactions in trade in goods.

In the accredited new Curriculum, which has been implemented since 2017/18 academic year, course *Trade in Goods* was named *Commercial Law*, while retaining its program content, which means that as a result of the previous design it dominantly covers the subject matter of trade contracts. Sources of law for *Commercial Law* are primarily national civil laws, of which the most important is the Law on Obligations[2], but a significant number of trade contracts are regulated by special laws. However, the trend of harmonization and unification of rights at the international level has long been expressed in this area, so this category of sources includes also international conventions, which when ratified have the force of law and are directly applied by the courts unless a special law is passed. Convention sources are particularly represented in sales and transport contracts. However, other international instruments of harmonization and unification (single-laws, model laws, etc.) are important in this area, as well as autonomous sources of law, which are passed not only by economic entities and their associations, but also by a large number of international organizations.

3. COMMERCIAL LAW AND EUROPEAN CONTRACT LAW

The question that arises in this project is how much and how European Contract Law can be represented in the program of this course, bearing in mind that European Contract Law has not yet been embodied in a single codification, but only a series of directives and other acts and documents regulating certain legal areas of contract law, and which essentially

[2] Law on Obligations, "Official Gazette of Montenegro", no. 47/2008 of 7 August 2008, 004/11 of 18 January 2011, 022/17 of 3 April 2017).

constitute the so-called 'soft law' of the European Union.[3] Harmonization of contract law is certainly one of the basic tasks of the European Union because contract law is the basic presupposition for the creation of a single European market, so the adoption of the European Civil Code was set as a political and legal goal. However, the process of harmonization and unification of contract law greatly complicates the significant legal particularism in this area in the EU member states, as well as the resistance in these countries towards the harmonization of contract law due to legal, cultural, historical and other specificities, as well as disagreements about the level of harmonization.[4]

For these and other reasons, the harmonization of contract law has been underway in the European Union for more than two decades. This activity is carried out on two levels: within and under the auspices of European Union institutions and by the academic community. This resulted in the development of a number of legal acts and documents that should have the aim of unified interpretation and application of numerous rules in the subject matter of obligation or contract law. One of the most important documents adopted in the field of harmonization of the general contract law of European states are the Principles of European Contract Law (Lando Principles), whose basic purpose is to serve as a basis for the unification and harmonization of EU Contract Law.[5] In general, the idea

[3] *Soft law EU* – non-binding legal regulations by which takeover the member states can harmonize their national laws.

[4] On the one hand, full harmonization with the adoption of the European Civil Code is advocated, while on the other hand, minimal harmonization is preferred to the extent necessary for the achievement of a single market but without interrupting internal trade. In the Member States, a minimum harmonization is generally carried out, which has its basis in Article 95 of the Founding Agreement, which requires Member States to harmonize their regulations, and only to the extent necessary for the creation and functioning of a single market, which has resulted in "harmonized areas" being continually different from country to country.

[5] This document was prepared in two stages (Part I 1995 and Part II in 1999) by the Commission for European Contract Law, chaired by Danish law professor Ole Lando and after nearly two decades of work (started in 1982) she presented it to the public in 1999. The third part of the Principle was published in 2003, and the work on the development of this document was completed. Although the basic purpose of the Principle is to be the basis for the unification and harmonization of EU Contract Law, until that goal is achieved, the authors have also assigned them the role of an autonomous source of law that parties may enter into a contract, or may negotiate as an authoritative right to contract or as a right to which the contract is subject and when there is no explicit agreement between the parties.

of standardizing contract law in the EU has its supporters and opponents[6], and its success is uncertain. Although the Principles do not constitute a compulsory instrument of a legislative character, they are regarded as a means of unification and harmonization of rights, since they served as a model for national legislators in an effort to modernize their existing legislation and inspire courts to interpret the provisions of the existing uniform law and filling legal gaps.[7]

The most ambitious document in the field of harmonization of European Contract Law today is the Draft Common Frame Reference for a European Private Law (hereinafter referred to as DCFR) of 2009.[8] The DCFR is based on many solutions of the Land Principles of European Contract Law, but it is broader than these principles and aims to cover the entire subject matter of EU law on obligations. When drafting this document, a systematic and comparative study of the national legal systems of the member states was carried out and a detailed analysis of Acquis, and although this document was not aimed at creating a new contract law, but the systematization and improvement of the existing, regardless of its political fate, is considered to be the most important starting point for the creation of the European Civil Code today.[9]

In the area of harmonization of general contract law, a number of directives in the field of e-business, insurance rights, banking operations, etc. have been adopted. Also, the process of harmonization of contract law significantly covered the subject matter that regulates consumer protection issues.[10] However, Commercial Law does not deal with general contract

[6] The Rules of European contract law, www.cisg.law.pace.edu/cisg/biblio/lando2.html, (14/1/1018).

[7] See: *Đurđev D.*, Nacrt Zajedničkog referentnog okvira za evropsko privatno pravo iz 2009. godine, u Zborniku radova Pravnog fakulteta u Novom Sadu, 2/2010., str. 71.

[8] The DCFR is the result of the work of a large number of legal experts in the field of private law from the member states of the European Union, and is presented as an "academic" document which is more dedicated to science and not to politics. Regardless of its awkward name, this text is considered to be a draft of the central components of the European Civil Code.

[9] See: *Đurđev D.*, p. 80-81.

[10] Some of the more important EU directives in the field of e-commerce, financial services and consumer protection are the following: Directive No. 93/13/EEC on unfair terms in consumer contracts, OJ L 95 of 21/4/1993, p. 29–34; Directive No. 99/44/EC on certain aspects of the sale of consumer goods and associated guarantees, OJ L 171, 7/7/1999, p. 12–16; Directive No. 2011/83/EU on consumer rights, amending Directive No. 93/13/EEC and Directive No. 99/44/EC and Directive No. 85/577/EEC and Directive No. 97/7/EC, OJ L 304, 22/11/2011, p. 64–88; Directive No. 2000/31/EC on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce'), OJ L 178, 17/7/2000, p. 1–16; Directive No.

law, and therefore does not deal with issues of e-business or electronic contract conclusion, because it is the subject matter of the Law on Obligations. Also, Commercial Law is not concerned with the protection of consumers, because this subject matter is part of a special subject in master's studies in Business-Legal Department, named as *Consumer Protection Right*, which in its syllabus includes all important aspects of regulating this subject matter at the European Union level.

4. RESULTS OF THE EVALUATION OF THE SYLLABUS FOR COMMERCIAL LAW

One of the important goals set by the CABUFAL project is the analysis of the curriculum of the Law Faculty of the University of Montenegro and the syllabi of individual courses covered by the curriculum in basic studies, with the aim of further Europeanization of teaching at this institution. Also, an important aspect of improving the teaching process in the direction of further Europeanization as a benefit of this project is the transfer of the best teaching practices and experiences from partner universities. The given suggestions, regardless of their applicability, represent one perception that comes from foreign partner institutions, reflecting the scope of the previous Europeanization of the teaching process at the Faculty of Law of the University of Montenegro, and guidelines for its further improvement. That is why, the suggestions given for each particular subject matter attract attention, and in this text with special interest we consider the suggestions given for Commercial Law.

In the *Report on Evaluation of the accredited curriculum and syllabi* it is right to say that Commercial Law focuses on specific trade agreements that are regulated by national legislation, and therefore there is little room for its Europeanization. Nevertheless, the two suggestions given in the Report deserve to be considered, in order to adopt good practices

2002/65/EC concerning the distance marketing of consumer financial services, OJ L 271, 9/10/2002, p. 16–24; Directive No. 2005/29/EC concerning unfair business-to-consumer commercial practices in the internal market ('Unfair Commercial Practices Directive') OJ L 149, 11/6/2005, p. 22–39; Directive No. 2008/48/EC on credit agreements for consumers, OJ L 133, 22/5/2008, p. 66–92; Directive No. 2008/122/ on the protection of consumers in respect of certain aspects of timeshare, long-term holiday product, resale and exchange contracts, OJ L 33, 3/2/2009, p. 10–30; Directive No. 2014/17/EU on credit agreements for consumers relating to residential immovable property, OJ L 60, 28/2/2014, p. 34–85; Directive No. 2015/2302/EU on package travel and linked travel arrangements, OJ L 326, 11/12/2015, p. 1–33.

and experiences that exist at the partner institutions involved in the CABUFAL project.

The first suggestion is that some comparative examples of trade contracts in EU Member States are included in the teaching of this course. A comparative approach is already present in the lectures in this course, since a significant number of international sources of law in this subject matter and the growing tendency of the convergence of rights between common law and continental law makes this approach indispensable. However, we believe that in some forms of teaching, such as seminar or practical classes, a comparative approach can be more prominent, and specifically focused on the regulation of certain trade contracts by individual Member States.

Another suggestion is that the study: Gabrielle Moens and John Trone, Commercial Law of the European Union, Springer (2010) is included together with the compulsory Commercial Law literature. This suggestion can only be accepted as a suggestion to include the above mentioned study in the supplementary literature of this course, having in mind that it was published in English and thus available only to a limited number of students. In any case, this could be stimulating for a number of students, and some teaching activities could be based on the use of this literature. Of course, the assumption is that this book is available to students in the Library or they have access to certain e-books.

Subject name:			COMMERCIAL LAW	
Subject code	Subject status	Semester	Number of ETCS credits	Class load
	compulsory	v	6	4P+1V
Study program is organized: Undergraduate studies Faculty of Law – Academic study program for obtaining a Bachelor of law degree (studies last for 6 semesters, 180 ECTS credits)				
Prerequisites: No				
Course goals: At the end of the course, students should be able to understand elements and legal regime of basic commercial transactions: contracts, banking transactions, as well as notion, features, legal nature and types of securities and negotiable instruments.				
Learning outcomes: At the end of the course student should be able to: 1. Define and explain particular types of commercial transactions; 2. Differentiate, classify and compare different types of commercial transactions; 3. Adequately interpret and apply legislative provisions regulating certain types of commercial transactions and apply them on particular set of factual circumstances.; 4. Analyze specific commercial transaction and adequately apply legislative rules on the according set of factual circumstances; 5. Establish and grade relevant facts, link them with regulations and, based on this, determines rights and duties of the parties to a commercial transaction; 6. Prepare and draft a commercial contract suitable in terms of key elements and general content for establishing particular commercial legal relation.				
Name and surname of the teacher and the teaching assistant: Professor Dragan Radonjić				

Teaching and learning methods: Teaching methods include: lectures, discussions, research and written projects or seminar papers, individual task and activities.

Practical teaching: It is conducted within the part of the teaching classes (10 hours) and during exercises (15 hours) and entails the lectures of visiting lecturers, visits to Commercial court, a commercial bank in Podgorica, Insurance Supervision Agency and examining of case law and its analyses in the form of student essays.

Course content:

Week 1 Week 2 Week 3 Week 4 Week 5 Week 6 Week 7 Week 8 Week 9 Week 10 Week 11 Week 12 Week 13 Week 14 Week 15 Week 16 Week 17 Week 18-21	Information on course; Review of the teaching units and of the students workload; Sources of law; Notion, specifics and types of commercial contracts; Contract of sale.The brokerage agrreement; Representation contract; Commission contract; Contract on control of goods and services. Contract of storage; Insurance contract; Construction contract; Contract on providing tourist services.Practical teaching - visit to Insurance Supervision Agency; Analysis of case law/examples (at the faculty) Logistic services contract; Contract of carriage of goods by sea Regular colloquium Contract of transport of goods by air; Contract of transport of goods by railroad; Contract of transport of goods by road. Contract of carriage of persons and luggage; Contract on multimodal transportation.Correctional colloquium;Practical teaching - visit to Commercial Court in Podgorica; Analysis of case law (at the faculty) Notion and types of banking transactions; Credit and deposit contracts; Banking service contracts (bank guarantee, documentary credit, documentary incasso) Practical teaching - visit to a commercial bank in Podgorica; Analysis of case law (at the faculty)Commercial contracts having mixed civil law legal nature (types, characteristics, nature); Leasing contract; Factoring; Forfeiting; Long-term production contract; Franchising. Securities and negotiable instruments (notion, features, legal nature, types) Final exam Correctional exam Final evaluation

Student workload

weekly	In semester
6 credits x 40/30 = 8 hours Structure: 2 hours of lectures 1 hour of exercises 5 hours of independent work, including consultations	Teaching and the final exam :(8 hours) x 16 = 128 hours Necessary preparations (administration, registration, verification before the beginning of the semester): 2 x (8 hours) = 16 hours Total hours for the course 6x30 = 180 hours By-work: Additional work for exam preparation in the make-up examination period, including the exam taking 0-36 hours(the remaining time of the first two items to the total load of the subject 180 hors)Load structure:: 128 hours. (Teaching and independent work)+16 hours (preparation)+36 hours (by-work)

Students are required to attend classes and to take tests. Students who are preparing seminar papers are presenting them publicly, while other students are required to participate in the debate following the presentation.

Literature: required reading:
Vasiljevic Mirko, Poslovno pravo, Beograd (2001 and onward eds).
Zakon o obligacionim odnosima Crne Gore
Literature: additional reading:
Gabriël Moens and John Trone, Commercial Law of the European Union, Springer (2010).

Examination methods: - One colloquium (maximum of 50 points), - Practical teaching and student essay with presentation (maximum 10 points), - Final exam (written form, maximum 40 points). Passing grade is obtained if student has accumulated at least 50 point

Grade E: 50 - 59; D: 60-69; C: 70-79; B: 80-89; A: 90-100

Name and surname of the teacher who prepared the information: Professor Dragan Radonjić

Comment: Additional information on subject can be found on http://www.pravni.ucg.ac.me

Vladimir Savković*

COMPANY LAW OF THE EUROPEAN UNION IN THE MONTENEGRIN EDUCATION AND LEGAL SYSTEM

1. INTRODUCTION – SUBJECT AND OBJECTIVES OF THE ANALYSIS

The European Union's acquis today is more complex than just a few decades back. The numbers and diversity of the so-called "acquis" contributes nothing less to its breadth and complexity, with whose implementation today also Montenegro faces as the candidate country closest to full membership[1], and one of the areas of European Union law in which these tendencies are most obvious is exactly Company Law. One of the most interesting consequences of the described tendency for Montenegro is that this country, in the accession process itself, faces the obligation to implement a whole set of specific regulations created after joining the European Union of those Member States that have acquired this capacity in the previous enlargement in 2004 and 2007 and even after the accession of Croatia in 2013.

* Vladimir Savkovic, PhD, is Associate Professor at Faculty of law University of Montenegro.

[1] In addition to the founding treaties, which make up the so-called "primary law" of the European Union, there are numerous other sources of the so-called "secondary law", such as directives directly applicable in the territory of a Member State, whose implementation takes a certain amount of "creativity" of national legislators, and the decisions of European Union bodies and opinions issued in respect of significant disputes concerning the application of EU law. In addition to the binding, secondary sources of EU law are also non-binding, such as recommendations, which are a kind of *lege ferenda* of the European Union. Also, today's special place in this nomenclature is taken by the extremely extensive practice of the European Court of Justice, whose *de facto* obligation is also the best indicator of the achieved convergence level of the two traditional and globally present legal systems of Anglo-American and Continental-European. Finally, there are a number of other documents produced by various European Union bodies, such as communications, reports, so-called "white" and "green" papers, which are strictly non legal sources, although they represent some kind of guidance in the interpretation of the formal sources of law of this *sui generis* of the supranational community.

In the academic field, the number of formal and informal sources of company law created by the institutions of the European Union has also made a stronger separation of EU Company Law as a new legal discipline which is increasingly being studied as a special course at European universities. The Faculty of Law of the University of Montenegro followed this trend and through the recent reform of the curriculum, implemented in 2017, introduced the course entitled "EU Company Law" in its curriculum for a two-year Master's Degree Program – Business Law. From that point of view, when designing units in course Company Law in Basic (bachelor) studies, the emphasis on European, that is, the Union's company law is reduced to a lesser extent. In other words, priority is given to studying various forms of economic activity in the context of the national regulatory framework, and not to different - indisputably very actual - "original European aspects" of company law such as cross-border mergers of capital companies, transfer of company headquarters from one state to another (member of the European Union), special European forms of corporations or recommendations on the plan of raising corporate governance standards.

Finally, in the light of the foregoing and in the context of the broader objectives set out in the CABUFAL project, the aim of this brief analysis is to look at:

- analysis of the curriculum of the Faculty of Law of the University of Montenegro made by the CABUFAL project by the Faculty of Law of the University of Ljubljana (hereinafter: "Curriculum Analysis"), in the part related to Company Law (European Union);
- key challenges with regard to the introduction of EU Company Law into the curriculum of the Faculty of Law of the University of Montenegro;
- contributions made to "Europeanization" of teaching in courses dealing with certain aspects of EU Company Law are made through CABUFAL activities, especially in the context of enhancing current teaching practices and methods;
- current moment in the transposition of EU Company Law into the Montenegrin legal system.

2. REVIEW OF THE ANALYSIS OF THE CURRICULUM BY THE FACULTY OF LAW OF THE UNIVERSITY OF LJUBLJANA

An observation similar to that given in the introductory part of this paper was also presented in the analysis of the curriculum of the Faculty of Law that was recently drafted within the CABUFAL project by the

Faculty of Law of the University of Ljubljana. Namely, in this document it is emphasized that the subject matter of Company Law in recently accredited basic studies or teaching units within this course primarily focuses on Montenegrin businesses and study of their status-legal framework set up in Montenegrin company law, which, as pointed out, leaves little room for "Europeanization" of the curriculum of this course. It is indisputable that the said is in part valid, but the analysis does not take into account the fact that a large part of the total corpus of EU Company Law is still in the directives, whose implementation requires transposition through national laws. This ultimately means that through the study of the Montenegrin legal framework of Company Law in Basic studies of the Faculty of Law the many rules of EU Company Law will be *de facto* studied, which will soon be expressed by the regulatory solutions of the national company law.[2] Of course, it is indisputable that, for a comprehensive understanding of the key postulates of EU Company Law in its present form for the study of some of the already mentioned aspects of EU Company Law, it was necessary to give more room than it was done in the curriculum of Company Law in basic studies. However, this "disadvantage" must also be seen in the light of the content of the curriculum of Company Law accredited in the second (master) level of academic studies within the program – Law Studies. Specifically, the teaching units of this course are focused on analyzing events on the European regulatory and judicial scene when it comes to issues such as cross-border mergers of capital companies, transfer of company headquarters from one state to another (EU member state), special European forms of companies, reporting in the context of foreign affairs, elaborate the principle of "apply or explain" in "hard" and "soft" corporate governance law, etc. In this context, it is difficult to speak about the defect, but rather about the concept of the study of Company Law which extends through two levels of study, where it is only at the second level that full attention is paid to the study of the original European aspects of Company Law. In the forthcoming period, at least until Montenegro's full membership in the European Union, it seems that such an approach is quite justified and meaningful.

On one hand, it allows a sufficient number of students and members of the legal professions to specialize in a perspective filed such as EU Company Law. On the other hand, this approach at the same time disables students who have not opted for specialization in the field of Business Law in Master's studies to be burdened in Basic studies with complex institutes and certain standards of Company Law that will form part of positive Mo-

[2] See *infra* PART V.

ntenegrin law only on the day of accession. This seems to have created a delicate balance between current needs and recent challenges that will bring a status to Montenegro as the 28th member of the European Union.

3. EU COMPANY LAW AT THE FACULTY OF LAW OF THE UNIVERSITY OF MONETENRGO – CURRENT STATE AND CHALLENGES

It has already been noted in the second part of this paper that the concept of study of EU Company Law at the Faculty of Law of the University of Montenegro is based on the principle of duality. Specifically, the recently accredited curriculum foresees that at the first basic level of studies regulatory solutions built into the contemporary Montenegrin company legislation are studied, and mostly traditional corporate law institutes elaborated by these regulatory solutions. This in practice means that Montenegrin students at the basic level of studies, at least until Montenegro's full membership in the European Union, will "come across" a part of EU Company Law, which is contained in the directives as one type of the regulatory instruments of EU law in the so-called "secondary" sources of EU law. Namely, Montenegro has been in the accession negotiations for more than six years with the European Union, and for five years in Chapter 6 - Company Law. Consequently, a significant part of EU Company Law contained in the directives has already been transposed into Montenegrin law by new legal regulations regulating the areas of accounting, auditing, taking over of shareholding companies and capital markets. Also, this will soon be the case with the key law in the area of Company Law, whose draft was already at the public hearing, and which, after the European Commission confirms full compliance with the relevant "company directives", will be adopted in the national parliament.[3] Thus, by studying national company law in Basic studies, Montenegrin students are simultaneously studying a significant part of the rules of EU law.

On the other hand, it is worth mentioning that EU Company Law is not just directives, but also regulations regulating the original "European forms of corporate entities", recommendations that they regulate, i.e., elaborate the latest and most advanced standards in the field of corporate governance, and increasingly the relevant practice which, primarily thanks to the so-called "judicial activism" of European Court of Justice[4] is beco-

[3] The adoption of this legal text is expected mid 2019

[4] There have been numerous works and analysis on this topic for decades. Here we mention just a few most recent scientific discussions. See: De Freitas L. V., “The Judicial

ming an inevitable source of European legal aid. In this connection, it should be emphasized that EU Company Law is not only conceived as such but is objectively more and more a complete whole, which can really pose an additional challenge in teaching Company Law in Basic studies. From this point on, we have a standpoint that it would be reasonable to timely start redefining the curricula of courses Company Law in Basic studies and EU Company Law in Master's studies before Montenegro enters the EU, all with the aim to responding to real needs of students at the given time. For example, it will be necessary to make equal, according to the importance given to the various economic activities of economic enterprises, companies established by the Companies Law and companies established directly under the Regulation on European Joint Stock Company or Regulation on European Economic Interest Association.[5] This is because regulations of the European Union have stronger legal force than national laws, in accordance with one of the fundamental principles of the Union's right - the principle of superimposition of the same in relation to national law.

The above mentioned, of course, does not necessarily mean that there will not be need for the survival of the course EU Company Law in Master's studies. On the contrary, we think that, the fact that a part of the teaching units that is currently reserved for the second (master) level of study, i.e. EU Company Law, will be "transferred" to Basic studies, it should be understood as creating room for further study of specific institutes of EU Company Law, in particular the ever more complicated and complex practice of European Court of Justice, which is becoming an increasingly important source of EU law.[6]

Activism of the European Court of Justice", Judical Activisam: An Interdisciplinary Approach to the American and European Experiences (eds. L. P. Coutinho, M. La Torre, S. D. Smith), Springer International Publishing, 2015, 173 – 180; Muir E., Dawson M. and de Witte B, "Introduction: The European Court of Justice as a Political Actor", Judicial Activism at the European Court of Justice (eds. M. Dawson, B. de Witte and E. Muir), Edward Elgar Publishing, 2017, 1–10; M. Blauberger, S. K. Schmidt, "The European Court of Justice and its political impact", *West European Politics*, Vol. 40(4), 2017, 907-918;

[5] It is not unreal to equally mention *societas privata Europaea* – Eurpoean limited liability company among those European forms of companies for whose introduction Eurpoean Commission has been advocating for decades. See example: Myszke-Nowakowska Miroslawa, "The European Private Company - Dream Big but Cautiously" Intereulaweast, Vol. II (1) 2015, 27 – 44.

[6] See example: H. de Waele, "The Role of the European Court of Justice in the Integration Process: A Contemporary and Normative Assessment", *Hanse Law Review* 6(1)/2010, 1 – 26;

4. APPLICATION OF EXPERIENCIES OF PARTNER UNIVERSITIES – FURTHER EUORPENIZATION OF THE CURRICULUM OF COMPANY LAW

Lecturers from the partner institutions who were guest speakers at the Faculty of Law of the University of Montenegro within the CABUFAL project are not specialized in the field of Company Law, and in this context it cannot be discussed their specific, narrowly technical contribution. However, such contributions have been made by some lecturers from partner institutions whose lectures were attended by the academic staff of the Faculty of Law of the University of Montenegro - including the author of this article - during study visits to the partner universities on this project. In this respect, visits to Europe Institute of the University of Saarland and the Faculty of Law in Skopje were particularly significant.

On the other hand, equally interesting and valuable contribution of the CABUFAL project in terms of Europeanization on the plan of studying both Company Law and other branches of law at the Faculty of Law of the University of Montenegro was also the transfer of the best teaching practices and experiences from partner universities. Namely, although it is about the practices and experiences that are directly related to different, sometimes very different, teaching disciplines from Company Law, it is also about significant experiences from the aspect of further improving the quality of teaching and overall education process organized by the Faculty of Law of the University of Montenegro. In this regard, it seems that the commitment to strengthening the practical aspect of the curriculum gained further justification and immediate exchange of experience between professors and associates of the Faculty of Law of the University of Montenegro and teachers from partner universities on the CABUFAL project, who have also just pointed to similar tendencies on their own, that is, their academic institutions. Namely, on all the partner universities where the author of this article had the opportunity to attend as part of the study visits provided for by the CABUFAL project, a strong orientation of the teaching process can be noticed, first of all, to the analysis of the case law of the European Court of Human Rights and European Court of Justice. It is also often insisted that students, in groups, prepare presentations of individual cases, and that through interaction (debate) with other students and course lecturers come up with key regulatory solutions applied by the mentioned courts in given cases, and theoretical and ideological approaches to their analysis and resolution.

Apart from the aforementioned and other forms of practical teaching, which often dominate the overall teaching process, area of best practices in the study of courses in the field of EU law, but also in other courses, it is especially worth mentioning the fact that partner universities are paying special attention to electronic databases of legal literature, i.e. providing access to students and teaching staff. In the exchange of experience with colleagues from partner universities, it is concluded that these databases are extremely important teaching material and that work with students at all levels of study cannot be imagined without their constant access to the latest state-of-the-art literature, i.e. latest works from different areas that are the subject of study in classes, as well as the subject of seminar papers and other student work during the academic year and as part of final exams.

Finally, it is worth noting the fact that, in relation to the Faculty of Law of the University of Montenegro, communication between teacher and student is often much more relevant and intensive at partner universities. However, in this context, realistic constraints on the Faculty of Law of the University of Montenegro should be taken into account, which are most likely to be expressed through the ratio of the number of students and teaching staff.

The transferred experience is not only related to the teaching process in the narrow sense, but also to the way of the organization of work at partner universities in the widest sense, which is certainly an added value of the project itself. Finally, the established bridges of cooperation are a good basis for the dynamism of mutual exchange of students and academic staff, which will contribute to the mutually useful, continuous exchange of experiences and, in the future, jointly conceived and managed study programs.

5. EU COMPANY LAW AND MONTENEGRIN LAW – SOURCES, DEGREE OF COMPLIANCE AND PERSPECTIVE

EU Company Law is, to a large extent, a regulatory operation of two freedoms. The first - freedom of establishment is guaranteed to the citizens of the European Union by Article 49 of the Treaty on the Functioning of the European Union (TFEU), in the sense that citizens of all EU member states have the right to both establish and manage different forms of economic activity in a stable and permanent manner under the same conditions as those provided for by citizens of the member state itself on whose territory the business is being set up. The second is freedom of

business, established by Article 16 of the Charter of Fundamental Rights of the European Union, but it should be emphasized that this freedom has formally become a part of (primary) EU law only after the entry into force of the Treaty of Lisbon in 2009, at the time part of the current sources of EU Company Law had already been effective and fully applied in the territory of member states. It can therefore be considered that the primary reason for establishing a special and relatively autonomous system of EU Company Law is the promotion and regulatory development of the fundamental freedoms of the internal market of the European Union and of the internal market itself which is largely based on them. In addition to the indicated sources of primary EU law, the mentioned system is also made of various forms of regulatory instruments that fall under the secondary right of this supranational creation, such as regulations, directives and formally binding recommendations, all of which can be classified into one of two basic categories, subfields.

In the first case it is a classic, i.e. traditional company law, which primarily governs: special (European) forms of companies, linking business registers of member states, protection of the interests of shareholders, establishment and maintenance of the structure of public limited liability companies, takeover of shareholding companies, disclosure of data, domestic mergers and divisions of public companies, cross-border mergers of capital companies in general, single-member capital companies and shareholder rights, policy of compensating the directors of listed companies and quality standards of corporate governance.[7]

The second category covers, in the broadest sense, the financial reporting of capital companies and primarily covers accounting areas (e.g. standard annual and consolidated annual financial statements) and audit of capital companies (with particular emphasis on independent and public oversight of mandatory audit).[8]

Turning to this context of the accession negotiations between Montenegro and the European Union, it is worth pointing out at the outset that one of the first chapters opened in these talks was precisely Chapter 6 - Company Law.[9] This was the case at the Intergovernmental Conference on Montenegro's accession to the European Union in December 2013, which made the process of adjusting Montenegrin Company Law to EU

[7] See Annex 1 – EU acquis in the area of Company Law
[8] *Ibid.*
[9] In Montenegro, term Company Law is used, which is, of course, wrong not just because of the wrong translation in English, but also because of the content of acquis in this chapter referring only to companies.

law much more important on a political level and consequently entered a new, significantly more dynamic phase. In this respect, in the Joint Position of the European Union for Chapter 6 - Company Law, four "final measures", i.e. the conditions that Montenegro must meet in order to temporarily conclude the negotiations in this chapter, are listed. In each of the four benchmarks, the obligation is primarily to make new or amend existing legal acts, with the key aim of fully harmonizing the national law with EU law in the given area. It is about the following obligations:

1. Adoption of the Capital Market Act and relevant by-law regulations with the primary purpose of harmonizing the Montenegrin regulatory framework of securities markets with the provisions of the Directive of European Parliament and Council 2004/109/EC of 15 December 2004 on the harmonization of transparency requirements with regard to information on issuing bodies whose securities are listed for trading on an organized market and amending Directive 2001/34/EC (hereinafter referred to as the "Transparency Directive").
2. Adoption of a new Company Law for the purpose of harmonization with EU law, and in particular introduction and elaboration of the concept of cross-border merger of capital companies;
3. Fully harmonization of the Montenegrin legal framework for the takeover of joint stock companies with Directive 2004/25/EC of the European Parliament and of the Council of 21 December 2004 on takeover bids (hereinafter: Takeover Directive);
4. Fully harmonization of the Montenegrin legislation in the area of audit accounting with EU law and establishment of an independent and adequately financed public oversight body and ensuring the quality of the mandatory (statutory) external audit of the society audit.[10]

At the time of writing this text, exactly five years after opening of the accession negotiations in Chapter 6 - Company Law, with reasonable certainty we can say that Montenegro is almost at the end of it. Specifically, following the order of the set standards, we note the following. First, the Capital Market Act[11], which is fully aligned with the appropriate

[10] In June, i.e. July 2016, the Law on Accounting ("Official Gazette of Montenegro", No. 52/16) and Law on Audit were adopted. The Law also prescribes the mandatory establishment of the Audit Council, as a special body for overseeing the process of applying the auditing standards, whose members are appointed by the Government of Montenegro at the proposal of the Ministry of Finance.

[11] Law on Capital Market ("Official Gazette of Montenegro, No. 01/18).

legal framework of the European Union[12], came into force in early 2018. Second, the Draft of the Company Law was at a public hearing at the end of 2017 and its adoption in the Parliament of Montenegro is expected in the first half of 2019, after the European Commission reviews the current version of the text and confirms the full compliance of this key legislative act with the company acquis. Concerning the third and final criterion regarding the harmonization of the national (Montenegrin) company law with the provisions of the Takeover Directive, it should be noted that Montenegro at the time of opening negotiations in Chapter 6 - Company Law already had the Law on Takeover of Joint Stock Companies which was to the fullest extent compatible with the Takeover Directive. From this point on, this was the simplest of four obligations (benchmarks). Consequently, the same was accomplished in June 2016, by passing the Law on Amendments to the Law on the Takeover of Joint Stock Companies ("Official Gazette of Montenegro", No. 52/16). Finally, with regard to the fourth benchmark, in mid-2016, the new Law on Accounting[13] entered into force, and at the beginning of 2017, and the Law on Audit[14] also came into force.

Therefore, the expected and forthcoming adoption of the new Company Law will fulfill the last and most complex condition for the temporary closure of negotiations in Chapter 6 - Company Law. On the other hand, the fulfillment of this benchmark was due for a long time, and it can certainly not be justified solely by the complexity and demanding nature of the drafting and harmonization of the national company law with the numerous provisions of the acquis that it has to transpose into the national legal system, but it can be justified, or it seems that way, with the need for the transposition provisions to be further aligned with the needs and specifics of the national economic and wider social system, which is no less important task and obligation of the legislator.

Of course, even after the provisional closure of the negotiations in this chapter, Montenegro will be required to monitor developments in the field of development of EU Company Law and, at the same time, timely harmonize national legislation and institutional systems with it. As things are now, the latter will be most noticeable in terms of synchronization and

[12] Like other legal acts adopted in the context of Montenegro's obligations in the accession negotiations with the European Union, this legal text after the public hearing has been submitted to the European Commission for approval in the sense of confirmation of full compliance with the acquis communautaire.

[13] Law on Accounting, "Official Gazette of Montenegro", No. 052/16 of 9 August 2016.

[14] Law on Audit, "Official Gazette of Montenegro", No. 001/17 of 9 January 2017.

interconnection between the European Business Registers Interconnection System and the Audit Council – institutional framework, institutional framework for supervision of the work of certified auditors and audit firms.

Company law syllabus

	Course title:	COMPANY LAW		
Course code	*Course status*	*Semestar*	*Number of ECTS credits*	*Class load*
	Compulsory	IV	6	60+15/4+1
Study program*:* Academic studies of the FACULTY OF LAW- Legal Department – PODGORICA, 2019/20 (studies last 6 semesters , 180 ECTS credits).				
Prerequisites*:* None				
Course objectives*:* At the end of the course a student should be able to define and discuss different forms of economic activity, including business and entrepreneurship; define and explain their property, management and organizational structure; simulate and demonstrate the process of establishing, linking and termination of companies.				
Course outcome: At the end of the course a student should be able to: 1. Define and explain certain forms of business; 2. distinguish, sort out individual forms of companies and compare their advantages and disadvantages; 3. properly interpret and apply regulations regulating certain forms of companies which are relevant for their establishment, organization and termination; 4. analyze the factual situation concerning the legal position and organization of a particular company for the proper application of legal rules; 5. establish and evaluate the relevant facts in the process of establishment and termination of the company and decision-making process by the bodies of that company; 6. Prepare and compose a memorandum of incorporation of a company which is, according to its basic elements and contents, harmonized with the regulation and will of the founder.				
First and last name of the teacher and teaching assistant: Prof. dr Dragan Radonjić – teacher				
Teaching methods: The methods include lectures, discussions, research and written projects or term papers, individual tasks and activities				
Practical class is carried out in part of the class planned for lectures (10 hours) and exercises (15 hours) and includes: guest lectures by guest speakers, visits to Commercial Court, Securities Commission of Montenegro, Central Depository Agency, getting to know case law (in court or within teaching at the faculty), analysis of case law by students in the form of seminar papers.				

Course content:	
Preparatory week I week II week III week IV week V week VI week VII week VIII week IX week X week XI week XII week XIII week XIV week XV week June 2018 June 2018	Course information; Sources; Forms of performing economic activity; Individual trader; Companies (concept and types; Systems of incorporation; Registration; Legal subjectivity¸ Individualization; Representation; Piercing the corporate veil; Partnership (concept, nature, distinction, pro&con, important elements, incorporation, mutual relations of partnerships; towards third parties; property; dissolution); Limited partnership (concept, features, pro&con, incorporation, mutual relations of members, termination); Limited company (concept, one party, features, pro&con, incorporation, bodies, capital, termination); Join Stock company 1 (concept, features, one party, pro&con, rights and duties of shareholders).Practical class – Visit to Commercial Court (venue: Commercial Court Podgorica); analysis of case law (venue: Faculty of Law – auditorium 2);Joint Stock company 2 (ways of incorporation, organization structure: assembly, board of directors, managing director, secretary, auditor); Practical class – Visit to Securities Commission (venue: Securities Commission Podgorica); analysis of practical examples (venue: Faculty of Law – auditorium II) MID-TERM EXAM (subject matter taught from 5 Feb - 12 March / Chapter 1- 6 of the course book); Joint Stock company 3 (financial structure: basic capital; shares, bonds); MAKE-UP EXAM (includes subject matter for regular mid-term exam); Joint Stock company 4 (Increase, decrease of capital; acquisition of own shares; dividend; termination) Takeover 5 (terms, way, procedure , public offer, rights and duties of participants);Restructuring of companies (merger, acquisition, divisions, changes of organization form) ; Practical class – Visit to Central Depository Agency (venue: Central Depository Agency Podgorica); analysis of practical examples (venue: Faculty of Law – auditorium II);Termination of companies (liquidation and bankruptcy); Reorganization of bankrupt companies;Final exam (subject matter taught from 26 March - 14 May/ Chapter 7- 12 of the course book); Make-up final exam (includes subject matter for final exam)

Student workload	
Weekly	In semester
6 credits x 40/30 = 8 hours Structure: 4 hours lectures 1 hour exercises 3 hours individual student's work (preparation for exercises, mid-term exams, homework) including consultations	Teaching and finals: (8 hours) x 16 = 128 hours Necessary preparation before beginning of semester (administration, registration, verification): 2 x (8 hours) = 16 hours Total course workload: 6 x 30 = 180 hours Additional work for preparation mid-term exams and final exams including make-up final exam from 0 - 30 hours Workload structure: 128 hours (teaching) + 16 hours (preparation) + 30 hours (additional work)

Students are required to attend lectures, participate in debates and take exams. Students who have written their term paper they defend it in front of others, while others participate in debates after the presentation.

Literature: A) Compulsory: Dragan Radonjić: "Pravo privrednih društava" (udžbenik), Podgorica, 2008;
B) Additional: "Komentar Zakona o privrednim društvima", Podgorica, 2003. god.; Zakon o privrednim društvima ('Sl. list RCG', 06/02, 17/07, 80/08, 62/08, 040/10, 036/11, 040/11) i Zakon o stečaju ('Sl. list CG', br. 001/11, 053/16, 032/18, 062/18); *Zakon o preuzimanju akcionarskih društava ("Sl. list CG", br. 18/2011 i 52/2016);*
M. Vasiljević, V. Radović, T. Jevremović Petrović, *Kompanijsko pravo Evropske unije,* Pravni fakultet Univerziteta u Beogradu;
Adriaan Dorresteijn, Tiago Monteiro, Christoph Teichmann, Erik Werlauff, *European Corporate Law*, second edition, Kluwer Law International, Alphen aan den Rijn, 2009.
Mads Andenas, Frank Wooldridge, *European Comparative Company Law*, Cambridge University Press, Cambridge, 2009.

Milan Marković*

CONSTITUTIONAL LAW IN THE CONTEXT OF THE EUROPEANIZATION OF THE CURRICULUM OF THE FACULTY OF LAW OF THE UNIVERSITY OF MONTENEGRO – AN ANALYSIS

1. INTRODUCTION

The European Union is an ever-evolving supranational entity whose long history, driving ideas, values and influence have made it the greatest transformative force on the European continent. The evolution of the both the Union and its member states is primarily manifested in law.[1] It is therefore important that students of the Faculty of Law of the University of Montenegro (UM) be given a comprehensive elaboration of EU law in all its aspects, not just Constitutional Law. The European Union has come a long way from its beginnings as the European Coal and Steel Community to the closely connected alliance of countries that share the idea of unity.

As one of the foundations of the modern European country, Constitutional law is an essential bedrock for all legislative and legal activity of a country and its citizens. It is, therefore, of great importance that the law student of today be familiarized with not just the EU as a whole, but also with the relationship and mutual influence between EU Law and Constitutional Law. Another significant aspect influence to modern Constitutional Law is also the Council of Europe. All these factors have contributed to the establishment of the European Constitutional Law of today.

Another important aspect to consider is the fundamental role of Constitutional law in the organization and functioning of Montenegro as a country. Its significance is even greater given the country's history, as the current Constitution of Montenegro[2], adopted in 2007, cemented and affirmed the renewal of the country's independence after almost a century. This is but one example, and as such, the significance of Constitutional law in both national and international context is unquestionable. And so is the

* Milan Markovic, PhD is a full professor at the Faculty of law and Faculty of Political sciences University of Montenegro.

[1] Kosutić, Budimir P, *Osnovi prava Evropske unije*, CID, Podgorica 2014;

[2] *Ustav Crne Gore*, „Sl. list Crne Gore" 01/07, 25.10.2007.

importance of Constitutional law at the Faculty of Law of UM. The beliefs and values of every society are woven into the fabric of their laws, and nowhere is that more evident than in Constitutional law.

2. ANALYSIS OF THE CURRICULUM BY THE FACULTY OF LAW OF THE UNIVERSITY OF LJUBLJANA EXPERT TEAM

The professors from the University of Ljubljana Faculty of Law have noted that the existing curriculum for the subject of Constitutional Law already has elements of EU law in several areas of the subject matter, but maintain that further expansion and introduction of the European element in other segments of the curriculum is also desirable. Specifically, a more detailed view into the practices of the European Court of Human Rights and the Court of Justice of the European Union, as well as the comparison of the practices of these courts with the practice of the Constitutional Court of Montenegro.

With that in mind, they have recommended certain amendments and changes to update the bibliography of the Faculty subject, to better incorporate the European aspect of the subject, especially the changes brought by the Lisbon Treaty within the EU[3]. These changes have been acknowledged and implemented in the curriculum in a timely manner.

3. APPLICATION OF THE EXPERIENCES AND KNOWLEDGE GAINED FROM CABUFAL PROJECT WORKSHOPS AND STUDY VISITS

Within the framework of the CABUFAL project, the professors and TAs of the Faculty of Law of the University of Montenegro have had the opportunity to learn about the application of good academic practice, contemporary teaching methods and the many years of experience in higher education from the partner Universities in the region, in the EU, and in Europe. The primary goal is the advancement and improvement of quality of the entire education system and subject curriculums of the Faculty of Law of Montenegro. This is to be achieved through the exchange of knowledge and experiences between regional and European Unive-

[3] For a comprehensive list of literature for the subject of Constitutional Law, see the subject Syllabus at the end of this article.

rsities with long traditions and excellent results in teaching and academic work (London, Saarbrucken, Ljubljana, Zagreb, Split, Skopje).

One of the most significant contributions of this project is the necessity for greater "Europeanization" of the subject matter taught and studied at the Faculty of Law of the UM, including the subject of Constitutional Law. These changes to the subject matter that introduce new European elements (EU and Council of Europe) would transform the curriculum of the Faculty into one comparable and compatible with other European Faculties and Universities.

A very important aspect of the CABUFAL project are the various presentations and lectures at the Faculty of Law of the University of Montenegro by eminent professors and experts from partner Universities in many fields of Law, not just Constitutional Law. Various discussions, talks and study visits are also noteworthy contributions to these academic fields in Montenegro. All these activities have had a significant role in the enrichment and improvement of the study of Law through the addition of many European aspects and elements. With that in mind, and in keeping with modern transformations in Constitutional law, several changes have been made to the subject curriculum of Constitutional Law at the Faculty of Law of UM – specifically, a new focus on activities of the European Court of Human Rights, the Court of Justice of the European Union, and the reformation of the EU since the Lisbon Treaty, among others.

Furthermore, in order to modernize and enhance our education system and quality of lectures at the Faculty of Law of the UM, and to give students more practical experiences and up-to-date knowledge for their future careers, we have invested additional effort to implement practical classes and traineeships in government and state organizations (Constitutional Court, Administrative Court, Parliament of Montenegro and others), and to organize a greater number of lectures by guest speakers – experts in various legal fields (from Montenegro and abroad).

Finally, the project has brought many benefits to the academic individual, as the professors and TAs of the Faculty of Law of the University of Montenegro have been afforded the outstanding opportunity to listen to lectures and presentations of their prominent counterparts from partner Universities, to stay at those Universities through organized study visits, and acquire great knowledge and experience to be applied in their future academic endeavors and pedagogic work. In this way, the excellence and standards of European academic education have found a place at the University of Montenegro.

4. CONSTITUTIONAL LAW AT THE FACULTY OF LAW OF THE UNIVERSITY OF MONTENEGRO – CURRENT STATE AND CHALLENGES

Constitutional law as an academic subject provides for the understanding of the basic legal institutes of this branch of law, as well as European Constitutional Law, and constitutional democracy in contemporary legal systems of EU Member States. Students will study the Constitution of Montenegro, other prominent constitutional texts and legal acts, as well as related legislation to better understand and interpret them. They will also explore and consider various problems in Constitutional Law, the ideas and concepts of constitutionalism, constitutional patriotism, fundamental human rights and liberties established by international law and their influence on today's Constitutional Law. Given the importance of EU integrations for Montenegro's legal system, the study of these concepts will also include the European Union - European Constitutional Law, as the organization and activities of the EU and its institutions are governed by EU laws of a character not unlike national Constitutional law. This knowledge will be expanded through study visits to prominent institutions pertaining to this area of law, lectures by guest speakers (experts of Constitutional law), and later with traineeship opportunities at the previously mentioned institutions.

Another valuable insight into the interpretation and application of nature of this area of law is the activity and practice of the Constitutional Court of Montenegro. In addition to the many aspects of national constitutional law, students will also have the chance to explore the modern tendencies and ideas that have influenced the development of this area of law through the practice of both the European Court of Human Rights and the Court of Justice of the EU. This will include important landmark decisions of all three courts, and their comparison with each other. These institutions have carried the torch of change for many fields of law, not only Constitutional law, and are therefore of vital interest to any scholar of law.

Acts and norms of constitutional Law are seldom amended, and new acts of constitutional law are even more rarely adopted. They are also often very abstract in character, and given their position on the hierarchy of the legal system, whether it's the EU or a single country, this is as it should be. On the other hand, this dramatically increases the role of the courts and the impact of their decisions. This is why judiciary practice is

essential to the understanding, development and advancement of Constitutional law, in Montenegro and in Europe.

Constitutional law syllabus

Subject name: CONSTITUTIONAL LAW				
Subject code	Subject status	Semester	Number of ETCS credits	Class load
	Compulsory	II	8	3L +1S

Study program is organized: Undergraduate studies Faculty of Law – Academic study program for obtaining a law degree (studies last for 6 semesters, 180 ECTS credits)

Prerequisites: None

Course goals: To enable students to acquire knowledge about basic and advanced constitutional concepts, institutes and ideas of Constitutional Law, and to learn about comparative constitutional solutions and the constitutional system of Montenegro and Europe.
After passing the subject of Constitutional law, the student will be able to:

- Recognize countries with established constitutionalism;
- Analyse the basic institutes of constitutional law and European Union constitutional law;
- Master the ability to read and understand constitutional texts, providing them with real-world context, and identify the conflict between "the constitutional and the real" in a constitutional provision and its practical application;
- Recognize the significance of European integration for the constitutional order of Montenegro (Constitutional law without borders);
- Understand the concept of Constitutional patriotism (Jurgen Habermas), and the significance and role of the activities of the Constitutional court, the European Court of Human Rights, and the Court of Justice of the European Union;

Name and surname of the teacher and the teaching assistant: Prof. dr Milan I. Marković

Teaching and learning methods: Lectures, seminars, term papers, visits to institutions, consultations and debates

Course content:

Preparatory week	Preparation and semester registration; Basic concepts of constitutional law; The concept, types and application of the constitution;
Week 1	Constitutional history in the world, constitutional history of Montenegro;
Week 2	Modern constitutionality of the world, Constitutional democracy in theory and practice;
Week 3	The basic legal institutes of European Union constitutional law, the EU constitution;
Week 4	Constitutional patriotism; The significance of European integration for the
Week 5	constitutional order of Montenegro (Constitutional law without borders); I Colloquium
Week 6	Constitutional principles I: legality and legitimacy, federalism and decentralization;
Week 7	Constitutional principles II: division and unity of government, direct democracy;
Week 8	Constitutional institutions I: Parliament and Government, Head of State;
Week 9	Constitutional institutions II: constitutional judiciary, courts, the Prosecution and the
Week 10	Ombudsman
Week 11	II Colloquium
Week 12	The authorities under the Constitution of Montenegro (2007) and its basic constitutional principles, Human rights and liberties under the Constitution of
Week 13	Montenegro;
Week 14	The Constitutional Court of Montenegro;
Week 15	The practice of the Court of Justice of the European Union and the European Court of Human Rights;
Week 16 -19	*Final exam* *Correctional exams; Verification of the semester and registration of the grades.*

Student obligations during classes: Students are required to attend lectures and seminars, and to do both colloquiums and the final exam.

Student workload

Weekly	In semester
8 credits x 40/ 30 = 13 hours and 30 minutes Structure: 3 hours of lectures 1 hour of seminars 9 hours and 30 minutes of independent work	Teaching and the final exam: (13 hours 30 minutes) x 16 = 216 hours Necessary preparations (administration, registration, verification before the beginning of the semester)2 x (13 hours and 30 minutes) = 27 hours Total hours for the course 8x30 = 260 hours Additional work: Additional work for exam preparation in the make-up examination period, including the exam taking hours: the remaining time of the first two items to the total load of the subject 260 hours Load structure: 216 hours. (teaching) +27 hours (preparation) + 17 hours (additional work) = 260 hours

Literature

Compulsory:

- Robert Schütze, European Consitutional Law, 2nd edition, Cambridge University Press, 2015.
- Mijat Šuković, Ustavno pravo (Constitutional Law), CID, Podgorica 2009.
- Jasna Omejec, Konvencija za zaštitu ljudskih prava i temeljnih sloboda u praksi Europskog suda za ljudska prava, strasbourški acquis (Convention for the Protection of Human Rights and Fundamental Freedoms in practice of the European Court of Human Rights, The Strasbourg acquis), Zagreb, 2013.
- Dragoljub Popović, Evropsko pravo ljudskih prava (European Law of Human Rights), Belgrade, 2012.

Additional:

- Milan I. Marković, Ustavnopravni eseji (Essays on Constitutional Law), CID, Podgorica 2017.

Ciril Ribičič, Ljudska prava i ustavna demokratija: ustavni sudija izmedju negativnog i pozitivnog aktivizma, (Human Rights and Constitutional Democracy – The Constitutional Court Judge between negative and positive activism), Službeni glasnik, Beograd 2012.

- Giuseppe de Vergottini, Uporedno ustavno pravo (Comparative Constitutional Law), Belgrade, 2015.
- Peter Haberle, Ustavna država (Constitutional State), Zagreb, 2002.
- Carl J. Friedrich, Konstitucionalna demokratija, Teorija i praksa u Evropi i Americi (Constitutional Democracy, Theory and Practice in Europe and America), Podgorica, 2005.
- Nenad Dimitrijević, Ustavna demokratija shvaćena kontekstualno (Constitutional democracy in context), Belgrade, 2007.
- Jan Werner Muller, Ustavni patriotizam (Constitutional patriotism), Belgrade, 2010.
- Josef Isensee, Država, ustav, demokracija (State, Constitution, Democracy), Zagreb, 2004.

Examination methods:

- Two colloquiums each carries 20 points (up to 40 in total)
- Student activity and participation in debates: up to 5 points
- Term paper is evaluated with a total of up to 5 points
- Final exam 50 points
- A passing grade is obtained by accumulating at least 51 points.

Number of points:	*90-100;*	*80-89;*	*70-79;*	*60-69;*	*50-59;*
Grade:	*A;*	*B;*	*C ;*	*D;*	*E;*

Additional remarks: None

Name of the teacher who prepared the information: Prof. dr Milan I. Marković

Comment: Additional information can be obtained in class and consultations, and by visiting the Faculty Website: www.pravni.ucg.ac.me.

Velimir Rakočević*

CRIMINAL LAW – SPECIAL PART AT THE FACULTY OF LAW OF THE UNIVERSITY OF MONTENEGRO – BEST PRACTICE OF STUDYING THE COURSE

1. INTRODUCTION

The study of law in Europe, and in particular criminal law, contains an integral approach, i.e. orientation towards integrity in the interpretation of legal norms, with emphasis on the necessity of critical thinking, which is certainly the most important goal of the teaching process in this field. Number one in education is undoubtedly solving numerous complex criminal cases, which includes a high level of intellectual knowledge, information about ways to solve a criminal problem and extraordinary ability of cognition and judgment. This means that nowadays, in addition to unquestioning expert knowledge, a professor of Criminal Law is required to transfer this knowledge to students in an optimal way, through the exploration of multiple correlations and causal connections, which enables students to understand individual criminal cases and form anticipatory thinking over a longer period of time and establish creative forms of material mastering. Multiple problems in the study of the subject matter of criminal law are solved in smaller groups by encouraging the appropriate form of interactive learning. The aim is to achieve the competence of research and competency of research methods, which is achieved through the interpretation of the legally relevant content of the course, by their proper selection and use. A professor must have constructive treatment for students, as well as a multimodal approach that involves the integration of different methods, observation modes and plural thinking with high competence in dealing with criminal cases.

The study of Criminal Law rests on scientific and critical education, that is, critical thinking, which is certainly a great challenge for students, since it excludes the wrong previous learning practice of learning by heart which causes low retention. This step is demanding as it seeks openness to new challenges as well as readiness for its own reflection and positioning.

* Velimir Rakocevic, PhD is a full professor at the Faculty of law University of Montenegro.

2. EDUCATION AND COMMUNICATION STRATEGY IN TEACHING CRIMINAL LAW

For every Criminal Law professor, it is crucial for him/her to develop ability with students to think critically and solve problems related to the analysis of criminal cases and evidence. It is very important to develop an appropriate culture of discussion. It is not necessary to have an integral knowledge that is transferred to students so that they ultimately critically check and reconstruct. It is important to have a balance between reproductive learning and active critical co-operation, and that forms of teaching that are used for knowledge transfer are a key part of the Criminal Law syllabus. The subject matter of Criminal Law is probably the most interesting to students and each lecture is accompanied with an increased dose of adrenaline, since they are involved in solving delicate criminal forensic cases and dilemmas. This gives professors of criminal law a fairly comfortable position that is not burdened by the problems that exist in other areas of law, where reproductive structural parts are dominant, and lectures in which direct student participation is required are insufficiently attended.

Teachers need to put emphasis on critical thinking and communication skills while developing knowledge and strong personalities with future criminal judges, state prosecutors and other elite legal professions. During studies, they become inevitable factors in teaching, especially in the area of expert discussions on case studies. Working with the best students implies the maximum development of a set of intellectual competences. In a modern knowledge society with a pronounced expansion of various forms of incrimination, a criminal law professor must educate students who think critically of what is an integral part of their emancipation and to be ready at all times to answer students' all questions and dilemmas. This means an essentially different structure of the study of law, which means primarily work with smaller groups of students and more supervising work. All this is difficult to implement at the Faculty of Law of the UM, bearing in mind that in positive legal disciplines, each professor has way too many students on average.

To be precise, the contemporary study of Criminal Law implies that the curriculum incorporates those contents that incline towards the unity of criminal justice and criminal science, with the dominant research elements that enable understanding of the essence and meaning of criminal law norms. The teaching process in this area includes the interaction of teachers and students in the part of creativity, criticality and flexibility,

resulting in structural cognitive modification. It is important that in the teaching process, we are more efficiently going towards the goal of achieving the cognitive and practical domains of criminal law students, developing their cognitive and psychomotor skills. The professor must enable the student to properly judge when solving complex criminal cases, combining several different options and creating a solution to the problem.

A new vision of studying Criminal Law at the Faculty of Law of the University of Montenegro in accordance with the new study program preceded by deep reforms has been entirely focused on students with a significant improvement in the transfer of knowledge. It is important to develop a higher level of specific competencies from the criminal law field. Bearing in mind the scope and dynamics of incrimination, there is a growing need to develop generic and changing competences that ensure the necessary level of knowledge and skills among students to solve various problems in Criminal Law.

3. CRIMINAL LAW – SPECIAL PART IN THE EU EDUCATION SYSTEM

For the purpose of the CABUFAL project, it is necessary to explain the difference between the Criminal Law of the European Union and European Criminal Law. The Criminal Law of the EU contains a system of legal regulations adopted to harmonize the criminal laws of Member States in the field of substantive, procedure and enforceable criminal law. On the other hand, European Criminal Law includes the criminal law of the Council of Europe constituted by conventions, agreements and decisions of the European Court of Human Rights as well as the criminal law that is rapidly developing in the European Union. So, European Criminal Law is a much wider concept of than the Criminal Law of the European Union. It should also be noted that there is a strong tendency towards the adoption of a single criminal code of the European Union that would be applied directly in all member states, which will inevitably be achieved very quickly. The Criminal Law of the EU is also different from transnational criminal law. Transnational Criminal Law contains norms of national law concerning the application of national criminal legislation to criminal offenses with elements of foreign, and these are the provisions of the national law of each state, whereas the Criminal Law of the EU has a supranational character.

Based on the relevant indicators it can be safely said that Criminal Law - special part is one of the most developed branches of EU law that is

much more organized and in relation to Criminal Law - general part. This is confirmed by a large number of European legal acts regulating various criminal offenses. The stepping-stone was creating the systematization of criminal offenses in relation to a group protection object or typology. All crimes in the category of serious incriminations that have disastrous consequences for the victim and the European Union are integral and have been regulated and numerous authors for these offenses use the term European criminal offenses.

Similar to national classifications and qualifications, and in European criminal law, delicts are divided according to the legally protected property, so that several groups of criminal offenses are identified: criminal offenses with elements of organized crime, criminal offenses against EU financial interests, criminal offences against the unity of the European market, criminal offenses of corruption, crimes with elements of terrorism, criminal offences against human dignity, criminal offences against human rights and freedoms, criminal offenses against public health, criminal offenses against public administration, criminal offenses against the judiciary, criminal offenses against the environment, criminal offenses against the security of computer data and the like. In the methodical-didactic sense, the question arises of justification of the direct application of EU conventions (a very large number from the criminal-legal area) into national legislation. I think it's a much better solution to find the correct model for implementing the European directive. As for Montenegro, in a number of cases, our state had regulated criminal offenses in the criminal code which were harmonized with EU standards by ratification. Montenegro dominantly took over new crimes from the EU and completely normed them.

Regarding the implementation techniques, the Montenegrin legislator decided to use several options. The most common option was the technique of adapting a certain EU act into Montenegrin legislation, which involves translating and adapting to the context of the Montenegrin legal system. The advantage of this technique is compatibility with Montenegrin legislation and case law. The second technique involves the direct downloading of a text of the convention that is incorporated in its original form into national legislation, whereby there is a problem of denotation and connotation, or inconsistency of terminology in the area of criminal justice standards. [1] The technique of interpreting the provisions of the criminal law of Montenegrin legislation from the perspective of the EU legal regulation by the courts is also applied.

The study of Criminal Law in Europe will be illustrated by the use of experience at the University College Cork according to the concept of

Dr. Shane Kilcommins. [2] and on a unique German concept. During attendance and upon completion of the course of Criminal Law, students should be able to: distinguish criminal law as written rules and criminal law in practice; briefly describe and investigate changes in punishment over time; determine the decisive factors that shape punishment in contemporary society; apply different theoretical approaches to the phenomenon of criminal law; examine the degree to which such a theory can explain events in contemporary society, interpret socially-legal cases of national criminal law, national legislation and suggestion for action; link the change in values and preferences in punishing to changes in emphasizing the importance of criminal law and procedure; assess the current policy of criminal law with regard to the impact it may have on the accused, victims, agencies and politicians, and examine the degree to which criminal law is truly objective and impartial.

Criminal law studies both in Germany and legal sciences in general differ significantly from other European countries. They are recognized by the fact that the emphasis is on familiarizing students with the techniques of solving and handling criminal cases in practice. In the work on concrete criminal cases, students are educated on exact procedures for processing and solving criminal phenomena, and then they train the preparation of written acts to the order for the investigation to be transmitted through indictment to criminal judgment. These fits professional opinions of professors who give a theme to the historical and comparative dimension of the technique of drafting criminal acts which represents the crucial dimension of studying in this country.

It can be noted that education in the field of criminal law in Germany is based on the conception of pleading cases whose processing has primacy in all forms of teaching and knowledge testing. Writing papers from the criminal law field in which specific cases are dealt with is the primary form of student knowledge control in mid-term and final exams with the exception of the oral part of the final exam.

Structuring the solution of a criminal case comprises several phases. In the first phase, the analysis of the actual situation is carried out. The second phase involves finding a criminal legal basis. In the third phase, complaints are resolved, and the fourth is subject to legal examination. The fifth phase includes drafting of a legal act. [3] All this could lead to substantially larger changes that would mean a complete demarcation between academic law studies and other forms of legal education in terms of realization of exercises in certain legal disciplines. [4]

4. PROPOSAL OF EUROPEANIZATION OF THE CURRICULUM OF CRIMINAL LAW – SPECIAL PART AT THE FACULTY OF LAW OF THE UNIVERSITY OF MONTENEGRO

The systematization of criminal offenses in contemporary Western legislation is predominantly based on the criterion of the gravity of the committed act. Thus, in France, three basic categories are distinguished. The first and most difficult are crimes (franc. en crimes), others are offenses (délits), in the third are violations (contraventions). Swedish criminal law also accepts this division. The Dutch legislation lists criminal offenses into the category of serious offenses or minor offenses. In the United States, crimes are classified into three basic categories: crimes, felonies, misdemeanors, and infractions, or only two categories - crimes and offenses. Within the above categories, in the legislation of individual federal units we find many subcategories. Similar systematization is also applied in many legislations around the world. Bearing in mind the above mentioned, I consider that the curriculum of Criminal Law - special part should be strengthened by a new classification and categorization of criminal offenses in this field, primarily through the typologies of organized crime, terrorism and corruption. In that sense, I propose the strengthening of the subject matter of Substantive Criminal Law cases in accordance with European trends by systematization of the following groups of criminal offences:

4.1. ORGANIZED CRIME

The globalization of organized crime goes hand in hand with the globalization of economic and international relations. Today organized criminal groups are sophisticated and worldly. In 2002, 1000 new organized criminal groups were identified in Europe. [5] According to Europol, in 2002 there were 4000 organized crime groups operating in the European Union, with some 40000 members. [6] Solutions in the criminal legislation should be comprehensive to contribute to the suppression of this type of criminal manifestation by separating criminal offenses with elements of organized crime into a particular group. One of the important EU documents in this area is the Framework Decision on Combating Organized Crime in 2008, which regulates criminal offenses related to participation in criminal organization, criminal sanctions and liability of legal persons. The Expert Group of the Council of Europe and Working Group on

Narcotics and Organized Crime as a specialized body of the European Union defined organized crime and this definition was accepted by the European Court of Human Rights. The European Union ratified the United Nations Convention against Transnational Organized Crime in 2004. Bearing in mind the focus of the EU's interest in the indicated area as well as the undeniable importance of uniform regulation of this area, the need for a separate systematization in the Criminal Code of Montenegro arises.

4.2. CRIMINAL OFFENCES AGAINST EU FINANCIAL INTERESTS

Criminal legal reactions to fraud and other illegal actions against financial interests of the EU is the subject of harmonization of these incriminations in the criminal codes of member states, since the common market is threatened by international criminality. The European Communities Convention on the Protection of Financial Interests from 1995, including two additional protocols, provides for the harmonization of national criminal codes of EU member states through the determination of corruption, economic and financial fraud. The first protocol refers to passive and active corruption, and the other includes money laundering and seizure of fraud and corruption revenues. Other legal acts are important such as the Framework Decision on increasing the protection of the euro against counterfeiting, through criminal penalties and other sanctions from 2000, Framework Decision on combating fraud and counterfeiting of non-cash payment instruments from 2001 and the Convention against corruption by officials from 1997.

4.3. CRIMINAL OFFENCES OF CORRUPTION

The future of EU Criminal Law is to constitute Corups iuris as a unified system of criminal law rules relating to offenses against the EU in order to unify certain elements of Criminal Law by defining certain criminal offenses by determining the general principles of regulation and centralization of the accusation and prosecution by the European State Prosecutor, which represents legal alignment. I consider it necessary to regulate European criminal offenses (eurocrimes) which jeopardize the EU financial interests.

Bearing in mind the abovementioned, I think that the criminal offenses of active and passive corruption envisaged in groups of criminal offenses against payment and commercial business and against official

duty should be systematized into a separate chapter that would be called CRIMINAL OFFENCES OF CORRUPTION and provide for a special criminal offense called ILLICIT ENRICHMENT, which is the EC's request.

4.4. CRIMINAL OFFENCES WITH ELEMENTS OF TERRORISM

Within the EU, a number of legal acts have been adopted relating to terrorist criminal offenses that are binding in character. One of the key documents is the Framework Decision on Combating Terrorism of 13 June 2002 [7] defining delicts of terrorism, other criminal offenses related to terrorism and liability of legal persons for criminal manifestations in this field. Framework Decision on the attack on information systems of 24 February 2005 [8] issued by the EU provides protection to a sensitive area potentially representing a terrorist target. This act obliges the Member States to criminalize illegal access to information systems, illegal change of data in the information system, encouraging, assisting and supporting such activities, punish for attempting, and minimum standards in determining penalties for these offenses is provided. At the beginning of 2016, based on the Decision of the Council for Justice and Home Affairs from 2015, the European Center for the Fight against Terrorism was established. It is a platform through which Member States can step up the exchange of information and operational co-operation regarding the monitoring and investigation of foreign terrorist fighters, trafficking in illegal firearms and financing of terrorism.

In 2017, the Council of Europe adopted a Directive on Terrorism Suppression that strengthens the EU legal framework for the prevention of terrorist attacks and seeks to find solutions to the emergence of foreign terrorist fighters. This document criminalizes acts of: 1) attending training or traveling for terrorist purposes, 2) organizing or facilitating travel for terrorist purposes, 3) securing or collecting funds related to terrorist groups or terrorist activities. I consider it necessary to systematize a special typology of criminal offenses under the title CRIMINAL OFFENCES WITH ELEMENTS OF TERRORISM that would consolidate all criminal offenses in this area and strengthen the normative basis in this area for the purpose of easier study.

5. CREATING A MODERN AND COMPETETIVE STUDY PROGRAM OF CRIMINAL LAW – PROPOSALS DE LEGE FERENDA

The modernization of the Criminal Law curriculum in Montenegro abandoned a traditional model that proved to be non-functional since it did not follow the trends in the labor market. The faculty program of this curriculum now contains all elements of contemporary criminal legal theory and practice with the tendency that our graduates will be able to deal with the most complex legal challenges immediately after graduation. It is important to create a syllabus that will dominantly encourage critical thinking focused on addressing criminal and legal challenges. The intent is to make the noncompetitive program competitive and perform a structural market-oriented transformation. Criminal Law study is not possible without the integration of clinical methods into teaching content. After completion of the exam, which contains a substantial percentage of practical lessons, a student must develop an ability that he/she will not have to first obtain at the workplace. A criminal law student is educated from the criminal legal theory to the extent necessary and then he/she is allowed to work in practice. Simply put, I cannot be a good criminal law professor if I cannot practically show what I teach and outline my own experience gained in practice. That is why I must enable students to develop the ability to acquire practical knowledge. Between a theoretical and practical transfer of knowledge, a balance must be established in order to avoid any scrutiny on either side. The fact is that only an extraordinary knowledge of criminal legal theory and related criminal disciplines allows solving problems in practice.

6. FUNCTIONAL MODEL OF STUDYING CRIMINAL LAW – SPECIAL PART

Every lecture from course Criminal Law – special part at the Law Faculty of the University of Montenegro I begin with an integral examination of a certain criminal phenomenon from the perspective of criminal legal theories and related criminal disciplines using a multidisciplinary approach. After a meticulous introduction of the theoretical dimension of certain incrimination, next step is concretization with the establishment of a causal link between theory and practice. In the next phase, a functional model of education is used in which students acquire theoretical knowledge gained by working on courses adopting useful

knowledge and skills. In the course of practical teaching, students learn through case studies how criminal law institutes exist in practice, which is permanently memorized and activated students to do research.

L i t e r a t u r e

[1] Klip A., European Criminal Law, An Integrative Approach, 2nd edition, Intersentia, 2012.
[2] Kennedy D. (2009) Pisanje i upotreba ishoda učenja, Savjet Evrope, dostupno na internet adresi: www.nairtl.ie.
[3] Braun J. (2000) "Der Zivilrechtsfall. Klausurenlehre für Anfänger und Fortgeschrittene", München, str. 3.Deutsches Richtergesetz/DriG),2002.
Wolfgang Böckenförde E., (1997), Juristenausbildung - auf dem Weg ins Abseits? JZ., str. 317.-326
Strempel D. (Hrsg.), (1998), Juristenausbildung zwischen Internationalität und Individualität, Baden-Baden.
Berger, H.L. (1975), Die Entwicklung der zivilrechtlichen Relationen und ihrer denktechnisch-methodischen Argumentationsformen, Frankfurt.
[4] German Law Journal, X (2009.) god., Following the Call of the Wild: The Promises and Perils of Transnationalizing Legal Education http:// sfruehwald.com/Legal_Education_Central_by_Scott_Fruehwald.htm (2016.).
[5] European Union organized crime report , Europol, Luxembourg, 2003, p.8.
[6] Organized Crime Situation, Report,2004-Focus on the threat of cybercrime, Council of Europe, Strasbourg, 2004, p.37.
[7] Framework decision on fight against terrorism 2002/475/JHA, SG L 164, 22 June 2002;
Framework decision 2008/919/JHA of 28 Novemeber 2008 on changes of Framework decision 2002/475/JHA on fight against terrorism, SG L 330, 09 December 2008.
[8] Framework Decision on attack on information systems 2005/222/JHA, SG L 69/67, 16 March 2005.

Course title:		CRIMINAL LAW - SPECIAL PART		
Course code	*Course status*	*Semester*	*Number of ECTS credits*	*Class load*
	Compulsory	*IV*	*6*	*60+15/4L+1 VE*
Study program *: Academic basic study program of the Faculty of Law (studies last 6 semesters, 180 ECTS credits). Academic program for obtaining BACHELOR'S DEGREE.*				
Prerequisites*: none*				
Course objectives*: The course is aimed at educating students in the field of Criminal Law - special part for the purpose of implementing scientific knowledge in practice.*				
Course outcome*:* After passing this exam a student will be able to: 1. List the common characteristics and basic criteria for classification and qualification of criminal offenses and their classification into certain chapters of the Criminal Code; 2. Recognize objective and subjective elements of each criminal offense; 3. Mark general and special elements of concretization of the criminal offense; 4. Define forms and ways of setting the action as a basic, connecting and differentiating element of any incrimination; 5. Perform a criminal analysis of the consequences of the criminal offense, determine the causal relationship between the act and the consequences, 6. Determine the subject of the criminal offense, object of the criminal offense, place where the criminal offense was committed, time of the commission of the criminal offense, guilt, acquisition, qualified forms of incrimination, etc. 6. Interpret complex and multifaceted elements of criminal offenses and resolve theoretical and practical problems in the application of the Criminal Code.				
First and last name of the teacher and teaching assistant*: Prof. dr Velimir Rakočević*				
Teaching methods*:* Lectures, exercises, case study, practical class				
Practical classes are conducted in classes scheduled for lectures (20 hours) and include visits to the Basic, Higher and Appellate Courts, Basic and High State Prosecutor's Office, getting to know judicial and prosecutorial practice, analysis of case law and drafting legal acts from the criminal law area in order for students to master practical knowledge and skills from the criminal law area.				
COURSE CONTENT				
I week II week III week IV week V week VI week VII week VIII week IX week X week XI week XII week XIII week XIV week	Concept of the special part of the criminal law, subject of the special part of the criminal law, methods of the special part of the criminal law, systematics of the special part of the criminal law, typology of criminal offenses;Criminal offenses against life and body; criminal offences against the freedom and rights of man and citizen;Criminal offenses against electoral rights; criminal offences against honor and reputation; criminal offenses against sexual freedomPractical classes (criminal qualification of criminal offences, Basic State Prosecutor's Office Podgorica)Criminal offenses against marriage and family; Criminal offenses against rights from labor; Criminal offenses against intellectual property; Criminal offenses against property;I mid-term exam Criminal offenses against payment transactions and business operations; Criminal offenses against EU financial interests; Criminal offenses against human health; Practical classes (concretization of basic elements of criminal offences, Basic Court Podgorica)Criminal offences against the environment and spatial planning; Criminal offenses against general safety of people and property; Criminal offenses against the safety of public transport; Criminal offenses against the security of computer data;II mid-term examCriminal offenses against the constitutional order and security of Montenegro; Criminal offenses against state authorities; Criminal offenses against the judiciary;			

XV week XVI-XIX week	Criminal offenses against public order and peace; Criminal offenses against legal traffic; Criminal offenses against official duty; Criminal offences of corruption Practical classes (criminal qualification and concretization of criminal offences within the competence of Supreme State Prosecutor's Office and High PO, High Court Pogorica, High State Prosecutor's Office Podgorica)Criminal offences against humanity and other goods protected by international law; Criminal offences of terrorism; Criminal offenses against the Army of Montenegro; Organized crime; Final exam, make-up exam

Student workload

Weekly	In semester
6 credits x 40/30 = 8 hours Structure: 4 hours teaching 1 hour exercises 3 hours individual student work (preparation for lab exercises, mid-term exams, homework) including consultations	Teaching and finals: (8 hours) x 16 = 128 hours Necessary preparation before beginning of semester (administration, registration, verification): 2 x (8 hours) = 16 hours Total course workload: 6 x 30 = 180 hours Additional work 36 hours

LITERATURE: Stojanović Z. Krivično pravo, Podgorica, 2008, Velimir Rakočević, Krivična djela sa elementima organizovanog kriminaliteta-specijalne istražne metode, Podgorica, 2014, V. Rakocevic, Criminal acts against life and body, Podgorica, 2015 Krivični zakonik Crne Gore, ("Sl. list RCG", br. 70/2003, 13/2004, 47/2006 i "Sl. list CG", br. 40/2008, 25/2010, 32/2011, 64/2011 , 40/2013, 56/2013 , 14/2015, 42/2015 i 58/2015); Klip,A. Substantive Criminal Law of the European Union, Maklu Publisher, Antwerpen/Apeldorорn/Portland, 2011;Follain, J., Vendeta:The Mafia, Jugde falcone and the Quest for Justice, Hodder, Stoughton, London, 2012; Roxin, C., Schunemann, B., Strafverfahrensrecht »verlag C.H. Beck«, Munchen, 2013; Bertel/Schweighofer, Ost Strafrecht Besonderer Teil 2, Wien, 2010.; - Lipmann, Contemporary Criminal Law, 2010; Jay S. Albanese, Organized Crime from the mob rto transnational organized crime, Seventh Edition, 2014; *zakoni, ratifikovane konvencije iz krivičnopravne oblasti*

Examination methods and grades:
Two tests - 15 points each (total 30 points). Practical class – 20 points. Share of practical classes in total 60 hours of teaching (4hours x 15 weeks): 20% or 12 hours of teaching. Final exam - 50 points. The passing grade is obtained if at least 50 points are collected cumulatively.

Number of points	*90-100;*	*80-89;*	*70-79;*	*60-69;*	*50-59;*
Grade	*A;*	*B;*	*C ;*	*D;*	*E;*

First and last name of the teacher who prepared information: Prof. dr Velimir Rakočevic

Note: All additional information is available in class, exercises or consultations.

Radoje Korać*

EUROPEANIZATION OF FAMILY LAW

1. INTRODUCTION

The process of Europeanization of Family Law imposed the need to have European family law included in the program of the Faculty of Law, to be monitored by the legislator, and that the documents of this legal area are implemented in judicial and administrative practice. Each regional organization, the Council of Europe and the European Union, each in a special way and in accordance with its objectives, creates legal acts as sources of the legal area relating to marriage and family relations. Hence, the European Family Law, as a new legal area, is used in legal terms in a dual meaning: in a wider sense, the European Family Law is a set of rights created by the Council of Europe, the European Union and the Hague Conference on Private International Law, and family law in the strict sense is a legal area that arises within the European Union.[1]

The harmonization of rights within the Council of Europe is done mainly through conventions, gradually and voluntarily, by the discretionary assessment of the member states to accept or not accept a particular convention, except for the European Convention for the Protection of Human Rights and Fundamental Freedoms, which is binding on all members of this regional European organization. Within the European Union, the harmonization of family law is done by regulations and directives.

Unlike public law, in which the process of harmonization and unification began early, the harmonization of legal systems in the field of private law began later, and the process of Europeanization of family law was particularly slowed down. This branch of law, more than others, carries the traits of national tradition, culture, customs, religion, demographic trends and other specificities of individual member states. Therefore, the process of harmonization, and especially unification, of this legal area is significantly lagging in relation to other parts of the legal system.

* Radoje Koraci, PhD, is a Full Professor at The Faculty of Law of the University of Montenegro.

[1] *I. Majstorović*, Obiteljsko pravo kao različitost u jedinstvu: Evropska unija i Hrvatska, u: *A. Korać Grahovac, I. Majstorović* (ur.), Europsko obiteljsko pravo, Zagreb 2013, str. 1.

Within the framework of the Council of Europe, the process of Europeanization of family law began in the 1960s, while the European Union sporadically began to embark on thirty years later. The first Council of Europe document on family law was the European Convention on the Adoption of 1967 (revised in 2008). Thereafter, the European Convention on the Legal Status of Extramarital Children (1975), the European Convention on the Enforcement of Children's Rights (1996) and the European Convention on Contact with Children (2003) were adopted.

Especially important is the European Convention on the Exercise of Children's Rights, with which, after ratification, our legislation was harmonized, in particular the last amendment to the Family Law of 2016. Thus, under its influence, special procedural rights of the child are prescribed: to obtain the necessary information and express the opinion in the procedure, to get a special representative (attorney) to get a support person.

European Union bodies have become more and more active in regulating family relationships, given the fact that freedom of movement of people, goods, services and capital contributed to the establishment of marriages and parental relations between citizens of different countries. Consequently, there is an increasing number of disputes about the consequences of divorce, abolition of extramarital communities, and exercise of parental rights after the end of the parents' community. Research shows that a large number of nationals of one member state live in other EU Member States and even more are nationals of non-EU countries living in one of the member states of this regional institution of 28 states. Numerous family legal issues, in particular merging of family members, cessation of marriage, contact of parents with children and various forms of support often receive a judicial epilogue. Since it is about disputes with foreign element the need for the creation of collision rules and the rules of court procedure of the competent court was imposed. The choice of the applicable law for a family relationship which is in the subject, object or rights and obligations related to the sovereignty of two or more national states is very significant, given that the substantive rights of the Member States are quite different. Hence, the bodies of the European Union first harmonized the rules of private international and procedure law, while the rules of substantive family law had long been beyond the interest of the European Union. The regulation of the substantive family law Member States did not transfer to the European Union, bearing in mind that this part of the law, more than other parts of the legal system, expresses national specificity. Therefore, substantive family law is not within the competence of the European Union, but within the jurisdiction of the Member States.

Family law in Montenegro is to a considerable extent aligned with the acquis of the European Union. This process started before signing the Stabilization and Association Agreement, when it became the responsibility of the competent bodies, i.e. bodies in the Government and Parliament of Montenegro. The process of harmonization will continue in the process of preparation of the Civil Code which will include family law. It will be an opportunity to review, evaluate, correct, amend and agree on numerous solutions of this branch of law.

2. ENTITIES OF HARMONIZATION OF FAMILY LAW

So far, there are no questions of substantive family law that are regulated by unified rules. There are only unified rules on individual conflict and procedural issues of European family law. However, the process of Europeanization of family law cannot be stopped, although some consider it to be Sisyphus's work. In theory, the process of Europeanization is considered to include two elements: *ius commune* as a set of common European legal bases and communitarianization, which denotes the trend that EU Member States increasingly delegate their competences to the EU.[2]

The harmonization of family law with the EU acquis is carried out through the activities of EU bodies, European Family Law Commission, European Court of Justice and the harmonization of family law solutions of national legal systems.

Prior to the entry into force of the Lisbon Treaty, family law regulation was explicitly excluded from the jurisdiction of EU institutions (Article 67, paragraph 5 of the Treaty of Nice). The Lisbon Treaty provides for European jurisdiction in the area of family law. The new Article 81 para. 3 of the Treaty on the functioning of the EU prescribes that measures in the field of family law with cross-border implications are determined by the Council unanimously, after consulting with the European Parliament and in accordance with a special legislative procedure. In the same way, the Council may, on a proposal from the Commission, make a decision defining aspects of family law with cross-border implications that may be the subject of acts adopted in a regular legislative procedure. The parliaments of the Member States are informed of this, so if within six months this is not contrary to any parliament, the Council can make a decision, otherwise there is no decision.

[2] *V. Bouček*, Evropsko međunarodno privatno pravo u eurointegracijskom procesu i harmonizacija hrvatskog međunarodnog privatnog prava, Zagreb 2009, str. 17 i dalje.

From the analysis of the provisions of the Treaty on the European Union and the Treaty on the Functioning of the EU, it can be concluded that, which *communis opinio* is in the legal theory, there is no basis for the regulation of substantive family law from the bodies of the European Union. The eventual extension of European competence to this branch of rights is limited to the principles envisaged in Article 5 of the EU Treaty: the principle of delegated jurisdiction, principle of subsidiarity and principle of proportionality. In accordance with the principle of the transfer of competencies, the Union acts only within the limits of the competences transposed by the Member States. In accordance with the principle of subsidiarity, the Union may, in areas not falling under its exclusive jurisdiction, act: a) only if the Member States cannot achieve the objectives of the proposed measure satisfactorily and b) if the proposed measures can be better achieved at the Union level. The content and form of the Union measure cannot go beyond what is necessary to achieve the objectives of the treaty (principle of proportionality).

With the Lisbon Treaty, the Charter of Fundamental Rights of the EU has become a mandatory act and, according to the legal force, it is equal to the EU Treaty and the Treaty on the Functioning of the EU. It can be said that this is the most important document of the EU that relates to family law, the content of which substantially corresponds to the European Convention on Human Rights. It primarily guarantees the protection of the right to human dignity as the basic postulate of European identity. Other rights guaranteed by the Charter are also of importance for family law: the right to respect for private and family life, protection of personal data, right to marry and start a family, right to education, freedom of conscience and religion. The Charter also contains special provisions on the rights of children (Article 24), although all Member States have ratified the UN Convention on the Rights of the Child.

EU regulations cover mainly conflict and procedural rules, but not rules of substantive family law. The most important in the context of family law are the following regulations:

1) Council Regulation (EC) 2201/2003 of 27 November 2003 on jurisdiction and the recognition and enforcement of decisions in marital and parental responsibility cases and repealing Regulation (EC) 1347/2000. This Regulation known as the *Brussels II bis Regulation* applies to civil proceedings involving divorce, separation or annulment of marriage, and assignment, exercise, cession, limitation or termination of parental responsibility. It contains provisions on the recognition of decisions providing for a system of *ipso iure* recognition of decisions, without co-

nducting a procedure for the recognition of a court decision rendered in another Member State. This Regulation also regulates the return of a child illegally seized or held in a Member State other than where the child is habitually resident.

2) Council Regulation (EC) No. 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of court decisions and cooperation in matters relating to the maintenance obligation. This Regulation, known by the name of *Maintenance Regulation*, contains rules on the conflict and procedural aspects of the unification of European family law.

3) Council Regulation (EU) no. 1259/2010 of 20 December 2010 on the implementation of enhanced cooperation in the area of the law applicable to divorce and legal separation, known as the *Rome III Regulation*, which for the first time regulate conflict rules on divorce and divorce within the EU.

The rules of the said regulations relate to the determination of jurisdiction, choice of applicable law, recognition and enforcement of decisions in civil matters, primarily with the aim of contributing to the proper functioning of the EU internal market.

The Regulations have compulsory force and are directly applied, in contrast to the directives binding on the Member States only in relation to the objective to be achieved, and the means of their implementation are left to each State individually. Decisions are mandatory, but only in respect of specific cases to which they relate in terms of their immediate application in the internal legal order of the Member States.

In addition, the EU Guidelines for the Promotion and Protection of Children's Rights (2007), EU Strategy on the Rights of the Child (2009), EU Agenda for the Rights of the Child (2011) should also be mentioned.

The European Family Law Commission since 2001, when it was founded, has been working to foster the harmonization of the family law of European countries in order to achieve the freedom of movement of people and creation of a unique legal space. Although there is no political legitimacy with the power of academic authority it affects the European Commission and legislators of certain national states to take into account the results of its work when regulating certain family law issues. This self-appointed and independent academic organization composed of professors of family and comparative law, through its Organizing Committee and Expert Group deals with theoretical and practical solutions of comparative legislation and prepares the principles of European family law, searching for *ius commune*. So far, the Commission has established Principles on

Divorce and Support between Spouses, Principle of Parental Responsibility and Principles on Property Relationships between Spouses.

Principles and their comments are intended primarily for European legislators and national legislators with a view to taking them into account when regulating family law relationships and thus become part of the Acquis Communitaire. The Commission uses *common core* methods, i.e. making rules based on the common core, or similarity of national family rules, and if the differences between national solutions are big and it is not possible to form a common core, *better law* method is used, or the choice of better law. In formulating the principles, the Commission may in certain cases combine these methods.[3]

3. PRACTICE OF EUROPEAN COURTS

The practice of the European Court of Human Rights and European Court of Justice significantly contribute to the harmonization of family law. The decisions of these courts are mandatory, although their competencies are different.

3.1.The court in Strasbourg

The European Court of Human Rights has made numerous decisions protecting the so-called the right to privacy under Article 8 of the Convention for the Protection of Human Rights and Freedoms (right to respect for private life, right to respect for family life, inviolability of home and inviolability of correspondence). Such is the relation between believers, homosexual relationship, trans-sexuality and gender change, relationship between spouses, relationship between parents and child, grandfather and grandmother and grandchildren, juvenile brothers and sisters, adoptive parent and adoptee, guardian and foster child, in the practice of the European Court of Human Rights protected as a right to respect for private life.[4] Also, through the interpretation of Article 8 of the Convention on the Respect of the Right to Family Life, the Court decided on the circle of persons entering the family, on the right of family members

[3] *K. Boele-Woelki*, The Working Method of the Commission on European Family Law, u: *K. Boele-Woelki*, (ed.) Common Core and Better Law in European Family Law, European Family Law Series, br. 10/2005, str. 31 i dalje.

[4] *M. Draškić*, Usklađenost domaćeg prava sa standardima Evropskog suda za ljudska prava u odnosu na član 8 Evropske konvencije, available at www.helsinki.org.rs/hrlawyers/archives/files/sem3_pred_marija.doc.

to live together and maintain mutual relations, origin of the child, surrogate motherhood, abduction of a child, deportation of family members, individual rights of the child and exercise of parental rights. The best practice of the European Court of Human Rights in the area of family law relates to Article 8 of the Convention (the right to respect for family life), but the decisions related to Article 12 (the right to marry and start a family) and Article 14 (prohibition of discrimination) are also important. In addition to the interests of the applicant, the Court draws attention to the interests of all members of the family, and often refers to the UN Convention on the Rights of the Child in its decisions, taking into account the best interests of the child.

Using the principle of a living instrument, sometimes under the influence of evolutionary interpretation, there is a change in case law without sufficient valid reasons, so that the theory indicates a constant need for balance between change and consistency[5]. Social changes and development of rights cannot jeopardize legal security and predictability. The Court has since insisted on its effective and evolutionary interpretation as a living instrument. An autonomous interpretation of the concepts of the Convention, i.e. interpretation according to the goal and purpose, irrespective of the meaning of national law, in order to ensure the uniform application of the rules of conventional law. It is necessary to adapt the interpretation to the current demands to the current social needs. The Court thus develops the Convention and maintains its actuality. With the evolutionary interpretation of the Convention, it is possible to maintain the effectiveness of the European Court's practice with regard to the time when the Convention was founded, and if it is objected for taking over the role of the legislator and often creates an inconsistent practice and jeopardizes legal certainty.

3.2.The court in Luxembourg

The European Court of Justice consists of two courts (European Court and General Court). The highest judicial institution of the European Union has the task of providing a single interpretation of primary law and is a source of law for all member states. Unlike the Strasbourg court, the Luxembourg court has broad jurisdiction, since it provides protection for market freedoms. The court's jurisdiction in Strasbourg is subsidiary, and

5 *G. Mihelčić, M. Marochini-Zrinski*, Utjecaj konvencijskih načela tumačenja na pojedine građanskopravne institute (odabrana pitanja), Zbornik radova Pravnog fakulteta u Niš, br. 57/2018, str. 136.

the court's jurisdiction in Luxembourg is originated. This means that the Strasbourg court decides later, when the party loses the dispute in its own country and exhausts the legal path. In Luxembourg, cases that are not lost to the party before national courts are dealt with. The outcome of the dispute in Luxembourg depends on the exercise of subjective rights before national courts. Both courts have the role of harmonizing family law, and in addition to certain differences in access to family relationships (e.g., only biological and rightful connection or emotional connection between family members).[6]

The Court of Justice of the European Union provides an unconditional priority in the application of primary law and secondary law over national law, regardless of whether an act of domestic law is passed before or after the law of the European Union that has a binding character. Ever since the famous *Simmenthal* judgment (1978), the Court of Justice of the European Union states that a national judge must ensure the application of the law of the European Union and, if necessary, to reject the contrary provisions of national law, even when they are subsequently enacted and without the obligation to wait for them to be previously removed in the prescribed constitutional procedure.

The Treaty on the Functioning of the EU envisages (Article 267) the previous procedure as a mechanism for equalizing the interpretation and application of European law. This means that when a question of interpretation or the validity of a law is put before a national court, it may at any stage of the proceedings request that the Court of Justice of the European Union make a decision on it. If such a question is brought before the court against whose decisions a remedy is not provided, the domestic court is obliged to always address the EU Court. The procedure of the previous decision is considered to be the cornerstone of the European legal order.

Based on that article, the EU Court has already developed a rich case law in the interpretation and assessment of the validity of European law. Its judgments and reasoned decisions are mandatory for the national court, which in the particular case raised the issue, but also for other courts, which ensures the uniform application of EU law. The Recommendations for National Courts (2016/C 439/01) contain provisions that apply to all requests for a prior decision (subject of the request, form and content of the request, time of making the request, costs) and the provisions applied

[6] *M.V. Antokolskaia*, Family Values and the Harmonisation of Family Law, u: M. Mclean, J. Eekelaar, (Eds.), Family Law and Family Values Oxford, 2005, str. 303.

to requests requiring a special speed of treatment. Therefore, the national courts of the Member States that are obliged to apply EU law have the ability to suspend proceedings in a specific case and ask the EU court to give a previous ruling on the interpretation of the norm to be applied (which the Court has not previously declared) or the validity of a norm which the judges doubt. After the decision of the EU court, the national court continues the procedure by which the dispute is resolved by performing the concrete consequences of the response received. If it is an interpretation of the norm, the judge can do this alone, but cannot decide on the validity of the legal norm, because this is the exclusive jurisdiction of the EU Court.[7] In the process of Montenegro joining the EU there will be a need for getting to know not only decisions and standards of EU court case law, but also rules on cooperation of national courts and the EU court, and the Montenegrin legislator *de lege ferenda* will be obliged to apply the implementing rules for the preliminary procedure under which national courts will act when addressing the European Court of Justice, in accordance with Article 267 of the Treaty on the Functioning of the EU. Bearing in mind the provisions of paragraphs 2 and 3 of Article 6 of the EU Treaty, it may happen that the Strasbourg and Luxembourg courts decide on the same issue, which resulted in different case law, which has recently been remedied by the mutual cooperation of these two European courts.

4. REVIEW OF THE ANALYSIS OF THE CURRICULUM OF THE FACULTY OF LAW MADE BY THE FACULTY OF LAW OF THE UNIVERSITY OF LJUBLJANA

The last change of the study model at UM kept the Family Law in the curriculum of basic studies at the Faculty of Law, and introduced a special course - Child Rights, but as an elective module. The Faculty of Law of the University of Ljubljana has compiled an analysis of the recently accredited curriculum of the Faculty of Law of UM, which highlighted a great improvement in achieving the goal - its "Europeanization" as a whole. In the part relating to the Family Law there were no recommendations for changes, except for the comment that the changes already made in sufficient measure introduce the European element into the syllabus of this course.

7 *T. Petrašević, I. Vuletić*, Prethodni postupak pred Europskim sudom pravde i njegova implementacija u hrvatsko procesno pravo, Godišnjak Akademije pravnih znanosti Hrvatske, br. 1/2014, str. 144 i dalje.

However, I believe that the presence of the "European" element in the syllabus of this course needs to be further strengthened, supplemented and actualized. The curriculum of the course Family Law should be supplemented by the analysis of EU and Council of Europe documents and practices of the European Court of Human Rights and the Court of Justice of the EU. The relevant provisions of primary European law and certain acts of secondary EU law, as well as relevant practices, that is, the standards of the European Court of Human Rights and the Court of Justice of the EU must find a place in the curriculum of Family Law.

5. APPLICATION OF EXPERIENCE AND RESULTS OF TRAINING, AND STUDY VISITS WITHIN CABUFAL

It can be noted that guest lecturers from partner institutions did not make a direct contribution, as part of the training held at the Faculty of Law, given the importance of the Europeanization in the field of family law study, since the topics from this branch of law in the trainings were not covered, which can be said for private law as a whole, except lectures at the Faculty of Law in Split. Similar case is with study visits where the author of this text participated and lectures he attended.

However, we should certainly bear in mind the indirect contribution of both training and study visits within the CABUFAL project. It is reflected in the exchange of experience between lecturers at partner institutions and the analysis of best teaching practices. These experiences will certainly contribute to improving the quality of the teaching process at the Faculty of Law of UM. In addition, established cooperation among partner institutions is the basis for the implementation of future activities.

6. BEST TEACHING PRACTICE

One example of good teaching practice, and in the light of the Europeanization of the curriculum of Family Law, is the European Family Law program at the Faculty of Law in Zagreb and the Faculty of Law in Split.

7. CURRICULUM SUPPLEMENT

Key challenges in terms of encouraging students to understand legal concepts, the position of family law of the European Union in the national legal system and the relationship with other areas of law.

The content supplement of the Family Law program should include the above-mentioned legal framework of the Council of Europe and the European Union relating to family relations and the rights of the child, including the standards of case law of the Strasbourg and Luxembourg courts.

The aim of such a supplementary curriculum needs to be understood as the need to know the integrative processes in Europe at the legal level and to acquire deeper knowledge of family law solutions in Montenegro and to compare it with the legal solutions and standards of the Charter of Fundamental Rights of the EU and the European Convention on Human Rights. After passing the course, the student could differentiate the meaning and modalities of European family law in the wider and broader sense and evaluate the advantages and disadvantages that the family law system in Montenegro shows in comparison with the solutions adopted in the EU and the Council of Europe.

Course title:			FAMILY LAW	
Course code	*Course status*	*Semester*	*Number of ECTS credits*	*Class load*
	Compulsory	*III*	*6*	*4L+1E*
Study program: Legal department – basic studies				
Prerequisites: None				
Course objectives: Introducing students to basic concepts and institutes of Family Law				
First and last name of the teacher and teaching assistant: Radoje Korać, PhD, Full Professor				
Teaching methods: Lectures, exercises, seminar papers, consultations, debate				

COURSE CONTENT	
I week	
II week	Basic concepts of Family Law. Systematization of Family Law. European
III week	family law - situation and perspectives. ECHR Practice and CJEU.Family
IV week	as a legal institution. The right to free parenting Marriage, form of
V week	marriage
VI week	Material conditions for the validity of marriage. Marital interference Legal
VII week	consequences of marriage. Personal rights and freedoms of spouse
VIII week	Annulment of marriage. Marriage annulment claim Extra-marital union
IX week	Divorce. Divorce and marriage annulment procedure Parental rights.
X week	Deprivation of parental rights Right of the child. Determination of
XI week	extramarital paternity Adoption. Procedure for adoption
XII week	Guardianship. Deprivation of legal capacity
XIII week	Legal support. Maintenance Property relations of spouses. Division of
XIV week	marriage Special court proceedings. Mediation in family relationships.
XV week	*Finals, Make-up final exam*
XVII -XX week	
Students' obligations: Students are required to attend lectures and take both exams	
Literature: Korać, Radoje, Porodično pravo, Podgorica, 2011 Mladenović, Marko, Porodično pravo – knjiga I i II, Beograd, 1981 Ponjavić, Zoran, Porodično pravo, Beograd, 2014 Draškić, Marija, Porodično pravo i prava deteta, Beograd, 2014 Kovaček-Stanić, Gordana, Uporedno porodično pravo, Novi Sad, 2002 Bodiroga-Vukobrat, N. i dr., Europsko obiteljsko pravo, Zagreb, 2013 Carbinnier, J., Droit civil, Tome 2, La famille, l'enfant, le couple, Paris, 2002 Herring, J., Family Law, Pearson Longman, 2011 Scherpe, Jens M., The present and future of European Family Law, vol. IV of European Family Law, 2016	
Examination methods and grades: Exercises up to 5 points Seminar paper up to 5 points Grades depend on total number of points Mid-term exam up to 40 points E (50-59);D (60-69);C (70-79) B (80-89); A (90-100) Final exam up to 50 points	
Comments: none	
First and last name of the teacher who prepared information: Prof. dr Radoje Korać	

Learning outcomes. After the student passes this exam he/she will be able to: recognize the meaning and explain the meaning of the most important family law institutes in the legal system; single out and explain the basic principles of arranging marital and family relationships; recognize the meaning and spirit of positive legal solutions to family relations and the rights of the child; compare national family-legal solutions through history with the current situation, and compare positive family-legal solutions with foreign and supranational solutions; explain the most important rights of the child and the specific nature of the procedures for their protection, and explain the reasons for the adoption of family-legal regulations and identify the directions of family law develop-pment; name types of proceedings in family law and recognize their basic meanings and specificities; recognize and explain the role of the guardianship authority in litigation from family-legal relationships; get to know different measures for the protection of children without parental care; learn about specific rules for regulating property relations in marital, extra-marital and family relations, recognize the types and specifics of the legal obligation of maintenance.

Gordana Paović-Jeknić*

FINANCIAL LAW AND TAX LAW OF THE EUROPEAN UNION IN THE MONTENEGRIN EDUCATION AND LEGAL SYSTEM

1. INTRODUCTION

Most authors today believe that the European Union is a unique, supranational, international organization sui generis. Unlike other international organizations, the European Union has Member States' sovereignty, its own budget revenues, makes legal regulations mandatory for member states and can conclude contracts with third countries. Also, the budgets of other international organizations finance their administrative costs while the EU budget reallocates over 90% of the funds to member states. Because of this, the budget of the European Union as an instrument for financing EU expenditures and budget revenues has a special place in the European Union's financial and legal system, that is, of its present and future member states. [1]

Principles of legality, autonomy of acquis communautaire, supremacy, subsidiarity, proportionality and solidarity are the basic principles applied in the European Union.

The principle of legality implies a rule that the European Union is based on the right, with the possibility of EU institutions, Member States and individuals to initiate proceedings before the European Court of Justice with a view to reviewing any illegal act. The principle of autonomy of acquis communautaire means that Acquis Communautaire, i.e. European regulations, will apply equally throughout the European Union. The principle of supremacy is reflected in the fact that, in the event of a conflict between the law of the European Union and the national law of the Member States, the provisions of the law of the European Union have the advantage. In carrying out its duties and competences, the Union may act only if the objectives of the established activities can not be achieved by the measures of the Member States, which makes the content of the principle of subsidiarity. The principle of proportionality means that the

* Gordana Paovic Jeknic, PhD, is a Full Professor at The Faculty of Law of the University of Montenegro.

[1]See: M. Prokopijević, Evropska unija, Službeni glasnik, Beograd 2008. S. Stojanović, Budžet Evropske unije, Finansije 1-6/2006. Beograd, D.Djurić, Koheziona politika i pretpristupna podrška Evropske unije, FOSI, Podgorica, 2009.

measures or means used by the European Union must be proportionate to the aim and the principle of solidarity requires the Member States to work together in order to develop political solidarity, etc.[2]

Montenegro's European integrations imply integration from an economic, legal and political point of view, with particular emphasis on strengthening the internal EU policy, in which the tax and budget systems play a special role. For this reason, when adopting the new curriculum at the Faculty of Law of the University of Montenegro, a special place within the framework of Basic studies belongs to course Financial Law, and in Master's studies Tax Law which, in accordance with the process of Montenegro's accession to the European Union, has been supplemented with topics of tax and budget law of the European Union.

Specifically, courses Financial Law and Tax Law in Basic and Master's studies are now conceived in a way which allows students of the Faculty of Law first get acquainted with the basic institutes in the field of tax and budget law of Montenegro and contemporary Western European countries and then acquire knowledge in the field of European Union law, starting from harmonization in the area of indirect and direct taxes, positive and negative tax integrations (EU Treaty, directives, European Court of Justice practice) and to the budget of the European Union (drafting procedure, issuing, executing and controlling EU budgets, principles and the European Court of Auditors).

Bearing this in mind, and in the context of achieving the goals set by the CABUFAL project, this analysis has several important elements:

1. An overview of the curriculum analysis of the Faculty of Law of the University of Montenegro, which is part of the CABUFAL project made by the Faculty of Law of the University of Ljubljana, in the part related to course Financial Law in Basic studies.

2. Application of experience and training results and study visits within CABUFAL.

3. Key challenges in the part of changes of the content of courses Financial Law and Tax Law (EU Tax and Budget Law), as well as in the incentive plan for students to understand key legal concepts, the position of EU Tax and Budget Law in the national legal system and relation with other branches of the law.

4. Contributions of "Europeanization" of teaching in courses Financial Law and Tax Law (Tax and Budget Law of the EU), with the

[2] See: G.Djurović, Evropska Unija i Crna Gora, Univerzitet Crne Gore-Ekonomski fakultet, Podgorica 2012.

introduction of modern teaching methods and practice, which is the result of CABUFAL activities.

2. REVIEW OF THE ANALYSIS OF THE CURRICULUM BY THE FACULTY OF LAW, UNIVERSITY OF LJUBLJANA

The Faculty of Law of the University of Ljubljana under the CABUFAL project has carried out an analysis of the curriculum of the Faculty of Law of the University of Montenegro, as well as an analysis of the content of course Financial Law studied within Basic (*bachelor*) studies. In this analysis, it is particularly emphasized that course Financial Law deals with taxes and budget management, which is already a "European element". It should be noted in this connection that this is a kind of confirmation of the fact that the subject matter of Financial Law is largely compatible with the same or similar courses at European universities because it deals with the most important public finance institutions: tax and budget in a modern and European way. Thus, students of the Faculty of Law in a comprehensive and systematic way are already studying the most important institutes of tax and budget law of Montenegro and contemporary Western European countries in Basic studies.

Considering the further improvement of course Financial Law, and having regard to the recommendations and suggestions of the Faculty of Law of the University of Ljubljana about the need to introduce teaching units from the field of European Union law into the curriculum of the Faculty of Law of UM, a great opportunity arose regarding supplementing and concretizing the curriculum of course Financial Law with topics from EU Tax and Budget Law such as: harmonization in the field of direct and indirect tax, tax cooperation, positive integration in the field of tax (EU Treaty, directives), negative integration in the field of tax (European Court of Justice practice), eliminating double taxation. Furthermore, The European Union budget structure, process of drafting and adopting the budget of the European Union (from the European Commission to the Council of the European Union and the European Parliament), concluding with the budget execution and budgetary control in the European Union (Finance controllers and the European Court of Auditors).

Also, bearing in mind the name of the course, the professors of the Faculty of Law of the University of Ljubljana suggest that new teaching units be added relating to: the common financial services market and harmonization process, new initiatives and legislation about financial services of the EU, with discussion of roles and duties of banks. Bearing in mind

the above-mentioned suggestions, we should note that in the theory of finance, finances are divided into finances in the narrower and broader sense. Finances in the narrow sense include public finances and imply the financial activity of the state, i.e. financial economy, aimed at collecting monetary means to finance public expenditures. Finances in the wider sense include public finances of the state, business finances (individual entrepreneurs and companies) and monetary finances (Central Banks, Business Banks and Insurance Companies).[3] Taking all this into account and accepting the Roman-German legal theory and practice, Tax and Budget Law is studied at the Faculty of Law of the University of Montenegro within the framework of the single course Financial Law. On the other hand, we take into account the real needs and European path of Montenegro, in order to consider and add in a timely manner the above mentioned proposals and content in the area of monetary finance and EU finances.

Finally, while respecting the proposal to introduce additional foreign literature provided by the professors of the Faculty of Law of the University of Ljubljana, in addition to the domestic authors, foreign authors should also be included especially in the part of EU law.

3. APPLICATION OF EXPERIENCES AND RESULTS OF TRAINING AND STUDY VISITS WITHIN CABUFAL

During the course of the CABUFAL project in lectures, workshops and study visits, we had the opportunity to get acquainted with the experiences and good practice at partner universities in the region and Europe (London, Saarbrucken, Ljubljana, Zagreb, Split, Skopje). The main goal was the transfer of knowledge and experience, as well as the improvement of teaching and educational programs at the Faculty of Law of the University of Montenegro. What has been a special contribution to this project is the need for a greater degree of „Europeanization" of the curriculum of a large number of courses at the Faculty of Law, so that the entire teaching and education process or curriculum at the Faculty of Law of the University of Montenegro would be compatible with the curriculum and educational methods of faculties from European universities. Although there were no lecturers specialized in tax and budget, i.e. topics were not related to Financial Law and Tax in the lectures of professors from partner universities who were guest lecturers at the Faculty of Law in Podgorica,

[3] D. Popovic, Nauka o porezima i poresko pravo, COLPI Budimpešta i Savremena administracija, Beograd 1997, str.1

yet all of that what was heard and seen in formal and informal meetings and analyzes, influenced the content of these courses be seen in a different and European way. As a result, we have proposed changes and improvements to the curriculum of course Financial Law, with teaching units dealing with tax and budget law of the European Union.

Also, in order to monitor contemporary tendencies in the field of higher education, raising the overall level of education and quality of teaching at the Faculty of Law of the University of Montenegro, through numerous presentations and dialogues of professors and associates of the Faculty of Law with professors from partner universities, the significance and need for introducing practical classes is clearly indicated, enabling students to get to know each other and gain practical knowledge and experience on individual legal institutes during their study.

Finally, the privilege we had by listening to well-respected professors from partner universities and well-organized study visits were precious for future scientific research and pedagogical activities at the Faculty of Law, which, in the years to come, should monitor more and apply the tendencies and standards in the field of European higher education.

4. FINANCIAL LAW AND TAX LAW OF THE EUROPEAN UNION AT THE FACULTY OF LAW OF THE UNIVERSITY OF MONTENEGRO - CURRENT STATE AND CHALLENGES

As already mentioned, in basic studies at the Faculty of Law of the University of Montenegro within course Financial Law, students study basic public finance institutions: taxes, public revenues, public expenditures and budget. More specifically, the new accredited curriculum at the Faculty of Law foresees that all students in basic studies in course Financial Law acquire knowledge on basic issues in the field of tax and debts, including other public revenues (contributions, fees and public loan) as well as public expenditures. In this way, students have the ability to understand public revenues or taxes as the most important income of contemporary states starting from the concept of tax, tax justification, tax terminology and tax principles, through effects and tax purposes, tax evasion to tax division and double taxation.

Furthermore, in the second part of course Financial Law students are given the opportunity to analyze the public loan (general features of public loan, differences between private and public loan, public loan techniques, conversion and consolidation and debt ceiling) as well as

public expenditures of Montenegro and modern states (division of public expenditures, structure and causes of the increase of public expenditures, etc.). A special place in this part of the course is budget and budget law, so students first get acquainted with the basic characteristics of the budget and budget law, drafting process, adopting and executing the budget, controlling budget resources and budget principles (Montenegro and comparative experiences).

Accepting the suggestion given in the analysis of the course in Basic Studies at the Faculty of Law of the University of Montenegro, by the Faculty of Law of the University of Ljubljana, which would emphasize the "European elements", the curriculum of course Financial Law should be supplemented and specified, particularly emphasizing teaching units first in the field of EU budget. In this way the necessary Europeanization would be achieved in one part of this course, and all students of basic studies at the Faculty of Law would acquire the necessary knowledge of the most important budget issues and EU budget law. From budget revenues and expenditures, drafting process and adopting the budget of the European Union (from the European Commission to the Council of the European Union and the European Parliament), concluding with budget execution and budget control in the European Union (Financial Controllers as a type of internal-financial and preventive control of spending of EU funds) and the European Court of Auditors, which many call a „monetary consciousness of Europe" etc.

On the other hand, the Faculty of Law of the University of Montenegro, following the European trends in the field of higher education and reforming its curriculum, introduced course Tax Law (Business Law) in Master's studies. The aim is that at the end of this course, students who have chosen this orientation will be able to understand and discuss the most important elements of the Tax Law of Montenegro and Tax Law of the European Union, particularly in the area of harmonization in the field of indirect and direct taxes and to know the practice European Court of Justice. Thus, the course Tax Law is now conceived in such a way that students first get acquainted with the Tax Law as part of the legal system, to accept the principles of Tax Law derived from the Constitutional Principle of the Rule of Law. Also, to analyze tax procedure and tax-legal relationship from tax liability to tax collection, parties in tax-legal relationnship, and especially tax-property relationship, tax-legal relationship and conflict of tax laws.

Furthermore, students should learn to differentiate certain types of taxes (property tax, income tax, consumption tax, etc.) within the tax

system of Montenegro and modern states, and most importantly to get acquainted with the most important issues of EU Tax Law such as harmonization in the area of indirect and direct taxes, harmonization in the field of tax cooperation, positive integration in taxation (EU Treaty, directives), negative integration in the area of taxation (European Court of Justice practice), elimination of double taxation, as well as to know the practice of the European Court of Justice and the European Court of Auditors in the area of taxation and execution of EU budget.

Great contribution and objective result of the CABUFAL project is the need for a re-examination of the curriculum at the Faculty of Law UM (basic studies), i.e. the need for such a conceived course in Master's studies. Although in the lectures of professors from partner universities who attended the Faculty of Law in Podgorica and study visits there were no topics related to Financial Law and Tax Law, yet all that was heard and seen within formal and informal meetings and analyzes influenced a different and European way of looking at the contents of these courses. The validity of this opinion is confirmed by the firm determination of Montenegro to be the next member of a large European family and to bring its legal system into line with the law of the European Union. Specifically, the mentioned teaching units related to EU tax law (harmonization in the field of indirect and indirect taxes, harmonization in the field of tax cooperation, positive tax integration (EU Treaty, directives), negative integration in the area of taxation (European Court of Justice practice), elimination of double taxation, etc.) should be rightly transferred from Master's studies to Basic studies. This will enable all students of the Faculty of Law (and not just those who have chosen the master's degree program - Business Law) to acquire basic knowledge of the Tax and Budget Law of the European Union, within course Financial Law.

Finally, the Master's studies could keep a course that would be concerned with teaching units relating to individual types of tax, tax administration and tax procedures, strengthened by high quality practice in the state bodies (Montenegrin Customs Administration and Tax Administration of Montenegro with which we have a successful long-term cooperation and positive student reactions).

Course name:		Financial Law		
Course code	Course status	Semester	Number of ECTS credits	Class load
	Compulsory	IV	6	4L+1

Study program: Academic basic study program of the Faculty of Law (studies last 6 semesters, 180 ECTS credits)

Prerequisites: None

Course objectives: At the end of this course, students should be able to: define and understand the basic institutions of Financial Law, i.e. the basic elements of tax and budget law (Montenegro and comparative experiences), know the system of public revenues and the structure of public expenditures, explain basic tax issues: from tax terminology, goals, tax effects and tax principles to general tax classification, tax evasion and double taxation, know public loan as well as budget and budget law: the process of drafting, passing and executing budgets as well as budget control, understand European Union tax and budget law: harmonization in the field of direct and indirect taxes, positive tax integration (EU Treaty, directives), negative tax integration (European Court of Justice), as well as the EU budget, budget revenues and expenditures, adoption, execution and control of the execution of the budget of the European Union etc.

First and last name of the teacher and teaching assistant: Gordana Paović-Jeknić, PhD, Full Professor

Teaching methods: Teaching methods include lectures given by teachers and experts, practice in government bodies, exercises, discussions and research, seminar papers, as well as individual tasks and activities.
Practical class: It is performed in the part of classes planned for lectures (10 hours) and in exercises (15 hours) and includes: lectures by guest lecturers and experts, stay and practice in the Tax Administration, Customs Administration, State Audit Institution, Parliament of Montenegro and Ministry of Finance, as well as an analysis of the most important elements of tax and budget law of the European Union.

COURSE CONTENT

I week II week III week IV week V week VI week VII week VIII week IX week	Public finance and financial law, characteristics of financial economy, local finance, public revenues, historical development, distribution of public revenues, tax concepts, tax terminology Taxation principles, taxation effects, taxation objectives, tax evasion, tax classification, double taxation, other public revenues Practical classes - practice in government bodies - guest lecture by a tax expert I mid-term exam, Tax law of the EU, harmonization in the field of direct and indirect taxes, harmonization in the field of tax cooperation, conflict of tax laws, elimination of double taxation Positive integration in the field of taxation (EU Treaty, directive), negative tax integration (European Court of Justice practice). Practical class - practice in government bodies Make-up I mid-term exam;
X week XI week XII week XIII week XIV week XV week XVI-XIX	Public loan, public loan technique, debt limits, public expenditures, causes of rising public expenditure, distribution of public expenditures, structure of public expenditures. Budget and budget law, historical development of budget, budget principles (static and dynamic) The process of drafting, passing, executing and controlling the execution of budget (Montenegro and comparative experiences) Practical classes (analysis of practical examples in the area of budget and budget law - budget in government bodies - lecture by experts on budget issues) Budget and budget law of the European Union, difference between the budget of the European Union and national budgets, notion of financial perspective, budget principles. The process of drafting, adopting and executing the EU budget (from the European Commission to the Council of the European Union and the European Parliament). Structure of the EU budget (EU budget revenues), budget expenditures. Budget control in the European Union, financial controllers, European Court of Auditors, European Parliament Final exam - Make-up final exam

Student workload

Weekly	In semester
6 credits x 40/30 = 8 hours Structure: 4 hours of lectures 1 hour of exercises 3 hours of individual work	Lectures and final exam: (8 hours) X 16 = 128 hours Necessary preparations before the beginning of the semester (administration, enrollment, verification): 2 x (8 hours)= 16 hours Total course workload 6x30 = 180 hours Supplementary work for preparing and taking the make-up exam: from 0 to 30 hours Workload structure 128 hours (teaching) + 16 sati (preparation) + 30 hours (supplementary work)
Students' obligations: Students are required to attend lectures, go to practice, participate in debates and creation of tests. Students who prepare seminar papers they present them in front of others, while others participate in debates after the presentation of their papers.	
Literature: Basic: D. Aleksić- G. Paović Jeknić, Finansije i finansijsko pravo, Univerzitet Crne Gore, Pravni fakultet, Podgorica 2001.; D. Popović, Poresko pravo, Univerzitet u Beogradu, Pravni fakultet, Beograd 2015; G. Paović -Jeknić, Budžetsko pravo, Univerzitet Crne Gore, Pravni fakultet Podgorica 2007.; G. Ilić Popov, Poresko pravo Evropske unije, Službeni glasnik, Beograd 2004.; J. Šimović –H.Šimović, Fiskalni sustav i fiskalna politika EU, Sveučilište u Zagrebu, Pravni fakultet 2006.; S. Stojanović, Finansiranje Evropske unije, Službeni glasnik Beograd 2008.; M.Helminem, EU Tax Law- direct taxation2018, IBFD, October 2018, Additional: D. Popović, Nauka o porezima i poresko pravo, Univerzitet u Beogradu, 2007; G. Paović -Jeknić, Budžetska kontrola, Univerzitet Crne Gore, Podgorica 2000.; Gianni de Luca, Diritto tributario, Ed.Simone, Napoli 2002.; B. Jelčić i grupa autora, FInansijsko pravo i finansijska znanost, Narodne novine, Zagreb 2002. ; G. Đurović, Evropska Unija i Crna Gora, Univerzitet Crne Gore, Ekonomski fakultet 2012.; D. Đurić, Koheziona politika i pretpristupna podrška Evropske Unije, FOSI, Podgorica 2009.; M. Prokopijević, Evropska Unija, Službeni glasnik, Beograd 2008.; Mattehias Haentyens-Pierre de Gioia-Carabellese, European banking and Financial law, Routledge 2015.	
Forms of assessment and grades: I mid-term exam up to 50 points (a student taking the make-up mid-term exam cannot keep the points he/she got on the regular exam) Final exam up to 40 points Seminar paper and practical classes up to 10 points	
Name of the teacher who provided the information: Gordana Paović-Jeknić, PhD, Full Professor	
Note: All additional information can be obtained in class, exercises, consultations or www.pravni.ucg.ac.me	

Aneta Spaić*

INTERNATIONAL BUSINESS LAW IN THE MONTENEGRIN EDUCATION AND LEGAL SYSTEM

1. INTRODUCTION – SUBJECT ANALYSIS AND OBJECTIVES

The European integration process of Montenegro, with the implied harmonization of Montenegrin with respect to European law, effectively started in 2010, by signing the Stabilization and Association Agreement between the EU, its member states and Montenegro (hereinafter: the Agreement).[1] With this document, Montenegro committed itself to the harmonization of its legislation, stances and policies in all areas of cooperation, in accordance with the principles of the rule of law, human rights and civil liberties. In particular, Article 72 of Chapter VI - *Harmonization of legislation, enforcement of laws and competition rules,* Montenegro committed itself to the process of harmonization of the existing legislation in Montenegro with the legislation of the Community[2].

Thus, Montenegro's full membership in the EU implies not only the harmonization of legislation and its effective implementation, but also the generation of awareness of duty to respect the "rights and obligations of citizens and institutions inherent in European space"[3]. National policies, institutes, emerging from European space, increasingly represent the knowledge and skills needed for wider regional or European markets, and as such must be placed in the area of higher education. The Faculty of Law, as the most important higher education institution in every society, must essentially show optimal ways of acquiring competitive abilities and students of the Faculty of Law, who will, from the positions of law graduates

* Aneta Spaic, PhD, is an Associate Professor at Faculty of law University of Montenegro.

[1] Montenegro signed the 2007 Agreement. However, the Agreement became binding when all EU Member States signed it - 1 May 2010.

[2] This alignment of the existing and future law with legal regulations - the acquis, is being implemented in several phases in the areas of finance, justice, freedom, security, trade, and education.

[3] Syllabus of the Faculty of Law of the University of Zagreb available at: https://www.pravo.unizg.hr/EJP/euwto, https://www.pravo.unizg.hr/EJP/studiji__studies/pravo_eu_pred_sudovima

- judges, prosecutors, notaries and other legal positions, need it in the European market which requires knowledge of the *acquis.*

Also, in accordance with the goals stated in Chapter 26 – referring to *Education and Culture*, Montenegro includes in its national territory an EU education policy segment, education and training in line with new EU market requirements, creating high quality education, improving student competencies based on practical knowledge, improvement of educational infrastructure, professional knowledge, competencies of teachers, as well as developing a system for monitoring and improving the quality of education[4].

Although the reform and accreditation process were completed in 2017, it did not adequately respond to the needs for the europeanization of the curriculum of particular courses. The change of the curriculum, which means the incorporation of EU elements into the syllabi, imposed itself as a specific goal of CABUFAL. In addition, the acquisition of adequate skills and knowledge of course teachers and students are additional reasons that have determined that the Faculty of Law of the University of Montenegro (hereinafter: FL) approaches the overall process of europeanization of the curriculum[5]. CABUFAL's project task of preparing and producing this publication implied:

- CABUFAL analysis of the subject matter of the curriculum of the basic studies of the Law Faculty of the University of Montenegro according to the predefined dynamics and phases. The same analysis was originally created by the Faculty of Law at the University of Ljubljana, redacted-supplemented by consortium institutions, and finally, through the Proposals for changes of individual syllabi it was concretized.

• Presentation of comparative practices and contents in which different components of International Business Law are studied.

[4] Chapter 26 – Education and culture was temporarily opened and closed on 15 April 2013 available at: https://www.eu.me/mn/26/item/71-poglavlje-26-obrazovanje-i-kultura

[5] This procedure started with the initial review of the current - reformed syllabi, and will end with their modification through the best practices of studying EU law, up to 30 ECTS credits.

2. REVIEW OF THE INDIVIDUAL ANALYSIS OF THE SYLLABUS OF INTERNATIONAL BUSINESS LAW SUGGESTED BY THE COURSE TEACHER

The CABUFAL project which provided for Europeanization of the curriculum of the Faculty of Law of the UM started with individual analysis of each of the courses in basic studies, which, at the beginning of the project, was suggesting different instruments and ways of approaching syllabi of comparative systems[6]. The process of introducing EU elements is manifested not only through the changed name of the teaching unit, but through the change of the content of the study material. The revised teaching unit shown through its title could be added to the existing or treated as an independent one, so some of the proposed changes related to: legal regulation of international business operations with EU business regulations through founding contracts and basic principles: freedom of movement of goods, services and capital, people; international organization as a subject of International Business Law[7] - supplemented with the EU as a special actor of international business; WTO as a subject of PIL, an international company supplemented with the process of founding an EU company; cross-border connections; the right of investment with special consideration of the new generation agreement, resulting disputes, the right of competition, with special amendments to the relevant EU regulations (Agreements, Regulations, Decisions), Arbitration Law.

According to the evaluation of external evaluators - a consortium of partners, the proposed structure of International Business Law is extensively set up, and requires a reduction of the subject matter covered by teaching units.

[6] Teachers suggested that the process of Europeanisation be implemented through four significant segments: 1) Changing the structure of the existing teaching units; 2) Introduction of new teaching units; 3) Establishing additional bibliographic compulsory and optional titles; 4) Supplementation of objectives, outcomes, content and comparability of courses.

[7] The course name both regionally and globally can vary - International Business Law, International Trade Law or International Business Transactions Law.

3. INTERNATIONAL BUSINESS LAW AT THE FACULTY OF LAW OF THE UNIVERSITY OF MONTENEGRO – CURRENT STATE AND CHALLENGES

International Business Law (hereinafter: IBL) was first found in the curriculum of the Faculty of Law, accredited by all faculty units of the University of Montenegro, in June 2017. Thus, the IBL course is in VI semester, with a load of 6 ECTS credits - 4+ 1. In other words, no law alumnus of the Faculty of Law was exposed to the content of the course, which is for the first time classified in the syllabus of the curriculum for the third year of basic studies, in the module for Private Law. Accredited - current syllabus for the course in basic studies, IBL is designed according to the traditional regional model of all textbooks and teachers in the countries of the region, and can be divided into two parts: *Standard* (traditional) and *fluctuating* segment of the syllabus.

The common denominator of the content of all the considered syllabi - the traditional part - implies the examination of the overall legal framework relating to the conventional law of both global and commercial law and the EU legal framework in which business transactions take place between business entities. Also, the common denominator includes the following topics: New *Lex mercatoria*, harmonization of EU Contract Law, international organizations (of geenral importance, financial organization, important to the World Bank Group, regional economic integrations), state (*de iure imperii* and de *iure negotii*), companies (national, foreign legal entities, transnational companies), World Trade Organization (WTO), agreement on the establishment of a multilateral trade organization, GATT and WTO relationship, other multilateral trade agreements, dispute resolution in WTO, international trade contracts, contract on international sales of goods - CISG, following contracts for international sale, financial leasing, factoring and franchising.

The second part of the syllabus refers to teaching units that represent the prelude of independent legal disciplines such as: Law of Investments (International Investment Law with special reference to ICSID and Investment Arbitration, role of ECJ - Achmea and other EU cases), International Arbitration Law, Competition law. All three units are in the accredited syllabus of the Faculty of Law - the second cycle of studies – master's studies. This concept of International Business Law enables students in basic studies to acquire basic knowledge of special disciplines

that will be studied in detail in master's studies[8], within the framework of International Business Law.

4. APPLICATION OF CABUFAL EXPERIENCES - FURTHER EUROPEANIZATION OF THE CURRICULUM IN THE FIELD OF INTERNATIONAL BUSINESS LAW

Europeanization of the curriculum involves not only the introduction of EU elements - teaching units in the syllabi of traditional legal disciplines, but also in the placement of the best scientific methods of studying them. CABUFAL experience in the observation of syllabi and methodological tools relevant to EU law faculties have been of great use in the creation of the final Proposal for the change of the current silabus. CABUFAL has made the process of Europeanization of the curriculum effective, purposeful and desirable through two components of activities - 1) training, and 2) study visits with bilateral teacher consultations.

1) The Faculty of Law of the University of Montenegro, through the CABUFAL project, implemented-hosted twelve lecturers who trained the academic staff of the Faculty of Law on various topics with a focus on EU elements[9]. Although none of the guests were originally hired in the International Business Law course, some of the lectures largely responded to the content of individual teaching units, thus facilitating the selection of topics and material selection.
2) The second component of CABUFAL included study visits with teacher consultations. In this regard, the visits and observations of the syllabus to Europa Institute of the University of Saarland, the Iustinianus Primus Law Faculty in Skopje, the Faculty of Law at

[8] The beginning of the study of this subject matter in many ways implies previously adopted elements of EU law (sources, competences).

[9] Regent University (Mireille Hebing, Neven Andjelic, Yossi Mekelberg), Faculty of Law, University of Ljubljana (Prof. dr Vasilka Sancin, Dr Masa Kovic Dine), Iustinianus Primus Faculty of Law (Karolina Ristova AAsterud, Jadranka Dabovic Anastayovska), Faculty of Law, University of Split (Petar Bačić, Arsen Bačić)
Faculty of Law, University of Zagreb (Mihovil Škarica, Ksenija Grubišić, Marko Jurić).

the University of Split[10], Faculty of Law of the University of Ljubljana[11], Faculty of Law of the University of Zagreb.[12]

3) Also important for identifying and selecting the subject matter are the syllabi of law faculties that are not directly considered through the project: Syllabi of the Faculty of Law of the University of Belgrade[13], Faculty of Law of the University of Rijeka[14], and the syllabus of the Faculty of Law of the University of Maastricht[15].

In addition to the Proposal of the Supplementary Literature by *Nicola de Luca*, the Basics of European Company Law, the consortium report suggested the division of the subject matter of International Business Law into three components: Vienna Convention on Contracts on International Sale of Goods, Investment Law as well as WTO Law. This structure of the content of the course of International Business Law is partly conditioned by other courses and their thematic / teaching content. In that sense, initially included teaching units within the scope of International Business Law, relating to the Arbitration Law and the Law of Competition, according to the consortium reports, were to be excluded from the contents of the course of International Business Law. Namely, their subsequent treatment through independent legal discipline has resulted in their substitution through units that are not processed within the framework of the syllabus, which is the field of Investment Law.

In addition to the usual traditional PIL units, which include: World Trade Organization (WTO), Agreement on the Establishment of a Multilateral Trade Organization, Basic Principles, Relationship between GATT and WTO, other multilateral trade agreements, WTO Dispute Resolution, the EU Foreign Trade Policy, and WTO-EU relationship,

[10]Faculty of Law, University of Split, available at: http://www.pravst.unist.hr/kolegiji.php?p=153

[11]Faculty of Law of the University of Ljubljana, available at: http://www.pf.uni-lj.si/media/ucni.nacrt.mednarodno.gospodarsko.pravo.b2.2018.pdf

[12]Syllabus of the Faculty of Law, University of Zagreb, available at: https://www.pravo.unizg.hr/EJP/euwto,
https://www.pravo.unizg.hr/EJP/studiji__studies/pravo_eu_pred_sudovima

[13]http://www.ius.bg.ac.rs/Studije/SilabusiPF2013.pdf?fbclid=IwAR2JL9O8tyKenkMxMfkaVpVpyK073DJW2ZsYb5jhVeo4aPNargUABO7UTF

[14]Faculty of Law, University of Rijeka, available at: https://pravri.uniri.hr/files/studiji/FPTD/opispredmetafptd.pdf

[15]Faculty of Law, University of Maastricht, available at: https://www.pravo.unizg.hr/EJP/studiji__studies/pravo_eu_pred_sudovima,
https://www.rug.nl/rechten/education/international-programmes/llm/eu-trade-law

degree of integration of EU policy in relation to the level of integration that WTO achieves is a significant segment of the proposed syllabus. [16]

Special focus of the revised PIL syllabus is on EU Investment Law. The need for Investment Law as an important segment of the International Business Law syllabus came from not only the suggestion of a consortium of partners, but also from several additional arguments: 1) Significance of the rights of investment in the EU legal and economic space[17], 2) Significance of the study of investment rights for Montenegro, 3) Lack of another course in the FL curriculum that deals with investment issues in all study cycles. The fact that neither the International nor the EU Investment Law is being studied at any level of the study has significantly determined that five teaching units of this course are dedicated to this topic.

The focus of the syllabus on the issue of trade in the EU Common Commercial Policy[18] is imposed by the fact that the Lisbon Treaty[19] transferred the competence of member states to the Union, and thus increased the capacity and position of the Union to efficiently and effectively create a coherent regulatory regime for foreign investments[20]. The EU Common

[16] While European law prohibits customs between Member States, the WTO implies the application of the principle of the most privileged nation and seeks to gradually reduce customs duties. See more from the sy labus of the Faculty of Law of the University of Zagreb, available at: Syllabus Faculty of Law, University of Zagreb, available at: https:// www.pravo.unizg.hr/EJP/euwto, https://www.pravo.unizg.hr/EJP/studiji__ studies/pravo_eu_pred_sudovima. Also see: Commission v Italy EU: C: 1969: 29, br. 24/68, Humblot v Directeur des Services Fiscaux EU: C: 1985: 185, No. 112/84, Commission v United Kingdom, EU: C: 1983: 202, 170/78

[17] The European Union is one of the three major international actors in international trade. With a 3457 billion euro exchange rate, the EU has achieved the most trade in the world in 2018. Statistics of the world's global trading opportunities, viewed through the parameters of imports and exports, includes a detailed analysis of the European Union both in the world market and in relation to the trade operations of EU Member States. For more information, see https://ec.europa.eu/eurostat/statistics-explained/index.php?title= International_trade_in_goods/en: "The trade in the EU-28 group of goods accounts for approximately 15% of world trade in goods. The value of international trade in goods is significantly higher than the value of international trade in services (approximately three times), which is a consequence of the nature of some services that make it difficult to provide them across borders. "

[18]https://ec.europa.eu/eurostat/statistics-explained/index.php?title=International_trade_ in_goods/hr

[19] The Treaty on the European Union, Article 3, as well as the Treaty on the Functioning of the European Union, Chapter II, which regulates the field of the Common Commercial Policy.

[20] Ciric A., Cvetkovic N., Karakteristike pravnog rezima stranih direktnih investicija u pravu EU, Zbornik radova Pravnog fakulteta u Nisu, (Broj 68, Godina LIII, 2014, str.680-681.

Commercial Policy came from the Lisbon Treaty, Regulation on the Establishment of a Transitional Regime for Bilateral Investment Agreements between Member States and Third States[21], and the judgment of the European Court of Justice also required re-examination, as well as the confirmation of the supremacy of communal law in relation to the regime of foreign investments established by bilateral investment agreements.

The exclusive jurisdiction in the field of Common Commercial Policy specifies that the Union contributes to the gradual abolition of restrictions in international trade by the Common Commercial Policy, in line with the development of world trade[22], and a customs union which involves trade in goods and includes the prohibition of import and export duties between Member States[23] and the introduction of a special joint customs tariffs for all third countries[24].

In the particular focus of this course is the topic of BITs as instruments for the protection of foreign investments, which allows investors to protect themselves from the host country. BITs as international treaties have opened up the issue of the relationship of European Union law and international law, especially considering it through arbitration decisions, which gave priority to international law, thus problematizing the supremacy of EU law and its autonomous character. The interpretation of BITs is in the jurisdiction of the Court of Justice, so their validity - as a

[21] The Regulation provides a balance between the need for the EU to achieve the effective protection of its investors and a sufficient regulatory space for implementing the appropriate policy.

[22] Article 206 CHAPTER II. Common Commercial Policy.

[23] Article 28 of the EU Treaty on the Functioning of the EU. Common commercial policy is based on unified principles, in particular with respect to "customs tariff changes, customs and trade agreements on trade in goods and services and commercial aspects of intellectual property, direct foreign investment and achievement of uniformity of liberalization measures, export policy and measures for the protection of trade such as those undertaken in the event of dumping or subsidies."

[24] Article 207 Treaty on the Functioning of the EU: Common Commercial Policy shall be guided in the context of the principles and objectives of the Union's external action. Adoption of measures for the implementation of the common commercial policy is within the competence of the European Parliament and the Council. The role of the Commission and the Council in the negotiation process, and ensuring the consistency of the agreement with the Union's policy, in accordance with Union's rules. The theme of these units is the trade in services and commercial aspects of intellectual property as well as direct foreign investments, the Council decides unanimously if those agreements contain provisions requiring unanimity in the adoption of internal rules.

source of law - must be assessed in accordance with EU law, in accordance with the fundamental principles of the EU.[25]

Applying and introducing the internationally recognized textbook for International Business Law Folsom, R.H., Gordon, M. W., Spagnole, J. A., International Business Transactions, WestLaw[26] - will substantially respond to the legally established requirement for practical teaching. This textbook on each of the teaching and sub-topics is a legal problem - a concrete *ad acta* course and a case study that are analyzed as an important segment of the study of the subject matter.

INFORMATION FOR STUDENTS AND SYLLABUS

	Course title:		*International Business Law*	
Course code	*Course status*	*Semester*	*Number of ECTS credits*	*Class load*
	Compulsory	*VI*	*6*	4+1

Study program : Academic basic studies of the FACULTY OF LAW, legal department - PODGORICA, 2017/18 (studies last 6 semesters, 180 ECTS credits).

Prerequisites: none

Course objectives: International business law is a scientific discipline which deals with relations between economic entities characterized by the presence of foreign element. From the content point of view, the course is designed so that the basic areas of study include *Introduction to International Business Law, International Company Law, International Contract Law, Arbitration Law, Foreign Investment Law, and Competition Law.*

Study outcomes

After the student passes International Business Law exam, he / she will be able to:

1. understand international legal framework and EU legal famework in which business transactions take place between business entities,
2. understand the role and importance of international organiations in creation and application of business law with emphasis on EU as *sui generis* of business actor;
3. understand the role of WTO as well as its system of dispute resolution;
4. distinguish between the role of the state as the subject of public and private business law, and therefore understand its *de iure negotii* and *de iure imperii* nature;
5. analyze current processes of global and EU business through the process of harmonization and unification of Business Law;
6. master basic individual contractual relations with foreign element such as: all types of purchase and sale, representation, mediation, commission, spedition, insurance, tourism, transport, leasing, factoring and franchising in global and EU context;
7. identify and point out to the specificity of foreign legal investments, understand their importance in Business Law.

[25] Radovan Vukadinović, The harmful effect of arbitration dispute settlement from the European Union's internal agreements on the protection of foreign investments to the legal order of the European Union, available at: http://ojs.ius.bg.ac.rs/index.php/anali/article /view/284

[26] Međunarodni trgovački poslovi u sažetom obliku, Pravni fakultet Sveučilišta u Rijeci i COLPI, Biblioteka prijevodi, 1998 used at the Faculty of Law of the University of Rijeka, of 1997, when it was translated into Croatian.

Course content: Attending the course enables students to familiarize themselves with the basic institutes of international and EU business law, as well as positive legal choices of domestic legislation in the field of company, commercial, contractual, investment law and rights of WTO. The prescribed segment of practical education, in all teaching units, will be incorporated into this course, and at the end of the teaching and examination process it will be expected from students to acquire not only theoretical but also practical knowledge.		
First and last name of the teacher and teaching assistant: *Aneta Spaic, PhD, Associate Professor*		
Teaching methods: Lectures, exercises, practical class, consultations		
WORK PLAN		
Week	*Names for teaching units methods (L), exercises (E) and other teaching contents (O);*	
I –	*L/E/O*	Introductory remarks on the course and literature
II-	*L/E/O*	Concept, object, sources, relationship with other branches of law, with a particular focus on the relationship with EU law.
III-	*L/E/O*	New Lex mercatoria. Unification of IBL. Harmonization of IBL. Harmonization of EU Contract Law.
IV-	*L/E/O*	Entitites: International organizations (of general importance, financial organization, of importance to the World Bank Group, regional economic integration), state (*de iure imperii and de iure negotii*), companies (national, foreign legal entities, transnational companies).
V-	*L/E/O*	World Trade Oragnization (WTO). Contract on establishment of multilateral trade organization. Relations between GATT and WTO. Other multilateral trade contracts. Dispute resolution in WTO.
VI-	*L/E/O*	Foreign trade policy EU. WTO - EU.
VII-	*L/E/O*	International trade contracts: Contract on international sale of goods - CISG
VIII-	*L/E/O*	International trade contracts: Contract on international sale of goods - CISG
IX-	*L/E/O*	Follow-up contracts to international sales. Financial leasing, factoring and franchising.
X-	*L/E/O*	Mid-term exam
XI-	*L/E/O*	Make-up exam
XII-	*L/E/O*	Legal framework of foreign investments. Special forms of foreign investment.
XIII-	*L/E/O*	New generation of contracts. Multilateral and bilateral investment models.
XIV-	*L/E/O*	Addressing the specifics of investment disputes. ICSID and other investment arbitrage
XV-	*L/E/O*	EU investment law. ESP. Achmea and other relevant courses
XVI-		*Finals*
XVII-		*Verification of semester and enetering grades*
XVIII-XXI-		*Additional lectures and make-up final exams*
Students' obligations: Students are required to attend lectures, participate in debates and take exams. Students who have written their term paper they defend it in front of others, while others participate in debates after the presentation.		

Student workload	
Weekly	In semester
6 credits x 40/30 = 8 hours Structure: 4 hours teaching 1 hour exercises 3 hours individual student work (preparation for lab exercises, mid-term exams, homework) including consultations	Teaching and finals: (8 hours) x 16 = 128 hours Necessary preparation before beginning of semester (administration, registration, verification): 2 x (8 hours) = 16 hours Total course workload: 6 x 30 = 180 hours Additional work for preparation for finals in the make-up term, including make-up finals from 0 - 30 hours. Workload structure: 128 hours (teaching) + 16 hours (preparation) + 30 hours (additional work)

LITERATURE:

A) Mandatory:

1. Đurović, R.: Međunarodno privredno pravo, Beograd, 2004;
2. Vasiljević, M.: Trgovinsko pravo, Beograd, 2014;
3. Vukadinović, R: Međunarodno poslovno pravo, Kragujevac, 2012.

B) Additional:

4. Andre Feibig, EU Business Law, American Bar Association, 2016.
5. Beate Sjåfjell, Anja Wiesbrock, The Greening of European Business Under EU Law: Taking Article 11 TFEU Seriously, Routledge, 2015.
6. Nicola de Luca, European Company Law: Text, Cases and Materials, Cambridge University Press, 2017.
7. Gabriel Moens and John Trone, Commercial Law of the European Union, Springer, 2010.
8. Carić, S., Vilus, J., Šogorov, S: Međunarodno privredno pravo, Novi Sad, 2000;
9. Draškić, M.., Stanivuković M: Ugovorno pravo međunarodne trgovine, Beograd, 2005;
10. Draškić, M: Međunarodno privredno ugovorno pravo, Beograd, 1990;
11. Đurović, R.., Ćirić, A: Međunarodno trgovinsko pravo - Opšti deo, Niš, 2005;
12. Folsom, R.H., Gordon, M.W., Van Alstine, M.P., Ramsey, M.D: International Business Transactions: A Problem-Oriented Coursebook, 12th and Documents Supplement for International Business Transactions, 2015;
13. Jankovec, I: Privredno pravo, Beograd, 1999;
14. Jovanović, N: Praktikum iz trgovinskog prava, Beograd, 1999;
15. Ljutić, B: Bankarsko i berzansko poslovanje, Beograd, 2004;
16. Mlikotin-Tomić, D: Pravo međunarodne trgovine, Zagreb, 1999;
17. Stojiljković, V: Međunarodno privredno pravo, Beograd, 2001;
18. Subotić-Konstantinović, N: Uvod u međunarodno privredno pravo, Beograd, 1999;
19. Šulejić, P: Pravo osiguranja, Beograd, 1997;
20. Varadi, T: Medjunarodno privatno pravo, Beograd, 2000.

Examination methods and grades:
- Mid-term exam up to 40 points;
- Interraction and seminar papers up to 10 points;
- Final oral exam (total subject matter) up to 50 points

The passing grade is obtained if 50 points are collected cumulatively.

Grade	*A*	*B*	*C*	*D*	*E*
Number of points[5)]	*90-100*	*80-89*	*70-79*	*60-69*	*50-59*

Maja Kostić-Mandić*

THE BEST TEACHING PRACTICE IN THE AREA OF EU PRIVATE INTERNATIONAL LAW

1. INTRODUCTION

Introduction of a more detailed study of EU Private International Law within course Private International Law which, especially in the 21st century[1], has been largely unified by the adoption of a number of regulateons relating to Private International Law[2] at the Faculty of Law at the Uni-

* Maja Kostic Mandic, PhD, is a Full Professor at The Faculty of Law of the University of Montenegro.

[1] After the Treaty on the European Union entered into force (Lisbon Treaty, consolidated version, [2012] OJ C 326/13), the legal basis for the competence of the European Union in this area is contained in Article 67 (4) and Article 81 of the Treaty on the Functioning of the European Union (consolidated version, [2012] OJ C 326/47)). Article 81 establishes the legal basis for the adoption of measures aimed at achieving the uniform rules of the Member States in the area of determining the relevant law and the issue of international jurisdiction, procedure and recognition and enforcement of foreign court decisions.

[2] The most important regulations that in their importance and effect on comparative rights exceed the EU are: Regulation no. 44/2001 on jurisdiction and on recognition and enforcement of judgments in civil and commercial matters (Brussels I Regulation), or Regulation no. 1215/2012 on jurisdiction and on recognition and enforcement of judgments in civil and commercial matters (Amended Brussels I Regulation of 2012), Regulation no. 2201/2003 on jurisdiction and on recognition and enforcement of judgments in marital affairs and matters of parental responsibility (Brussels II bis Regulation), Regulation no. 864/2007 on establishing the applicable law for non-contractual obligations (Rome II Regulation), Regulation no. 593/2008 on establishing the applicable law for contractual obligations (Rome I Regulation), Regulation no. 4/2009 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations, Regulation no. 1259/2010 on the introduction of enhanced cooperation in the area of the applicable law for divorce and separation (Rome III Regulation), Regulation no. 650/2012 on jurisdiction, applicable law, recognition and enforcement of judgments and authentic instruments in the field of succession and creation of a European conviction on succession (Regulation on succession - Regulation IV); 1103/2016 on the introduction of enhanced cooperation in the area of jurisdiction, relevant law and recognition and enforcement of decisions in matters of the marital property regime (Regulation on the marital property regime) and Regulation no. 1104/2016 on the introduction of enhanced cooperation in the area of jurisdiction, relevant law and recognition and enforcement of decisions in matters of property consequences of registered partnership (Regulation on the property consequences of registered partne-

versity of Montenegro coincides with the beginning of the CABUFAL project, as well as publishing textbooks[3] for the course, which significantly deals with this matter. Civil law relations with an international element in the field of conflict of laws (in the field of relevant law) at this faculty are studied exclusively within course Private International Law, in third year of studies, within one semester, with a 60-hour class load (four hours of lectures per week and one exercise), and there is one lecturer hired in this course, without assistants. Some issues that are part of the civil procedure law with an international element in addition to Private International Law are also covered by some other legal disciplines (primarily by Civil Procedure Law and courses involving some segments of dispute resolution through international trade arbitration), while the rights of aliens to enter civil law relations, even the rights of citizens of EU Member States, are studied only at the level of general principles. One of the specifics of this legal discipline is the existence of a large number of international treaties, which also legally bind both Montenegro and the member states of the European Union.

Some issues that are part of the Civil Procedure Law with international element in addition to the Private International Law are also covered by some other legal disciplines (primarily Civil Procedure Law and cases involving some segments of dispute resolution through international trade arbitration), while the rights of aliens to enter civil law relations, even the rights of citizens of EU Member States, are studied only at the level of general principles. One of the specifics of this legal discipline is the existence of a large number of international treaties, which also oblige both Montenegro and the member states of the European Union.[4]

rship). Procedural sources include: Regulation no. 1346/2000 on bankruptcy, Regulation no. 1206/2001 on cooperation between the courts of the Member States in the field of evidence in civil and commercial matters, Regulation no. 805/2004 on the European enforcement order, Regulation no. 1896/2006, which introduces the procedure of the European Payment Order, Regulation no. 861/2007 on the introduction of the European Small Claim Procedure and Regulation no. 1393/2007 on delivery of judicial and extrajudicial letters in civil or commercial matters in member states from 2007.

[3] Maja Kostić-Mandić, Međunarodno privatno pravo, Univerzitet Crne Gore, Pravni fakultet, Podgorica, 2017.

[4] Particularly important are the "Hague Conventions": https://www.hcch.net/en/instruments /conventions (18 January 2019).

2. A review of the analysis of the curriculum of the Faculty of Law of the University of Montenegro, made by the Faculty of Law of the University of Ljubljana - in the part relating to Private International Law

We consider it indisputable that the teaching of a positive legal course should be addressed to the needs of future law graduates. In Montenegro, since 2014, the Private International Law Code of Montenegro[5] (PILC) has been applied, which, in accordance with Article 80 of the Stabilization and Association Agreement, is aimed at aligning national law with EU law in this area. The law provides for the application of EU law in two ways: by incorporating provisions of EU regulations into national law in certain areas and for certain types of relations with certain changes, but also by direct reference to EU law. In the latter case, the PILC explicitly provides that the interpretation and application of the provisions relating to contractual and non-contractual obligations shall be carried out in accordance with the Rome I and Rome II Regulations.[6] With regard to establishing the relevant right to maintenance obligations, the provisions of the 2007 Hague Protocol on the applicable law for maintenance obligations (which are part of EU law and applied to the Regulation on maintenance obligations) are fully taken over. The inheritance area is modeled according to Rome IV Regulation. In the area of international jurisdiction, the decisions of the Brussels I Regulation have been largely taken over. In view of the above, and the fact that this is a course at the level of undergraduate studies, adequate attention has been psid to the study of EU Private International Law, as stated in the Analysis done at the Faculty of Lw of the University of Ljubljana, but primarily taking into account the material that is being applied today in Montenegro, as a candidate country for EU membership. This is also supported by the fact that in the basic textbook[7] used in this field at the Faculty of Law of UM of 384 pages of

[5] Private International Law Code ("Official Gazette of Montenegro", no. 1/2014, 6/2014 - revised 11/2014 - revised, 14/2014 i 47/2015 – other law).
[6] See Articles 49 i 67 of the PILC.
[7] Maja Kostić-Mandić, Međunarodno privatno pravo, Univerzitet Crne Gore, Pravni fakultet, Podgorica, 2017.

the basic text[8], the method units that have EU law are about 66 pages[9], while this number is larger when added to it and those methodological units within which the institutes of national law are being studied, and which are taken over from EU law (eg, applicable law for contracts, non-contractual obligations, inheritance and maintenance), resulting in an amount of about 80 pages and a share of about 21% in the study matter relating to EU law.

The idea stated in the Analysis that, even now, within the same course, Regulation Brussels II bis, as well as the Regulation on the European Executive Order, the Regulation ntroducing the procedure of the European Payment Order and the Regulation introducing the European Small Claims Dispute are additionally studied would make sense if Montenegro was already a member of the EU, and / or if there would be a bigger class load, or special courses at various levels of study in which topics in the field of Private International Law deal with. Otherwise, the already reduced number of lessons dedicated to basic institutes and basic theoretical settings in order to modernize the curriculum by introducing the study of EU law (a number of regulations and case law of the European Court of Justice), as well as the orientation of practice through the study of positive legal solutions from national legislation and international treaties could lead to the lack of time to process the basic settings of this very complex discipline.

The teaching focuses on the relevant EU law in those areas where these solutions have not been adopted by the PILC, and the decisions of the Rome III Regulation and the Regulation on the marital property regime are studied to a lesser extent, because they have universal application (the right relevant to these regulations it is also applicable when it is not the law of an EU member state), and the law of Montenegro may also apply as a competent law. Also, a number of international conventions under the Hague Conference for the PIL are being processed.

[8] It refers to text that does not include preface, reviews, content, literature, and attachments.

[9] EU Procedure Law - Brussels I (jurisdiction, litispendence, acknowledgment and enforcement) was processed on 11 pages, Rome I Regulation on 5 pages, Rome II Regulation on 15 page, Rome IV Regulation on 6 pages, and the like.
EU Procedure Law - Brussels I (jurisdiction, litispendence, ackonwledgment and enforcement) was processed on 11 pages, the Rome I Regulation on 5 pages, the Rome II Regulation on 15 pages, Rome IV Regulation on 6 pages, and the like.

3. Application of experiences and results of training and study visits within CABUFAL

Within the CABUFAL project, we have been able to participate in various forms of training and exchange of experiences regarding the organization and implementation of the teaching process at partner institutions. Considering the limitation regarding the length of this text, we will only look at the experience of colleagues from Iustinianus Primus Faculty of Law in Skopje. The exchange of experiences was of particular importance, as both Macedonia and Montenegro have new laws on private international law that partially carried out the reception of EU law in the mentionned area, and the countries are EU candidate countries.

There is a special department for Private International Law at the partner faculty in Macedonia. This material is studied at all levels of the study[10], and three faculty members are involved in the teaching process (at F of L UM, as already mentioned, there is only one course of the same name, in undergraduate studies and one faculty). The first degree course is Private International Law, the third year of study, with 7 ECTS. Courses at the second level within the framework of two orientations include the EU Private International Law I and II, and at the third level - doctoral studies, the Private International Law of Intellectual Property is studied in two orientations.

From the above it can be seen that courses EU Private International Law and EU II Private International Law are two separate courses at the Iustinianus Primus Faculty of Law, which are sudied to a certain extent at the Facultu of Law of UM in Basic studies within general Private International Law.

By comparing the curriculum, it is noted that at the F of L of UM the Private International Law deals with the subject matter covered by EU Private International Law (Regulations: Brussels 1, Rome I and Rome II, and the Hague Convention on the Selection of Court (2005)) [11] while the

[10] http://www.pf.ukim.edu.mk/wp-content/uploads/2017/12/Megjunarodno-privatno-pravo.pdf (14 January 2019.); http://pf.ukim.edu.mk/megjunarodno-pravo-i-odnosi-i-pravo-na-eu/ (14 January 2019.); http://pf.ukim.edu.mk/wp-content/uploads/2018/05/10-11%20Medjunarodno%20pravo%20Pravo%20na%20EU.pdf (14 January 2019.); http://pf.ukim.edu.mk/wp-content/uploads/2018/05/3%20Pravo%20na%20intelektualna%20sopstvenost.pdf
(14 January 2019.).

[11] https://www.hcch.net/en/instruments/conventions (18 January 2019.).

subject matter covered by EU Private International Law II Brussels II bis Regulation is not separately studied, but the following are studied: Rome III Regulation, Regulation on Inheritance and Hague Conventions, which bind Montenegro too: Convention on the protection of children and Co-operation in Convention on jurisdiction, applicable law, recognition, enforcement and cooperation in the area of international adoption (1993); Convention on competence, applicable law, acknoledgment, enforcement and cooperation in respect of parental responsibility and measures for the protection of children (1996) and the Convention on the international collection of claims for the maintenance of a child and other forms of family support (2007).

4. Best teaching practice/examples (and personal experiences) in the relevant fields of European Union law

When designing an innovative syllabus for Private International Law, there was a doubt that is present with every PIL teacher: how detailed they are supposed to teach the subject matter. Given the limited class load, we have given priority to providing a comprehensive and systematic overview of the basic institutes in all traditional areas of the PIL, but also their content transposed into the legal norms of Montenegro, the European Union and a number of countries, in relation to a more detailed theoretical and historical access. This model is also applied in the textbook, with detailed sources and literature in both domestic and foreign languages.

After the theoretical processing of basic legal institutes, followed by exercises and practical classes (visiting a law office, i.e. exercises and simulations at the faculty, with the assistance of a demonstrator, a lawyer trainee), we provide special classes to EU Private International Law.

Given the limited number of classes and the complexity of the subject matter, all forms of teaching and exercises are designed so that students recognize situations that can be close to them and in which they themselves can be. The topics that relate to family relations are always the most attentive, and the topic of the issue of EU law is the relevant law for consumer contracts. Thus, within this topic, students find out why, for example, a German would buy a Golf from a Danish distributor, and not in Germany, which right may be relevant when, for example, they order a product on the Internet or when from a website posted in a foreign country music or movie is downloaded or hotel accommodation is paid for; in

which areas there are directives containing substantive rules and where more information can be found about it; what is autonomous interpretation and what it implies in eg. the term "directing activities" towards a consumer's country of habitual residence, what is the significance of enforced regulation of the right of a consumer's country of habitual residence, etc.

5. Key challenges in terms of encouraging students to understand key legal concepts, position of the relevant area of EU law in the national legal system, and relationship with other areas of law.

In the teaching process related to EU PIL the teacher has to bear in mind that he/she teaches a complex subject matter to students, some of whom have not even passed courses from the civil law group (Law of Obligations and Property Law), while in addition to lectures of PIL, they have lectures of Civil Procedure Law. In view of this, in lectures, the teacher always points out, in short, basic legal concepts from domestic substantive or procedure law. Then, to the extent that this subject matter allows us we elaborate a simple hypothetical example with the addition of international element. Furthermore, we deal in detail with these concepts from the aspect of PIL, pointing to some comparative experiences that are significant or have led to the formulation of certain concepts, both in the doctrine of PIL and in comparative legislation (eg domicile / habitual residence of the seller, as a point of connecting or clause of derogation from the applicable law[12]). The next step is the elaboration of positive legal solutions in the law of Montenegro, primarily based on the Private International Law Code, and most often it is directly related to EU law, whose solutions are reciprocated with this codification. Previously, sources of the EU PIL, as well as EU law as a spurce of PIL of Montenegro are being processed. The Power Point presentation, which accompanies the teaching of the said method unit, process, collision regulationas and regulations that encompass both domains are distinguished in particular. This may, at first glance, seem as unnecessary and obvious, but the experience

[12] Starting from the Swiss general deviation clause, and more detailed studies of deviation clauses, which have found a place in EU law: in the area of applicable law for contracts (Rome I Regulation), non-contractual obligations (Rome II Regulation), maintenance (the Hague Protocol) , inheritance (Regulation IV), marital status and property consequences of registered partnership.

of this teacher shows that a number of students do not show a tendency to logical thinking and that any matter that deviates from the topics explicitly stated in the textbooks is a challenge for them.

When the teacher gets the impression that students understand the basic concepts and that in the interaction they can provide/ create a simple example to describe the given concept/ phenomenon, and after exercises and practical lessons are made (of which one part in the law office, and one part at the faculty, with the participation of a demonstrator who is a postgraduate and lawyer trainee), we are going to comment the practice of the European Court of Justice (previously students are familiar with the role of this court and the importance of uniform interpretation[13] and the creation of autonomous concepts in EU law).[14]

Previous opinions of this court in the domain of the application of Brussels I Regulation (specifically, the Brussels I system) [15] are covered, for directives of direct application[16], applicable law: for personal name[17], for legal persons[18], for consumer contracts and labor contracts[19] and for non-contractual relations[20].

[13] ECJ, case 12/76, *Industrie Tessili Italiana Como v Dunlop AG* [1976] ECR 1473.

[14] In fact, this means that the interpretation of a specific issue given by the EU Court of Justice concerning the meaning of a particular institute, for example Brussels I Regulation (or Brussels Convention), is most often applicable to identical institutions included in the provisions of regulations on the applicable law for obligatory relations. In addition to this general rule, there are also cases where the preamble of a single regulation suggests a harmonized interpretation of certain terms from different instruments. Thus, for example, item 24 of the Preamble to Rome I Regulation provides that the notion of directed activity in consumer contracts should be interpreted in a harmonized manner with Brussels I Regulation.

[15] ECJ, case C-7/98, *Krombach v. Bamberski* (2000) ECR I-1935; CJEU, case C-54/99, *Eglise de Scientologie* (2000) ECR I-1335; CJEU, case C-36/02, *Omega* (2004) ECR I-9609, CJEU, case C-281/02, *Owusu v. Jackson* (2005) ECR I-1383.

[16] ECJ, case *C-381/98, Arblade* ECR I-9305; CJEU, case C-281/02, *Ingmar (2005)* ECR I-1383.

[17] CJEU, case C-148/02, *Avello v. Belgium* (2003) ECR I-11613; CJEU, case C-353/06, *Grünkin-Paul*, (2008) ECR I-7639; CJEU, case C-208/09, *Sayn-Wittgenstein*, CJEU, case C-391/09, *Runevič-Vardyn*,

[18] ECJ, case C-81/87, *Daily Mail* (1988) ECR 5483; ECJ, case C-212/97, *Centros* (1999) ECR I-1459; ECJ, case C-208/00, *Überseering*.

[19] CJEU, case C-464/01, *Johann Gruber v. Bay Wa AG*; CJEU, case C-585/08, *Peter Pammer v. Reederei Karl Schlüter GmbH & Co KG*; CJEU, case C-144/09, *Hotel Alpenhof v. Mr. Heller*; CJEU, case C-29/10, *Koelzsch v. Luxembourg*; CJEU, case C-384/10, *Voogsgeerd v. Navimer*.

[20] ECJ, case C-21/76, *Handelskwekerij G. J. Bier v. Mines Potasses d'Alsace* [1976] ECR 1735; ECJ, case C-68/93, *Fiona Shevill and others v. Press Alliance SA* [1995] ECR I –

6. Introduction of the relevant area of EU law in the Montenegrin legal and educational system: current situation, challenges and perspectives

Montenegrin private international law has already largely been "europeanized" by the adoption of the PILC and ratification of the Hague Conventions. In the forthcoming period, as the Montenegro's accession to the EU approaches, the amendment will be considered to the text of the codification of the PIL, in the area that is regulated by Brussels II bis Regulation, and, as far as we know, amendments to the Law on Civil Procedure[21] are already in process and they will reflect the decisions of European Payment Order, European Enforcement Order and Small-Claim Disputes.

At this moment it is not possible to include the study of these topics within course Private International Law in undergraduate studies, which, of course, will be the case when the country becomes a member of the EU. Previously, an excellent opportunity was missed to have EU Private International Law studied as a separate course until Montenegro joins the EU because at the time of re-accreditation carried out in 2016, the then UM leadership held a general view that apart from the introductory, general course on EU law, certain segments are studied within the framework of main disciplines, and that there is no dispersion of courses that will study certain segments of EU law in various cycles, nor in the form of elective courses.

In the future, we believe that in the next change of the curriculum, a more detailed study of the EU PIL should be enabled. This could be achieved in two ways: by separating the Private International Law into a first level course in two subjects: Private International Law and Private International Procedure Law, whose total class load would be at least 80 (compared to the existing 60) or by introducing a special course EU Private International Law at the second level of studies.

Also, it would be necessary for the course teacher to be granted to formally hire a demonstrator in the said course, and in the future, create conditions for engaging teaching assistants in a related group of courses, which will include Private International Law. A bigger class load, or a

415; ECJ, case C-364/93, *Marinari v Lloyd's Bank*, [1995] ECR I-2719; ECJ, case C-51/97, *Réunion Européenne v Spliethoff's Bevrachtingskantoor*, [1998] ECR I-6511.

[21] Law on Civil Procedure ("Official Gazette of Montenegro", no. 22/2004, 28/2005 – decision US i 76/2006 and "Official Gazette of Montenegro", no. 47/2015 – other law, 48/2015, 51/2017, 75/2017 - decision US and 62/2018 - decision US).

special course, would also provide practical classes, as well as exercises in which more attention would be paid to training students to explain the views from the decisions of European Court of Justice, using additional literature[22] in the form of a collection of decisions of this court.

INFORMATION FOR STUDENTS AND CURRICULUM

Course title:		*Private International Law*		
Course code	*Course status*	*Semester*	*Number of ECTS credits*	*Class load*
	compulsory	*VI*	*8*	4+1

Study program: Basic academic studies at the Faculty of Law		
Prerequisites: none		
Course objectives Introducing students to the basic concepts of private international law in the fields of: determining relevant law, international jurisdiction, recognition and enforcement of foreign court decisions and rights of aliens to enter into civil law relations		
First and last name of the teacher and teaching assistant: Prof. dr Maja Kostić-Mandić		
Study methods: Lectures, exercises, practiclas classes, consultations		
TEACHING PLAN		
Week and data	*Name of methodological units for lectures (T), exercises (E) and other teaching contents (O)Planned examination method (EM: homework, tests, mid-term exams...)*	
I –[1)]	*L/E/O/EM*[2)]	Introductory remarks on the course and literature
II-	*L/E/O/EM*	Concept and subject of international private law, relations with other branches of law, sources (including EU law)
III-	*L/E/O/EM*	Collision norms, problem of qualification, interpretation (including EU law), knowledge and proving rights of aliens
IV-	*L/E/O/EM*	Return and referral, general deviation clause, public order, norms of direct application (including EU law)
V-	*L/E/O/EM*	International Jurisdiction (including Brussels I Regulation)
VI-	*L/E/O/EM*	Civil proceedings with foreign element, recognition and enforcement of foreign court decisions (including Brussels I Regulation, Rome IV Regulation and Regulation on taking of evidence)
VII-	*L/E/O/EM*	International Trade Arbitration
VIII-	*L/E/O/EM*	Mid-term exam
IX-	*L/E/O/EM*	Make-up exam
X-	*L/E/O/EM*	Rights of aliens, points of attachment, applicable law for status relations of natural and legal persons (including EU law)
XI-	*L/E/O/EM*	Applicable law for contracts (including Regulation Rome I)
XII-	*L/E/O/EM*	Applicable law for delict (including Regulation Rome II)
XIII-	*L/E/O/EM*	Applicable law for property relations and inheritance (including Regulation Rome IV)
XIV-	*L/E/O/EM*	Mjerodavno pravo za porodične odnose (including Regulation Rome III and Regulation on matrimonial property regime)
XV-	*L/E/O/EM*	Preparation for finals

[22] C. Jessel-Holst, H. Sikirić, V. Bouček, D. Babić, Međunarodno privatno pravo – zbirka odluka Suda Evropske unije, Narodne novine, Zagreb, 2014.

XVI-	*Final exam*
XVII-	*Semester verification and grades enetring*
XVIII-XXI-	*Additional classes and make-up final exams*

Students' obligations: Attendance and active participation in classes

Consultations: Mondays from 9 am - 1 pm

Students workload in hours:

weekly[3)]	In semester[4)]
Lectures: Exercises: Other teaching activities: Seminar papers Individual work of students	Teaching and finals: 85 hours Necessary preparations (administration, registration, verification before the beginning of the semester): 10 hours Total course workload: 120 hours Additional work: 25 hours Workload structure: 85 hours (teaching) + 10 (preparation) + 25 (additional work)

Basic literature:
Maja Kostić-Mandić, Međunarodno privatno pravo, Pravni fakultet Univerziteta Crne Gore, Podgorica, 2017.

General literature:
-Varadi, Bordaš, Knežević, Pavić, Međunarodno privatno pravo, Pravni fakultet Univerziteta u Beogradu, Beograd, 2012.
-Maja Stanivuković, Mirko Živković, Međunarodno privatno pravo (opšti deo), Službeni glasnik, Beograd, 2015.
-Maja Stanivuković, Petar Đundić, Međunarodno privatno pravo (posebni deo), Pravni fakultet Univerziteta u Novom Sadu, Novi Sad, 2008.
-Krešimir Sajko, Međunarodno privatno pravo, 5. izmijenjeno i dopunjeno izdanje, Narodne novine, Zagreb, 2009.
-Davor Babić, Christa Jessel-Holst, Međunarodno privatno pravo – zbirka unutarnjih, europskih i međunarodnih propisa, Narodne novine, GIZ, Zagreb, 2011.
-Michael Bogdan, Concise Introduction to EU private international law, Europa law publishing, Groningen, 2012.
-Geert Van Calster, European Private International Law, Hart Publishing, Oxford and Portland, 2013.

Examination methods and grades:
Examination methods include mid-term exam, make-up exam, finals and make-up final exam (orally) and finals in August term
Grades are:

- Mid-term exam – up to 60 points
- Participation in practical classes – up to 5 points
- Finals – up to 35 points
- Passing grade is obtained if 50 points are cumulatively collected

Grade	*A*	*B*	*C*	*D*	*E*
Points[5)]	*90-100*	*80-89*	*70-79*	*60-69*	*50-59*

Notes:
In addition to the general institutes of Private International Law (PIL), the new program is also significantly concerned with the European Union (EU), whose solutions have been taken over by the new Montenegrin Code on Private International Law (CPIL). The new CPIL explicitly provides that EU law is directly applied in the area of relevant law for contractual and non-contractual obligations with a cross-border element (provisions of the law are interpreted and applied in accordance with Regulations No.593/2008 and 864/2007 - Rome I and Rome II). Also, the applicable law for succession and maintenance obligations is applied to the decisions

taken from EU law, and in the area of international jurisdiction, EU law solutions are directly transposed.
Based on the innovative program, the most important practice of the European Court of Justice is addressed.
In line with the above, the list of literature dedicated to the EU PIL has been extended.

Velibor Korać*

NOTARY LAW -AN ATTEMPT OF „EUROPEANIZATION" OF THE CURRICULUM-

1. INTRODUCTION

A permanent process of legal harmonization in Europe cannot get around even the notary profession. However, the notary profession, activities of notaries public and their functions, same as with other professions directly or indirectly participating in the exercise of the judiciary, are not uniquely regulated by the law of the European Union and are not within the competence of regulating the competent bodies of this regional organization. Although it is known that there is no single notary in Europe, as well as that founding contracts, as integral parts of the so-called primary law of the Community do not cover this subject matter, requirements for the harmonization of this area have long been set up by notary organizations, the European Commission and European Parliament.

The establishment of a common internal market and more efficient exercise of fundamental freedoms in the EU member states has inevitably led to the need for creating some kind of uniform legal regulation at the European level, as the activities of notaries public, tasks and functions they perform increasingly constitute international elements. Thus, for example, the European Union Notary Conference adopted in 1995 the Code of European Notarial Deontology (*Code Européen de déontologie notariale*), which represents the first attempt to harmonize the standards of Latin notary within the European Union.[1]

The adoption of the implied power doctrine, adopted in the Lisbon Treaty, will certainly contribute to the Europeanization of this legal area. Although the Treaty on the Functioning of the European Union and Treaty

* Velibor Korac, PhD, is a Teaching assistant at Civil Law Department of the Faculty of Law of the University of Montenegro.

[1] The goal of adopting these rules was not to change the rules of the notary laws of national states, but to some extent harmonize the procedure and activities of notaries public in order to ensure better protection of users of notarial services and beyond the borders of the country of origin. See *S. Zimmermann, A. Schmitz-Vornmoor*, Javnobilježnička služba u Evropskoj uniji, Filozofija struke i trendovi razvoja, harmonizacija i ujedničavanje, Zbornik Pravnog Fakulteta u Zagrebu, 6/2009, str. 1120.

on the European Union, the area of notary law is not within the competence of the EU, but national states, however, in the text of the Treaty on the Functioning of the European Union of 2010, the provision of an unaccepted European Constitution is adopted defining so-called implicit authorization within judicial cooperation in civil matters[2]. Namely, Article 81 stipulates that the Union shall develop judicial cooperation in civil matters with cross-border implications, based on the principle of mutual recognition of judgments and decisions in extra-judicial cases, and it may also involve the establishment of measures for the approximation of laws and regulations of member states.[3]

2. REVIEW OF THE ANALYSIS OF THE CURRICULUM OF THE FACULTY OF LAW MADE BY THE FACULTY OF LAW OF THE UNIVERSITY OF LJUBLJANA

By the last modification of the model of study at the UM, in the curriculum of basic studies at the Faculty of Law, for the first time, the course Notary Law was introduced. The Faculty of Law of the University of Ljubljana has compiled an analysis of the recently accredited curriculum of the Faculty of Law of the UM, which highlighted a great improvement in achieving the goal - its "Europeanization" as a whole. In the part concerning Notary Law, there were no recommendations for changes, except for the comment that the changes already made to a sufficient extent introduce the European element into the syllabus of this course.

However, I believe that the presence of the "European" element in the syllabus of this course needs to be further strengthened, since the process of Europeanization of private law is unstoppable. Students during the course should also be provided with practical and theoretical tools, which will enable them to understand, analyze and solve problems in international relations, especially in areas related to notary law. After passing the exam, the student should also have knowledge on the substantive and procedural aspect of notary law, and to know its national, regional and European dimension. Notaries public of the Latin notary model, which was adopted in the EU member states, have recently acquired extended

[2] More *M. Holterman*, The Importance of Implied Powers in Community Law, LL.M. Thesis in European Law, RijksUniversiteit Groningen 2005, str. 27 and more.

[3] In accordance with the ordinary legislative procedure, the European Parliament and the Council may, when necessary for the proper functioning of the internal market, establish measures to ensure, inter alia, the mutual recognition and enforcement of judgments and decisions in extra-judicial cases, cross-border delivery of these acts and compatibility of the rules applied in the Member States with regard to the conflict of laws and jurisdiction.

responsibilities in the obligation, hereditary, family and business law, and in particular their role is important in the making of legal affairs relating to the disposal of rights to immovable property.

Notary profession in international relations and sources of private international notary law are of undeniable importance, bearing in mind that European notaries have committed themselves to a European judicial policy that responds to social and economic challenges, that is, as someone who provides legal service, and at the same time responds to expectations of citizens and businesses in the European Union. The European Commission statistics show that more than 8 million Europeans no longer live in the country of origin, 2.5 million real estate belongs to people living in a country other than the one in which the real estate is located, each year 450000 procedure relating to inheritance matters with an international element worth about 123 billion euros are instituted, 13% of new marriages are of a bi-national nature, 16 million international couples are in the European Union, 20% of registered partnerships in the EU are of a bi-national nature.[4] In this regard, they respond within their competence and in their fields of expertise to the expectations of EU citizens, support mediation as an alternative form of dispute resolution, and then again, within their jurisdiction, facilitate the creation of the pledge law in the European Union.[5]

Also, one of the priorities of European notaries public is cross-border cooperation, i.e. special interconnection in particular in legal matters relating to cross-border real estate (*Eufides platform)*, as a linking to the keeping of registers of testimonies, marital contracts, and the European Certificate of Succession (*ENRWA / ARERT).*

3. APPLICATION OF EXPERIENCE AND RESULTS OF TRAINING AND STUDY VISITS WITHIN CABUFAL

It can be noted that guest lecturers from partner institutions, within the framework of the trainings held at the Faculty of Law, did not give a direct contribution, given the importance of Europeanization in the field of studying notary law. The main reasons for this need to be sought in topics that were discussed in the trainings, which did not have anything in

[4] See http://www.notaries-of-europe.eu/plan2020/pdf/CNUE_Brochure2020_ WEB_ En. pdf (15/01/2019).

[5] The European Union has passed the Consumer Loan Directive for residential real estate with the aim of establishing a mortgage credit market in Europe with a high degree of consumer protection.

common with the subject of the study of notary law, as well as in the areas of scientific interest of lecturers, which were not related to notary and not even to civil law as a whole (family of rights).[6] A similar thing can be said for the study visits in which the author of these lines participated and the lectures he attended, with the exception of visiting the Europe Institute in Saarland. Attending the lectures held by some lecturers from the Europe Institute has, to a certain extent, given a specific narrow professional contribution, as well as a contribution to the methodology of teaching.

However, we should certainly bear in mind the indirect contribution of both training and study visits within the CABUFAL project. It is reflected in the exchange of experiences between lecturers at partner institutions and analysis of best teaching practices. These experiences will certainly contribute to improving the quality of the teaching process at the Faculty of Law of the UM. In addition, established cooperation among partner institutions is the basis for the implementation of future activities.

4. BEST TEACHING PRACTICE

One example of good teaching practice and in the light of the Europeanization of the curriculum of the Notary Law course, is the program of International Notary Law at the Faculty of Law of the University of Lyon III (*Master 2 Droit Notarial de l'Université Jean Moulin Lyon III*). In the course, besides domestic, international private, EU law and European law are also studied. The importance is given to mastering the methods of finding information and using databases from these branches of law, making it unique. In addition, the process of movement, recognition and legal effects of court decisions, notarial and other legal acts is studied; international law is studied regarding the rights to immovable property, international succession law, legal and business capacity of natural and legal persons in the international context, family law, international family law, etc.

France, as a cradle of modern notary in Europe, is in a way also an example of good practice and especially when it comes to encouraging the development of the European dimension of notary. Namely, the Supreme Council (*Conseil Supérieur du Notariat*), as one of the professional associations in France, the Regional Council of the Appellate Court in Lyon and the Movement young notary (*Mouvement Jeune Notariat*) initiated an initiative aimed at creating a new body for the notary profession in France, the so-called Notary Center of European Law (*Centre Notarial de droit*

[6] This is, as it is understood, about trainings and lectures the author attended.

Européen). The aim of this newly formed body is to enable every notary public a professional training in the field of notarial duties in order to better respond to the demands of clients in the European Union, and as the Center points out, the transition to the European dimension has become an obligetion for the notary profession.[7]

5. SOME SUGGESTIONS OF THE AMENDMENTS TO THE CURRICULUM OF THE COURSE NOTARY LAW CONTRIBUTING TO ITS "EUROPEANIZATION"

- Key challenges in terms of encouraging a student to understand legal concepts, position of EU notary law in the national legal system and relationship with other areas of law-

I.

Recognizing the need to unload courts of cases in which no decision on proceedings in a substantive-legal sense is authoritatively brought, the Montenegrin legislator entrusted notaries public with the conduct of proceedings related to succession as the most frequent and most important of the official and non-contentious extra-judicial proceedings. In this regard, in the curriculum of the Notary Law, and in order to achieve its "Europeanization", it is necessary to make the necessary changes in order to familiarize students with the newsletters adopted by implemented European regulations in the field of succession. Namely, cross-border succession is facilitated by the adoption of new EU rules, specifically the Succession Regulation (EU) no. 650/2012[8], as one of the most important results of a large and ambitious codification of private international law[9]. The regulation regulates jurisdiction, bodies (courts or notaries) and the succession procedure with an international element, and perhaps most importantly that this Regulation introduces a European Certificate of Succession. This is a document issued by the competent authority (court

[7] http://acenode.eu/beneficier-dun-accompagnement-permanent/

[8] Regulation (EU) No 650/2012 of the European Parliament and of the Council of 4 July 2012 on jurisdiction, applicable law, recognition and enforcement of decisions and aceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession, Official Journal of the European Union L 201/107, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32012R0650. These rules have been implemented since 17 August 2015.

[9] *A. Davì*, Introduction, u: *A.-L. Calvo Caravaca, A. Davì, H.-P. Mansel (eds.)*, The EU Succession Regulation: A Commentary, Cambridge University Press 2016, str. 1.

or notary) to successors, legatees, testators, and persons who manage succession in order to prove legal position. A European Certificate of Succession is recognized in all Member States without the need for any special procedure.[10] This legislation is of great importance for notaries in Europe, that is, all notaries from the member states of the European Union, since notaries public in most countries perform tasks as court judges, that is, they have been given the authority to carry out a probate proceeding and make a decision on succession. Students should be, as far as necessary, introduced to the new European Union regulation on succession (applicable law, jurisdiction of the notary public as a person carrying out the probate proceeding, recognition of execution or acceptance of the enforceability of decisions and public documents, the European Certificate of Succession).

II.

An important segment of the notary profession, considering from the aspect of "Europeanization of the curriculum", are marital regimes in the international context. Namely, students should understand mechanisms of marital property regimes in the presence of the foreign element. The notary public constitutes, in the form of a notary deed, a marital contract that excludes or changes the marital property regime regulated by the law of the country that has yet to be determined. In addition, it is necessary to know the rules on the basis of which automatic recognition of the marital property regime is carried out, as well as procedures in case recognition does not happen.[11]

The adoption of Regulation (EU) 2016/1103 of 24 June 2016 on the implementation of enhanced cooperation in the area of jurisdiction, relevant law and recognition and enforcement of decisions in matters of

[10] *D. Damascelli, D. Restuccia, V. Crescimanno, G. Liotta, C. A. Marcoz, C. Valia, A. Barone*, Le certificat successoral européen : propositions opérationnelles, str. 155 i dalje, u: L'EUROPE POUR LES NOTAIRES LES NOTAIRES POUR L'EUROPE, formation 2015-2017; *J. G. de Almeida*, Le certificat successoral européen : quelques questions, str. 97 i dalje u: L'EUROPE POUR LES NOTAIRES LES NOTAIRES POUR L'EUROPE, formation 2015-2017; *C. Budzikiewicz*, Effects of the Certificate, u: *A.-L. Calvo Caravaca, A. Davì, H.-P. Mansel (eds.)*, The EU Succession Regulation: A Commentary, Cambridge University Press 2016, str. 769 i dalje.

[11] Here, as it is understood, it is not about violation of the so-called territorial principle, because notaries public in Montenegro, as well as notaries of the European-Continental legal circle, cannot perform their official duties outside the state and their activities are not mobile, that is, cannot be transferred outside state borders.

marital property regimes[12] in 18 Member States[13] makes it easier to decide on matters of the marital property regime with a cross-border element. Namely, this Regulation contains rules by which it is possible to determine which court or notary is competent[14], or which is the relevant law. The Notary Public is, as the court's commissioner, according to the Regulation on succession 650/2012, competent to decide in matters of marital property regime that are not controversial among the successors.[15]

III.

The emphasis should also be placed on persons without business capacity in private international law and EU law. The aim is to understand the rules of the applicable law to protect a minor or person deprived of legal capacity, as well as the competent authority requiring full representation. This is especially important when exercising parental rights, legal representation, succession, as well as in the acquisition of property rights and other rights to immovable property rights. We also need to point out the rules that will address the legal effects of institutes that do not exist in our law (e.g. *testamentum mysticum or nondum conceptus*), which may be recognized as a property of the acquirer (successor) to a person under rules that do not apply in our law.

IV.

The state provides Montenegrin nationals abroad with preventive legal (judicial) protection by persons that are not notaries public. There is an exception to the rule that the notary profession, i.e. performance of notary business, is reserved exclusively for notaries, and exclusively in the territory of Montenegro (territorial principle). Namely, Montenegro exercises the function of preventive judiciary also through consulates, since the execution of notarial tasks for persons of Montenegrin citizenship abro-

[12] Council Regulation (EU) 2016/1103 of 24 June 2016 implementing enhanced cooperation in the area of jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes, available at https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32016R1103

[13] See no. 11 Preamble.

[14] See no. 31 Preamble.

[15] In the case where the issue of the division of the common property of the spouses arises in the probation procedure, the notary public instructs the parties to initiate a proceeding before the court of the state before which the succession procedure was initiated based on Regulation (EU) no. 650/2012. See Art. 4 of Regulation (EU) no. 2016/1103.

ad is entrusted to consular posts. The law stipulates that a consulate[16] performs the tasks set forth by the Vienna Convention on Consular Relations, which stipulates that the consular function also includes acting in the capacity of the notary public, that is, performance of notarial business.[17]

V.

Citizenship decisions also contribute to the Europeanization of notary. Citizenship was until recently a generally accepted condition for the appointment of the notary public in almost all European countries that accepted the Latin notary model. This is understandable because it is rightly expected that domestic citizens, due to the public-private connection of a physical person with the state, will carry out notarial duty as a specific public service with greater loyalty. However, in the European Union countries after a series of judgments of the European Court of Justice made in 2011, citizenship can no longer be a condition for carrying out the notary profession in the member states. Since the Court took the view that the notary service was not directly linked to the exercise of public authority, in the future this profession will not be reserved solely to its own nationals. Any further retention of citizenship as the conditions for the appointment of the notary public in the legislation of the Member States of the European Union is subject to the general provision on the prohibition of any discrimination on grounds of nationality.[18] In the future, the notary public will solemnly express loyalty not only to the state, but also to the European Union. The above interpretation of the Court of Justice of the European Union has undoubtedly had de lege ferenda effect to the existence of this requirement in our legislation.[19]

The European Court of Justice, deciding in 2011 in the proceedings against several EU Member States (Austria, Belgium, France, Germany,

[16] Art. 29 of the Law on Foreign Affairs, *Official Gazette of Montenegro*, no.70 / 2017. Consular representations of Montenegro abroad are: Consulate General, Consulate and Consular Agency. In a state where there is no consular representation, consular affairs are carried out by the embassy throughout the territory of the receiving State.

[17] See Article 5(f) Vienna Convention on Consular Relations (1963). Available at https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=III-6&chapter=3&clang=_en.

[18] Article 18 of the Treaty on Functioning of the European Union (former Article 12 of the Treaty of EC).

[19] See *V. Korać*, Notari i notarski zapisi, Podgorica 2018, str. 242. Namely, the Law on Amendments to the Law on Notaries Public from 2016 prescribes that, besides Montenegrin citizens, a person who is a citizen of the member states of the EU can be appointed public notary.

Greece and Luxembourg) initiated by the European Commission in respect of national regulations which provide that a notary public must have the nationality of the State in which he/she is pursuing his/her activity, which prevents the freedom of establishment in other countries, stipulated in Article 49 (former Article 43) of the Treaty on the Functioning of the European Union, concluded that notaries public perform an activity that is directly and specifically related to the exercise of public authority.[20] In each of the six judgments, the Court explained in an almost identical manner this view and stated in the enacting clause that all the respondent States violated the obligations under Article 43 of the EC Treaty[21] by prescribing citizenship as conditions for access to the profession of notaries public. The Court did not accept the most important argument of the respondent States that notaries public perform public authority because they constitute public and executive documents, noting that the drafting of these documents by a notary public is not directly and sufficiently connected with the exercise of public authority, since that document is preceded by a legal business arising from the will of the parties and when it comes to the enforcement document, the debtor's consent to be subjected to forced execution is also required.[22]

Although the tendency of crushing the Latin notary is recognized, after the views of the European Commission and judgments of the European Court of Justice, the tendency towards liberalization and orientation of notary towards the free profession is increasingly observed in many legislations. Such a trend in the movement of normative regulation in theory opened the question of whether the notary belongs to the domain of the judiciary or area of the common market for the provision of services.[23] Based on the answer to this question, it depends whether notary will regulate the communal law or the law of the member states. If notary

[20] CJEU, case C-47/08 *European Commission v Kingdom of Belgium*; CJEU, case C-50/08 *European Commission v French Republic*; CJEU, case C-51/08 *European Commission v Grand Duchy of Luxemburg*; CJEU, case C-53/08; *European Commission v Republic of Austria*; CJEU, case C-54/08 *European Commission v Federal Republic of Germany*; CJEU, case C-61/08 *European Commission v Hellenic Republic*. The judgments are available at http://curia.europa.eu/ (25.12.2018).

[21] The Commission sued individually six states (Austria, Belgium, France, Germany, Greece and Luxembourg), and at least 13 States took part in the proceedings, on the Commission's side two (Great Britain and Northern Ireland), and on the side of the respondents (eg Germany) 11 countries (Bulgaria, Czech Republic, Estonia, France, Latvia, Lithuania, Hungary, Austria, Poland, Slovenia, Slovakia).

[22] See CJEU, case C-47/08 items 90-92 and 103; CJEU, case C-54/08 items 91-93 and 105; CJEU, case C-50/08 items 80-82 and 94; CJEU, case C-53/08 items 89-91 and 103.

[23] *S. Zimmerman, A. Schmitz-Vornmoor, op.cit.*, p. 1229.

belongs to the area of provision of services in the free market, the competence for its normative regulation belongs to the bodies of the European Union; otherwise notary will remain in the legislation of the member states.

The impression is that with too restrictive interpretation of the exception for the public service, the Court has somewhat exceeded the boundaries of the powers of the Treaty on the European Union and the Treaty on the Functioning of the European Union. In an effort to protect the basic principle of equality and the prohibition of discrimination on any ground, and in particular on the basis of nationality, and to enable the functioning of the common market, the Court, through a whole series of judgments, narrowed the jobs that, according to communal law, could be regarded as directly and specifically related to the exercise of public authority. The hybrid character of the Latin notary is difficult to argue with legal argumentation. As a public service, he/she acts with the authority of the state, regardless of the fact that notaries public perform their duty as a free profession. The exercise of public authority remains a kind of extended state arm, connected with the prerogatives of the authorities.[24]

Course title: NOTARY LAW				
Course code	*Course status*	*Semester*	*Number of ECTS credits*	*Class load*
	Compulsory	*VI*	*6*	*4L+1E*
Study program: Basic studies – Private-legal module				
Prerequisites: None				
Course objectives: Introducing students to the basic issues of organizing the work of notaries public				
First and last name of the teacher and teaching assistant: Doc. dr Ljiljana Kadić, Prof. dr Zoran Rašović, Prof. dr Radoje Korać, Prof. dr Snežana Miladinović				
Teaching methods: Lectures, exercises, drafting notary deeds				

[24] *V. Korać*, *op.cit*., p. 238. Thus, from the legal point of view, it can be concluded that the hybrid character of the Latin notary is not questioned, regardless of the practice of the European Court of Justice and the views of the European Commission. It could be said that there is a political demand for the harmonization of the notarial service in the European Union by the gradual shift of the Latin notary to the Anglo-Saxon concept of the notary service. In order to achieve market freedoms, more efficient functioning of the internal market and elimination of barriers to the provision of services, it is insisted on notary as a free profession. *V. Korać*, *op.cit*., p. 242 and more.

COURSE CONTENT	
I week II week III week IV week V week VI week VII week VIII week IX week X week XI week XII week XIII week XIV week XV week XVII -XX	Historical development of the notary service. Goals and importance of the notarial profession.Models of notary in the European Union. The basic principles of free notary of a European-continental type. Code of Notary Deontology. Harmonization process, European regulations of importance for notary profession, CJEU practice.Principles of notary profession Concept and sources of Notary Law Organizational Notary Law Notary activity Notary deeds (documents)Form and procedure for drafting notarial deeds Notary act as a public and executive document Notary responsibility Making a notarial deed of legal affairs. Competence of the notary public in succession law. Competence of the notary public in family law Competence of the notary public in property law *Final exam, make-up exam*
Students' duties: Students are required to attend lectures and take exams	
Literature: - Bikić, E., Povlakić, M., Suljević, S., Plavšić, M., Notarsko pravo, Sarajevo, 2013 - Đurđević, Dejan, Javnobeležnička delatnost, Beograd, 2014; - Pillebout, Jean-Francois, Yaigre, Jean, Droit professionnel notarial, Paris, 2015; - Trgovčević-Prokić, M., Ovlašćenja javnog beležnika, Beograd, 2007, - Bikić, E., Radović, M., Suljević, S., Notarijat u Crnoj Gori, Podgorica, 2010, - Velibor Korać, Notari i notarski zapisi, Podgorica 2018, - Sarah Torricelli-Chrifi, La pratique notariale, source du droit, Doctorat & Notariat, Defrénois 2015.	
Examination methods and grades: Seminar paper up to 10 points Exercises up to 15 points Mid-term exam I up to 25 points Final exam up to 50 points	Grades depend on total number of points E (50-59); D (60-69); C (70-79); B (80-89); A (90-100)
Comments: none	
First and last name of the teacher who prepared the information:	
Note: none	

Learning outcomes. After the student passes this exam, he/she will be able to: recognize the meaning and explain the meaning of the most important institutes of notary law in the legal system and select and explain the basic principles of notary service; identify the tendency of harmonizing notary law at the level of professional organizations, examine the influence of European legal movements on the notary service and perspectives of notary in the European legal area, recognize the spirit and sense of positive legal solutions of notary activity; compare the organization of notary service with different models and solutions in foreign laws; explain the most important notarial affairs and notarial documents; explain the purpose of a notary deed; explain the method of making a notary deed and recognize the basic characteristics of the notary procedure; distinguish between the form of a notary deed and form of notary solemnization; explain the independent and impartial relation of the notary public to participants in the notary procedure; recognize different activities of the notary public in certain branches of the civil law family.

MNE VERSION

Thomas Giegerich*

ANTIDISKRIMINACIONO PRAVO: GLOBALNE I EVROPSKE PERSPEKTIVE

Predavanje "Antidiskriminaciono pravo: globalne i evropske perspektive" je – kako naslov ukazuje - diskusija na više nivoa o osnovama antidiskriminacionog prava.

Rješavanje primjenjivog globalnog pravnog okvira (naročito Konvencije UN, npr. ICCPR[1], ICERD[2], ICESCR[3], CEDAW[4], CRPD[5]) predstavlja imperativ sa dvije tačke gledišta. Prvo, ono omogućava bolje razumijevanje gdje Evropska konvencija o ljudskim pravima (ECHR) i pravni sistemi Evropske unije (EU) crpe inspiraciju i drugo, on pomaže u sveobuhvatnom bavljenju ključnim konceptima koji se koriste u antidiskriminacijskom diskursu. Pored toga, globalni naspram evropskog pristupa dozvoljava analizu sudske prakse međunarodnih tijela za ljudska prava (npr. CERD[6], CESCR[7]) i dva evropska suda – Evropski sud za ljudska prava (ECtHR) i Evropski sud pravde (CJEU) – na komparativan način, naglašavajući ključne tačke i tačke divergencije. To daje dodatnu vrijednost studentima jer im pomaže da steknu jasnije razumijevanje kada koncept diskriminacije treba tumačiti u širem ili užem smislu, koji komparatori, standardi za opravdanje i granica diskrecije država se koriste od strane razmatranih tijela i sudova, itd.

Osim što se bavi konceptima jednakosti i diskriminacije na opštem nivou, predavanje se bavi odabranim oblastima antidiskriminacijskog

* Univ.-Prof. Dr. iur. Thomas Giegerich LL.M, Chair for European law, Public international Law and Public Law, Jean Monnet Chair for European Law and European Integration and Director of the Europa-Institut of Saarland University.

[1] Međunarodni pakt o građanskim i političkim pravima, usvojen Rezolucijom GA 2200A (XXI) od 16/12/1966., stupio na snagu 23/03/1976

[2] Međunarodni pakt o ukidanju svih oblika rasne diskriminacije, usvojen Rezolucijom 2106 (XX) GA od 21/12/1965., stupio na snagu 04/01/1969

[3] Međunarodni pakt o ekonomskim, socijalnim i kulturnim pravima, usvojen Rezolucijom GA 2200A (XXI) od 16/12/1966., stupio na snagu 03/01/1976

[4] Konvencija o eliminaciji svih oblika diskriminacije žena, usvojena Rezolucijom GA 34/180 od 18/12/1979., stupila na snagu 03/09/1981

[5] Konvencija o pravima osoba sa invaliditetom, usvojena Rezolucijom GA 61/106 od 13/12/2006, stupila je na snagu 03/05/2008

[6] Komitet za eliminaciju rasne diskriminacije prati implementaciju ICERD-a.

[7] Komitet za ekonomska, socijalna i kulturna prava nadgleda implementaciju ICESCR-a.

prava, kao što je zabrana diskriminacije na osnovu pola, seksualne orjentacije, starosti, invaliditeta ili vjere i uvjerenja, između ostalog, koje se detaljnije razmatraju. Takvo ispitivanje razmatra specifične pravne osnove, definicije relevantnih koncepata kao i vodeću sudsku praksu na svim ispitivanim nivoima: globalno / pravo Savjeta Evrope (CoE) / EU.

Glavni izvori za studente iz prvog dijela predavanja - zabrana diskriminacije na globalnom nivou - trebali bi se u širem obimu naći u sljedećim redovima. Prvo, međunarodni instrumenti za ljudska prava obično sadrže dvije vrste odredbi koje štite jednakost: (i) odredbe o zabrani diskriminacije u uživanju prava koja pruža dotični *instrument*[8] koji imaju *dopunski karakter* i (ii) odredbe o opštem uslovu jednakosti pred zakonom i jednakog tretmana[9] koji imaju *nezavisan karakter*.

Drugo, većina takvih instrumenata radi sa istom definicijom diskriminacije, shvatajući je kao "svaku razliku, isključivanje, ograničenje ili preferenciju koja se zasniva na bilo kojoj osnovi kao što su rasa, boja, pol, jezik, religija, političko ili drugo mišljenje, nacionalno ili socijalno porijeklo, vlasništvo, rođenje ili drugi status, a koji imaju za cilj ili posljedicu poništavanje ili ometanje priznavanja, uživanja ili ostvarivanja od strane svih osoba, na jednakoj osnovi, svih prava i sloboda."[10]

Treće, nakon analize prakse nadzornih tijela za ljudska prava, postaje jasno da nisu sve razlike u ophođenju diskriminacija. Prema riječima Komiteta za ljudska prava, "uživanje prava i sloboda na jednakim osnovama ne znači identičan tretman u svakom slučaju".[11] Razvijeni su jasni kriterijumi da bi se utvrdilo kada razlike predstavljaju diskriminaciju a kada ne, jer „nije svaka diferencijacija tretmana diskriminacija, ako su kriterijumi za takvo razlikovanje razumni i objektivni i ako je cilj postići svrhu koja je legitimna na osnovu Pakta."[12]

Na kraju, praksa različitih nadzornih tijela jasno pokazuje da popis zabranjenih osnova diskriminacije sadržanih u većini instrumenata nije iscrpan; drugi slični razlozi su obuhvaćeni kriterijumom „svi drugi".

Vraćajući se na drugi dio predavanja - zabrana diskriminacije na evropskom nivou - treba napomenuti da se i Savjet Evrope i Evropska unija pridržavaju i pokušavaju da primijene princip jednakih prava i nediskriminacije za sve. Njihovi napori se međusobno pojačavaju i nadopu-

[8] Npr. član 2 ICCPR, član 2(2) ICESCR.
[9] Npr. član 26 ICCPR, član 5(1) CRPD).
[10] CCPR General Comment No. 18 adopted by the Human Rights Committee (HRC) on 10/11/1989, para. 7.
[11] CCPR General Comment No. 18, (fn. 10), para. 8.
[12] *ibid*, para. 13.

njuju. Od 1950, član 14 ECtHR je odredio dodatnu zabranu diskriminacije na osnovu nepotpune liste problematičnih osnova. Tačan sadržaj ove odredbe je razjašnjen brojnim odlukama[13] ECtHR. Sve države članice EU su vezane ECtHR čije odredbe Sud EU koristi kao sredstvo za tumačenje prava EU. Zemljama članicama Savjeta Evrope je bilo potrebno pedeset godina da izrade nezavisnu i sveobuhvatnu zabranu diskriminacije koja je uključena u Protokol br. 12 od 2000. godine. Dok je Protokol u međuvremenu stupio na snagu, samo jedna manjina država Konvencije (i samo deset država članica EU) su je ratifikovale. Očigledno je da mnogi od njih nisu skloni da daju Evropskom sudu za ljudska prava konačnu riječ o tome da li su razlike koje propisuju u svojim zakonima „razumne". Evropska unija je spremna da složi sa ECtHR, ali ne i Protokolom br. 12.

Antidiskriminacijsko pravo EU, za razliku od prava Savjeta Evrope, dostiže mnogo više i mnogo je bolje implementirano. Ugovori kao takvi uvijek su uključivali zabrane diskriminacije na temelju državljanstva koje su direktno primjenjivi u nacionalnim sudskim postupcima i nadjačavaju suprotno nacionalno zakonodavstvo. Njihov tačan obim je pojašnjen sudskom praksom CJEU koja je stroga.

Stupanjem na snagu Ugovora iz Lisabona, Povelja o osnovnim pravima EU (CFR) promovisana je u rang primarnog prava EU, u skladu sa Ugovorima i sprovedena od strane CJEU. Povelja sadrži nekoliko odredbi o jednakosti pred zakonom i nediskriminaciji (vidi čl. 20 - 26). Kada oni odgovaraju pravima koja su garantovana Ugovorima, ona će se koristiti i pod uslovima i u granicama koje su u njoj definisane (član 52 (2) CFR). Tamo gdje prava iz Povelje odgovaraju pravima zajamčenim ECtHR, njihovo značenje i opseg neće biti manje opsežni od onih utvrđenih Konvencijom (član 52, st. 3 ZOP). Međutim, uvijek treba imati na umu da su prava Povelje prvenstveno namijenjena institucijama i sl. EU. Države članice podliježu samo onim pravima kada primjenjuju pravo Unije (član 51 (1) CFR).

Ugovor iz Amsterdama iz 1997. godine je uveo odredbu sad sadržanu u članu 19 (1) Ugovora o funkcionisanju EU (UFEU). Ta odredba kao takva ne zabranjuje diskriminaciju zasnovanu na drugim osnovama od nacionalnosti koje su navedene u iscrpnoj listi koja uključuje najproblematičniju osnovu (kao što su pol, rasno ili etničko porijeklo i seksualna orijentacija). On samo identifikuje vrste diskriminacije koje zaslužuju bo-

[13] Vidi naročito, ECtHR, br. 40892/98, *Koua Poirrez protiv Francuske*, presuda od 30/09/2003, paragrafi 36, 39; i ECtHR, br. 27996/06, *Sejdić and Finci protiv Bosne i Hercegovine*, presuda od 22/12/2009, paragraf 39.

rbu i ovlašćuje Savjet EU i Evropski parlament da zajednički donesu podzakonske akte u tu svrhu. Činjenica da bilo koji zakon zasnovan na članu 19 (1) UFEU zahtijeva jednoglasnost u Savjetu (koji se sastoji od ministra iz svake države članice) pokazuje da su države članice željele da zadrže anti-diskriminaciju EU pod njihovom kontrolom.

U međuvremenu, nekoliko antidiskriminacijskih direktiva[14] je donešeno na osnovu člana 19 (1) TFEU ili drugih odredbi Ugovora. Savjet, međutim, još uvijek nije spremno da donese opštu direktivu o sprovođenju načela jednakog tretmana osoba bez obzira na vjeru ili uvjerenje, invaliditet, dob ili seksualnu orjentaciju koju je predložila Evropska komisija[15] još 2008.

Takođe treba imati na umu da postoje i druge odredbe protiv diskriminacije u raznim ugovorima koje je EU zaključila s trećim državama.[16] Te odredbe zabranjuju diskriminaciju državljana trećih država na osnovu državljanstva. Prema sudskoj praksi ECJ, oni su obično direktno primjenjivi i nadjačavaju i suprotno sekundarno pravo EU i nacionalno pravo.

[14] Direktiva 2000/43/EU o primjeni načela jednakog tretmana lica bez obzira na rasno ili etničko porijeklo, OJ L 180 od 19/7/2000. (Direktiva o rasnoj jednakosti), Direktiva 2000/78/EZ o uspostavljanju opšteg okvira za jednako postupanje u zapošljavanju i zanimanju, OJ L 303 od 02/12/2000 (Okvirna direktiva), Direktiva 2004/113/EZ o primjeni principa jednakog tretmana muškaraca i žena u pristupu i snabdijevanju robama i uslugama, OJ L 373, od 21/12/2004 (Direktiva o robama i uslugama), Direktiva 2006/54/EZ o primjeni načela jednakih mogućnosti i jednakog tretmana muškaraca i žena u pitanjima zapošljavanja i zanimanja (prerada), OJ L 204 od 26/7/2006. (Direktiva o jednakom tretmanu), Direktiva 2010/41/EZ o primjeni principa jednakog tretmana muškaraca i žena koji se bave samostalnom djelatnošću, OJ L 180, od15/7/2010.

[15] Predlog Direktive Savjeta o sprovođenju načela jednakog postupanja prema osobama bez obzira na vjeru ili uvjerenje, invaliditet, dob ili seksualnu orijentaciju, predstavljen od strane Evropske komisije 02/07/2008 - COM (2008) 426 konačno - ali nikada nije usvojen zbog nedostatka jednoglasnosti u Savjetu.

[16] Vidi, na primjer, Sporazum o stabilizaciji i pridruživanju između Evropskih zajednica i njihovih država članica, s jedne strane, i Republike Albanije s druge strane, od 12/26/2006, OJ L 2009 od 28/04/2009, čl. 46. Odgovarajuće odredbe u članu 49 Sporazuma o stabilizaciji i pridruživanju sa Republikom Crnom Gorom od 15/10/2007, OJ L 2010 29/04/2010.

Unutar ovog odjeljka, definicija diskriminacije[17], osnova za opravdanje razlikovanja[18], državna sloboda procjene kada se ograničavaju prava[19], kao i teret dokazivanja[20] slučajeva navodne diskriminacije, između ostalog, treba analizirati opsežnim upućivanjem na sudsku praksu ECtHR i CJEU. S obzirom na mnoga preklapanja i komplementarna područja ECHR-a i pravnih sistema EU, posebno je korisno za studente ako se prikaže vizualno poređenje (na primjer, u obliku tabele) pristupa dva evropska suda.

Kada se na globalnom i evropskom nivou raspravlja o opštem antidiskriminacijskom okviru, treći dio predavanja bliže se bavi pojedinostima i sudskom praksom u vezi s odabranim osnovama diferencijacije (pol, seksualna orijentacija, dob, religija ili uvjerenje, invaliditet, rasa, etnička pripadnost, boja ili pripadnost nacionalnoj manjini). Ovaj segment predavanja je odlična prilika da se istovremeno ispita antidiskriminacijski okvir na tri nivoa (globalni / CoE / EU) i osmišljen je da pomogne studentima da integrišu prethodno naučene koncepte i primijene ih na određenu vrstu diskriminacije.

Krajnji cilj predavanja i procjena je da studenti mogu kritički raditi sa odabranom sudskom praksom. Prezentacije i diskusije koje treba pratiti treba da pokažu da su studenti tačno razumjeli pravni okvir, ključne konce-

[17] Vidi, između ostalog,, ECtHR, br. 57325/00, *D.H. i drugi protiv Republike Češke*, presuda od 13/11/2007, para. 175; ECtHR, br. 58641/00, *Hoogendijk protiv Holandije*, para 2, odluka o prihvatljivosti od 06/01/2005; ECtHR, br. 29865/96, *Ünal Tekeli protiv Turske*, presuda od 16/11/2004, para. 49; CJEU, slučaj C-279/93, *Finanzamt Köln Altstadt protiv Schumacker*, ECLI:EU:C:1995:31, para. 30; CJEU, slučaj C-303/06, *Coleman protiv Attridge prava*, ECLI:EU:C:2008:415, para. 38; CJEU, slučaj C-54/07, *CGKR protiv Firma Feryn NV*, ECLI:EU:C:2008:397, para. 25; CJEU, slučaj C-237/94, *O'Flynn protiv Službenika za odlučivanje*, ECLI:EU:C:1996:206, paras. 19-21.

[18] Vidi, između ostalog, ECtHR, br. 40892/98, *Koua Poirrez protiv Francuske*, presuda od 30/09/2003, para 46; ECtHR, br. 65731/01, *Stec i drugi protiv Ujedinjenog Kraljevstva*, presuda od 12/04/2006, para. 51; CJEU, slučaj C-285/98, *Kreil protiv Njemačke*, ECLI:EU:C:2000:2, para. 20; CJEU, slučaj C-409/95, *Marschall protiv Land Nordrhein-Westfalen*, ECLI:EU:C:1997:533, paras 31-33.

[19] Vidi, između ostalog, ECtHR, br. 9214/80, *Abdulaziz i drugi protiv Ujedinjenog Kraljevstva*, presuda od 28/05/1985, para. 78; ECtHR, br. 20458/92, *Petrovic protiv Austrije*, presuda od 27/03/1998, para. 37; ECtHR, br. 34462/97, *Wessels-Bergervoet protiv Holandije*, presuda od 04/06/2002, para. 49; CJEU, slučaj C-83/94, *Leifer i drugi*, ECLI:EU:C:1995:329, para. 35; CJEU, slučaj C-273/97, *Sirdar protiv The Army Board and Others*, ECLI:EU:C:1999:523, para. 28.

[20] Vidi, između ostalog, ECtHR, br. 55762/00 i drugi, *Timishev protiv Rusije*, presuda od 13/12/2005, para. 57; ECtHR, br. 57325/00, *D.H. i drugi protiv Republike Češke,* presuda od 13/11/2007, paras. 178, 187; ECtHR, br. 58641/00, *Hoogendijk protiv Holandije*, odluka o prihvatljivosti od 06/01/2005.

pte, praksu nadzornih tijela za ljudska prava i sudsku praksu dva evropska suda i da ih mogu prenijeti i analizirati slobodno i uvjerljivo.

Preporučena literatura:

Arnardóttir, Oddný Mjöll, Equality and Non-Discrimination under the European Convention on Human Rights, 2003
Carlson, Laura, Comparative Discrimination Law, 2017
Chalmers, Damian/Davies, Gareth & Monti, Giorgio, European Union Law: Text and Materials, 3rd ed. 2014, Chapter 13: Equal Opportunities Law and Policy, pp. 569 et seq.
Collins, Hugh/Khaitan, Tarunabh (eds.), Foundations of Indirect Discrimination Law, 2018
De Schutter, Olivier, International Human Rights Law, 2nd ed. 2014, Chapter 7: The prohibition of discrimination, pp. 632 et seq.
Dovidio, John F. and others (eds.), The SAGE Handbook of Prejudice, Stereotyping and Discrimination, 2013
Ellis, E. & Watson, P., EU Anti-Discrimination Law, 2nd ed. 2012
Freeman, Marsha A., Chinkin, Christine and Rudolf, Beate (eds.), The UN Convention on the Elimination of All Forms of Racial Discrimination: A Commentary, 2013
Givens, Terry/Case, Rhonda Evans, Legislating Equality: The Politics of Antidiscrimination Policy in Europe, 2014
Handbook on European non-discrimination law – 2018 edition (co-published by the European Union Agency for Fundamental Rights and the Council of Europe), available at https://www.echr.coe.int/Documents/Handbook_non_discri_law_ENG.pdf (accessed on 27 March 2018)
Harris, O'Boyle & Warbrick, Law of the European Convention on Human Rights, 3rd ed. 2014 (by David Harris, Michael O'Boyle and others), pp. 783 et seq.
Hellman, Deborah/Moreau, Sophia (eds.), Philosophical Foundations of Discrimination Law, 2013
Hellum, Anne/Sinding Aasen, Henriette (eds.), Women's Human Rights: CEDAW in International, Regional and National Law, 2013
Mulder, Jule, EU Non-Discrimination Law in the Courts, 2017
Peers, Steve/Hervey, Tamara/Kenner, Jeff/Ward, Angela (eds.), The EU Charter of Fundamental Rights: A Commentary, 2014, pp. 563 et seq. (Art. 20), pp. 579 et seq. (Art. 21), pp. 605 et seq. (Art. 22), pp. 633 et seq. (Art. 23)
Solanke, Iyiola, Discrimination as Stigma: A Theory of Anti-Discrimination Law, 2017

Thornberry, Patrick, The International Convention on the Elimination of All Forms of Racial Discrimination – A Commentary, 2016
Tobler, Christa, Equality and Non-Discrimination under the ECHR and EU Law – A Comparison Focusing on Discrimination against LGBTI Persons, Zeitschrift für ausländisches öffentliches Recht und Völkerrecht (Heidelberg Journal of International Law) 74 (2014), pp. 521 et seq.
Verbist, Valérie, Reverse Discrimination in the European Union, 2017
Wintemute, Robert, 'Within the Ambit': How Big *Is* the 'Gap' in Article 14 European Convention on Human Rights?, European Human Rights Law Review vol. 9 (2004), pp. 366 et seq.
Wintemute, Robert, Filling the Article 14 'Gap': Government Ratification and Judicial Control of Protocol No. 12 ECHR, European Human Rights Law Review vol. 9 (2004), pp. 484 et seq.

Modul 5: Evropska i međunarodna zaštita ljudskih prava	
Predmet	Antidiskriminaciono pravo: globalne i evropske perspektive
Predavač	Prof. Dr. Thomas Giegerich, LL.M. (Univerzitet u Virdžiniji)
Učestalost	Godišnje
Trajanje predmeta	1 semestar
Stduenti koji mogu da slušaju predmet	Studenti upisani na Master program "Evropsko i međunarodno pravo"
Nastavni plan i program	Izborni predmet
ECTS	3
Opterećenje (h)	Vrijeme za predmet: 16h Nezavisni rad: 34h Prezentacija: 40h Ukupno vrijeme za učenje: 90h
Tip predmeta	Predavanje
Maks. br. studenata	20 učesnika
Ocjenjivanje	Usmena prezentacija slučaja i diskusija. Grupni i individualni rad se zahtijeva.
Ciljevi predmeta / Namjeravani ishodi učenja	Na predavanju se raspravlja o osnovama antidiskriminacionog prava na globalnom i evropskom nivou. Cilj je da se studenti upoznaju sa relevantnim pravnim okvirom (Konvencijama UN-a, Evropskom konvencijom o ljudskim pravima, primarnim i sekundarnim pravom EU), ključnim konceptima koji se koriste u antidiskriminacijskom diskursu, kao i relevantnoj praksi međunarodnih tijela za ljudska prava (npr. CERD, CESCR) i sudsku praksu dva evropska suda (ECtHR i CJEU). Da se osigura da studenti steknu bolje razumijevanje ove teme, određena područja antidiskriminacionog prava, kao što je zabrana diskriminacije na osnovu pola, dobi ili vjere, koje se bavi ovim detaljnije. Krajnji cilj predavanja i procjena je da studenti mogu kritički raditi sa odabranom sudskom praksom. Grupne prezentacije i diskusije koje treba pratiti treba da pokažu da su učenici tačno razumjeli pravni okvir, ključne koncepte, praksu nadzornih tijela za lju-

	dska prava i sudsku praksu dva evropska suda i da ih mogu slobodno prenositi i analizirati uvjerljivo.
Nastavni plan	**A. Antidiskriminaciono pravo – globalna perspektiva** **I. Opšti pravni osnov** **1. UN nivo** a. Opšti dokumenti o ljudskim pravima (Povelja UN, Univerzalna deklaracija o ljudskim pravima, ICESCR, ICCPR, Konvencija o pravima djeteta, Međunarodna konvencija o zaštiti prava svih radnika migranata i članova njihovih porodica, CRPD) b. Antidiskriminacioni dokumenti (ICERD, CEDAW) **2. Regionalni nivo** Američka konvencija o ljudskim pravima (ACHR), Afrička povelja o ljudskim pravima i pravima naroda, revidirana Arapska povelja o ljudskim pravima (ACHR), Deklaracija o ljudskim pravima Udruženja zemalja jugoistočne Azije (ASEAN). **II. Definicija diskriminacije** (npr. CCPR, Opšti komentar br. 18) **III. Obaveza država da "garantuju" nediskriminaciju u ostvarivanju paktnih prava** (npr. CESCR, Opšti komentar br. 20) **B. Antidiskriminaciono pravo – evropska perspektiva** **I. Opšti pravni osnov** **1. Savjet Evrope** ECHR (posebno čl. 14, čl. 1 Protokola br. 12), Evropska socijalna povelja (revidirana), Okvirna konvencija za zaštitu nacionalnih manjina, Evropska konvencija o državljanstvu, Konvencija o ljudskim pravima i biomedicini, Konvencija o sprečavanju i borbi protiv nasilja protiv žena i nasilja u porodici **2. EU** **a. Primarno pravo** TEU, TFEU, Povelja o fundamentalnim pravima **b. Sekundarno pravo** Direktiva 2000/78/EZ (Okvirna direktiva), Direktiva 2000/43/EZ (Direktiva o rasnoj jednakosti), Direktiva 2004/11/ EZ (Direktiva o robi i uslugama), Direktiva 2006/54/EZ (Direktiva o jednakom tretmanu) **II. Definicija ključnih pojmova** (npr. diskriminacija, uznemiravanje, poučavanje o diskriminaciji, viktimizacija, direktna i indirektna diskriminacija, pozitivne akcije) upućivanjem na njihove pravne osnove + ECtHR i primjenjivu sudsku praksu CJEU **III. Polje slobodne procjene države / nahođenje** (CoE/EU) **IV. Teret dokazivanja** (CoE/EU) **C. Posebnosti i sudska praksa u vezi s određenim osnovama diferencijacije** (npr. pol, seksualna orijentacija, dob, religija ili uvjerenje, invalidnost, rasa, etnička pripadnost, boja ili pripadnost nacionalnoj manjini) na globalnom nivou / nivou Saveta Evrope / EU, ispitivanjem specifičnih pravnih osnova, relevantnih definicija i vodeće sudske prakse.
Razno	Radni jezik: Engleski Bibliografija: Studentima će biti obezbijeđen čitač i power point prezentacija koju priprema predavač. Nastavni metodi i metodi učenja: Studenti mogu da koriste sve uređaje za koje smatraju da su neophodni i korisni za prezentacije, kao što su Power Point, Prezentacije, Projektor, Bijela tabla, Flip Chart, Handouti.

Mireille Hebing*

Žene i nejednakost pred zakonom

Žene i zakon

Predavanje „Žene i zakon“ dio je dodiplomskog modula pod nazivom “*Politika roda”,* koji je osnovni modul za studente na Fakultetu političkih nauka BA liberalnih studija na Regent Univerzitetu u Londonu. Ukupna naracija ovog modula predstavlja kritičku procjenu ženskih iskustava u javnoj i privatnoj sferi, na nacionalnom, regionalnom i globalnom nivou. Ona uvodi pojmove pola, roda, feminizma, muškosti i ženskosti, jer se oni odnose na razumijevanje pitanja identiteta, nejednakosti, društva, prava, politike i politike. Modul ispituje rodna iskustva i zastupljenost muškaraca i žena angažovanjem na temama kao što su rod i feminizam, ljudska prava, rodno zasnovano nasilje, seksualno nasilje, silovanje kao oružje u ratu, rod i azil i savremena rodna politika. Studenti će steći teorijska znanja i istraživačke alate neophodne za kritičku analizu rodno uslovljenih struktura moći koje oblikuju iskustva muškaraca i žena u politici i društvu primjenom feminističke perspektive. Oni će razviti duboko razumijevanje različitih teorija roda i istražiti uticaj roda na nacionalnu, regionalnu i globalnu politiku.

Nakon prvog predavanja modula „Istraživanje koncepata: Pol i rod“ predavanje „Žene i zakon“ održava se u drugoj sedmici. Fokusira se na to kako je porijeklo zakona i pravnih institucija u Evropi, a posebno u Velikoj Britaniji, ukorijenjeno u patrijarhalnim vrijednostima sadržanim u prosvjetiteljskoj misli i porijeklu liberalnih demokratija.

Uprkos mnogim pozitivnim promjenama u mnogim zemljama članicama EU u posljednjih pedeset godina, i dalje je problematično da žene imaju pristup i da budu zaštićene zakonom. Na primjer, u Velikoj Britaniji, broj slučajeva silovanja prijavljenih policiji se više nego utrostručio u periodu između 2009. i 2017. godine; to se povećalo na 20,751 u 2014. godini, a 2017. godine policija je prijavila 41,186 slučajeva silo-

* Interim Head of Programmes International Relations, Politics and Law, Regent’s University London, Inner Circle, Regent’s Park, London NW1 4NS, 020 2487 7652, hebingm@regents.ac.uk

vanja[1]. Ipak, broj osuda za silovanje ne prati isti obrazac. U 2009./2010. godini, slučajevi silovanja koji su doveli do osude počinioca bili su 2.270, što je povećalo na 2.348 osuđujućih presuda u 2013./2014. Međutim, do 2016./2017. godine broj osuđujućih presuda u slučajevima silovanja iznosio je 2.991, što je samo 721 više nego u 2009./2010.[2], pokazujući da se broj slučajeva silovanja koje je zabilježila policija dramatično povećala, mnogi od tih slučajeva nikada ne odu na suđenje [3].

Nasilje u porodici prati sličan obrazac, tokom posljednjih deset godina došlo je do značajnog povećanja u prijavljivanju, policija u prosjeku prima više od 100 poziva koji se odnose na nasilje u porodici svakih sat vremena u Engleskoj i Velsu[4]. Ipak, stope krivičnog gonjenja za slučajeve nasilja u porodici ostaju notorno loše; to je dijelom zato što domaće zlostavljanje nije samo po sebi krivično djelo, već „više vrsta ponašanja koje može predstavljati bilo koji broj krivičnih djela u zavisnosti od percepcije policije“[5].

Da bi se razumjelo kako rodna nejednakost pred zakonom opstane, korisno je ispitati istorijsko porijeklo i razvoj zakona i pravnih institucija. Priroda prava u liberalno-demokratskim društvima proizašla je iz principa prosvjetiteljstva iz osamnaestog veka, koji su uključivali vrijednosti slobode, jednakosti i čvrstog usredsređivanja na prava pojedinca, centralnu karakteristiku vladavine prava. Međutim, modernizam je generisao društva koja su patrijarhalna po prirodi, što znači da su aktivnosti u javnoj sferi, kao što su politika, pravo i rad, osmišljene za muškarce i kojima dominiraju muškarci. Žene u ovom kontekstu bile su obavezne da ostanu u privatnoj sferi, preuzimajući ulogu u kući, podređenu svojim muževima, brinući se o djeci i starijim osobama.

Savremena društva su se razvila u okviru ovog liberalnog demokratskog modela prava kao pravednog, neutralnog, nepristrasnog, objektivnog i intelektualno rigoroznog sistema za rješavanje sukoba, koji bi trebao biti utemeljen na vrijednosti jednakosti svih pred zakonom, bez

[1] Zavod za nacionalnu statistiku https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/articles/sexualoffencesinenglandandwales/yearendingmarch2017#sexual-offences-recorded-by-the-police

[2] Kraljevska tužilačka služba https://www.cps.gov.uk/publication/rape-prosecutions-key-facts

[3] Kennedy, H. (2018) *Eve Was Shamed: how British Justice is Failing Women* London: Chatto and Windus

[4] Her Majesty's Inspectorate Constabulary https://www.justiceinspectorates.gov.uk/hmicfrs/wp-content/uploads/increasingly-everyones-business-domestic-abuse-progress-report.pdf

[5] Kennedy, H. (2018) p90

obzira na pol, klasu, rasu ili religiju. U ovoj perspektivi, uloga krivičnog zakona je da arbitrira sukobe između države i građanina putem „pravičnog postupka“, to jest u skladu sa pravnim pravilima i postupcima poznatim kao fer i pravedni, ponderisani niti protiv optuženog niti u korist onih koji imaju moć. Uloga građanskog prava je da riješi sporove između pojedinih građana, opet prateći zakonska pravila koja garantuju pravičnost i jednakost. Kao i krivično pravo, građansko pravo se razvilo kroz mješavinu običajnog prava ili zakona koji su donijeli sudovi; to je zbog praćenja "presedana" koji su utvrdili viši sudije u prethodnim predmetima i zakona koji su izabrani političari donijeli u parlamentu.

Iako se čini da se zakon zasniva na principima jednakosti i pravičnosti, u stvarnosti, tokom 18. i 19. vijeka, pravni sistemi funkcionišu po principima seksizma, održavajući muške interese, često na štetu žena. Muška dominacija prava i javne sfere bila je apsolutna, jer žene nisu imale nikakva zakonska prava, kao što su pravo na imovinu, pravo na sopstvenu platu, pravo na razvod braka ili na njihovu decu. Osim toga, zakon nije štitio žene od nasilja. Tokom dvadesetog vijeka žene su stekle određenu osnovu u sticanju prava i njihovom glasu, ali sve do 1970-ih to je ostalo krajnje ograničeno, a u mnogim evropskim zemljama i dalje je teško ženama da pristupe zakonu i pravnim procesima, posebno u oblastima zlostavljanja u porodici i seksualno nasilje.[6].

Kritične feminističke perspektive klasičnog liberalizma pokušavaju da objasne kako se zakon bavio pitanjima života žena. Feministkinje su usmjerile svoj fokus ka zakonu kroz aktivizam Ženskog pokreta tokom sedamdesetih godina, kao dio borbe za jednakost žena i pravde i zaštite u odnosu na kućno i seksualno nasilje. Ova borba je bila osnova feminističke jurisprudencije, koja je ispitivala načine na koje su rodni odnosi moći, pored onih rasnih i klasnih, otjelotvoreni u zakonu. Studije žena tokom ovog perioda počele su da se fokusiraju na prirodu i stepen seksualnog i porodičnog nasilja i smatraju da je zakon umiješan u njegovo neuspjeh da odgovori. Feministički naučnici i aktivisti pokušali su da učine da se čuju glasovi žena i da se ženske situacije i okolnosti zakonski priznaju. Istorijske studije su otkrile skrivenu prirodu zakonske borbe ranijih generacija žena.

Feministička jurisprudencija nastala je kao odgovor na rodnu nejednakost pred zakonom i teoretizirala odnos žena prema zakonu uopšte. Liberalne feministkinje su se fokusirale na osporavanju muške pristrasnosti u pravu, posebno kritičkim ispitivanjem pretpostavljenih vrijednosti

[6] Harne, L. and Radford, J. (2008) *Tackling Domestic Violence: theories, policies, practice* Maidenhead: Open University Press

pravednosti i neutralnosti. Oni su tvrdili da bi se suprotstavilo činjenici da je muška dominacija zakona bila apsolutna, više žena treba da radi u okviru zakona.

Međutim, u stvarnosti ovo rješenje nije bilo uspješno u svim državama članicama EU. Na primjer, statutarni zakon se donosi kroz parlamentarni politički proces. Tokom 20. vijeka žene su ulazile u svoje nacionalne vlade kao poslanici. U Velikoj Britaniji, od ukupno 650 poslanika, u 2010. godini, 143 su bile žene, što je dovelo do 208 ženskih poslanika u 2017. godini.[7] Iako je ovo poboljšanje, Britanski parlament, i stoga britanski proces donošenja zakona ostaje pretežno muški. Ova rodna neravnoteža je slična u oblasti običajnog prava, a to je zakon koji donose sudovi: U Evropi je odnos žena prema muškim sudijama 51%, ali u Velikoj Britaniji 2015. godine, 25% sudija su bile žene, što se povećalo na 28 % u 2016. godini.[8] Uprkos zakonodavstvu koje promoviše rodnu ravnopravnost i osporava rodnu diskriminaciju, u Velikoj Britaniji ni u vladi ni u zakonu nije postignuta ravnopravnost polova.

Radikalnije forme feminizma tvrde da je ideja da će više žena zakonodavaca promijeniti rodnu neravnotežu u zakonu zasnovana na liberalnim feminističkim pretpostavkama. Umjesto toga, oni predlažu da muška dominacija ne samo da prožima stvaranje i primjenu zakona, već i da su zakon i pravne institucije ukorijenjeni u jakoj tradicionalnoj muškoj kulturi. U tom okruženju, neutralnost i objektivnost su ideologija, a ne stvarnost, i vođene su paradigmom muške dominacije. Zakonodavstvo dizajnirano da štiti žene to ne uspijeva i proizvodi ženska iskustva ugnjetavanja umjesto da ih mijenja, čime se legitimizuje kontrola muškaraca nad životima žena. Žrtve silovanja, nasilja u porodici ili prostitucije i dalje imaju poteškoća da budu zaštićene zakonom, jer se on još više bavi očuvanjem kulture muškosti umjesto da osigura žensku sigurnost.

Pitanje rodne nejednakosti pred zakonom postalo je pitanje žestoke globalne političke debate, posebno nakon skandala Harvey Weinstein, i nakon toga #metoo kampanje u oktobru 2017. Seksualno uznemiravanje, seksualno nasilje i drugi oblici rodne neravnopravnosti postaju sve značajniji na političkoj agendi, koja će i dalje imati uticaj na zakon na nacionalnom, regionalnom i globalnom nivou.

[7] Parliament UK (2019) https://www.parliament.uk/business/publications/research/key-issues-for-the-new-parliament/the-new-parliament/characteristics-of-the-new-house-of-commons/

[8] Guardian (2016) https://www.theguardian.com/law/2016/oct/06/proportion-of-women-judges-in-uk-among-lowest-in-europe

Ovo predavanje pruža solidnu platformu za istraživanje preostalih tema u modulu, uključujući ljudska prava, nasilje nad ženama i djevojčicama, azil, prostituciju, seks trafiking, silovanje i porodično nasilje.

Preporučena literatura:

Anand, D, 'Anxious sexualities: Masculinity, nationalism and violence' in The British Journal of Politics and International Relations, 92, pp.257-269, 2007
Asylum Aid (2003) Women Asylum Seekers in the UK: a gender perspective, some facts and figures, Refugee Women's Resource Project and Asylum Aid, 2003
Asylum Aid, Researching Country of Origin Information on Gender and Persecution in the context of asylum and human rights claims, Asylum Aid and Refugee Women's Project, 2007
Bloom, M, 'Bombshells: Women and terror' in Gender Issues, 281-2, pp.1-21, 2011
Bryson, V, Feminist Political Theory (2nd Ed), 2003
Butler, Judith, Gender Trouble, 1990
Cohn, Carol, (ed), Women & Wars, 2013
Connell, R.W. and Messerschmidt, J.W. Hegemonic masculinity rethinking the concept in Gender & society, 196, pp.829-859, 2005
De Beauvoir, S, The Second Sex Trans. H. M. Parshley, 1986
Crawley, H, Refugees and Gender: Law and Process, 2001
Crawley, H, 'Engendering the State in Refugee Women's Claims for Asylum' in Jacobs, S. et al (eds) (2000) States of Conflict: Gender, Violence and Resistance, 2000
Enloe, C. H, Bananas, beaches and bases: Making feminist sense of international politics, 2000
Enloe, C, Maneuvers: The international politics of militarizing women's lives, 2000
Haywood, C. and Mac an Ghaill, M, Men and Masculinities, 2003
Harne, L. and Radford, J, Tackling Domestic Violence: theories, policies and practice, 2008
Higate, P, 'Peacekeepers, masculinities, and sexual exploitation' in Men and Masculinities, 101, pp.99-119, 2007
Hill Collins, P. and Bilge, S, Intersectionality, 2016
Kennedy, H, Eve was Shamed: how British Justice is failing women, 2018
Kilby, J. and Ray, L. Violence and Society: towards a new sociology, 2014
Kirby, P, 'How is rape a weapon of war?: feminist international relations, modes of critical explanation and the study of wartime sexual violence' in European Journal of International Relations, p.1-25, 2012
Kofman, E., Raghuram, P. and Merefield, M, Towards Gender Sensitive Policies in the UK, 2005
Kofman, E, et al, Gender and International Migration in Europe: employment, welfare and politics, 2000
Leatherman, Janie L, Sexual Violence and Armed Conflict, 2011
Mackay, F, Radical Feminism, 2015
MacKinnon, C. A, Are Women Human? And Other International Dialogues, 2007
Marcus, S, Girls to the Front: The True Story of the Riot Grrrl Movement, 2010
Refugee Women Resource Project, Gender Issues in Assessing Asylum Claims: spreading good practice across the European Union, 2005
Robinson, V. and Richardson, D, Introducing Gender and Women's Studies, 2015
Murphy, P, Feminism and Masculinities, 2004
Sjoberg, L, Gender, War & Conflict, 2014
Tickner, A, Gendering World Politics: Issues and Approaches in the Post-Cold War Era, 2001
True, J, The Political Economy of Violence Against Women, 2012
Walby, S, The future of feminism, 2011
Weber, C, Queer International Relations, 2016
Woodiwiss, A, Human Rights, 2005

Nedjelja druga: Žene i zakon	
Modul	POL501 Politika roda
Predavač	Dr Mireille Hebing (Regent Univerzitet u Londonu)
Učestalost	Godišnje
Trajanje predmeta	12 nedjelja (jedan semestar)
Studenti koji mogu da slušaju predmet	Nivo 5 studenti BA Liberalne studije
Nastavni plan i program	Obavezan
ECTS	12
Opterećenje (h)	Vrijeme za predmet: 36 Samostalni rad: 36 Ocjenjivanje: 48 Ukupno vrijeme za učenje: 120
Tip predmeta	Predavanja i seminari
No. of Students	Najviše 20 učesnika
Ocjenjivanje	Esej (50%) i završni ispit (50%)
Ciljevi predmeta / Namjeravani ishodi učenja	Efikasno definisanje širokog spektra relevantnih informacija, demonstriranje razumijevanja primjenom relevantnih rodnih koncepata i teorija. Uspješno identifikovanje niza relevantnih informacija koje se odnose na rod i konflikt i biti u stanju da ih studenti konstruktivno obrađuju u diskusijama i zadacima na času. Sistematično pretraživanje širokog spektra resursa uz kritičko prosuđivanje. Organizovanje i prezentovanje argumenata jasno i na način koji predviđa suprotstavljene stavove, koristeći pouzdane, relevantne i multi-perspektivne dokaze. Često i efektivno artikulisanje modulskog materijala u diskusijama i zadacima na času. Pokazivanje profesionalniog odnosa na času i u zadacima, kroz aktivnu organizaciju, efikasno upravljanje vremenom i odgovarajuću predanost razumijevanju materijala za modul. Pokazivanje aktivnog razmišljanja o konceptima i kontekstima obuhvaćenim u modulu.
Plan i program	I nedjelja: Koncepti: Pol i rod II nedjelja: Žene i zakon; Prosvjetljenje i osnivanje patrijarhata III nedjelja: Rod u međunarodnom pravu i diskursu o ljudskim pravima IV nedjelja: Rani feminizam: Mary Wolstonecraft; Pokret sufražeta i pravo glasa V nedjelja: Drugi feministički talas (1960-ih/1970-ih); reći i savremeni feministički talas VI nedjelja: Muškost VII nedjelja: Nasilje nad ženama i djevojčicama (npr. silovanje kao oružje rata, sakaćenje ženskih genitalija) VIII nedjelja: Rod i azil: izbjeglice i žene migranti XIV nedjelja: Rod i kriminal I: prostitucija i seks trafiking X nedjelja: Rod i kriminal II: silovanje, nasilje u porodici, seksualno uznemiravanje XI nedjelja: #metoo: Budućnost roda i feminizma XII nedjelja: Pregled gradiva/priprema za ispit

Damian BIELICKI*

MEĐUNARODNO JAVNO PRAVO

Modul Međunarodnog prava će studentima pružiti detaljan uvod u principe i funkcionisanje međunarodnog pravnog poretka iz multidisciplinarne perspektive. Teme će obuhvatiti: istorijsku pozadinu, izvore međunarodnog prava, države, sistem Ujedinjenih nacija, diplomatsko i konzularno pravo, ljudska prava, međunarodno humanitarno pravo oružanih sukoba, prostorno i sajber pravo, međunarodno krivično pravo, ekološko pravo i još mnogo toga.

Modul će omogućiti studentima da nauče, razumiju, istraže i steknu razumijevanje za mnoga pitanja koja spadaju pod krovnu oblast sociopravnih studija poznatih kao Međunarodno javno pravo. Razmatraće se kritički pristup pravnom obrazovanju koji uključuje multidisciplinarnu prirodu međunarodnog prava, sa studijama od prava, politike, istorije, nauke, filozofije, sociologije, ekonomije, do etike i međunarodnih odnosa. Štaviše, razmatraćemo međunarodno pravo iz nacionalne, regionalne i globalne perspektive. To će pomoći studentima da opišu, analiziraju i procijene različita pitanja, i da pogledaju ispod površine zakona i propisa, da vide „širu sliku“. Odabrane teme već su imale, imaju ili će imati direktan uticaj na naše živote, čineći ga veoma praktičnim.

Modul će obuhvatiti osnovna znanja o tome kako funkcioniše sistem međunarodnog prava i koja je uloga advokata, političara, diplomata i drugih stručnjaka na međunarodnoj sceni. Daće se praktični slučajevi kako bi se zakon povezao sa stvarnim scenarijima života. Modul je rijetka prilika za studente, omogućavajući im da kritički procjenjuju tekuće razvoje u teoriji i praksi međunarodnog prava i prepoznaju kako se ovi razvoji odno-se jedan na drugi.

Ishodi učenja:

Po završetku ovog modula, studenti će moći da:

- Pokažu detaljno poznavanje međunarodnog prava iz multidisciplinarne perspektive.

* Dr Damian Bielicki is a Visiting lecturer at Regent's University London.

- Identifikuju i kritički procijene tekuća pitanja, razvoj, znanje, dokaze i argumente koji se odnose na teoriju i praksu u nizu tema međunarodnog prava.
- Pokažu vještine kritičke svijesti i originalnosti misli u rješavanju složenih pitanja i razvoja međunarodnog prava.
- Pokažu sposobnost osporavanja i raspravljanja o teoriji i praksi međunarodnog prava – *de lege lata* i *de lege ferenda* (latinski: zakon kakav postoji i šta bi trebalo da bude zakon).
- Pokažu sposobnost da pronađu, sumiraju i asimiluju niz složenih radova u bilo kojoj specijalističkoj oblasti u okviru međunarodnog prava i konstruišu koherentan argument.
- Uključe se u jasnu i efikasnu komunikaciju ideja i argumenata usmeno i pismeno sa međunarodnom i raznovrsnom publikom.
- Pokažu sposobnost samostalnog rada sa pouzdanjem, preuzimajući inicijativu za čitanje, istraživanje i proaktivno traženje novih vještina i znanja.
- Pokažu sposobnost osporavanja tipičnih i utemeljenih stavova i originalnog razmišljanja.

Preporučena literatura:

- Shaw, Malcolm N., *International Law*, Seventh Edition, 8th Ed., Cambridge University Press 2017
- Crawford James, *Brownlie's Principles of Public International Law*, Oxford University Press 2012
- Aust, Anthony, *Handbook of International Law*, 2nd ed. Cambridge University Press 2010
- Dinstein Yoram, *War, Aggression and Self-defense*, latest edition.
- Shelton Dinah, *The Oxford Handbook of International Human Rights Law*, Oxford University Press 2015

Dodatni izvori:

- Međunarodni sud pravde – Slučajevi http://www.icj-cij.org/ docket/ index.php?p1=3
- Evropski sud za ljudska prava http://www.echr.coe.int/Pages/home.aspx?p=home
- Međuamerički sud za ljudska prava http://www.corteidh.or.cr/index.php/en

- Međunarodni krivični sud – Slučajevi https://www.icc-cpi.int/en_menus/icc/situations%20and%20cases/cases/Pages/cases%20index.aspx
- Međunarodno humanitarno pravo – Sporazumi, dokumenta i komentari https://ihl-databases.icrc.org/ihl
- Ujedinjene nacije – Rezolucije Generalne skupštine http://www.un.org/en/sections/documents/general-assembly-resolutions/index.html
- Ujedinjene nacije – Rezolucije Savjeta bezbjednosti http://www.un.org/en/sc/documents/resolutions/
- Kolekcija sporazuma Ujedinjenih nacija https://treaties.un.org/pages/cumulativeindexes.aspx

Nastavni plan
Sesija 1: Uvod u međunarodno pravo *(Istorijski razvoj, osnovna terminologija i principi)* Sesija 2: Izvori međunarodnog prava *(Fokus na član 38 Statuta MSP-a i izvore koji nisu spomenuti u Statutu)* *Sesija 3: Subjekti međunarodnog prava* *(Države, međunarodne međuvladine organizacije, nevladine organizacije, nedržavni akteri, koncept međunarodnog pravnog subjektiviteta)* *Sesija 4: Teritorija u međunarodnom pravu* *(Pojam teritorije u međunarodnom pravu, terrotorijalni suverenitet i integritet, načini sticanja teritorije itd.)* *Sesija 5: Ujedinjene nacije* *(Sistem UN-a, Povelja UN-a, tijela UN-a itd.)* *Sesija 5: Rješavanje sporova* *(Diplomatske i sudske metode rješavanja sporova; uloga međunarodnih institucija i organizacija u rješavanju sporova itd.*) *Sesija 6-7: Zakon o ljudskim pravima* *(Međunarodna i regionalna zaštita ljudskih prava*) *Sesija 7-8: Međunarodno humanitarno pravo oružanih sukoba* *(Istorijska pozadina, nezakonitost rata, izuzeci od zabrane upotrebe sile itd.)*

Sesija 9: Tehnološki razvoj i međunarodno pravo *(Vazduhoplovno pravo, Svemirsko pravo, Sajber pravo)* *Sesija 10: Pravo zaštite životne sredine* *(Istorijska pozadina, trenutni pravni režim)*
Radni jezik: Engleski Bibliografija: Studentima će biti obezbijeđen čitač i power point prezentacija koju priprema predavač. Nastavne metode i metode učenja: Studenti mogu da koriste sve uređaje za koje smatraju da su neophodni i korisni za prezentacije, kao što su Power Point prezentacije, projektor, bijela tabla, flip chart, brošure.

Vasilka Sancin*
Maša Kovič Dine**

NASTAVA PRAVA EU KAO DIO NASTAVNIH PLANOVA I PROGRAMA MEĐUNARODNOG PRAVA

1. Uvod

Ovo poglavlje nudi perspektivu u nastavi prava Evropske unije (EU) kao dio programa međunarodnog javnog prava na Pravnom fakultetu Univerziteta u Ljubljani (Fakultet).[1] Iskustvo Odsjeka za Međunarodno pravo Fakulteta pokazuje da se osnove, kao i neki odabrani aspekti prava EU, mogu efikasno predavati u okviru predmeta međunarodnog prava, kako na nivou osnovnih (bečelor), tako i na nivou master pravnih studija. Između ostalog, ovakav pristup omogućava studentima da povežu teme prava EU sa drugim pravnim oblastima i da im pruži šire vertikalno i horizontalno razumijevanje funkcionisanja pravnog sistema EU.
Od kraja 1990-tih godina, neke osnovne karakteristike, kao i odabrane teme prava EU, redovno se izvode u okviru obaveznog predmeta Međunarodno javno pravo u četvrtom razredu na nivou osnovnih studija, kao i u okviru predmeta na nivou master studija, trenutno, posebno u okviru predmeta Odabrana poglavlja Međunarodnog prava, koji je dostupan kao obavezni predmet Modula Međunarodnog prava na nivou master studija na Fakultetu.

U okviru predmeta **Međunarodno javno pravo** (10 ECTS, 150 sati ukupno – 90h predavanja, 60h praktičnih vježbi koje analiziraju sudske prakse međunarodnih sudova i tribunala) – koji se trenutno nalazi na studijama prvog ciklusa Bolonjskog procesa - pravo EU se uglavnom razmatra u uvodnom dijelu (zimski semestar), gdje se objašnjavaju osnovni

* dr Vasilka Sancin, Vanredni profesor Međunarodnog prava i Šef Odsjeka Međunarodnog prava na Pravnom fakultetu Univerziteta u Ljubljani, Direktor Instituta za međunarodno pravo i međunarodne odnose, Poljanski nasip 2, Si-1000 Ljubljana, Slovenija, e-mail: vasilka.sancin@pf.uni-lj.si; telefon: +3861420 3129.
** dr Maša Kovič Dine, docent za Međunarodno pravo na Pravnom fakultetu Univerziteta u Ljubljani, Poljanski nasip 2, Si-1000 Ljubljana, Slovenija, e-mail: masa.kovic-dine@pf.uni-lj.si; telefon: +38614203116
[1] Edukacija i obuka iz prava EU na Pravnom fakultetu Univerziteta u Ljubljani, kao dio slovenačkog prava, predstavljeno je u poglavlju ove knjige pod nazivom *Edukacija i obuka u oblasti prava EU na Pravnom fakultetu Univerziteta u Ljubljani* Ane Vlahek.

odnosi između različitih pravnih poredaka, tj. domaćeg prava - prava EU - međunarodnog prava, i upućivanjem na teorije monizma, dualizma i koordinacije (otprilike 3 sata predavanja i 2 sata praktičnih vježbi u kojima se raspravlja o sudskoj praksi Suda pravde EU (CJEU).)). Postoje i drugi slučajevi u kojima se pravo EU poziva na raspravu o osnovnim pravilima i principima međunarodnog prava, kao što su uslovi za priznavanje država, u kojima je EU, izgleda, dodala neke uslove za priznavanje novih država, uključujući i nakon raspada bivše Jugoslavije, ili kada se razmatraju različiti mehanizmi sankcija uvedeni zakonodavstvom EU, kako za borbu protiv terorizma ili za reagovanje na nezakonitu upotrebu sile, između ostalog.

Mnogo snažniji fokus i detaljna studija međudjelovanja međunarodnog javnog prava i prava EU osigurana je u okviru modula Međunarodnog prava 2. Bolonjskog ciklusa studija koji se nude na Fakultetu od 2009. godine. Glavni obavezni predmet modula, pod nazivom **Odabrana poglavlja Međunarodnog prava** (8 ECTS, 90 sati ukupno - 60 sati predavanja, 30 sati praktičnih vježbi) je posebno osmišljeno tako da analizira materiju svakog predmeta iz perspektive međunarodnog prava i prava EU. Ovaj pristup je dalje objašnjen u sljedećem dijelu ovog poglavlja.

Već dugi niz godina, pravo EU je bilo predmet specijalizovanih takmičenja u simulaciji suđenja. Ipak, nije neobično da se pravo EU i sudska praksa odnose i na studentska **takmičenja u simulaciji suđenja** u oblasti međunarodnog javnog prava (npr. Philip C. Jessup International Law Moot Court Competition, Frankfurt Investment Arbitration Moot Court Competition, Manfred Lachs Space Law Moot Court Competition), u kojem redovno učestvuju timovi Fakulteta i postižu zapažene rezultate.

Pored nastave prava EU u okviru Odsjeka za Međunarodno pravo Fakulteta, postoje i brojne **teze** (ranije - prije Bolonjske reforme - na nivou osnovnih studija (sve dok ih nisu zamijenila dva dodatna izborna predmeta), na master nivou, kao i na doktorskim studijama) fokusirajući se na različita pitanja prava EU, dok se studenti mogu uključiti i u brojne **istraživačke projekte** Odsjeka, baveći se i aspektima prava EU.

2. Širenje znanja o pravu EU u okviru Master studija Međunarodnog prava

Već u programu iz 2001. godine, zatim naučnih, Master studija iz međunarodnog prava (predbolonjske studije), nastavni planovi i programi uključivali su poseban obavezni predmet pod nazivom *Međunarodni*

pravni aspekti Evropske unije. Predmet sa 20 sati predavanja bavio se raznim pitanjima iz oblasti prava EU, kao što su istorija integracija EZ/EU, pravni subjektivitet Evropske komisije i EU, institucionalne strukture, zaključivanje ugovora, vanjski poslovi EU, pravni aspekti pridruživanja i članstva u EU procesima i institucionalnim i normativnim pitanjima. Predmet je osmišljen sa ciljem da edukuje i pripremi pojedince koji su uključeni u proces priprema Slovenije za buduće članstvo u EU, kao i one koji treba da budu upoznati sa normativnim i institucionalnim okvirom EU kao dio svojih poslova čak i prije nego što je Slovenija postala članica EU 2004. godine.

Međutim, nakon Bolonjske reforme i nesretnog ukidanja naučnih Master studija u Sloveniji, Odsjek za Međunarodno pravo Fakulteta odlučio je, kao što je gore navedeno, da uključi u svoj modul međunarodnog prava 2. Bolonjskog ciklusa, obavezni predmet pod nazivom Odabrana poglavlja Međunarodnog prava. Nastavni program predmeta sastoji se od sljedećih glavnih tema: odnos između međunarodnog prava i nacionalnog prava, odnos između međunarodnog prava i prava EU, zaštita manjina, diplomatska zaštita, međunarodno investiciono pravo, međunarodno ekološko pravo i mirno rješavanje sporova. Dok je fokus na pravo EU ključan u okviru teme o odnosu između međunarodnog prava i prava EU, sve ostale teme sadrže i važne elemente zakona EU, što će biti predstavljeno u sljedećim djelovima. Nastavne jedinice iz prava EU prezentuju se studentima na različite načine, kroz posebno fokusirana predavanja o temama EU, kroz poređenje prava EU sa pravilima međunarodnog prava ili kroz proučavanje odluka i mišljenja Suda EU ili drugih praktičnih primjera iz prakse EU.

2.1. Odnos između Međunarodnog prava i prava EU

Kao što je gore ilustrovano, teme prava EU su značajno isprepletene sa temama međunarodnog prava, još više za države članice EU (DČ). Stoga je neophodno da učenici upoznaju odnos između međunarodnog prava i prava EU. Predmet Odabrana poglavlja Međunarodnog prava tako utiče na složenost podjele i dijeljenja nadležnosti između EU i njenih država članica u odnosu na njihova zakonska prava i obaveze prema međunarodnom pravu. Od studenata se očekuje da steknu temeljno znanje o položaju međunarodnog prava u okviru prava EU. Fundamentalni aspekti kompetencija EU već se razmatraju na dodiplomskom (bečelor) nivou

(1. Bolonjski ciklus), kao što je, na primjer, slučaj *MOX plant*[2] i mješovitih međunarodnih sporazuma proučavan kao dio praktičnih vježbi u okviru Međunarodnog javnog prava. Pitanje odnosa između prava EU i međunarodnog prava, kao dva odvojena pravna sistema, dalje je elaborirano sa studijom *slučaja Kadi*[3] i odlukama sudova EU na svim nivoima, jer je to jedan od kamena temeljaca za ilustraciju odnosa između prava EU i međunarodnog prava. Od studenata se traži da detaljno pročitaju odluke svih sudova i da se podstaknu da razgovaraju o svim mogućim ishodima odluka. U okviru ovog predmeta obrađuju se i pitanja zaštite osnovnih ljudskih prava na nivou EU. Osnovni udžbenik za ovaj dio predmeta je Sancin, V., Mednarodno pravo v hierarhiji pravnih virov EU in njenih članic (Međunarodno pravo u hijerarhiji pravnih izvora EU i njenih članica), Uradni list Republike Slovenije, Ljubljana, 2009.

2.2. Zaštita manjina

Zaštita manjina je prioritetna oblast EU, posebno u procesu proširenja. Iako je pravni okvir za zaštitu manjina unutar EU prilično slab, postoje i drugi evropski regionalni dokumenti i mehanizmi monitoringa koji pružaju zaštitu etničkim, jezičkim i vjerskim manjinama u državama članicama EU. Nastavni program predmeta među opštim temama o razvoju manjinske zaštite i zaštite manjina u okviru sistema Ujedinjenih nacija, takođe pokriva zaštitu manjina u okviru Savjeta Evrope i njenog vodećeg dokumenta Evropske konvencije o ljudskim pravima i osnovnim slobodama (ECHR), kao i u okviru sistema Organizacije za ekonomsku saradnju i razvoj (OECD). Ovi višestruki dokumenti i njihovi mehanizmi praćenja najbolje se prikazuju kroz studiju slučaja jedne nacionalne manjine. Stoga primjere položaja i borbe slovenačkih manjina u susjednim zemljama, svim državama članicama EU proučavaju studenti kroz najnovije izvještaje gore spomenutih nadzornih tijela. Razmatraju se pitanja ispunjenja od strane država stanovanja dotičnih manjina i njihove opcije

[2] Komisija Evropskih zajednica protiv Irske, Presuda Suda (Veliko vijeće) 30. maja 2006., Slučaj C-459/03.

[3] Yassin Abdullah Kadi protiv Savjeta EU i Evropske komisije, Presuda Suda prve instance (Drgo vijeće, proširen sastav) od 21. septembra 2005., Slučaj T-315/01; Yassin Abdullah Kadi i Al Barakaat International Foundation protiv Savjeta EU i Evropske komisije, Presuda Suda (Veliko vijeće) od 3. septembra 2008., Združeni slučajevi C-402/05 P i C-415/05 P; Yassin Abdullah Kadi protiv Evropske komisije, Presuda Opšteg suda (Sedmo vijeće) od 30. septembra 2010., Slučaj T-85/09; Evropska komisija i ostali protiv Yassin Abdullah Kadi, Presuda Suda (Veliko vijeće), od 18. jula 2013., Združeni slučajevi C-584/10 P, C-593/10 P i C-595/10 P.

za pravno zadovoljenje. U svjetlu posljednjeg, studenti se upoznaju sa pozicijom EU i mjerama koje su joj na raspolaganju da reaguju na zloupotrebe prava manjina u svojim državama članicama.

2.3. Diplomatska zaštita i Međunarodno investiciono pravo

Ova dva naslova nastavnog plana i programa ponovo pozivaju na proučavanje zakonske regulative EU na temu investicionog prava i konkretnije investicione arbitraže i druge oblike rješavanja sporova. Razmatrani su različiti aktuelni slučajevi ulaganja i njihov uticaj na pravo EU. Među njima su *slučaj Yukos*[4], naročito zbog kršenja ljudskih prava i postupci pred Evropskim sudom za ljudska prava (ECtHR) i pitanja vezanih za izvršenje odluke pred sudovima država članica EU, kao i *presuda Achmea*[5] o nekompatibilnosti ugovora o ulaganju unutar EU sa pravom EU i Mišljenje 1/17[6], u kojoj je CJEU potvrdio kompatibilnost Suda za investicione sudove CETA sa pravom EU.

2.4. Međunarodno pravo životne sredine

Poseban fokus na predmetu je takođe posvećen proučavanju Evropskog zakona o životnoj sredini i njegovoj primjeni. S obzirom na to da su proučeni slučajevi ekološkog prava imali važan uticaj na pravo EU i nacionalnu regulativu i implementaciju zakona o zaštiti životne sredine, ove implikacije se razmatraju kao posljedica međunarodne pravne prakse. Jedan od takvih slučajeva je već spomenuti slučaj MOX plant, koji se bavi odnosom između međunarodnog prava i EU sa mješovitim ugovorima. Osim toga, razmatra se pitanje nadležnosti između institucija EU i država članica, jer to utiče na obaveze država članica u ispunjavanju međunarodnih sporazuma o ekološkom pravu. U oblastima u kojima međunarodno pravo nema regulativu za zaštitu životne sredine, kao što je zaštita šuma i krčenje šuma, zakonska regulativa EU je predstavljena kao relevantna regulativa koja ograničava državni suverenitet nad prirodnim resursima i određuje njihovo upravljanje. U slučaju krčenja šuma, predmet *ES C-*

4 PCA Case No. AA 226 Hulley Enterprises Limited (Kipar) protiv Ruske federacije, PCA Case No. AA227 Yukos Universal Limited (Isle of Man) protiv Ruske federacije, PCA Case No. AA 228 Veteran Petroleum Limited (Kipar) protiv Ruske federacije, 13. jul 2014., https://pca-cpa.org/en/cases/61/ (14.4.2019).

[5] Republika Slovačka protiv Achmea BV, Presuda Suda (Veliko vijeće) od 6. marta 2018., Slučaj C-284/16.

[6] EU-Canada CET Agreement, Mišljenje Suda (puni sastav) od 30. aprila 2019., Mišljenje C-1/17.

441/17 Evropska komisija protiv Poljske[7] je detaljno proučen i razmatran. Dodatna pažnja se takođe posvećuje pitanjima parničenja u pitanjima zaštite životne sredine i forumima EU, budući da se razmatraju neke od mogućih alternativa.

2.5. Mirno rješavanja sporova

Za države članice EU, razni mehanizmi EU i forumi za rješavanje sporova, predstavljaju održivu mogućnost za rješavanje mnoštva međudržavnih sporova. Budući da su međunarodne opcije često ograničene, zbog ograničenih zahtjeva ili nepostojanja nadležnosti ili nedopustivosti, mehanizmi EU otvaraju brojne mogućnosti za obeštećenje koje inače ne bi bile dostupne državama članicama EU ili privatnim stranama u sporu. Među međudržavnim sporovima o kojima se raspravljalo na predmetu je i spor između Slovenije i Hrvatske, koji je prvi podnijela Slovenija CJEU 2018. godine.

2. Zaključak

Pravo EU, od svog osnivanja kao posebne grane međunarodnog prava, postepeno se razvilo u nezavisni pravni poredak *sui generis*, uglavnom kao rezultat progresivnog tumačenja od strane sudova EU. Međutim, njegova pupčana vrpca sa međunarodnim pravom nikada nije u potpunosti prekinuta. Stoga postoje mnogi razlozi zbog kojih će se pravo EU proučavati i u okviru programa međunarodnog javnog prava, pored njegovog uvođenja u druge pravne predmete. Pomenimo samo neke. Osnovni ugovori EU, kao što je Lisabonski ugovor, odražavaju kvalitet međunarodnih ugovora, za koje se primjenjuju pravila tumačenja Bečke konvencije o pravu međunarodnih ugovora. Štaviše, EU je postala stranka u brojnim multilateralnim ugovorima na snazi ili pored svojih država članica, te je stoga vezana takvim međunarodnim pravnim obavezama, koje treba poštovati u međunarodnom pravnom sistemu. Konačno, još važnije, Sud EU koristi međunarodno pravo u obavljanju svoje sudske funkcije od svog osnivanja, i stoga značajno doprinosi fenomenu *evropeizacije* međunarodnog prava.

Sve gore navedeno i još više, naveli su neke da tvrde da je „pravni sistem Evropske unije postao najefikasniji međunarodni pravni sistem koji

[7] Evropska komisija protiv Republike Poljske, Presuda Suda (Veliko vijeće) od 17. aprila 2018., SLučaj C-441/17.

postoji, koji stoji u jasnom kontrastu sa tipičnim slabostima međunarodnog prava i međunarodnih sudova“[8].

[8] Karen J. Alter, Establishing the Supremacy of European Law, The Making of an International Rule of Law in Europe, Oxford University Press, 2001.

Ana Vlahek*

EDUKACIJA I OBUKA IZ PRAVA EU NA PRAVNOM FAKULTETU UNIVERZITETA U LJUBLJANI

1. UVOD

Univerzitet u Ljubljani je najstarija i najveća ustanova visokog obrazovanja i naučno-istraživačkog rada u Sloveniji. Osnovan je 1919. godine, a jedan od njegovih osnivača je Pravni fakultet. Na stogodišnjicu Univerziteta i Pravog fakulteta, 2019. godine, Slovenija obilježava 15 godina članstva u EU. Međutim, pravo EU je počelo da se predaje na Pravnom fakultetu u Ljubljani mnogo prije nego što je Slovenija ušla u EU 2004. godine. Redovni studijski programi koji pokrivaju pravo EZ potiču iz kasnih 1980-ih i početkom 1990-ih kada su različiti tipovi predmeta o EEZ/EZ bili ponuđeni studentima osnovnih i master studija. Većina ovih aktivnosti obavljena je u okviru jednog od Tempus projekata. Važno je napomenuti da je u to vrijeme (tj. u periodu puta Slovenije do nezavisnosti od bivše Jugoslavije), mnogi pravni fakulteti iz država članica EU još uvijek nisu ponudili izborne, a kamoli obavezne predmete iz prava EEZ/EZ/EU. Motiv ovog modernog i vizionarskog pokreta je nesumnjivo bio profesor Peter Grilc[1] s odsjeka za Privatno pravo[2] Fakulteta koji je bio svjestan važnosti članstva Slovenije u EZ i znanja potrebnih pravnicima, sudijama i privrednim entitetima prije i nakon ulaska u EU.

* dr Ana Vlahek (Ljubljana, Slovenija), vanredni profesor na Univerzitetu u Ljubljani, Pravni fakultet, Poljanski nasip 2, Si-1000 Ljubljana, Slovenija, e-mail: ana.vlahek@ pf.uni-lj.si; telefon: +38614203154. U ovom poglavlju razmatra se edukacija i obuka iz prava EU na Pravnom fakultetu Univerziteta u Ljubljani, kao dio slovenačkog prava, dok se poglavlje koje su napisali Sancina i Koviča Dine bavi uključivanjem tema prava EU u predmete međunarodnog prava.

[1] http://www.pf.uni-lj.si/en/faculty/teachers-and-researchers/peter-grilc-phd-professor/ (28/2/2019).

[2] http://www.pf.uni-lj.si/en/faculty/departments/department-of-civil-law/ (28/2/2019).

2. NASTAVA PRAVA EZ/EU PRAVA NA PRAVNOM FAKULTETU U LJUBLJANI

2.1. Počeci (1980-ih i 1990-ih)

Počeci uvođenja prava EEZ/EZ/EU u obrazovne aktivnosti Pravnog fakulteta u Ljubljani datiraju iz kasnih 1980-ih kada se profesor Peter Grilc (istraživač i asistent na Pravnom fakultetu u Ljubljani u to vrijeme) vratio iz prakse u Evropskoj komisiji u Briselu. Inspirisan idejama evropske integracije i funkcionisanja zajedničkog tržišta i svjestan toga oboje, važnost slovenačke trgovine sa zemljama članicama EEZ, kao i usklađivanje slovenačkog pravnog poretka sa *acquis communautaire,* potrebnim za buduće članstvo u EEZ, on uspio je da organizuje razne ljetne škole vezane za pravo EEZ i druge vannastavne aktivnosti. Uz pomoć njegovog mentora profesora emeritus Bojana Zabela,[3] on je na kraju uspio da uvrsti i novi predmet o pravu EZ (*Sl. Pravo Evropske skupnosti*) među izbornim predmetima poslednje, četvrte godine osnovnih studija. Nacrt predmeta predstavljao je okvir za sve kasnije predmete koji pokrivaju pravo EZ/EU i sastoji se od sledećih tema: istorijski pregled, institucije EZ, pravni izvori EZ, pravni ljekovi, karakteristike prava EZ, slobodno kretanje robe, pravo konkurencije EZ, slobodno kretanje ljudi i usluga, ekonomska i monetarna unija, zaštita životne sredine, spoljna politika, Slovenija i evropske zajednice. Potrebno je proučiti sudsku praksu Evropskog suda pravde i čitanje postojeće strane literature o funkcioniranju EZ, kao i prvog slovenačkog rada o pravu EZ, odnosno knjigu slučajeva iz 1984. pod nazivom *Pravna regulativa EEZ-a* od strane pokojnog profesora Mirka Ilešiča sa Univerziteta u Mariboru, Pravni fakultet.

Ubrzo nakon toga, profesor Grilc je postao član Tempus projekta JEP 07783/94 koji se provodi u okviru Transevropske sheme saradnje za visoko obrazovanje između Srednje / Istočne Evrope i Evropske zajednice.[4] Projekat pod nazivom *Uvođenje evropskog prava u univerzitetske programe i van-univerzitetsko obrazovanje u Sloveniji* bio je usmjeren na uvođenje i / ili restrukturiranje i modernizaciju predmeta prava EU na pravnim fakultetima u Ljubljani i Mariboru, uključujući razvoj postdiplomskog master studija iz evropskog prava i stvaranje međunarodne ljetnje škole u evropskom pravu.[5] EZ je finansirala uvođenje predmeta iz

[3]http://www.pf.uni-lj.si/en/faculty/teachers/bojan-zabel-phd-professor-emeritus/ (28/2/2019).

[4] *European Commission*, Tempus, Compendium, Academic Year 1994/95, Brussels, Luxembourg, 1994, http://aei.pitt.edu/91970/1/1994-95.pdf (28/2/2019).

[5] See *Fašink*, Tudi to je lažja pot do znanja, Pravna praksa, no. 3, 1995, p. 28.

prava EZ u nastavne planove i programe slovenačkih pravnih fakulteta, dok su drugi obavezni da redovno izvode nastavu na tim predmetima i finansiraju ih. Projekat je omogućio saradnju univerziteta u Mariboru (prof. Mirko Ilešič), Ljubljane (profesor Peter Grilc), Graca (profesor Posch), Trsta (AvD. Mansi) i Amsterdama (profesor Jan H. Jans i profesor Edmond L.M. Völker).

Jedan od najvažnijih rezultata projektnih aktivnosti na Pravnom fakultetu u Ljubljani bio je uvođenje obaveznog predmeta pod nazivom *Pravo EZ* u posljednjoj, četvrtoj godini dodiplomskog programa. Kao što je to bio slučaj sa postojećim izbornim predmetom, pravo EZ se sastojalo od 90 sati, a predavali su ga profesor Grilc i profesor Podobnik[6] (tadašnji asistent) tokom zimskog i proljećnjeg semestra. Pored toga, u okviru naučnih master studija građanskog i privrednog prava uveden je novi izborni predmet *Zakon međunarodnih ekonomskih integracija* koji pokriva pretežno pravo EZ. Kako je nastava iz oblasti prava EZ na fakultetu počela prije mnogo godina, zapravo ne postoje dokazi o točnoj akademskoj godini u kojoj su počeli izborni i obavezni predmeti o pravu EZ u okviru dodiplomskih i postdiplomskih studija. Dodiplomski studijski programi pohranjeni u arhivima fakulteta datiraju iz 1996/97, dok neki stariji koji su dostupni nisu datirani.[7] Prema sjećanjima profesora Grilca i Podobnika, dodiplomski izborni predmet počeo je početkom devedesetih godina prošlog vijeka, a obavezan predmet negdje sredinom 1990-ih tokom implementacije Tempus projekta. Prema knjigama fakulteta i starim programskim knjižicama, predmeti koji pokrivaju pravo EZ u postdiplomskim studijama ponuđeni su najkasnije 1993/94.

U okviru Tempus projekta, profesori Grilc i Podobnik su takođe organizovali dvije ljetnje škole iz evropskog prava koje su se održavale na Pravnom fakultetu u Ljubljani 1997/98 i 1998/99. Tada su, kao rezultat projektnih aktivnosti, izdate i razne knjige predmeta o pravu EZ.[8]

Nekoliko godina prije nego što je Slovenija pristupila EU, profesori Grilc i Podobnik su željeli da nadograde sve ove aktivnosti osnivanjem novog fakulteta Odsjek za evropsko pravo i / ili fakulteta Instituta za

[6]http://www.pf.uni-lj.si/en/faculty/teachers-and-researchers/klemen-podobnik-phd-associate-professor/ (28/2/2019).

[7] I thank colleagues from the student affairs office for the help in research the archives of study programs.

[8] *Ilešič, Grilc, Brinar*, Pravo Evropske skupnosti, praktikum, Pravna fakulteta v Mariboru, 1996; *Ilešič, Grilc, Knez*, Pravo Evropske skupnosti, Del 2, Primeri iz prakse sodišča Evropske skupnosti, Pravna fakulteta v Mariboru, 1997; *Ilešič et al.*, Pravo Evropske skupnosti: študijsko gradivo in sodna praksa, Pravna fakulteta v Mariboru, 1998.

evropsko pravo koji su tipični u državama članicama EU i *conditio sine qua non* za intenzivna naučna istraživanja prava EU. Njihove ideje nažalost nisu implementirane. To je sigurno bila jedna od prepreka za dodatno intenziviranje istraživanja prava EU na Fakultetu. Još jedan razlog za nedostatak istraživačkih aktivnosti iz prava EU na prelazu vijeka pa na dalje, su vječno slabe mogućnosti zapošljavanja na Fakultetu, što je rezultiralo nedostatkom mladih istraživača i nastavnika, zajedno sa preopterećenjem postojećeg osoblja, koje se ne može fokusirati isključivo na istraživanju prava EU (a da ne govorimo o specifičnoj temi u okviru prava EU), ali su prečesto potrebni za pokrivanje različitih predmeta u različitim pravnim oblastima. Imajući u vidu ove okolnosti, rezultati onih koji podučavaju i istražuju pravo EU bili su prilično impresivni. Kvalitet nastave i istraživanja prava EU najbolje se može mjeriti uspjehom timova Univerziteta u Ljubljani na EU simulacijama parnica i našim diplomcima na njihovim Erasmus, postdiplomskim ili doktorskim studijama u inostranstvu, pružajući povratnu informaciju o tome kako je odlično njihovo znanje o pravu EU stečeno na Fakultetu, kao i broj uspješno organizovanih konferencija i projekti koji pokrivaju teme iz prava EU koje obavlja osoblje Fakulteta.

2.2. Predmeti o pravu EZ / EU predbolonjskog sistema (sredina 1990-ih - 2009)

Predmet pod nazivom *Pravo EZ* je jedan od osnovnih obaveznih predmeta na Pravnom fakultetu u Ljubljani od sredine devedesetih godina. Kao što je to bio slučaj sa izbornim predmetom o *Pravu EZ,* koji je dodat u nastavni plan i program nekoliko godina ranije, i ovaj predmet je obuhvatio i opšte ustavne i proceduralne teme, kao i materijalne teme kao što su četiri slobode i Zakon o konkurenciji EU/EZ. Strukturiran je na sljedeći način: Razvoj evropske ekonomske integracije; Institucije EU; Sudski pravni ljekovi u EZ; Zakonodavstvo EZ i donošenje političkih odluka; Priroda prava EZ: direktni i indirektni efekti; Primjena prava EZ: pravni ljekovi pred nacionalnim sudovima; Odnos između prava EZ i nacionalnog prava: prioritet; Opšti principi; Slobodno kretanje robe; Slobodno kretanje radnika (i šire); Sloboda osnivanja i pružanje usluga; Izuzeci od javne politike; Garantovanje jednakosti; Zakon o konkurenciji; Pravo intelektualne svojine; Država i zajedničko tržište; Zajedničko tržište: ideje za finalizaciju; Zaštita okoline; Spoljna politika; Slovenija i EZ. Nastavni plan predmeta je godinama ostao manje-više isti. On je tek neznatno restrukturiran i detaljnije napisan, dodati su i neki aspekti prava EU (npr. Pravo EU potrošača i novine koje donose novi ugovori).

Predmetni sati su podijeljeni na predavanja i seminare (2 sata predavanja plus 1 sat seminara nedjeljno u zimskom i proljećnjem semestru). Ono što možemo uočiti kao još uvijek najbolju praksu u podučavanju prava EU na našem fakultetu je integracija studija sudske prakse u sistem predavanja. Od samog početka, teme o pravu EZ/EU su objašnjene analizom relevantnih predmeta ECJ1/CJEU. Neke od fokusnih tema i slučajeva su se dodatno detaljno analizirale na seminarima koji su se izvodili u manjim grupama studenata. Ovih dana, seminari se po pravilu mogu izvoditi samo u jednoj grupi studenata, a vježbe se teško mogu organizovati zbog činjenice da na fakultetu nema dovoljno kadra, zbog čega se sve aktivnosti (*ex chatedra* predavanja, diskusije, analize predmeta CJEU itd.) održavaju tokom „predavanja".

Kao što je u to vrijeme, na slovenačkom jeziku nije bila dostupna nikakva sudska praksa, predmeti su čitani i analizirani na engleskom jeziku (ili na nekom drugom jeziku koji su izabrali studenti) što je omogućilo studentima da praktikuju strane jezike i pravnu terminologiju. Studenti su također podsticani da koriste stranu literaturu o pravu EZ / EU (npr. Craig & deBurca, Mathijsen, Brown & Jacobs, Harding & Sherlock, Emmert, Opperman, Steiner & Woods itd.), koja je ostala glavna literatura navedena u studiji programa čak i nakon što je 2001. objavljena prva slovenačka knjiga o pravu EU. *Pravo EU* (Sl. *Pravo Evropske unije*) koje su napisali Peter Grilc i Tomaž Ilešič, sastojalo se od dva dijela, prvi je pokrivao opšte teme prava EU (istorijat, principi, pravni ljekovi, pravni akti, donošenje odluka, itd.),[9] a drugi, materijalno pravo EU, uglavnom pravo o četiri slobode i pravo o konkurenciji.[10] Knjiga je napravljena po uzoru na postojeće strane knjige o pravu EZ i dugi niz godina ostala jedina slovenačka monografija o pravu EU.

Prije nego što je Slovenija ušla u EU, drugi predmeti osnovnih studija, bez obzira da li su obavezni ili izborni, uglavnom nisu pokrivali bilo koje teme iz prava EU, a kasnije su odabrani aspekti prava EU polako počeli da se analiziraju u okviru radnog prava, prava socijalne sigurnosti, privatnog prava, korporativnog prava, krivičnog prava i drugih dodiplomskih predmeta.

U predbolonjskom sistemu, Pravni fakultet u Ljubljani ponudio je i akreditovane naučne master i doktorske studije. U okviru Građanskog i Privrednog modula master studija, izborni predmet iz *Zakona o međuna-*

[9] *Grilc, Ilešič*, Pravo Evropske unije, 1. knjiga, Zbirka Pravna obzorja 17, Cankarjeva založba, Ljubljana 2001.
[10] *Grilc*, Pravo Evropske unije, 2. knjiga, Zbirka Pravna obzorja, 17, Cankarjeva založba, Ljubljana 2001.

rodnim ekonomskim integracijama održavan je najmanje od 1993/94 pa na dalje. Osim STO-a, ona je uglavnom pokrivala funkcionisanje EEZ-a. Ovaj predmet je kasnije (eventualno 1996/97.) transformisan i preimenovan u *Pravo EZ*, a kasnije u *Pravo EU*. Još jedan izborni master predmet koji pokriva pravo EEZ/EZ/EU je bio *Zakon o konkurenciji* gdje je EEZ/EZ/EU zakon o konkurenciji bio intenzivno analiziran zbog činjenice da je slovenačko pravo konkurencije u to vrijeme već bilo zasnovano na pravu EU. Neke teme vezane za pravo EU predavane su i u okviru obaveznog master studija o *Privatnom pravu* i izbornim predmetima iz oblasti *Potrošačkog prava, Korporativnog prava*. To je zahtijevalo da oni koji još nisu studirali pravo EZ/EU tokom svojih osnovnih studija ili nisu odlučili da se upišu na izborne predmete vezane za EZ/EU, shvate osnove funkcionisanja EZ/EU. Profesori Grilc i Podobnik koji su bili pokretačka snaga ovih nastavnih planova i programa, podstakli su studente da napišu svoje master i doktorske disertacije o odabranim temama iz prava EU.

Čak i nakon ulaska Slovenije u EU, predavanje iz prava EU za studente master studija nažalost nastavljeno je isključivo u okviru *Građanskog i Privrednog modula* master studija gdje je ponuđen samo izborni predmet o *Pravu EU.* Nije pokrenut ni jedan EU modul.

U godinama prije i nakon ulaska Slovenije u EU, mnogi studenti su ipak prepoznali važnost i prednosti istraživanja i znanja o pravu EU i odlučili da napišu svoje diplomske i master teze o raznim temama prava EU. Tokom ovog perioda, prvi studentski timovi Fakulteta počeli su da učestvuju na takmičenjima u simulaciji suđenja prava EU, prvo u Centralnom i Istočnom evropskom takmičenju simulacije suđenja (CEEMC) i kasnije u Evropskom takmičenju simulacije suđenja (ELMC), gde su odmah počeli postizanje značajnih rezultata. Zaposleni na Fakultetu, aktivni u istraživanju prava EU, tada su počeli da učestvuju u raznim evropskim projektima i istraživačkim grupama.

2.3.Bolonjska reforma iz 2009.

Bolonjska reforma implementirana je na Fakultetu 2009. godine. Kao rezultat toga, došlo je do velikog i mnogo kritikovanog restrukturiranja studija.[11] Tradicionalne četvorogodišnje predbolonjske univerzitetske studije sa dodatnom godinom za finalizaciju ispita i pisanje završnog diplomskog rada zamijenjene su kombinacijom četiri godine

[11] Vidi *Kranjc*, Bolonjska reforma kot priložnost ali kot nepotrebna nadloga?, Pravna praksa, GV Založba, y. 24, no 20 (19 May 2005), pp. 6-8; *Kranjc*, (Bolonjska) reforma pravnega študija, y. 25, no. 28 (20 July 2006), p. 18; *Žužek Leskovšek*, Bolonjska reforma: od ideje do izvedbe, MA thesis, Univerza v Ljubljani, Pravna fakulteta, 2018.

prvog ciklusa osnovnih (bečelor) studija (koje su na početku zahtijevale odbranu kraćeg diplomskog rada, koji je kasnije zamijenjen sa dva dodatna ispita za izborni predmet)[12], i jednogodišnjim master studijem drugog ciklusa, a završava se odbranom diplomskog rada.[13] Dodatna godina za finalizaciju ispita i / ili pisanje teze može se dodati i za četiri godine osnovnih studija i za jednu master godinu.

I dodiplomski studij o *Pravu EU* je promijenjen Bolonjskom reformom. Umjesto jednog temeljnog obaveznog predmeta o pravu EU u oba semestra završne, četvrte godine, dva obavezna predmeta o pravu EU sada su dio studija prvog ciklusa: *Evropsko ustavno pravo* koje se sastoji od 60 sati (4 ECTS) u proljećnjem semestru prve godine, a pravo EU od 120 sati (8 ECTS) u zimskom semestru druge godine. U okviru *Evropskog ustavnog prava* (koji pokriva i EU i Savjet Evrope) predstavljene su osnove funkcionisanja EU (pravna priroda integracije, opšti principi, donošenje odluka, institucije), dok pravni ljekovi i četiri slobode se predaju u okviru *Prava EU*. U početku, Bolonjski predmet pravo EU druge godine bio je naslovljen *Pravo EU i Ekonomija*, jer je pokrivao i odabrane teme o ekonomiji prava EU. Nakon penzionisanja profesora koji ih je pokrivao, sadržaj predmeta je opet restrukturiran na onaj tradicionalni i predmet je ponovo preimenovan u *Pravo EU*.

Kako je predmet premješten sa četvrte na prvu i drugu godinu, gdje studenti nemaju osnovna znanja o korporativnom pravu, privrednom pravu, nacionalnom procesnom pravu i sl., nemoguće je pružiti dubinsku analizu niza ključnih pitanja funkcionisanja EU i njenog unutrašnjeg tržišta. Zbog toga su neke od tema koje su prvobitno bile predviđene da budu obuhvaćene predmetom *pravo EU* (npr. Pravo konkurencije EU) morale biti izostavljene i sada su obuhvaćene drugim obaveznim i izbornim predmetima treće godine dodiplomskih studija (*Privredno pravo, Korporativno pravo, Evropsko privatno pravo*) i master studija (*Privredno pravo i Procesno, Međunarodno trgovinsko pravo, Međunarodno privatno pravo* itd.). Učenje o funkcionisanju unutrašnjeg tržišta trebalo bi da bude rezervisano za poslednje godine pravnih studija nakon što su studenti već shvatili osnove korporativnog prava, privrednog prava i ekonomije, raznih nacionalnih sudskih i upravnih postupaka, i bolje razumjeli funkcionisanje države, EU i privrede. Dodatni sati koji su na raspolaganju u okviru predmeta *Pravo EU* (koji su donekle nedostajali u predbolonjskoj eri s obzirom na raznovrsnost tema obuhvaćenih programom predmeta) posvećeni su dubinskoj analizi slučajeva koji su relevantni za Sloveniju bilo u okviru

[12] http://www.pf.uni-lj.si/en/1st-cycle/ (28/2/2019).
[13] http://www.pf.uni-lj.si/en/2nd-cycle/ (28/2/2019).

analize strukture pravosuđa u EU ili četiri slobode. Na taj način studenti imaju jasniju sliku o tome kako funkcioniše EU i kako na njih utiču pravo EU i presude CJEU. Studenti prezentuju slovenačke prethodne presude, postupke protiv Slovenije na Sudu, postupke ništavnosti u Sloveniji i slično. Takođe se raspravlja o odabranim suštinskim pitanjima koja su u prvom planu u Sloveniji. Takva saradnja među studentima i profesorima doživljava se kao da ima sinergijske efekte na razumijevanje prava EU.

Bolonjski master studij drugog ciklusa omogućava studentima da odluče između pet studijskih orjentacionih modula (opšte, trgovačko pravo, građansko pravo, međunarodno pravo, državno pravo). Nažalost, ne postoji nijedan evropski ili EU modul. Pored obaveznih predmeta modula privrednog prava pod nazivom *Ekonomska analiza funkcionisanja tržišta EU i preduzetništva* i *Međunarodnog i evropskog zakona o socijalnom osiguranju*, ne postoji obavezan ili izborni predmet o pravu EU. U suprotnom, pravo EU se predaje samo ako su teme obuhvaćene dostupnim modulima i predmetima povezanim sa pravom EU.

2.4.Erasmus predmeti

Fakultet je sklopio sporazume o razmjeni u okviru Erasmus + programa s više od 90 univerziteta iz gotovo cijele Europe.[14] Prvi Erasmus predmeti za dolazne studente ponuđeni su prije više od deset godina i njihov broj se svake godine povećavao. Danas se na engleskom jeziku nude različiti predmeti koji pokrivaju materijalno i procesno pravo EU i veoma su popularni među Erasmus studentima: *Evropsko ustavno pravo, Pravni ljekovi u EU, Unutrašnje tržište EU, Evropsko privatno pravo, Međunarodni i evropski zakon o socijalnoj sigurnosti, Sudska saradnja u građanskim stvarima, Javne usluge u pravu EU*, itd.

3. VAŽNOST TAKMIČENJA U SIMULACIJI SUĐENJA ZA STICANJE NAPREDNOG ZANJA IZ PRAVA EU

Fakultet se posebno ponosi činjenicom da je jedna od najrazvijenijih (van) nastavnih aktivnosti ponuđena studentima učešće u nacionalnim, regionalnim i međunarodnim takmičenjima u simulaciji suđenja.[15] Naši studenti počeli su da učestvuju na takmičenjima početkom devedesetih godina i od tada pozicioniraju Univerzitet u Ljubljani kao

[15] http://www.pf.uni-lj.si/en/international-program/erasmus-108/ (28/2/2019).

[16] See *Škrubej*, Moot court tekmovanja – tekmovanja v simuliranih obravnavah pravnih primerov, http://www.pf.uni-lj.si/mednarodno-sodelovanje/mednarodna-studentska-tekmovanja/ (28/2/2019).

jedan od vodećih univerziteta u takmičenju u simulaciji suđenja u svijetu. Fakultet i Univerzitet priznaju ovaj vid takmičenja kao izuzetno važan dio obrazovanja iz prava i pripreme za buduću pravnu profesiju, kao i priliku da studenti steknu napredna znanja o pravu i terminologiji, istraživačkim i retoričkim vještinama i timskom radu.[16] Zbog toga je nedavno ECTS dodijeljen za simulaciju suđenja koje omogućava studentima da zamijene jedan od izbornih predmeta aktivnim učešćem u priznatoj takmičarskoj ekipi fakulteta.[17]

Od 1999. godine, fakultetski timovi učestvuju na regionalnom takmičenju u simulaciji suđenja na temu prava EU – Centralno i istočnoevropsko takmičenje u simulaciji suđenja *Central and East European Moot (CEEMC)*[18] koje organizuje Britanski pravni centar pod okriljem CJEU i Univerziteta u Kembridžu.[19] 2000., 2003., 2012., 2014. i 2015. Fakultet je pobijedio na takmičenju zauzevši 2. mjesto 2004., treće mjesto 2005. i 2017. i dobio brojne nagrade za najbolje govornike i najbolje memorandume. Timovi koji učestvuju na *Takmičenju u simulaciji suđenja na temu EU prava (European Law Moot Court) (ELMC)*[20], koje organizuje ELMC Društvo i CJEU, takođe, su bili veoma uspješni na takmičenjima kvalifikovavši se uvijek u usmenoj fazi i postizali dobre rezultate na Regionalnim završnim takmičenjima.[21] Takođe su se tri puta kvalifikovali za All-European Final u Luksemburgu. 2004. godine, ekipa Fakulteta je osvojila All-European Final u AG kategoriji, dok je 2006. godine osvojila drugo mjesto u ovoj kategoriji. Tim Fakulteta osvojio je All-European Final u kategoriji timova 2016. godine, dok je 2017. godine jedan od studenata dobio nagradu Ole Due Best Speaker. Ova postignuća su nesumnjivo rezultat intenzivnog proučavanja prava EU tokomdodiplomskih i postdiplomskih studija na Fakultetu, kao i izuzetno intenzivnog i entuzijastičnog, iako često pro bono, podučavanja uglavnom mlađeg akademskog osoblja i / ili bivših takmičara.

---

[17] *Vlahek*, Sodelovanje študentov Pravne fakultete Univerze v Ljubljani na mednarodnih študentskih *moot court* tekmovanjih, in: *Kambič et al.*, Liber Amicorum Janez Kranjc, Pravna fakulteta Univerze v Ljubljani, Ljubljana 2019, in print

[18] *Ibid*.

[19]https://www.ceemc.co.uk/,http://www.pf.uni-lj.si/mednarodno-sodelovanje/mednarodna-studentska-tekmovanja/central-and-east-european-moot-court-ceemc/

[20] *Ibid.*.

[21] https://www.europeanlawmootcourt.eu/, http://www.pf.uni-lj.si/mednarodno-sodelovanje/mednarodna-studentska-tekmovanja/european-law-moot-court-competition/

[22] For more details on the results of the University of Ljubljana teams at the competition ELMC see *Aleksovski et al.*, Ljubljana regional final booklet: ELMC 2018/2019 Ljubljana regional final, 31 January - 3 February. University of Ljubljana, Faculty of Law, Ljubljana 2019.

4. BUDUĆNOST PRAVA EU NA PRAVNOM FAKULTETU U LJUBLJANI

Otkrivajući zamke reformisanog „Bolonjskog sistema“, Fakultet sada planira da reformiše svoj studijski program, kako bi ponovo uspostavio uniformne, petogodišnje pravne studije bez razlike između prvog i drugog ciklusa. Analiza planiranog nacrta studijskog programa pokazuje da, iako *Evropsko ustavno pravo* ostaje u prvoj godini sa 60 sati predavanja (4 ECTS), osnovni obavezni predmet EU pravo gubi 30 sati predavanja (2 ECTS) ostavljajući ga sa samo 90 sati (6 ECTS). Dobra odluka je, međutim, bila da se pomjeri sa druge na treću godinu, kada je većina relevantnih tema potrebnih za razumijevanje funkcionisanja unutrašnjeg tržišta već objašnjena u okviru drugih predmeta.

Uprkos ovom nerazumnom smanjenju broja predavanja posvećenih suštinskom predmetu pravo EU, praćeno drugim već postojećim neučinkovitostima EU obrazovanja i istraživanja na Fakultetu, količina znanja i stručnost naših studenata iz prava EU sigurno se neće smanjiti jer imaju mnoštvo drugih nastavnih i vannastavnih opcija za učenje prava EU, posebno u okviru simulacije suđenja i istraživačkih aktivnosti. Nadajmo se da će entuzijazam studenata i akademskog osoblja i njihova strast prema pravu EU ostati prava pokretačka snaga za EU istraživačke i nastavne aktivnosti i uspjehe fakulteta.

Mihovil Škarica*

EVROPSKA DIMENZIJA NASTAVE JAVNE UPRAVE NA PRAVNOM FAKULTETU UNIVERZITETA U ZAGREBU

1. EVROPSKI ADMINISTRATIVNI PROSTOR U PROGRAMU PRAVNIH STUDIJA

Evropska unija nema nadležnost da direktno reguliše institucionalna ili organizaciona pitanja javnih uprava država članica jer ustavni tekstovi EU ne predviđaju specifičan model javne uprave. Ipak, tokom godina, pravna tekovina u oblasti javne uprave, kako formalne tako i neformalne, se pojavila. Evropski administrativni prostor (EAP) je koncept koji se odnosi na zajednički skup načela i standarda za djelovanje unutar javne uprave. On se zasniva na nekoliko široko prihvaćenih ključnih standarda: vladavina prava, otvorenost i transparentnost, odgovornost, efikasnost i djelotvornost, ali i na proporcionalnosti, supsidijarnosti, učešću i koherentnosti. Evropska unija je privukla pažnju naučnika javne uprave ne samo kao izvor uticaja na domaće upravne institucije, već i kao specifičan institucionalni sistem, čija upravna tijela predstavljaju kompleksnu i jedinstvenu mrežu. Pitanje administrativnih kapaciteta je posebno naglašeno prije talasa pristupanja bivših komunističkih zemalja 2004. godine i priznato je još 1995. godine Madridskim kriterijimom za pridruživanje EU. Ovi događaji su postali relevantni kada je Hrvatska započela pregovore o pristupanju EU i ubrzo su se odrazili na prilagođavanje nastavnog plana i programa pravnih studija.

Pravni fakultet Univerziteta u Zagrebu nudi nekoliko dodiplomskih, diplomskih, postdiplomskih i doktorskih studija iz prava, javne uprave i socijalnog rada. Modernizacija i evropeizacija njenih nastavnih planova počela je početkom ovog vijeka kada je sprovedena bolonjska reforma. Promijenila je strukturu studijskog programa prava i produžila je na 5 integrisanih godina[1]. Koncepti i pitanja EAP-a se prvenstveno uče

* Docent na Katedri za Nauku o javnoj upravi, Pravni fakultet, Univerzitet u Zagrebu

[1] Tokom reforme tadašnjeg / predbolonjskog univerzitetskog programa u petogodišnji integrisani model, najvažniji eksterni akteri pravne struke podržali su novi integrisani studijski program kao optimalni model, s obzirom da sve aktivnosti koje traže pravno obrazovanje zahtijevaju pet godina obrazovanja i da tržište rada ne prepoznaje koncept diplomskog studija u oblasti prava (www.pravo.unizg.hr).

kroz predmet Nauka o javnoj upravi, što je obavezni predmet treće godine integrisanog pravnog programa. Međutim, pored diplomskog programa studija pravnih studija, EAP je izdvojen i ponuđen kao poseban predmet u dodiplomskom programu studija državne uprave (obavezni predmet na drugoj godini), postdiplomske i doktorske pravne studije (izborni predmet). Postoji nekoliko izbornih predmeta koji se nude u nastavnom planu i programu prava, a koji se takođe bave evropskom dimenzijom javne uprave: *Komparativna javna uprava, Reforma javne uprave u evropskom kontekstu i Evropsko upravno pravo. Nekoliko drugih obaveznih predmeta obuhvata neke od elemenata EAP-a: Upravno pravo, Evropsko javno pravo* itd.

2. EVROPEIZACIJA NASTAVNOG PLANA I PROGRAMA NAUKE O JAVNOJ UPRAVI I NASTAVNIH PRAKSI

Nauka o javnoj upravi je obavezan predmet treće godine integrisanog studijskog programa prava. Tradicionalno je orijentisan ka empirijskom, organizacionom i pozitivističkom pristupu javnoj upravi, ne zanemarujući svoju pravnu i normativnu dimenziju. Nauka o javnoj upravi je osnovni predmet u nastavnom planu i programu u kojem se Evropski administrativni prostor prezentuje, analizira i uči. Evropska orjentacija u nastavi javne uprave se čak odražava u naslovu priručnika koji je objavljen i uveden kao obavezan 2014. godine: *Nauka o javnoj upravi: javna uprava u evropskom kontekstu,* čiji su autori profesori na Katedri za Nauku o javnoj upravi: Ivan Koprić, Gordana Marčetić, Anamarija Musa, Vedran Đulabić and Goranka Lalić Novak[2]. Do objavljivanja, evropska dimenzija javne uprave predstavljena je u nekoliko tekstova koji su sastavljeni u udžbeniku. Iako ovaj predmet nije uslovljen polaganjem drugog (prethodnog) predmeta, većina upisanih studenata je položila predmete koji su ključni preduslovi za razumijevanje javne uprave u evropskom kontekstu - Ustavni zakon i Evropsko javno pravo, oboje se studiraju na drugoj godini integrisanog pravnog programa. Iako je možda najvažnija, Evropska unija nije jedini izvor uticaja evropeizacije na domaće institucije. Shodno tome, adekvatna pažnja posvećena je drugim udruženjima i temama kao što je Savjet Evrope. Evropski pravni tekstovi su najčešće predsta-

[2] Knjiga ima 384 stranice i podijeljena je u devet poglavlja: 1. Javna uprava - osnovni koncepti i pojmovi; 2. Javna uprava u društvu i u političko-upravnom sistemu; 3. Upravna organizacija i javno upravljanje; 4. Upravljanje ljudskim resursima u javnoj upravi; 5. Državna uprava; 6. Javne usluge - usluge od opšteg interesa; 7. Lokalna i regionalna samouprava; 8. Evropski administrativni prostor; 9. Reforme i modernizacija javne uprave.

vljeni na seminarima. Seminari su odvojeni oblik nastavnog procesa i nisu povezani sa samom osnovnom temom. Ona nudi odvojene ECTS kredite (2) i nije uslovljena usvajanjem osnovnog predmeta ili obrnuto. Između ostalih pravnih dokumenata koji su neophodni za polaganje seminarskog ispita, studenti su obavezni da prouče *Povelju o osnovnim pravima Evropske unije i Evropski kodeks dobrog upravnog ponašanja.*

2.1. EU teme u Nauci o javnoj upravi

Dva različita i komplementarna pristupa u pogledu tema EU su prisutna tokom predmeta i odražavaju se u strukturi priručnika. Predavanja o Evropskom administrativnom prostoru sistematizovana su u posebnom poglavlju priručnika i predaju se kao takva u 12 sati nastave. Nadalje, neke od tema koje se odnose na EU su rasute po udžbeniku i pominju se u određenim tematskim djelovima. Prije svega, evropeizacija i proces evropskih integracija se analiziraju kao važne kontekstualne okolnosti u savremenom razvoju javne uprave. U okviru predavanja o sistemu državne službe studenti se upoznaju sa evropskim standardima i principima sistema državne službe koji su prvenstveno razvijeni od strane Sigme (*Podrška za unaprijeđenje upravljanja i rukovođenja)* kao kriterijuma za pristupanje EU.

Poglavlje i predavanja o uslugama od opšteg interesa (eng. SGI) nude opsežnu analizu EU pristupa ovim pitanjima i uticaja zakona i politika EU na razvoj SGI-a, koji je uokviren sa nekoliko trendova: liberalizacija, privatizacija, deregulacija, komercijalizacija i remunicipalizacija. Odjeljak u kojem se raspravlja o finansiranju javnih službi u velikoj mjeri se oslanja na razlikovanje državne pomoći i naknada za javne usluge u EU. Primjena zakonodavstva EU na domaće javne usluge zavisi od njihove prirode i odgovarajuće klasifikacije unutar pravne tekovine EU koja razlikuje usluge od opšteg interesa, usluge od opšteg ekonomskog interesa, mrežne industrije i socijalne usluge od opšteg interesa. Pored pravnih instrumenata propisa SGI (propisi, direktive i presude Evropskog suda pravde), studenti se upoznaju sa dokumentima mekog prava objavljenim od strane institucija EU koji su relevantni i za ovu oblast: *Zelena knjiga o uslugama od opšteg interesa (2003), Bijela knjiga o uslugama od opšteg interesa, Komunikacija o uslugama od opšteg interesa (2007), Okvir za kvalitet usluga od opšteg interesa (2011)* itd.

Sekcija za lokalnu i regionalnu vlast uključuje teme evropeizacije u dva različita, ali isprepletena toka. Prvo, lekcija o harmonizaciji i konvergenciji sistema lokalnih vlasti u Evropi prepoznaje ulogu evropskih udruženja u postavljanju zajedničkih standarda i promovisanju vrijednosti

demokratije, decentralizacije i vladavine prava u lokalnoj upravi. Proces usklađivanja je uglavnom pod uticajem aktivnosti i dokumenata Savjeta Evrope, od kojih su neke najvažnije: *Evropska povelja o lokalnoj samoupravi (1985), Evropska okvirna konvencija o prekograničnoj saradnji između teritorijalnih zajednica ili vlasti (1980)* sa tri dodatna protokola, *Konvencija o učešću stranaca u javnom životu na lokalnom nivou (1992) itd.* Tok tema evropeizacije fokusira se na uticaj Evropske unije na regionalno i urbano upravljanje i razvoj u državama članicama, uglavnom kroz instrumente regionalne politike EU, NUTS klasifikaciju i strukturne fondove.

Poglavlja i predavanja o Evropskom administrativnom prostoru sistematizuju i analiziraju najvažnije aspekte procesa evropeizacije u pogledu nacionalnih sistema javne uprave. U njemu se razmatra ideja administrativne konvergencije - harmonizacija različitih nacionalnih administrativnih modela uslovljenih zakonodavstvom i politikama EU. Faktori koji doprinose stvaranju EAP-a su analizirani i rangirani. Uticaj EU (proces evropeizacije) na nacionalne političke i administrativne institucije klasifikovan je u tri dimenzije; a) *dimenzija politike (eng. policy)* (ciljevi i principi javnih politika); b) *dimenzija političkog poretka* (administrativne strukture) i c) *politička dimenzija* (politički procesi). Drugi dio ovog poglavlja (drugo predavanje o EAP) predstavlja nekoliko pojedinačnih evropskih administrativnih standarda u različitim sektorima politike: pravo na dobru administraciju, evropsku politiku za mlade, evropske standarde upravnog postupka, politiku informacionog društva i e-upravu (rukovođenje). Sve teme se razmatraju na osnovu relevantnog zakonodavstva EU ili dokumenata politike (soft-law). Poglavlje je zaključeno dijelom o koordinacionim strukturama politika i institucija EU, kako na nivou EU tako i na domaćem nivou.

2.2. Plan i program Nauke o javnoj upravi

Naziv predmeta:		Nauka o javnoj upravi		
Šifra predmeta	Status predmeta	Semestar	Broj ECTS kredita	Sati
36590	Obavezan	6	8	90
Studijski program: Integrisani dodiplomski i diplomski studijskog programa prava				
Uslovljenost drugim predmetima: Nema				
Opšti opis: Osnovna konceptualna pitanja javne uprave. Razvoj proučavanja javne uprave. Javna uprava u društvu. Položaj i uloga javne uprave u političkom sistemu. Organizacija uprave i javni menadžment. Upravljanje ljudskim resursima u javnoj upravi. Sistem državne službe u Hrvatskoj. Organizacija i nadležnosti državne				

uprave u Hrvatskoj. Usluge od opšteg interesa. Lokalna i regionalna vlada. Evropski administrativni pro-stor. Evropeizacija nacionalnih birokratija. Modernizacija uprave i reforme javne upra-ve.	
Sadržaj pojedinačnih nedjeljnih predavanja:	
1. nedjelja	Uvodno predavanje (6h): Osnovni pojmovi u javnoj upravi; Upravni sistemi; Istorijat studiranja i nastave javne uprave, Pravno uređenje javne uprave
2. nedjelja	Društveni konteksti javne uprave (6h): Trendovi u društvenom i upravnom razvoju; Glavni evropski modeli javne uprave; Građani i javna uprava - transparentnost i otvorenost JU
3. nedjelja	Javna uprava u političkom sistemu (6h): Istorijski razvoj političkih sistema; Položaj javne uprave u okviru različitih političkih režima; Politički nadzor i odgovornost javne uprave.
4. nedjelja	Organizacioni aspekti javne uprave (6h): Razvoj organizacionih teorija; Osnovne organizacione varijable
5. nedjelja	Javni menadžment (6h): Tradicionalni pristup javnom menadžmentu; Moderni naglasci javnog menadžmenta.
6. nedjelja	Sistem državne službe (6h): Ljudska komponenta u javnoj upravi; Profesionalizacija i zasluge u javnoj upravi; Sistem državne službe uopšte i u Hrvatskoj;
7. nedjelja	Upravljanje ljudskim resursima u javnom menadžmentu (6h): Metode i instrumenti upravljanja ljudskim resursima u javnoj upravi; Modeli upravljanja ljudskim resursima; Stručno usavršavanje i razvoj ljudskih resursa
8. nedjelja	Državna uprava u Hrvatskoj (6h): Uticaj političkih institucija na državnu upravu u Hrvatskoj (parlament, predsjednik, vlada); Organizacija i nadležnosti državne uprave u Hrvatskoj
9. nedjelja	Fragmentacija i koordinacija u upravnom sistemu (6h): Diversifikacija državne uprave: javne agencije i proces agencifikacije; Strukture i instrumenti za efikasnu koordinaciju
10. nedjelja	Usluge od opšteg interesa (6h): Koncept i klasifikacije javnih usluga; savremeni trendovi razvoja; usluge od opšteg interesa u pravu EU i politikama; Okvir za javne usluge u Hrvatskoj
11. nedjelja	Lokalno i regionalno upravljanje I (6h): Koncepti i modeli lokalne uprave; Teritorijalna organizacija lokalne uprave; Harmonizacija sistema lokalne uprave u Evropi; Urbana i regionalna politika.
12. nedjelja	Lokalno i regionalno upravljanje II (6h): Lokalni i regionalni obim poslova; Lokalne političke i administrativne institucije; Centralno-lokalni odnosi; Politike decentralizacije
13. nedjelja	Europski administrativni prostor I (6h): Koncept EAP-a; Evropeizacija i administrativna konvergencija; Osnovni principi i faktori EAP-a
14. nedjelja	Europski administrativni prostor II (6h): Evropski administrativni standardi; Pravo na dobru upravu; Povelja o osnovnim pravima u EU; Evropski standardi za upravni postupak; Hrvatska uprava u sistemu upravljanja EU
15. nedjelja	Modernizacija i reforme javne uprave (6h): Klasifikacije administrativnih reformi; Novi javni menadžment, Neoveberijanska država, Dobro upravljanje; Modernizacija uprave u kontekstu pristupanja EU; Modernizacija javne uprave u Hrvatskoj
Literatura: Koprić, I., Marčetić, G., Musa, A., Đulabić, V., Lalić Novak, G. (2014): Upravna znanost – Javna uprava u suvremenom europskom kontekstu (*Administrative science – Public Administration in Contemporary European Context*). Pravni fakultet Sveučilišta u Zagrebu	

Preporučena literatura:

Cardona, F. (2005) Assesing the Approximation of Administrative Principles and Practices among EU Member States. OECD Sigma.

Heidbreder, E. G. (2009) Structuring of the European Administrative Space: Channels of EU Penetration and Mechanisms of National Change

Hoffman, H. (2015) Current Debates in European Administrative Law – Background and Perspectives. In: Auby, J. B., Perroud, T (eds.) Droit de Procedure Administratif. Bruylandt.

Koprić, I (2017) European Administrative Space – myth, reality, and hopes. In: Ivan Koprić, Polonca Kovač (ur.) European Administrative Space: Spreading Standards, Building Capacities. Bratislava: NISPAcee.

Koprić, I., Musa, A., Lalić Novak, G. (2012) Europski upravni proctor. Institut za javnu upravu.

Musa, A. (2016) Good Local Governance in Europe: Influences and Standards. In: Lhomme, D., Musa, A., de la Rosa, S. (eds.) Good local governance, pp. 37-59. Bruylandt.

Nemec, J. (2016) Europeanization in Public Administration Reforms. NISPAcee Press.

De la Rosa, S. (2016) Local Autonomy and EU Procurement Law. In: Lhomme, D., Musa, A., de la Rosa, S. (eds.) Good local governance, pp. 79-95. Bruylandt.

Ksenija Grubišić*

IMPLEMENTACIJA EVROPSKIH STANDARDA ZA OBEZBJEĐIVANJE KVALITETA U VISOKOM OBRAZOVANJU NA PRAVNOM FAKULTETU U ZAGREBU

1. Evropski standardi za obezbjeđivanje kvaliteta u visokom obrazovanju

Interno obezbjeđivanje kvaliteta i Standardi i smjernice za obezbjeđivanje kvaliteta u Evropskom prostoru visokog obrazovanja (ESG) - ESG je skup standarda i smjernica za interno i eksterno obezbjeđivanje kvaliteta u visokom obrazovanju. ESG nisu standardi za kvalitet, niti propisuju kako se sprovode procesi obezbjeđivanja kvaliteta, ali oni pružaju smjernice, pokrivajući područja koja su od vitalnog značaja za uspješno obezbjeđivanje kvaliteta i okruženje za učenje u visokom obrazovanju. ESG treba razmotriti u širem kontekstu koji uključuje i kvalifikacijske okvire, ECTS i dodatak diplomi koji takođe doprinose promovisanju transparentnosti i uzajamnog povjerenja u visokom obrazovanju u EHEA.

ESG standardi imaju sledeće ciljeve: a) oni postavljaju zajednički okvir za sisteme obezbjeđivanja kvaliteta za učenje i nastavu na evropskom, nacionalnom i institucionalnom nivou; b) omogućavaju obezbjeđivanje i poboljšanje kvaliteta visokog obrazovanja u evropskom području visokog obrazovanja; c) podržavaju uzajamno povjerenje i na taj način olakšavaju prepoznavanje i mobilnost unutar i izvan nacionalnih granica; d) pružaju informacije o obezbjeđivanju kvaliteta u EHEA.

Razmatranja za institucije visokog obrazovanja:

Politika obezbjeđivanja kvaliteta - standard: Institucije treba da imaju politiku za obezbjeđivanje kvaliteta koja se objavljuje i čini dio njihovog strateškog upravljanja. Interni akteri treba da razviju i implementiraju ovu politiku kroz odgovarajuće strukture i procese, uz uključivanje vanjskih aktera.

* Doc. dr Ksenija Grubišić, Pravni fakultet, Univerzitet u Zagrebu, Trg Republike Hrvatske 14, Zagreb; ksenija.grubisic@pravo.hr

Dizajn i odobravanje programa - standard: Institucije treba da imaju procese za izradu i odobravanje svojih programa. Programi bi trebali da budu osmišljeni tako da ispunjavaju postavljene ciljeve, uključujući i planirane ishode učenja. Kvalifikacija koja proizilazi iz programa treba da bude jasno naznačena i saopštena, i odnosi se na ispravan nivo nacionalnog kvalifikacionog okvira za visoko obrazovanje i, shodno tome, na Kvalifikacioni okvir Evropskog prostora visokog obrazovanja.

Učenje, nastava i ocjenjivanje usmjereno na studenta - standard: Institucije treba da obezbijede da se program isporučuje na način koji ohrabruje studente da preuzmu aktivnu ulogu u kreiranju procesa učenja i da ocjenjivanje studenata odražava ovaj pristup. Ovaj standard podstiče upotrebu fleksibilnih puteva učenja, različite načine isporuke, različite pedagoške metode i daje osjećaj autonomije svakom studentu. Pošto digitalizacija sadržaja sama po sebi ne vodi automatski do uspješnog obrazovnog okruženja, institucije možda žele da osmisle svoj nastavni plan i program na takav način da stimuliraju i angažuju studente u procesu učenja (korak koji može pomoći u sprečavanju neželjenih odustajanja) i odražavaju najbolje prakse i istraživanja u nastavi i učenju.

Prijem studenata, napredovanje, priznavanje i sertifikacija – standard: Institucije treba da dosljedno primjenjuju unaprijed definisane i objavljene propise koji pokrivaju sve faze studentskog „životnog ciklusa“, npr. prijem studenata, napredovanje, priznavanje i sertifikacija.

Nastavno osoblje - standard: Institucije bi trebale da se uvjere u kompetentnost svojih nastavnika. Oni bi trebali da primjenjuju fer i transparentne procese za angažovanje i razvoj osoblja.

Resursi za učenje i podrška studentima - standard: Institucije bi trebale da imaju odgovarajuće finansiranje za aktivnosti učenja i nastave i da se obezbijede adekvatni i lako dostupni resursi za učenje i podršku studentima.

Upravljanje informacijama i javne informacije - standard: Institucije treba da obezbijede da one prikupljaju, analiziraju i koriste relevantne informacije za efikasno upravljanje svojim programima i drugim aktivnostima. Institucije treba da objave informacije o svojim aktivnostima, uključujući programe, koji su jasni, tačni, objektivni, ažurirani i lako dostupni.

2. Obezbjeđivanje kvaliteta na Pravnom fakultetu u Zagrebu

Tokom gotovo dva i po vijeka, Pravni fakultet Univerziteta u Zagrebu prikupio je znatnu količinu znanja i iskustva stečenih tokom svoje

duge istorije. Pravni fakultet je istovremeno i od samog početka bio učesnik u procesu razvoja pravnog obrazovanja u širem evropskom kontekstu, u kojem je prepoznat kao centar izvrsnosti s posebnim identitetom i dobro razvijenom međunarodnom saradnjom.

Organi upravljanja Fakulteta su Dekan i Fakultetsko vijeće. Organizacione jedinice Fakulteta su predsjednici, instituti, centar za socijalni rad, studijski centar za javnu upravu i javne finansije, odsjek za izdavaštvo, odsjek za informatiku, biblioteka i sekretarijat. Katedre su osnovne organizacione jedinice nastavne i naučnoistraživačke djelatnosti na Fakultetu. Instituti su organizacione jedinice sa više katedri. Instituti Fakulteta organizuju i vode naučno-istraživački i stručni rad u svojim naučnim oblastima. Svi nastavnici i saradnici zaposleni na Fakultetu su uključeni u rad katedri i instituta, iako često - kako bi podstakli izvrsnost i osiguranje kvaliteta u pogledu nastave, naučnog istraživanja i stručnih aktivnosti - angažovani su i vanjski učesnici: pravne struke, kao što su sudije, advokati, notari, različiti zaposleni u javnoj upravi, socijalni radnici itd. Pored vanjskih aktera, radu katedri Fakulteta značajno doprinose i najbolji studenti Fakulteta koji, kao studentski asistenti, doprinose nastavi, ali i sve više i profesionalnim i naučnim istraživanjima odsjeka. Važnu ulogu u radu Fakulteta imaju stalni i privremeni odbori Fakulteta i odbori Fakultetskog vijeća, kao što su Odbor za unaprijeđenje studijskih programa, Odbor za upravljanje kvalitetom, Vijeće za postdiplomske studijske programe, Odbor za biblioteke, Odbor za bivše studente, itd. Pored zaposlenih na Fakultetu, članovi odbora uključuju i studentske predstavnike koje biraju sami studenti, a u posljednje vrijeme Fakultetsko vijeće daje sve značajniju ulogu vanjskim akterima u doprinosu radu pojedinih komiteta i odbora.

Misija i vizija Fakulteta definisani su *Strategijom razvoja Pravnog fakulteta Univerziteta u Zagrebu.* Misija Fakulteta je obuka vrhunskih stručnjaka iz oblasti prava, socijalnog rada i javne uprave koji će svoja znanja i vještine iskoristiti za unaprijeđenje i povezivanje prakse, obrazovanja, naučnog istraživanja i stručnog rada na navedenim područjima. Promovisanje kulture kvaliteta u svim aspektima aktivnosti Fakulteta (tj. nastave, naučno-istraživačkog i stručno-profesionalnog djelovanja), međunarodne prepoznatljivosti, popularizacije profesije i jačanja prepoznatljivosti Fakulteta u društvu oduvijek su bili važni u definisanju i upravljanju aktivnosti Fakulteta - sada i u budućnosti. Pored toga, jedan od važnih strateških ciljeva Fakulteta je intenziviranje saradnje sa društvom u cjelini: privatnim sektorom / poslovnim sektorom ili preduzećima, javnim institucijama, javnim organima itd., na nacionalnom i širem regionalnom nivou.

Dokumenti koji sadrže strategiju i procedure za obezbjeđivanje kvaliteta:

1. Strategija razvoja Pravnog fakulteta Univerziteta u Zagrebu,
2. Pravilnik o sistemu obezbjeđivanja kvaliteta na Pravnom fakultetu Univerziteta u Zagrebu,
3. Smjernice za obezbjeđivanje kvaliteta Pravnog fakulteta Univerziteta u Zagrebu,
4. Politika kvaliteta,
5. (Godišnji) Izvještaji i akcioni planovi koji pokazuju stepen implementacije određenih aktivnosti postignutih u određenim periodima.

Prvi Odbor za upravljanje kvalitetom na Fakultetu imenovan je i počeo sa radom 24. oktobra 2007. godine, odnosno dvije godine prije donošenja zakona kojim se reguliše ova materija. Unaprijeđenje sistema obezbjeđenja kvaliteta koji je kasnije uslijedio na Fakultetu proizašao je iz zakonskih propisa i drugih relevantnih dokumenata. To su Zakon o obezbjeđivanju kvaliteta u nauci i visokom obrazovanju iz 2009. godine (*Službeni list*, br. 45/09), Uredba o sistemu obezbjeđivanja kvaliteta na Univerzitetu u Zagrebu iz 2011. godine, te Standardi i smjernice za obezbjeđivanje kvaliteta u Evropskom prostoru visokog obrazovanja iz 2005. koji detaljno navodi glavne karakteristike ključnih komponenti sistema obezbjeđivanja kvaliteta na univerzitetima i njihovim sastavnim jedinicama. Unaprijeđenje sistema obezbjeđivanja kvaliteta na Fakultetu razvijeno je u skladu sa politikom kvaliteta definisanom u dokumentima koje donosi Fakultetsko vijeće. Ovim dokumentima utvrđene su aktivnosti u cilju postizanja sljedećih ciljeva: 1. Proširenje organizacione strukture sistema upravljanja kvalitetom na sva područja djelovanja Fakulteta; 2. Razvijanje mehanizama za obezbjeđivanje kvaliteta; 3. Informisanje zainteresovanih strana o programima i realizovanim projektima i kvalifikacijama koje stiču na Fakultetu; 4. Intenziviranje saradnje sa diplomiranim studentima.

Uredba o obezbjeđivanju kvaliteta na Pravnom fakultetu Univerziteta u Zagrebu, usvojena 25. aprila 2012. godine, propisuje područja obezbjeđivanja kvaliteta: pravila i procedure za obezbjeđivanje kvaliteta na Fakultetu; primjena sistema na sve nivoe unutrašnje i spoljne kontrole kvaliteta; studijski programi; nastava i evaluacija nastavnika; studiranje i ocjenjivanje studenata; resursi za učenje i podrška studentima; nastavna, naučna i stručna sredstva; naučno-istraživačke aktivnosti; profesionalne aktivnosti; Međunarodna saradnja i mobilnost; Fakultetski informacioni sistem; javnosti rada Fakulteta.

Sredinom akademske 2011/12 godine, Fakultetsko vijeće je imenovalo novi Odbor za upravljanje kvalitetom u skladu sa novim zakonskim okvirom i Uredbom Univerziteta za 2011. godinu. Pravilnik o obezbjeđivanju kvaliteta na Univerzitetu u Zagrebu, Pravni fakultet propisuje nadležnosti, djelokrug rada i specifične zadatke Odbora:

1. Podsticanje razvojnih programa u cilju obezbjeđivanja kvaliteta u skladu sa fakultetskim, univerzitetskim, nacionalnim i međunarodnim standardima;
2. Predlaganje mjera za obezbjeđivanje kvaliteta u pojedinim oblastima organima upravljanja Fakulteta;
3. Planiranje i sprovođenje procesa internog sistema obezbjeđivanja kvaliteta u skladu sa odlukama Fakulteta;
4. Praćenje i podsticanje uključivanja studenata i drugih zainteresovanih strana u proces obezbjeđivanja kvaliteta;
5. Praćenje efikasnosti sistema obezbjeđivanja kvaliteta;
6. Sprovođenje drugih aktivnosti u skladu sa odlukama Fakulteta.

Međutim, određene oblasti obezbjeđivanja kvaliteta su već dugi niz godina bile odgovornost i drugih odbora Fakulteta. Fakultet je prepoznao potrebu za kontinuiranim i sistematskim obezbjeđivanjem kvaliteta nastave na Fakultetu mnogo godina prije uvođenja Bolonjskog procesa. Obezbjeđivanje kvaliteta je u to vrijeme smatrano odgovornošću prodekana za obrazovanje i nastavne programe / Odbora za unaprijeđenje nastave i studijskih programa, Vijeća za postdiplomske studijske programe, Komisije za promociju izvrsnosti studenata (Komisija za promociju izvrsnosti studenata), Bibliotečki odbor, itd.

Neke od procedura za obezbjeđivanje kvaliteta su do sada ostale u okviru odgovornosti navedenih tijela. Odbor za usavršavanje/nastavu i usavršavanje nastavnih programa kontinuirano prati implementaciju studijskih programa i njihovih amandmana predlažući nove predmete i nove oblike nastave, izradu nastavnih planova i programa i svih drugih dokumenata potrebnih za obezbjeđivanje kvaliteta nastave. U pravilu, Odbor za unaprijeđenje nastavnih/studijskih programa i Odbora za unaprijeđenje studijskih programa sastaju se jednom u dva mjeseca ili češće ako je potrebno. U proteklih pet godina, Odbor je radio kontinuirano i samo u akademskoj godini 2013/14, Odbor je pripremio novu Uredbu o organizaciji studija, uveo amandmane na Pravilnik o studentskim nagradama koje su inicirali studentski predstavnici, predložio uvođenje novih izbornih predmeta i ERASMUS predmeta za studente razmjene, itd. Sve predloge koje je predložio Odbor za unaprijeđenje nastavnih / studijskih programa usvojilo je Fakultetsko vijeće. Komitet za promociju izvrsnosti studenata

obično se sastaje jednom godišnje u svrhu predlaganja/nominacija studenata za nagrade i priznanja Univerziteta i Fakulteta. Rad Odbora svršenih studenata je bio nezadovoljavajući u smislu kontinuiteta. Sadašnje rukovodstvo Fakulteta nastoji da definiše osnovne aktivnosti i ciljeve Odbora svršenih studenata u skladu sa strateškim dokumentom Fakulteta, uz pomoć kojeg će Odbor svršenih studenata biti u mogućnosti da poboljša saradnju sa svršenim studentima Fakulteta i učini ga sistematičnijim. Vijeće za postdiplomske studije kontinuirano prati implementaciju postdiplomskih studijskih programa i nadgleda procedure obezbjeđivanja kvaliteta. U proteklih pet godina, Vijeće bi se obično sastajalo jednom mjesečno.

Glavni strateški ciljevi Fakulteta su:

1. Obezbijediti visok kvalitet obrazovnog procesa kroz sinergiju nastave, naučno-istraživačkog i stručnog rada, podsticati mobilnost nastavnika i studenata, razvijati zajedničke studijske programe sa stranim univerzitetima, podsticati učešće u međunarodnim istraživačkim projektima i međunarodnim udruženjima.
2. Dodatno podsticati interaktivnost i praktičnu orjentaciju dijela nastave, posebno seminara, vježbi i praktičnog radnog iskustva u pravosudnim institucijama, upravnim tijelima i sistemu socijalne zaštite, ili stvoriti uslove za uključivanje što većeg broja studenata tokom studija u programe koji olakšavaju sticanje praktičnog radnog iskustva u svim aspektima pravnih i socijalnih poslova, tijela javne uprave i poreskog zakonodavstva / poreske profesije.
3. Podsticati razvoj postdiplomskih specijalističkih studijskih programa u skladu sa potrebama struke / tržišta rada i podsticati razvoj cjeloživotnog učenja. Zadovoljenje potreba struke / tržišta rada na kvalitetan način ometeno je zbog teškoća u uspostavljanju sistemskih komunikacijskih kanala sa vanjskim akterima, poslodavcima koji zapošljavaju naše studente i našim bivšim studentima.
4. Povećati kvantitet / opseg / obim i kvalitet naučnog istraživanja na Fakultetu, afirmisati Fakultet kao vodeću naučnoistraživačku instituciju u oblasti prava, socijalnog rada, socijalne politike, javne uprave i poreskog zakonodavstva u regionu, i povećati prepoznatljivost i vidljivost Fakulteta u Evropskom istraživačkom prostoru.
5. Investirati dalji rad na optimizaciji upisne politike Fakulteta, što znači da bi kvote za upis na fakultet trebale biti uravnotežene (socijalne potrebe) / potrebe tržišta rada i postići optimalan odnos između studenata i nastavnika.

6. Dalje razvijati politike koje se odnose na poboljšanje kvaliteta studentskog života i promovisati uključivanje studenata u kulturne i sportske aktivnosti (rad studentskih udruženja, Studentska unija, *Capella Juris*, sportske aktivnosti, humanitarni rad, itd.).
7. Poboljšati i modernizovati uslove rada na Fakultetu.

3. Preporuke za unaprijeđenje kvaliteta Pravnog fakulteta u Podgorici

Upravljanje i obezbjeđivanje kvaliteta: 1. Izraditi detaljan strateški plan za Fakultet koji uključuje ciljeve istraživanja i nastave, strategije zapošljavanja osoblja i finansijske pristupe potrebne za postizanje ciljeva. U izradi strateškog plana, zainteresovane strane bi trebale da budu bliže uključene: 2. Promovisanje izvrsnosti u nastavi i istraživanju kroz razvoj dodatnih mehanizama za prepoznavanje i nagrađivanje odličnih rezultata osoblja; 3. Treba poboljšati prikupljanje i analizu relevantnih podataka (npr. sati nastave, kvaliteta istraživanja); 4. Izmijeniti postojeće programe razvoja kadrova koji se izvode na Fakultetu i uvesti sistem praćenja zapošljavanja koji zadovoljava specifične potrebe neakademskog osoblja; 5. Fakultet bi trebao da razvije i održava Alumni mrežu (mreža svršenih studenata) kako bi pomogao u izgradnji kontakata za zapošljavanje i savjetovanje sadašnjih studenata itd. Fakultet bi takođe trebao da analizira podatke o zapošljavanju svršenih studenata kako bi se to moglo unijeti u dizajn predmeta i prakse upisa. Informacije o zaposlenju treba da budu uključene na web stranici.

Studijski programi: 1. Ishodi učenja predmeta treba da budu eksplicitno usklađeni sa ishodima učenja na nivou studijskog programa, formulisanim u uslovima koji se oslanjaju na Blumovu taksonomiju i sistematski testirani (tj. kroz uvođenje „test matrice“); 2. Razviti krajnje ishode učenja koji pojašnjavaju njegovu institucionalnu misiju, pomažu nadgledanje monitoringa nastavnih planova i programa i podržavaju evaluaciju efektivnosti programa zasnovanu na ishodima; 3. Trebalo bi da bude jasno i transparentno kako stvarna opterećenja za studente odgovaraju broju ECTS dodijeljenih određenom predmetu; 3. Mogućnosti za praktično učenje treba da budu olakšane u većoj meri, treba da budu integrisane u program i, što je najvažnije, treba da budu dostupne svim studentima; 4. Održavanje kontakta i praćenje bivših studenata trebalo bi da se sprovodi na sistematičniji način; 5. Fakultet treba redovno da pregleda svoje programe u cilju racionalizacije i obezbjeđivanja ažuriranosti sadržaja nastavnog plana i programa. Trebalo bi da osigura mehanizme za nastavu pod

vođstvom istraživača: 6. Fakultet treba da traži najbolje prakse u procjeni potražnje i treba da sprovede svoje planove za anketiranje svršenih studenata, te da razvije alumni mrežu; 7. Fakultet bi mogao da iskoristi svoju alumni mrežu kako bi razvio program stažiranja i prakse za studente; 8. Kontinuirana evaluacija kvaliteta novog studijskog programa (studentske ankete i ankete nastavnika).

Studenti: 1. Izrada informativnog paketa o novom studijskom programu u skladu sa *Standardima i smjernicama za obezbjeđivanje kvaliteta u Evropskom prostoru visokog obrazovanja* (ESG) - http://www.enqa.eu/wp-content/uploads/2015/11/ESG_2015.pdf**;** 2. Baza podataka bivših studenata trebala bi se koristiti za prikupljanje podataka o trenutnom zanimanju bivših studenata.

Proširiti opseg aktivnosti Alumni udruženja, uključujući i značajnije projekte za razvoj fakulteta, kao što je praćenje bivših učenika kako bi se procijenila djelotvornost programa i umrežavanje sa institucijama i ustanovama visokog obrazovanja; 3. Povećati promociju javnog imidža Fakulteta kroz poboljšanu web stranicu i druge mehanizme odnosa s javnošću.

Nastavnici: 1. Preporučujemo da se poslovi na kojima je nastava na engleskom jeziku moguća (npr. Međunarodno pravo, pravo EU) takođe oglašavaju na engleskom jeziku na međunarodnim web stranicama i da se distribuiraju putem različitih mailing lista u Evropi; 2. Fakultetu se strogo preporučuje da uspostavi kontinuirane programe cjeloživotnog učenja; 3. Uspostaviti kvalitetniji sistem evaluacije istraživanja i nastave; 4. Nejednakosti u nastavnom opterećenju treba svesti na minimum; 5. Smanjiti ogroman stepen nastavnih aktivnosti i omogućiti više vremena za istraživanje.

Naučna i profesionalna aktivnost: 1. Broj publikacija u međunarodno priznatim pravnim časopisima treba značajno povećati; 2. Potrebno je obezbijediti administrativnu pomoć za prijave projekata; 3. Osoblje treba aktivnije podsticati na sticanje vanjskih sredstava; 4. Razviti detaljan program strateških istraživanja za održavanje i izgradnju oko prioritetnih područja Fakulteta; 5. Razviti sistem za osvješćivanje istraživačkog osoblja o nacionalnim i međunarodnim šemama odobravanja i pružanju personaliziranih smjernica u primjeni tih programa; 6. Kada je to moguće, Fakultet treba da se angažuje sa industrijom u vezi sa potencijalnom saradnjom i partnerstvom.

Međunarodna saradnja i mobilnost: 1. Trebalo bi sprovesti ambiciozniji plan akcije za veće angažovanje u evropskim projektima; 2. Treba obezbijediti namjensko finansiranje za Erasmus studente pravnog

odsjeka; 3. Fakultet treba da nastoji da obezbijedi finansiranje iz evropskih i međunarodnih izvora; 4. Treba preduzeti mjere kako bi se osiguralo da se potpuna širina Erasmus mjesta (i dolaznih i odlaznih) pretplati, posebno kroz podizanje svijesti o prednostima; 5. Uspostaviti uslove koji će omogućiti da 10% ili više nastavnog osoblja provede najmanje 6 mjeseci u inostranstvu u narednih pet godina, i da se ova mobilnost implementira kao preduslov za napredovanje u karijeri nastavnika; 6. Promovisati objavljivanje istraživanja u časopisima sa visokim faktorom uticaja iz više istraživačkih grupa, djelimično povećanjem zahtjeva učinka objavljivanja za napredovanje u karijeri; 7. Razviti programe za privlačenje stranih nastavnika, po mogućnosti pružanjem kratkih predmeta na engleskom i ljetnjim školama. Ovi programi mogli bi da imaju koristi od postojećih međunarodnih naučnih saradnji među istraživačima Fakulteta; 8. Razviti strateški plan za međuinstitucionalnu i međunarodnu saradnju, djelimično kroz nadogradnju postojećih saradničkih istraživačkih grupa na institucionalnu saradnju.

Preporučena dokumenta / literatura:

Standards and Guidelines for Quality Assurance in the European Higher Education Area from 2005. - https://enqa.eu/index.php/home/esg/ (14/4/2019).

The Standards and guidelines for quality assurance in the European Higher Education Area (ESG) - http:// www.enqa.eu/wp-content/ uploads/ 2015/ 11/ ESG _2015.pdf (15/4/2019).

The Act on Quality Assurance in Science and Higher Education from 2009 (*Official Gazette*, no. 45/09)

Standards for the evaluation of quality of universities and university constituents in the procedure of re-accreditation of higher education institutions - https://www.azvo.hr/images/stories/novosti/ENG_STANDARDS_FOR_THE_EVALUATION_OF_QUALITY_-_UNIVERSITIES.pdf

Procedure for the re-accreditation of higher education institutions - https://www.azvo.hr/images/stories/vrednovanja/Procedure_for_the_re-accreditation_of_HEI.pdf (11/4/2019).

Quality Assurance and Learning Outcomes - https://enqa.eu/indirme/papers-and-reports/workshop-and-seminar/WSR%2017%20-%20Final.pdf (16/4/2019).

The Regulation on the Quality Assurance System at the University of Zagreb from 2011. - http://www.unizg.hr/fileadmin/rektorat/O_Sveucilistu/ Dokumenti_javnost/Propisi/Pravilnici/15052018-FINAL-Pravilnik_o_sustavu_osiguravanja_kvalitete_-_SENAT_lektorirano.pdf (11/4/2019).

Development Strategy of the University of Zagreb Faculty of Law - https://www.pravo.unizg.hr/fakultet/upravljanje_kvalitetom/dokumenti (11/4/2019).

Regulation on the Quality Assurance System at the University of Zagreb Faculty of Law - https://www.pravo.unizg.hr/fakultet/upravljanje_kvalitetom/dokumenti (11/4/2019).
Quality Assurance Guidelines of the University of Zagreb Faculty of Law - https://www.pravo.unizg.hr/fakultet/upravljanje_kvalitetom/dokumenti (11/4/2019).
Quality Policy - https://www.pravo.unizg.hr/fakultet/upravljanje_ kvalitetom/ dokumenti (11/4/2019).
(Annual) Reports and action plans showing the level of implementation of certain activities achieved in specific periods - https://www.pravo.unizg.hr/fakultet/ upravljanje_kvalitetom/dokumenti (11/4/2019).

Arsen Bačić*

EUROPSKE INTEGRACIJE I INSTITUCIJE EUROPSKE UNIJE

Kolegij Europske integracije i institucije Europske unije uvršten je u program Specijalističkog diplomskog stučnog upravnog studija Pravnog fakulteta u Splitu kao izborni kolegij četvrtog semestra na drugoj godini studija, a nosi 6 ECTS bodova. Satnica kolegija je 45 sati predavanja i 15 sati seminara, odnosno 60 sati nastave ukupno. Konačna ocjena sastoji se od kombinacije praktičnih zadataka (50%) i pisanog ispita (50%).

Predmet studentima treba dati temeljita i cjelovita znanja o europskim integracijama i institucijama Europske unije. Institucije i pravo Europske unije nisu izmijenili samo političku, socijalnu i ekonomsku kartu država članica, već i globalne međunarodne odnose. Glavni ciljevi predmeta su stoga upoznavanje studenata s institucijama Europske unije te njihovim međusobnim odnosima, ukazivanje na specijalni karakter EU prava u usporedbi s međunarodnim i nacionalnim pravom, poticanje studenata na istraživanje efekata EU institucija i prava na drugim područjima međunarodnih odnosa, razvijanje kritičkog mišljenja glede drugih predmeta povezanih s političkim znanostima i međunarodnim odnosima. Posebno se razmatra proces proširenja Unije i integracije novih država članica, pri čemu se dakako najviše pažnje posvećuje pristupanju Republike Hrvatske te analizi efekata njenoga članstva u Europskoj uniji.

Student će moći: 1) identificirati i navesti temeljne pojmove povezane s etapama europskih integracija i institucionalnom strukturom Europske unije, 2) izdvojiti i objasniti relevantne dokumente, pravna načela i načela organizacije vlasti Europske unije, 3) povezati i prilagoditi opća znanja o pravu Europske unije i procedurama europskih institucija te procesu pridruživanja Republike Hrvatske Europskoj uniji, 4) analizirati relevantne dokumente europskog javnog prava i praksu Europskog suda pravde, 5) zaključiti o utjecaju i doprinosu europskih institucija i europskog pravnog sustava razvoju nacionalnog pravnog sustava i položaju hrvatskih građana.

Posebna se pozornost pridaje razradi terorijskog okvira na praktičnim primjerima, a sama činjenica da je Republika Hrvatska 2005. po-

* Akademik Arsen Bačić je redoviti profesor u trajnom zvanju na Pravnom fakultetu Univerziteta u Splitu.

krenula pristupne pregovore s Europskom unijom te da je 2013. godine postala njenom članicom otvorila je mogućnost za case study koji je za studente iznimno interesantan i poticajan.

Kao nužnost se nameće eksplikacija komparativne problematike ustavnih promjena izazvanih procesom proširenja EU, dijaloga o ustavnim promjenama koje su u europskim zemljama inicirane potrebom ratifikacije europskih dokumenata (prije svega Maastrichtskog sporazuma), odnosno procesa sukcesivnog širenja na nove članice čiji broj predvidljivo raste iz godine u godinu. Postavljamo pitanje i o tome u kolikoj je mjeri nacionalna država otvorena da na ustavnome planu reflektira spremnost i odgovore na dva izazova razumijevanju i praksi upravljanja moderne države: naime, na procese globalizacije i funkcionalne diferencijacije. Jer, teorija i praksa suvremene države sve više ukazuje kako ovi dugoročni trendovi nacionalnu državu stavljaju pod takav pritisak koji prije ili kasnije neizostavno traži adaptaciju tradicionalnih političko-institucionalnih aranžmana. Riječ je i o posljedicama procesa europske integracije koji, kako to ističe **J.H.H. Weiler**, više nego ijedan drugi proces osvjetljava i svu moguću nedostatnost određenih ključnih koncepata ustavne i demokratske misli izvan konteksta relativno homogenih nacionalnih država, pa ustavne promjene prije ili kasnije nužno dolaze na dnevni red nacionalne politike.[1]

Fenomen ustavnih promjena koje imaju uzrok u kompleksnom političko-pravnom procesu nastajanja, proširivanja i sazrijevanja Europske unije dotiče ne samo ustavotvorce klasičnih demokracija, već i ustavotvorce novih demokracija koje su također obuhvaćene problematikom proširenja EU. Tamo gdje su na djelu ili ih se tek očekuje, te su promjene promjene nužni i sastavni dio kompleksa proširenja EU, konstitucionalizacije EU, odnosno harmonizacije, ili komunitarizacije nacionalnih politika unutar sve povezanijeg svijeta europske politike i prava.

Pitanja koja su otvorena u novom valu racionalizacije europskih ustava i to prije svega onih zemalja koje pripadaju historijskim utemeljiteljima Europske unije su izuzetno značajna. U ovom razdoblju koje nazivaju "erom integracije" izazvana je, kaže ***F. Venter***, sva sila različitih klasičnih pojmova ustavnog prava. Među tim pojmovima prvi je onaj o samoj prirodi države, o temeljima ustava, o središtu državne vlasti te horizontalnom i vertikalnom balansiranju vlasti. Ovi izazovi su se pojavili ne samo radi "procesa supranacionalnog organiziranja, koji u EU ima na-

[1] Weiler J.H.H., Constitutionalism and Democratic Representation in the European Union, p.3; dostupno na:https://eif.univie.ac.at/downloads/projekte/ResearchProgrammeConstitutionalism.pdf

jrazvijeniji primjer, već i kao posljedica globalizacije politike, trgovine, komunikacija i životnoga stila".[2]

Dijalog između razvoja europskih ugovora i nacionalnih ustava otvoren je 1992. godine nakon usvajanja Maastrichtskog ugovora (*Maastricht Treaty, Le Traite de Maastricht*). A da je Ugovor iz Maastrichta u pravom smislu predstavljao prekretnicu svjedoči i činjenica da se u razdoblju između 1951. i 1992. godine, koje ipak predstavlja i razdoblje od četrdeset godina "europske konstrukcije", nije nikada postavljalo pitanje o eventualnom inkompatibilitetu između novog legalnog poretka i tradicionalnih nacionalnih ustava. Kada se je ta debata otvorila, istu je naglo okončala politička volja koja nije željela postojanje bilo kakvih ustavnih prepreka kreiranju Ujedinjenih europskih država. Zato je Ugovor iz Maastrichta u pravom smislu riječi okrenuo novu stranicu europskog dijaloga. Njegovim sklapanjem odmah su se pojavile i nove kontroverze, prije svega zbog onih odredbi koje se odnose na biračko pravo građana zemalja izvan EU odnosno zbog monetarne politike, itd. U tom su smislu sve države potpisnice Ugovora iz Maastrichta bile obvezane da sagledaju sadržaj Ugovora i da ga sučele sa sadržajem vlastitih ustava. Taj je čin trebao biti preliminarni potez prije ratifikacije ovog ugovora u dvanaest država članica Unije.

Historija pregovora o proširenju Europske unije je ustvari priča o nametanju obaveze prihvaćanja čitavoga spektra principa, mjera, zakona, praksi, obveza i ciljeva koji su usuglašeni i prihvaćeni unutar Unije, onoga što se naziva *acquis communautaire*; čini se više nego očitim da je danas preteški teret adaptacije EU na strani država koje se priključuju zajednici. Obzirom na činjenicu da su politički i ekonomski sistemi zemalja u pitanju još uvijek u procesu tranzicije, postavlja se pitanje hoće li proces proširenja i zahtjevi koji se s time pojavljuju dovesti do promjene ustava koji su usvojeni i prije no što se mislilo o uključivanju u tako zahtjevnu strukturu kakva je Europska unija ?

Procedure ustavnih promjena koje su se do sada odvijale u zemljama članicama EU reproduciraju, prema riječima nekih analitičara, "racionaliziranu varijantu akcije konstituirajuće vlasti koju omogućuju suvremeni ustavi".[3] U najvećem broju ovih država odluke i presude usta-

[2] Venter F., Constitution Making and the Legitimacy of the Constitution, u Jyranki A. (ed.), National Constitutions in the Era of Integration, Kluwer Law International, 1999., p. 9

[33] Tanchev E., The Current Constitutional deabate and the implications of Bulgaria's acession to the European union, p. 9; dostupno na: https://www.nato.int/acad/fellow/97-99/tanchev.pdf

vnih sudova koje se tiču suglasnosti temeljnih zakona s osnivačkim ugovorima predstavljaju obligatorni element ratifikacijske procedure. Štoviše, u Njemačkoj i Francuskoj ti su sudovi intervenirali i prije i poslije ustavnih amandmana koji su se ticali konteksta ratifikacije europskog prava. Dok se sama ratifikacija u Danskoj, Irskoj i Francuskoj odvijala u dramatičnim okolnostima nacionalnog referenduma, negdje se je taj proces ratifikacije odvijao u sasvim pomirljivoj atmosferi nacionalnih parlamenata gdje se je odluka donosila kvalificiranim većinama.

U trenutku otvaranja procesa pripremanja Hrvatske za članstvo u Europskoj uniji hrvatski pregovarač s EU izjavljuje kako "prilagodba Europi zahtijeva reformu cijele države". Jedan od prvih koraka je utemeljenje novog saborskog Odbora za europske integracije koji će, prema riječima vođe tima hrvatskih pregovarača N. Mimice, "ocjenjivati sve propise i zakone koji nose dimenziju usklađivanja s europskim zakonodavstvom".[4] Je li se ova opaska odnosila i na Ustav Republike Hrvatske? I da li se pod 'ocjenom' zapravo mislilo na još jednu (novu) promjenu hrvatskog Ustava?

Klasična i suvremena ustavnopravna teorija stoji na stajalištu da ustavne odredbe koje služe za promjenu ustava nisu samo tehnička sredstva. Riječ je o odredbama kojima se mogu mijenjati rezultati one (konstitutivne) vlasti koja je stvorila ustav. U tom smislu promjena ustava znači reviziju i ponovno ispisivanje temeljnog akta. Revizijske odredbe ustava utjelovljuju dakle 'kompromis između tendencije prema socijalnoj i političkoj inovaciji, kojim se ostvaruje prilagodba političkog sistema novim okolnostima".[5]

Na koji će se način u Republici Hrvatskoj realizirati ustavna evaluacija EU zavisilo je dakako od sposobnosti Hrvatske da razriješi najodsudnija pitanja svoje daljnje perspektive i razvoja. Premda kvaliteta i kvantiteta pitanja u ovoj evaluaciji gotovo zastrašuje (Republika Hrvatska se je konfrontirala s činjenicom potvrde kompletnog *acquis communautaire*, koji se sastoji od temeljnih ugovora, sekundarne legislative, međunarodnih sporazuma institucija Unije, jurisprudencijom europskih sudova, etc.), u suštini je opet riječ o suočavanju s izborom i rješavanjem klasične dileme: da li izabrati Hobbesovu ili Lockeovu konstitucionalnu opciju? Dok Hobbesova socijalna dilema potpomognuta 'benevolentnim diktatorima' odvodi transformaciji konflikata na kraći rok, tek Lockeova

[4] Usp. Pripreme Hrvatske za EU – najesen se pali 'crvena lampica' za zakonodoavnu prilagodbu Europskoj uniji, u: Jutarnji list

[5] Elster J. et al., Institutional design in post-communist societies – rebuilding the ship at sea, Cambridge university Press, Cambridge, 1998. p. 105

koncepcija konstitucionalizma stvara 'protektivnu' i 'produktivnu' ustavnodemokratsku državu. No, zadaća 'konstitucionalizacije transnacionalnih regulatornih ovlasti', a time i rješavanje gore postavljene dileme, traži ponovno i još produbljenije osmišljavanje ustavnih tradicija i koncepata koji su do pristupanja Uniji prevladavali u ustavnopolitičkom razvoju Republike Hrvatske. Možda je upravo mogućnost ulaska Republike Hrvatske u EU bila najbolja prilika za takvu jednu 'generalku' ustavnih tradicija i koncepata koji su kao plod države-nacije nastale u vrijeme kada su međunarodni odnosi prije svega bili položeni na politici moći i rata.

Republika Hrvatska je s Europskom unijom potpisala Sporazum o stabilizaciji i pridruživanju 29. listopada 2001. godine. Hrvatski put prema punopravnom članstvu započeo je dakako još i ranije. Tako je u svibnju 1999. godine Europska komisija predložila otvaranje Procesa stabilizacije i pridruživanja za Albaniju, Bosnu i Hercegovinu, Hrvatsku, Makedoniju i SR Jugoslaviju, a iste godine u lipnju usuglašen je Pakt o stabilnosti kao politički dokument kojem je strateški cilj stabilizacija u jugoistočnoj Europi putem približavanja zemalja regije euroatlantskim strukturama te jačanje međusobne suradnje. 15. veljače 2000. osnovana je Zajednička konzultativna radna skupina RH – EU, a u svibnju iste godine Europska komisija je objavila pozitivan Izvještaj o početku pregovora o zaključivanju Sporazuma o stabilizaciji i pridruživanju. Prekretnica je bio Zagrebački summit održan u studenom 2000. koji je označio i početak pregovora između RH i EU o zaključivanju sporazuma, kojega je napokon Hrvatski sabor ratificirao 5. prosinca 2001. godine, a zatim ga je potvrdio i Europski parlament 12. prosinca iste godine.

Hrvatska je zahtjev za članstvo u Europskoj uniji predala 21. veljače 2003., a u travnju iste godine Vijeće EU dalo je mandat Europskoj komisiji da izradi mišljenje o zahtjevu Republike Hrvatske za primanje u članstvo. Europska komisija predala je Hrvatskoj 10. srpnja 2003. godine Upitnik s 4560 pitanja, a odgovore je Hrvatska uručila tri mjeseca kasnije – 9. listopada 2003.

Pristupni pregovori između RH i EU su otvoreni 3. listopada 2005. godine, nakon čega je započeo postupak analitičkog pregleda usklađenosti (screening) hrvatskog zakonodavstva s pravnom stečevinom EU. Prva Međuvladina konferencija na razini zamjenika voditelja izaslanstava/glavnih pregovarača, na kojoj su usuglašena načela i proceduralni aranžmani za vođenje pristupnih pregovora te je razmotren inicijalni radni program temeljen na planu screeninga pojedinih poglavlja pregovora, održana je 28. listopada 2005. godine. Održano je sveukupno trinaest sastanaka Međuvladine konferencije o pristupanju RH Europskoj uniji na ministarskoj razini,

a pregovori su formalno okončani 30. lipnja 2011. godine zatvaranjem svih 35 pregovaračkih poglavlja. No, da bi Hrvatska mogla učiniti upravo spomenuti korak prethodno je bilo neophodno adaptirati i njen ustavni okvir.

Sve promjene Ustava koje su realizirane, a bile su prethodno sadržane u Prijedlogu promjene Ustava, mogu se sistematizirati u dvije skupine. Za predmet našeg interesa važna je prva skupina izmjena i dopuna Ustava Republike Hrvatske, kojima se utvrđuje valjana ustavno-pravna osnova kako za pristupanje Republike Hrvatske Europskoj uniji, tako i za učinkovito funkcioniranje Republike Hrvatske u Europskoj uniji i to: a) Ustavna pitanja koja proizlaze iz pojedinih poglavlja pregovora s Europskom unijom (neovisnost Hrvatske narodne banke i Državnog ureda za reviziju, aktivno i pasivno biračko pravo državljana EU koji borave u Republici Hrvatskoj, jačanje neovisnosti, nepristranosti i profesionalnosti sudbene vlasti, učinkovita provedba Okvirne odluke Vijeća EU o Europskom uhidbenom nalogu); b) Ustavna pitanja koja nisu izravno vezana za pojedina poglavlja pregovora već se odnose na modalitete pristupanja i funkcioniranja Republike Hrvatske u Europskoj uniji (ustavna osnova za pristupanje EU, referendum o članstvu Republike Hrvatske u EU, prijenos ustavnih ovlasti, sudjelovanje u institucijama EU, izravni učinak i primjena prava EU, odnos između zakonodavne, izvršne i sudbene vlasti nakon stjecanja punopravnog članstva u EU te položaj državljana EU u Republici Hrvatskoj i osiguranje njihovih prava).

Dakle, već je i dotadašnja ustavna norma, ujedno i ustavna osnova za pristupanje Republike Hrvatske EU, a koja za taj postupak propisuje provedbu referenduma, predstavljala poseban izazov za ustavotvorca te uopće za budućnost projekta europske Hrvatske. Naime, ta je ustavna norma za pozitivan ishod referenduma zahtijevala vrlo strogu većinu – većinu glasova svih birača u državi. Takav izričaj stvara situaciju u kojoj svaki neizlazak na referendum (apstinencija) predstavlja glas "protiv". Imajući u vidu velik broj hrvatskih državljana upisanih u biračke popise koji ne žive u Republici Hrvatskoj, te uzimajući u obzir visok postotak izborne apstinencije takvih birača, postojala je opasnost da referendum koji bi se organizirao temeljem postojeće ustavne norme ne bi pružio realnu sliku volje biračkog tijela odnsono da bi broj birača koji se uopće nisu odazvali referendumu uvelike utjecao na njegov ishod.

Referendum o pristupanju mora osigurati legitimnost takve odluke kao osnove članstva u EU. Stoga je bilo potrebno osigurati da na referendumu dođe do izražaja stvarna volja biračkog tijela. Zaključeno je da je cilj moguće osigurati propisivanjem donje granice najnižeg odaziva birača koji jamči legitimnost referenduma. Stoga je predloženo i usvojeno rje-

šenje da se donji prag odredi kao "većina birača koji su pristupili referendumu“.

Nadalje, Ustav je dopunjen i novom Glavom VIII - EUROPSKA UNIJA koja uređuje posebna pitanja članstva u EU. Takve posebne dijelove ustava posvećene EU nalazimo i u ustavima drugih država, poput Francuske i Njemačke.

U članku 143. Ustava tako se navode ciljevi i vrijednosti europskog zajedništva koje Republika Hrvatska prihvaća kao temelj članstva u EU. Njime se izražava misao da Republika Hrvatska ne pristupa bilo kakvoj organizaciji, već upravo takvoj koja štuje i štiti navedene vrijednosti i na njima se zasniva. Članstvo u EU zahtijeva da se na zajedničke institucije prenesu određene ustavne ovlasti, kako je propisano člankom 139. Ustava. EU je organizacija ograničenih ovlasti i ima samo one ovlasti koje su na nju Osnivačkim ugovorima i njihovim izmjenama i dopunama prenijele države članice. Ovaj članak relevantan je i za buduće izmjene i dopune ugovornog okvira EU.

U članku 144. Ustava pojašnjava se demokratska dimenzija EU. Dio ustavnih ovlasti prenosi se na europske institucije, a demokratsko načelo osigurava se u Europskom parlamentu. Stavcima 2., 3. i 4. ovoga članka osigurava se ustavna osnova za donošenje odgovarajućeg zakona i izmjene Poslovnika Hrvatskog sabora kojima će se regulirati način sudjelovanja Hrvatskoga sabora u zakonodavnom postupku Europske unije te nadzor nad djelovanjem Vlade u institucijama Europske unije. U stavku 5. se određuje da će Republiku Hrvatsku u Vijeću i Europskom vijeću zastupati, sukladno njihovim ustavnim ovlastima, Vlada i Predsjednik Republike Hrvatske.

U članku 145. Ustava uređuje se zaštita subjektivnih prava građana pred hrvatskim sudovima. Riječ je o “izravnom učinku” prava EU kao jednoj od temeljnih karakteristika prava EU. Obvezu primjene prava EU imaju ne samo sudovi, već i drugi subjekti. Ovdje se izražava i načelo ekvivalentne pravne zaštite. Nacionalno pravo ne smije činiti ostvarivanje subjektivnih prava koja proizlaze iz prava EU pretjerano teškim ili gotovo nemogućim. Ova je norma upućena svim tijelima državne vlasti, uključujući i sudove. Pravo EU je dio nacionalnog pravnog poretka i sudovi su obvezni suditi primjenjujući ga. Ukoliko je norma nacionalnog prava suprotna normi prava EU, nacionalni sud mora izuzeti iz primjene nacionalnu pravnu normu i izravno primijeniti normu prava EU. U stavku

4. izražava se načelo administrativnog izravnog učinka, odnosno, obveza svih tijela državne vlasti/javne uprave da primjenjuju pravo EU.

U članku 146. Ustava određeno je da su državljani Republike Hrvatske građani EU i uživaju prava koja im jamči pravna stečevina EU. Sva prava ostvaruju se u skladu s uvjetima i ograničenjima propisanima ugovorima na kojima se temelji EU i mjerama prihvaćenima temeljem tih ugovora. U stavku 3. zajamčeno je da u Republici Hrvatskoj sva prava zajamčena pravnom stečevinom EU uživaju svi građani EU. Europsko građanstvo predstavlja temeljni status koji uživaju građani država članica EU. Ono sa sobom nosi niz prava koja su navedena u ovom članku, a zajamčena su Osnivačkim ugovorima. Ona pripadaju svim građanima EU, a po pristupanju Republike Hrvatske u EU pripadat će i hrvatskim državljanima u svim državama članicama i državljanima drugih država članica u Republici Hrvatskoj.

Promjena Ustava RH stupila je na snagu danom proglašenja (16. lipnja 2010. godine), osim: čl. 9. st. 2. (u dijelu koji se odnosi na izvršenje odluka o predaji donesenih sukladno pravnoj stečevini Europske unije), čl. 133. st 4. (pravo na lokalnu i regionalnu samoupravu tj. biračko pravo koje u RH ostvaruju i građani Europske unije), te već navedenih čl. 144., 145. i 146. koji su stupili na snagu danom pristupanja Republike Hrvatske Europskoj uniji tj. 1. srpnja 2013. godine.[6]

[6] Ustav RH (pročišćeni tekst), Narodne novine br. 85/2010

<table>
<tr><td>NAZIV PREDMETA</td><td colspan="6">Evropske integracije i institucije Europske unije</td></tr>
<tr><td>Šifra</td><td colspan="2"></td><td>Godina studija</td><td colspan="3">II</td></tr>
<tr><td>Predmetni nastavnik</td><td colspan="2">Dr.sc. Arsen Bačić, Profesor i osoblje</td><td>ECTS</td><td colspan="3">6</td></tr>
<tr><td rowspan="2">Vanredni nastavnik</td><td colspan="2" rowspan="2">Dr. sc. Petar Bačić, Vanredni profesor</td><td rowspan="2">Vrsta nastave (broj sati)</td><td>L</td><td>S</td><td>E</td><td>F</td></tr>
<tr><td>45</td><td>15</td><td></td><td></td></tr>
<tr><td>Status predmeta</td><td colspan="2">Izborni</td><td>Procenat primjene e-učenja</td><td colspan="3">-</td></tr>
<tr><td colspan="7">OPIS PREDMETA</td></tr>
<tr><td>Ciljevi predmeta</td><td colspan="6">Predmet studentima treba da da temeljna i cjelovita znanja o evropskim integracijama i institucijama Europske unije. Institucije i pravo Evropske unije nisu izmijenili samo političku, socijalnu i ekonomsku kartu država članica, već i globalne međunarodne odnose. Glavni ciljevi predmeta su stoga upoznavanje studenata s institucijama Europske unije te njihovim međusobnim odnosima, ukazivanje na specijalni karakter EU prava u poređenju sa međunarodnim i nacionalnim pravom, podsticanje studenata na istraživanje efekata EU institucija i prava na drugim područjima međunarodnih odnosa, razvijanje kritičkog mišljenja u vezi sa drugim predmetima povezanih s političkim naukama i međunarodnim odnosima. Posebno se razmatra proces proširenja Unije i integracije novih država članica, pri čemu se dakako najviše pažnje posvećuje pristupanju Republike Hrvatske te analizi efekata njenoga članstva u Evropskoj uniji.</td></tr>
<tr><td colspan="2">Uslovi za upis predmeta i startne kompetencije potrebne za predmet</td><td colspan="5">Za upis studenti moraju da ispunjavaju opšte uslove za upis na drugu godinu studija.</td></tr>
<tr><td>Očekivani ishodi učenja na nivou predmeta (4-10 ishoda učenja)</td><td colspan="6">Studenti će moći da: 1) identifikuju i naznače osnovna načela i koncepte vezane za evropski integracioni proces i institucionalnu strukturu EU; 2) izdvoje i objasne relevantne instrumente i načela vezana za organizaciju vlasti na nivou EU; 3) kombinuju i prilagode osnovna znanja o pravu i postupcima EU u institucijama EU kao i o pristupanju Republike Hrvatske Evropskoj uniji; 4) analiziraju relevantne dokumente EU kao i sudsku praksu Evropskog suda pravde; 5) zaključe o uticaju i doprinosu prava EU i institucija EU na razvoj nacionalnog prava i pravnog statusa hrvatskih građana.</td></tr>
<tr><td>Sadržaj predmeta detaljno razrađen prema nedjjenom rasporedu predavanja (silabus)</td><td colspan="6">I. Istorijat evropskih integracija:
1) uvod; 2) Evropska zajednica za ugalj i čelik; 3) Evropska ekonomska zajednica, Evropska zajednica za atomsku energiju (Euratom); 4) Ugovor o spajanju; 5) proširenje članstva u EU; 6) Pristupanje Republike Hrvatske Evropskoj uniji.
II. Osnivački ugovori; 1) Jedinstveni evropski akt; 2) Ugovor iz Mastrihta; 3) Ugovor iz Amsterdama; 4) Ugovor iz Nice; 5) Ustav EU; 6) Lisabonski ugovor.
III. Institucije EU: 1) 1) Evropska komisija, 2) Evropski parlament, 3) Evropski savjet, 4) Savjet ministara, 5) Sud pravde Evropske unije.
IV. Izvori i načela evropskog prava: 1) primarni izvori, sekundarni izvori, meko pravo, 2) načelo supremacije, 3) načelo direktnog učinka, 4) načelo nediskriminacije, 5) načelo ograničenih ovlasti, 6) načelo supsidijarnosti, 7) načelo razmjernosti, 8) načelo lojalnosti, 9) načelo državne odgovornosti, 10) zaštita osnovnih prava.
V. Republika Hrvatska u Evropskoj uniji.</td></tr>
<tr><td></td><td colspan="3">☒ predavanja</td><td colspan="3">☐ samostalni zadaci</td></tr>
</table>

Format nastave	☒ seminari i radionice ☐ vježbe ☐ *on line* u cjelini ☐ djelimično e-learning ☐ terenski rad	☐ multimedija ☐ laboratorija ☐ rad s mentorom ☐ (ostalo)
Obaveze studenata	Od studenata se očekuje da prisustvuju svim oblicima nastave (predavanja, seminari, testovi). Od studenata se očekuje da napišu esej (praktični zadatak). Studenti moraju da polože usmeni ispit.	

Provjera studentskog rada (navesti udio ECTS bodova za svaku aktivnost tako da ukupan broj ECTS bodova odgovara ECTS bodovnoj vrijednosti predmeta)						
	Prisustvo nastavi		Istraživanje		Praktična obuka	
	Eksperimentalni rad		Izvještaj		(ostalo)	
	Esej		Seminarski esej		(ostalo)	
	Testovi		Usmeni ispit		(ostalo)	
	Pismeni ispit		Projekat		(ostalo)	
Ocjenjivanje i vrednovanje rada studenata tokom nastave i na završnom ispitu			Različiti oblici angažmana (pohađanje nastave, eseji, praktični zadaci) 50%. Usmeni ispit 50%			

Potrebna literatura (dostupna u biblioteci i putem drugih medija)	Naslovi	Broj primjeraka u biblioteci	Dostupnost preko drugih medija
	1. Bačić Arsen i Bačić Petar, Europsko pravo – studijski izvori, Pravni fakultet, Split, 2007.	20	
	2. Europska unija i Lisabonski ugovor - dodatak knjizi Europsko pravo (priredio dr. sc. Petar Bačić), 2010.	20	WEB
	3. Republika hrvatska i institucije Europske unije - dodatak knjizi Europsko pravo (priredio dr. sc. Petar Bačić), 2013.		

Dopunska literatura (u trenutku podnošenja prijedloga studijskog programa)	1. Josipović T, Načela europskog prava, Narodne novine, Zagreb, 2005. 2. Bačić Petar, Ustav za Europu i značaj konstitucionalizacije ljudskih prava, Zbornik Pravnog fakulteta u Splitu, br. 1-2/2005., str. 105. – 119. 3. Rodin S. et al., Reforma Europske unije - Lisabonski ugovor, Narodne novine, Zagreb, 2009.
Načini praćenja kvaliteta koji obezbjeđuju sticanje izlaznih kompetencija	Studenti će imati mogućnost trajne komunikacije s nastavnikom kroz konsultacije i korespondenciju putem e-maila. Popis naslova za esej će biti dostavljen studentima. Studenti će također dobiti adekvatnu literaturu i nastavnici će ih voditi tokom pisanja eseja.
Ostalo (kako predlagač želi da doda)	

Petar Bačić*

ZAŠTITA LJUDSKIH PRAVA U EVROPSKOJ I KOMPARATIVNOJ PERSPEKTIVI / PRAVO EU O LJUDSKIM PRAVIMA UKRATKO

Zaštita ljudskih prava u evropskoj i komparativnoj perspektivi je izborni predmet, 6 ECTS, koji se predaje u 9. semestru pete godine studija prava na Pravnom fakultetu u Splitu. Tokom 9. semestra održava se 60 nastavnih sati i 15 sati seminara, ukupno 75 sati. Konačna ocjena se formira iz praktičnog zadatka (60%) i usmenog ispita (40%).

Predmet Zaštita ljudskih prava u evropskoj i komparativnoj perspektivi treba da pruži duboko i sveobuhvatno znanje o ljudskim pravima i osnovnim slobodama i sistemima koji su stvoreni za njihovu zaštitu. Ovaj predmet nudi temeljnu analizu zaštite ljudskih prava na različitim nivoima - nacionalnim, nadnacionalnim i međunarodnim, kao i primjere sudskog aktivizma u oblasti ljudskih prava. Glavni ciljevi ovog predmeta su pružiti studentima osnovne informacije o dokumentima koji garantuju ljudska prava na evropskom i nacionalnom nivou i odgovarajućim sistemima za njihovu zaštitu, kao i znanje o pravosudnim institucijama čiji su glavni zadaci zaštita ljudskih prava na nacionalnom i evropskom nivou i njihove prakse, odnosno relevantne sudske prakse Evropskog suda za ljudska prava i Suda pravde Evropske unije (CJEU / ECJ).

Nakon završenog predmeta studenti treba da steknu sposobnost da: 1) identifikuju i navedu osnovne pojmove vezane za zaštitu ljudskih prava i osnovnih sloboda i njihov razvoj; 2) izdvoje relevantne principe koji se odnose na zaštitu ljudskih prava, kao i nacionalne i komparativne dokumente i institucije; 3) objasne funkcionisanje sistema zaštite ljudskih prava na različitim nivoima; 4) kombinuju i prihvataju osnovna znanja o dokumentima o ljudskim pravima, institucijama i sistemima zaštite ljudskih prava; 5) analiziraju relevantne nacionalne i evropske dokumente, mehanizme i institucije za zaštitu ljudskih prava; 6) izvode zaključke o uticaju i doprinosu prakse nacionalnih i evropskih institucija za zaštitu ljudskih prava.

Bitan dio predmeta posvećen je temi zaštite ljudskih prava u Evropskoj uniji. Proučavanje pristupa CJEU pitanjima ljudskih prava predsta-

* Prof. dr. sc. Petar Bačić je prodekan i redoviti profesor Pravnog fakulteta Univerziteta u Splitu.

vlja jedan od najboljih primjera pravosudnog aktivizma u komparativnoj perspektivi i nudi priliku za diskusiju sa studentima o opravdanosti sudskog aktivizma i rastućih fenomena pravosuđa i pravničke demokratije. To je glavni razlog zašto sam odlučio da elaboriram temu zaštite ljudskih prava u Evropskoj uniji kao primjer dobre nastavne prakse u oblasti prava EU.

PRAVO EU O LJUDSKIM PRAVIMA UKRATKO

Prvobitni ugovori o osnivanju - Pariski ugovor (1951.) kojim se uspostavlja Evropska zajednica za ugalj i čelik, Rimski ugovori (1957.) o osnivanju Evropske ekonomske zajednice i Evropske zajednice za atomsku energiju - u vrijeme njihovog usvajanja bili su klasični međunarodni ugovori i tri zajednice su bile obične međunarodne organizacije. Drugim riječima, ti ugovori se definitivno nisu smatrali "ustavnim ugovorima", niti su namjera država koje su ih potpisale. Štaviše, tri zajednice nisu osnovane da bi se konkretno bavile pitanjima ljudskih prava. Dakle, za razliku od modela integracije Savjeta Evrope čiji su primarni ciljevi - međunarodne garancije ljudskih prava i postizanje mira u Evropi - organski povezani, EU model integracije se temeljio na drugim osnovama. 'Osnivači' Evropske unije bili su koncentrisani na integraciju ograničene ali važne ekonomske prekogranične saradnje između država članica. Stoga su prvobitni ugovori o osnivanju prvenstveno bili usmjereni na ostvarivanje zajedničkog (unutrašnjeg, jedinstvenog) tržišta koje nastoji jamčiti slobodno kretanje ljudi, robe, kapitala i usluga (četiri slobode).[1]

Istovremeno, prvobitni osnivački ugovori nisu imali direktnu referencu u pogledu ljudskih prava. Međutim, postojale su neke odredbe u Ugovoru o EEZ, kao što je zabrana diskriminacije na osnovu državljanstva ili načelo jednake plate za muškarce i žene, ali su ta prava zaštićena samo u mjeri potrebnoj za ostvarivanje ekonomske integracije. Štaviše, EU dugo nije imala sveobuhvatnu, konstruktivnu politiku o zaštiti ljudskih prava.[2]

Ipak, od samog nastanka EU postojala je očigledna potreba da se obezbijedi zaštita od kršenja tih prava (prvenstveno ekonomskih i socijalnih prava) koja proističu iz odredbi osnivačkih ugovora, odnosno iz procesa ekonomske integracije. Vremenom je Evropski sud pravde (ECJ)

[1] Lenaerts K. & Van Nuffel P., CONSTITUTIONAL LAW OF THE EUROPEAN UNION, Sweet and Maxwell, London, 1999., p. 3 et passim

[2] Alston P. & Weiler J.H.H., AN 'EVER CLOSER UNION' IN NEED OF A HUMAN RIGHTS POLICY: THE EUROPEAN UNION AND HUMAN RIGHTS, JMWP Working Papers, Jean Monnet Center, NYU School of Law, 1999., p. 3-68.

preuzeo ulogu i zadatak zaštitnika ljudskih prava na nivou EU. Stoga, elementi zaštite ljudskih prava na nivou Evropske unije postaju postepeno, prije svega kroz sudsku praksu Evropskog suda pravde. Ali, kao što smo već istakli, osnivački ugovori nisu imali direktnu referencu u vezi sa zaštitom ljudskih prava. Nije bilo ni EU kataloga prava. Dakle, odakle početi ili s čim početi?

ECJ i ljudska prava. Zapravo, sve je počelo početkom 1960-ih sa dva poznata slučaja - prvo je *Van Gend en Loos*, a drugi je *Costa protiv ENEL*. Nakon donošenja odluka u ova dva slučaja, stvoren je pravni i politički imperativ za pronalaženje načina za zaštitu ljudskih prava na nivou EU.

Naime, sama ideja da su osnivački ugovori zapravo različiti od klasičnih međunarodnih ugovora uvedena je i priznata od strane Evropskog suda u *Van Gend en Loos* (1963). U tom predmetu Sud je naveo da je "Ugovor više od sporazuma koji samo stvara međusobne obaveze između država ugovornica". Štaviše, Sud je naveo da „Zajednica predstavlja novi pravni poredak međunarodnog prava, u korist kojeg su države ograničile svoja suverena prava“; i da novi pravni poredak stvara prava i obaveze ne samo za države članice, nego što je još važnije za njihove državljane. Ova prava tako postaju "dio njihovog pravnog nasljeđa".[3]

Godinu dana kasnije, u alučaju *Costa protiv ENEL* (1964) Sud je izjavio da su "ograničenja suverenih prava država trajna" i da pravo Zajednice "zbog svoje posebne i originalne prirode" "ne može biti" nadjačano nacionalnim pravom odredbe ". Ni nacionalnim ustavima. To su poznati principi nadmoći i direktnog uticaja prava EU. Nema ni traga od njih u osnivačkim ugovorima. Ovi principi su čisto stvaranje ECJ i upravo je kroz ove principe započeo proces konstitucionalizacije Ugovora.[4]

Da bi se uspješno odbranila takva ogromna ustavna moć, ECJ je jednostavno morao da revidira ugovore kroz svoju sudsku praksu kako bi osigurao zaštitu ljudskih prava na nivou EU. Iako je isprva bio neodlučan, kao na primjer u slučaju *Stork* (1959), Sud je ubrzo počeo da mijenja smjer. Prvo spominjanje ljudskih prava može se naći u slučaju *Stauder* (1969), gdje je Sud naveo da su „osnovna prava sadržana u opštim načelima prava EU i zaštićena od strane Suda“. Slučaj Stauder je tako potvrdio postojanje osnovnih prava u pravu EU.[5] A onda u slučaju *Internationalle Handelsge-*

[3] Van Gend and Loos v. Nederlandse Administratie der Belastingen, no. 26/62 (1963), ECR 1

[4] Costa v. ENEL, no. 6/64 (1964), ECR 585. Bačić P., Konstitucionalizam i sudski aktivizam, Pravni fakultet, Split, 2010., p. 296 et passim.

[5] Stauder v. Stadt Ulm, no. 29/69 (1969), ECR 419

sellscahft (1970), Sud nastavlja i nakon ponovnog potvrđivanja slučaja Stauder navodi da je „zaštita osnovnih prava inspirisana ustavnim tradicijama koje su zajedničke državama članicama“ i dodaje da njihova zaštita „mora biti osigurana u okviru strukture i ciljeva Zajednice“. Primarni izvor osnovnih prava je stoga u ustavnim tradicijama država članica.[6] U jednako poznatom slučaju *Nold* (1974) Sud je utvrdio sekundarni izvor osnovnih prava - to su međunarodni ugovori o ljudskim pravima. Sud je izjavio da: "međunarodni ugovori o zaštiti ljudskih prava na kojima su države članice sarađivale, ili čiji su potpisnici, mogu dati smjernice koje bi trebalo slijediti u okviru prava EU."[7] Nakon ove odluke Sud se više puta izričito pozvao na Evropsku konvenciju, kao i na druge ugovore, mada u manjoj mjeri (na primjer, ECHR se koristi kao smjernica u slučaju *Hauer, Rutili Case* ili *National Panasonic*; s druge strane, presuda u drugom slučaju *Defrenne* je inspirisana Evropskom socijalnom poveljom i Međunarodnom radnom konvencijom o diskriminaciji u pogledu zapošljavanja i zanimanja).

Takođe je važno naglasiti da je u slučaju *Nold* Sud naveo da će "poništiti sve odredbe zakonodavstva EU koje su nespojive s osnovnim pravima priznatim i zaštićenim ustavima država članica". To je u stvari bio veoma pametan potez Suda, iako nije bio potpuno dobrovoljan. Naime, to je uslijedilo nakon čuvenog slučaja *Solange I* (1974) u kojoj se njemački Ustavni sud usprotivio stajalištu ECJ izraženom u predmetu Internationale Handelsgesellscahft koji se odnosi na prevlast prava EU u odnosu na osnovna prava zajamčena njemačkim Ustavom (Osnovni zakon). Ustavni sud Njemačke je izjavio da, iako generalno prihvata prevlast prava EU, ne može prihvatiti njegovu nadmoć nad osnovnim pravima zaštićenim njemačkim Ustavom "dokle god pravo EU ne sadrži precizan katalog osnovnih prava." Dakle, u suštini, sve dok takva situacija postoji, njemački sudovi imaju pravo da preispitaju sve zakone EU kako bi osigurali isti nivo zaštite osnovnih prava kao što je zajamčeno njemačkim Ustavom. Kasnije, u slučaju Solange II (1986), njemački Ustavni sud potvrdio je značajno poboljšanje zaštite ljudskih prava na nivou EU i preokrenuo svoj stav. U njemu se navodi da - opet - „dokle god ugovori EU garantuju isti nivo zaštite osnovnih prava kao i njemački Ustav“ nema potrebe da njemački sudovi preispituju zakonodavstvo EU.[8]

Nakon ovih ranih odluka, razvoj se nastavio i polje zaštite proširilo. Na primjer, nakon slučaja *Wachauf* (1989) Sud je počeo da nadzire rad

[6] Internationale Handelsgesellschaft v. EVGF, no. 11/70 (1970), ECR 1125
[7] Nold protiv Komisije, br. 4/73 (1974), ECR 491
[8] Bačić A. & Bačić P., Europsko pravo – studijski izvori, Pravni fakultet, Split, 2007., p. 269-270.

država članica u primjeni zakonodavstva EU. Drugim riječima, osnovna prava koja su zajamčena zakonodavstvom EU također su obavezujuća za države članice kada djeluju u okviru prava EU, kada primjenjuju pravila EU.[9] Presuda u slučaju *ERT* (1991) prvo potvrđuje Wachauf, a zatim čak i dalje proširuje nadležnost ECJ - sada se proširuje na nacionalne mjere poduzete u vršenju diskrecionih ovlašćenja predviđenih zakonom Zajednice. Kao zaključak: iako nije utvrđen osnivačkim ugovorima i bez kataloga EU o ljudskim pravima, ECJ je uspostavio nadležnost za pitanja ljudskih prava u okviru svoje sudske prakse. Kako? Jednostavnim proglašavanjem ljudskih prava opštim načelom prava Zajednice, Sud je smatrao da je dužan to da obezbijedi. Da bi to učinio, ECJ se oslonio na ustavne tradicije koje su zajedničke svim državama članicama, kao i na međunarodne instrumente o ljudskim pravima koje su ratifikovale sve države članice, a posebno ECHR.

Primarno pravo EU i ljudska prava. Ljudska prava su se prvi put formalno pominjala u preambuli Jedinstvenog evropskog akta (1987) - i u njoj je izjavljeno da je Zajednica "odlučna da zajedno radi na promovisanju demokratije na osnovu temeljnih prava priznatih u ustavima i zakonima država članica, u Konvenciji o zaštiti ljudskih prava i osnovnih sloboda i Evropskoj socijalnoj povelji, posebno slobodi, jednakosti i socijalnoj pravdi". Nakon Jedinstvenog evropskog akta, posvećenost ljudskih prava EU postaje sve više naglašena sa svakim ustavnim ugovorom.

Ugovorom iz Mastrihta (1992) obaveza poštovanja ljudskih prava izražena u sudskoj praksi Suda pretvorena je u obavezu iz Ugovora, čime je postala suštinski dio ustavnog prava EU. Ugovor iz Mastrihta je formalno kodifikovao standard utvrđen sudskom praksom ECJ uvođenjem čl. F (kasnije člana 6) TEU, koja je potvrdila da: „Unija poštuje osnovna prava, kako je zajamčena Evropskom konvencijom o ljudskim pravima i osnovnim slobodama (...) i kako proizlaze iz ustavnih tradicija koje su zajedničke za države članice, kao opšti principi prava Zajednice“. Nadalje, ugovor iz Mastrihta uključuje poštovanje ljudskih prava i osnovnih sloboda među ciljevima zajedničke vanjske i sigurnosne politike EU, te uvodi državljanstvo EU.

Ugovor iz Amsterdama (1999) ojačao je posvećenost EU ljudskim pravima. U članu 6. dodata je eksplicitna izjava: Unija je zasnovana na principima slobode, demokratije, poštovanja ljudskih prava i osnovnih sloboda, i vladavine prava, principa koji su zajednički za države članice. Nadalje, propisao je posebnu proceduru - sankcije se mogu izreći državi članici u slučajevima „ozbiljnog i trajnog kršenja“ člana 6 Savjet može,

[9] Wachauf protiv Njemačke, br. 5/88 (1989), ECR 2609

jednoglasno i uz pristanak EP-a, " da utvrdi postojanje ozbiljnog i upornog kršenja" (član 7.1) i odluči da suspenduje neka od državnih prava. Konačno, član 46 eksplicitno proširuje ovlašćenja Suda na član 6. kako bi dobila ovlašćenje da odluči da li institucije nisu poštovale osnovna ljudska prava.

Ugovor iz Nice (2000) poboljšava mehanizam sankcionisanja uspostavljen u Amsterdamu - ako države članice vide da postoji jasan rizik od ozbiljnog kršenja, one mogu uputiti preporuke državi i zatražiti od grupe nezavisnih eksperata da podnesu izvještaj. Štaviše, u Nici su predsjednici evropskih institucija (Savjet, Parlament i Komisija) također prvi put proglasili Povelju o osnovnim pravima. Ipak, Povelja nije uključena u Ugovor iz Nice i stoga nije postala pravno obavezujuća. To pitanje je trebalo riješiti daljim pregovorima. Tako je Laekenska deklaracija (2001) uključila ovaj zadatak u dnevni red Konvencije o budućnosti Evrope.

Ugovor o Ustavu za Evropu (Ustav EU, 2004.) doista je uključio Povelju o osnovnim pravima. Međutim, sudbina Ustava EU je dobro poznata. Njegovo eventualno usvajanje bi dodijelilo obavezujuću snagu Povelji. Međutim, neuspjeh procesa ratifikacije značio je da Povelja ostaje deklaracija prava bez obavezujuće snage.[10]

Konačno, stupanjem na snagu Lisabonskog ugovora 2009. godine, Povelja postaje pravno obavezujuća. Iako Lisabonski ugovor nije uključio Povelju kao što je to učinio Ustav EU, ona predviđa sljedeće: „Unija priznaje prava, slobode i načela utvrđena u Povelji o osnovnim pravima Evropske unije od 7. decembra 2000. godine, kako je prilagođeno u Strazburu, 12. decembra 2007. godine, koja će imati istu pravnu vrijednost kao i Ugovori “.

Povelja o osnovnim pravima. Povelja utvrđuje osnovna prava koja moraju da poštuju i Evropska unija i države članice prilikom implementacije prava EU. Što se tiče strukture i sadržaja Povelje, podijeljena je na sedam naslova, od kojih je šest posvećeno određenim vrstama prava. Stoga je moguće tvrditi da se prava objedinjuju ili okupljaju oko šest osnovnih vrijednosti, a to su: I - Dostojanstvo, II - Slobode, III - Jednakost, IV - Solidarnost, V - Prava građana, VI - Pravda. Posljednji, sedmi naslov (VII - Opšte odredbe o tumačenju i primjeni Povelje) pojašnjava opseg primjene Povelje i načela kojima se uređuje njegova primjena. Prva važna i specifična karakteristika Povelje je, dakle, da napušta tradicionalnu podjelu prava između građanskih i političkih prava s jedne strane, te

[10] Schimmelfennig F. & Schwellnus G., THE CONSTITUALIZATION OF HUMAN RIGHTS IN THE EUROPEAN UNION: HUMAN RIGHTS CASE STUDIES AND QCA CODING, http://www.eup.ethz.ch/research/constitutional/fs-gs-dossier.pdf

ekonomska, socijalna i kulturna prava s druge strane. Druga važna karakteristika Povelje je da ona uvodi neka inovativna, postmoderna prava - kao što je pravo na zaštitu ličnih podataka (član 8),[11] zabrana reproduktivnog humanog kloniranja i zabrana eugenskih postupaka (član 3),[12] ili pravo na dobru i transparentnu administraciju (član 41).[13] Povelja zapravo uspostavlja sva prava iz sudske prakse EU, prava i slobode sadržane u Evropskoj konvenciji o ljudskim pravima, kao i druga prava i principe koji proizilaze iz zajedničkih ustavnih tradicija EU zemalja i drugih međunarodnih instrumenata.[14]

Prema članu 51 Povelja se primarno odnosi na institucije i tijela Evropske unije, u skladu s načelom supsidijarnosti, dok je isti zahtjev obavezujući za države članice kada djeluju u okviru prava Unije (kao što proizilazi iz sudske prakse ECJ). Takođe je važno naglasiti da je Povelja u skladu sa Evropskom konvencijom o ljudskim pravima; štaviše, prema čl. 52/3/ kada Povelja sadrži prava koja proizlaze iz ove Konvencije, njihov smisao i opseg su isti („U onoj mjeri u kojoj ova Povelja sadrži prava koja odgovaraju pravima zagarantovanim Konvencijom za zaštitu ljudskih prava i osnovnih sloboda, značenje i obim tih prava će biti isti kao i oni utvrđeni pomenutom Konvencijom"). Pozivanje na ECHR pokriva i Ko-

[11] Član 8 – Zaštita ličnih podataka. 1. Svako ima pravo na zaštitu ličnih podataka koji se odnose na njega ili nju. 2. Takvi podaci moraju biti fer obrađeni za određene svrhe i na osnovu pristanka dotičnog lica ili neke druge zakonske osnove propisane zakonom. Svako ima pravo pristupa podacima koji su prikupljeni u vezi sa njim i pravo na ispravku. 3. Poštovanje tih pravila podliježe kontroli od strane nezavisnog organa.

[12] Član 3 - Pravo na integritet osobe. 1. Svako ima pravo na poštovanje svog fizičkog i mentalnog integriteta. 2. U oblasti medicine i biologije, posebno se moraju poštovati: a) slobodan i informisan pristanak dotične osobe, u skladu sa procedurama propisanim zakonom; b) zabranu eugenskih praksi, posebno onih koje imaju za cilj odabir lica; c) zabranu da se ljudsko tijelo i njegovi djelovi pretvore u izvor finansijske dobiti; d) zabrana reproduktivnog kloniranja ljudskih bića.

[13] Član 41 - Pravo na dobru upravu. 1. Svako lice ima pravo da mu poslove vode institucije, organi, kancelarije i agencije Unije nepristrasno, pravično i u razumnom roku. 2. Ovo pravo uključuje: a) pravo svake osobe da bude saslušana, prije nego što se poduzmu bilo kakve pojedinačne mjere koje bi na njega ili nju utjecale; b) pravo svake osobe da ima pristup svom dosijeu, poštujući legitimne interese povjerljivosti i profesionalne i poslovne tajne; c) obavezu uprave da obrazloži svoje odluke. 3. Svako lice ima pravo da mu Unija nadoknadi svaku štetu koju prouzrokuju njene institucije ili njeni službenici u obavljanju njihovih dužnosti, u skladu sa opštim principima koji su zajednički za zakone država članica. 4. Svako lice može pisati institucijama Unije na jednom od jezika Ugovora i mora imati odgovor na istom jeziku.

[14] Europa-Institut of Saarland University (ed.), EUROPEAN LAW – SELECTED DOCUMENTS, 2nd revised and extended edition, Verlag Alma Mater, Saarbrücken, 2014.

nvenciju i Protokole uz nju. Štaviše, značenje i obim garantovanih prava utvrđuje i praksa Evropskog suda za ljudska prava. Međutim, ova odredba ne sprečava zakon EU da pruža opsežniju zaštitu.[15]

Iako je Povelja jedino svečano proglašena od strane institucija EU i nisu uključene u Ugovor iz Nice, Sud pravde kao i nezavisni advokati gotovo su odmah počeli da se pozivaju na njegove odredbe. Tako je do 2009. godine, kada je stekla pravno obavezujuću snagu, Povelja već spomenuta u 59 presuda Suda. Međutim, većina tih referenci, kako je to naznačila Grainne De Burca, "napravljene su samo usputno i nisu uključivale ozbiljno angažovanje u odredbama Povelje".[16] Takođe mi je zanimljivo istaći da se u istom periodu Sud pozvao na Evropsku konvenciju u 81 presudi. Ipak, pošto je Povelja stekla pravno obavezujuću snagu, broj upućivanja na njegove odredbe značajno je porastao. Moglo bi se, dakle, zaključiti da je Evropski sud pravde evoluirao od institucije koja se prvenstveno bavi ekonomskim pitanjima i samo povremeno pitanjima ljudskih prava, do one koja sada ima jasnu nadležnost u rješavanju predmeta koji se odnose na ljudska prava, iako u odnosu na specijalizovane sudove za ljudska prava, kao što je Evropski sud za ljudska prava, još uvijek nedostaje iskustvo kao i stručnost.

Dodatna literatura:

Alston P. & Weiler J.H.H., An 'Ever Closer Union' in need of a Human Rights Policy: The European Union and Human Rights, JMWP Working Papers, Jean Monnet Center, NYU School of Law, 1999.

Bačić P., Konstitucionalizam i sudski aktivizam – ustavna demokracija između zahtjeva za vladavinom većine i protuvećinskog argumenta, Pravni fakultet, Split, 2010.

Douglas-Scott S. & Hatzis N. (ed.), Research Handbook on EU Law and Human Rights, Edward Elgar Publishing, Cheltenham, 2017.

Europa-Institut of Saarland University (ed.), European Law – Selected Documents, 2nd revised and extended edition, Verlag Alma Mater, Saarbrücken, 2014.

Grainne de Burca, After the EU Charter of Fundamental Rights: The Court of Justice as a Human Rights Adjudicator, 20 Maastricht J. Eur. & Comp. L. 168 (2013)

Peers S. et al. (ed.), The EU Charter of Fundamental Rights – A Commentary, Hart Publishing, Oxford and Portland, Oregon, 2014.

European Court of Justice

Costa v. ENEL, no. 6/64 (1964), ECR 585

Internationale Handelsgesellschaft v. EVGF, no. 11/70 (1970), ECR 1125

[15] http://ec.europa.eu/justice/fundamental-rights/charter/index_en.htm

[16] Grainne de Burca, After the EU Charter of Fundamental Rights: The Court of Justice as a Human Rights
Adjudicator, 20 Maastricht J. Eur. & Comp. L. 168 (2013)

Nold v. Commission, no. 4/73 (1974), ECR 491
Stauder v. Stadt Ulm, no. 29/69 (1969), ECR 419
Van Gend and Loos v. Nederlandse Administratie der Belastingen, no. 26/62 (1963), ECR 1
Wachauf v. Germany, no. 5/88 (1989), ECR 2609
CJEU Opinion 2/13 pursuant to Article 218(11) TFEU, 18. December 2014, ECLI:EU:C:2014:2454
(...)

<table>
<tr><td>NAZIV PREDMETA</td><td colspan="7">Zaštita ljudskih prava - evropska i komparativna perspektiva</td></tr>
<tr><td>Šifra</td><td colspan="2">PR5ZLJP</td><td colspan="2">Godina</td><td colspan="2">5</td></tr>
<tr><td>Predmetni nastavnik</td><td colspan="2">Dr. sc. Petar Bačić, vanredni profesor</td><td colspan="2">ECTS</td><td colspan="2">6</td></tr>
<tr><td rowspan="2">Vanredni nastavnik</td><td rowspan="2" colspan="2"></td><td rowspan="2">Nastavni sati po semestru</td><td>P</td><td>S</td><td>V</td><td>T</td></tr>
<tr><td>60</td><td>15</td><td></td><td></td></tr>
<tr><td>Status predmeta</td><td colspan="2">Izborni</td><td>Procenat e-učenja</td><td colspan="4">/</td></tr>
<tr><td colspan="8">OPIS PREDMETA</td></tr>
<tr><td>Ciljevi predmeta</td><td colspan="7">Predmet Zaštita ljudskih prava u evropskoj i komparativnoj perspektivi daje duboko i sveobuhvatno znanje o ljudskim pravima i osnovnim slobodama i sistemima stvorenim za njihovu zaštitu. Ovaj predmet nudi temeljnu analizu zaštite ljudskih prava na različitim nivoima - nacionalnim, nadnacionalnim i međunarodnim, kao i primjere sudskog aktivizma u oblasti ljudskih prava. Glavni ciljevi ovog predmeta su pružiti studentima osnovne informacije o dokumentima koji garantuju ljudska prava na evropskom i nacionalnom nivou i odgovarajućim sistemima za njihovu zaštitu, kao i znanje o pravosudnim institucijama čiji su glavni zadaci zaštita ljudskih prava na nacionalnom i evropskom nivou i njihove prakse, odnosno relevantne sudske prakse Evropskog suda za ljudska prava i Suda pravde Evropske unije (CJEU / ECJ).</td></tr>
<tr><td colspan="3">Uslovi za upis predmeta i startne kompetencije potrebne za predmet</td><td colspan="5">Za upis, studenti moraju da ispune opšte uslove za upis na petu godinu studija.</td></tr>
<tr><td>Očekivani ishodi učenja na nivou predmeta (4-10 ishoda učenja)</td><td colspan="7">Studenti će moći da: 1) identifikuju i navedu osnovne pojmove vezane za zaštitu ljudskih prava i osnovnih sloboda i njihov razvoj; 2) izdvoje relevantne principe koji se odnose na zaštitu ljudskih prava, kao i nacionalne i komparativne dokumente i institucije; 3) objasne funkcionisanje sistema zaštite ljudskih prava na različitim nivoima; 4) kombinuju i prihvataju osnovna znanja o dokumentima o ljudskim pravima, institucijama i sistemima zaštite ljudskih prava; 5) analiziraju relevantne nacionalne i evropske dokumente, mehanizme i institucije za zaštitu ljudskih prava; 6) zaključuju o uticaju i doprinosu prakse nacionalnih i evropskih institucija za zaštitu ljudskih prava.</td></tr>
<tr><td>Sadržaj predmeta detaljno razrađen prema nedjeljnom rasporedu nastave (nastavni plan)</td><td colspan="7">I. UVOD U LJUDSKA PRAVA 1. Osnovni pojmovi; 2. Razvoj zaštite ljudskih prava u istorijskoj perspektivi; 3. Teorija i ideologija ljudskih prava; 4. Zaštita ljudskih prava i uloga pravosuđa; 4. Posebni modeli zaštite ljudskih prava: američki model i njegove varijante; 5. Posebni modeli zaštite ljudskih prava: Vestminsterski model; 6. Zaštita ljudskih prava u evropskim regionalnim organizacijama.
II. OGRANIČENJA ZAŠTITE LJUDSKIH PRAVA: 1. Pravo na privatnost (sudska praksa sudova SAD i Njemačke, sudska praksa ECHR i CJEU, pravo na privatnost pred hrvatskim sudovima); 2. Pravo na život (definicije, debate o životi i izborima, ECHR i CJEU, sudska praksa, pravo na život pred hrvatskim sudovima), 3. Pravo na slobodu (habeas corpus i nacionalni zakoni, derogacije, ECHR i CJEU sudska praksa, slobodi pred hrvatskim sudovima), 4. Pravo na pravično suđenje (pravo na pravično suđenje u nacionalnim zakonima, pravo na djelotvorno pravno sredstvo, ECHR i praksa CJEU, pravo na pravično suđenje pred hrvatskim sudovima), 5. Sloboda govora (sloboda govora u nacionalnim zakonima, cenzura, govor mržnje, kleveta, zaštita prava na internetu, ECHR i praksa CJEU, sloboda govora pred hrvatskim</td></tr>
</table>

	sudovima) 6. Pravo na jednakost i nediskriminaciju (istorijski razvoj, ECHR) I sudska praksa CJEU, pravo na jednakost pred hrvatskim sudovima), 7. Politička prava (političke stranke i propisi o finansiranju političkih stranaka, sudska praksa ECHR i CJEU, politička prava pred hrvatskim sudovima), 8. Bioetika i ljudska prava.			
Format nastave	☒ predavanja ☒ seminari, radionice ☐ vježbe	☐ *on line* u cijelosti ☐ mješovito e-učenje ☐ terenska nastava	☐ samostalni zadaci ☐ multimedija ☐ laboratorij	☐ mentorski rad ☐ (ostalo upisati)
Obaveze studenata	Od studenata se očekuje da pohađaju sve oblike nastave (predavanja, seminari, testovi). Od studenata se očekuje da napišu esej (praktični zadatak). Studenti moraju da polože usmeni ispit.			

Provjera studentskog rada (navesti udio ECTS bodova za svaku aktivnost tako da je ukupan broj ECTS bodova jednak ECTS vrijednosti predmeta)						
	Pohađanje nastave		Istraživanje		Praktični rad	
	Eksperimentalni rad		Referat		(Ostalo upisati)	
	Esej		Seminarski rad		(Ostalo upisati)	
	Kolokviji		Usmeni ispit		(Ostalo upisati)	
	Pismeni ispit		Projekt		(Ostalo upisati)	

Ocjenjivanje i vrednovanje studentskog rada na nastavi i završnom ispitu	Pohađanje nastave i pisanje eseja (praktični zadatak) 60%.Usmeni ispit 40%.

Potrebna literatura (dostupna u biblioteci i putem drugih medija)	Naslov	Broj primjeraka u knjižnici	Dostupnost putem ostalih medija
	1. Bačić Petar, Zaštita prava čovjeka u europskim organizacijama, Pravni fakultet, Split, 2007.	15	
Opcionalna literatura (u trenutku podnošenja predloga studijskog programa)	1. Bačić Petar, Konstitucionalizam i sudski aktivizam, Pravni fakultet, Split, 2010. 2. Douglas-Scott S. & Hatzis N. (ed.), Research Handbook on EU Law and Human Rights, Edward Elgar Publishing, Cheltenham, 2017. 3. Greer S., The European Convention on Human Rights – Achievements, Problems and Prospects, Cambridge University Press, Cambridge, 2006.		
Metode obezbjeđenja kvaliteta koje osiguravaju sticanje izlaznih kompetencija	Studenti će imati mogućnost komunikacije sa nastavnikom kroz svakodnevne konsultacije. Studenti imaju otvoren pristup e-mailovima nastavnika i odsjeka. Učenicima se daju upute o pisanju eseja. Teme eseja biće dostupne studentima na početku semestra. Nastavnici će ih voditi kroz pripremu eseja i proučavanje nastavnog materijala.		
Ostalo (kao što predlagač želi da doda)			

Goran Koevski*

SILABUS ZA PREDMETNI PROGRAM MEĐUNARODNO TRGOVINSKO PRAVO NA PRAVNOM FAKULTETU „JUSTINIJAN PRVI“, PRI UNIVERZITETU „SV. KIRIL I METODIJ“ U SKOPJU, REPUBLIKA SEVERNA MAKEDONIJA

Predmet međunarodno trgovinsko pravo se predaje u 8-om semestru na master studijama prava, smer poslovno pravo. Cilj ovog narativnog dijela teksta je da se napravi analiza sadržaja postojećeg silabusa za predmet međunarodno trgovinsko pravo. Analiza se nametnula kao inherenta potreba kako bi se (pre)ispitala usaglašenost predmeta sa pravom Evropske unije sa jedne, ali i da se identifikuju sadržaji koji bi se trebali izmeniti i dopuniti, sa druge strane. Analiza silabusa je napravljena za potrebe projekta CABUFAL (Capacity Building of the Faculty of Law) čiji je glavni nocilac Pravni fakultet Univerziteta u Podgorici, Crna Gora.

Sklapanjem Sporazuma u Prespi i njegovom ratifikacijom od strane grčkog i makedonskog parlamenta, početkom 2019 g. uklonjena je najveća prepreka za početak pregovora za članstvo Republike Severne Makedonije u Evropsku uniju. U ovom procesu neophodna će biti aktivna uloga akademske zajednice, osobito u delu osvežavanja sadržaja postojećih silabusa za predmete koji se već predavaju na pravnim fakultetima. Ovo neće biti jednokratni posao, već će se potreba revidiranja postojećih silabusa nametati prilikom otvaranja i pregovaranja svakog novog poglavlja u pristupnim pregovorima sa Evropskom unijom. U tom smislu, biće potrebno dopunsko i produbljeno zapoznavanje sa opštim pravom Evropske unije (*acquis communautaire)*, ali i njegovo postupno transponovanje u silabusima predmeta koji pokrivaju različite pravne oblasti.

Kjučni principi na kojim sa zasniva Evropska unija su slobode kretanja robe, usluga, kapitala i ljudi. Ove se slobode mogu ostvariti samo preko formalnog i faktičkog savlađivanja svih prepreka koje se javljaju u procesu njihovog vršenja. Nadmašivanje ovih barijera u okviru EU doprinosi povećanju obima ekonomske razmene, što, sa svoje strane, pozitivno utiče na razvoj celokupne evropske ekonomije. Svedoci smo danas da se proces koji je započeo kao carinska unija postupno pretvara u jedinstveno evropsko tržište, a detaljnije je uređen Ugovorom o funkcioni-

* Prof. dr Goran Koevski je redovni profesor na Univerzitetu "Sveti Ćiril i Metodij", Pravni fakultet "Iustinianus Primus" - Skoplje.

sanju Evropske unije (Treaty on the Functioning of the European Union - TFEU).

Generalno, svi nastavni programi zastupljenu u okviru akreditovanih studiskih programa na Pravnom fakultetu „Justinijan Prvi“ uključuju osnovne koncepte prava EU, ali i ostale izvore međunarodnog karaktera. To, svakako, važi i za predmet međunarodno trgovinsko pravo. U tom smislu, u predmetnom programu obuhvaćeni su glavni sadržaji koji reflektuju njegov međunarodni karakter. Tako, u okviru silabusa obuhvaćena su: načela međunarodnog trgovinskog prava; najnovije tendencije u harmonizovanju i unificiranju međunarodnog trgovinskog prava; nova *lex mercatoria* i njena uloga u harmonizovanju i unificiranju međunarodnog trgovinskog prava, prvenstveno putem sve više korišćenijih instrumenata takozvanog „mekog prava“ (soft law) i opcijskih instrumenata. Isto tako, daje se pregled i analiza glavnih međunarodnih izvora prava koji se odnose na međunarodno trgovinsko pravo: načela evropskog ugovornog prava (Lando načela); regulative i direktive EU iz oblasti ugovornih i drugih poslovnih transakcija; uloga i glavni dokumenti Komisije Ujedinjenih Nacija za Međunarodno Trgovinsko Pravo (UNCITRAL) u harmonizovanju i unificiranju međunarodnog trgovinskog prava; uloga i glavni dokumenti Međunarodnog Instituta za Unifikaciju Privatnog Prava (UNIDROIT); uloga i glavni dokumenti Međunarodne Trgovinske Komore (ICC) u harmonizovanju i unificiranju međunarodnog trgovinskog prava, itd.

Potencijalno članstvo Republike Severne Makedonije u EU, svakako, iziskuje da se uzmu u obzir svi prethodno pomenuti trendovi razvoja međunarodnog trgovinskog prava. U tom smislu, silabus predmeta međunarodno trgovinsko pravo treba prikazati i reflektovati srednjeročnu i dugoročnu viziju pravnika iz oblasti poslovnog prava. Sasvim opravdano, možemo očekivati da će makedonski pravnici, u razumnom roku, biti suočeni sa potrebom da prakticiraju pravo EU kao svoje nacionalno pravo.

Mora se, međutim, znati da pravo EU predstavlja autonomni pravni system. Ono zahteva svoju posebnu metodologiju u pogledu proučavanja osnovnih izvora ovog prava, tumačenje primarne i sekundarne legislative, konkretizacija opštih načela i slično. Dobro poznavanje sudske prakse Evropskog suda pravde će u mnogome pomoći u primeni EU prava i njegovih metoda u nacionalni kontekst i nacionalne pravne tradicije. Konačno, studentima koji izučavaju predmet međunarodno trgovinsko pravo mora se omogućiti razvoj posebnih veština u pretraživanju, prvenstveno digitalno dostupnih, baza podataka (zakonodavnih, oficijalnih publikacija, prakse Evropskog suda pravde i slično).

SILABUS ZA PREDMET MEĐUNARODNO TRGOVAČKO PRAVO

I. Podaci o predmetnim nastavnicima:

Ime i prezime: Goran Koevski, Darko Spasevski,	Akademske titule i zvanja: Redovni profesor, dr; Vanredni profesor, dr.

II. Podaci o saradnicima i drugim predavačima:

Ima i prezime saradnika:	Akademske titule i zvanja:
Ostali predavači i stručnjaci iz prakse:	

III. Osnovni podaci o predmetnom programu i materijalima:

Naziv predmeta: MEĐUNARODNO TRGOVAČKO PRAVO	
Šifra predmeta:	Broj kredita: 6
Broj časova/sati: 52	Broj strana obaveznog predmetnog materijala: 330
Godina studija: 4. godina	Semestar studija: 8. semestar

IV. Opis predmeta i ključne riječi i termini:

Opis predmeta:
Sadržaj ovog predmeta je definisanje pozicije međunarodnog trgovačkog prava u nacionalnom pravnom sistemu određivanjem njegovog pojma i oblasti proučavanja. Nadalje, predmet opisuje ulogu međunarodnih organizacija u oblasti međunarodnog trgovačkog prava i pravne akte i dokumente koje oni stvaraju kao glavni izvor prava u ovoj oblasti prava. Posebna pažnja posvećena je aktivnostima Evropske unije u oblasti međunarodnih komercijalnih transakcija. Najvažniji komercijalni sporazumi koji su relevantni za međunarodnu trgovinu su detaljno predstavljeni. Dio predmeta je posvećen mehanizmima za rješavanje sporova koji proizilaze iz međunarodnih komercijalnih transakcija.
Ključne riječi i termini u predmetnom materijalu:
Međunarodni trgovinski ugovori, unifikacija i harmonizacija trgovačkog prava, *lex mercatoria*, međunarodni izvori trgovačkog prava, rješavanje trgovinskih sporova

V. Ciljevi predmeta i rezultati:

Ciljevi predmeta i rezultati:
Studenti će steći šira znanja o međunarodnim trgovačkim transakcijama. Glavni fokus je stavljen na razumijevanje pravnih pravila koja regulišu međunarodne trgovačke ugovore, izvore međunarodnog trgovačkog prava i značaj ujedinjenja i harmonizacije međunarodnog trgovačkog prava. Nakon uspješno završenog predmeta studenti će biti u mogućnosti da demonstriraju detaljno znanje za ključne principe međunarodnog trgovačkog prava, kao i da demonstriraju sposobnost za praktičnu analizu i kritičko mišljenje za specifične aspekte u međunarodnom trgovačkom pravu.

VI. Nastavne metode:

Predmet međunarodno trgovačko pravo sprovodi se kroz interaktivna predavanja, komparativnu analizu, analize sudske prakse, radionice i debate. On će osigurati aktivno učešće studenata u nastavi i vježbama pripremajući prezentacije, debatu i pripremu praktičnih vježbi. Studenti će imati osnovne veštine u vođenju ogromnih baza podataka službenih publikacija, zakonodavstva i sudske prakse.

VII. Detaljna struktura nastavnog plana i programa:

Nedjelja 1	Broj predmetnih sati: 3.5
Nastavna cjelina: KONCEPT MEĐUNARODNOG TRGOVAČKOG PRAVA	Obavezni predmetni materijal:
Detaljni opis nastavne cjeline:	

- Istorijski razvoj međunarodnog trgovačkog prava; - Međunarodno trgovačko pravo kao dio drugih grana prava; - Međunarodno trgovačko pravo kao zasebna grana prava; - Principi međunarodnog trgovačkog prava; - Savremeni trendovi u procesu objedinjavanja i harmonizacije međunarodnog trgovačkog prava - ***Počeci ugovornog prava EU*** - ***Nadležnost EU - Ugovor o funkcionisanju Evropske unije*** - ***Ugovorno pravo EU kao instrument za harmonizaciju unutrašnjeg tržišta***
Nedjelja 2 | Broj predmetnih sati: 3.5
Nastavna cjelina: PRISTUPI ZA UNIFIKACIJU I USKLAĐIVANJE MEĐUNARODNOG TRGOVAČKOG PRAVA | Obavezni predmetni materijal:
Detaljni opis nastavne cjeline: - Novi *Lex Mercatoria* i njegova uloga u ujedinjenju i harmonizaciji međunarodnog trgovačkog prava; - *Instrumenti ugovornog prava EU:* - *Nacrt zajedničkog referentnog okvira i napori da se kao opcioni instrument uvede Zajedničko evropsko pravo prodaje* - *Vrijednosti Ugovornog prava EU* - Principi Ugovornog prava EU (Lando principi); - Direktive Evropske unije u oblasti međunarodnih trgovinskih transakcija; - Uvod u pravo konkurencije i njena povezanost sa međunarodnim trgovačkim pravom
Nedjelja 3 | Broj predmetnih sati: 3.5
Nastavna cjelina: MEĐUNARODNE I NEVLADINE ORGANIZACIJE KOJE UČESTVUJU U STVARANJU PRINCIPA I PRAVILA MEĐUNARODNOG TRGOVAČKOG PRAVA | Obavezni predmetni materijal:
Detaljni opis nastavne cjeline: - *Uloga Evropskog parlamenta, Evropskog suda pravde i Evropske komisije* - *Sudska praksa Evropskog suda pravde* - *Odnosi između nacionalnih sudova država članica i Evropskog suda pravde* - *Uloga evropskih regulatornih organa* - Komisija UN za međunarodno trgovinsko pravo UNCITRAL - Zadaci, metode i sastav UNCITRAL-a; - Konvencija UN o ugovorima za međunarodnu prodaju robe; - Međunarodni institut za unifikaciju privatnog prava UNIDROIT; - Međunarodna trgovinska komora ICC; - Međunarodne ugovorne klauzule i modeli ugovora (ICC Standardi, ICC Model ugovora, ICC Model klauzula, ICC Pravila, COMBITERMS, Institut teretnih klauzula); - Međunarodna regulacija e-trgovine
Nedjelja 4 | Broj predmetnih sati: 3.5
Nastavna cjelina: DEFINICIJA I STRUKTURA MEĐUNARODNIH TRGOVINSKIH TRANSAKCIJA | Obavezni predmetni materijal:
Detaljni opis nastavne cjeline: - Zaključivanje ugovora sa međunarodnim elementom - Struktura međunarodnih trgovačkih ugovora - Faze zaključivanja međunarodnih trgovačkih ugovora - Pregovaranje i *culpa in contrahendo* - Ponuda za zaključenje ugovora - Prihvatanje ponude - Vrijeme i mjesto zaključenja ugovora - Zaključenje ugovora elektronskim putem, telefonom, teleprinterima, faksom ili na drugi način

- Uticaj administrativnih dozvola i odobrenja na međunarodne trgovačke ugovore - Forma međunarodnih trgovačkih ugovora	
Nedjelja 5	Broj predmetnih sati: 3.5
Nastavna cjelina: UGOVOR ZA MEĐUNARODNU PRODAJU ROBE	Obavezni predmetni materijal:
Detaljni opis nastavne cjeline: - Izvori prava i oblik ugovora za međunarodnu prodaju robe i usluga - Zaključivanje i izvršenje ugovora o međunarodnoj prodaji robe i usluga - Obaveze prodavca - Obaveze kupca - Izbjegavanje ugovora	
Nedjelja 6	Broj predmetnih sati: 3,5
Nastavna cjelina: INCOTERMS	Obavezni nastavni materijal: Nikolovski d-r Aleksandar, „International commercial law", Skopje
Detaljni opis nastavne cjeline: - Transfer rizika i troškova u međunarodnoj prodaji robe - Ugovor o međunarodnoj prodaji investicione opreme	
Nedjelja 7	Broj predmetnih sati: 3.5
Nastavna cjelina: MEĐUNARODNI TRGOVINSKI UGOVORI (prvi dio)	Obavezni nastavni materijal:
Detaljni opis nastavne cjeline: - Ugovor o trgovačkom zastupanju - Ugovor o posredovanju - Provizioni ugovor - Ugovor o prevozu robe	
Nedjelja 8	Broj predmetnih sati:
Nastavna cjelina: MEĐUNARODNI TRGOVAČKI UGOVORI (drugi dio)	Obavezni nastavni materijal:
Detaljni opis nastavne cjeline: - Leasing ugovor sa međunarodnim elementom - Know-how - Ugovor o faktoringu - Ugovor o forfetingu - Ugovor o distribuciji - Ugovor o franšizi	
Nedjelja 9	Broj predmetnih sati: 3.5
Nastavna cjelina: MEĐUNARODNI TRGOVAČKI UGOVORI (treći dio)	Obavezni predmetni materijal:
Detaljni opis nastavne cjeline: - Ugovor za špediciju - Ugovor za dugoročnu saradnju - Ugovor za bankarski transfer - Akreditiv	
Nedjelja 10	Broj predmetnih sati: 3.5
Nastavna cjelina: METODE PLAĆANJA U MEĐUNARODNOJ TRGOVINI	Obavezni predmetni materijal:
Detaljni opis nastavne cjeline: - Upoznavanje sa načinima plaćanja u međunarodnoj trgovini: elektronski transfer novca, kreditne kartice, - Ugovor za dokumentarni akreditiv, - Pravni odnosi između strana koje učestvuju u dokumentarnom akreditivu - Vrste dokumentarnog akreditiva	

- Dužnosti i obaveze banke u dokumentarnim akreditivnim transakcijama	
Nedjelja 11	Broj predmetnih sati: 3.5
Nastavna cjelina: UGOVOR ZA BANKARSKU GARANCIJU	Obavezni predmetni materijal:
Detaljni opis nastavne cjeline: - Domaći i međunarodni pravni okvir vezan za bankarsku garanciju - Pravni odnosi uspostavljeni bankarskom garancijom - Vrste bankarske garancije	
Nedjelja 12	Broj predmetnih sati: 3.5
Nastavna cjelina: RJEŠAVANJE SPOROVA IZ MEĐUNARODNIH TRGOVAČKIH TRANSAKCIJA	Obavezni predmetni materijal:
Detaljni opis nastavne cjeline: - Izvori prava, metode rješavanja sporova i njihova institucionalizacija - Sudska i arbitražna zaštita - Vrste arbitraže i nadležnosti - Medijacija, pregovaranje i slične metode rješavanja sporova	

VIII. Aktivnosti drugih institucija

Studijske posjete institucijama u inostranstvu
N/A

IX. Predmetni materijal i literatura

Obavezni predmetni materijal:
Коевски Горан, „Водич за алтернативните извори на финансирање”, Здружение на правници на Република Макеоднија, 2007 Николовски Александар, „Меѓународно трговско право”, Скопје, стр. 7-53; 133-222; 356-377; 403-434; 443-460; 508-511 и 517-523
Dodatni materijal: Перовић Јелена, Међународно привредно право, Београд, 2016 Перовић Јелена, Стандардне клаузуле у међународним привредним уговорима, Београд, 2012 Caric Slavko, Vilus Jelena, Sogorov Stefan, „Međuanrodno privredno pravo”, Centar za privredni konsalting, Novi Sad, 2001; Houtte Van Hans, „The Law of International Trade”, Sweet & Maxwell, London, 1995; Ramberg Jan, „International Commercial Transactions”, ICC, Kluwer law International, Norstedts Juridik AB, 2000; Schmitthoff M. Clive, „Schmitthoffs export trade – The Law and Practice of International Trade”, ninth edition, Steven&Sons, London, 1990; Tomič Deša Miklton, „Pravo međuarodne trgovine”, školska kniga, Zagreb, 1999; Whaley J Douglas, „Problems and Materials in Commercial Law”, eight edition, Aspen publishers, 2005

Jadranka Dabović - Anastasovska[*]
Neda Zdraveva[**]

PRAVO ZAŠTITE POTROŠAČA IZMJENE I DOPUNE PREDMETA U SVIJETLU RAZVOJA PRAVNE TEKOVINE EU O ZAŠTITI POTROŠAČA

Predmetni program o zaštiti potrošača uveden je u nastavni program Pravnog fakulteta "Justinijan Prvi" još od akademske 2005/2006. Predmet je predavan kao izborni predmet, za drugi semestar master studija iz Građanskog prava, modul Građansko materijalno pravo i kao izborni predmet za druge master programe. Većina studenata koji su izabrali / opredijelili se za ovaj predmet su sa master studija Građanskog prava.

Postojeći predmet se fokusira na pitanja zaštite potrošača iz nacionalne perspektive. Predmet pruža uvid u nacionalnu regulativu odnosa prema kome je potrošač stranka i mehanizme za zaštitu potrošača.

U smislu najnovijeg izvještaja Evropske komisije za Republiku Makedoniju[1] za 2018. godinu, država je umjereno pripremljena u oblasti zaštite potrošača. Nadalje, nije zabilježen napredak u oblasti zaštite potrošača. Što se tiče pravnog okvira, naglašava se da nije u potpunosti usklađen sa pravnom tekovinom o pravima potrošača. Tradicionalno, izvještaj identifikuje slabosti u sistemu podrške potrošačkih organizacija, nedostatak administrativnih resursa i nedostupnost postojeće šeme medijacije za potrošače, posebno u smislu troškova. Glavna preporuka odnosi se na usklađivanje pravnog okvira sa acquis o zaštiti potrošača i jačanju operativnih struktura koje služe zaštiti potrošača.

Što se tiče pravnog okvira, glavna slabost se može naći u tehničkoj neusklađenosti Zakona o zaštiti potrošača[2], čije su nekolike izmjene rezultirale nedostatkom transparentnosti za potrošače i njihova prava. Što se tiče usklađivanja sa pravom EU, može se reći da je ZZP usklađen samo

[*] Prof. dr Jadranka Dabović - Anastasovska je redovni profesor na Univerzitetu "Sv. Ćiril i Metodij", Pravni fakultet "Iustinianus Primus" - Skoplje

[**]Prof. dr Neda Zdraveva je vanredni profesor na Univerzitetu "Sveti Ćiril i Metodij", Pravni fakultet "Iustinianus Primus" - Skoplje.

[1] Evropska komisija, Bivša jugoslovenska republika Makedonia Izvještaj iz 2018., SWD(2018) 154 konačno (Strazbur, 17.04.2018.).

[2] Službeni list Republike Makedonije br. 38/04, 77/07, 103/88, 24/11, 164/13, 97/15 i 152/15 (ZZP)

u opštem smislu sa odredbama direktiva koje se obično tretiraju kao dio *acquis*-a prava potrošača:

1. Direktiva Savjeta 93/13/EEZ od 5. aprila 1993. o nefer uslovima u potrošačkim ugovorima;
2. Direktiva 98/6/EK Evropskog parlamenta i Savjeta od 16. februara 1998. o zaštiti potrošača pri navođenju cijena proizvoda koji se nude potrošačima;
3. Direktiva 1999/44/EK Evropskog parlamenta i Savjeta od 25. maja 1999. o određenim aspektima prodaje robe široke potrošnje i povezanih garancija;
4. Direktiva 2005/29/EK Evropskog parlamenta i Savjeta od 11. maja 2005. o nefer poslovnim praksama između preduzeća i potrošača na unutrašnjem tržištu;
5. Direktiva 2006/114/EK Evropskog parlamenta i Savjeta od 12. decembra 2006. o zabludama i komparativnom oglašavanju;
6. Direktiva 2009/22/EK Evropskog parlamenta i Savjeta od 23. aprila 2009. o zabranama za zaštitu interesa potrošača; i
7. Direktiva 2011/83/EU Evropskog parlamenta i Savjeta od 25. oktobra 2011. o pravima potrošača.

Tradicionalno, ZPP takođe reguliše pitanja pokrivena sledećim direktivama:

1. Direktiva Savjeta 85/374/EEZ od 25. jula 1985. o usklađivanju zakona, propisa i administrativnih odredbi država članica koje se odnose na odgovornost za neispravne proizvode; i
2. Direktiva 2008/122/ EK Evropskog parlamenta i Savjeta od 14. januara 2009. o zaštiti potrošača u vezi s određenim aspektima o vremenskom zakupu, dugoročnom odmoru, preprodaji i razmjeni ugovora.

Kao što je već pomenuto, ZPP je samo usklađen u pravilu sa pravilima navedenih direktiva, ili njihovih prethodnika, dok se mogu identifikovati dvije opšte nedosljednosti. Prva se odnosi na opštu tehničku nedosljednost ZPP, kao što je gore navedeno. Druga se odnosi na djelimično usklađivanje, u većoj mjeri, posebno s odredbama Direktive Savjeta 85/374/EEZ od 25. jula 1985. o usklađivanju zakona, propisa i administrativnih odredbi država članica u vezi s odgovornošću za neispravne proizvode[3], Direktiva 2008/122/EK Evropskog parlamenta i Savjeta od 14.

[3] Treba napomenuti da se pravila ove direktive primjenjuju i u Zakonu o obligacionim odnosima, Službeni list Republike Makedonije, br. 38/04, 77/07, 103/08, 24/11, 164/13, 97/15 i 152/15 (LO).

januara 2009. o zaštiti potrošača u odnosu na određene aspekte ugovora o vremenu, dugoročnom odmoru, preprodaji i zamjeni ugovora i Direktivi 2009/22/EK Evropskog parlamenta i Savjeta od 23. aprila 2009. o zabranama za zaštitu interesa potrošača.

U pogledu pravnog okvira, postoji i potreba za takozvanom horizontalnom harmonizacijom zakonodavstva, posebno u smislu sljedećih direktiva:

1. Direktiva 2000/31/EK Evropskog parlamenta i Savjeta od 8. juna 2000. o određenim pravnim aspektima usluga informacionog društva, posebno elektronske trgovine. Relevantna materija je pokrivena odredbama Zakona o elektronskoj trgovini;[4]
2. Direktiva 2002/65/EK Evropskog parlamenta i Savjeta od 23. septembra 2002. u vezi marketinga potrošačkih finansijskih usluga na daljinu. Relevantna materija je pokrivena odredbama Zakona o marketingu potrošačkih finansijskih usluga na daljinu;[5]
3. Direktiva 2006/123/EK Evropskog parlamenta i Savjeta od 12. decembra 2006. o uslugama na unutrašnjem tržištu. Ova direktiva nije implementirana u makedonski zakon;
4. Direktiva 2008/48/EK Evropskog parlamenta i Savjeta od 23. aprila 2008. o kreditnim ugovorima za potrošače. Relevantna materija je pokrivena odredbama Zakona o zaštiti potrošača u ugovorima o potrošačkom kreditu.[6]
5. Direktiva 2013/11/EU Evropskog parlamenta i Savjeta od 21. maja 2013. o alternativnom rješavanju sporova za potrošačke sporove. Ova direktiva nije implementirana u makedonski zakon;
6. Direktiva 2014/17/EU Evropskog parlamenta i Savjeta od 4. februara 2014. o kreditnim ugovorima za potrošače koji se odnose na stambene nekretnine. Ova direktiva nije implementirana u makedonski zakon;
7. Direktiva (EU) 2015/2366 Evropskog parlamenta i Savjeta od 25. novembra 2015. o platnim uslugama na unutrašnjem tržištu. Ova direktiva nije implementirana u makedonski zakon. Tu je i pitanje relevantnosti odredbi Uredbe (EU) 2015/751 Evropskog parlamenta i Savjeta od 29. aprila 2015. o međubankovnim naknadama za platne transakcije zasnovane na karticama; i
8. Direktiva (EU) 2015/2302 Europskog parlamenta i Savjeta od 25. novembra 2015. o paket aranžmanu i povezanim putnim aranžma-

[4] Službeni list Republike Makedonije, br. 133/07, 17/11, 104/05 i 192/15.
[5] Službeni list Republike Makedonije, br. 158/10 i 153/15.
[6] Službeni list Republike Makedonije, br. 51/11, 145/15 i 23/16.

nima. Ova direktiva nije implementirana u makedonski zakon. Relevantna materija je pokrivena odredbama ZO i Zakona o turizmu.[7]

Predmet tzv. javnih usluga je, u smislu pravne prirode, sektorski.

Na kraju, što se tiče stvarne operacionalizacije zaštite potrošača, može se identifikovati nekoliko glavnih slabosti. U početku, sistem nadzora inspekcijskih organa regulisan odredbama ZZP i Zakona o Državnoj tržišnoj inspekciji[8] je nekonzistentan i prilično dvosmislen. Drugo, postoji nedostatak proceduralnih mehanizama za zaštitu kolektivnih prava i / ili interesa potrošača, imajući u vidu odredbe Zakona o parničnom postupku[9]. Treća nedosljednost leži u mehanizmu alternativnog rješavanja potrošačkih sporova, imajući u vidu i odredbe Zakona o posredovanju. [10]

Imajući u vidu ova pitanja, predlažemo izmjene i dopune programa predmeta Potrošaško pravo. Cilj izmjena i dopuna je da se poveća stepen proučavanja Prava zaštite potrošača u EU, kako se on razvija i kako on utiče na nacionalni zakon o potrošačima. Takav pomak u paradigmi će uticati na metodologiju realizacije predmeta. Studenti će biti više uključeni u istraživanje i analizu. Posebna pažnja će se posvetiti analizi sudske prakse Suda pravde Evropske unije.

Potrošačko pravo, kao pravna disciplina, proučava načine na koje ugovore i transakcije zaključuju pojedinačni potrošači kao učesnici u trgovini, odnosno korisnici usluga. U skladu sa najnovijim trendovima u Evropskoj uniji i svijetu, regulativa o potrošačkom pravu dobija na zamahu u pravnim sistemima razvijenih zemalja, a u poslednje vrijeme i u zemljama u razvoju. Na tržištu, potrošači svakodnevno stupaju u ogroman broj ugovornih odnosa, čime se stvara odgovarajuća potreba za pravnim oblikovanjem područja i profiliranjem stručnog osoblja u njemu. Predmetni program obuhvata sadržaje iz domaćeg zakonodavstva i direktiva i propisa Evropske unije o zaštiti potrošača. Predmet se posebno fokusira na mehanizme zaštite prava potrošača u svakodnevnom životu, predstavljajući znanja neophodna za efikasnu primjenu propisa u ovoj oblasti.

[7] Službeni list Republike Makedonije, br. 62/04, 89/08, 12/09, 17/11, 47/11, 53/11, 123/12, 164/13, 27/14, 116/15, 192/15 i 53/16.

[8] Službeni list Republike Makedonije, br. 24/07, 81/07, 152/08, 36/11, 18/13, 164/13, 41/14, 33/15, 61/15, 152/15 i 53/16.

[9] Službeni list Republike Makedonije, br. 79/05, 110/08, 83/09, 116/10 i 124/15.

[10] Službeni list Republike Makedonije, br. 188/13, 148/15, 192/15 i 55/16.

Naziv predmeta:		Potrošačko pravo		
Šifra predmeta	Status predmeta	Semestar	Broj ECTS kredita	Obim časova
	Izborni	Drugi ili treći	6	3.5P+1,2I

Studijski program za koji se organizuje: Drugi ciklus – Master studij

Uslovljenost drugim predmetima: Nije uslovljen polaganjem drugog predmeta

Svrha predmeta je da osposobi studente da samostalno procjenjuju odnose između potrošača i trgovaca i da shvate značaj državne intervencije u stvaranju i kontinuiranom razvoju zaštite potrošača. Predmet se zasniva na regulaciji područja zaštite potrošača od strane Evropske unije. Posebna pažnja se posvećuje načinu na koji se pravila EU u ovoj oblasti (acquis EU o potrošačima) implementiraju u nacionalno zakonodavstvo.

Glavni zadaci nastavog plana i programa su:

6. Doprinijeti studentima da shvate uticaj evropskog prava i nevladinih organizacija na razvoj zakonodavstva o zaštiti potrošača

7. Podstaći studente da kritički analiziraju primjenu pravila o zaštiti potrošača

8. Razviti praktičan pristup studenata u pronalaženju rješenja za kršenje prava potrošača

Očekuje se da će studenti nakon savladavanja gradiva moći da:

1. Analiziraju Evropsko pravo u oblasti zaštite potrošača
2. Ocjenjuju nivo usklađenosti nacionalnog prava sa pravnom tekovinom EU o potrošačima
3. Razumiju primjenu zakonodavstva o zaštiti prava potrošača
4. Identifikuju instrumente za zaštitu prava pojedinačnih potrošača
5. Pokažu vještine u rješavanju konkretnih slučajeva kršenja prava potrošača

Ime i prezime nastavnika i saradnika: Prof.dr Jadranka Dabović – Anastasovska
Prof.dr Nenad Gavrilović
Prof.dr Neda Zdraveva

Nastavne metode i načini savladavanja gradiva: Materijal je podijeljen u 12 tematskih cjelina. U okviru svake tematske jedinice, pitanja će se analizirati sa teorijske i praktične tačke gledišta. Studenti će biti podstaknuti na samostalan i timski istraživački rad, nadgledan od strane predmetnih nastavnika i saradnika, što će im omogućiti da steknu dubinsko znanje i razvoj vještina. Studenti će biti podijeljeni u manje grupe timove od 3-5 studenata koji će zajedno pripremiti složenije istraživačke projekte.

Nastava će se odvijati putem interaktivnih predavanja, kroz koje će studenti biti podstaknuti da dođu do svojih zaključaka na osnovu analize specifičnih pitanja.

Praktična nastava: praktične vježbe kroz koje će se razvijati vještine učenika, simulacije i analize slučajeva, video prezentacije, posjete relevantnim institucijama, uloge, te kroz predavanja stručnjaka iz oblasti. Praktikum će se provoditi studijskim posjetama relevantnim tijelima i organizacijama.

Sadržaj predmeta

I nedjelja	Uvod u potrošačko pravo: materija, mjesto, uloga, značaj potrošačkog prava i razvoja potrošačkog prava.
II nedjelja	Međunarodni i EU izvori Potrošačkog prava: Zaštita potrošača pod UN-om, nastanak i razvoj zaštite potrošača na nivou EU prava.
III nedjelja	Domaći izvori Potrošačkog prava: Zakon o zaštiti potrošača, Zakon o obligacionim odnosima, zakoni u posebnim oblastima zaštite potrošača.
IV nedjelja	Pravo potrošača na informisanje: specifičnosti prava potrošača da bude informisan o uslovima prodaje proizvoda i pružanju usluga; regulisanje oglašavanja u EU i nacionalnom pravu.
V nedjelja	Sigurnost proizvoda, odgovornost za neispravne proizvode: zahtjevi za sigurnost proizvoda (opšta sigurnost proizvoda, tehnički zahtjevi, sigurnost dječjih igračaka, sigurnost hrane i poljoprivredni proizvodi); odgovornost za neispravan proizvod u EU i nacionalnom pravu.

VI nedjelja	Potrošački ugovor i posebna pravila o potrošačkim ugovorima: pojam potrošačkog ugovora, sklapanje potrošačkih ugovora, nefer ugovorni uslovi i posljedice nefer ugovornih uslova u EU i nacionalnom pravu.
VII nedjelja	Finansijske usluge potrošačima: Bankarske usluge, posebno potrošački krediti, sredstva za obezbeđenje; usluge osiguranja; investicione usluge u EU i nacionalnom pravu.
VIII nedjelja	Potrošači, elektronska trgovina i prodaja od vrata do vrata: zaštita potrošača u e-trgovini (ugovori na daljinu, posebna pravila o sklapanju i izvršenju ugovora na daljinu), ugovori zaključeni izvan prostora trgovca i posebna pravila u EU i nacionalnom pravu.
IX nedjelja	Zaštita potrošača u turizmu: specifični aspekti zaštite potrošača kao putnika, uključujući ugovore o putovanju, aranžmane za pakete, vremenska raspodjela, prava putnika u avio saobraćaju u EU i
X nedjelja	nacionalnom pravu. Potrošači kao korisnici usluga: javne usluge koje se pružaju potrošačima, zaštita ugroženih potrošača u pružanju javnih usluga; potrošači kao korisnici medicinskih usluga (prava pacijenata) u EU i nacionalnom
XI nedjelja	pravu. Sprovođenje prava potrošača: građanska i administrativna zaštita prava potrošača, uključujući obim zaštite, metode zaštite, izrečene zabrane; posredovanje u potrošačkim sporovima; kolektivnu pravnu zaštitu u EU
XII nedjelja	i nacionalnom pravu. Potrošačke organizacije: Međunarodni, EU i nacionalni sistem organizacija potrošača; uloga potrošačkih organizacija u ostvarivanju i
XIII – XV nedjelja	zaštiti prava potrošača. Praktični dio zaštite potrošača: posjet nadležnim tijelima i organizacijama, klinički program

Opterećenje studenta

Nedjeljno	U toku semestra
6 kredita x 50/30 = 10 sati Struktura: 3,5 sati predavanja 1,2 sati istraživačkog rada 5,3 sati individualni rad	Predavanja: (3.5 sati) X 15 = 52,5 sati Istraživački rad: (1,2 sati) X 15 = 18 sati Individualni rad uključujući administrativne zadatke, pripremu ispita itd.: (5,3 sati) X 15 = 79,5 sati

Obaveze studenta u toku semestra: Redovno pohađanje nastave, učešće u praktičnoj nastavi, priprema istraživačkih radova, učešće u debatama, studije slučaja, uloge.

Literatura:
Obavezna:
Галев, Г. и Дабовиќ-Анастасовска, Ј., Облигационо право, трето издание, Просветно дело, Скопје, 2012
Relevantni zakoni:
Zakon o obligacionim odnosima; Zakon o zaštiti potrošača; Zakon o zaštiti potrošača u ugovorima o potrošačkim kreditima; Zakon o zaštiti prava pacijenata; Zakon o sigurnosti proizvoda; Zakon o sigurnosti hrane; Zakon o lizingu; Zakon o energiji; Zakon o elektronskoj trgovini; Zakon o elektronskim komunikacijama; Zakon o turizmu; Zakon o stanovanju; Pravilnik o sigurnosti dječjih igračaka.
Dodatna literatura:
Fairgrieve D., Product Liability in Comparative Perspective, Cambridge, 2005
Askaham & Nebbia, EU Consumer Law, Oxford, 2004

Ocjene:
Završni ispit do 70 poena
Istrživački rad do 20 poena
Aktivnost na času do 10 poena

Ime i prezima nastavnika koji je pripremio podatke: Prof.dr Jadranka Dabović – Anastasovska
Prof.dr Nenad Gavrilović Prof.dr Neda Zdraveva

Napomena: sve dodatne informacije mogu se dobiti tokom časova, konsultacija ili na www.pf.ukim.edu.mk

Biljana Đuričin*

GRAĐANSKO PROCESNO PRAVO -IZMJENA SILABUSA U KONTEKSTU USKLAĐIVANJA KURIKULUMA SA PRAVOM EU-

1. UVOD

Crna Gora je 2012. godine počela pripreme na svim nivoima za ulazak u Evropsku uniju. Korjenite pripreme se sprovode u pravnoj oblasti: pravosuđu, zakonodavstvu i obrazovanju. Promjene u obrazovanju su usmjerene na sticanje novih, kako teorijskih, tako i praktičnih znanja prava Evropske unije budućih pravnika. Preko nastalih promjena naš pravni sistem postaje usklađen sa pravom Evropske unije i na taj načina će se upotpuniti uslužno orijentisano pravosuđe koje obezbjeđuje vladavinu prava (rule of law) i pravnu državu, kao i stvoriti nove generacije budućih pravnika koji će biti sposobni da razvijaju kritičko i kreativno mišljenje, kao i pravne vještine. Oni koji budu uključeni u pravosuđe, očekuju nova iskušenja ka ostvarivanju pravne države i vladavine prava u kojoj se poštuju pravna pravila, ili kako je to govorio Hegel dolazi do „uozbiljenja prava".

Na putu ka Evropskoj uniji, značajnu ulogu u procesu harmonizacije sa evropskim pravom, pripada Pravnom fakultetu Univerziteta Crne Gore. On je subjekat koji treba da pruži snažan doprinos brojnim promjenama koje se očekuju u pravnoj oblasti i koji, a iskustvo to potvrđuje, posjeduje taj kapacitet. U namjeri da ojača svoje pozicije, a koje se odnose na obrazovanje budućih pravnika, Pravni fakultet je aplicirao i dobio projekat Capacity Building of the Faculty of Law (u daljem tekstu CABUFAL) u okviru Erasmus+ programa Evropske unije, a u koji su uključene i dvije referentne institucije iz oblasti pravosuđa Sudski savjet i Centar za obuku u sudstvu i državnom tužilaštvu u Crnoj Gori. Partnerske institucije u ovom projektu su: Regent University iz Londona, Univerzitet u Ljubljani, Zagrebu i Splitu (svi su iz zemalja članica Evropske unije) i Univerzitet u Skoplju. Ove institucije, preko Projekta, su pokazale izuzetnu preduzetljivost i preko studijskih posjeta, gostovanja i predavanja eminentnih stručnjaka, logističke pomoći, donacija u kvalitetnim knjigama i slično, su pomogli nastavnom osoblju Pravnog fakulteta da se detaljno upoznaju sa njihovim nastavnim planovima i programima, i usklade kurikulume

* Prof. dr Biljana Đuričin je redovni profesor Pravnog fakulteta Univerziteta Crne Gore.

Pravnog fakulteta u Podgorici sa pravom Evropske unije. Duguje se duboka zahvalnost svim učesnicima u CABUFAL-u na izuzetno plodnoj i korisnoj kooperaciji.

Glavna očekivanja od ovog projekta su već ostvarena, kako za Pravni fakultet, tako i za ostale institucije koje učestvuju u njemu.

Projekat će ostaviti duboku prepoznatljivost u pravnom obrazovanju u Crnoj Gori, posebno imajući u vidu činjenicu da se radi o fakultetu gdje se upisuje većina studenata u Crnoj Gori. U tom pravcu, budući pravnici će dobijati nova teorijska i praktična saznanja i učiti vještine, koje je akademsko osoblje sublimiralo kroz CABUFAL. Preko novih kurikuluma, proširenih i novih kurseva, a koji su usklađeni sa pravom Evropske unije, budući pravnici će postati aktivni nosioci promjena ne samo u institucijama gdje su zaposleni, nego i šire za potrebe crnogorske države i društva u cjelini.

Potrebno je naglasiti da od CABUFAL-a ogromne koristi ima i Centar za obuku u sudstvu i državnom tužilaštvu i Sudski savjet, koji vrše brojne teorijske i praktične edukacije, testove za polaganje pravosudnog ispita, brojne provjere budućih sudija i tužilaca. Preko ovih instucija, a zahvaljujući CABUFAL-u, organizovaće se kursevi o primjeni prava Evropske unije, što će biti i prioritet u ovom trenutku shodno napretku Crne Gore u pregovorima.

2. DE LEGE LATA

Građansko procesno pravo na Pravnom fakultetu Univerziteta Crne Gore se izučava na trećoj godini studija u šestom semestru i ima 6 ECTS kredita (4+1). Ciljevi izučavanja ovog predmeta su upoznavanje studenata sa pojmom, metodom, organizacionim i funkcionalnim procesnim pravom i njihovim institutima. Studenti povezuju znanja iz ove oblasti sa znanjima stečenim iz ostalih oblasti materijalnog prava u cilju osposobljavanja za pratičan rad i primjenu stečenih znanja. Materija se izučava na nacionalnom nivou. Nakon što student položi ovaj ispit u mogućnosti je da: definiše oblike zaštite subjektivnih građanskih prava i prepozna pretpostavke za dopuštenost vođenja parnice i pretpostavke donošenja meritorne sudske odluke; razlikuje parnični od krivičnog i upravno procesnog postupka; upozna se sa načelima organizacije i rada pravosuđa; imenuje subjekte parničnog postupka i definiše pojedine parnične radnje suda i stranaka; opiše tok parničnog postupka i aktivnosti procesnih subjekata u parnici; objasni stranačku i parničnu sposobnost stranaka i oblike zastupanja u parnici; identifikuje izvore crnogorskog građanskog parničnog procesnog prava i

prepozna osnovna načela procesnog prava u pojedinim zakonskim odredbama; razlikuje: građansko od građanskog procesnog prava, parnični od vanparničnog postupaka, redovni parnični postupak od posebnih parničnih postupaka kao i parnični postupak od drugih (alternativnih) načina rješavanja sporova; objasni postupak pred drugostepenim sudovima; objasni postupak po vanrednim pravnim lijekovima; objasni posebne parnične postupke; objasni vanparnični postupak; identifikuje posebne vanparnične postupke; objasni izvršni postupak; identifikuje i razumije ulogu javnih izvršitelja u izvršenju kao novih organa pravosuđa; kritički se odosi prema postojećim rješenjima u pozitivno - pravnoj regulativi.

CABUFAL projektom je predviđeno da se kurikulum ovog predmeta uskladi sa pravom Evropske unije. Usklađivanje je prošlo kroz slijedeće etape:

1. Izmjenu strukture postojećeg kurikuluma;
2. Uvođenje novih nastavnih jedinica koje se odnose na pravo EU;
3. Dodavanje nove bibliografije koja se odnosi na pravo EU i
4. Dopuna ciljeva, ishoda, sadržine i uporedivosti predmeta.

3. DE LEGE FERENDA

Uzor za izmjene postojećih i uvođenje novih nastavnih jedinica u kurikulumu Građanskog procesnog prava je bio nastavni plan i program Pravnog fakulteta u Ljubljani, Zagrebu, Splitu, Skoplju i Regent Univerziteta iz Londona, njihove sugestije i napomena da se radi o zemljama koje su članice EU, osim Makedonije. Predložene izmjene su se izvršile:

1. Pregledom važećih pravnih izvora i aktivnosti evropskog zakonodavstva na području evropskog građanskog procesnog prava.[1]

2. Izučavanjem i praktičnom primjenom unificiranih evropskih posebnih postupaka - postupak o evropskom izvršnom naslovu za nesporne tražbine, postupak o evropskom platnom nalogu, evropski postupak za sporove male vrijednosti i evropski postupak zaštite kolektivnih interesa i prava.[2]

[1] Kada Crna Gora postane članica EU, treba razmisliti o novom predmetu Evropsko građansko procesno pravo koje bi se izučavalo na privatnom modulu i pružalo šire poimanje evropskih građansko procesnih instituta, kako je to urađeno na Pravnom fakultetu u Ljubljani.

[2] Izučavanjem i praktičnim konsekvencama Uredbi Brisela se bavi materija međunarodnog privatnog prava na Pravnom fakultetu u Podgorici.

3. Izučavanjem i praktičnom primjenom uredbe o ostvarivanju pravosudne saradnje unutar članica EU.

Izmjene koje su predložene pod 2, a odnose se na evropske postupke u sporovima male vrijednosti (Uredba EU 861/2007) i evropski platni nalog (Uredba EU 1896/2006) su predložene kao izmjene i dopune Zakona o parničnom postupku (predlog Vlade od 20.12.2018.g.) i očekuje se njihovo usvajanje u Parlamentu. Uredbe EU su obavezujući zakonodavni akti koji se primjenjuju na teritoriji članica Unije. Iz tog razloga je potrebno stvoriti sve potrebne uslove za njihovu primjenu u Crnoj Gori nakon njenog pristupanja Evropskoj uniji. Evropski postupak u sporovima male vrijednosti povjeriocima omogućava naplatu potraživanja u građanskim i trgovačkim stvarima u prekograničnim slučajevima kada vrijednost potraživanja ne prelazi 2000 eura. Evropski platni nalog omogučava povjeriocima da naplate nesporne novčane građanske i trgovačka potraživanja u prekograničnim slučajevima. Inače, Uredba 1896/2006 se primjenjuje u svim državama EU, osim Danske. Izučavanje i praktična primjena ove dvije uredbe je u okviru kurikuluma građanskog procesnog prava i nastavne jedinice: *Posebni parnični postupci.* Usaglašavanje sa Uredbom EZ 805/2004, a koja se odnosi na evropski izvršni nalog za nesporna potraživanja je izvršeno u Zakonu o izvršenju i obezbjeđenju. Ovom Uredbom se težilo stvaranju unificiranog postupka u kojem se izdaje potvrda o izvršnosti sudske odluke, poravnanja ili javne isprave o nespornim potraživanjima i omogućavanja njihovog nesmetanog protoka u članicama Evropske unije. Navedena materija će se izučavati u okviru nastavne jedinice: *Izvršni postupak.*

Preko CABUFAL projekta je upućena sugestija da se kao posebna nastavna jedinice uvrsti i postupak za zaštitu kolektivnih interesa i prava koji je prepoznatljiv u zemljama Evropske unije. Radi se najčešće o postupcima kojima se pruža zaštita potrošača, kao i zabrana diskriminacije. Naš zakon o parničnom postupku još nije regulisao opšti okvir pokretanja ovog postupka koji bi po svojoj prirodi bio lex generalis. Postupak zaštite potrošača i zabrana diskriminacije su usaglašeni sa prvom EU preko Zakona o zaštiti potrošača[3], odnosno Zakona o zabrani diskriminacije[4], a koji su usvojeni kao rezultat evropskog acquis communautairea u crnogorsko pravo. Inače, u nastavnom planu i programu Pravnog fakulteta na master studijama su posebni predmeti koji se bave navedenom problematikom.

[3] Objavljen u "Sl. iistu Crne Gore", br.002/14, 006/14 i 043/15.
[4] Objavljen u „Sl. listu Crne Gore", br. 046/10, 040/11, 018/14 i 042/17.

Potreba za tužbom, a to implicira i postupak, za zaštitu kolektivnih interesa i prava se mora pronaći u izmjenama i dopunama Zakona o parničnom postupku. U parničnom postupku se pruža zaštita za povrijeđena i ugrožena subjektivna prava. Ova zaštita je prevashodno usmjerena ka individualnim pravima. Međutim, u savremenom pravnom sistemu potrebno je zadovoljiti pružanje pravne zaštite u sporovima u kojima je povrijeđen ili ugrožen interes brojnim subjektima i kada postoji isti ili sličan činjenični ili pravni supstrat njihovih zahtjeva. U teoriji su to tkz. mass harm situation.[5] Tužba, odnosno postupak za zaštitu kolektivnih interesa i prava bi obuhvatao one grane prava u kojima se potenciraju zajednički i interesi opšteg dobra od pojedinačnih interesa pojedinaca, kao što su prava potrošača, antidiskriminacijski, socijalni interesi, zaštite životne sredine, i slično.

Izučavanje i praktična primjena tužbe za zaštitu kolektivnih interesa i prava je u okviru kurikuluma Građanskog procesnog prava i nastavne jedinice: *Posebni parnični postupci*. Naravno, praktična primjena ovog postupka će se moći realizovati tek kada ova tužba dobije svoju punu afirmisanost u praksi.

Izmjene koje su predložene pod 3 se odnose na dostavljanje u zemljama članicama sudskih i vansudskih dokumenata u građanskim i privrednim stvarima (Uredba EU 1293/2007) i na saradnju sudova država članica prilikom izvođenja dokaza u građanskim i privrednim stvarima (Uredba EZ 1206/2001). Uredbe su postale dio izmjena i dopuna Zakona o parničnom postupku, koji je u proceduri. Uredba koja se odnosi na dostavljanje se primjenjuje u svim državama članicama Evropske unije. Uredbom su predviđeni razni načini slanja i dostavljanja dokumenata. Tijela za slanje odgovorna su za slanje sudskih i vansudskih pismena koja moraju biti dostavljena u drugu državu članicu. Tijela za primanje odgovorna su za primanje sudskih i vansudskih pismena iz druge države. Središnje tijelo odgovorno je za dostavu podataka tijelima za slanje i rješavanje mogućih poteškoća prilikom slanja pismena na dostavu. Uredba o izvođenju dokaza u građanskim i privrednim stvarima poboljšava, pojednostavljuje i ubrzava saradnju između sudova u izvođenju dokaza. Uredba se primjenjuje u svim državama članicama, osim u Danskoj. Uredbom se predviđaju dva načina izvođenja dokaza između država članica: izvođenjem dokaza putem zamoljenog suda i neposredno izvođenje dokaza od strane suda koji upućuje zahtjev. Sud koji upućuje zahtjev je sud u kojem se sudski postupci pokreću ili odvijaju. Zamoljeni sud

[5] Vidi, Fairgrieve at All, Collective Redress Procedures – European Debates, 2009, International and Comparative Law Quarterly 58 (2), p. 379-409.

je sud druge države članice nadležan za izvođenje dokaza. Središnje tijelo nadležno je za dostavu informacija i traženje rješenja za poteškoće koje mogu da se pojave u vezi sa zahtjevom. Inkorporiranje ove dvije Uredbe je bilo neophodno da bi se parnični postupak učinio efikasnijim i pružila kvalitetnija pravna zaštita subjektima koji je traže. U kurikulimu Građanskog procesnog prava će se izučavati u nastavnim jedinicama: *Dostavljanje,* odnosno *Dokazivanje*.

Metodi učenja i podučavanja Građanskog procesnog prava su, takođe, dopunjeni. Pored nastave, vježbi, seminara, konsultacija, posebno mjesto kada su u pitanju instituti Evropske unije, će imati diskusije i rješavanje praktičnih slučajeva i analiza Case Study CJEU i ECHR, koji se mogu naći u ECLI.[6]

Vježbe iz predmeta Građansko procesno pravo su upućene na praktičnu primjenu instituta crnogorskog parničnog postupka. Studenti uče vještinu kako da rješavaju konkretne pravne sporove supsumiranjem činjeničnog stanja pod odgovarajuću normu materijalnog prava, kao i pripremom se za pisanje različitih vrsta podnesaka tužbe, pravnih lijekova i sudskih odluka, tj. presude i rješenja. Studenti su u obavezi da provedu dvije nedelje na praksi u Osnovnom sudu u Podgorici gdje upotpunjuju svoja teorijski stečena znanja sa praktičnim.

Bibliografija za predmet Građansko procesno pravo je domaća i strana. Strana bibliografija je, zahvaljujući CABUFAL projektu dopunjena, posebno knjigama koje se odnose na evropsko građansko procesno pravo,[7] a odnose se na institute koji se izučavaju u okviru predmeta.

Sve gore navedene izmjene, usloviće i izmjene u sadržaju predmeta.

Pohađanje kursa Građansko procesno pravo na osnovnim studijama Pravnog fakulteta u Podgorici će omogućiti studentima da se upoznaju sa izvorima, osnovnim institutima, legislativom i praksom evropskog građanskog procesnog prava. Na taj način će studenti biti u prilici da budu aktivni sudionici promjena u našem pravnom sistemu u trenutku kada Crna Gora postane članica Evropske unije, što naravno, podrazumijeva i njihov praktičan rad u ovom domenu.

Ishodi učenja Građanskog procesnog prava su, takođe, dopunjeni. Student koji položi ispit iz ovog predmeta biće u mogužnosti da:

1. Shvati EU, izvore evropskog građanskog procesnog prava;
2. Razumije evropsku legislativu i njen značaj u primjeni građanskog procesnog prava EU;
3. Analizira sudsku praksu kroz presude sudova u EU;

[6] Primjer se može vidjeti na:http://eur-lex.europa.eu/LexUriserv/LexUriServ.do?

[7] O dopunjenoj bibliografiji vidi, ECT katalog za Građansko procesno pravo.

4. Kritički se odnosi prema postojećim rješenjima u pozitivno pravnoj regulativi i eventualno predloži rješenja;
5. Pripremi se za stručno usavršavanje u pravosuđu onih struktura koji treba da se upoznaju sa standardima i preporukama EU.

4. ZAKLJUČAK

Zahvaljujući CABUFAL-u, nastavni plan i program predmeta Građansko procesno pravo je znatno dopunjen u skladu sa mjerilima i standardima prava Evropske unije koja se odnose na navedenu materiju. Edukativni karakter CABUFAL-a je omogućio razmjenu znanja i prakse sa partnerima, pa samim tim i kvalitetnije obrazovanje budućih pravnika. Nadajmo se da će novi nastavni plan i program biti prepoznatljivo obilježje Pravnog fakulteta Univerziteta Crne Gore u budućnosti. Preko CABUFALA-a su napravljeni svi preduslovi za realizaciju jednog kvalitetnog i korisnog pravnog obrazovanja.

INFORMACIJA ZA STUDENTE I PLAN RADA- GRAĐANSKO PROCESNO PRAVO

Naziv predmeta:		GRAĐANSKO PROCESNO PRAVO		
Šifra predmeta	*Status predmeta*	*Semestar*	*Broj ECTS kredita*	*Fond časova*
	Obavezan	V	6	4 p + 1
Studijski programi za koje se organizuje: Akademski osnovni studijski program Pravnog fakulteta (studije traju 6 semestara, 180 ECTS kredita).				
Uslovljenost drugim predmetima: Nema uslova za prijavljivanje i slušanje predmeta				
Ciljevi izučavanja predmeta: Upoznavanje sa pojmom, metodom, organizacionim i funkcionalnim procesnim pravom i njihovim institutima. Povezivanje znanja iz ove oblasti sa znanjima stečenim iz ostalih oblasti materijalnog prava u cilju osposobljavanje za pratičan rad i primjenu stečenih znanja				
Ime i prezime nastavnika: Prof. dr Biljana Đuričin				
Metod nastave i savladanja gradiva: Predavanja, konsultacije, vježbe, seminarski radovi, analiza slučajeva s posebnim osvrtom na pravo EU, pismene provjere i završni ispit				
PLAN RADA				
Nedjelja i datum	*Naziv metodskih jedinica za predavanja(P), vježbe (V)*			
Pripremna nedjelja	Upoznavanje, priprema i upis semestra.			
I nedelja	*P/V*	Predmet, struktura, procesna prava kao manifestacija prava, forma i formalizam, organizaciono i funkcionalno procesno pravo, metod, izvori, norme i njihovo važenje, cilj, organizacija sudova, ustavna načela o organizaciji sudova		
II	*P/V*	Građanski sudski postupak, parnični postupak-litispendencija, priroda parnice, procesne pretpostavke, odnos građanskog i krivičnog postupka, odnos građanskog procesnog prava prema upravnom procesnom pravu		
III	*P/V*	Nadležnost- stvarna, mjesna		
IV	*P/V*	Načela parničnog postupka, stranke u parnici, stvarna legitimacija, zastupnici, parnične radnje, o tužbi i njenom podnošenju, dostavljanje s akcentom na:dostavljanje prema uredbi o dostavi sudskih i vansudskih pismena u građanskim i privrednim stvarima u državama članicama.		
V	*P/V*	Pripremno ročište, odbrana tuženog, vrijeme parničnih radnji, množina subjekata, učešće trećih lica u parnici, množina tužbenih zahtjeva, povlačenje tužbe, preinačenje tužbe, protivtužba, istovjetnost tužbenih zahtjeva, povraćaj u pređašnje stanje		

VI	*P/V*	Prethodno pitanje, glavna rasprava, zastoj u postuplu, sudsko poravnanje
VII	*P/V*	KOLOKVIJUM
VIII	*P/V*	Dokazivanje, posebno o dokaznim sredstvima s akcentom na: izvođenje dokaza prema Uredbi o saradnji između sudova država članica u pogledu izvođenja dokaza u građanskim i privrednim stvarima
IX	*P/V*	Vrste odluka, žalba protiv presude, pravnosnažnost odluke, vanredni pravni lijekovi, troškovi postupka
X	*P/V*	Posebni parnični postupci s osvrtom na :postupak zaštite kolektivnih prava, evropski postupak za sporove male vrijednosti, evropski platni nalog,
XI	*P/V*	POPRAVNI KOLOKVIJUMA
XII	*P/V*	Vanparnični postupak, načela, odluke, posebni vanparnični postupci
XIII	*P/V*	Izvršni postupak, s osvrtom na evropski izvršni nalog za nesporna potraživanja
XIV	*P/V*	Javni izvršitelji
V	*P/V*	Postupak obezbjeđenja
11.06.2018		Završni ispiti
25.06.2018		*Popravni ispitni rok*

Obaveze studenta u toku nastave: Studenti su obavezni da pohađaju nastavu, vježbe i rade kolokvijume.

*Konsultacije::*svakog četvrtka u terminu od 12 do 13 časova

Opterećenje studenta u časovima:

Nedjeljno	u semestru
Struktura:	Ukupno opterećenje za predmet: Struktura:Nastava i završni ispit: Neophodne pripreme prije početka semestra (administracija, upis, ovjera): Dopunski rad za pripremu i polaganje ispita u popravnom roku:

Literatura:

Domaća:

1.Đuričin, Građansko procesno pravo, Podgorica, (2019)
2.Đuričin, Zakon o parničnom postupku sa objašnjenjima, Podgorica, (2004)
3.Zakon o posredovanju, Podgorica, (2009)
3.Đuričin, Utvrđivanje istine u parničnom postupku, Podgorica, (1998)

Strana:

1.Triva i ostali, Građansko parnično procesno pravo, (2004)
2.Poznić, Vodinelić, Građansko procesno pravo, (1999)
3.Starović, Keča, Građansko procesno pravo, (2004)
4.Galič, Beteto, Evropsko civilno procesno pravo I, GV, Ljubljana, (2011)
5.Storskrubb, Civil Procedure and EU Law: A PolicyAreaUncovered, Oxford Studies in European Law, Oxford University Press (2008).
6.Lenearts and All, EU Procedural Law, Oxford University press, (2014)

Zakoni:

1.Izmjene i dopune Zakona o parničnom postupku, Sl. List CG, br.48-2015
2.Zakon o vanparničnom postupku, Sl. List CG, br. 48-2015
3.Zakon o javnim izvršiteljima, Sl. List CG, br. 61-2011
4.Zakon o izvršenju i obezbijeđenju, Sl. List CG, br. 36-2011, 28-2014 i 20-2015

Dodatna literatura za seminarske radove se može dobiti kod predmetnog nastavnika.

Oblici provjere znanja i ocjenjivanje: Ocjenjuju se:

- Kolokvijum sa maksimalno 45, završni ispit maksimalno 50 poena.
- Uspješno odbranjen seminarski rad boduje se sa maksimalno 5 poena.
- Nema usovljavanja izlaska na završni ispit.

Prelazna ocjena se dobija ako se kumulativno sakupi najmanje 50 poena.

Ocjena	*A*	*B*	*C*	*D*	*E*
Broj poena	*90-100*	*80-89*	*70-79*	*60-69*	*50-59*

Napomena: U planu rada su navedeni naslovi jedinica koje se izućavaju, dok su unutar njih posebni podnaslovi, koji će se izučavati, a sastavni dio su navedenih jedinica.

Dodatne informacije o predmetu:

Sve dodatne informacije je moguće dobiti na konsultacijama i na mail djuricin@t-com.me

Ime i prezime nastavnika koji je pripremio podatke: Prof. dr Biljana Đuričin

Dragan Radonjić*

TRGOVINSKO PRAVO I MOGUĆNOSTI NJEGOVE EVROPEIZACIJE

1. STANDARDIZACIJA I EVROPEIZACIJA KURIKULUMA I SILABUSA KROZ PROJEKAT CABUFAL

Nastavni plan i nastavni programi pojedinačnih predmeta na Pravnom fakultetu Univerziteta Crne Gore u proteklih 15 godina bili su predmet značajnih reformi. Redizajniranje kurikuluma i silabusa bilo je uglavnom inspirisano potrebom standardizacije u duhu Bolonjskog procesa i evropeizacije u smislu sve veće zastupljenosti prava EU u programskim sadržajima, u sklopu težnji države Crne Gore da stupi u članstvo Evropske unije.

Projekat CABUFAL u okviru svojih ključnih ciljeva uključuje ocjenjivanje i sugestije za potencijalno osvježenje novog akreditovanog opšteg kurikuluma od 2016. godine. Takođe, značajan cilj ovog projekta je da pruži potvrdu da su silabusi raznih kurseva, koji su već dominantno ili djelimično povezani sa različitim aspektima prava EU, uokvireni na način koji je jednak onom koji je primijenjen za takve kurseve u državama članicama Evropske unije. Ovo omogućava aktivan i odgovoran odnos Pravnog fakulteta u procesu pristupnih pregovara sa EU, u kojima su harmonizacija prava sa Acquis Communautaire, kao i niz najvažnijih poglavlja u pristupnim pregovorima, vezani za pravne aspekte. Ovim se stvaraju uslovi da Crna Gora bude spremnija da efikasno primijeni pravo EU kada postane država članica.

Izvještaj o evaluaciji akreditovanog nastavnog plana i programa Pravnog fakulteta Univerziteta Crne Gore (*Report on Evaluation of the accredited curriculum and syllabi*), koji su sačinile partnerske institucije u okviru projekta CABUFAL, predstavlja novi podsticaj za inovacije opšteg nastavnog plana na osnovnim studijama i programa pojedinačnih predmeta. U ovom prilogu razmotrićemo sugestije koje se odnose na nastavni program predmeta Trgovinsko pravo.

* Prof.dr Dragan Radonjić je redovni profesor Pravnog fakulteta Univerziteta Crne Gore.

2. OD PRIVREDNOG PRAVA DO TRGOVINSKOG PRAVA

Istorijski gledano, pravno regulisanje poslova robnog prometa (ugovora u privredi i hartija od vrijednosti) tradicionalno je izučavano u našem obrazovnom sistemu u okviru Privrednog prava, koje je kao cjelovit predmet obuhvatao statusni dio posvećen subjektima privrednog prava, i obligacioni dio koji se bavio pravnim poslovima koje ovi subjekti sklapaju u prometu robe i usluga. Određeni diskontinuitet u ovakvom tretiranju ove materije bio je prisutan na Pravnom fakultetu Univerziteta Crne Gore u periodu od 1974. do 1992. godine, kada je materija privrednih subjekata izučavana u okviru posebne nastavne discipline na drugoj, a poslovi robnog prometa na četvrtoj godini studija. Razlozi za ovakav pristup bili su ideološke prirode, motivisani socijalističkim shvatanjem organizacije privrede i svojine.[1] Zato je ovakav pristup imao epizodan karakter, i nakon napuštanja socijalističke organizacije društva, došlo je do integracije obje materije u predmet Privredno pravo, što je ostala neprekinuta tradicija na drugim pravnim fakultetima u okruženju.

Ponovno izdvajanje materije poslova robnog prometa iz korpusa Privrednog prava u posebnu nastavnu disciplinu nametnule su reforme obrazovnog sistema na principima *Bolonjske deklaracije* (1999), koje su donijele novu organizaciju nastave i režim studija. Isti programski sadržaj *Privrednog prava* zbog širine predmeta, nije mogao naći adekvatno mjesto u jednosemestralnoj organizaciji nastave i smanjenom fondu časova. Zato je bilo prirodno da se njegov sadržaj kondenzuje i drugačije organizuje, odnosno da cjeline koje su već unutar njega bile jasno razgraničene i samostalne, budu tretirane u novom nastavnom planu kao posebne nastavne discipline. Tako su 2004. godine, nakon donošenja novog Zakona o visokom obrazovanju u Crnoj Gori (2003), podjelom *Privrednog prava* kreirani novi nastavni predmeti sa ”starom” sadržinom: *Pravo privrednih društava* u V semestru sa fondom časova 3p+1v (u novom akreditovanom programu *Kompanijsko pravo – IV sem. 4p+1v*) i *Poslovi robnog prometa* (u novom akreditovanom programu *Trgovinsko pravo – V sem. 4p+1v*).

Materija koju obuhvata Trgovinsko pravo je nezaobilazna u obrazovanju pravnika na nivou osnovnih studija. Ona u svakom slučaju obuhvata obligacioni dio privrednog prava, odnosno pravne poslove koje u robnom

[1] U konceptu socijalističke organizacije društva u SFRJ privredni subjekti (ranije organizacije udruženog rada, kasnije društvena preduzeća) mahom su bili u društvenoj svojini a njihova organizacija je bazirana na konceptu samoupravljanja, što je i opredijelilo tadašnje kreatore da se statusni dio Privrednog prava izučava u okviru predmeta koji je imenovan kao *Društvena svojina i samoupravljanje*.

prometu među sobom sklapaju privredni subjekti, na čemu je baziran dosadašnji naziv ovog predmeta. *Poslovi robnog prometa* obuhvatili su ugovore u privredi kao osnovne pravne poslove, ali i pojedinačne hartije od vrijednosti kao jednostrane izjave volje. Ovi pravni poslovi su po svojoj prirodi različiti, metodi njihovog regulisanja nisu isti, a regulisani su i različitim posebnim izvorima prava. Takođe, obim ove materije izlazio je iz postavljenog okvira opterećenja studenata u okviru semestralne nastave. Tako se u narednoj iteraciji izmjena Nastavnog plana materija hartija od vrijednosti izdvojila u poseban predmet na specijalističkim studijama na *Poslovno pravnom* smjeru, dok je u okviru *Poslova robnog prometa* ostalo poglavlje koje tretira opšta pitanja hartija od vrijednosti (pojam, karakteristike, vrste i priroda) kao vrste pravnih poslova u robnom prometu.

U akreditovanom novom Nastavnom planu koji se realizuje od 2017/18. studijske godine predmet *Poslovi robnog prometa* nominovan je kao *Trgovinsko pravo*, pri čemu je zadržao svoj programski sadržaj, što znači da kao rezultat prethodnog dizajniranja dominantno obuhvata materiju trgovinskih ugovora. Izvori prava za *Trgovinsko pravo* su prvenstveno nacionalni građanski zakoni, od kojih je najvažniji Zakon o obligacionim odnosima,[2] ali značajan broj trgovinskih ugovora regulisan je i posebnim zakonima. Međutim, na ovom području već odavno je izražen trend harmonizacije i unifikacije prava na internacionalnom nivou, tako da ova kategorija izvora uključuje i međunarodne konvencije, koje kada se ratifikuju imaju snagu zakona i neposredno se primjenjuju od strane sudova ukoliko nije donijet poseban zakon. Konvencijski izvori su naročito zastupljeni kod prodaje i kod ugovora o prevozu. Međutim, na ovom području su od značaja i drugi međunarodni instrumenti harmonizacije i unifikacije (jednobrazni zakoni, model-zakoni i dr.), kao i autonomni izvori prava, koje donose ne samo privredni subjekti i njihove asocijacije, već i veliki broj međunarodnih organizacija.

3. TRGOVINSKO PRAVO I EVROPSKO UGOVORNO PRAVO

Pitanje koje se otvara u ovom projektu jeste koliko i kako ugovorno pravo Evropske unije može biti zastupljeno u programu ovog predmeta, imajući u vidu da Evropsko ugovorno pravo još nije otjelotvoreno u jedinstvenoj kodifikaciji, već je samo donijet čitav niz direktiva i drugih

[2] Zakon o obligacionim odnosima, "Službeni list Crne Gore", br. 47/2008 od 07.08.2008, 004/11 od 18.01.2011, 022/17 od 03.04.2017).

akata i dokumenata koja uređuju pojedina pravna područja ugovornog prava, i koja u suštini čine tzv. 'meko pravo' Evropske unije.[3] Harmonizacija ugovornog prava svakako predstavlja jedan od osnovnih zadataka Evropske unije jer je ugovorno pravo osnovna pretpostavka stvaranja jedinstvenog evropskog tržišta, pa je donošenje Evropskog građanskog zakonika postavljeno kao politički i pravni cilj. Međutim, proces harmonizacije i unifikacije ugovornog prava uveliko otežava značajni pravni partikularizam na ovom području u državama članicama EU, kao i otpor u tim državama prema harmonizaciji ugovornog prava zbog pravnih, kulturoloških, istorijskih i drugih specifičnosti, kao i neslaganja oko stepena harmonizacije.[4]

Iz ovih ali i drugih razloga, u Evropskoj uniji se već duže od dvije decenije sprovodi harmonizacija ugovornog prava. Ova aktivnost se sprovodi na dva nivoa: u okviru i pod okriljem institucija Evropske unije i od strane akademske zajednice. To je rezultiralo izradom niza pravnih akata i dokumenata koja su trebala imati za cilj jedinstveno tumačenje i primjenu brojnih pravila u materiji obligacionog odnosno ugovornog prava. Jedan od najznačajnijih dokumenata donijetih na području harmonizacije opšteg ugovornog prava evropskih država jesu Principi evropskog ugovornog prava (Lando načela), čija je osnovna svrha da posluže kao temelj za unifikaciju i harmonizaciju ugovornog prava EU.[5] Generalno, ideja standardizacije ugovornog prava u EU ima svoje pristalice i svoje

[3] *Meko pravo* (soft law) *EU* - neobavezujuća pravna regulativa čijim preuzimanjem države članice mogu da međusobno harmonizuju svoja nacionalna prava.

[4] S jedne strane zagovara se potpuna harmonizacija donošenjem Evropskog građanskog zakonika, dok se s druge strane preferira minimalna harmonizacija u mjeri koja je nužna za ostvarivanje jedinstvenog tržišta ali bez ometanja unutrašnje trgovine. U zemljama članicama uglavnom se sprovodi minimalna harmonizacija, koja ima svoj osnov u članu 95. Ugovora o osnivanju koji nalaže obavezu država članica da usklade svoje propise, i to samo u mjeri koja je neophodna za stvaranje i funkcionisanje jedinstvenog tržišta, što je rezultiralo time da se „harmonizovana područja“, i dalje značajno razlikuju od države do države.

[5] Ovaj dokument je u dvije etape (I dio 1995. i II dio 1999. godine) pripremila Komisija za evropsko ugovorno pravo, kojom je predsjedavao danski profesor prava Ole Lando i nakon skoro dvije decenije rada (započela je sa radom 1982.) prezentovala javnosti 1999. godine. Treći dio Principa objavljen je 2003. godine čime je završen rad na izradi ovog dokumenta. Mada je osnovna svrha Principa da budu temelj unifikacije i harmonizacije ugovornog prava EU, dok se taj cilj ne ostvari autori su im namijenili i ulogu autonomnog izvora prava koje stranke mogu unijeti u ugovor, ili ga mogu ugovoriti kao mjerodavno pravo za ugovor, ili kao pravo kojemu se ugovor podvrgava i kada nema izričitog sporazuma stranaka.

protivnike,[6] i njen uspjeh je neizvjestan. Mada Principi ne predstavljaju obavezni instrument zakonodavnog karaktera, oni se smatraju sredstvom unifikacije i harmonizacije prava, jer su poslužili kao model nacionalnim zakonodavcima u nastojanju da modernizuju svoje postojeće zakonodavstvo i inspiracija sudovima u tumačenju odredaba postojećeg uniformnog prava i popunjavanja pravnih praznina.[7]

Za najambiciozniji dokument u oblasti harmonizacije evropskog ugovornog prava danas se smatra „Nacrt Zajedničkog okvira za evropsko privatno pravo" (Draft Common Frame Reference for a European private Law - dalje u tekstu DCFR) iz 2009. godine.[8] DCFR se zasniva na mnogim rješenjima Landovih Principa evropskog ugovornog prava, ali je širi od ovih principa i nastoji da obuhvati cjelokupnu materiju obligacionog prava Evropske unije. Pri izradi ovog dokumenta izvršeno je sistematsko i komparativno istraživanje nacionalnih pravnih sistema država članica i detaljna analiza *Acquisa*, i mada ovaj dokument nije usmjeren na stvaranje novog ugovornog prava već sistematizaciju i unapređenje postojećeg, bez obzira na njegovu političku sudbinu, smatra se da do danas predstavlja najznačajnu polaznu osnovu za izradu Evropskog građanskog zakonika.[9]

Na području harmonizacije opšteg ugovornog prava donijet je i čitav niz direktiva na području elektronskog poslovanja, prava osiguranja, bankarskog poslovanja itd. Takođe, procesom harmonizacije ugovornog prava u značajnoj mjeri zahvaćena je i materija koja reguliše pitanja zaštite potrošača.[10] Međutim, Trgovinsko pravo se ne bavi opštim ugovornim pra-

---

[6] The Rules of European contract law, www.cisg.law.pace.edu/cisg/biblio/lando2.html, (14/1/1018).

[7] Vidi: *Đurđev D*., Nacrt Zajedničkog referentnog okvira za evropsko privatno pravo iz 2009. godine, u Zborniku radova Pravnog fakulteta u Novom Sadu, 2/2010., str. 71.

[8] DCFR je rezultat rada velikog broja pravnih stručnjaka iz oblasti privatnog prava iz država članica Evropske unije, i predstavlja se kao „akademski" dokument koji je više posvećen nauci, a ne politici. Bez obzira na njegovo nezgodno ime, smatra se da je ovaj tekst predstavlja nacrt centralnih komponenti Evropskog građanskog zakonika.

[9] Vidi: *Đurđev D*., str. 80-81.

[10] Neke od važnijih direktiva EU iz oblasti elektronske trgovine, finansijskih usluga i zaštite potrošača su sledeće: Directive No. 93/13/EEC on unfair terms in consumer contracts, OJ L 95 of 21/4/1993, p. 29–34; Directive No. 99/44/EC on certain aspects of the sale of consumer goods and associated guarantees, OJ L 171, 7/7/1999, p. 12–16; Directive No. 2011/83/EU on consumer rights, amending Directive No. 93/13/EEC and Directive No. 99/44/EC and Directive No. 85/577/EEC and Directive No. 97/7/EC, OJ L 304, 22/11/2011, p. 64–88; Directive No. 2000/31/EC on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce'), OJ L 178, 17/7/2000, p. 1–16; Directive No. 2002/65/EC concerning the distance marketing of consumer financial services, OJ L 271, 9/10/2002, p. 16–24; Directive No. 2005/29/EC concerning unfair business-to-consumer commercial

vom, pa se iz tog razloga ne bavi ni pitanjima elektronskog poslovanja, odnosno elektronskog zaključivanja ugovora, jer to je materija Obligacionog prava. Takođe, Trgovinsko pravo se ne bavi ni zaštitom potrošača, jer je toj materiji posvećen poseban predmet na master studijama na Poslovno pravnom smjeru imenovan kao *Pravo zaštite potrošača*, koji u svom silabusu uključuje sve bitne aspekte regulisanja ove materije na nivou Evropske unije.

4. REZULTATI EVALUACIJE SILABUSA ZA TRGOVINSKO PRAVO

Jedan od bitnih ciljeva postavljenih projektom CABUFAL jeste analiza kurikuluma Pravnog fakulteta Univerziteta Crne Gore i silabusa pojedinačnih predmeta obuhvaćenih nastavnim planom na osnovnim studijama, u cilju dalje evropeizacije nastave na ovoj instituciji. Također, važan aspekt unapređenja nastavnog procesa u pravcu dalje evropeizacije kao benefit koji donosi ovaj projekat jeste i transfer najboljih nastavnih praksi i iskustava sa partnerskih univerziteta. Date sugestije, bez obzira na njihovu primjenjivost, predstavljaju jednu percepciju koja dolazi od inostranih partnerskih institucija, u kojoj se reflektuju dometi dosadašnje evropeizacije nastavnog procesa na Pravnom fakultetu Univerziteta Crne Gore, i smjernice za njegovo dalje unapređenje. Zato, sugestije date za svaki pojedini predmet pobuđuju pažnju, a u ovom tekstu sa posebnim interesovanjem razmatramo sugestije date za Trgovinsko pravo.

U Izvještaju o evaluaciji akreditovanog nastavnog plana i programa (*Report on Evaluation of the accredited curriculum and syllabi*), ispravno je konstatovano da se kurs iz Trgovinskog prava fokusira na specifične trgovačke ugovore koji su regulisani nacionalnim zakonodavstvom i da stoga ima malo prostora za njegovu evropeizaciju. Ipak, dvije sugestije koje su date u Izvještaju zaslužuju da se razmotre, u cilju usvajanja dobre prakse i iskustava koja postoje na partnerskim institucijama uključenih u projekat CABUFAL.

practices in the internal market ('Unfair Commercial Practices Directive') OJ L 149, 11/6/2005, p. 22–39; Directive No. 2008/48/EC on credit agreements for consumers, OJ L 133, 22/5/2008, p. 66–92; Directive No. 2008/122/ on the protection of consumers in respect of certain aspects of timeshare, long-term holiday product, resale and exchange contracts, OJ L 33, 3/2/2009, p. 10–30; Directive No. 2014/17/EU on credit agreements for consumers relating to residential immovable property, OJ L 60, 28/2/2014, p. 34–85; Directive No. 2015/2302/EU on package travel and linked travel arrangements, OJ L 326, 11/12/2015, p. 1–33.

Prva sugestija je da se u nastavi na ovom predmetu uključe neki komparativni primjeri trgovinskih ugovora u državama članicama Evropske unije. Komparativni pristup već je zastupljen u predavanjima iz ovog predmeta, jer značajan broj međunarodnih izvora prava u ovoj materiji i sve izraženija tendencija konvergencije prava između common law-a i kontinentalnog prava ovakav pristup čini neizostavnim. Međutim, smatramo da u pojedinim oblicima nastave, kao što je seminarska ili praktična nastava, komparativni pristup može biti zastupljeniji i posebno fokusiran na regulativu određenih trgovinskih ugovora od strane pojedinih država članica.

Druga sugestija preporučuje da se u obaveznu literaturu iz Trgovinskog prava uključi studija: Gabriël Moens and John Trone, Commercial Law of the European Union, Springer (2010). Ova sugestija može biti prihvatljiva samo kao predlog da se gore pomenuta studija uključi u dopunsku literaturu iz ovog predmeta, imajući u vidu da je objavljena na engleskom jeziku i time dostupna samo ograničenom broju studenata. U svakom slučaju, ovo bi moglo biti stimulativno za jedan broj studenata, i na korišćenju ove literature mogle bi se bazirati određene nastavne aktivnosti. Naravno, pretpostavka je da ova knjiga bude dostupna stu-dentima u Biblioteci ili da im se omogući pristup određenim bazama e-knjiga.

INFORMACIJA ZA STUDENTE I PLAN RADA- TRGOVINSKO PRAVO

Naziv predmeta		Trgovinsko pravo		
Šifra predmeta	*Status predmeta*	*Semestar*	*Broj ECTS kredita*	*Fond časova*
	compulsory	v	6	4P+1V
Studijski programi za koje se organizuje: Akademski osnovni studijski program Pravnog fakulteta (studije traju 6 semestara, 180 ECTS kredita).				
Uslovljenost drugim predmetima: Nema uslova za prijavljivanje i slušanje predmeta				
Ciljevi predmeta: Na kraju kursa studenti treba da razumiju elemente i pravni režim osnovnih komercijalnih transakcija: ugovore, bankarske transakcije, kao i pojam, karakteristike, pravnu prirodu i vrste hartija od vrijednosti i ugovorene instrumente.				
Ishodi učenja: Na kraju kursa student treba da bude u stanju da: 1. Definiše i objasni pojedine vrste komercijalnih transakcija; 2. Razlikuje, razvrsta i uporedi različite vrste komercijalnih transakcija; 3. Pravilno tumači i primjenjuje zakonske odredbe koje regulišu određene vrste komercijalnih transakcija i primjenjuje ih na određeni skup činjeničnih okolnosti; 4. Analizira specifične komercijalne transakcije i adekvatno primjenjuje zakonska pravila o određenom skupu činjeničnih okolnosti; 5. utvrdi i ocijeni relevantne činjenice i poveže s propisima i na osnovu toga odredi prava i obaveze ugovornih strana u komercijalnoj transakciji; 6. pripremi i sastavi trgovniski ugovor koji po osnovnim elementima i sadržini odgovara za uređenje konkretnog poslovnog odnosa.				
Ime i prezime nastavnika i saradnika: Prof. dr Dragan Radonjić – nastavnik;				
Metod nastave i savladavanja gradiva: Metodi nastave uključuju predavanja, diskusije, istraživanja i pisane projekte ili seminare, i individualne zadatke i aktivnosti				

Praktična nastava obavlja se na dijelu časova predviđenim za predavanja (10 časova) i na vježbama (15 časova) i obuhvata: predavanja gostujućih predavača, posjete Privrednom sudu, komercijalnoj banci u Podgorici, Agenciji za nadzor osiguranja, upoznavanje sa sudskom praksom (u sudu / ili u okviru nastave na fakultetu), analizu sudske prakse od strane studenata u obliku seminarskih radova.

Sadržaj predmeta:

1 nedjelja	Informacije o predmetu i očekivanja; Pregled nastavnog programa (syllabus-
2 nedjelja	a); Izvori prava; Pojam, specifičnosti i vrste ugovora u privredi; Ugovor o
3 nedjelja	prodaji; Ugovor o posredovanju; Ugovor o zastupanju;Ugovor o komisionu;
4 nedjelja	Ugovor o kontroli robe i usluga; Ugovor o uskladištenju; Ugovor o
5 nedjelja	osiguranju; Ugovor o građenju; Ugovori o turističkim uslugama;Praktična
6 nedjelja	nastava - posjeta Agenciji za nadzor osiguranja; Analiza sudske prakse /
7 nedjelja	primjeri (na fakultetu) Ugovor o otpremanju robe; Ugovor o prevozu robe
8 nedjelja	morem; Redovni kolokvijum Ugovor o prevozu robe vazdušnim putem; govor
9 nedjelja	o prevozu robe željeznicom; Ugovor o prevozu robe drumom;Ugovor o
10 nedjelja	prevozu putnika; Ugovor o prevozu prtljaga ;Ugovor o komb. prevozu robe;
11 nedjelja	Popravni kolokvijum Praktična nastava - posjeta Privrednom sudu u
12 nedjelja	Podgorici; Analiza sudske prakse (na fakultetu) Pojam, i vrste
13 nedjelja	bankarskih.poslova.; Kreditni bankarski poslovi; Depozitni bankarski poslovi;
14 nedjelja	Uslužni bankarski poslovi (akreditiv, bankarska.garancija, dokumenta-
15 nedjelja	rni.inkaso); Praktična nastava - posjeta komercijalnoj banci u Podgorici;
16 nedjelja	Analiza sudske prakse (na fakultetu) Ugovori sa mješovitom građanskopra-
17 nedjelja	vnom osnovom (vrste, karakteristike, priroda);Ugovor o lizingu; Ugovor o
18-21	faktoringu, Ugovor o forfetingu . Ugovor o licenci, Ugovor o dug. proizvod.
nedjelja	kooperaciji, Ugovor o franšinzingu;Hartije od vrijednosti (pojam, osobine,
	pravna priroda, vrste); Završni ispit Popravni ispit Konačna evaluacija

Opterećenje studenta

Nedeljno	U semestru
6 kredita x 40/30 = 8 sati Struktura: 4 sata predavanja 1 sat vježbi 3 sata samostalnog rada	Nastava i završni ispit: (8 sati) X 16 = 128 sati Neophodne pripreme prije početka semestra (administracija, upis, ovjera) 2 x (8sati)= 16 sati Ukupno opterećenje za predmet 6x30 = 180 sati Dopunski rad za pripremu ispita u popravnom ispitnom roku, uključujući i polaganje popravnog ispita od 0 do 30 sati Struktura opterećenja 128 sati (nastava) + 16 sati (priprema) + 30 sati (dopunski rad)

Studenti su obavezni da pohađaju nastavu, učestvuju u debatama i izradi testova. Studenti koji izrade seminarski rad, po pravilu ga, javno brane, dok ostali studenti učestvuju u debati nakon prezentacije rada.

Obavezna literatura: Vasiljevic Mirko, Poslovno pravo, Beograd (2001 and onward eds).
Zakon o obligacionim odnosima Crne Gore
Dodatna literatura:
Gabriël Moens and John Trone, Commercial Law of the European Union, Springer (2010).

Oblici porvjere znanja:
- Jedan kolokvijum (maksimalno 50 poena),
- Praktična nastava i studentski esej sa prezentacijom (maksimalno 10 bodova),
- Završni ispit (pismeni, maksimalno 40 bodova).
Prolazna ocena se dobija ako je student sakupio najmanje 50 bodova
OCJENA E: 50 - 59; D: 60-69; C: 70-79; B: 80-89; A: 90-100

Ime i prezime nastavnika koji je pripremio podatke: Prof. dr Dragan Radonjić

Komentar: Dodatne informacije o predmetu mogu se naći na http: // www. pravni.ucg.ac.me

Vladimir Savković*

KOMPANIJSKO PRAVO EVROPSKE UNIJE U CRNOGORSKOM OBRAZOVNOM I PRAVNOM SISTEMU

1. UVOD - PREDMET I CILJEVI ANALIZE

Pravna tekovina Evropske unije danas je višestruko obimnija nego samo par decenija unazad. Utisku o njenoj širini i složenosti ništa manje ne doprinosi brojnost i raznolikost izvora tzv. „*acquis*"- ja, sa čijom se implementacijom danas suočava i Crna Gora kao država kandidat koja je najbliža punopravnom članstvu,[1] a jedna od oblasti prava Evropske unije u kojoj su ove tendencije najvidljivije jeste upravo kompanijsko pravo (*i.e.* pravo privrednih društava). Jedna od najintersantnijih posljedica opisane tendencije za Crnu Goru jeste to što se ova država, već u samom procesu pristupanja, srijeće se sa obavezom implementacije čitavog niza specifičnih propisa nastalih nakon ulaska u Evropsku uniju onih država članica koje su to svojstvo stekle u prethodnim talasima proširenja, 2004. i 2007. godine, pa čak i nakon pristupanja Hrvatske, u 2013. godini.

U akademskoj ravni, brojnost formalnih i neformalnih izvora kompanijskog prava koje kreiraju institucije Evropske unije uslovila je i snažnije izdvajanje kompanijskog prava Evropske unije kao nove pravne discipline koja se na evropskim univerzitetima sve više izučava kao poseban kurs, odnosno predmet. Pravni fakultet Univerziteta Crne Gore pra-

* Prof. dr Vladimir Savković je vanredni profesor Pravnog fakulteta Univerziteta Crne Gore.

[1] Pored osnivačkih ugovora, koji čine tzv. „primarno pravo" Evropske unije, tu su i brojni drugi izvori tzv. „sekundarnog prava" poput uredbi, koje se neposredno primjenjuju na teritoriji država članica, direktiva, čija implemenacija trpi izvjesnu dozu „kreativnosti" nacionalnih zakonodavaca, te odluke organa Evropske unije i mišljenja koja izdaju u pogledu značajnih spornih pitanja u vezi sa primjenom prava EU. Pored obavezujućih, sekundarni izvori prava Evropske unije su i oni neobavezujući, poput preporuka, koje su svojevrsno *lege ferenda* Evropske unije. Takođe, danas posebno mjesto u ovoj nomenklaturi zauzima i izuzetno opsežna praksa Suda pravde Evropske unije, čija *de facto* obaveznost predstavlja i najbolji pokazatelj dostignutog stepena konvergencije dva tradicionalna i globalno prisutna pravna sistema, anglo-američkog i kontinentalno-evropskog. Najzad, tu je i jedan broj drugih dokumenata koje produkuju različiti organi Evropske unije, poput komunikacija, izvještaja, tzv. „bijelih" i „zelenih" papira, koji *sensu stricto* nijesu pravni izvori, iako predstavljaju svojevrsne smjernice u tumačenju formalnih izvora prava ove *sui generis* nadnacionalne zajednice.

tio je ovaj trend i kroz nedavnu reformu nastavnih planova, sprovedenu 2017. godine, uveo predmet pod nazivom: „Kompanijsko pravo Evropske unije“ u svoj nastavni plan za dvogodišnje master studije – Poslovno pravo. Odatle je i prilikom koncipiranja nastavnih jedinica u predmetu kompanijsko pravo na osnovnim (*bachelor*) studijama akcenat na evropsko, tj. unijsko kompanijsko pravo stavljen u manjoj mjeri. Drugim riječima primat je dat izučavanju različitih oblika obavljanja privredne djelanosti u kontekstu nacionalnog regulatornog okvira, a ne različitim – nesporno, vrlo aktuelnim - „izvornim evropskim aspektima“ kompanijskog prava poput prekograničnih spajanja društava kapitala, prenosa sjedišta društva iz jedne u drugu državu (članicu Evropske unije), posebne evropske forme privrednih društava ili preporuka na planu podizanja standarda korporativnog upravljanja.

Najzad, u smislu gore iznijetog, te u kontekstu širih ciljeva postavljenih projektom CABUFAL, cilj ove kratke analize je da se osvrne na:

- analizu nastavnog plana Pravnog fakulteta Univerziteta Crne Gore sačinjenu u sklopu projekata CABUFAL od strane Pravnog fakulteta u Univerziteta u Ljubljani (u daljem tekstu: „Analiza nastavnog plana“), u dijelu koji se odnosi na kompanijsko pravo (Evropske unije);
- ključne izazove u pogledu uvođenja kompanijskog prava Evropske unije u nastavni plan i program Pravnog fakulteta Univerziteta Crne Gore;
- doprinos koji su na planu „evropeizacije“ nastave na predmetima u okviru kojih se izučavaju pojedini aspekti kompanijskog prava Evropske unije dale aktivnosti u sklopu CABUFAL-a, posebno u kontekstu unapređenja aktuelnih nastavnih praksi i metoda;
- aktuelni trenutak na planu transpozicije kompanijskog prava Evropske unije u crnogorski pravni sistem.

2. OSVRT NA ANALIZU NASTAVNOG PLANA OD STRANE PRAVNOG FAKULTETA UNIVERZITETA U LJUBLJANI

Zapažanje slično onom koje je dato u uvodnom dijelu ovog rada, iznijeto je i u Analizi nastavnog plana Pravnog fakulteta koja je nedavno sačinjena u sklopu projekata CABUFAL od strane Pravnog fakulteta Univerziteta u Ljubljani. Naime, u ovom dokumentu se ističe da se sam predmet kompanijsko pravo na nedavno akreditovanim osnovnim studijama, odnosno nastavne jedince u sklopu ovog predmeta primarno foku-

siraju na crnogorske poslovne subjekte i izučavanje njihovog statusno-pravnog okvira postavljenog u crnogorskom kompanijskom zakonodavstvu, što, kako je istaknuto, ostavlja malo prostora za evropeizaciju samog kurikuluma ovog predmeta. Nesporno je da istaknuto makar dijelom stoji, ali se u analizi ne uzima u obzir okolnost da se veliki dio ukupnog korpusa kompanijskog prava Evropske unije još uvijek nalazi u direktivama, čija implementacija zahtijeva transpoziciju putem nacionalnih zakona. To u krajnjem znači da će se kroz izučavanje crnogorskog zakonskog okvira kompanijskog prava na osnovnim studijama Pravnog fakulteta *de facto* izučavati i brojna pravila kompanijskog prava Evropske unije koja su već ili će uskoro biti izražena regulatornim rješenjima nacionalnog kompanijskog zakonodavstva.[2] Naravno, nesporno je da bi za sveobuhvatno upoznavanje sa ključnim postulatima kompanijskog prava Evropske unije u njegovoj današnjoj formi izučavanju pojedinih od već pomenutih aspekata evropskog kompanijskog prava bilo neophodno dati više prostora nego što je to učinjeno nastavnim planom predmeta kompanijsko pravo na osnovnim studijama. No, ovaj „nedostatak" se primarno mora sagledati i u svijetlu sadržine nastavnog plana na predmetu kompanijsko pravo Evropske unije akreditovanog na drugom (master) nivou akademskih studija u sklopu programa Pravne nauke. Konkretno, nastavne jedinice ovog predmeta fokusirane su upravo na analizu dešavanja na evropskoj regulatornoj i pravosudnoj sceni kada je riječ o pitanjima poput prekograničnih spajanja društava kapitala, prenosa sjedišta društva iz jedne u drugu državu (članicu Evropske unije), posebne evropske forme privrednih društava, izvještavanja u kontekstu djelova stranih društva, razrade principa „primijeni ili objasni" u „tvrdom" i „mekom" pravu korporativnog upravljanja i sl. U ovom kontekstu, stoga, teško da se može govoriti o nedostatku, već je prije riječ o konceptu izučavanja kompanijskog prava koji se proteže kroz dva nivoa studija, gdje se tek na drugom nivou puna pažnja posvećuje izučavanju izvorno evropskih aspekata kompanijskog prava. U narednom periodu, makar do sticanja punopravnog članstva Crne Gore u Evropskoj uniji, čini se da je takav pristup sasvim opravdan i svrsishodan. Naime, na jednoj strani, njime se omogućava dovoljnom broju studenata i pripadnika pravničke profesije da se specijalizuje u jednoj perspektivnoj oblasti kakvo je kompanijsko pravo Evropske unije. Na drugoj strani, pak, ovim se pristupom istovremeno izbjegava da studenti koji se nijesu opredijelili za specijalizaciju u oblasti poslovnog prava na master studijama budu još na osnovnim (*bachelor*) studijama opterećeni složenim institutima i pojedinim standardima uni-

[2] Vidi *infra* DIO V.

jskog kompanijskog prava, koji će dio pozitivnog crnogorskog prava postati tek na dan pristupanja. Time je, čini se, stvorena delikatna ravnoteža između trenutnih potreba i skorih izazova koje će Crnoj Gori donijeti status, za očekivati je, 28. članice Evropske unije.

3. KOMPANIJSKO PRAVO EVROPSKE UNIJE NA PRAVNOM FAKULTETU UNIVERZITETA CRNE GORE – STANJE I IZAZOVI

Već je iznijeto zapažanje u drugom dijelu ovog rada da se koncept izučavanja kompanijskog prava Evropske unije na Pravnom fakultetu Univerziteta Crne Gore zasniva na principu dvostepenosti. Konkretno, nedavno akreditovanim nastavnim planom predviđeno je da se na prvom, osnovnom nivou studija primarno izučavaju regulatorna rješenja ugrađena u savremeno crnogorsko kompanijsko zakonodavstvo, te uglavnom tradicionalni instituti kompanijskog prava koji su razrađeni ovim regulatornim rješenjima. To u praksi znači da će se crnogorski studenti na osnovnom nivou studija, makar do sticanja punopravnog članstva Crne Gore u Evropskoj uniji,, „srijetati" sa dijelom kompanijskog prava Evropske unije koji je sadržan u direktivima kao jednom tipu regulatornih instrumenata prava Evropske unije koji spada u tzv. „sekundarne" izvore prava Evropske unije. Naime, Crna Gora je već duže od šest godina u pristupnim pregovorima sa Evropskom unijom, a od toga već pet godina u poglavlju 6. – Kompanijsko pravo. Shodno tome, značajan dio kompanijskog prava Evropske unije koji je sadržan u direktivama je već transponovan u crnogorsko pravo novim zakonskim rješenjima kojima se uređuju oblasti računovodstva, revizije, preuzimanja akcionarskih društava i tržišta kapitala. Takođe, uskoro će to biti slučaj i sa ključnim zakonom u oblasti kompanijskog prava – Zakonom o privrednim društvima, čiji je Nacrt već bio na javnoj raspravi, te koji će, nakon što Evropska komisija potvrdi punu usklađenost sa relevantnim „kompanijskim direktivama", biti usvojen u nacionalnom parlamentu.[3] Dakle, izučavajući nacionalno kompanijsko pravo na osnovnim studijama, crnogorski studenti izučavaće istovremeno i značajan dio pravila kompanijskog prava Evropske unije.

Na drugoj strani, vrijedi podsjetiti da kompanijsko pravo Evropske unije nijesu samo direktive, već i uredbe kojima se uređuju originalni, „evropski oblici privrednih subjekata", preporuke kojima se uređuju, tj. razrađuju najnoviji i najnapredniji standardi iz oblasti korporativnog

[3] Usvanjanje ovog zakonskog teksta očekuje se sredinom 2019.

upravljanja, a sve više i relevantna praksa koja, ponajprije zahvaljujući tzv. „sudskom aktivizmu“ Suda pravde Evropske unije,[4] sve više postaje nezaobilazan izvor evropske pravne tekovine. S tim u vezi, treba istaći i to da kompanijsko pravo Evropske unije ne samo da je zamišljeno kao takvo, već objektivno sve više i predstavlja jednu posve zaokruženu cjelinu, što realno može predstavljati dodatni izazov u nastavi na predmetu kompanijsko pravo na osnovnim studijama. Odatle na ovom mjestu iznosimo i stanovište kako bi bilo svrsishodno da se pred sam ulazak Crne Gore u Evropsku uniju pristupi blagovremenom redefinisanju nastavnih planova na predmetima kompanijsko pravo na osnovnim studijama i kompanijsko pravo Evropske unije na master studijama, sve sa ciljem da se odgovori realnim potrebama studenata u datom trenutku. Ilustracije radi, biće neophodno da se po značaju koji se daje različitim oblicima obavljanja privrednih djelatnosti izjednače privredna društva koja se osnivaju po Zakonu o privrednim društvima i društva koja će se osnivati direktno na osnovu Uredbe o Evropskom akcionarskom društvu ili Uredbe o Evropskom ekonomskom interesnom udruženju.[5] Ovo tim prije što uredbe Evropske unije imaju jaču pravnu snagu od nacionalnih zakona, u skladu sa jednim od osnovnih načela unijskog prava – načelom supermacije istog u odnosu na nacionalno pravo.

Gore istaknuto, naravno, ne znači da će nužno prestati potreba za opstankom predmeta kompanijsko pravo Evropske unije na master studijama. Naprotiv, to što će dio nastavnih jedinica koji je trenutno rezervisan za drugi (master) nivo studija, tj. predmet kompanijsko pravo Evropske unije, biti „spušten“ na osnovne studije, smatramo, trebalo bi razumijeti kao otvaranje prostora za još detaljnije proučavanje pojedinih specifičnih instituta kompanijskog prava Evropske unije, posebno sve složenije i

[4] Brojni su radovi i analize na ovu temu već decenijama unazad. Ovdje navodimo samo nekoliko najsvježijih naučnih rasprava. Dakle, vidi: De Freitas L. V., “The Judicial Activism of the European Court of Justice”, Judical Activisam: An Interdisciplinary Approach to the American and European Experiences (eds. L. P. Coutinho, M. La Torre, S. D. Smith), Springer International Publishing, 2015, 173 – 180; Muir E., Dawson M. and de Witte B, “Introduction: The European Court of Justice as a Political Actor”, Judicial Activism at the European Court of Justice (eds. M. Dawson, B. de Witte and E. Muir), Edward Elgar Publishing, 2017, 1–10; M. Blauberger, S. K. Schmidt, “The European Court of Justice and its political impact”, *West European Politics*, Vol. 40(4), 2017, 907-918;

[5] Nije neralno da već u tom trenutku ravnoparavno među pomenutim evropskim oblicima privrednih društava bude i *societas privata Europaea* – evropsko društvo sa ograničenom odgovornošću za čije se uvođenje već deceniju unazad i formalno zalaže Evropska komisija. Primjera radi, vidi: Myszke-Nowakowska Miroslawa, “The European Private Company - Dream Big but Cautiously“ Intereulaweast, Vol. II (1) 2015, 27 – 44.

obimnije prakse Suda pravde Evropske unije, koja postaje i sve značajniji izvor evropskog prava.[6]

4. PRIMJENA ISKUSTAVA PARTNERSKIH UNIVERZITETA - DALJA EVROPEIZACIJA NASTAVNIH PLANOVA IZ OBLASTI KOMPANIJSKOG PRAVA

Predavači sa partnerskih institucija koji su gostovali na Pravnom fakultetu Univerziteta Crne Gore u sklopu projekta CABUFAL nijesu specijalizovani za oblast kompanijskog prava, te se u tom kontekstu ne može govoriti o njihovom specifičnom, usko stručnom doprinosu. Takav doprinos, međutim, dali su pojedini nastavnici sa partnerskih institucija čijim je predavanjima akademsko osoblje Pravnog fakulteta Univerziteta Crne Gore – uključujući i autora ovih redova - imalo mogućnost prisustvovati upravo prilikom studijskih posjeta partnerskim univerzitetima na ovom projektu. U tom su smislu posebno značajne i vrijedne bile posjete Evropa Institutu Univerziteta u Saarland-u i Pravnom fakultetu u Skoplju.

Na drugoj strani, jednako interesantan i vrijedan doprinos projekta CABUFAL u pogledu evropeizacije na planu izučavanja kako kompanijskog prava tako i drugih grana prava na Pravnom fakultetu Univerziteta Crne Gore predstavljao je i transfer najboljih nastavnih praksi i iskustava sa partnerskih univerziteta. Naime, iako je riječ o praksama i iskustvima koja su neposredno vezana za različite, ponekad i bitno drugačije nastavne discipline od kompanijskog prava, riječ je o značajnim i vrijednim iskustvima sa stanovišta daljeg unapređenja kvaliteta nastave i ukupnog obrazovnog procesa koji organizuje Pravni fakultet Univerziteta Crne Gore. S tim u vezi, čini se da je opredjeljenje ka snaženju praktičnog aspekta nastavnog procesa dobilo svoje dodatno opravdanje i u neposrednoj razmjeni iskustava između profesora i saradnika Pravnog fakulteta Univerziteta Crne Gore i nastavnika sa partnerskih univerziteta na projektu CABUFAL, koji su upravo i ukazali na slične tendencije na sopstvenim, tj. matičnim akademskim ustanovama. Naime, na svim partnerskim univerzitetima na kojima je autor ovih redova imao priliku da boravi u sklopu studijskih posjeta predviđenih projektom CABUFAL može se primijetiti snažna usmjerenost nastavnog procesa, prije svega, na analizu sudske prakse Evropskog suda za ljudska prava i Suda pravde Evropske unije. Nerijetko se insistira i na tome da sami studenti, u grupama, pripreme

[6] Primjera radi, vidi: H. de Waele, "The Role of the European Court of Justice in the Integration Process: A Contemporary and Normative Assessment", *Hanse Law Review* 6(1)/2010, 1 – 26;

prezentacije pojedinih slučajeva, te da kroz interakciju (debatu) sa ostalim studentima i predmetnim nastavnikom dođu do ključnih regulatornih rješenja primijenjenih od strane pomenutih sudova u datim slučajevima, te teorijskog i ideološkog pristupa njihovoj analizi i rješavanju.

Pored navedenog i drugih oblika praktične nastave, koji nerijetko dominiraju u ukupnom nastavnom procesu, na planu najboljih praksi u izučavanju predmeta iz oblasti prava Evropske unije, ali i drugih predmeta, posebno je vrijedno napomenuti i okolnost da se na partnerskim univerzitetima izuzetna pažnja posvećuje elektronskim bazama podataka pravne literature, tj. obezbjeđivanju pristupa studentima i nastavnom osoblju. U razmjeni iskustava sa kolegama sa partnerskih univerziteta, dolazi se do zaključka da su ove baze podataka izuzetno važno nastavno sredstvo, te da se rad sa studentima na svim nivoima studija ne može zamisliti bez njihovog konstantnog pristupa najsavremenijoj pravnoj literaturi, tj. najnovijim radovima iz različitih oblasti koje su predmet izučavanja na časovima nastave, ali i predmet seminarskih i drugih radova studenata u toku nastavne godine i u sklopu završnih ispita.

Najzad, vrijedi primijetiti i okolnost da je, u odnosu na Pravni fakultet Univerziteta Crne Gore, komunikacija na relaciji nastavnik – student nerijetko znatno sadržajnija i intenzivnija na partnerskim univerzitetima. Međutim, u tom kontekstu bi trebalo imati u vidu i realna ograničenja Pravnog fakulteta Univerziteta Crne Gore koja su najslikovitije izražena kroz srazmjer broja studenata i nastavnog osoblja.

Prenijeta iskustva ne odnose se samo na proces nastave u užem smislu, već i na način organizacije rada na partnerskim unverzitetima u najširem smislu te riječi, što je svakako dodatna vrijednost samog projekta. Najzad, uspostavljeni mostovi saradnje predstavljaće kvalitetan osnov za dinamiziranje međusobne razmjene studenata i akademskog osoblja, što će doprinijeti obostranoj korisnoj, kontinuiranoj razmjeni iskustava, a u perspektivi moguće i zajednički koncipiranim i vođenim studijskim programima.

5. KOMPANIJSKO PRAVO EVROPSKE UNIJE I CRNOGORSKO PRAVO – IZVORI, STEPEN USKLAĐENOSTI I PERSPEKTIVE

Kompanijsko pravo Evropske unije je u najvećoj mjere regulatorna operacionalizacija dvije slobode. Prva je sloboda poslovnog nastanjivanja garantovana građanima Evropske unije članom 49. Ugovora o funkcionisanju Evropske unije (UFEU), u smislu koje državljani svih država članica Evropske unije imaju pravo kako da osnivaju tako i upravljaju

različitim oblicima obavljanja privredne djelatnosti na stabilan i trajan način, pod istim uslovima kojima je to omogućeno državljanima same države članice na čijoj se teritoriji vrši poslovno nastanjivanje. Druga je sloboda poslovanja, ustanovljena članom 16. Povelje Evropske unije o temeljnim pravima, s tim što treba naglasiti da je ova sloboda formalno postala dio (primarnog) prava Evropske unije tek stupanjem na snagu Lisabonskog ugovora, 2009. godine, u kom trenutku je najveći dio aktuelnih izvora kompanijskog prava Evropske unije već bio snazi i u punoj primjeni na teritoriji država članica. Odatle se može smatrati da je primarni razlog uspostavljanja posebnog i relativno autonomnog sistema kompanijskog prava Evropske unije promocija i regulatorna razrada temeljnih sloboda unutrašnjeg tržišta Evropske unije i samog unutrašnjeg tržišta koje na njima najvećim dijelom i počiva. Pomenuti sistem danas, pored naznačenih izvora primarnog prava Evropske unije, čine i različiti oblici regulatornih instrumenata koji spadaju u sekundarno pravo ove nadnacionalne tvorevine poput uredbi, direktiva i formalno neobavezujućih preporuka, pri čemu se svi mogu svrstati u jednu od dvije osnovne kategorije, tj. podoblasti.

U prvom slučaju je riječ o klasičnom, *i.e.* tradicionalnom kompanijskom pravu u sklopu kojeg se primarno uređuju: posebni (evropski) oblici privrednih društava, povezivanje poslovnih registara država članica, zaštita interesa akcionara i tzv. „stejkholdera", osnivanje i održavanje strukture kapitala javnih društava kapitala (eng. „public limited liability companies"), preuzimanje akcionarskih društava, objavljivanje podataka, domaća spajanja i podjele javnih društava kapitala, prekogranična spajanja društava kapitala uopšte, jednočlana društva kapitala i prava akcionara, politika nadoknada direktorima kotiranih društava, te standardi kvaliteta korporativnog upravljanja.[7]

Druga kategorija se u najširem smislu odnosi na finansijsko izvještavanje društava kapitala i primarno obuhvata oblasti računovodstva (*e.g.* standarde izrade godišnjih i konsolidovanih godišnjih finansijskih iskaza) i revizije društava kapitala (s posebnim naglaskom na nezavisni i javni nadzor postupka obavezne revizije).[8]

Vraćajući se i u ovom kontekstu na pristupne pregovore između Crne Gore i Evropske unije, vrijedi na početku istaći da je jedno od prvih poglavlja otvorenih u ovim pregovaorima bilo upravo poglavlje 6 –

[7] Vidi Aneks 1 – Pravna tekovina Evropske unije u oblasti kompanijskog prava.
[8] *Ibid.*

Kompani-jsko pravo.[9] Desilo se to na Međuvladinoj konferenciji o pristupanju Crne Gore Evropskoj uniji još u decembru 2013. godine, čime je proces prilagođavanja crnogorskog kompanijskog prava pravnoj tekovini Evropske unije dobio na političkom značaju i shodno tome ušao u novu, znatno dinamičniju fazu. U tom smislu, u Zajedničkoj poziciji Evropske unije za poglavlje 6. - Kompanijsko pravo, navedena su četiri „završna mjerila", tj. uslova koje Crna Gora mora ispuniti kako bi privremeno okončala pregovore u ovom poglavlju. Kod svakog od četiri mjerila, obaveza se prvenstveno sastoji donošenju novih ili izmjeni postojećih zakonskih akata, sa ključnim ciljem punog usaglašavanja nacionalnog sa pravom Evropske unije u datoj oblasti. Riječ je o sljedećim obavezama:

1. Donošenje Zakona o tržištu kapitala i odgovarajuće podzakonske regulative sa primarnim ciljem usaglašavanja crnogorskog regulatornog okvira tržišta hartija od vrijednosti sa odredbama Direktive Evropskog parlamenta i Savjeta 2004/109/EC od 15. decembra 2004, o usklađivanju zahtjeva za transparentnošću u vezi s informacijama o izdavaocima čije su hartije od vrijednosti uvrštene za trgovanje na organizovanom tržištu i o izmjeni Direktive 2001/34/EC (u daljem tekstu: "Direktive o transparentnosti").
2. Donošenje novog Zakona o privrednim društvima radi usaglašavanja sa pravom Evropske unije, a posebno uvođenje i razrada koncepta prekograničnog spajanja društava kapitala;
3. Potpuno usaglašavanje crnogorskog pravnog okvira preuzimanja akcionarskih društava sa Direktivom 2004/25/EC Evropskog parlamenta i Savjeta od 21. IV 2004, o ponudama za preuzimanje (u daljem tekstu: Direktiva o preuzimanju);
4. Potpuno usaglašavanje crnogorskog zakonodavstva u dijelu računovodstva revizije sa pravom Evropske unije i uspostavljanje nezavisnog i adekvatno finansiranog tijela za javni nadozor i obezbjeđenje kvaliteta postupka obavezne (zakonske) spoljne revizije društva.[10]

U trenutku pisanja ovog teksta, tačno pet godina nakon otvaranja pristupnih pregovora u poglavlju 6. – Kompanijsko pravo, sa priličnom

[9] U Crnoj Gori se koristi naziv „Privredno pravo", što je, naravno, pogrešno, ne samo zbog pogrešnog prevoda naziva na engleskom („Company law"), već i zbog sadržine acquis-ja u ovom poglavlju, koji se isključivo odnosi na privredna društva.

[10] U junu, odnosno julu 2016. godine, donijeti su Zakon o računovodstvu („Sl. list CG", br. 52/16) i Zakon o reviziji. Zakon propisuje i obavezno osnivanje Savjeta za reviziju, kao posebnog tijela za praćenje procesa primjene standarda revizije, čije članove, na predlog Ministarstva finansija, imenuje Vlada Crne Gore.

sigurnošću možemo reći da se Crna Gora se nalazi pred njihovim zatvaranjem. Naime, prateći redosljed postavljenih mjerila, konstatujemo sljedeće. Prvo, Zakon o tržištu kapitala,[11] koji je u cjelini usklađen sa odgovarajućom pravnom tekovinom Evropske unije,[12] stupio je na snagu početkom 2018. godine. Drugo, Nacrt Zakona o privrednim društvima bio je na javnoj raspravi krajem 2017. godine i njegovo usvajanje u Skupštini Crne Gore očekuje se u prvoj polovini 2019. godine, nakon što Evropska komisija izvrši uvid u aktuelnu verziju teksta i potvrdi punu usaglašenost ovog ključnog zakonskog akta sa kompanijskim *acquis*-jem. U pogledu trećeg završnog mjerila, koje se tiče usaglašavanja nacionalnog (crnogorskog) kompanijskog prava sa odredbama Direktive o preuzimanju, potrebno je naglasiti da je Crna Gora već u trenutku otvaranja pregovora u Poglavlju 6. - Kompanijsko pravo imala Zakon o preuzimanju akcionarskih društva koji je u najvećoj mjeri bio usaglašen sa Direktivom o preuzimanju. Odatle je ovo mjerilo predstavljalo i najlakšu od četiri obaveze (mjerila). Shodno tome, isto je ispunjeno u junu 2016. godine, donošenjem Zakon o izmjenama i dopunama Zakona o preuzimanju AD („Sl. list CG“, br. 52/16). Najzad, u pogledu četvrtog mjerila, sredinom 2016. godine, stupio je na snagu novi Zakon o računodstvu,[13] a početkom 2017. godine i Zakon o reviziji.[14]

Dakle, očekivanim skorim usvajanjem novog Zakona o privrednim društvima biće ispunjen i posljednji, najsloženiji uslov za privremeno zatvaranje pregovora u poglavlju 6. – Kompanijsko pravo. Na drugoj strani, to što se sa ispunjenjem ovog mjerila čekalo prilično dugo, svakako se ne može opravdati samo i isključivo složenošću i zahtjevnošću izrade i usklađivanja nacionalnog kompanijskog zakona sa brojnim odredbama acquis-ja koje treba da prenese u nacionalni pravni sistem, ali se može pravdati, makar se tako čini, potrebom da se transpozicione odredbe dodatno upodobe potrebama i specifičnostima nacionalnog ekonomskog i šireg društvenog sistema, što je ne manje važan zadatak i obaveza zakonodavca.

Naravno, čak i nakon privremenog zatvaranja pregovora u ovom poglavlju, sve do dana pristupanja, Crna Gora će biti u obavezi da prati dešavanja na polju razvoja kompanijskog prava Evropske unije i blagovre-

[11] Zakon o tržištu kapitala ("Sl. list CG", br. 01/18).

[12] Kao i drugi zakonski akti usvojeni u kontekstu obaveza Crne Gore u pristupnim pregovorima sa Evropskom unijom, ovaj je zakonski tekst nakon javne rasprave dostavljena Evropskoj komisiji na saglasnost u smislu potvrde pune usklađenosti sa pravnom tekovinom Evropske unije.

[13] Zakon o računovodstvu, "Službeni list Crne Gore", br. 052/16 od 09.08.2016.

[14] Zakon o reviziji, "Službeni list Crne Gore", br. 001/17 od 09.01.2017.

meno usaglašava nacionalno zakonodavstvo i institucionalni sistem sa istima. Kako sada stvari stoje, ta posljednje će biti najvidljivije na planu sinhonizacije i međusobnog povezivanja Sistema interkonekcije evropskih poslovnih registara, te na planu djelovanja Savjeta za reviziju – institucionalnog okvira za nadzor nad radom ovlašćenih revizora i društava za reviziju.

INFORMACIJA ZA STUDENTE I PLAN RADA
KOMPANIJSKO PRAVO

	Naziv predmeta:	KOMPANIJSKO PRAVO		
Šifra predmeta	*Status predmeta*	*Semestar*	*Broj ECTS kredita*	*Fond časova*
	Obavezan	IV	6	60+15/4+1
Studijski programi za koje se organizuje*:* Akademske osnovne studije PRAVNOG FAKULTETA , pravni odsjek – PODGORICA, 2019/20 (studije traju 6 semestara, 180 ECTS kredita).				
Uslovljenost drugim predmetima*:* Nije uslovljen položenim ispitom iz drugog predmeta.				
Ciljevi izučavanja predmeta*:* Na kraju kursa iz ovog predmeta student treba da je osposobljen da definiše i raspravlja o različitim formama (metodima) obavljanja privredne djelatnosti, uključujući privredna društva i preduzetnika; da definiše i obrazloži njihovu svojinsku, upravljačku i organizacionu strukturu; da simulira i demonstrira postupak osnivanja, povezivanja i prestanka privrednih društava.				
Ishodi učenja: na kraju kursa student treba da: 1. definiše i objasni pojedine oblike privrednih društava; 2. razlikuje, razvrsta pojedine oblike privrednih društava i uporedi njihove prednosti i nedostatke; 3. pravilno tumači i primijeni propise koji uređuju pojedine oblike privrednih društava koji su relevantni za njIhovo osnivanje, organizaciju i prestanak; 4. analizira konkretno činjenično stanje koje se odnosi na pravni položaj i organizaciju konkretnog privrednog društva radi pravilne primjene pravnih pravila; 5. utvrdi i ocijeni relevantne činjenice u postupku osnivanja i prestanka privrednog društva i postupku donošenja odluka od strane organa tog društva; 6. pripremi i sastavi osnivačka aktapotrebna za registraciju privrednog društva koja su po osnovnim elementima i sadržini usklađena sa propsima i voljom osnivača.				
Ime i prezime nastavnika i saradnika: Prof. dr Dragan Radonjić – nastavnik;				
Metod nastave i savladavnja gradiva: Metodi nastave uključuju predavanja, diskusije, istraživanja i pisane projekte ili seminare, i individualne zadatke i aktivnosti				
Praktična nastava obavlja se na dijelu časova predviđenim za predavanja (10 časova) i na vježbama (15 časova) i obuhvata: predavanja gostujućih predavača, posjete Privrednom sudu, posjete Komisiji za hartije od vrijednosti Crne Gore, posjete Centralnoj depozitarnoj agenciji, upoznavanje sa sudskom praksom (u sudu / ili u okviru nastave na fakultetu), analizu sudske prakse od strane studenata u obliku seminarskih radova.				
Sadržaj predmeta:				

Pripremne nedjelje I nedjelja II nedjelja III nedjelja IV nedjelja V nedjelja VI nedjelja VII nedjelja VIII nedjelja IX nedjelja X nedjelja XI nedjelja XII nedjelja XIII nedjelja XIV nedjelja XV nedjelja Jun 2018. Jun 2018	Informacije o predmetu;; Izvori; Forme obavljanja priv. djelatnosti; Individualni trgovac; Privredna društva (pojam i vrste; Sistemi osnivanja; Registracija; Pravni subjektivitet¸ Ind-vidualizacija; Zastupanje; Probijanje pravne ličnosti; Ortačko društvo (pojam, priroda, razgraničenja, pro&con, bitni eleme, osnivanje, međusobni odnosi ortaka; prema trećim licima; imovina; disolucija); Komanditno društvo (pojam, karakteristike, pro&con, osnivanje, međusobni odnosi članova, prestanak); Društvo sa ograničeno odgovornošću (pojam, jednočlan, karakte-ristike, pro&con, osnivanje, organi, kapital, prestanak); Akcionarsko društvo 1 (pojam, karakteristike, jednočlano, pro&con, prava i obaveze akcionar). Praktična nastava – Posjeta Privrednom sudu (mjesto održavanja: Privredni sud Podgo-rica); analiza sudske prakse (mjesto održavanja: Pravni fakultet – sala II); Akcionarsko društvo 2 (načini osnivanja, organizaciona struktura: skupština, odbor direktora, izvršni direktor, sekretar, revizor); Praktična nastava – Posjeta Komisiji za hartije od vrijednosti (mjesto održavanja: Komisija za hartije od vrijednosti Podgorica); analiza praktičnih primjera (mjesto održa-vanja: Pravni fakultet – sala II); Red. KOLOKVIJUM (materija obuhvaćena ciklusom predavanja od 05. Feb - 12. marta / Glava 1- 6 Udžbenika); Akcionarsko društvo 3 (finansijska struktura : osnovni kapital; akcije, obveznice;); Pop. KOLOKVIJUM (uključuje materiju obuhvaćenu za redo-vni kolokvijum); Akcionarsko društvo 4 (Povećanje, smanjenje kapitala; Sticanje sopstvenih akcija;Dividende;Prestanak) Preuzimanje akcionarskih društava 5 (uslovi, način, postupak, javna ponuda, prava i obaveze uče-snika); Restrukturiranje privrednih društava (pripajanje, spajanje, podjele, promjene organizacionog oblika) ; Praktična nastava – Posjeta Centralnoj depozitarnoj agenciji (mjesto održavanja: Centralna depoziotarna agencija Podgorica); analiza praktičnih primjera (mjesto održavanja: Pravni fakultet – sala II); Prestanak privrednih društava (likvidacija i stečaj); Reorganizacija društva u stečaju; Z a v r š n i i s p i t (Materija obuhvaćena ciklusom predavanja od 26. marta - 14. maja / Glava 7- 12 Udžbenika); Popravni završnog ispita (uključuje materiju obuhvaćenu za završni ispit)
Opterećenje studenata	
Nedjeljno	U semestru
6 kredita x 40/30 = 8 sati Struktura: 4 sati predavanja 1 sati vježbi 3 sati individualnog rada studenta (priprema za laboratorijske vježbe, za kolokvijume, izrada domaćih zadataka) uključujući i konsultacije	Nastava i završni ispit: (8 sati) x 16 = 128 sati Neophodna priprema prije početka semestra (administracija, upis, ovjera): 2 x (8 sati) = 16 sati Ukupno opterećenje za predmet: 6 x 30 = 180 sati Dopunski rad za pripremu ispita u popravnom ispitnom roku, uključujući i polaganje popravnog ispita od 0 - 30 sati. Struktura opterećenja: 128 sati (nastava) + 16 sati (priprema) + 30 sati (dopunski rad)
Studenti su obavezni da pohađaju nastavu, učestvuju u debatama i izradi testova. Studenti koji izrade seminarski rad, po pravilu. javno ga brane, dok ostali studenti učestvuju u debati nakon prezentacije rada.	
Literatura: A) Obavezna literatura: Dragan Radonjić: "Pravo privrednih društava" (udžbenik), Podgorica, 2008; B) Dodatna literatura: "Komentar Zakona o privrednim društvima", Podgorica, 2003. god.; Zakon o privrednim društvima ('Sl. list RCG', 06/02, 17/07, 80/08, 62/08, 040/10, 036/11, 040/11) i Zakon o stečaju ('Sl. list CG', br. 001/11, 053/16, 032/18, 062/18); *Zakon o preuzimanju akcionarskih društava ("Sl. list CG", br. 18/2011 i 52/2016);* M. Vasiljević, V. Radović, T. Jevremović Petrović, *Kompanijsko pravo Evropske unije,* Pravni fakultet Univerziteta u Beogradu; Adriaan Dorresteijn, Tiago Monteiro, Christoph Teichmann, Erik Werlauff, *European Corporate Law*, second edition, Kluwer Law International, Alphen aan den Rijn, 2009. Mads Andenas, Frank Wooldridge, *European Comparative Company Law,* Cambridge University Press, Cambridge, 2009.	

Milan Marković*

USTAVNO PRAVO U KONTEKSTU EVROPEIZACIJE NASTAVNOG PLANA I PROGRAMA PRAVNOG FAKULTETA UNIVERZITETA CRNE GORE – ANALIZA

1. UVOD

Evropska unija je nadnacionalni entitet koji se stalno razvija, a njena duga istorija, vodeće ideje, vrijednosti i uticaj, učinili su je najvećom transformativnom silom na evropskom kontinentu. Evolucija Unije i njenih država članica prvenstveno se manifestuje u zakonu.[1] Stoga je važno da studenti Pravnog fakulteta Univerziteta Crne Gore dobiju sveobuhvatnu elaboraciju prava EU u svim njenim aspektima, a ne samo Ustavnog prava. Evropska unija je prešla dug put od svojih početaka kao Evropska zajednica za ugalj i čelik do blisko povezanog saveza zemalja koje dijele ideju jedinstva.

Kao jedan od temelja moderne evropske zemlje, Ustavno pravo predstavlja osnovni temelj za sve zakonodavne i pravne aktivnosti zemlje i njenih građana. Stoga je od velikog značaja da se student prava danas upozna ne samo sa EU u cjelini, već i sa odnosom i međusobnim uticajem između prava EU i Ustavnog prava. Drugi značajan aspekt uticaja na savremeno Ustavni pravo je i Savet Evrope. Svi ovi faktori doprinijeli su uspostavljanju evropskog Ustavnog prava današnjice.

Još jedan važan aspekt koji treba uzeti u obzir jeste fundamentalna uloga Ustavnog prava u organizaciji i funkcionisanju Crne Gore kao zemlje. Njegov značaj je još veći s obzirom na istoriju zemlje, kako je sadašnji Ustav Crne Gore[2], usvojen 2007. godine, učvrstio i potvrdio obnavljanje nezavisnosti zemlje nakon skoro jednog vijeka. Ovo je samo jedan primjer, i kao takav, značaj Ustavnog prava u nacionalnom i međunarodnom kontekstu je neupitan. Isto tako je i značaj Ustavnog prava na Pravnom fakultetu UCG. Vjerovanja i vrijednosti svakog društva utkani su u tkivo njihovih zakona i nigdje to nije očiglednije nego u Ustavnom pravu.

*Prof. dr Milan Marković je redovni profesor Pravnog fakulteta i Fakulteta političkih nauka Univerziteta Crne Gore

[1] Kosutić, Budimir P, *Osnovi prava Evropske unije*, CID, Podgorica 2014;

[2] *Ustav Crne Gore*, „Sl. list Crne Gore" 01/07, 25.10.2007.

2. ANALIZA NASTAVNOG PLANA I PROGRAMA OD STRANE EKSPERTSKOG TIMA PRAVNOG FAKULTETA UNIVERZITETA U LJUBLJANI

Profesori Pravnog fakulteta Univerziteta u Ljubljani su primijetili da postojeći nastavni plan i program za predmet Ustavno pravo već ima elemente prava EU u nekoliko područja materije, ali tvrde da dalje širenje i uvođenje evropskog elementa u druge segmente nastavnog plana i programa je takođe poželjno. Konkretnije, detaljniji uvid u praksu Evropskog suda za ljudska prava i Suda pravde Evropske unije, kao i poređenje prakse ovih sudova sa praksom Ustavnog suda Crne Gore.

Imajući to u vidu, preporučili su određene izmjene i dopune kako bi se ažurirala bibliografija predmeta Fakulteta, kako bi se bolje uklopio evropski aspekt teme, posebno promjene prouzrokovane Lisabonskim ugovorom unutar EU[3]. Ove promjene su blagovremeno priznate i implementirane u nastavni plan i program.

3. PRIMJENA ISKUSTAVA I ZNANJA STEČENIH KROZ CABUFAL PROJEKTNE RADIONICE I STUDIJSKE POSJETE

U okviru CABUFAL projekta, profesori i stručni saradnici Pravnog fakulteta Univerziteta Crne Gore imali su priliku da se upoznaju sa primjenom dobre akademske prakse, savremenim nastavnim metodama i dugogodišnjim iskustvom u visokom obrazovanju partnerskih univerziteta u regionu, EU i Evropi. Osnovni cilj je unaprijeđenje i poboljšanje kvaliteta cjelokupnog obrazovnog sistema i predmetnih programa Pravnog fakulteta Crne Gore. To se postiže kroz razmjenu znanja i iskustava između regionalnih i evropskih univerziteta s dugom tradicijom i odličnim rezultatima u nastavnom i akademskom radu (London, Sarbriken, Ljubljana, Zagreb, Split, Skoplje).

Jedan od najznačajnijih doprinosa ovog projekta je potreba za većom „evropeizacijom“ predmeta koji se predaje i studira na Pravnom fakultetu UCG, uključujući i predmet Ustavnog prava. Ove promjene u materiji koje uvode nove evropske elemente (EU i Savjet Evrope) transformisale bi nastavni plan i program Fakulteta u jedan uporediv i kompatibilan program sa drugim evropskim fakultetima i univerzitetima.

[3] Za detaljniji spisak literature za predmet Ustavno pravo pogledati nastavni plan i program na kraju ovog članka.

Veoma važan aspekt CABUFAL projekta su razne prezentacije i predavanja na Pravnom fakultetu Univerziteta Crne Gore od strane eminentnih profesora i eksperata sa partnerskih univerziteta iz mnogih oblasti prava, a ne samo Ustavnog prava. Razne diskusije, razgovori i studijske posjete takođe su značajno doprinijeli ovim akademskim oblastima u Crnoj Gori. Sve ove aktivnosti imale su značajnu ulogu u obogaćivanju i unaprijeđenju proučavanja prava kroz dodavanje mnogih evropskih aspekata i elemenata. Imajući to u vidu, a u skladu sa savremenim transformacijama u Ustavnom pravu, izvršeno je nekoliko promjena u nastavnom planu i programu Ustavnog prava na Pravnom fakultetu UCG - konkretno, novi fokus na aktivnosti Evropskog suda za ljudska prava, Suda pravde Evropske unije i reformu EU još od Lisabonskog ugovora, između ostalog.

Nadalje, u cilju modernizacije i unaprijeđenja našeg obrazovnog sistema i kvaliteta predavanja na Pravnom fakultetu UCG, te kako bi se studentima dalo više praktičnih iskustava i savremenih znanja za njihove buduće karijere, uložili smo dodatne napore za implementaciju praktične nastave i obuke u Vladinim i državnim organizacijama (Ustavni sud, Upravni sud, Skupština Crne Gore i dr.), kao i za organizovanje većeg broja predavanja gostujućih predavača - stručnjaka iz različitih pravnih oblasti (iz Crne Gore i inostranstva).

Konačno, projekat je donio mnoge koristi akademskom pojedincu, jer je profesorima i saradnicima Pravnog fakulteta Univerziteta Crne Gore pružena izvanredna prilika da slušaju predavanja i prezentacije svojih istaknutih kolega sa partnerskih univerziteta, kako bi ostali na tim univerzitetima kroz organizovane studijske posjete, a oni stekli veliko znanje i iskustvo koje treba primijeniti u njihovim budućim akademskim nastojanjima i pedagoškom radu. Na ovaj način, izvrsnost i standardi evropskog akademskog obrazovanja našli su mjesto na Univerzitetu Crne Gore.

4. USTAVNO PRAVO NA PRAVNOM FAKULTETU UNIVERZITETA CRNE GORE - TRENUTNO STANJE I IZAZOVI

Ustavno pravo kao akademski predmet omogućava razumijevanje osnovnih pravnih instituta ove grane prava, kao i Evropskog ustavnog prava i ustavne demokratije u savremenim pravnim sistemima država članica EU. Studenti će proučavati Ustav Crne Gore, druge istaknute ustavne tekstove i pravne akte, kao i srodne zakone kako bi ih bolje razumjeli i interpretirali. Oni će takođe istražiti i razmotriti različite probleme u Ustavnom pravu, ideje i koncepte ustavnosti, ustavni patriotizam, osnovna

ljudska prava i slobode uspostavljene međunarodnim pravom i njihov uticaj na današnje Ustavno pravo.

S obzirom na značaj evropskih integracija za crnogorski pravni sistem, proučavanje ovih koncepata će obuhvatiti i Evropsku uniju - Evropsko ustavno pravo, budući da se organizacija i aktivnosti EU i njenih institucija regulišu zakonima EU koji su slični nacionalnom Ustavnom pravu. Ova znanja će se proširiti kroz studijske posjete istaknutim institucijama iz ove oblasti prava, predavanja gostujućih predavača (stručnjaci Ustavnog prava), a kasnije i mogućnostima stažiranja u navedenim institucijama.

Još jedan vrijedan uvid u tumačenje i primjenu prirode ove oblasti prava je aktivnost i praksa Ustavnog suda Crne Gore. Pored mnogih aspekata nacionalnog ustavnog prava, studenti će takođe imati priliku da istraže savremene tendencije i ideje koje su uticale na razvoj ove oblasti prava kroz praksu i Evropskog suda za ljudska prava i Suda pravde EU. To će uključiti važne odluke svih triju sudova i njihovo međusobno poređenje. Ove institucije su unijele promjenu u mnoge oblasti prava, ne samo u Ustavno pravo, i stoga su od vitalnog interesa za svakog učenjaka prava.

Zakoni i norme Ustavnog prava se rijetko mijenjaju, a novi ustavni zakoni se još rjeđe usvajaju. Oni su takođe često veoma apstraktni po karakteru, i s obzirom na njihov stav o hijerarhiji pravnog sistema, bilo da se radi o EU ili jednoj zemlji, to je onako kako bi trebalo da bude. S druge strane, to dramatično povećava ulogu sudova i uticaj njihovih odluka. Zbog toga je sudska praksa od suštinskog značaja za razumijevanje, razvoj i unaprijeđenje Ustavnog prava u Crnoj Gori i Evropi.

Naziv predmeta:	USTAVNO PRAVO			
Šifra predmeta	*Status predmeta*	*Semestar*	*Broj ECTS kredita*	*Fond časova*
	Obavezan	*II*	*8*	*3P +1V*
Studijski program za koji se organizuje: Akademski osnovni studijski program Pravnog fakulteta (studije traju 6 semestara, 180 ECTS kredita).				
Uslovljenost drugim predmetima: Nema uslova za prijavljivanje i slušanje predmeta				
Ciljevi izučavanja predmeta: Omogućiti studentima da steknu znanja o osnovnim i naprednim ustavnim konceptima, institutima i idejama Ustavnog prava, te da upoznaju komparativna ustavna rješenja i ustavni sistem Crne Gore i Evrope. Nakon položenog predmeta Ustavnog prava, student će moći da: - Prepozna zemlje sa ustanovljenim konstitucionalizmom; - Analizira osnovne institute ustavnog prava i ustavne zakone Evropske unije; - Ovlada čitanjem i razumijevanjem ustavnih tekstova, pružajući im kontekste iz stvarnog svijeta, te identifikuju sukobe između "ustavnog i stvarnog" u ustavnoj odredbi i njenoj praktičnoj primjeni; - Prepozna značaj evropskih integracija za ustavni poredak Crne Gore (Ustavni zakon bez granica);				

- Razumije pojam ustavnog patriotizma (Jurgen Habermas), te značaj i ulogu aktivnosti Ustavnog suda, Evropskog suda za ljudska prava i Suda pravde Evropske unije;	
Ime i prezime nastavnika i saradnika: Prof. dr Milan I. Marković	
Metod nastave i savladavanja gradiva: Predavanja, seminari, seminarski radovi, posjete institucijama, konsultacije i debate	
Plan rada:	
Pripremna nedjelja 1. nedjelja 2. nedjelja 3. nedjelja 4. nedjelja 5. nedjelja 6. nedjelja 7. nedjelja 8. nedjelja 9. nedjelja 10. nedjelja 11. nedjelja 12. nedjelja 13. nedjelja 14. nedjelja 15. nedjelja 16. -19. nedjelja	Priprema i upis semestra; Osnovni pojmovi Ustavnog prava; Pojam, vrste i primjena ustava; Ustavna istorija u svijetu, ustavna istorija Crne Gore; Savremena ustavnost svijeta, ustavna demokratija u teoriji i praksi; Osnovni pravni instituti ustavnog prava Evropske unije, Ustav EU; Ustavni patriotizam; Značaj evropskih integracija za ustavni poredak Crne Gore (Ustavni zakon bez granica); I kolokvijum Ustavna načela I: zakonitost i legitimitet, federalizam i decentralizacija;Ustavni principi II: podjela i jedinstvo vlasti, direktna demokratija; Ustavne institucije I: Parlament i Vlada, šef države; Ustavne institucije II: ustavno sudstvo, sudovi, tužilaštvo i ombudsman II kolokvijum Vlast prema Ustavu Crne Gore (2007) i njena osnovna ustavna načela, Ljudska prava i slobode prema Ustavu Crne Gore; Ustavni sud Crne Gore;Praksa Suda pravde Evropske unije i Evropskog suda za ljudska prava; *Završni ispit, Popravni ispit; Ovjera semestra i upis ocjena.*
Obaveze studenta u toku nastave Studenti su obavezni da pohađaju nastavu, vježbe i rade kolokvijume i seminare.	
Opterećenje studenta	
Nedjeljno 8 kredita x 40/ 30 = 13 sati i 30 minuta Struktura: 3 sata predavanja 1 sat seminarskih 9 sati i 30 minuta samostalnog rada	U toku semestra Nastava i završni ispit: (13 sati 30 minuta) x 16 = 216 sati Neophodne pripreme (administracija, upis, ovjera prije početka semestra) 2 x (13 sati i 30 minuta) = 27 sati Ukupno opterećenje za predmet 8x30 = 260 sati Dopunski rad: Dopunski rad za pripremu i polaganje ispita u popravnom roku, uključujući sati za polaganje ispita: preostalo vrijeme od prva dva prema ukupnom opterećenju za predmet 260 sati Opterećenje strukture: 216 sati (predavanja) +27 sati (priprema) + 17 sati (dodatni rad) = 260 sati

Literatura *Obavezna:* - Robert Schütze, European Consitutional Law, 2nd edition, Cambridge University Press, 2015. - Mijat Šuković, Ustavno pravo (Constitutional Law), CID, Podgorica 2009. - Jasna Omejec, Konvencija za zaštitu ljudskih prava i temeljnih sloboda u praksi Europskog suda za ljudska prava, strasbourški acquis (Convention for the Protection of Human Rights and Fundamental Freedoms in practice of the European Court of Human Rights, The Strasbourg acquis), Zagreb, 2013. - Dragoljub Popović, Evropsko pravo ljudskih prava (European Law of Human Rights), Belgrade, 2012. *Dodatna:* - Milan I. Marković, Ustavnopravni eseji (Essays on Constitutional Law), CID, Podgorica 2017. Ciril Ribičič, Ljudska prava i ustavna demokratija: ustavni sudija izmedju negativnog i pozitivnog aktivizma, (Human Rights and Constitutional Democracy – The Constitutional Court Judge between negative and positive activism), Službeni glasnik, Beograd 2012. - Giuseppe de Vergottini, Uporedno ustavno pravo (Comparative Constitutional Law), Belgrade, 2015. - Peter Haberle, Ustavna država (Constitutional State), Zagreb, 2002. - Carl J. Friedrich, Konstitucionalna demokratija, Teorija i praksa u Evropi i Americi (Constitutional Democracy, Theory and Practice in Europe and America), Podgorica, 2005. - Nenad Dimitrijević, Ustavna demokratija shvaćena kontekstualno (Constitutional democracy in context), Belgrade, 2007. - Jan Werner Muller, Ustavni patriotizam (Constitutional patriotism), Belgrade, 2010. - Josef Isensee, Država, ustav, demokracija (State, Constitution, Democracy), Zagreb, 2004.
Oblici provjere znanja i ocjenjivanje: - Dva kolokvijuma oba nose po 20 poena (ukupno najviše 40 poena) - Aktivnost studenta i učestvovanje u debatama: najviše 5 poena - Seminarski rad se ocjenjuje sa najviše 5 poena - Završni ispit 50 poena - Prelazna ocjena se dobija ako se kumulativno skupi 50 poena. *Broj poena:* *90-100;* *80-89;* *70-79;* *60-69;* *50-59;* *Ocjena:* *A;* *B;* *C ;* *D;* *E;*
Napomena: Nema

Ime i prezime nastavnika koji je pripremio podatke: Prof. dr Milan I. Marković
Dodatne informacije o predmetu: Dodatne informacije moguće je dobiti na času, konsultacijama i sajtu: www.pravni.ucg.ac.me.

Velimir Rakočević*

KRIVIČNO PRAVO-POSEBNI DIO NA PRAVNOM FAKULTETU UNIVERZITETA CRNE GORE- NAJBOLJE PRAKSE IZUČAVANJA PREDMETA

1. UVOD

Izučavanje studija prava u Evropi, a posebno krivičnog prava, sadrži integralni pristup, odnosno orijentaciju ka cjelovitosti prilikom tumačenja pravnih normi, sa akcentom na nužnost kritičkog promišljanja, što je zasigurno najznačajniji cilj nastavnog procesa u ovoj oblasti. U fokusu edukacije je, bez sumnje na prvom mjestu rješavanje brojnih kompleksnih krivično pravnih slučajeva, što uključuje visok nivo intelektualnog znanja tj. informacija o načinima rješavanja krivično pravnog problema i izvanrednu sposobnost kognicije i prosuđivanja. To znači da je profesoru Krivičnog prava danas, pored nespornog ekspertskog znanja, potrebno da to znanje prenese studentima na optimalan način, kroz eksplanaciju mnogostrukih korelacija i kauzalnih veza, što omogućava studentima razumijevanje individualnih kriminalnih slučajeva i kod njih oblikuje anticipatorsko razmišljanje u dužem vremenskom periodu i fundira kreativne forme savladavanja gradiva. Višestruki problemi u izučavanju materije krivičnog prava rješavaju se u manjim grupama uz podsticanje odgovarajuće forme interaktivnog učenja. Cilj je ostvariti kompetenciju istraživanja i kompetenciju metoda istraživanja, što se ostvaruje putem tumačenja krivično pravno relevantnih sadržaja predmeta, njihovim pravilnim izborom i korišćenjem. Profesoru je neophodno konstruktivno ophođenje prema studentima kao i multimodalitetni pristup koji obuhvata povezivanje različitih metoda, modusa posmatranja i pluralno mišljenje sa naglašenom kompetencijom u riješavanju krivičnih slučajeva.

Izučavanje Krivičnog prava oslonjeno je na naučnu i kritičku edukaciju, odnosno kritičko razmišljanje, što je za studente sigurno veliki izazov, budući da isključuje pogrešnu raniju praksu učenja napamet koja uzrokuje nisku retenciju. Taj iskorak je zahtjevan jer traži otvorenost za nove izazove kao i spremnost na vlastitu refleksiju i pozicioniranje.

*Prof. dr Velimir Rakočević je redovni profesor Pravnog fakulteta Univerziteta Crne Gore.

2. STRATEGIJA EDUKACIJE I KOMUNIKACIJA U NASTAVI KRIVIČNOG PRAVA

Za svakog nastavnika Krivičnog prava ključno je da razvije kod studenata vještinu kritičkog razmišljanja i rješavanja problema u vezi sa analizom krivičnih predmeta i dokazima. Veoma je važno razviti odgovarajuću kulturu diskusije. Nije neophodno integralno znanje koje se transferiše studentima da oni do kraja kritički provjere i rekonstruišu. Najvažnije je da postoji balans između reproduktivnog učenja i aktivne kritičke saradnje i da su oblici nastave koji koriste za prenos znanja ključni dio silabusa Krivičnog prava. Materija krivičnog prava je ubjedljivo najinteresantnija studentima i svako predavanje isprate sa pojačanom dozom adrenalina s obzirom da se uključuju u rješavanje delikatnih krivično forenzičkih slučajeva i dilema. To daje profesorima krivičnog prava prilično lagodnu poziciju koja nije opterećena problemima koji postoje u drugim oblastima prava, gdje su pretežno reproduktivni strukturni djelovi dominantni, a predavanja u kojima se traži direktna participacija studenata nedovoljno posjećena. Budućim sudijama krivičarima, državnim tužiocima i drugim elitnim pravnim profesijama nastavnici moraju tokom prenošenja znanja akcenat staviti na kritičko mišljenje i komunikacijske vještine razvjajući jake ličnosti. U toku studija oni postaju nazaobilazni činioci nastave posebno u dijelu stručnih rasprava na studijama slučaja. Rad sa najboljim studentima podrazimijeva maksimalno razvijanje seta intelektualnih kompetencija. U savremenom društvu znanja sa naglašenom ekspanzijom inkriminacija različitih oblika profesoru krivičnog prava je imperativ da edukuje studente koji kritički razmišljaju što je sastavni dio njihove emancipacije i da je spreman u svakom trenutku da odgovori studentima na sva pitanja i dileme. To podarumijeva bitno drugačiju strukturu stidija prava koja znači prevashodno rad sa manjm grupama studenata i više mentorskog rada. Sve to je teško realizovati na Pravnom fakultetu UCG imajući u vidu da na pozitivno pravnim disciplinama svaki profesor u prosjeku ima višestruko veći broj studenata.

Da budem precizan, savremeno izučavanje krivičnog prava podrarazumijeva da se u nastavni plan i program inkorporiraju oni sadržaji koj inkliniraju jedinstvu krivično pravnih i krivičnih nauka pri čemu dominiraju istraživački elementi koji omogućavaju shvatanje suštine i smisla krivično pravnih normi. Nastavni proces u ovoj oblasti uključuje interakciju nastavnika i studenata u dijelu kreativnosti, kritičnosti i fleksibilnosti što za rezultat ima strukturalnu kognitivnu modifikaciju. Bitno je da u nastavnom procesu što efikasnije idemo ka cilju ostvarenja saznajnih

i praktičnih domena sudenata krivičnog prava razvijajući njihove saznajne i psihomotorne sposobnosti. Profesor mora studenta osposobiti da pravilno prosuđuje prilikom rješavanja kompleksnih krivično pravnih predmeta, kombinuje više različitih mogućnosti i kreira rješenje problema.

Nova vizija izučavanja krivičnog prava na Pravnom fakultetu Univerziteta Crne Gore shodno novom programu studija kome su prethodile duboke reforme u cjelosti je fokusirana na studente sa značajnim poboljšanjem transfera zmanja. Suština je razviti viši nivo specifičnih kompetencija iz krivično pravne oblasti. Imajući u vidu obim i dinamiku inkriminacija sve više se ukazuje potreba razvijanja generičkih i promjenljivih kompetencija koje osiguravaju potreban nivo znanja i vještina kod studenata za rješavanje različitih problema u krivičnom pravu.

3. KRIVIČNO PRAVO –POSEBNI DIO U OBRAZOVNOM SISTEMU EVROPSKE UNIJE

Za potrebe CABUFAL projekta neophodno je objasniti razliku između krivičnog prava Evropske unije i evropskog krivičnog prava. Krvično pravo Evropske unije sadrži sistem pravnih propisa donijetih u svrhu harmonizacije krivičnih zakonodavstava država članica u oblasti materijalnog, procesnog i izvršnog krivičnog prava. S druge strane, evropsko krivično pravo obuhvata krivično pravo Savjeta Evrope koje konstituišu konvencije, sporazumi i odluke Evropskog suda za ljudska prava kao i krivično pravo koje se ubrzano razvija u Evropskoj uniji. Dakle evropsko krivično pravo je znatno širi pojam od krivičnog prava EU. Takođe treba istaći da postoji snažna tendencija ka donošenju jedinstvenog krivičnog zakonika Evropske unije koji bi se direktno primjenjivao u svim državama članicama što će se neminovno vrlo brzo ostvariti. Krivično pravo EU razlikuje se i od transnacionalnog krivičnog prava. Transnacionalno krivično pravo sadrži norme nacionalnog prava koje se tiču primjene nacionalnog krivičnog zakonodavstva na krivična djela sa elementima inostranosti i to su odredbe nacionalnog prava svake države, dok krivično pravo EU ima nadnacionalni karakter.

Na osnovu relevantnih pokazatelja može se sa sigurnošću tvrditi da je krivično pravo – posebni dio jedna od najrazvijenijih grana prava Evropske unije koja je znatno organizovanija i u odnosu na krivično pravo – opšti dio. To potvrđuje veliki broj evropskih pravnih akata koji regulišu različita krivična djela. Iskorak više je učinjen sačinjavanjem sistematizacije krivičnih djela prema grupnom zaštitnom objektu ili tiplogijama. Sva krivična djela iz kategorije teških inkriminacija koja imaju razorne

posledice po žrtvu i Evropsku uniju integralno su regulisana i brojni autori za ove delikte koriste termin evropska krivična djela. Slično nacionalnim klasifikacijama i kvalifikacijama i u evropskom krivičnom pravu delikti su podijeljeni prema pravno zaštićenom dobru, tako da je identifikovano više grupa krivičnih djela od kojih izdvajamo: krivična djela sa elementima organizovanog kriminaliteta, krivična djela protiv finansijskih interesa EU, krivična djela protiv jedinstva evropskog tržišta, krivična djela korupcije, krivična djela sa elemntima terorizma, krivična djela protiv ljudskog dostojanstva, krivična djela protiv slobode i prava čovjeka i građanina, krivična djela protiv javnog zdravlja, krivična djela protiv javne administracije, krivična djela protiv pravosuđa, krivična djela protiv životne sredine, krivična djela protiv bezbjednosti računarskih podataka i slično. U metodičko-didaktičkom smislu postavlja se pitanje opravdanosti direktne primjene konvencija EU (kojih ima jako veliki broj iz krivično pravne oblasti) u nacionalno zakonodavstvo. Mislim da je mnogo bolje rješenje iznaći pravilan model implementacije evropske direktive. Što se Crne Gore tiče, u jednom broju slučajeva naša država je imala regulisana krivična djela u krivičnom zakoniku koja su ratifikacijom usklađena sa standardima EU. Crna Gora je dominantno preuzimala nova krivična djela od EU i u cjelosti normirala. U odnosu na tehnike implementacije crnogorski zakonodavac se odlučio za korišćenje više varijanti. Najčešća opcija je bila tehnika adaptacije određenog akta EU u crnogorsko zakonodavstvo, što obuhvata prevođenje i prilagođavanje kontekstu crnogorskog pravnog sistema. Prednost ove tehnike je kompatibilnost sa crnogorskim zakonodavstvom i sudskom praksom. Druga tehnika obuhvata direktno preuzimanje teksta konvencije koja se inkorporira u izvornom obliku u nacionalno zakonodavstvo pri čemu postoji problem denotacije i konotacije, odnosno neusaglašenosti terminologije u dijelu krivično pravnih standarda.[1] Primjenjuje se i tehnika interpretacije odredbi krivičnog prava crnogorskog zakonodavstva u duhu pravne regulative EU od strane sudova.

Izučavanje krivičnog prava u Evropi prikazaćemo korišćenjem iskustava na Univerzitetskom koledžu Kork shodno koncepcije dr Shane Kilcommins[2] i na jedinstvenom njemačkom konceptu. Tokom pohađanja i po završetku kurska krivičnog prava studenti bi trebalo da budu sposobni da: razlikuju krivično pravo kao pisana pravila i krivično pravo u praksi; ukratko opišu i istraže promjene u kažnjavanju tokom vremena; utvrde odlučujuće činioce koji oblikuju kažnjavanje u savremenom društvu; primijene različite teorijske pristupe fenomenu krivičnog prava; istraže stepen do kog takve teorije mogu da objasne događaje u

savremenom društvu, društveno-pravno tumače slučajeve nacionalnog krivičnog prava, nacionalno zakonodavstvo i proporuke za delovanje; povežu promjenu u vrijednostima i sklonostima prilikom kažnjavanja sa promjenama u naglašavanju značaja krivičnog prava i postupka; procijene aktuelnu politiku krivičnog prava s obzirom na uticaj koji može imati na optužene, žrtve, agencije i političare i ispitaju stepen do kog krivično pravo zaista jeste objektivno i nepristrasno.

Studije krivičnog prava u Njemačkoj pa i pravnih nauka uopšte bitno se razlikuju u odnosu na druge države Evrope. Prepoznate su po tome što je akcenat na upoznavanju studenata sa tehnikama rješavanja i obrade krivičnih slučajeva u praksi. U radu na konkretnim krivično pravnim predmetima studenti se edukuju egzaktnim procedurama za obradu i rješavanje kriminalnog fenomena, zatim uvježbavaju izradu pisanih akata od naredbe za sporovođenje istrage preko optužnice do krivične presude. U to se uklapaju stručna mišljenja profesora koji tematiziraju istorijsku i komparativnu dimenziju tehnike izrade krivično pravnih akata što predstavlja krucijalnu dimenziju studiranja u ovoj državi.

Može se konstatovati da je edukacija iz oblasti krivičnog prava u Njemačkoj zasnovana na koncepciji izlaganja slučajeva čija obrada ima primat na svim oblicima izvođenja nastave i provjere znanja. Pisanje radova iz krivično pravne oblasti u kojima se obrađuju konkretni slučajevi je primarni oblik kontrole znanja studenata na kolokvijumima i završnim ispitima uz izuzetak u odnosu na usmeni dio završnog ispita.

U strukturiranju rješenja krivičnog slučaja polazi se kroz više faza. U prvoj fazi vrši se analiza stvarnog stanja. Druga faza obuhvata pronalaženje krivično pravnog osnova. U trećoj fazi rješavaju se prigovori a u četvrtoj se vrši pravno ispitivanje. Peta faza sadrži izradu pravnog akta.[3] Sve ovo bi moglo dovesti do znatno većih promjena koje bi značile potpuno razgraničenje između akademskih studija prava i drugih oblika pravničke edukacije u smislu realizacije vježbi iz pojedinih pravnih disciplina.[4]

4. PREDLOG EVROPEIZACIJE KURUKULUMA KRIVIČNO PRAVO-POSEBNI DIO NA PRAVNOM FAKULTETU UNIVERZITETA CRNE GORE

Sistematizacija krivičnih djela u savremenim zapadnim zakonodavstvima pretežno se zasniva na kriterijumu težine učinjenog djela. Tako se u Francuskoj razlikuju tri osnovne kategorije. Prvu i najtežu čine zločini (franc. en crimes), drugu čine prestupi (délits), u trećoj su prekršaji (contra-

ventions). Švedsko krivično zakonodavstvo takođe prihvata ovu podjelu. Holandsko zaknodavstvo svrstava krivična djela u kategoriju ozbiljnih krivičnih djela (serious offences) ili u prekršaje (minor offences). U SAD krivična djela razvrstavaju se na tri osnovne kategorije - zločini (engl. felonies), prestupi (misdemeanors) i prekršaji (infractions), ili na svega dvije kategorije - zločini i prestupi. Unutar navedenih kategorija, u zakonodavstvima pojedinih federalnih jedinica pronalazimo mnoge podkategorije. Slična sistematizacija primjenjuje se i u mnogim zakonodavstvima širom svijeta. Imajući prethodno u vidu smatram da kurikulum krivičnog prava - posebni dio treba ojačati novom klasifikacijom i kategorizacijom krivičnih djela u ovoj oblasti prevashodno kroz tipologije organizovanog kriminaliteta, terorizma i korupcije. U tom smislu predlažem jačanje sadržaja predmeta materijalnog krivičnog prava saglasno evropskim trendovima sistematizovanjem sljedećih grupa krivičnih djela:

4.1. ORGANIZOVANI KRIMINALITET

Globalizacija organizovanog kriminaliteta ide uporedno sa globalizacijom ekonomskih i međunarodnih odnosa. Danas su organizovane kriminalne grupe sofisticirane i mondijalističke. U Evropi je 2002. godine identifikovano 1000 novih organizovanih kriminalnih grupa.[5] Prema podacima Europola u 2002. godini na teritorji Evropske unije je djelovalo 4000 organizovanih kriminalnih grupa sa oko 40000 članova.[6] Rješenja u krivičnom zakonodavstvu trebaju biti sveobuhvatna da doprinesu suzbijanju ovog vida kriminalnog ispoljavanja izdvajanjem krivičnih djela sa elementima organizovanog kriminaliteta u posebnu grupu. Jedan od važnih dokumenata EU u ovoj oblasti je Okvirna odluka o borbi protiv organizovanog kriminaliteta iz 2008. godine koja reguliše krivična djela vezana za participaciju u kriminalnoj organizaciji, krivične sankcije i odgovornost pravnih lica. Ekspertska grupa Savjeta Evrope i Radna grupa za probleme narkotika i organizovanog kriminaliteta kao specijalizovano tijelo Evropske unije definisalo je organizovani kriminalitet i tu definiciju prihvatio Evropski sud za ljudska prava. Evropska unija je ratifikovala konvenciju Ujedinjenih Nacija protiv transnacionalnog organizovanog kriminaliteta 2004. godine. Imajući u vidu fokus interesovanja EU za naznačenu oblast kao i nesporni značaj uniformnog regulisanja ove oblasti iz toga proizilazi potreba zasebne sistematizacije u Krivičnom zakoniku Crne Gore.

4.2. KRIVIČNA DJELA PROTIV FINANSIJSKIH INTERESA EVROPSKE UNIJE

Krivično pravno reagovanje na prevare i druge nezakonite radnje protiv finansijskih interesa EU je predmet usaglašavanja ovih inkriminacija u krivičnim zakonicima država članica, budući da je zajedničko tržište ugroženo kriminalitetom internacionalnog karaktera. Konvencija o zaštiti finansijskih interesa Evropske zajednice iz 1995. uključujući i dva dodatna protokola predviđa usklađivanje nacionalnih krivičnih zakona članica EU putem determinacije korupcije, ekonomskih i finansijskih prevara. Prvi protokol se odnosi na pasivnu i aktivnu korupciju a drugi obuhvata pranje novca i oduzimanje prihoda od prevare i korupcije. Od značaja su i drugi pravni akti kao što su Okvirna odluka o povećanju zaštite eura od falsifikovanja, putem krivičnih kazni i drugih sankcija iz 2000. godine, Okvirna odluka o borbi protiv prevara i falsifikovanja bezgotovinskih sredstava plaćanja iz 2001. godine i Konvencija protiv korupcije koju vrše zvaničnici iz 1997. godine.

4.3. KRIVIČNA DJELA KORUPCIJE

Budućnost krivičnog prava EU je u konstituisanju Corups iuris kao jedinstvenog sistema pravila krivičnog prava koji se odnosi na delikte protiv EU, u svrhu objedinjavanja pojedinih elemenata krivičnog prava definisanjem određenih krivičnih djela, određivanjem opštih principa regulisanja i centralizacije optuženja i gonjenja od strane Evropskog državnog tužioca, što predstavlja pravno ujednačavanje. Smatram da je neophodno regulisati i evropska krivična djela (eurocrimes) koja ugrožavaju finansijske interese EU.

Imajući prethodno u vidu, mišljenja sam da krivična djela aktivne i pasivne korupcije predviđena u grupama krivičnih djela protiv platnog prometa i privrednog poslovanja i protiv službene dužnosti treba sistematizovati u posebnu glavu koja bi nosila naziv KRIVIČNA DJELA KORUPCIJE i predvidjeti posebno krivično djelo NEZAKONITO BOGAĆENJE, što je i zahtjev EK.

4.4. KRIVIČNA DJELA SA ELEMENTIMA TERORIZMA

U okviru EU donijet je veliki broj pravnih akata koji se odnose na krivična djela terorizma koji su obavezujućeg karaktera. Jedan od ključnih dokumenata je Okvirna odluka o borbi protiv terorizma od 13 juna 2002.

godine[7]koja definiše delikte terorizma, druga krivična djela povezana sa terorizmom i odgovornost pravnih lica za kriminalna ispoljavanja u ovoj oblasti. Okvirna odluka o napadu na informacione sisteme od 24 februara 2005. godine[8] donijeta od strane EU pruža zaštitu osjetljivoj oblasti koja potencijalno predstavlja terorističku metu. Ovm aktom su obavezane države članice da kao krivična djela predvide ilegalni pristup informacionim sistemima, ilegalno mijenjanje podataka u informacionom sistemu, podsticanje, pomaganje i podržavanje ovakvih aktivnosti, kažnjavanje za pokušaj a predviđen je i minimum standarda u dijelu određivanja kazni za ove delikte. Početkom 2016. godine na osnovu Odluke Savjeta za pravosuđe i unutrašnje poslove iz 2015. godine uspostavljen je Evropski centar za borbu protiv terorizma. Radi se o platformi putem koje države članice mogu pojačati razmjenu informacija i operativnu saradnju u vezi praćenja i istraživanja stranih terorističkih boraca, trgovanja nezakonitim vatrenim oružjem i finansiranja terorizma.

Savjet Evrope je 2017. godine donio Direktivu o suzbijanju terorizma kojom se jača pravni okvir EU za sprječavanje terorističkih napada i nastoje naći rješenja za pojavu stranih terorističkih boraca. Ovim doku-mentom se kriminalizuju djela: 1) pohađanje obuke ili putovanja u terorističke svrhe; 2) organizacija ili olakšavanje putovanja u terorističke svrhe; 3) obezbjeđenje ili prikupljanje sredstava povezano sa terorističkim grupama ili terorističkim aktivnostima. Smatram neophodnim da bi radi lakšeg proučavanja bilo potrebno sistematizovati posebnu tipologiju krivičnih djela pod nazivom KRIVIČNA DJELA SA ELEMENTIMA TERORIZMA koja bi objedinila sva krivična djela iz ove oblasti i pojačala normativnu osnovu u ovoj oblasti.

5. IZGRADNJA MODERNOG I KONKURENTNOG STUDIJA KRIVIČNOG PRAVA - PREDLOZI DE LEGE FERENDA

Modernizacijom kurkuluma krivičnog prava u Crnoj Gori napušten je tradicionalni model koji se pokazao nefunkcionalnim budući da nije pratio tendencije na tržištu rada. Fakultetski program ovog kurikuluma danas sadrži sve elemente savremene krivično pravne teorije i prakse sa tendencijom da naši diplomci budu osposobljeni da se odmah nakon diplomiranja uhvate u koštac sa najsloženijim pravnim izazovima. Bitno je kreirati silabus koji će dominantno podsticati kritičko promišljanje fokusirano na rješavanje krivično pravnih izazova. Intencija je nekonkurentni program učiniti konkurentnim i izvršiti strukturnu tržišno usmjerenu transformaciju. Izučavanje krivičnog prava nije moguće bez

integracije kliničkih metoda u nastavni sadržaj. Nakon završetka ispita koji u značajnom procentu sadrži praktičnu nastavu, kod studenta se mora razviti sposobnost koju neće morati prvi put da stiče na radnom mjestu. Student krivičnog prava se edukuje iz krivično pravne teorije u neophodnoj mjeri a zatim mu se omogućava rad u praksi. Prosto rečeno, kao što ja ne mogu biti ni početno slovo od dobrog profesora krivičnog prava ako ne mogu praktično prikazati ono što predajem i iznositi vlastita iskustva stečena u praksi tako i studentima moram omogućiti da razviju sposobnost usvajanja praktičnih znanja. Između teorijskih i praktičnih prenosa znanja se mora uspostaviti balans kako ne bi došlo do prevage na bilo koju stranu. Činjenica je da samo izvanredno poznavanje krivično pravne teorije i srodnih krivičnih disciplina omogućava rješavanje problema u praksi.

6. FUNKCIONALNI MODEL PROUČAVANJA KRIVIČNOG PRAVA POSEBNI DIO

Svako predavanje iz predmeta krivično pravo –posebni dio na Pravnom fakultetu Univerziteta Crne Gore započinjem integralnim sagledavanjem određenog krminalnog fenomena iz ugla krivično pravnih teorija i srodnih krivičnih dicsiplina korišćenjem multidisciplinarnog pristupa. Nakon studioznog upoznavanja teorijske dimenzije određene inkriminacije pristupa se njenoj konkretizaciji uz uspostavljanje uzročne veze između teorije i prakse. U sljedećoj fazi se primjenjuje funkcionalni model edukacije u kome studenti stečeno teorijsko znanje utvrđuju kroz rad na predmetima usvajajući upotrebljiva znanja i vještine. U djelu praktične nastave studenti se kroz studije slučaja edukuju kako krivično pravni instituti egzistiraju u praksi što se trajno memoriše i aktivira studente na istraživanje.

L i t e r a t u r a

[1] Klip A., European Criminal Law, An Integrative Approach, 2nd edition, Intersentia, 2012.
[2] Kennedy D. (2009) Pisanje i upotreba ishoda učenja, Savjet Evrope, dostupno na internet adresi: www.nairtl.ie.
[3] Braun J. (2000) "Der Zivilrechtsfall. Klausurenlehre für Anfänger und Fortgeschrittene", München, str. 3.Deutsches Richtergesetz/DriG),2002.
Wolfgang Böckenförde E., (1997), Juristenausbildung - auf dem Weg ins Abseits? JZ., str. 317.-326

Strempel D. (Hrsg.), (1998), Juristenausbildung zwischen Internationalität und Individualität, Baden-Baden.
Berger, H.L. (1975), Die Entwicklung der zivilrechtlichen Relationen und ihrer denktechnisch-methodischen Argumentationsformen, Frankfurt.
[4] German Law Journal, X (2009.) god., Following the Call of the Wild: The Promises and Perils of Transnationalizing Legal Education http:// sfruehwald.com/Legal_Education_Central_by_Scott_Fruehwald.htm (2016.).
[5] European Union organized crime report , Europol, Luxembourg, 2003, p.8.
[6] Organized Crime Situation, Report,2004-Focus on the threat of cybercrime, Council of Europe, Strasbourg, 2004, p.37.
[7] Okvirna odluka o borbi protiv terorizma 2002/475/JHA, SG L 164, 22.06.2002. godine;
Okvirna odluka 2008/919/JHA od 28.11.2008. godine o izmjeni Okvirne odluke 2002/475/JHA o borbi protiv terorizma, SG L 330, 09.12.2008. godine.
[8] Okvirna odluka o napadu na informacione sisteme 2005/222/JHA, SG L 69/67, 16. 03.2005. godine.

INFORMACIONA LISTA – KRIVIČNO PRAVO POSEBNI DIO

Naziv predmeta:		KRIVIČNO PRAVO POSEBNI DIO		
Šifra predmeta	*Status predmeta*	*Semestar*	*Broj ECTS kredita*	*Fond časova*
	Obavezni	*IV*	*6*	*60+15/4P+1 V*
Studijski programi za koje se organizuje *: Osnovne studije PRAVNOG FAKULTETA - akademski studijski program za sticanje* DIPLOME OSNOVNIH STUDIJA, *(studije traju 6 semestara, 180 ECTS kredita).*				
Uslovljenost drugim predmetima*: nema uslova za prijavljivanje i slušanje predmeta;*				
Ciljevi izučavanja predmeta*: Predmet ima za cilj edukaciju studenata iz oblasti Krivičnog prava-posebni dio u svrhu implementacije naučnih saznanja u praksi.*				
Ishodi učenja*:* Nakon što položi ovaj ispit student će biti u mogućnosti da:1. Navede zajedničke karakteristike i osnovne kriterijume za klasifikaciju i kvalifikaciju krivičnih djela i njihovo svrstavanje u pojedine glave Krivičnog zakonika; 2. Prepozna objektivno-subjektivne elemente svakog krivičnog djela; 3. Označi opšte i posebne elemente konkretizacije krivičnog djela; 4. Definiše oblike i načine postavljanja radnje kao bazičnog, povezujućeg i diferencirajućeg elementa svake inkriminacije; 5. Izvrši krivičnopravnu analizu posledice krivičnog djela, utvrdi uzročni odnos između radnje i posledice, 6. Determinise subjekt krivičnog djela, objekt krivičnog djela, mjesto izvršenja krivičnog djela, vrijeme izvršenja krivičnog djela , krivicu, sticaj, kvalifikovane oblike inkriminacija i tsl. 6. Protumači kompleksne i višeznačne elemente krivičnih djela i rješava teorijske i praktične probleme u primeni Krivičnog zakonika.				
Ime i prezime nastavnika i saradnika*: Prof. dr Velimir Rakočević*				
Metod nastave i savladanja gradiva*:* Predavanja, vježbe, studije slučaja , praktična nastava,				
Praktična nastava obavlja se na časovima predviđenim za predavanja (20 časova) i i obuhvata posjete Osnovnom, Višem i Apelacionom sudu, Osnovnom i Višem državnom tužilaštvu ,upoznavanje sa sudskom i tužilačkom praksom, analizu sudske prakse i izradu pravnih akata iz krivičnopravne oblasti u cilju ovladavanja studenata prakticnim znanjima i vjestinama iz krivicnopravne oblasti.				
SADRŽAJ PREDMETA				
I nedjelja	Pojam posebnog dijela krivičnog prava, predmet posebnog dijela krivičnog prava, metodi posebnog dijela krivičnog prava, sistematika posebnog dijela krivičnog prava, tipologije krivičnih djela;			
II nedjelja	Krivična djela protiv života i tijela; Krivična djela protiv sloboda i prava čovjeka i građanina;			
III nedjelja IV nedjelja	Krivična djela protiv izbornih prava; kd protiv časti i ugleda; kd protiv polne slobode			

V nedjelja	Praktična nastava (krivicnopravna kvalifikacija kd, Osnovno državno tužilaštvo Podgorica)
VI nedjelja	Krivična djela protiv braka i porodice; Krivična djela protiv prava iz rada; Krivična djela protiv intelektualne svojine; Krivična djela protiv imovine;
VII nedelja	I kolokvijum
VIII nedjelja	Krivična djela protiv platnog prometa i privrednog poslovanja;Krivična djela protiv finansijskih interesa EU; Krivična djela protiv zdravlja ljudi;
IX nedjelja	Praktična nastava (konkretizacija osnovnih elemenata kd, Osnovni sud Podgorica)
X nedjelja	Krivična djela protiv životne sredine i uređenja prostora; Krivična djela protiv opšte sigurnosti ljudi i imovine; Krivična djela protiv bezbjednosti javnog saobraćaja;
XI nedjelja	Krivična djela protiv bezbjednosti računarskih podataka;
XII nedjelja	II kolokvijum
XIII nedjelja	Krivična djela protiv ustavnog uređenja i bezbjednosti Crne Gore; Krivična djela protiv državnih organa; Krivična djela protiv pravosuđa;
XIV nedjelja	Krivična djela protiv javnog reda i mira; Krivična djela protiv pravnog saobraćaja;
XV nedjelja	Krivična djela protiv službene dužnosti; Krivična djela korupcije
XVI-XIX nedjelja	Praktična nastava (krivicnopravna kvalifikacija i konkretizacija kd iz nadleznosti VDT I VS, Viši sud Podgorica, Više državno tužilaštvo Podgorica) Krivična djela protiv čovječnosti i drugih dobara zaštićenih međunarodnim pravom; Krivična djela terorizma; Krivična djela protiv Vojske Crne Gore; Organizovani kriminalitet; Završni ispit, popravni ispit

Opterećenje studenta

Nedjeljno	U semestru
6 kredita x 40/30 = 8 sati Struktura: 4 sati predavanja 1 sati vježbi 3 sati individualnog rada studenta (priprema za laboratorijske vježbe, za kolokvijume, izrada domaćih zadataka) uključujući i konsultacije	Nastava i završni ispit: (8 sati) x 16 = 128 sati Neophodna priprema prije početka semestra (administracija, upis, ovjera): 2 x (8 sati) = 16 sati Ukupno opterećenje za predmet: 6 x 30 = 180 sati Dodatni rad 36 sati

LITERATURA:Stojanović Z. Krivično pravo, Podgorica, 2008, Velimir Rakočević, Krivična djela sa elementima organizovanog kriminaliteta-specijalne istražne metode, Podgorica, 2014, V. Rakocevic, Criminal acts against life and body, Podgorica,2015Krivični zakonik Crne Gore, ("Sl. list RCG", br. 70/2003, 13/2004, 47/2006 i "Sl. list CG", br. 40/2008, 25/2010, 32/2011, 64/2011 , 40/2013, 56/2013 , 14/2015, 42/2015 i 58/2015), ; Klip,A. Substantive Criminal Law of the European Union, Maklu Publisher, Antwerpen/Apeldorn/Portland, 2011;Follain, J., Vendeta:The Mafia, Jugde falcone and the Quest for Justice, Hodder, Stoughton, London, 2012; Roxin, C., Schunemann, B., Strafverfahrensrecht »verlag C.H. Beck«, Munchen, 2013; Bertel/Schweighofer, Ost Strafrecht Besonderer Teil 2, Wien, 2010.; - Lipmann, Contemporary Criminal Law, 2010; Jay S. Albanese, Organized Crime from the mob rto transnational organized crime, Seventh Edition, 2014; *zakoni, ratifikovane konvencije iz krivičnopravne oblasti*

Oblici provjere znanja i ocjenjivanje:
Dva testa - po 15 poena (ukupno 30 poena).Praktična nastava – 20 poena. Udio praktične nastave u ukupnom fondu od 60 časova nastave (4časa x 15nedjelja): 20% ili 12 časova nastave. Završni ispit - 50 poena. Prelazna ocjena se dobija ako se kumulativno sakupi najmanje 50 poena.
Broj poena 90-100; 80-89; 70-79; 60-69; 50-59;
Ocjena A; B; C ; D; E;

Ime i prezime nastavnika koji je pripremio podatke: Prof. dr Velimir Rakočević

Napomena: Sve dodatne informacije je moguće dobiti na casovima predavanja, vjezbi ili konsultacijama

Radoje Korać*

EVROPEIZACIJA PORODIČNOG PRAVA

1. UVOD

Proces evropeizacije Porodičnog prava nametnuo je potrebu da se Evropsko porodično pravo nađe u programu Pravnog fakulteta, da o njemu vodi računa zakonodavac i da dokumenti ovog pravnog područja budu implementirani u sudskoj i upravnoj praksi. Dvije regionalne organizacije, Savjet Evrope i Evropska unija, svaka na poseban način i saglasno svojim ciljevima, stvara pravne akte kao izvore pravnog područja koje se odnosi na brak i porodične odnose. Otuda se Evropsko porodično pravo, kao novo pravno područje, u pravnoj teoriji upotrebljava u dvostrukom značenju: u širem smislu Evropsko porodično pravo označava skup prava koja stvaraju Savjet Evrope, Evropska unija i Haška konferencija za međunarodno privatno pravo, a porodično pravo u užem smislu označava pravno područje koje nastaje u okviru Evropske unije.[1]

Harmonizacija prava u okviru Savjeta Evrope vrši se uglavnom kroz konvencije, i to postupno i na dobrovoljnom principu, diskrecionom ocjenom država članica da prihvate ili ne prihvate određenu konvenciju izuzev Evropske konvencije o zaštiti ljudskih prava i osnovnih sloboda koja je obavezna za sve članice ove regionalne evropske ogranizacije. U okviru Evropske unije harmonizacija porodičnog prava vrši se uredbama i direktivama.

Za razliku od javnog prava u kome je proces harmonizacije i unifikacije započeo rano, usaglašavanje pravnih sistema u oblasti privatnog prava započelo je kasnije, a naročito je usporen proces evropeizacije porodičnog prava. Ova grana prava više od ostalih nosi obilježja nacionalne tradicije, kulture, običaja, religije, demografskih kretanja i drugih specifičnosti pojedinih država članica. Stoga je proces harmonizacije, a posebno unifikacije, ovog pravnog područja u značajnom zaostatku u odnosu na ostale djelove pravnog sistema.

*Prof. dr Radoje Korać je redovni profesor Pravnog fakulteta Univerziteta Crne Gore.

[1] *I. Majstorović*, Obiteljsko pravo kao različitost u jedinstvu: Evropska unija i Hrvatska, u: *A. Korać Grahovac, I. Majstorović* (ur.), Europsko obiteljsko pravo, Zagreb 2013, str. 1.

U okviru Savjeta Evrope proces evropeizacije porodičnog prava započeo je šezdesetih godina prošlog vijeka, dok je Evropska unija sporadično usaglašavanje započela tridesetak godina kasnije. Prvi dokument Savjeta Evrope koji se odnosi na porodično pravo bila je Evropska konvencija o usvojenju iz 1967. godine (revidirana 2008. godine). Nakon toga, usvojena je Evropska konvencija o pravnom položaju vanbračne djece (1975), Evropska konvencija o ostvarivanju dječijih prava (1996) i Evropska konvencija o kontaktima sa djecom (2003).

Od posebnog značaja je Evropska konvencija o ostvarivanju dječijih prava sa kojom je, nakon ratifikacije, usaglašeno naše zakonodavstvo, posebno zadnjom izmjenom Porodičnog zakona iz 2016. godine. Tako su pod njenim uticajem propisana posebna procesna prava djeteta: da dobije potrebne informacije i izrazi mišljenje u postupku, da dobije posebnog zastupnika (advokata), da dobije lice za podršku.

Tijela Evropske unije u novije vrijeme sve više su aktivnija u regulisanju porodičnih odnosa, s obzirom na činjnicu da je sloboda kretanja ljudi, dobara, usluga i kapitala doprinijela zasnivanju brakova i roditeljskih odnosa između državljana različitih država. Posljedica toga su i sve veći broj sporova o posljedicama razvoda braka, prestanka vanbračnih zajednica i vršenju roditeljskog prava nakon prestanka zajednice života roditelja. Istraživanja pokazuju da veliki broj državljana jedne države članice živi u drugim državama članicama Evropske unije, a još više je državljana država izvan Evropske unije koji žive u nekoj od država članica ove regionalne institucije od 28 država. Brojna porodičnopravna pitanja, posebno spajanje članova porodice, prestanak braka, kontakt roditelja sa djecom i različiti oblici izdržavanja često dobijaju sudski epilog. Pošto se radi o sporovima sa elementom inostranosti nametnula se potreba stvaranja kolizionih pravila i pravila sudske procedure nadležnog suda. Izbor mjerodavnog prava za jedan porodičnopravni odnos koji je u subjektu, objektu ili pravima i obavezama vezan za suverenitete dvije ili više nacionalnih država, veoma je značajan, s obzirom na to da su materijalana prava država članica dosta različita. Otuda su tijela Evropske unije prvo usaglašavala pravila međunarodno privatnog i procesnog prava, dok su pravila materijalnog porodičnog prava dugo bila izvan interesovanja Evropske unije. Regulisanje materijalnog porodičnog prava države članice nijesu prenijele na Evropsku uniju imajući u vidu da ovaj dio prava, više od ostalih djelova pravnog sistema, izražava nacionalnu specifičnost. Zato materijalno porodično pravno nije u nadležnosti Evropske unije već u nadležnosti država članica.

Porodično pravo u Crnoj Gori u značajnoj mjeri usklađeno je sa pravnom tekovinom Evropske unije. Taj proces započeo je prije potpisivanja Sporazuma o stabilizaciji i pridruživanju, kada je to postala obaveza nadležnih organa, odnosno tijela u Vladi i Skupštini Crne Gore. Proces harmonizacije nastaviće se u postupku pripreme Građanskog zakonika koji će obuhvatiti i porodično pravo. Biće to prilika da se preispitaju, vrednuju, koriguju, dopune i usaglase brojna rješenja ove grane prava.

2. SUBJEKTI HARMONIZACIJE PORODIČNOG PRAVA

Do sada nema pitanja materijalnog porodičnog prava koja su regulisana unificiranim pravilima. Postoje samo unificirana pravila o pojedinim kolizionim i procesnim pitanjima evropskog porodičnog prava. Međutim, proces evropeizacije porodičnog prava ne može se zaustaviti, iako unifikaciju neki smatraju Sizifovim poslom. U teoriji se smatra da proces evropeizacije obuhvata dva elementa: *ius commune* kao skup zajedničkih evropskih pravnih osnova i komunitarizaciju koja označava trend da države članice EU sve više svoje nadležnosti ustupaju EU.[2]

Harmonizacija porodičnog prava sa pravnim tekovinama EU obavlja se aktivnošću organa EU, Komisije za evropsko porodično pravo, Evropskog suda EU i usaglašavanjem porodičnopravnih rješenja nacionalnih pravnih sistema.

Prije stupanja na snagu Lisabonskog ugovora regulisanje porodičnog prava bilo je izričito isključeno iz nadležnosti regulisanja institucija EU (čl. 67 st. 5 Ugovora iz Nice). Lisabonskim ugovorom predviđena je evropska nadležnost i za područje porodičnog prava. Novim članom 81 st. 3 Ugovora o funkcionisanju EU propisano je da mjere iz oblasti porodičnog prava sa prekograničnim posljedicama utvrđuje Savjet jednoglasno, nakon savjetovanja sa Evropkim parlamentom i u skladu sa posebnim zakonodavnim postupkom. Na isti način Savjet, na predlog Komisije, može donijeti odluku kojom se utvrđuju aspekti porodičnog prava sa prekograničnim posljedicama koje mogu biti predmet akata donešenih u redovnom zakonodavnom postupku. O tome se obavještavaju parlamenti država članica, pa ako se u roku od šest mjeseci tome ne usprotivi neki parlament Savjet može donijeti odluku, u protivnom odluke nema.

Iz analize odredaba Ugovora o Evropskoj uniji i Ugovora o funkcionisanju EU može se zaključiti, što je *communis opinio* u pravnoj teoriji, da nema osnova za regulisanje materijalnog porodičnog prava od organa

[2] *V. Bouček*, Evropsko međunarodno privatno pravo u eurointegracijskom procesu i harmonizacija hrvatskog međunarodnog privatnog prava, Zagreb 2009, str. 17 i dalje.

Evropske unije. Eventualno proširenje evropske nadležnosti na ovu granu prava ograničeno je načelima predviđenim u članu 5 Ugovora o EU: načelom prenešene nadležnosti, načelom supsidijarnosti i načelom proporcionalnosti. Saglasno načelu prenosa nadležnosti Unija djeluje samo u granicama nadležnosti koje su države članice na nju prenijele. U skladu sa načelom supsidijarnosti, Unija u oblastima koje ne spadaju u njenu isključivu nadležnost, može djelovati: a) samo ako države članice ne mogu na zadovoljavajući način postići ciljeve predložene mjere i b) ako se predložene mjere mogu bolje ostvariti na nivou Unije. Sadržaj i forma mjere Unije ne može preći ono što je neophodno za ostvarivanje ciljeva iz ugovora (načelo proporcionalnosti).

Lisabonskim ugovorom Povelja o osnovnim pravima EU postala je obavezni akt i po pravnoj snazi izjednačena je sa Ugovorom o EU i Ugovorom o funkcionisanju EU. Može se reći da je to najznačajni dokument EU koji se odnosi i na porodično pravo, čiji se sadržaj u značajnoj mjeri poklapa sa Evropskom konvencijom o ljudskim pravima. Ona u prvom redu garantuje zaštitu prava na ljudsko dostojanstvo kao osnovni postulat evropskog identiteta. Od značaja za porodično pravo su i druga prava koja se jamče Poveljom: pravo na poštovanje privatnog i porodičnog života, zaštita ličnih podataka, prava na sklapanje braka i zasnivanje porodice, pravo na obrazovanje, sloboda mišljenja savjesti i vjeroispovjesti. Povelja sadrži i posebne odredbe o pravima djece (čl. 24), mada su sve države članice ratifikovale Konvenciju o pravima djeteta UN.

Uredbe EU obuhvataju uglavnom koliziona i procesna pravila, ali ne i pravila mateijalnog porodičnog prava. Kao najznačajnije u kontekstu porodičnog prava smatraju se:

1) Uredba Savjeta (EZ) 2201/2003 od 27. novembra 2003. o nadležnosti i priznanju i izvršenju odluka u bračnim predmetima i predmetim roditeljske odgovornosti i ukidanju Uredbe (EZ) 1347/2000. Ova Uredba poznata kao *Uredba Bruxelles II bis* primjenjuje se u građanskim postupcima razvoda braka, rastave ili poništenja braka i dodjeljivanja, ostvarivanja, ustupanja, ograničenja ili prestanka roditeljske odgovornosti. Ona sadrži odredbe o priznanju odluka kojima se predviđa sistem *ipso iure* priznanja odluka, bez vođenja postupka za prizanje sudske odluke donešene u drugoj državi članici. Ova Uredba reguliše i pitanje povratka djeteta koje je na nezakonit način oduzeto ili zadržano u državi članici različitoj od one gdje dijete ima uobičajeno boravište.

2) Uredba Savjeta (EZ) br. 4/2009 od 18. decembra 2008. o nadležnosti, mjerodavnom pravu, priznanju i izvršenju sudskih odluka i saradnji u stvarima koje se odnose na obavezu izdržavanja. Ova Uredba poznata po

nazivu *Uredba o izdržavanju* sadrži pravila o kolizionopravnim i procesnopravnim aspektima unifikacije evropskog porodičnog prava.

3) Uredba Savjeta (EU) br. 1259/2010 od 20. decembra 2010. o sprovođenju pojačanje saradnje u području prava mjerodavnog za razvod braka i zakonsku rastavu, poznata kao *Uredba Rim III* kojom se prvi put uređuju koliziona pravila o razvodu i o rastavi braka u EU.

Pravila navedenih uredbi odnose se na određivanje nadležnosti, izbora mjerodavnog prava, priznanja i izvršenja odluka u građanskim stvarima, prevashodno sa ciljem da se doprinese pravilnom funkcionisanju unutrašnjeg tržišta EU.

Uredbe imaju obaveznu snagu i u cjelini se neposredno primjenjuju, za razliku od direktiva koje obavezuju države članice samo u pogledu cilja koji treba ostvariti, a načini njihovog ostvarivanja prepušteni su svakoj državi pojedinačno. Obavezne su i odluke, ali samo u pogledu konkretnih slučajeva na koje se odnose u smislu njihove neposredne primjene u unuštrašnjim pravnim porecima država članica.

Pored navedenih treba pomenuti i Smjernice EU za promociju i zaštitu prava djece (2007), Strategiju EU o pravima djece (2009), Agendu EU o pravima djece (2011).

Komisija za evropsko porodično pravo od 2001. godine kada je osnovana radi na podsticanju harmonizacije porodičnog prava evropskih država u cilju ostvarivanja slobode kretanja ljudi i stvaranja jedinstvenog pravnog prostora. Iako nema politički legitimitet snagom akademskog autoriteta utiče na Evropsku komisiju i zakonodavce pojedinih nacionalnih država da prilikom regulisanja pojedinih porodičnopravnih pitanja uzmu u obzir i rezultate njenog rada. Ta samoimenovana i nezavisna akademska organizacija sastavljena od profesora porodičnog i komparativnog prava, preko svog Organizacionog komiteta i Grupe eksperata, obrađuje teorijska i praktična rješenja uporednih zakonodavstva i priprema principe evropskog porodičnog prava, tragajući za *ius commune*. Do sada je Komisija oblikovala Principe o razvodu i izdržavanju između bračnih drugova, Principe o roditeljskoj odgovornosti i Principe o imovinskim odnosima između bračnih drugova.

Principi i njihovi komentari namijenjeni su prvenstveno evropskom zakonodavcu i zakonodavcima nacionalnih država sa ciljem da ih uzmu u obzir prilikom regulisanja porodičnopravnih odnosa i tako postanu dio evropske pravne tekovine. Komisija koristi *common core* metod, tj. izradu pravila na osnovu zajedničkog jezgra, odnosno sličnosti nacionalnih porodičnih pravila, a ako su razlike između nacionalnih rješenja velike pa nije moguće oblikovati zajedničko jezgro, primjenjuje se *better law* meto-

da, odnosno izbor boljeg prava. Prilikom formulisanja principa Komisija može u određenim slučajevima kombinovati ove metode.[3]

3. PRAKSA EVROPSKIH SUDOVA

Praksa Evropskog suda za ljudska prava i Suda Evropske unije u značajnoj mjeri doprinose harmonizaciji porodičnog prava. Odluke ovih sudova su obavezne, iako su njihove nadležnosti različite.

3.1. Sud u Strazburu

Evropski sud za ljudska prava donio je brojne odluke štiteći tzv. prava na privatnost iz člana 8 Konvencije o zaštiti ljudskih prava i sloboda (pravo na poštovanje privatnog života, pravo na poštovanje porodičnog života, nepovredivost doma i nepovredivost prepiske). Tako je odnos između vjerenika, homoseksualni odnos, transseksualitet i promjena pola, odnos između supružnika, odnos između roditelja i djeteta, djeda i babe i unuka, maloljetne braće i sestara, usvojioca i usvojenika, hranitelja i hranjenika, u praksi Evropskog suda za ljudska prava štićen kao pravo na poštovanje privatnog života.[4] Isto tako je Sud kroz tumačenje člana 8 Konvencije o poštovanju prava na porodični život odlučivao o krugu lica koja ulaze u sastav porodice, o pravu članova porodice da žive zajedno i održavaju međusobne odnose, o porijeklu djeteta, surogat materinstvu, otmici djeteta, deportaciji članova porodice, pojedinačnim pravima djeteta i vršenju roditeljskog prava. Najbogatija praksa Evropskog suda za ljudska prava iz oblasti porodičnog prava odnosi se na član 8 Konvencije (pravo na poštovanje porodičnog života), ali od značaja su i odluke vezane za član 12 (pravo na brak i zasnivanje porodice) i član 14 (zabrana diskriminacije). Pored interesa podnosioca predstavke Sud obraća pažnju na interese svih članova porodice, a često se u svojim odlukama poziva na Konvenciju o pravima djeteta UN, vodeći računa o najboljem interesu djeteta.

Koristeći načelo živog instrumenta ponekad se pod uticajem evolutivnog tumačenja dešava promjena sudske prakse bez dovoljno valjanih razloga, tako da se u teoriji ukazuje na konstantnu potrebu ravnoteže izme-

[3] *K. Boele-Woelki*, The Working Method of the Commission on European Family Law, u: *K. Boele-Woelki*, (ed.) Common Core and Better Law in European Family Law, European Family Law Series, br. 10/2005, str. 31 i dalje.

[4] *M. Draškić*, Usklađenost domaćeg prava sa standardima Evropskog suda za ljudska prava u odnosu na član 8 Evropske konvencije, dosputno na adresi www.helsinki.org.rs/hrlawyers/archives/files/sem3_pred_marija.doc.

đu promjene i konzistentnosti.[5] Društvene promjene i razvoj prava ne mogu ugroziti pravnu sigurnost i predvidljivost. Sud od početka insistira na njenom djelotvornom i evolutivnom tumačenju kao živog instrumenta. Autonomno tumačenje pojmova Konvencije, odnosno tumačenje prema cilju i svrsi nezavisno od značenja u nacionalnom pravu, kako bi se obezbijedila jedinstvena primjena pravila konvencijskog prava. Potrebno je tumačenje prilagoditi trenutnim zahtjevima, sadašnjim društvenim potrebama. Sud tako razvija Konvenciju i održava njenu aktuelnost. Evolutivnim tumačenjem Konvencije moguće je zadržati djelotvornost prakse Evropskog suda, s obzirom na vrijeme nastanka Konvencije, i ako mu se prigovara da preuzima ulogu zakonodavca i često stvara nekonzistentnu praksu i ugožava pravnu sigurnost.

3.2. Sud u Luksemburgu

Sud Evropske unije sastoji se od dva suda (Evropskog suda i Opšteg suda). Najviša sudska instanca Evropske unije ima zadatak da obezbijedi jedinstveno tumačenje primarnog prava i izvor je prava za sve države članice. Za razliku od suda u Strazburu, sud u Luksemburgu ima širu nadležnost, s obzirom da pruža zaštitu tržišnih sloboda. Nadležnost suda u Strazburu je supsidijarna, a suda u Luksemburgu originala. To znači da sud u Strazburu odlučuje naknadno, kad stranka izgubi spor u svojoj državi i iscrpi pravni put. U Luksemburgu se rješavaju predmeti koji za stranku nijesu izgubljeni pred nacionalnim sudovima. O ishodu spora u Luksemburgu zavisi ostvaranje subjektivnih prava pred nacionalnim sudovima. I jedan i drugi sud imaju ulogu harmonizacije porodičnog prava, i pored određenih razlika u pristupu porodičnim odnosima (npr. samo biološka ipravna povezanost ili i emocionalna veza između člano porodica)[6]

Sud Evropske unije obezbjeđuje bezuslovno prvenstvo primjene primarnog prava i sekundarnog prava nad nacionalnim pravom, bez obzira na to je li neki akt domaćeg prava donijet prije ili poslije prava Evropske unije koje ima obavezujući karakter. Još od poznate presude *Simmenthal* (1978) Sud Evropske unije stoji na stanovištu da nacionalni sudija mora obezbijediti primjenu prava Evropske unije, i ako je potrebno odbaciti suprotne odredbe nacionalnog prava, pa i kad su naknadno donijete, i bez

5 *G. Mihelčić, M. Marochini-Zrinski*, Utjecaj konvencijskih načela tumačenja na pojedine građanskopravne institute (odabrana pitanja), Zbornik radova Pravnog fakulteta u Niš, br. 57/2018, str. 136.

6 *M.V. Antokolskaia*, Family Values and the Harmonisation of Family Law, u: M. Mclean, J. Eekelaar, (Eds.), Family Law and Family Values Oxford, 2005, str. 303.

obaveze da čeka da se one prethodno uklone u propisanoj ustavnoj proceduri.

Ugovorom o fukcionisanju EU predviđen je (čl. 267) prethodni postupak kao mehanizam za ujednačavanje tumačenja i primjene evropskog prava. To znači kad se neko pitanje tumačenja ili važenja prava postavi pred nacionalnim sudom on može u svakoj fazi postupka tražiti da o tome prethodno Sud EU donese odluku. Ako se takvo pitanje postavi pred sudom protiv čijih odluka nije predviđen pravni lijek, domaći sud je obavezan da se uvijek obrati Sudu EU. Postupak prethodne odluke smatra se kamenom temeljcem evropskog pravnog poretka. Na osnovu navedenog člana Sud EU već je razvio bogatu sudsku praksu u interpretaciji i ocjeni valjanosti evropskog prava. Njegove presude i obrazložena rješenja obavezna su za nacionalni sud koji je u konkretnom slučaju postavio pitanje, ali i za ostale sudove, čime se obezbjeđuje ujednačena primjena prava EU. U Preporukama namijenjenim nacionalnim sudovima (2016/C 439/01) sadržane su odredbe koje se primjenjuju na sve zahtjeve za prethodnu odluku (predmet zahtjeva, oblik i sadržaj zahjetva, vrijeme upućivanja zahjteva, troškovi) i odedbe koje se primjenjuju na zahtjeve koji zahtijevaju posebnu brzinu postupanja. Dakle, nacionalni sudovi država članica koji su dužni da primjenjuju pravo EU imaju mogućnost da privremeno obustave postupak u konkretnom predmetu i zatraže od suda EU prethodnu odluku o tumačenju norme koju treba primjeniti (a o kojoj se Sud nije ranije izjašnjavao) ili o valjanosti neke norme u koju sudije posumnja. Poslije odluke suda EU nacionalni sud nastavlja postupak kojim rješava spor izvodeći konkretne posljedice iz odgovora koji je dobio. Ako je u pitanju tumačenje norme sudija to može i sam učiniti ali ne može odlučivati o valjanosti pravne norme jer je to isključiva nadležnost suda EU.[7] U postupku pridruživanja Crne Gore EU biće potrebno upoznavanje, ne samo odluka i standarda sudske prakse Suda EU, već i pravila o saradnji nacionalnih sudova i suda EU, a crnogorski zakonodavac *de lege ferenda* biće u obavezi da primjeni implementaciona pravila za prethodni postupak po kojima će postupati nacionalni sudovi prilikom obraćanja Evropskom sudu, saglasno članu 267 Ugovora o funkcionisanju EU. Imajući u vidu odredbe stava 2 i 3 člana 6 Ugovora o EU može se desiti da i strazburški i luksemburški sud odlučuju o istom pitanju, što je imalo za posljedicu različitu sudsku praksu, koja se u novije vrijeme otklanja međusobnom saradnjom ova dva evropska suda.

7 *T. Petrašević, I. Vuletić*, Prethodni postupak pred Europskim sudom pravde i njegova implementacija u hrvatsko procesno pravo, Godišnjak Akademije pravnih znanosti Hrvatske, br. 1/2014, str. 144 i dalje.

4. OSVRT NA ANALIZU NASTAVNOG PLANA PRAVNOG FAKULTETA SAČINJENU OD STRANE PRAVNOG FAKULTETA UNIVERZITETA U LJUBLJANI

Posljednjom izmjenom modela studiranja na UCG, u nastavni plan i program osnovnih studija na Pravnom fakultetu zadržan je predmet Porodično pravo, a uveden je jedan poseban predmet – Prava djeteta, ali na izbornom modulu. Pravni fakultet Univerziteta u Ljubljani je sačinio Analizu nedavno akreditovanog nastavnog plana i programa Pravnog fakulteta UCG u kome je istaknuto veliko poboljšanje u ostvarivanju cilja - njegove „evropeizacije“ u cjelini. U dijelu koji se odnosi na Porodično pravo nije bilo preporuka za izmjenu, osim komentara da izmjene koje su već učinjene u dovoljnoj mjeri uvode evropski element u silabus ovog predmeta.

Međutim, smatram da se prisustvo „evropskog“ elementa u silabusu ovog predmeta treba dodatno pojačati, dopuniti i aktuelizovati. Nastavni program predmeta Porodično pravo treba dopuniti analizom doku-menata EU i Savjeta Evrope i prakse Evropskog suda za ljudska prava i Suda EU. Odgovarajuće odredbe primarnog evropskog prava i određeni akti sekundarnog prava EU, kao i relevantna praksa, odnosno standardi Evropskog suda za ljudska prava i Suda EU moraju naći mjesto u programu predmeta Porodičnog prava.

5. PRIMJENA ISKUSTAVA I REZULTATA TRENINGA, KAO I STUDIJSKIH POSJETA U OKVIRU *CABUFAL*-A

Može se konstatovati da gostujući predavači sa partnerskih institucija, u okviru treninga održanih na Pravnom fakultetu, nisu dali neposredan doprinos, ako se ima u vidu evropeizacija na planu izučavanja porodičnog prava, s obzirom na to da teme iz ove grane prava na treninzima nijesu ni bile obrađivane, što se može reći za privatno pravo u cjelini, izuzev predavanja na Pravnom fakultetu u Splitu. Slično je i sa studijskim posjetama u kojima je autor ovih redova učestvovao i predavanja kojima je prisustvovao.

Međutim, svakako treba imati u vidu posredan doprinos, kako treninga tako i studijskih posjeta u okviru CABUFAL projekta.On se ogleda u razmjeni iskustava između predavača na partnerskim institucijama i analizi najboljih nastavnih praksi. Ova iskustva će svakako doprinijeti unaprijeđenju kvaliteta nastavnog procesa na Pravnom fakultetu UCG. Pored

toga, uspostavljena saradnja među partnerskim institucijama predstavlja osnov za realizaciju budućih aktivnosti.

6. NAJBOLJE NASTAVNE PRAKSE

Jedan od primjera dobre nastavne prakse, a u svjetlu evropeizacije kurikuluma predmeta Porodično pravo, je program Evropskog porodičnog prava na Pravnom fakultetu u Zagrebu i Pravnom fakultetu u Splitu.

7. DOPUNA KURIKULUMA

Ključni izazovi na planu podsticanja studenta da razumije pravne pojmove, poziciju porodičnog prava Evropske unije u nacionalnom pravnom sistemu i odnos sa drugim granama prava.

Dopuna sadržaja programa Porodičnog prava treba da obuhvati naprijed navedeni pravni okvir Savjeta Evrope i Evropske unije koji se odnosi na porodične odnose i prava djeteta, uključujući i standarde sudske prakse strasburškog i luksemburškog suda.

Cilj ovakve dopune nastavnog programa treba razumjeti kao potrebu saznanja integrativnih procesa u Evropi na pravnom nivou i sticanje produbljenih znanja o rješenjima porodičnog prava u Crnoj Gori, te upoređivanje sa pravnim rješenjima i standardima Povelje o osnovnim pravima EU i Evropske Konvencije o ljudskim pravima. Student bi nakon položenog predmeta mogao razlikovati smisao i modalitete Evropskog porodičnog prava u užem i širem smislu i procijeniti prednosti i nedostatke koje porodičnopravni sistem u Crnoj Gori pokazuje u komparaciji sa rješenjima usvojenim u EU i Savjetu Evrope.

Naziv predmeta:	PORODIČNO PRAVO			
Šifra predmeta	Status predmeta	Semestar	Broj ECTS kredita	Fond časova
	obavezni	III	6	4P+1V
Studijski programi za koje se organizuje: Pravne nauke – osnovne studije				
Uslovljenost drugim predmetima: Nema uslova				
Ciljevi izučavanja predmeta: Upoznavanje studenata sa osnovnim pojmovima i institutima porodičnog prava				
Ime i prezime nastavnika i saradnika: Prof. dr Radoje Korać				
Metod nastave i savladanja gradiva: Predavanja, vježbe, seminarski radovi, konsultacije, debatni časovi				

SADRŽAJ PREDMETA	
I nedelja II nedelja III nedelja IV nedelja V nedelja VI nedelja VII nedelja VIII nedelja IX nedelja X nedelja XI nedelja XII nedelja XIII nedelja XIV nedelja XV nedelja XVII -XX nedelja	Osnovni pojmovi porodičnog prava. Sistematizacija porodičnog prava. Evropsko porodično pravo – stanje i perspektive. Praksa ECHR i CJEU. Porodica kao pravna ustanova. Pravo na slobodno roditeljstvo Brak, forma braka Materijalni uslovi za punovažnost braka. Bračne smetnje Pravne posljedice braka. Lična prava i slobode supružnika Poništenje braka. Tužba za poništenje braka Vanbračna zajednica Razvod braka. Postupak za razvod i poništenje braka Roditeljsko pravo. Lišenje roditeljskog prava Prava djeteta. Utvrđivanje vanbračnog očinstva Usvojenje. Postupak zasnivajna usvojenja Starateljstvo. Lišenje poslovne sposobnosti Zakonsko izdržavanje. Ostvarivanje izdržavanja Imovinski odnosi bračnih drugova. Podjela bračne tekovine Posebni sudski postupci. Posredovanje u porodičnim odnosima. *Završni ispit, Popravni završni ispit*
Obaveze studenta u toku nastave: Studenti su obavezni da pohađaju nastavu i rade oba kolokvijuma	
Literatura: Korać, Radoje, Porodično pravo, Podgorica, 2011 Mladenović, Marko, Porodično pravo – knjiga I i II, Beograd, 1981 Ponjavić, Zoran, Porodično pravo, Beograd, 2014 Draškić, Marija, Porodično pravo i prava deteta, Beograd, 2014 Kovaček-Stanić, Gordana, Uporedno porodično pravo, Novi Sad, 2002 Bodiroga-Vukobrat, N. i dr., Europsko obiteljsko pravo, Zagreb, 2013 Carbinnier, J., Droit civil, Tome 2, La famille, l'enfant, le couple, Paris, 2002 Herring, J., Family Law, Pearson Longman, 2011 Scherpe, Jens M., The present and future of European Family Law, vol. IV of European Family Law, 2016	
Oblici provjere znanja i ocjenjivanje: Vježbe do 5 poena Sem. rad do 5 poena Kolokvijum do 40 poena Završni ispit do 50 poena	Ocjene u zavisnosti od ukupnog broja poena E (50-59);D (60-69);C (70-79) B (80-89); A (90-100)
Posebne naznake za predmet: nema	

Ime i prezime nastavnika koji je pripremio podatke: Prof. dr Radoje Korać
Napomena: nema

Ishodi učenja. Nakon što student položi ovaj ispit biće u mogućnosti da: prepozna značenje i objasni smisao najvažnijih instituta Porodičnog prava u pravnom sistemu; izdvoji i objasni osnovna načela uređenja bračnih i porodičnih odnosa; prepozna smisao i duh pozitivnopravnih rješenja porodičnih odnosa i prava djeteta; uporedi nacionalna porodično-pravna rješenja kroz istoriju sa sadašnjim stanjem, kao i da uporedi pozitivna porodično-pravna rješenja sa inostranim i nadnacionalnim rješenjima; objasni najvažnija prava djeteta i specifičnost postupaka njihove zaštite i objasni razloge donošenja porodično-pravnih propisa i identifikuje pravce razvoja porodičnog prava; imenuje vrste postupaka u porodičnom pravu i prepozna njihovna osnovna značenja i specifičnosti; prepozna i objasni uloge koje ima organ starateljstva u parnicama iz porodično-pravnih odnosa; upozna različite mjere zaštite djece bez roditeljskog staranja; upozna specifična pravila regulisanja imovinskih odnosa u bračnim, vanbračnim i porodičnim odnosima, prepozna vrste i specifičnosti zakonske obaveze izdržavanja.

Gordana Paović-Jeknić*

FINANSIJSKO PRAVO I PORESKO PRAVO EVROPSKE UNIJE U CRNOGORSKOM OBRAZOVNOM I PRAVNOM SISTEMU

1. UVOD

Većina autora danas smatra da je Evropska unija jedinstvena, nadnacionalna, međunarodna organizacija sui generis. Za razliku od drugih međunarodnih organizacija, Evropska unija raspolaže dijelom suvereniteta država članica, ima vlastite budžetske prihode, donosi pravne propise koji su obavezni za državne članice i može zaključivati ugovore sa trećim državama. Takođe, budžetima drugih međunarodnih organizacija finansiraju se njihovi administrativni troškovi, dok se budžetom Evropske unije preraspodjeljuje preko 90% sredstava državama članicama. Zbog toga budžet Evopske unije kao instrument finansiranja rashoda Evropske unije i budžetski prihodi imaju posebno mjesto u finansijsko-pravnom sistemu Evropske unije odnosno njenih sadašnjih i budućih država članica[1].

Prinicipi legaliteta, autonomije komunitarnog pravnog poretka, supremacije, supsidijarnosti, proporcionalnosti i solidarnosti su osnovni principi koji se primjenjuju u Evropskoj uniji.

Princip legaliteta podrazumjeva pravilo da se Evropska unija zasniva na pravu, uz mogućnost institucija EU, država članica i pojedinaca da pokrenu postupak pred Evropskim sudom pravde sa ciljem da se provjeri bilo koji nezakoniti akt. Princip autonomije komunitarnog pravnog poretka znači da će se komunitarno pravo tj. evropski propisi primjenjivati jednako u cijeloj Evropskoj uniji. Princip supremacije se ogleda u tome da u slučaju sukoba prava Evropske unije i nacionalnog prava država članica, prednost imaju odredbe prava Evropske unije. U vršenju svojih poslova i nadležnosti Unija može djelovati samo ako se ciljevi utvrđenih aktivnosti ne mogu ostvariti mjerama država članica, a to čini sadržinu principa supsidijarnosti. Princip proporcionlnosti znači da preduzete mjere ili sredstva koje koristi Evropska unija moraju biti proporcionalne cilju a

* Prof. dr Gordana Paović Jeknić je redovni profesor Pravnog fakulteta Univerziteta Crne Gore.

[1] Vid.:M. Prokopijević, Evropska unija, Službeni glasnik, Beograd 2008. S. Stojanović, Budžet Evropske unije, Finansije 1-6/2006. Beograd, D.Djurić, Koheziona politika i pretpristupna podrška Evropske unije, FOSI, Podgorica, 2009.

princip solidarnosti potrebu da države članice moraju raditi zajedno u cilju razvijanja političke solidarnosti i dr[2].

Evropske integracije Crne Gore podrazumjevaju integracije sa ekonomskog, pravnog i političkog aspekta, pri čemu posebnu važnost ima jačanje unutrašnje politike EU, u kojem poreski i budžetski sistem imaju posebnu ulogu. Zbog toga je prilikom usvajanja novog nastavnog plana i programa na Pravnom fakultetu Univerziteta Crne Gore, posebno mjesto u okviru osnovnih i studija zauzeo predmet Finansijsko pravo, a na master studijama Poresko pravo koji je u skladu sa procesom pridruživanja Crne Gore Evropskoj uniji proširen sa temama iz oblasti poreskog i budžetskog prava Evropske unije.

Preciznije, predmeti Finansijsko pravo i Poresko pravo na osnovnim i master studijama, sada su tako koncipirani da se studenti Pravnog fakulteta prvo upoznaju sa osnovnim institutima iz oblasti poreskog i budžetskog prava Crne Gore i savremenih zapadno-evropskih dražava, a zatim da usvoje znanja iz oblasti prava Evropske unije, počev od harmonizacije u oblasti posrednih i neposrednih poreza, pozitivnih i negativnih integracija u oblasti poreza (Ugovor EU, direktive, praksa Evropskog suda pravde) pa do budžeta Evropske unije (postupak sastavljanja, donošenja, izvršenja i kontrole budžeta EU, budžetskih principa i Evropskog Revizorskog suda).

Imajući sve ovo u vidu, a u kontekstu ostvarenja ciljeva postavljenih projektom CABUFAL-a, ova analiza ima nekoliko značajnih elementa:

1.Osvrt na Analizu nastavnog plana Pravnog fakulteta Univerziteta Crne Gore, koja je u okviru projekta CABUFAL sačinjena od strane Pravnog fakulteta Univerziteta u Ljubljani, u dijelu koji se odnosi na predmet Finansijsko pravo na osnovnim studijama.

2. Primjena iskustava i rezultata treninga i studijskih posjeta u sklopu CABUFAL-a.

3. Ključni izazovi u dijelu promjena sadržaja predmeta Finansijsko pravo i Poresko pravo (Poresko i Budžetsko pravo EU), kao i na planu podsticanja studenata da razumiju ključne pravne pojmove, poziciju Poreskog i budžetskog prava Evropske unije u nacionalnom pravnom sistemu i odnos sa drugim granama prava.

4. Doprinosi ¨evropeizacije¨ nastave na predmetu Finansijsko pravo i Poresko pravo (Poresko i Budžetsko pravo EU), uz uvođenje modernih nastavnih metoda i prakse, što je rezultat aktivnosti CABUFAL-a.

[2] Vid.: G.Đurović, Evropska unija i Crna Gora, Univerzitet Crne Gore-Ekonomski fakultet, Podgorica 2012.

2. OSVRT NA ANALIZU NASTAVNOG PLANA OD STRANE PRAVNOG FAKULTETA UNIVERZITETA U LJUBLJANI

Pravni fakultet Univerziteta u Ljubljani je u okviru projekta CABUFAL uradio analizu nastavnog plana i programa Pravnog fakulteta Univerziteta Crne Gore, pa i analizu sadržaja predmeta Finansijsko pravo koji se izučava u okviru osnovnih (*bachelor*) studija. U toj analizi se posebno ističe da se predmet Finansijsko pravo bavi porezima i upravljanjem budžetom što već predstavlja ¨evropski element¨. S tim u vezi treba istaći, da je ovo svojevrsna potvrda činjenice da je sadržaj predmeta Finansijsko pravo u velikoj mjeri kompatibilan sa istim ili sličnim kursevima na evropskim univerzitetima, jer se bavi najvažnijim institucijama javnih finansija: porezom i budžetom i to na moderan i ¨evropski¨način. Tako da studenti Pravnog fakulteta na sveobuhvatan i sistematičan način već na osnovnim studijama izučavaju najvažnije institute poreskog i budžetskog prava Crne Gore i savremenih zapadno-evropskih država.

Razmišljajući o daljem unaprijeđenju kursa Finansijsko pravo, a imajući u vidu preporuke i sugestije Pravnog fakulteta Univerziteta u Ljubljani o potrebi uvođenja nastavnih jedinica iz oblasti prava Evropske unije u Nastavni plan i program Pravnog fakulteta UCG, ukazala se odlična prilika da se predloži proširivanje i konkretizacija kurikuluma predmeta Finansijsko pravo sa temama iz oblasti poreskog i budžetskog prava Evropske unije, kao što su: harmonizacija u oblasti posrednih i neposrednih poreza, harmonizacija u domenu poreske saradnje, pozitivna integracija u oblasti poreza (Ugovor EU, direktive), negativna integracija u oblasti poreza (praksa Evropskog suda pravde), eliminisanje dvostrukog oporezivanja. Nadalje, struktura budžeta Evropske unije, postupak sastavljanja i donošenja budžeta Evropske unije (od Evropske komisije pa do Savjeta Evropske unije i Evropskog parlamenta), zaključno sa izvršenjem budžeta i budžetskom kontrolom u Evropskoj uniji (Finansijski kontrolori i Evropski revizorski sud (The Court of Auditors).

Takođe, imajući u vidu naziv kursa, profesori Pravnog fakulteta Univerziteta u Ljubljani predlažu da se dodaju nove nastavne jedinice koje se odnose na: zajedničko tržište finansijskih usluga i proces harmonizacije, o novim inicijativama i legislativi o finansijskim uslugama EU, sa diskusijom o ulogama i obavezama banaka. Uvažavajući navedene sugestije i predloge, napominjemo da se u finansijskoj teoriji finansije dijele na finansije u užem i širem smislu. Finansije u užem smislu obuhvataju javne finansije i podrazumjevaju finansijsku djelatnost države tj. finansijsku privredu usmjerenu na prikupljanje novčanih sredstava za finansiranje javnih

rashoda, dok finansije u širem smislu obuhvataju javne finansije države, poslovne finansije (individualnih preduzetnika i preduzeća) i monetarne finansije (Centralne banke, poslovnih banaka i osiguravajućih društava).[3] Imajući sve ovo u vidu, a prihvatajući romansko-germansku pravnu teoriju i praksu, na Pravnom fakultetu Univerziteta Crne Gore se izučava poresko i budžetsko pravo u okviru jedinstvenog predmeta Finansijsko pravo. S druge strane, uvažavamo realne potrebe i evropski put Crne Gore, da se u okviru ovog kursa blagovremeno razmotre i dodaju navedeni predlozi i gradivo iz oblasti monetarnih finansija i finansija EU.

Konačno, uvažavajući predlog uvođenja dodatne inostrane literature koje su da li profesori Pravnog fakulteta Univerziteta u Ljubljani, pored domaćih autora uključiti i inostrane autore posebno u dijelu prava Evropske unije.

3. PRIMJENA ISKUSTAVA I REZULTATA TRENINGA I STUDIJSKIH POSJETA U SKLOPU CABUFAL-a

Za vrijeme trajanja projekta CABUFAL na predavanjima, radionicama i tokom studijskih posjeta, imali smo priliku da se upoznamo sa iskustvima i dobrom nastavnom praksom na partnerskim univerzitetima u regionu i Evropi (London, Saarbrucken, Ljubljana, Zagreb, Split, Skoplje). Glavni cilj je bio prenošenje znanja i iskustava, kao i unaprijeđenje kvaliteta nastave i obrazovnog programa na Pravnom fakultetu Univerziteta Crne Gore. Ono što je poseban doprinos ovog projekta je uočena potreba za većom ¨evropeizacijom¨ kurikuluma velikog broja predmeta na Pravnom fakultetu, da bi cijelokupni nastavno-obrazovni proces odnosno nastavni plan i program na Pravnom fakultetu Univerziteta Crne Gore bio kompatibilan sa nastavnim planom i obrazovnim metodama fakulteta sa evropskih univerziteta. Iako u okviru projekta CABUFAL nije bilo predavača specijalizovanih za pitanja poreza i budžeta tj. na predavanjima profesora sa partnerskih univerziteta koji su gostovali na Pravnom fakultetu u Podgorici i studijskim posjetama nijesu bile teme vezane za Finansijsko pravo i Poresko pravo, ipak je sve ono što se čulo i vidjelo u okviru formalnih i neformalnih susreta i analiza uticalo da se na drugačiji i evropskiji način sagleda sadržina ovih predmeta. Kao rezultat imamo predložene izmjene i unaprijeđenje kurikuluma predmeta Finansijsko pravo, sa nastavnim jedinicama koje se bave poreskim i budžetskim pravom Evropske unije.

[3] D. Popović, Nauka o porezima i poresko pravo, COLPI Budimpešta i Savremena administracija, Beograd 1997, str.1

Takođe, u cilju praćenja savremenih tendencija u oblasti visokog obrazovanja, podizanja ukupnog nivoa obrazovanja i kvaliteta nastave na Pravnom fakultetu Univerziteta Crne Gore, kroz brojne prezentacije i dijalog profesora i saradnika Pravnog fakulteta sa profesorima sa partnerskih univerziteta, jasno je ukazano na značaj i potrebu uvođenja praktične nastave, što omogućava studentima da se u toku školovanja upoznaju i steknu praktična znanja i iskustva o pojedinim pravnim institutima.

Konačno, privilegija koju smo imali slušajući predavanja uvaženih profesora sa partnerskih univerziteta i dobro organizovane studijske posjete, dragocijeni su za buduću naučno-istraživačku i pedagošku djelatnost na Pravnom fakultetu, koja u godinama koje slijede treba da još intenzivnije prati i primjenjuje tendencije i standarde u oblasti evropskog visokog obrazovanja.

4. FINANSIJSKO PRAVO I PORESKO PRAVO EVROPSKE UNIJE NA PRAVNOM FAKULTETU UNIVERZITETA CRNE GORE- STANJE I IZAZOVI

Kao što je već rečeno, na osnovnim studijama na Pravnom fakultetu Univerziteta Crne Gore u okviru predmeta Finansijsko pravo, studenti izučavaju osnovne institucije javnih finansija: poreze, javne prihode, javne rashode i budžet. Preciznije, novim akreditovanim Nastavnim planom i programom na Pravnom fakultetu je predviđeno da svi studenti na osnovnim studijama na predmetu Finansijsko pravo stiču znanja o osnovnim pitanjima iz oblasti poreza i bužeta uključujući i druge javne prihode (doprinose, takse i javni zajam) kao i javne rashode. Na taj način studenti imaju mogućnost da razumiju javne prihode odnosno poreze kao najvažnije prihode savremenih država. Počev od pojma poreza, opravdanja poreza, poreske terminologije i principa oporezivanja, preko efekata i ciljeva poreza, evazije poreza pa do podjele poreza i dvostrukog oporezivanja.

Nadalje, u drugom dijelu predmeta Finansijsko pravo studentima se daje mogućnost da analiziraju javni zajam (opšta obilježja javnog zajma, razlike između privatnog i javnog zajma, tehnike javnog zajma, konverziju i konsolidaciju i granice zaduživanja) kao i javne rashode Crne Gore i savremenih država (podjelu javnih rashoda, strukturu i uzroke porasta javnih rashoda i dr). Posebno mjesto u ovom dijelu predmeta zauzima budžet i bužetsko pravo, tako da se studenti prvo upoznaju sa osnovnim karakteristikama budžeta i budžetskog prava, postupkom sastavljanja, donošenja i izvršenja budžeta, kontrolom trošenja budžetskih sredstava i budžetskim principima (Crna Gora i uporedna iskustva).

Prihvatajući sugestiju koja je data u analizi predmeta na osnovnim studijama na Pravnom fakultetu Univerziteta Crne Gore, od strane Pravnog fakulteta Univerziteta u Ljubljani kojom se potenciraju ¨evropski elementi¨, trebalo bi proširiti i precizirati kurikulum predmeta Finansijsko pravo, posebno naglašavajući nastavne jedinice prvo iz oblasti budžeta Evropske unije. Na taj način bi se postigla potrebna evropeizacija u jednom dijelu ovog predmeta, a svi studenti osnovnih studija na Pravnom fakultetu stekli bi potrebna znanja o najvažnijim pitanjima budžeta i budžetskog prava Evropske unije. Od budžetskih prihoda i rashoda, postupka sastavljanja i donošenja budžeta Evropske unije (od Evropske komisije pa do Savjeta Evropske unije i Evropskog parlamenta), zaključno sa izvršenjem budžeta i budžetskom kontrolom u Evropskoj uniji (Finansijski kontrolori kao vrsta interne -unutrašnje i preventivne kontrole trošenja budžetskih sredstava u EU i Evropski revizorski sud (The Court of Auditors) kojeg danas mnogi sa pravom zovu ¨finansijska savjest Evrope ¨ i dr.

S druge strane, Pravni fakultet Univerziteta Crne Gore prateći evropske trendove u oblasti visokog obrazovanja i reformišući svoj nastavni plan, uveo je u okviru master studija (Poslovno pravo) predmet Poresko pravo. Cilj je da na kraju ovog kursa odnosno predmeta, studenti koji su izabrali ovo usmjerenje budu osposobljeni da razumiju i da raspravljaju o najvažnijim elementima poreskog prava Crne Gore i poreskog prava Evropske unije, posebno u dijelu harmonizacije u domenu posrednih i neposrednih poreza i da poznaju praksu Evropskog suda pravde. Tako da je predmet Poresko pravo sada koncipiran na način da se studenti prvo upoznaju sa poreskim pravom kao dijelom pravnog sistema, da prihvate principe poreskog prava izvedene iz Ustavnog principa vladavine prava. Takođe, da analiziraju poreski postupak i poresko- pravni odnos od nastanka poreske obaveze do naplate poreza, stranke u poresko-pravnom odnosu a posebno poresko - imovinski odnos, poresko-upravni odnos i sukob poreskih zakona. Nadalje, studenti treba da nauče da razlikuju pojedine vrste poreza (porezi na imovinu, porezi na dohodak, porezi na potrošnju i dr.) u okviru poreskog sistema Crne Gore i savremenih država i što je najvažnije da sa upoznaju sa najznačajnijim pitanjima iz Poreskog prava Evropske unije kao što su: harmonizacija u oblasti posrednih i neposrednih poreza, harmonizacija u domenu poreske saradnje, pozitivna integracija u oblasti poreza (Ugovor EU, direktive), negativna integracija u oblasti poreza (praksa Evropskog suda pravde), eliminisanje dvostrukog oporezivanja, kao i da poznaju praksu Evropskog suda pravde i Evropskog revizorskog suda u oblasti poreza i izvršenja budžeta EU.

Ono što je veliki doprinos i objektivni rezultat projekta CABUFAL je potreba za ponovnim preispitivanjem nastavnog plana i programa na Pravnom fakultetu UCG (osnovne studije), odnosno potreba za postojanjem ovako koncipiranim predmetom na master studijama. Iako na predavanjima profesora sa partnerskih univerziteta koji su gostovali na Pravnom fakultetu u Podgorici i studijskim posjetama nijesu bile teme vezane za Finansijsko pravo i Poresko pravo, ipak je sve ono što se čulo i vidjelo u okviru formalnih i neformalnih susreta i analiza uticalo da se na drugačiji i evropskiji način sagleda sadržina ovih predmeta. Ispravnost ovakvog mišljenja potvrđuje i čvrsto opredeljenje Crne Gore da bude sledeći član velike evropske porodice i da svoj pravni sistem uskladi sa pravom Evropske unije. Konkretno, navedene nastavne jedinice koje se odnose na poresko pravo EU (harmonizacija u oblasti posrednih i neposrednih poreza, harmonizacija u domenu poreske saradnje, pozitivna inegracija u oblasti poreza (Ugovor EU, direktive), negativna integracija u oblasti poreza (praksa Evropskog suda pravde), eliminisanje dvostrukog oporezivanja i sl.) opravdano bi trebalo ¨vratiti¨ sa master studija na osnovne studije. Na taj način će se omogućiti svim studentima Pravnog fakulteta (a ne samo onima koji su izabrali master studije-Poslovno pravo) da steknu osnovna znanja iz oblasti poreskog i budžetskog prava Evropske unije, i to u okviru predmeta Finansijsko pravo.

Konačno, na master studijama mogao bi ostati predmet koji bi se sadržinski bavio nastavnim jedinicama koje se odnose na pojedinačne vrste poreza, poresku adminitraciju i poreski postupak, ojačan kvalitetnom praksom u državnim organima (Uprava carina Crne Gore i Poreska uprava Crne Gore sa kojima imamo uspiješnu saradnju već dugi niz godina i pozitivne reakcije studenata).

INFORMACIONA LISTA – FINANSIJSKO PRAVO

Naziv predmeta:		Finansijsko pravo		
Šifra predmeta	Status predmeta	Semestar	Broj ECTS kredita	Fond časova
	Obavezni	IV	6	4P+1V
Studijski programi za koje se organizuje: Osnovne studije Pravnog fakultet (studije traju 6 semestara, 180 ECTS kredita)				
Uslovljenost drugim predmetima: Nije uslovljen položenim ispitom iz drugog predmeta				
Ciljevi izučavanja predmeta: Na kraju kursa iz ovog predmeta studenti treba da budu osposobljeni da definišu i razumiju osnovne institucije Finansijskog prava, odnosno osnovne elemente poreskog i budžetskog prava (Crna Gora i uporedna iskustva), da poznaju sistem javnih prihoda i strukturu javnih rashoda, da objasne osnovna pitanja poreza: od poreske terminologije, ciljeva, efekata poreza i poreskih principa pa do opšte klasifikacije poreza, evazije poreza i dvostrukog oporezivanja, da poznaju javni zajam kao i budžet i budžetsko pravo: postupak				

sastavljanja, donošenja i izvršenja budžeta kao i budžetsku kontrolu.Da razumiju poresko i budžetsko pravo Evropske unije: harmonizaciju u domenu posrednih i neposrednih poreza, pozitivnu integraciju u oblasti poreza (Ugovor EU, direktive), negativnu integraciju u oblasti poreza(praksa Evropskog suda pravde) kao i budžet EU, budžetske prihode i rashode, postupak sastavljanja, donošenja, izvršenja i kontrolu izvršenja budžeta Evropske unije i dr.	
Ime i prezime nastavnika : Prof.dr Gordana Paović-Jeknić	
Metod nastave i savladavanja gradiva: Metodi nastave uključuju predavanja nastavnika i stručnjaka iz prakse, praksu u državnim organima, vježbe, dikusije i istraživanja, seminarske radove, kao i individualne zadatke i aktivnosti . Praktična nastava: Obavlja se u dijelu časova predviđenim za predavanja(10 časova) i na vježbama (15 časova) i obuhvata:predavanja gostujućih predavača i stručnjaka iz prakse, boravak i praksu u Poreskoj upravi, Upravi carina, Državnoj revizorskoj instituciji, Skupštini Crne Gore i Ministarstvu finansija, kao i analizu najvažnijih elemenata poreskog i budžetskog prava Evropske unije.	
SADRŽAJ PREDMETA	
I nedelja	Javne finansije i finansijsko pravo, karakteristike finansijske privrede, lokalne finansije, javni prihodi, istorijski razvoj, podjela javnih prihoda, pojam poreza,
II nedelja	poreska terminologija,
III nedelja	Principi oporezivanja, efekti oporezivanja, ciljevi oporezivanja, izbjegavanje plaćanje poreza (poreska evazija), klasifikacija poreza, dvostruko oporezivanje,
IV nedelja	ostali javni prihodi
V nedelja	Praktična nastava - praksa u državnim organima-gostujuće predavanje poreskog stručnjaka
	I kolokvijum,
VI nedelja	Poresko pravo EU, harmonizacija u domenu posrednih i neposrednih poreza, harmonizacija u domenu poreske saradnje, sukob poreskih zakona, eliminisanje
VII nedelja	dvostrukog oporezivanja
VIII nedelja	Pozitivna integracija u oblasti poreza (Ugovor EU, direktive), negativna integracija
IX nedelja	u oblasti poreza (praksa Evropskog suda pravde)
	Praktična nastava- praksa u državnim organima
X nedelja	Popravni I kolokvijum;
XI nedelja	Javni zajam, tehnika javnog zajma,granice zaduženja, javni rashodi, uzroci porasta javnih rashoda, podjela javnih rashoda, struktura javnih rashoda,
XII nedelja	Budžet i budžetsko pravo, istorijski razvoj budžeta, budžetski principi (statički i dinamički)
XIII nedelja	Postupak sastavljanja, donošenja, izvršenja i kontrola izvršenja budžeta (Crna Gora i uporedna iskustva)
XIV nedelja	Praktična nastava (analiza praktičnih primjera iz oblasti budžeta i bužetskog prava -praksa u državnim organima- predavanje stručnjaka za pitanja budžeta)
	Budžet i budžetsko pravo Evropske unije, razlika između budžeta Evropske unije i nacionalnih budžeta, pojam finansijske perspektive, budžetski principi
XV nedelja	Postupak sastavljanja, donošenja i izvršenja budžeta Evropske unije (od Evropske komisije do Savjeta Evropske unije i Evropskog parlamenta)
XVI-XIX nedelja	Struktura budžeta Evropske unije (prihodi budžeta EU), budžetski rashodi, Budžetska kontrola u Evropskoj uniji, finansijski kontrolori, Evropski revizorski sud, Evropski parlament Završni ispit Popravni ispitni rok
Opterećenje studenata	

Nedeljno	U semestru
6 kredita x 40/30 = 8 sati Struktura: 4 sata predavanja 1 sat vježbi 3 sata samostalnog rada	Nastava i završni ispit: (8 sati) X 16 = 128 sati Neophodne pripreme prije početka semestra (administracija, upis, ovjera) 2 x (8sati)= 16 sati Ukupno opterećenje za predmet 6x30 = 180 sati Dopunski rad za pripremu ispita u popravnom ispitnom roku, uključujući i polaganje popravnog ispita od 0 do 30 sati Struktura opterećenja 128 sati (nastava) + 16 sati (priprema) + 30 sati (dopunski rad)

Obaveze studenata u toku nastave: Studenti su obavezni da pohađaju nastavu, obavljaju praksu, učestvuju u debatama i izradi testova.Studenti koji pripremaju seminarski rad javno ga brane, dok ostali studenti učestvuju u debati nakon prezentacije rada.

Literatura:
Osnovna:

D. Aleksić- G. Paović Jeknić,Finansije i finansijsko pravo, Univerzitet Crne Gore, Pravni fakultet, Podgorica 2001.
D. Popović, Poresko pravo, Univerzitet u Beogradu, Pravni fakultet, Beograd 2015
G. Paović -Jeknić, Budžetsko pravo, Univerzitet Crne Gore, Pravni fakultet Podgorica 2007.
G.Ilić Popov, Poresko pravo Evropske unije, Službeni glasnik, Beograd 2004.
J.Šimović –H.Šimović, Fiskalni sustav i fiskalna politika EU, Sveučilište u Zagrebu, Pravni fakultet 2006.
S Stojanović, Finansiranje Evropske unije, Službeni glasnik Beograd 2008.
M.Helminem, EU Tax Law- direct taxation2018, IBFD, october 2018,

Dodatna:

D. Popović, Nauka o porezima i poresko pravo, Univerzitet u Beogradu, 2007
G. Paović -Jeknić, Budžetska kontrola, Univerzitet Crne Gore, Podgorica 2000.
Gianni de Luca, Diritto tributario,Ed.Simone, Napoli 2002.
B. Jelčić i grupa autora, FInansijsko pravo i finansijska znanost, Narodne novine, Zagreb 2002.
G.Đurović, Evropska unija i Crna Gora, Univerzitet Crne Gore, Ekonomski fakultet 2012.
D.Đurić, Koheziona politika i pretpristupna podrška Evropske Unije, FOSI, Podgorica 2009.
M.Prokopijević, Evropska unija, Službeni glasnik, Beograd 2008.
Mattehias Haentyens-Pierre de Gioia-Carabellese, European banking and Financial law, Routledge 2015.

Oblici provjere znanja i ocjenjivanje:
I kolokvijum do 50 poena (studentu koji polaže popravni kolokvijum poništavaju se poeni sa redovnog kolokvijuma)
Završni ispit do 40 poena
Seminarski rad i praktična nastava do 10 poena

Ime i prezime nastavnika koji je pripremio podatke: Prof. dr Gordana Paović-Jeknić

Napomena: Sve dodatne informacije moguće je dobiti na časovima predavanja, vježbi, konsultacija ili na www.pravni.ucg.ac.me
Uporedivost:
Beograd:http:/www.ius.bg.ac.rs
Maribor:http:/www.pf.um.si/sl

Aneta Spaić*

MEĐUNARODNO POSLOVNO PRAVO U CRNOGORSKOM OBRAZOVNOM I PRAVNOM SISTEMU

1. UVOD - PREDMET I CILJEVI ANALIZE

Evropsko-integrativni proces Crne Gore, sa podrazumijevanom harmonizacijom crnogorskog u odnosu na evropsko pravo, je efektivno otpočeo 2010. godine, potpisivanjem Sporazuma o stabilizaciji i pridruživanju između EU, njenih država članica i Crne Gore (u daljem tekstu: Sporazum).[1] Ovim dokumentom Crna Gora se obavezala na usklađivanje svog zakonodavstva, stavova i politika u svim oblastima saradnje, shodno principima vladavine prava, ljudskih prava i građanskih sloboda. Konkretno, članom 72 glave VI - *Uskladjivanje zakonodavstva, sprovodjenje zakona i pravila o konkurenciji*, Crna Gore se obavezala na proces usklađivanja postojećeg zakonodavstva u Crnoj Gori sa zakonodavstvom Zajednice.[2]

Dakle, punopravno članstvo Crne Gore u EU, podrazumijeva ne samo uskladjivanje zakonodavstva i njegovo efikasno sprovođenje, već i generisanje svijesti o obavezi poštovanja "prava i obaveza gradjana i institucija inherentnih evropskom prostoru".[3] Nacionalne politike, instituti, proistekli iz evropskog prostora, sve više podrazumijevaju znanja i vještine potrebne za šira regionalna, odnosno evropska tržista, te kao takva moraju biti plasirana u prostoru visokog obrazovanja. Pravni fakultet kao najznačajnija visoko - obrazovna institucija u svakom društvu, pokazno pa i suštinski, mora uputiti na optimalne načine sticanja konkurentskih sposobnosti i studenata Pravnog fakulteta, koji će im iz pozicija pravnika –

*Prof.dr Aneta Spaić je vanredni profesor Pravnog profesor Pravnog fakulteta Univerziteta Crne Gore.

[1] Crna Gora je potpisala Sporazum 2007. godine. Medjutim, Sporazum je počeo da obavezuje kada su ga sve države članice EU potpisale - 1. maja 2010. godine.

[2] Ovo usklađivanje postojećih i budućeg zakona s pravnim propisima – *acquis,* se sprovodi u nekoliko faza u oblastima finansija, pravosuđa, slobode, bezbjednosti, trgovine i obrazovanja.

[3]Silabus Pravnog fakulteta Univerziteta u Zagrebu, dostupno na: https://www.pravo.unizg.hr/EJP/euwto, https://www.pravo.unizg.hr/EJP/studiji__studies/pravo_eu_pred_sudovima

sudija, tužilaca, notara i drugih pravničkih pozicija, biti potrebna na evropskom tržistu, koje zahtjeva poznavanje *acquis-a*.

Takodje, shodno ciljevima saopštenim kroz poglavlje 26 – koje se odnosi na *Obrazovanje i kulturu,* Crna Gora u svoj nacionalni prostor uključuje segment obrazovne politike EU, školovanje i osposobljavanje u skladu s novim zahtjevima EU tržišta, kreiranje visokokvalitetnog obrazovanja, poboljšanje studentskih kompetencija zasnovanih i na praktičnom znanju, poboljšanje obrazovne infrastrukture, profesionalnog znanja, kompetencija nastavnika, kao i razvijanje sistema praćenja i unapređenja kvaliteta obrazovanja.[4]

Iako okončan postupak reforme i akreditacije u 2017.godini, isti nije u adekvanoj mjeri dao odgovor na potrebe za evropeizacijom kurikuluma pojedinih predmeta. Izmjena kurikuluma koja znači inkorporisanje EU elemenata u silabuse nametnula se kao svojevrsan cilj CABUFAL-a. Dodatno, sticanje adekvatnih vještina i znanja predmetnih nastavnika i studenata su dodatni razlozi koji su opredijelili da Pravni fakultet Univerziteta Crne Gore (u daljem tekstu: PF) pristupi sveukupnom procesu evropeizacije nastavnog plana.[5] CABUFAL projektni zadatak pripreme i izrade ove publikacije je podrazumijevao:

- CABUFAL analizu predmeta nastavnog plana osnovnih studija Pravnog fakulteta Univerziteta Crne Gore po unaprijed definisanoj dinamici i fazama. Ista je prvobitno sačinjena od strane Pravnog fakulteta u Univerziteta u Ljubljani, redigovana-dopunjena od strane institucija konzorcijuma, i konačno, kroz Prijedloge izmjena pojedinačnih silabusa konkretizovana.
- Prikaz uporednih praksi i sadržaja u okviru kojih se izučavaju različite komponente međunarodnog poslovnog prava.

2. OSVRT NA INDIVIDUALNU ANALIZU SILABUSA MEĐUNARODNOG POSLOVNOG PRAVA PONUĐENOG OD PREDMETNOG NASTAVNIKA

CABUFAL projektom predviđena evropeizacija kurikuluma Pravnog fakulteta UCG je otpočela individualnom analizom svakog od pre-

[4] Poglavlje 26 – Obrazovanje kultura je privremeno otvoreno i zatvoreno 15.aprila 2013. godine, dostupno na: https://www.eu.me/mn/26/item/71-poglavlje-26-obrazovanje-i-kultura

[5] Ovaj postupak je započeo prvobitnim preispitivanjem tekućih – reformisanih silabusa, a završiće se njihovom izmjenom kroz priloge najboljih praksi izučavanja prava EU, do 30 ECTS kredita.

dmeta na osnovnim studijama, koja je, na početku projekta, uputno sugerisala različite instrumente i načine približavanja silabusima uporednih sistema.[6] Postupak unošenja EU elemenata se manifestuje ne samo kroz promijenjeni naziv nastavne jedinice, već kroz izmjenu sadržine izučavane materije. Revidirana nastavna jedinica saopštena i kroz njen naziv bi mogla biti dodata na postojeću ili tretirana kao nezavisna, pa su se neki od prijedloga izmjene odnosili na: Pravno regulisanje međunarodnog poslovanja uz EU biznis regulativu kroz osnivačke ugovore i osnovne principe: Slobode kretanje roba, usluga i kapitala, ljudi*;* međunarodne organizacije kao subjekt Međunarodnog poslovno prava[7] - a dopunjena sa EU kao posebnim akterom međunarnog poslovanja; STO kao subjekt MPP-a, medjunarodne kompanije dopunjene postupkom osnivanja EU kompanije; Prekogranična povezivanja; Pravo investicija uz posebno razmatranje sporazuma nove generacije, nastalih sporova, pravo konkurencije, sa posebnim dopunjena sa Relevantna EU regulativa (Sporazumi, Uredbe, Odluke), Arbitražno pravo.

Prema ocjeni eksternih evaluatora – konzorcijum partnera ovako predložena struktura Međunarodnog poslovnog prava je ekstenzivno postavljena, te iziskuje reduciranje materije obuhvaćene nastavnim jedinicama.

3. MEDUNARODNO POSLOVNO PRAVO NA PRAVNOM FAKULTETU UNIVERZITETA CRNE GORE – STANJE I IZAZOVI

Predmet Međunarodno poslovno pravo (u daljem tekstu: MPP) se po prvi put našao u nastavnom planu Pravnog fakulteta, akreditacijom svih fakultetskih jedinica Univerziteta Crne Gore, juna 2017. Tako, predmet MPP situiran je u VI semestru, sa opterećenjem od 6 ECTS kredita - 4+1. Drugim riječima, nijedan alumnista Pravnog fakulteta nije bio izložen sadržini predmeta koja se po prvi put uvrstava u silabus nastavnog plana na trećoj godini osnovnih studija, na modulu za privatno pravo. Akreditovani - aktuelni silabus za predmet na osnovnim studijama MPP,

[6] Nastavnici su predložili da se proces evropeizacije sprovede kroz četiri značajna segmenta: 1) Izmjene strukture postojećih nastavnih jedinica; 2) Uvođenje novih nastavnih jedinica; 3) Ustanovljavanje dodatnih bibliografskih obaveznih i fakultativnih naslova; 4) Dopune ciljeva, ishoda, sadržine i uporedivosti predmeta.

[7] Naziv predmeta regionalno i pa i globalno posmatrano može biti različit - Međunarodno poslovno pravo, Međunarodno trgovinsko pravo ili Pravo međunarodnih poslovnih transakcija.

koncipiran je po tradicionalnom regionalnom modelu svih udžbenika i nastavnika zemalja regiona, te se isti može dijeliti na dva dijela: *Standardni* (tradicionalni) i *fluktuirajući* segment silabusa.

Zajednički denominator sadržine svih razmatranih silabusa – tradicionalni dio - podrazumijeva sagledavanje cjelokupnog pravnog okvira koji se odnosi na konvencijsko pravo kako globalnog tako poslovnog prava i EU pravni okvir u kojima se odvijaju poslovne transakcije između poslovnih subjekata. Takodje, zajednički sadržalac obuhvata i obradu sljedećih tema: Nova *Lex mercatoria*, harmonizacija ugovornog prava EU, međunarodne organizacije (od opšeg značaja, finansijske organizacije, o značaja za Grupacija Svjetske banke, regionalne ekonomske integracije), država (*de iure imperii* i *de iure negotii)*, kompanije (Nacionalna, strana pravna lica, transnacionalne kompanije), svjetska trgovinska organizacija (STO), sporazuma o osnivanju multilateralne trgovinske organizacije, odnos GATT-a i STO-a, ostali multilateralni trgovinski sporazumi, rješavanje sporova u STO, međunarodni trgovinski ugovori, ugovor o međunarodnoj prodaji robe – CISG, prateći ugovori međunarodnoj kupoprodaji, finansijsi lizing, faktoring i franšizing.

Drugi dio silabusa se odnosi na nastavne jedinice koji predstavaljaju preludijume samostalnih pravnih disciplina kao što su: Pravo investija (međunarodno pravo investicija sa posebnim osvrtom na ICSID i investicionih arbitraža, ulogu ECJ - Achmea i drugi EU predmeti), Međunarodno arbitrašno pravo, Pravo konkurencije. Sve tri cjeline se nalaze u akreditovanom silabusu Pravnog fakulteta – drugom ciklusu studija – master studija.[8] Ovakva koncepcija Međunarodnog poslovnog prava omogućava da studenti već na osnovnim studijama, u okviru Međunarodnog poslovnog prava, dobiju osnovna znanja o posebnim disciplinama koje će se detaljnije proučavati sa masteru.

4. PRIMJENA ISKUSTAVA IZ CABUFAL-a - DALJA EVROPEIZACIJA NASTAVNIH PLANOVA IZ OBLASTI MEDJUNARODNOG POSLOVNOG PRAVA

Evropeizacija nastavnog plana ne obuhvata samo inaugurisnje EU elemenata – nastavnih jedinica u silabusima tradicionalnih pravnih disciplina, već i u plasiranju najboljih naučnih metoda proučavanja istih. CABUFAL iskustva u sagledavanju i promatranju silabusa i metodoliških alatki referentnih za EU pravne fakultete su u mnogome koristila u kreiranju

[8] Pocetak izučavanja ovih materija u mnogome podrazumijeva prethodno usvojene elemente EU prava (izvore, nadležnosti).

konačnog Prijedloga izmjene tekućeg silabusa. CABUFAL je kroz dvije komponente aktivnosti – 1) treninga, i 2) studijskih posjeta uz bilateralne nastavničke konsultacije, proces evropeizacije kurikuluma učinio efikasnim, svrsishodnim i željenim.

4) Pravni fakultet Univerziteta Crne Gore je kroz projekat CABUFAL realizovao – ugostio dvanaest predavača koji su na različite teme sa fokusom na EU elemente obučavali akademski kadar Pravnog fakulteta.[9] Iako nijedan od gostiju nije izvorno anagažovan na predmetu Međunarodno poslovno pravo, neka od predavanja su u značajnoj mjeri odgovorila na sadržinu pojedinih nastavnih jedinica, te tako olakšali selekciju tema i izbor materijala.
5) Druga komponenta CABUFAL –a je podrazumijevala studijske posjete uz nastavničke konsultacije. U tom su smislu posebno značajne i vrijedne bile posjete i sagledavanje silabusa Evropa Institutu Univerziteta u Saarland-u, Iustinianus Primus Pravnom fakultetu u Skoplju, Pravnom fakultetu Univerziteta u Splitu,[10] Pravnom fakultetu Univerziteta u Ljubljani,[11] Pravnog fakulteta Univerziteta u Zagrebu.[12]
6) Takođe, značajni za opredjeljivanje i selekciju predmetne materije su silabusi pravnih fakulteta koji nijesu neposredno razmatrani kroz projekat: Silabusi Pravnog fakutleta Univerziteta u Beogradu,[13] Pravnog fakulteta Univerziteta u Rijeci,[14] kao i silabusa Pravnog fakulteta Univerziteta u Mastrihtu.[15]

[9] Regent Univerzitet (Mireille Hebing, Neven Andjelic, Yossi Mekelberg), Pravni fakultet Univerziteta u Ljubljani (Prof. dr Vasilka Sancin, Dr Masa Kovic Dine), Iustinianus Primus Pravni fakultet (Karolina Ristova AAsterud, Jadranka Dabovic Anastayovska), Pravni fakultet Univerziteta u Splitu (Petar Bačić, Arsen Bačić)
Pravni fakultet Unvierziteta u Zagreb (Mihovil Škarica, Ksenija Grubišić, Marko Jurić).

[10]Pravni fakultet Univerziteta u Splitu, dostupno na: http://www.pravst.unist.hr/kolegiji.php?p=153

[11]Pravni fakultet Univerziteta u Ljubljani, dostupno na: http://www.pf.uni-lj.si/media/ucni.nacrt.mednarodno.gospodarsko.pravo.b2.2018.pdf

[12] Silabus Pravnog fakulteta Univerziteta u Zagrebu, dostupno na: https://www.pravo.unizg.hr/EJP/euwto, https://www.pravo.unizg.hr/EJP/studiji__studi es/pravo_eu_ pred_ sudovima

[13]http://www.ius.bg.ac.rs/Studije/SilabusiPF2013.pdf?fbclid=IwAR2JL9O8tyKenkMxMfkaVpVpyK073DJW2ZsYb5jhVeo4aPNargUABO7UTF

[14] Pravni fakultet Univerziteta u Rijeci, dostupno na: https://pravri.uniri.hr/files/studiji/FPTD/opispredmetafptd.pdf

[15]Pravni fakultet Univerziteta u Mastrihtu, dostupno na: https://www.pravo.unizg.hr/EJP/studiji__studies/pravo_eu_pred_sudovima, https://www.rug.nl/rechten/education/international-programmes/llm/eu-trade-law

Pored Prijedloga dodatne literature autora *Nicola de Luca*, Osnove evropskog kompanijskog prava, izvještaj konzorcijuma je predložio dijeljenje materije međunarodnog poslovnog prava na tri komponente: Bečku konvenciju o ugovorima o međunarodnoj prodaji robe, Investiciono pravo kao i pravo STO-a. Ovo struktuiranje sadržaja predmeta Međunarodnog poslovnog prava je dijelom uslovljeno drugim predmetima i njihovim tematskim/nastavnim sadržajem. U tom smislu, prvobitno uključene nastavne jedinice u okviru predmeta Medjunarodno poslovno pravo, koje se odnose na Arbitražno pravo i Pravo konkurencije, prema stanovištu konzorcijum izvjestaja je bilo potrebno isključiti iz sadržaja predmeta Međunarodnog poslovnog prava. Naime, njihovo kasnije tretiranje kroz samostalne pravne discipline je proizvelo za posljedicu njihovo supstituisanje kroz jedinice koje se ne obradjuju u okviru silabusa a to je oblast Investicionog prava.

Pored uobicajnih – tradicionalnih jedinica MPP-a, koje čine: Svjetska trgovinska organizacija (STO), Sporazum o osnivanju multilateralne trgovinske organizacije, Osnovni principi, Odnos GATT-a i STO, drugi multilateralni trgovinski sporazumi, Rješavanja sporova u STO, Spoljnotrgovinska politika EU, i odnos WTO – EU, *stepen integrativnosti EU politike u odnosu na nivo integracije koji postize WTO* je značajan segment predloženog silabusa.[16]

Poseban fokus izmjenjenog MPP silabusa je na investicionom EU pravu. Potreba za Investicionim pravom kao značajnim segmentom silabusa Međunarodnog trgovinskog prava je proistekla, ne samo iz prijedloga konzorcijum partnera, već iz nekoliko dodatnih argumeneta: 1) Značaja prava investicija u EU pravnom i ekonomskom prostoru,[17] 2) Značaja

[16]Dok evropsko pravo zabranjuje carine izmežu država članica, WTO podrazumijeva primjenu principa najpovlaštenije nacije i nastoji da postepeno smanji carine. Više vidjeti iz silabusa Pravnog fakulteta Univerziteta u Zagrebu, dostuono na: Silabus Pravnog fakulteta Univerziteta u Zagrebu, dostupno na: https://www.pravo.unizg.hr/EJP/euwto, https://www.pravo.unizg.hr/EJP/studiji__studies/pravo_eu_pred_sudovima. Takođe vidjeti: Commission v Italy EU: C: 1969: 29, br. 24/68, Humblot v Directeur des Services Fiscaux EU: C: 1985: 185, Br. 112/84, Commission v United Kingdom, EU: C: 1983: 202, 170/78

[17] Evropska unija je jedna od tri glavna svjetska aktera u međunarodnoj trgovini. Sa 3457 milijardi eura razmjene, EU je ostvarila najviše trgovine u svijetu u 2018-oj godini. Statistika ukupne svjetskih trgovinskih prilika posmatrana kroz parametre uvoza i izvoza, podrazumijeva detaljnu analizu Evropske Unije kako na svjetskom tržištu, tako i odnosu na trgovinsko poslovanje država članica EU. Više pogledati na https://ec.europa.eu/eurostat/statistics-explained/index.php?title=International_trade_in_goods/hr: "Trgovina robom skupine zemalja EU-28 čini približno 15 % svjetske trgovine robom. Vrijednost međunarodne trgovine robom znatno je veća od vrijednosti međunarodne

proučavanja prava investicija za CG, 3) Nepostojanja drugog predmeta u nastavnom planu PF koji tretira pitanja investicija, ni na jednom od ciklusa studiranja. Činjenica da se međunarodno, ni EU investiciono pravo ne izučava ni na jednom nivou studija su u značajnoj mjeri opredijelili da se pet nastavnih jedinica ovog predmeta posveti upravo ovoj tematici.

Fokus silabusa na pitanje uređenja zajedničke trgovine EU- Common Commercial Policy,[18] je nametnuto i činjenicom da je Lisabonskim ugovorom[19] izvršeno prenošenje nadležnosti država članica na Uniju, te tako pojačan kapacitet i pozicija Unije da efikasno i efektivno kreira koherentni regulatorni režim stranih investicija.[20] Zajednička trgovinska politika EU proistekla iz Lisaboskog sporazuma, Uredba o ustanovljavanju tranzicionog režima za bilateralne investicione sporazume država članica i trećih država,[21] i presuda Evropskog suda pravda je takođe uslovila i preispitivanja pa i potvrđivanje supremacije komunitarnog prava u odnosu na režim stranih ulaganja ustanovljenih bilateralnim investicionim sporazumima.

Isključiva nadležnost u području zajedničke trgovinske politike precizira da Unija zajedničkom trgovinskom politikom doprinosi postupnom ukidanju ograničenja u međunarodnoj trgovini, uravnoteženom razvoju svjetske trgovine,[22] te carinskoj uniji koja podrazumijeva trgovinu robom i uključuje zabranu uvoznih i izvoznih carina izmedju država članica, [23] kao i uvođenje posebne zajedničke carinske tarife prema svim trećim državama.[24]

---

trgovine uslugama (približno tri puta), što je posljedica prirode nekih usluga zbog koje je otežano njihovo pružanje preko granica."

[18]https://ec.europa.eu/eurostat/statistics-explained/index.php?title=International_trade_in _goods/hr

[19] Ugovor o Evropskoj uniji, clan3, kao i Ugovor o funkcionisanju Evropske unije, Glava II kojom se uredjuje oblast Zajednicke trgovinske politike.

[20] Ciric A., Cvetkovic N., Karakteristike pravnog rezima stranih direktnih investicija u pravu EU, Zbornik radova Pravnog fakulteta u Nisu, (Broj 68, Godina LIII, 2014, str.680-681.

[21] Uredba obezbeđuje balans između potrebe EU da ostvari efektivnu zaštitu svojih investitora i dovoljan regulatorni prostor za sprovođenje odgovarajuće politike.

[22] Clan 206 GLAVA II. Zajednička trgovinska politika.

[23] Član 28 UEU Ugovor o funkcionisanju EU. Zajednička trgovinska politika temelji se na jedinstvenim načelima, narocito u odnosu na „promjene carinskih stopa, sklapanje carinskih i trgovinskih sporazuma o trgovini robom i uslugama te komercijalnim aspektima intelektualnog vlasništva, direktna strana ulaganja i postizanje ujednačenosti mjera liberalizacije, izvoznu politiku i mjere za zaštitu trgovine poput onih koje se poduzimaju u slučaju dampinga ili subvencija".

[24] Član 207 Ugovor o funkcionisanju EU: Zajednička trgovinska politika vodi se u kontekstu načela i ciljeva vanjskog djelovanja Unije. Usvajanje mjera za sprovodjenje zaje-

U naročitom fokusu ovog predmeta je tema BIT-ova kao instrumenta zaštite stranih investicija, kojima se investitorima omogućava da se zaštite od države domaćina. BIT-ovi kao međunarodni ugovori su otvorili pitanje odnosa prava Evropske unije i međunarodnog prava naročito ga sagledavajući kroz arbitražne odluke, kojima se prednost dala međunarodnom pravu, te tako problematizovala suprematija prava EU i njegov autonomni karakter. Tumačenje BIT-ova je u nadležnosti Suda pravde pa se njihova punovažnost – kao izvora prava, mora ocenjivati u skladu sa pravom EU, shodno temeljnim principima EU.[25]

Primjena i uvodjenje u nastavu svjetski priznatog udžbenika za oblast međunarodnog poslovnog prava Folsom, R.H., Gordon, M. W., Spagnole, J.A., International Business Transactions, WestLaw[26] - -će u značajnoj mjeri odgovoriti na zakonom utvrdjeni zahtjev koji se odnosi na praktičnu nastavu. Ovaj udžbenik po svakoj od nastavnih i podnastavnih tema predstavlja pravni problem - konkretan *ad acta* predmet i studiju slučaja koji se analiziraju kao značajan segment proučavanja materije.

INFORMACIONA LISTA – MEĐUNARODNO TRGOVINSKO PRAVO

	Naziv predmeta:	Međunarodno trgovinsko pravo		
Šifra predmeta	Status predmeta	Semestar	Broj ECTS kredita	Fond časova
	Obavezan	VI	6	4+1
Studijski programi za koje se organizuje : Akademske osnovne studije PRAVNOG FAKULTETA , pravni odsjek – PODGORICA, 2017/18 (studije traju 6 semestara, 180 ECTS kredita).				
Uslovljenost drugim predmetima: ne				
Ciljevi izučavanja predmeta: Međunarodno poslovno pravo jeste naučna disciplina koja za predmet izučavanja ima odnose između privrednih subjekata koje karakteriše prisustvo elemenata inostranosti. Sa sadržinskog aspekta, kurs je koncipiran tako da se kao osnovne oblasti izučavanja javljaju *Uvod u međunarodno poslovno pravo, Međunarodno kompanijsko pravo, Međunarodno ugovorno poslovno pravo, Arbitražno pravo, Pravo stranih ulaganja, i Pravo konkurencije*.				
Ishodi učenja - Nakon što student položi ispit iz Međunarodnog poslovnog prava biće u mogućnosti da: 1. Shvati međunarodni pravni okvir i EU pravni okvir u kojima se odvijaju poslovne transakcije između poslovnih subjekata,				

dnicke trgovinske politike je u nadleznosti Evropskog parlamenta i Savjeta. Uloga Komisije i Savjeta povodom pregovora, i osiguravanja uskladjenosti sporazuma sa politikom Unije, shodno pravilima Unije. Tema ovih jedinica su i trgovine uslugama i komercijalnih aspekata intelektualnog vlasništva kao i direktnih stranih ulaganja, Vijeće odlučuje jednoglasno ako ti sporazumi sadržavaju odredbe za koje je potrebna jednoglasnost pri donošenju unutarnjih pravila.

[25] Radovan Vukadinović**,** Štetno dejstvo arbitražnog rešavanja sporova iz internih sporazuma evropske unije o zaštiti stranih investicija na pravni poredak evropske unije, dostupno na: http://ojs.ius.bg.ac.rs/index.php/anali/article/view/284

[26] Međunarodni trgovački poslovi u sažetom obliku, Pravni fakultet Sveučilišta u Rijeci i COLPI, Biblioteka prijevodi, 1998. Korišćen na Pravnom fakultetu Univerziteta u Rijeci, od 1997 godine, kada je isti i preveden na hrvatski jezik.

2. Razumije ulogu i značaj i međunarodnih organizacija u stvaranju i primjeni poslovnog prava, sa fokusom na EU kao *sui generis* poslovnog aktera;
3. Shvati ulogu STO-a i kao i njegov sistem rjesavanja sporova;
4. Razluči ulogu države kao subjekta javnog i privatnog- poslovnog prava, i shodno tome shvati njenu *de iure negotii* i *de iure imperii* prirodu;
5. Analizira aktuelne procese globalnog i EU poslovanja kroz procese harmonizacije i unifikacije poslovnog prava;
6. Ovlada osnovama pojedinačnih ugovornih odnosa sa elementom inostranosti kao što su: sve vrste kupoprodaje, zastupanja, posredovanja, komisiona, špedicije, osiguranja, turizma, transporta, lizinga, faktoringa i franšizinga,u globalnom i EU kontekstu;
7. Prepozna i uputi na specifičnosti prava stranih ulaganja, shvati njihov značaj u poslovnom pravu.

Sadržaj predmeta: Pohađanje kursa omogućava upoznavanje sa osnovnim institutima međunarodnog i EU poslovnog prava, kao i pozitivno-pravnim opredjeljenjima domaće legislative u domenu kompanijskog, trgovinskog, ugovornog, investicionog prava i prava STO-a. Propisani segment praktičnog obrazovanja, po svim nastavnim jedinicima, će biti inkorporisan u ovaj predmet, pa će po zavrsetku nastavnog i ispitnog procesa očekuje sticanje ne samo teorijskih već i praktičnih znanja.

Ime i prezime nastavnika i saradnika: Prof. dr Aneta Spaic

Metod nastave i savladanja gradiva: Predavanja, vježbe, oblici praktične nastave, konsultacije

PLAN RADA

Nedjelja i datum		*Naziv metodskih jedinica za predavanja(P), vježbe (V) i ostale nastavne sadržaje (O);*
I	*P/V/O*	Uvodne napomene o predmetu i literature
II	*P/V/O*	Pojam, predmet, izvori, odnos sa drugim granama prava, sa narocitim fokusom na odnos sa pravnom EU.
III	*P/V/O*	Nova Lex mercatoria. Unifikacija MPP. Harmonizacija MPP. Harmonizacija ugovornog prava EU.
IV	*P/V/O*	Subjekti: Medjunarodne organizacije (od opseg znacaja, finansijske organizacije, o znacaja za Grupacija Svjetske banke, regionalne ekonomske integracije), država (*de iure imperii* i *de iure negotii)*, kompanije (Nacionalna, strana pravna lica, transnacionalne kompanije).
V	*P/V/O*	Svjetska trgovinska organizacija (STO). Sporazum o osnovanju multilateralne trgovinske organizacije. Osnovni principi.Odnos GATT-a i STO. Ostali multilateralni trgovinski sporazumi. Rjesavanja sporova u STO.
VI	*P/V/O*	Spoljnotrgovinska politika EU. WTO - EU.
VII	*P/V/O*	Međunarodni trgovinski ugovori: Ugovor o međunarodnoj prodaji robe – CISG.
VIII	*P/V/O*	Međunarodni trgovinski ugovori: Ugovor o međunarodnoj prodaji robe – CISG.
IX	*P/V/O*	Prateći ugovori međunarodnoj kupoprodaji. Finansijsi lizing, faktoring i franšizing.
X	*P/V/O*	Kolokvijum
XI	*P/V/O*	Popravni kolokvijum
XII	*P/V/O*	Pravni okvir stranih investicija. Posebni oblici stranih ulaganja.
XIII	*P/V/O*	Nova generacija sporazuma. Multilateralni i bilateralni investicioni modeli
XIV	*P/V/O*	Rjesavanje specificnosti investicionih sporova. ICSID i druge investicione arbitraže
XV	*P/V/O*	Investiciono pravo EU. ESP. Achmea i drugi relevantni predmeti
XVI		*Završni ispit*
XVII		*Ovjera semestra i upis ocjena*
XVIII-XXI		*Dopunska nastava i popravni ispitni rok*

Obaveze studenta u toku nastave: Studenti su obavezni da pohađaju nastavu, učestvuju u debatama i izradi testova. Studenti koji izrade seminarski rad, po pravilu. javno ga brane, dok ostali studenti učestvuju u debati nakon prezentacije rada.

Konsultacije: Ponedjeljkom od 9-13 h

Opterećenje studenata

Nedjeljno	U semestru
6 kredita x 40/30 = 8 sati Struktura: 4 sati predavanja 1 sati vježbi 3 sati individualnog rada studenta (priprema za laboratorijske vježbe, za	Nastava i završni ispit: (8 sati) x 16 = 128 sati Neophodna priprema prije početka semestra (administracija, upis, ovjera): 2 x (8 sati) = 16 sati Ukupno opterećenje za predmet: 6 x 30 = 180 sati Dopunski rad za pripremu ispita u popravnom ispitnom roku, uključujući i polaganje popravnog ispita od 0 - 30 sati.

kolokvijume, izrada domaćih zadataka) uključujući i konsultacije	Struktura opterećenja: 128 sati (nastava) + 16 sati (priprema) + 30 sati (dopunski rad)

LITERATURA:

A) Obavezna:

1. Đurović, R.: Međunarodno privredno pravo, Beograd, 2004;
2. Vasiljević, M.: Trgovinsko pravo, Beograd, 2014;
3. Vukadinović, R: Međunarodno poslovno pravo, Kragujevac, 2012.

B) Dodatna:

4. Andre Feibig, EU Business Law, American Bar Association, 2016.
5. Beate Sjåfjell, Anja Wiesbrock, The Greening of European Business Under EU Law: Taking Article 11 TFEU Seriously, Routledge, 2015.
6. Nicola de Luca, European Company Law: Text, Cases and Materials, Cambridge University Press, 2017.
7. Gabriel Moens and John Trone, Commercial Law of the European Union, Springer, 2010.
8. Carić, S., Vilus, J., Šogorov, S: Međunarodno privredno pravo, Novi Sad, 2000;
9. Draškić, M.., Stanivuković M: Ugovorno pravo međunarodne trgovine, Beograd, 2005;
10. Draškić, M: Međunarodno privredno ugovorno pravo, Beograd, 1990;
11. Đurović, R.., Ćirić, A: Međunarodno trgovinsko pravo - Opšti deo, Niš, 2005;
12. Folsom, R.H., Gordon, M.W., Van Alstine, M.P., Ramsey, M.D: International Business Transactions: A Problem-Oriented Coursebook, 12th and Documents Supplement for International Business Transactions, 2015;
13. Jankovec, I: Privredno pravo, Beograd, 1999;
14. Jovanović, N: Praktikum iz trgovinskog prava, Beograd, 1999;
15. Ljutić, B: Bankarsko i berzansko poslovanje, Beograd, 2004;
16. Mlikotin-Tomić, D: Pravo međunarodne trgovine, Zagreb, 1999;
17. Stojiljković, V: Međunarodno privredno pravo, Beograd, 2001;
18. Subotić-Konstantinović, N: Uvod u međunarodno privredno pravo, Beograd, 1999;
19. Šulejić, P: Pravo osiguranja, Beograd, 1997;
20. Varadi, T: Medjunarodno privatno pravo, Beograd, 2000.

Oblici provjere znanja i ocjenjivanje: - Kolokvijum do 40 poena; - Interakcija i izrada seminarskog rada do 10 poena; - Završni usmeni ispit (ukupno gradivo) do 50 poena

Prelazna ocjena se dobija ako se kumulativno sakupi najmanje 50 poena

Ocjena	*A*	*B*	*C*	*D*	*E*
Broj poena[5)]	*90-100*	*80-89*	*70-79*	*60-69*	*50-59*

Maja Kostić-Mandić*

NAJBOLJE NASTAVNE PRAKSE U OBLASTI MEĐUNARODNOG PRIVATNOG PRAVA EVROPSKE UNIJE

1. Uvod

Uvođenje detaljnijeg izučavanja međunarodnog privatnog prava Evropske unije u okviru predmeta Međunarodno privatno pravo, koje je pogotovo u 21. vijeku[1] u značajnoj mjeri unifikovano donošenjem većeg broja uredbi (regulativa) koje se odnose na međunarodno privatno pravo[2],

* Prof. dr Maja Kostić Mandić je redovni profesor Pravnog fakulteta Univerziteta Crne Gore.

[1] Nakon stupanja na snagu Ugovora o Evropskoj uniji (Lisabonski ugovor, konsolidovana verzija, [2012] OJ C 326/13), pravni osnov za nadležnost Evropske unije u ovoj oblasti je sadržan u članu 67 (4) i članu 81 Ugovora o funkcionisanju Evropske unije (konsolidovana verzija, [2012] OJ C 326/47)· Članom 81 je uspostavljen pravni osnov za usvajanje mjera koje imaju za cilj postizanje jedinstvenih pravila država članica u oblasti određivanja mjerodavnog prava i pitanja međunarodne nadležnosti, postupka i priznanja i izvršenja stranih sudskih odluka.

[2] U važnije propise koji po svom značaju i uticaju na uporedna prava nadilaze EU spadaju: Uredba br. 44/2001 o nadležnosti i o priznanju i izvršenju presuda u građanskim i trgovinskim stvarima (Uredba Brisel I), odnosno Uredba br. 1215/2012 o nadležnosti i o priznanju i izvršenju presuda u građanskim i trgovinskim stvarima (Izmijenjena Uredba Brisel I iz 2012), Uredba br. 2201/2003 o nadležnosti i o priznanju i izvršenju presuda u bračnim stvarima i stvarima roditeljske odgovornosti (Uredba Brisel II bis), Uredba br. 864/2007 o određivanju mjerodavnog prava za vanugovorne obaveze (Uredba Rim II), Uredba br. 593/2008 o određivanju mjerodavnog prava za ugovorne obaveze (Uredba Rim I), Uredba br. 4/2009 o nadležnosti, mjerodavnom pravu, priznanju i izvršenju odluka i o saradnji u stvarima u vezi sa obavezama izdržavanja, Uredba br. 1259/2010 o uvođenju pojačane saradnje u oblasti mjerodavnog prava za razvod i rastavu (Uredba Rim III), Uredba br. 650/2012 o nadležnosti, mjerodavnom pravu, priznanju i izvršenju presuda i autentičnih instrumenata u oblasti nasljeđivanja i stvaranja evropskog uvjerenja o nasljeđivanju (Uredba o nasljeđivanju – Uredba Rim IV), Uredba br. 1103/2016 o uvođenju pojačane saradnje u oblasti nadležnosti, mjerodavnog prava i priznanja i izvršenja odluka u stvarima bračnoimovinskog režima (Uredba o bračnoimovinskom režimu) i Uredba br. 1104/2016 o uvođenju pojačane saradnje u oblasti nadležnosti, mjerodavnog prava i priznanja i izvršenja odluka u stvarima imovinskih posljedica registrovanog partnerstva (Uredba o imovinskim posljedicama registrovanog partnerstva). U procesne izvore spadaju i: Uredba br. 1346/2000 o stečaju, Uredba br. 1206/2001 o saradnji između sudova država članica u području izvođenja dokaza u građanskim i trgovinskim predmetima, Uredba br. 805/2004 o evropskom izvršnom nalogu, Uredba br. 1896/2006 kojom se uvodi postupak evropskog platnog naloga, Uredba br. 861/2007 o uvođenju evropskog postu-

na Pravnom fakultetu Univerziteta Crne Gore se poklapa sa početkom CABUFAL projekta, kao i sa objavljivanjem udžbenika[3] za navedeni predmet, koji u značajnoj mjeri obrađuje i ovu materiju. Građanskopravni odnosi sa međunarodnim elementom u domenu kolizionopravnog regulisanja (oblast mjerodavnog prava) na ovom fakultetu izučavaju se isključivo u okviru predmeta Međunarodno privatno pravo, na trećoj godini studija, u okviru jednog semestra, sa fondom časova 60 (četiri časa predavanja nedjeljno i jedan čas vježbi), a na predmetu je angažovan jedan nastavnik, bez saradnika. Neka pitanja koja spadaju u građansko procesno pravo sa međunarodnim elementom pored međunarodnog privatnog prava obuhvaćena su i nekim drugim pravnim disciplinama (u prvom redu Građansko procesnim pravom i predmetima koji obuhvataju neke segmente rješavanja sporova putem međunarodnih trgovinskih arbitraža), dok se prava stranaca da stupaju u građanskopravne odnose, pa i prava državljana članica Evropske unije izučavaju samo na nivou opštih principa. Jedna od specifičnosti ove pravne discipline je i postojanje velikog broja međunarodnih ugovora, koji obavezuju i Crnu Goru i zemlje članice Evropske unije[4].

2. Osvrt na Analizu nastavnog plana Pravnog fakulteta Univerziteta Crne Gore sačinjenog od strane Pravnog fakulteta Univerziteta u Ljubljani – u dijelu koji se odnosi na Međunarodno privatno parvo

Smatramo nespornim da nastava pozitivnopravnog predmeta treba da bude okrenuta potrebama budućih pravnika. U Crnoj Gori se od 2014. godine primjenjuje Zakon o međunarodnom privatnom pravu Crne Gore[5] (ZMPP) koji, u skladu sa članom 80 Sporazuma o stabilizaciji i pridruživanju, ide ka usklađivanju nacionalnog prava sa pravom EU i u ovoj oblasti. Zakon predviđa primjenu prava EU na dva načina: ugrađivanjem odredaba propisa EU u nacionalno pravo u određenim oblastima i za određene vrste odnosa sa određenim izmjenama, ali i direktnim upućivanjem na pravo EU. U ovom drugom slučaju ZMPP izričito predviđa da se

pka za sporove male vrijednosti i Uredba br. 1393/2007 o dostavi u državama članicama, sudskih i vansudskih pismena u građanskim ili trgovinskim stvarima iz 2007. godine.

[3] Maja Kostić-Mandić, Međunarodno privatno pravo, Univerzitet Crne Gore, Pravni fakultet, Podgorica, 2017.

[4] Posebno su značajne "haške konvencije": https://www.hcch.net/en/instruments/conventions (18.01.2019.).

[5] Zakon o međunarodnom privatnom pravu ("Sl. list CG", br. 1/2014, 6/2014 - ispr., 11/2014 - ispr., 14/2014 i 47/2015 - dr. zakon).

tumačenje i primjena odredaba koje se odnose na ugovorne i vanugovorne obaveze vrši u skladu sa uredbama Rim I i Rim II[6]. U pogledu određivanja mjerodavnog prava za obaveze izdržavanja u potpunosti su preuzete odredbe Haškog protokola o mjerodavnom pravu za obaveze izdržavanja iz 2007. godine (koji je dio prava EU i na čiju primjenu upućuje Uredba o obavezama izdržavanja). Oblast nasljeđivanja je regulisana po uzoru na rješenja Uredbe Rim IV. U oblasti međunarodne nadležnosti, u značajnoj mjeri su preuzeta rješenja Uredbe Brisel I. S obzirom na naprijed navedeno, i činjenicu da se radi o jednom predmetu na nivou dodiplomskih studija, izučavanju međunarodnog privatnog prava EU je posvećena adekvatna pažnja, kao što je to navedeno i u Analizi koja je rađena na Pravnom fakultetu Univerziteta u Ljubljani, ali prvenstveno vodeći računa o materiji koja se danas primjenjuje u ovoj oblasti, u Crnoj Gori kao zemlji kandidatu za članstvo u EU. Tome ide u prilog i činjenica da u osnovnom udžbeniku[7] koji se koristi u ovoj oblasti na Pravnom fakultetu UCG od 384 stranica osnovnog teksta[8], na metodske jedinice koje u naslovu imaju pravo EU otpada oko 66 stranica[9], dok je taj broj veći kada se tome dodaju i one metodske jedinice u okviru kojih se izučavaju instituti nacionalnog prava, a koji su preuzeti iz prava EU (npr. mjerodavno pravo za ugovore, vanugovorne obaveze, nasljeđivanje i izdržavanje) čime se dolazi do iznosa od oko 80 stranica i udjela od oko 21 % u izučavanju materije koja se odnosi na pravo EU.

Ideja navedena u Analizi da se, već sada, u okviru istog predmeta, eventualno, dodatno obrađuju i Uredba Brisel II bis, kao i Uredba o evropskom izvršnom nalogu, Uredba kojom se uvodi postupak evropskog platnog naloga i Uredba o uvođenju evropskog postupka za sporove male vrijednosti djelovala bi logično kada bi Crna Gora već bila članica EU, i/ili kada bi postojao veći fond časova, odnosno posebni predmeti na raznim nivoima studija u okviru kojih se obrađuju teme iz oblasti međunarodnog privatnog prava. U suprotnom, ionako smanjen broj časova posvećen osnovnim institutima i osnovnim teorijskim postavkama u cilju osavremenjivanja nastavnog plana uvođenjem izučavanja prava EU (jednog broja uredbi i sudske prakse Suda pravde EU), kao i okrenutost praksi kroz

[6] Vidi članove 49 i 67 ZMPP-a.

[7] Maja Kostić-Mandić, Međunarodno privatno pravo, Univerzitet Crne Gore, Pravni fakultet, Podgorica, 2017.

[8] Misli se na tekst koji ne uključuje predgovor, recenzije, sadržaj, literaturu i priloge.

[9] Procesno pravo EU - Brisel I (nadležnost, litispendencija, priznanje i izvršenje) obrađeno je na 11 strana, Uredba Rim I na 5 strana, Uredba Rim II na 15-tak strana, Uredba Rim IV na 6 strana i slično.

izučavanje pozitivnopravnih rješenja iz nacionalnog zakonodavsta i međunarodnih ugovora bi mogao dovesti do toga da nema dovoljno vremena za obrađivanje osnovnih postavki ove veoma složene discipline.

U nastavi se posvećuje pažnja mjerodavnom pravu EU i u onim oblastima gdje nisu preuzeta ta rješenja ZMPP-om, pa se, u manjoj mjeri, izučavaju i rješenja Uredbe Rim III i Uredbe o bračnoimovinskom režimu, jer one imaju univerzalnu primjenu (pravo mjerodavno prema ovim uredbama primjenjuje se i onda kada ono nije pravo neke države članice EU), pa se kao mjerodavno pravo može javiti i pravo Crne Gore. Takođe, obrađuje se veći broj međunarodnih konvencija donijetih pod okriljem Haške konferencije za MPP.

3. Primjena iskustava i rezultata treninga i studijskih posjeta u sklopu CABUFAL-a

U okviru projekta CABUFAL bili smo u prilici da učestvujemo u raznim oblicima obuke i razmjene iskustava u pogledu organizovanja i izvođenja nastavnog procesa na partnerskim institucijama. S obzirom na ograničenje vezano za dužinu ovog teksta, osvrnućemo se samo na iskustva kolega sa Iustinianus Primus Pravnog fakulteta iz Skoplja. Razmjena iskustava je bila od posebnog značaja jer i Makedonija i Crna Gora imaju nove zakone o međunarodnom privatnom pravu koji su djelimično izvršili recepciju prava Evropske unije u navedenoj oblasti, i zemlje su kandidati za članstvo u EU.

Na partnerskom fakultetu iz Makedonije postoji posebna katedra za Međunarodno privatno pravo. Ova materija se izučava na svim nivoima studija[10], a u nastavni proces su uključena tri izvršioca (na PF UCG, kao što je već navedeno, postoji samo jedan, istoimeni predmet, na dodiplomskim studijama i jednim izvršiocem). Predmet na prvom stepenu je Međunarodno privatno pravo, na trećoj godini studija, sa 7 ECTS. Predmeti na drugom stepenu u okviru dva usmjerenja obuhvataju i Međunarodno privatno pravo EU I i II, a na trećem stepenu – doktorskim studijama, na dva usmjerenja izučava se Međunarodno privatno pravo intelektualne svojine.

[10] http://www.pf.ukim.edu.mk/wp-content/uploads/2017/12/Megjunarodno-privatno-pravo.pdf (14.01.2019.); http://pf.ukim.edu.mk/megjunarodno-pravo-i-odnosi-i-pravo-na-eu/ (14.01.2019.); http://pf.ukim.edu.mk/wp-content/uploads/2018/05/10-11%20Medjunarodno%20pravo%20Pravo%20na%20EU.pdf(14.01.2019.);http://pf.ukim.edu.mk/wp-content/uploads/2018/05/3%20Pravo%20na%20intelektualna%20sopstvenost.pdf (14.01.2019.).

Iz navedenog si vidi da su na Iustinianus Primus Pravnom fakultetu posebni predmeti Međunarodno privatno pravo EU i Međunarodno privatno pravo EU II, koji se na PF UCG izučava samo u određenoj mjeri, na osnovnim studijama, u okviru opšteg Međunarodnog privatnog prava. Upoređivanjem programa rada uočava se da se na PF UCG u okviru predmeta Međunarodno privatno pravo izučava materija obuhvaćena predmetom Međunarodno privatno pravo EU (uredbe: Brisel 1, Rim I i Rim II, kao i Haška konvencija o izboru suda (2005)[11], dok se od materije obuhvaćene predmetom Međunarodno privatno pravo EU II posebno ne izučava Uredba Brisel II bis, ali se zato, u kratkim crtama izučavaju: Uredba Rim III, Uredba o nasljeđivanju, i haške konvencije, koje obavezuju i Crnu Goru: Konvencija o zaštiti djece i saradnji u oblasti međunarodnog usvojenja (1993); Konvencija o nadležnosti, mjerodavnom pravu, priznanju, izvršenju i saradnji u pogledu roditeljske odgovornosti i mjera za zaštitu djece (1996) i Konvencija o međunarodnoj naplati potraživanja za izdržavanje djeteta i druge oblike izdržavanja porodice (2007).

4. Najbolje nastavne prakse/primjeri (i lična iskustva) u odgovarajućim oblastima prava Evropske unije

Prilikom koncipiranja inoviranog plana i programa (silabusa) za Međunarodno privatno pravo javila se nedoumica, prisutna kod svakog nastavnika MPP-a: koliko „duboko“ ući u materiju. S obzirom na ograničen fond časova, mi smo prednost dali cjelovitom i sistematskom prikazu osnovnih instituta u svim tradicionalnim oblastima MPP-a, ali i njihovom sadržaju pretočenom u pravne norme Crne Gore, Evropske unije i jednog broja zemalja, u odnosu na detaljniji teorijski i istorijski pristup. Ovaj model je primijenjen i u udžbeniku, uz detaljno navođenje izvora i literature kako na domaćem tako i na stranim jezicima.

Međunarodnom privatnom pravu EU posvećujemo posebne časove, nakon teorijske obrade osnovnih pravnih instituta, praćenih vježbama i praktičnom nastavom (posjetom advokatskoj kancelariji, odnosno, vježbama i simulacijama na fakultetu, uz pomoć demonstratora, advokatskog pripravnika).

S obzirom na ograničen broj časova predavanja i složenost materije, svi oblici nastave i vježbe su koncipirani tako da studenti prepoznaju situacije koje im mogu biti bliske i u kojima se i oni sami mogu naći. Uvijek najviše pažnje izazovu teme koje se odnose na porodične odnose, a

[11] https://www.hcch.net/en/instruments/conventions (18.01.2019.).

od tema gdje se neposredno izlaže pravo EU izdvaja se mjerodavno pravo za potrošačke ugovore. Tako u okviru ove teme, studenti saznaju zašto bi, na primjer Njemac, automobil marke „Golf“ kupio od danskog distributera, a ne u Njemačkoj, koje pravo može biti mjerodavno kada, na primjer, putem interneta naručuju određeni proizvod ili kada sa vebsajta postavljenog u nekoj stranoj zemlji daunloduje muziku ili film ili uplaćuje hotelski smještaj; u kojim sve oblastima postoje direktive koje sadrže materijalnopravne norme i gdje mogu naći više informacija o tome; šta je autonomno tumačenje i šta ono podrazumijeva kod npr. pojma „usmjeravanja djelatnosti” prema državi uobičajenog boravišta potrošača, kakav je značaj prinudnih propisa prava uobičajenog boravišta potrošača i drugo.

5. Ključni izazovi na planu podsticanja studenta da razumije ključne pravne pojmove, poziciju odgovarajuće oblasti prava Evropske unije u nacionalnom pravnom sistemu i odnos sa drugim granama prava

U nastavnom procesu koji se odnosi na MPP EU nastavnik mora da ima u vidu da predaje složenu materiju studentima od kojih neki još nisu položili ni predmete iz građanskopravne grupe (Obligaciono pravo i Stvarno pravo), dok uporedo sa predavanjima iz MPP-a imaju i predavanja iz Građansko procesnog prava. S obzirom na navedeno, u predavanjima nastavnik uvijek ukaže, u kratkim crtama i na osnovne pravne koncepte iz domaćeg materijalnog ili procesnog prava. Zatim, u mjeri u kojoj to materija dozvoljava elaboriramo neki jednostavan hipotetični primjer uz dodavanje međunarodnog elementa. Dalje, detaljno se bavimo tim pojmovima sa aspekta MPP-a, uz ukazivanje na neka uporednopravna iskustva koja su značajna ili su dovela do formulisanja određenih pojmova, kako u doktrini MPP-a, tako i u uporednom zakonodavstvu (npr. domicil/uobičajeno boravište prodavca, kao tačka vezivanja ili klauzule odstupanja od mjerodavnog prava[12]). Naredni korak je elaboriranje pozitivnopravnih rješenja u pravu Crne Gore, prvenstveno na osnovu Zakona o međunarodnom privatnom pravu, a najčešće je to direktno povezano sa pravom EU, čija rješenja su recipirana ovom kodifikacijom. Prethodno, obrađuju se izvori MPP EU, kao i pravo EU kao izvor MPP-a Crne Gore.

[12] Polazi se od švajcarske generalne klauzule odstupanja, a detaljnije se izučavaju klauzule odstupanja, koje su našle su mjesto i u pravu Evropske unije: u domenu mjerodavnog prava za ugovore (Uredba Rim I), vanugovorne obaveze (Uredba Rim II), izdržavanje (Haški protokol), nasljeđivanje (Uredba Rim IV), bračnoimovinski režim i imovinske posljedice registrovanog partnerstva.

Power point prezentacijom koja prati izlaganje navedene metodske jedinice posebno se izdvajaju procesne, kolizione i uredbe koje obuhvataju obje oblasti. Ovo može, na prvi pogled djelovati kao nepotrebno i očigledno, ali iskustvo ovog nastavnika pokazuje da jedan broj studenata ne pokazuje sklonost ka logičkom razmišljanju i da svako pitanje koje imalo odstupa od teza eksplicitno navedenih u udžbenicima za njih predstavlja izazov.

Kada nastavnik stekne utisak da studenti razumiju osnovne pojmove i da u interakciji i sami mogu da navedu/osmisle jednostavan primjer kojim bi opisali dati pojam/pojavu, i nakon što su odrađene vježbe i praktična nastava (od čega jedan dio u advokatskoj kancelariji, a jedan dio na fakultetu, uz učešće demonstratora koji je postdiplomac i advokatski pripravnik), prelazimo na komentarisanje prakse Suda pravde EU (prethodno su studenti upoznati sa ulogom ovog suda i značajem ujednačenog tumačenja[13] i stvaranjem autonomnih pojmova u pravu EU)[14]. Obuhvaćena su prethodna mišljenja ovog suda u domenu primjene Uredbe Brisel I (tačnije, sistema Brisel I)[15], za norme neposredne primjene[16], mjerodavno pravo: za lično ime[17], za pravno lice[18], za potrošačke ugovore i ugovore o radu[19] i za vanugovorne odnose[20].

---

[13] ECJ, slučaj 12/76, *Industrie Tessili Italiana Como v Dunlop AG* [1976] ECR 1473.

[14] To faktički znači da je tumačenje određenog pitanja koje je dao Sud pravde EU a koje se odnosilo na značenje određenog instituta, iz, na primjer, Uredbe Brisel I (ili Briselske konvencije) najčešće primjenjivo i za istovjetne institute sadržane u odredbama uredbi o mjerodavnom pravu za obligacione odnose. Pored ovog opšteg pravila, ima i slučajeva da preambula jedne uredbe upućuje na usklađeno tumačenje određenih pojmova iz različitih instrumenata. Tako, npr., tačka 24 Preambule Uredbe Rim I predviđa da pojam usmjerene djelatnosti kod potrošačkih ugovora treba usklađeno tumačiti sa Uredbom Brisel I.

[15] ECJ, slučaj C-7/98, *Krombach v. Bamberski* (2000) ECR I-1935; CJEU, slučaj C-54/99, *Eglise de Scientologie* (2000) ECR I-1335; CJEU, slučaj C-36/02, *Omega* (2004) ECR I-9609, CJEU, slučaj C-281/02, *Owusu v. Jackson* (2005) ECR I-1383.

[16] ECJ, slučaj *C-381/98, Arblade* ECR I-9305; CJEU, slučaj C-281/02, *Ingmar (2005)* ECR I-1383.

[17] CJEU, slučaj C-148/02, *Avello v. Belgium* (2003) ECR I-11613; CJEU, slučaj C-353/06, *Grünkin-Paul*, (2008) ECR I-7639; CJEU, slučaj C-208/09, *Sayn-Wittgenstein*, CJEU, slučaj C-391/09, *Runevič-Vardyn*,

[18] ECJ, slučaj C-81/87, *Daily Mail* (1988) ECR 5483; ECJ, slučaj C-212/97, *Centros* (1999) ECR I-1459; ECJ, slučaj C-208/00, *Überseering*.

[19] CJEU, slučaj C-464/01, *Johann Gruber v. Bay Wa AG*; CJEU, slučaj C-585/08, *Peter P-mmer v. Reederei Karl Schlüter GmbH & Co KG*; CJEU, slučaj C-144/09, *Hotel Alpenhof v. Mr. Heller*

CJEU, slučaj C-29/10, *Koelzsch v. Luxembourg*; CJEU, slučaj C-384/10, *Voogsgeerd v. Navimer*.

[20] ECJ, slučaj C-21/76, *Handelskwekerij G. J. Bier v. Mines Potasses d'Alsace* [1976] ECR 1735; ECJ, slučaj C-68/93, *Fiona Shevill and others v. Press Alliance SA* [1995]

6. Uvođenje odgovarajuće oblasti prava Evropske unije u crnogorski pravni i obrazovni sistem: trenutno stanje, izazovi i perspektive

Crnogorsko međunarodno privatno pravo je već u velikoj mjeri "evropeizirano" usvajanjem ZMPP-a i potvrđivanjem haških konvencija. U narednom periodu, kako se bude približavalo vrijeme pristupanja Crne Gore EU razmotriće se amandmansko djelovanje na tekst kodifikacije MPP-a, u oblasti koju uređuje Uredba Brisel II bis, a koliko nam je poznato, već se radi na izmjenama Zakona o parničnom postupku[21] koje će reflektovati rješenja uredbi o evropskom platnom nalogu, evropskom izvršnom nalogu i sporovima male vrijednosti.

U ovom trenutku nije moguće obuhvatiti izučavanje navedenih tema u okviru predmeta Međunarodno privatno pravo na dodiplomskim studijama, što će, naravno, biti slučaj kada zemlja postane članica EU. Prethodno, propuštena je izvrsna prilika da se do pristupanja Crne Gore EU kao poseban predmet izučava Međunarodno privatno pravo EU, jer je u vrijeme reakreditacije izvršene 2016. godine tadašnje rukovodstvo UCG imalo generalan stav da se osim uvodnog, opšteg predmeta o pravu EU, pojedini segmenti izučavaju u okviru matičnih disciplina, i da se ne vrši disperzija predmeta koji bi izučavali pojedine segmente prava EU na raznim ciklusima, kao ni u vidu izbornih predmeta.

U perspektivi smatramo da bi prilikom naredne promjene kurikuluma trebalo omogućiti detaljnije izučavanje MPP EU. Ovo bi se moglo postići na dva načina: razdvajanjem predmeta Međunarodno privatno pravo na prvom stepenu studija na dva predmeta: Međunarodno privatno pravo i Međunarodno privatno procesno pravo, čiji bi ukupan fond časova bio najmanje 80 (u odnosu na postojeći koji je 60) ili uvođenjem posebnog predmeta Međunarodno privatno pravo EU na drugom stepenu studija. Takođe, nužno bi bilo da se predmetnom nastavniku odobri i formalno angažovanje demonstratora na navedenom predmetu, a da se u perspektivi stvaraju uslovi za angažovanje saradnika na srodnoj grupi predmeta, koja će obuhvatati i Međunarodno privatno pravo. Veći fond časova, odnosno posebni predmet bi omogućio i praktičnu

ECR I – 415; ECJ, slučaj C-364/93, *Marinari v Lloyd's Bank*, [1995] ECR I-2719; ECJ, slučaj C-51/97, *Réunion Européenne v Spliethoff's Bevrachtingskantoor*, [1998] ECR I-6511.

[21] Zakon o parničnom postupku ("Sl. list RCG", br. 22/2004, 28/2005 - odluka US i 76/2006 i "Sl. list CG", br. 47/2015 - dr. zakon, 48/2015, 51/2017, 75/2017 - odluka US i 62/2018 - odluka US).

nastavu, kao i vježbe u okviru kojih bi se veća pažnja posvetila osposobljavanju studenata da sami obrazlažu stavove iz odluka Suda pravde EU, uz primjenu dodatne literature[22] u vidu zbirke odluka ovog suda.

Informacija za studente i plan rada - Međunarodno privatno pravo

Naziv predmeta:	Međunarodno privatno pravo			
Šifra predmeta	Status predmeta	Semestar	Broj ECTS kredita	Fond časova
	obavezan	VI	8	4+1
Studijski programi za koje se organizuje : Osnovne akademske studije na Pravnom fakultetu				
Uslovljenost drugim predmetima: ne				
Ciljevi izučavanja predmeta - Upoznavanje studenata sa osnovnim konceptima međunarodnog privatnog prava u oblastima: određivanja mjerodavnog prava, međunarodne nadležnosti, priznanja i izvršenja stranih sudskih odluka i prava stranaca da stupaju u građanskopravne odnose				
Ime i prezime nastavnika i saradnika: Prof. dr Maja Kostić-Mandić				
Metod nastave i savladanja gradiva: Predavanja, vježbe, oblici praktične nastave, konsultacije				
PLAN RADA				
Nedjelja i datum	*Naziv metodskih jedinica za predavanja(P), vježbe (V) i ostale nastavne sadržaje (O); Planirani oblik provjere znanja(PZ: domaći zadaci, kontrolni testovi, kolokvijumi, ...)*			
I –[1)]	*P/V/O/Pz*[2)]	Uvodne napomene o predmetu i literaturi		
II-	*P/V/O/Pz*	Pojam i predmet međunarodnog privatnog prava, odnos sa drugim granama prava, izvori (uključujući pravo EU)		
III-	*P/V/O/Pz*	Kolizione norme, problem kvalifikacije, tumačenje (uključujući pravo EU), saznanje i dokazivanje stranog prava		
IV-	*P/V/O/Pz*	Uzvraćanje i upućivanje, opšta klauzula odstupanja, javni poredak, norme neposredne primjene (uključujući pravo EU)		
V-	*P/V/O/Pz*	Međunarodna sudska nadležnost (uključujući Uredbu Brisel I)		
VI-	*P/V/O/Pz*	Građanski postupak sa stranim elementom, priznanje i izvršenje stranih sudskih odluka (uključujući Uredbu Brisel I, Uredbu Rim IV i Uredbu o izvođenju dokaza)		
VII-	*P/V/O/Pz*	Međunarodne trgovinske arbitraže		
VIII-	*P/V/O/Pz*	Kolokvijum		
IX-	*P/V/O/Pz*	Popravni kolokvijuma		
X-	*P/V/O/Pz*	Prava stranaca, tačke vezivanja, mjerodavno pravo za statusne odnose fizičkih i pravnih lica (uključujući pravo EU)		
XI-	*P/V/O/Pz*	Mjerodavno pravo za ugovore (uključujući Uredbu Rim I)		
XII-	*P/V/O/Pz*	Mjerodavno pravo za delikte (uključujući Uredbu Rim II)		
XIII-	*P/V/O/Pz*	Mjerodavno pravo za stvarnopravne odnose i za nasljeđivanje (uključujući Uredbu Rim IV)		
XIV-	*P/V/O/Pz*	Mjerodavno pravo za porodične odnose (uključujući Uredbu Rim III i Uredbu o bračnoimovinskom režimu)		
XV-	*P/V/O/Pz*	Priprema za ispit		
XVI-		*Završni ispit*		
XVII-		*Ovjera semestra i upis ocjena*		
XVIII-XXI-		*Dopunska nastava i popravni ispitni rok*		
Obaveze studenta u toku nastave: Prisustvo i aktivno učešće u nastavi				

[22] C. Jessel-Holst, H. Sikirić, V. Bouček, D. Babić, Međunarodno privatno pravo – zbirka odluka Suda Evropske unije, Narodne novine, Zagreb, 2014.

Konsultacije: Ponedjeljkom od 9-13 h	
Opterećenje studenta u časovima:	
nedjeljno[3)]	u semestru[4)]
Predavanja: Vježbe: Ostale nastavne aktivnosti: Seminarski radovi Individualni rad studenata	Nastava i završni ispit: 85 sati Neophodne pripreme (administracija, upis, ovjera prije početka semestra): 10 sati Ukupno opterećenje za predmet : 120 sati Dopunski rad: 25 sati Struktura opterećenja: 85 sati (nastava) + 10 (prirprema) + 25 (dopunski rad)

Osnovna literatura:
Maja Kostić-Mandić, Međunarodno privatno pravo, Pravni fakultet Univerziteta Crne Gore, Podgorica, 2017.
Opšta literatura:
-Varadi, Bordaš, Knežević, Pavić, Međunarodno privatno pravo, Pravni fakultet Univerziteta u Beogradu, Beograd, 2012.
-Maja Stanivuković, Mirko Živković, Međunarodno privatno pravo (opšti deo), Službeni glasnik, Beograd, 2015.
-Maja Stanivuković, Petar Đundić, Međunarodno privatno pravo (posebni deo), Pravni fakultet Univerziteta u Novom Sadu, Novi Sad, 2008.
-Krešimir Sajko, Međunarodno privatno pravo, 5. izmijenjeno i dopunjeno izdanje, Narodne novine, Zagreb, 2009.
-Davor Babić, Christa Jessel-Holst, Međunarodno privatno pravo – zbirka unutarnjih, europskih i međunarodnih propisa, Narodne novine, GIZ, Zagreb, 2011.
-Michael Bogdan, Concise Introduction to EU private international law, Europa law publishing, Groningen, 2012.
-Geert Van Calster, European Private International Law, Hart Publishing, Oxford and Portland, 2013.

Oblici provjere znanja i ocjenjivanje:
Oblici provjere znanja su kolokvijum, popravni kolokvijuma, završni ispit i popravni ispit (sve u usmenoj formi) i ispit u avgustovskom roku.
Ocjenjuju se:

- Kolokvijum – do 60 poena
- Učešće u oblicima praktične nastave – do 5 poena
- Završni ispit – do 35 poena
- Prelazna ocjena se dobija ako se kumulativno sakupi najmanje 50 poena

Ocjena	*A*	*B*	*C*	*D*	*E*
Broj poena[5)]	*90-100*	*80-89*	*70-79*	*60-69*	*50-59*

Posebne naznake za predmet:
Pored opštih instituta međunarodnog privatnog prava (MPP), novi program se u značajnoj mjeri bavi i MPP-om Evropske unije (EU), čija su rješenja preuzeta novim crnogorskim Zakonom o međunarodnom privatnom pravu (ZMPP). Novi ZMPP eksplicitno predviđa da se u oblasti mjerodavnog prava za ugovorne i vanugovorne obaveze sa prekograničnim elementom direktno primjenjuje pravo EU (odredbe zakona se tumače i primjenjuju u skladu sa uredbama br. 593/2008 i 864/2007 - Rim I i Rim II). Takođe, za mjerodavno pravo za nasljeđivanje i obaveze izdržavanja primjenjuju se preuzeta rješenja iz prava EU, a u oblasti međunarodne nadležnosti direktno se preuzimaju rješenja prava EU.
Na osnovu inoviranog programa obrađuje se i najznačajnija praksa Suda pravde Evropske unije.
U skladu sa navedenim, proširena je i lista literature izvorima posvećenim MPP EU.

Velibor Korać*

NOTARSKO PRAVO
-POKUŠAJ „EVROPEIZACIJE“ KURIKULUMA-

1. Uvod

Stalni proces pravnog ujednačavanja u Evropi ne može da zaobiđe ni notarsku profesiju. Međutim, notarska profesija, djelatnost notara i njihove funkcije, kao što je slučaj i sa ostalim profesijama koje direktno ili indirektno učestuju u vršenju pravosuđa, nije jedinstveno regulisana pravom Evropske unije i nije u nadležnosti regulisanja nadležnih tijela ove regionalne organizacije. Iako je poznato da ne postoji jedinstveni notarijat u Evropi, kao i da osnivački ugovori, kao sastavni djelovi tzv. primarnog prava Zajednice, ne obuhvataju ovu materiju, zahtjevi za harmonizacijom ove oblasti odavno su postavljeni od strane notarskih organizacija, Evropske Komisije i Evropskog Parlamenta.

Uspostavljanje zajedničkog unutrašnjeg tržišta i efikasnije ostvarivanje osnovnih sloboda u zemljama članicama EU neminovno je dovelo do potrebe za stvaranjem nekog vida jedinstvene pravne regulative na evropskom nivou, jer djelatnost notara, poslovi i funkcije koje obavljaju, sve češće u sebi sadrže međunarodne elemente. Tako je, na primjer, Konferencija notarijata Evropske unije donijela još 1995. godine Kodeks evropske notarske deontologije (*Code Européen de déontologie notariale*), koji predstavlja prvi pokušaj ujednačavanja standarda latinskog notarijata u okviru Evropske unije.[1]

Evropeizaciji ovog pravnog područja doprinijeće svakako i primjena doktrine implicitnih ovlašćenja (*implied power doctrine*) prihvaćene u Lisabonskom ugovoru. Iako Ugovorom o funkcionisanju Evropske unije i Ugovorom o Evropskoj uniji područje notarskog prava nije u nadležnosti EU, već nacionalnih država, ipak je u tekstu Ugovora o funkcionisanju Evropske unije iz 2010. godine, preuzeta odredba nepri-

* Dr Velibor Korać je saradnik u nastavi na građanskopravnoj katedri Pravnog fakulteta Univerziteta Crne Gore.

[1] Cilj donošenja ovih pravila nije bio da se mijenjaju pravila notarskog prava nacionalnih država, već da se u određenoj mjeri harmonizuje postupak i aktivnosti notara, kako bi se osigurala bolja zaštita korisnika notarskih usluga i van granica države porijekla. Vidi *S. Zimmermann, A. Schmitz-Vornmoor*, Javnobilježnička služba u Evropskoj uniji, Filozofija struke i trendovi razvoja, harmonizacija i ujedničavanje, Zbornik Pravnog Fakulteta u Zagrebu, 6/2009, str. 1120.

hvaćenog Evropskog ustava, kojom se određuju tzv. implicitna ovlašćena u okviru sudske saradnje u građanskim stvarima.[2] Naime, u članu 81 predviđeno je da Unija razvija sudsku saradnju u građanskim stvarima sa prekograničnim posljedicama, koja se temelji na načelu uzajamnog priznavanja presuda i odluka u vansudskim predmetima, a može podrazumijevati i utvrđivanje mjera za približavanje zakona i propisa država članica.[3]

2. Osvrt na analizu nastavnog plana Pravnog fakulteta sačinjenu od strane Pravnog fakulteta Univerziteta u Ljubljani

Zadnjom izmjenom modela studiranja na UCG, u nastavni plan i program osnovnih studija na Pravnom fakultetu uveden je, po prvi put, predmet Notarsko pravo. Pravni fakultet Univerziteta u Ljubljani je sačinio Analizu nedavno akreditovanog nastavnog plana i programa Pravnog fakulteta UCG u kome je istaknuto veliko poboljšanje u ostvarivanju cilja - njegove „evropeizacije" u cjelini. U dijelu koji se odnosi na Notarsko pravo nije bilo preporuka za izmjenu, osim komentara da izmjene koje su već učinjene u dovoljnoj mjeri uvode evropski element u silabus ovog predmeta.

Međutim, smatram da je prisustvo „evropskog" elementa u silabusu ovog predmeta potrebno dodatno pojačati, s obzirom na to da je proces evropeizacije privatnog prava nezaustavljiv. Studentima u okviru kursa treba dati i praktične i teorijske alate, koji će im omogućiti da razumiju, analiziraju i da riješe probleme u međunarodnim odnosima naročito u oblastima koje se tiču notarskog prava. Student treba, nakon položenog ispita, da vlada i materijalnim i procesnim aspektom notarskog prava, i da poznaje njegovu nacionalnu, regionalnu i evropsku dimenziju. Notari latinskog modela notarijata, koji je usvojen u državama članicama EU, dobili su u novije vrijeme proširene nadležnosti u obligacionom, nasljednom, porodičnom i privrednom pravu, a posebno je njihova uloga značajna u sačinjavanju pravnih poslova koji se odnose na raspolaganje pravima na nepokretnostima. Notarska djelatnost u međunarodnim odnosima i izvori međunarodnog privatnog notarskog prava su od nespornog značaja, imajući u vidu da su se evropski notari obavezali na evropsku pravosudnu poli-

[2] Vise *M. Holterman*, The Importance of Implied Powers in Community Law, LL.M. Thesis in European Law, RijksUniversiteit Groningen 2005, str. 27 i dalje.

[3] Evropski Parlament i Savjet mogu u skladu sa redovim zakonodavnim postupkom, kad je to potrebno za pravilno funkcionisanje unutrašnjeg tržišta, utvrditi mjere kojima će, pored ostalog, obezbijediti uzajamno priznanje i izvršenje presuda i odluka u vansudskim predmetima, prekograničnu dostavu tih akata i usklađenost pravila koja se primjenjuju u državama članicama u pogledu sukoba zakona i nadležnosti.

tiku koja odgovara na socijalno ekonomske izazove, odnosno kao neko ko pruža pravnu uslugu, a istovremeno i odgovora na očekivanja građana i poslovnih subjekata u Evropskoj uniji. Statistika Evropske komisije pokazuje da više od 8 miliona Evropljana više ne živi u zemlji svog porijekla, da 2,5 miliona nepokretnosti pripada osobama koje žive u zemlji različitoj od one u kojoj se nepokretnost nalazi, da se svake godine pokreće 450000 ostavinskih postupaka sa međunarodnim elementom vrijednosti oko 123 milijarde eura, da je 13% novih brakova binacionalne prirode, da je 16 miliona međunarodnih parova u Evropskoj uniji, 20% registrovanih partnerstava u EU je binacionalne prirode.[4] S tim u vezi oni u okviru svoje nadležnosti i u svojim područijma stručnosti odgovaraju na očekivanja građana EU, podržavaju medijaciju kao alternativni oblik rješavanja sporova, takođe, opet u okviru svojih nadležnosti, olakšavaju zasnivanje založnog prava u Evropskoj uniji.[5]

Takođe, jedan od prioriteta evropskih notara je i prekogranična saradnja, tj. svojevrsno međupovezivanje naročito u pravnim poslovima u vezi sa prekograničnim prometom nepokretnosti (*Eufides platforma*), kao povezivanje koje se tiče vođenja registara testamenata, bračnih ugovora, kao i Evropske potvrde o nasljeđivanju (*ENRWA/ARERT*).

3. Primjena iskustava i rezultata treninga, kao i studijskih posjeta u okviru *CABUFAL*-a

Može se konstatovati da gostujući predavači sa partnerskih institucija, u okviru treninga održanih na Pravnom fakultetu, nisu dali neposredan doprinos, ako se ima u vidu evropeizacija na planu izučavanja notarskog prava. Glavne razloge za to treba tražiti u temama koje su na treninzima obrađivane, a koje nisu imale dodirnih tačaka sa predmetom izučavanja notarskog prava, kao i u područjima naučnog interesovanja predavača, koja se nisu odnosila na notarsko, štaviše, često ni na građansko pravo kao cjelinu (porodicu prava).[6] Slična stvar se može reći i za studijske posjete u kojima je autor ovih redova učestvovao i predavanja kojima je prisustvovao, sa izuzetkom posjete Evropa Institutu u Sarlandu. Prisustvo predavanjima koje su držali neki predavači sa Evropa Instituta je, u odre-

[4] Vidi http://www.notaries-of-europe.eu/plan2020/pdf/CNUE_Brochure2020_WEB_En.pdf (15/01/2019).

[5] Evropska unija je donijela Direktivu o kreditima za potrošače u vezi sa nepokretnostima namijenjenim za stanovanje sa ciljem ustanovljavanja tržišta hipotekarnih kredita u Evropi sa velikim stepenom zaštite potrošača.

[6] Ovdje se, razumije se, govori o treninzima i predavanjima kojima je autor prisustvovao.

đenoj mjeri, dalo specifičan usko stručni doprinos, kao i doprinos na planu metodologije izvođenja nastave.

Međutim, svakako treba imati u vidu posredan doprinos, kako treninga tako i studijskih posjeta u okviru CABUFAL projekta. On se ogleda u razmjeni iskustava između predavača na partnerskim institucijama i analizi najboljih nastavnih praksi. Ova iskustva će svakako doprinijeti unaprijeđenju kvaliteta nastavnog procesa na Pravnom fakultetu UCG. Pored toga, uspostavljena saradnja među partnerskim institucijama predstavlja osnov za realizaciju budućih aktivnosti.

4. Najbolje nastavne prakse

Jedan od primjera dobre nastavne prakse, a u svjetlu evropeizacije kurilukuma predmeta Notarsko pravo, je program Međunarodno notarsko pravo na Pravnom fakultetu Univerziteta Lion III (*Master 2 Droit Notarial de l'Université Jean Moulin Lyon III*). Na kursu se, pored domaćeg, proučava i međunarodno privatno, pravo EU i evropsko pravo. Značaj se pridaje savladavanju metoda pronalaženja informacija i korišćenja baza podataka iz ovih grana prava, što ga čini jedinstvenim. Pored toga, izučava se proces kretanja, priznavanja i pravnih dejstava sudskih odluka, notarskih i drugih pravnih akata, proučava se međunarodno pravo koje se tiče prometa prava na nepokretnostima, međunarodno pravo nasljeđivanja, pravna i poslovna sposobnost fizičkih i pravnih lica u međunarodnom kontekstu, međunarodno porodično pravo, međunarodno imovinsko porodično pravo itd.

Francuska, kao kolijevka modernog notarijata u Evropi, je na jedan drugi način takođe primjer dobre prakse. I to na planu podsticanja razvoje evropske dimenzije notarijata. Naime, Vrhovno Vijeće (*Conseil Supérieur du Notariat*), kao jedno od strukovnih udruženja u Francuskoj, Regionalno vijeće Apelacionog suda u Lionu i Pokret mladi notarijat (*Mouvement Jeune Notariat*) pokrenuli su inicijativu sa ciljem stvaranja novog tijela pri notarskoj profesiji u Francuskoj, tzv. Notarski centar Evropskog prava (*Centre Notarial de droit Européen*). Cilj ovog novoformiranog organa je da omogući svakom notaru stručno usavršavanje iz domena notarskih dužnosti, kako bi na što bolji način odgovorili zahtjevima klijenata u Evropskoj uniji, jer kako u Centru ističu, prelaz na evropsku dimenziju je postala obaveza za notarsku profesiju.[7]

[7] http://acenode.eu/beneficier-dun-accompagnement-permanent/

5. Neki predlozi izmjene nastavnog plana i programa na predmetu notarsko pravo koji doprinose njegovoj „evropeizaciji“

- Ključni izazovi na planu podsticanja studenta da razumije pravne pojmove, poziciju notarskog prava Evropske unije u nacionalnom pravnom sistemu i odnos sa drugim granama prava-

I.

Uvažavajući potrebu rasterećenja sudova od predmeta u kojima se ne odlučuje autoritativno o sporovima u materijalnopravnom smislu, crnogorski zakonodavac povjerio je notarima vođenje postupka za raspravljanje zaostavštine kao najčešćeg i najznačajnijeg oficijelnog i nekontencioznog vanparničnog postupka. S tim u vezi, u nastvnom planu za predmet Notarsko pravo, a u cilju njegove „evropeizacije“, je neophodno izvršiti potrebne izmjene kako bi se studenti upoznali sa novinama koje donosi sprovođene evropske regulative na području nasljeđivanja. Naime, prekogranično nasljeđivanje je olakšano donošenjem novih pravila EU, tačnije Uredbe o nasljeđivanju (EU) br. 650/2012,[8] kao jednog od najvažnijih rezultata velikog i ambicioznog programa kodifikovanja međunarodno privatnog prava.[9] Uredbom se reguliše nadležnost, tijela (sud ili notari) i postupak sprovođena nasljeđivanja sa međunarodnim elementom, a možda i najvažnije da se ovom Uredbom uvodi Evropska potvrda o nasljeđivanju. To je isprava koju nadležni organ (sud ili notar) izdaje nasljednicima, legatarima, izvršiocima testamenta i licima koja upravljaju zaostavštiom sa ciljem dokazivanja pravnog položaja. Evropska potvrda o nasljeđivanju se priznaje u svim državama članicima bez potrebe za bilo kakvim posebnim postupkom.[10] Ova legislativa je od izuzetne važnosti za

[8] Regulation (EU) No 650/2012 of the European Parliament and of the Council of 4 July 2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession, Official Journal of the European Union L 201/107, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3 A32012R0 650. Ova pravila se primjenjuju od 17. avgusta 2015. godine.

[9] *A. Davì*, Introduction, u: *A.-L. Calvo Caravaca, A. Davì, H.-P. Mansel (eds.)*, The EU Succession Regulation: A Commentary, Cambridge University Press 2016, str. 1.

[10] *D. Damascelli, D. Restuccia, V. Crescimanno, G. Liotta, C. A. Marcoz, C. Valia, A. Barone*, Le certificat successoral européen : propositions opérationnelles, str. 155 i dalje, u: L'EUROPE POUR LES NOTAIRES LES NOTAIRES POUR L'EUROPE, formation 2015-2017; *J. G. de Almeida*, Le certificat successoral européen : quelques questions, str.

notare u Evropi, odnosno sve notare iz država članica Evropske unije, s obzirom na to da notari u većini zemalja vrše poslove kao povjerenici suda, odnosno dato im je dato u nadležnost da sprovode ostavinsku raspravu i donose rješenje o nasljeđivanju. Studentima, u potrebnoj mjeri, treba ukazati na novu regulativu Evropske unije koja se tiče nasljeđivanja (na mjerodavno pravo, nadležnost notara kao lica koje sprovodi ostavinski postupak, priznavanje izvršenja ili prihvatanje izvršivosti odluka i javnih isprava, na Evropsku potvrdu o nasljeđivanju).

II.

Važan segment notarske djelatnosti, posmatrajući sa aspekta „evropeizacije nastavnog plana", su bračni režimi u međunarodnom kontekstu. Naime, studenti treba da razumiju mehanizme bračnih imovinskih režima u prisustvu stranog elementa. Notar sačinjava, u formi notarskog zapisa, bračni ugovor kojim se isključuje ili mijenja bračni imovinski režim regulisan pravom zemlje koje tek treba utvrditi. Pored toga, neophodno je poznavanje pravila na osnovu kojih se vrši automatsko priznavanje bračnog imovinskog režima, kao i procedure u slučaju da do priznavanje ne dođe.[11]

Donošenjem Uredbe (EU) 2016/1103 od 24. juna 2016. o sprovođenju pojačane saradnje u području nadležnosti, mjerodavnog prava i priznavanja i izvršenja odluka u stvarima bračnoimovinskih režima[12] u 18 država članica[13] olakšava se odlučivanje u stvarima bračnoimovinskog režima sa prekograničnim elementom. Naime, ova Uredba sadrži pravila po kojima se može utvrditi koji je sud odnosno notar nadležan,[14] odnosno koje pravo je mjerodavno. Notar je kao povjerenik suda, prema Uredbi o

97 i dalje u: L'EUROPE POUR LES NOTAIRES LES NOTAIRES POUR L'EUROPE, formation 2015-2017; *C. Budzikiewicz*, Effects of the Certificate, u: *A.-L. Calvo Caravaca, A. Davì, H.-P. Mansel (eds.)*, The EU Succession Regulation: A Commentary, Cambridge University Press 2016, str. 769 i dalje.

[11] Ovdje se, razumije se, ne govori o povredi tzv. teritorijalnog principa, jer notari u Crnoj Gori, kao uostalom i notari evropsko-kontinentalnog pravnog kruga, svoje službene dužnosti ne mogu vršiti van države i njihova djelatnost nije mobilna, tj. ne može se prenositi van državnih granica.

[12] Council Regulation (EU) 2016/1103 of 24 June 2016 implementing enhanced cooperation in the area of jurisdiction, applicable law and the recognition and nforcement of decisions in matters of matrimonial property regimes, dostupno na adresi https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32016R1103

[13] Vidi br. 11 Preambule.

[14] Vidi br. 31 Preambule.

nasljeđivanju 650/2012, nadležan da odlučuje u stvarima bračnog imovinskog režima koje među sanasljednicima nisu sporne.[15]

III.

Akcenat treba staviti i na lica bez poslovne sposobnosti u međunarodnom privatnom pravu i pravu EU. Cilj je da se razumiju pravila mjerodavnog prava kojima se štiti maloljeto ili lice lišeno poslovne sposobnosti, kao i nadležno tijelo koje zahtijeva punovažno zastupanje. Ovo je naročito važno kod vršenja roditeljskog prava, zakonskog zastupanja, nasljeđivanja, kao i kod sticanja prava svojine i drugih stvarih prava na nepokretnim stvarima. Takođe, treba ukazati na pravila kojima će biti riješena pravna dejstva instituta koji ne postoje u našem pravu (npr. *testamentum mysticum* ili *nondum conceptus*), kojima nekom licu može biti priznato svojstvo sticaoca (nasljednika) po pravilima koja ne važe u našem pravu.

IV.

Crnogorskim državljanima u inostranstvu država omogućava preventivnu pravnu (sudsku) zaštitu od strane lica koji nisu notari. Od pravila da je notarska djelatnost, odnosno obavljanje notarskih poslova, rezervisana isključivo za notare, i isljučivo na teritoriji Crne Gore (teritorijalni princip), postoji izuzetak. Naime, Crna Gora vršenje funkcije preventivnog pravosuđa ostvaruje i preko konzularnih predstavništava, jer je vršenje notarskih poslova za lica crnogorskog državljanstva u inostranstvu povjereno konzularnim predstavništvima. Zakonom je propisano da konzularno predstavništvo[16] vrši poslove utvrđene Bečkom konvencijom o konzularnim odnosima, koja propisuje da konzularna funkcija obuhvata i djelovanje u svojstvu notara, tj. vršenje notarskih poslova.[17]

[15] U slučaju kada se u ostavinskom postupku kao sporno javi pitanje podjele zajedničke imovine bračnih drugova, notar upućuje strane da pokrenu parnicu pred sudom države pred kojim je pokrenut postupak nasljeđivanja na snovu Uredbe (EU) br. 650/2012. Vidi čl. 4 Uredbe(EU) br. 2016/1103.

[16] Čl. 29 Zakona o vanjskim poslovima, *Sl. list CG*, br.70/2017. Konzularna predstavništva Crne Gore u inostranstvu su: generalni konzulat, konzulat i konzularna agencija. U državi u kojoj ne postoji konzularno predstavništvo, konzularne poslove vrši ambasada na cijelom području države prijema.

[17] Vidi čl. 5(f) Vienna Convention on Consular Relations (1963). Dostupno na adresi https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=III-6&chapter=3&clang=_en

V.

Evropezaciji notarijata doprinose i rješenja u vezi sa državljanstvom. Državljanstvo je donedavno bilo opšteprihvaćeni uslov za imenovanje notara u gotovo svim državama Evrope koje su prihvatile latinski model notarijata. To je i razumljivo jer se s pravom očekuje da će domaći državljani, zbog javnopravne veze fizičkog lica sa državom, sa većom odanošću vršiti notarsku djelatnost kao specifičnu javnu službu. Međutim, u državama Evropske unije nakon niza presuda Evropskog suda pravde donijetih tokom 2011. godine državljanstvo više ne može biti uslov za bavljenje notarskom profesijom u državama članicama. Pošto je Sud zauzeo stav da notarska služba nije direktno povezana sa vršenjem javne vlasti, ubuduće ova profesija neće biti rezervisana samo za sopstvene državljane. Svako dalje zadržavanje državljanstva kao uslova za imenovanje notara u zakonodavstvima država članica Evropske unije dolazi pod udar opšte odredbe o zabrani svake diskriminacije po osnovu državljanstva.[18] Ubuduće će notari polaganjem zakletve izražavati lojalnost ne samo državi nego i Evropskoj uniji. Navedeno tumačenje Suda Evropske unije imalo je nesumnjivo *de lege ferenda* uticaja i na postojanje ovog uslova u našem zakonodavstvu.[19]

Evropski sud pravde je, odlučujući 2011. godine u postupku protiv nekoliko država članica EU (Austrija, Belgija, Francuska, Njemačka, Grčka i Luksemburg) koji je pokrenula Evropska komisija povodom nacionalnih propisa koji predviđaju da notar mora imati državljanstvo države u kojoj vrši djelatnost, što sprječava slobodu poslovnog nastanjivanja u drugim državama, propisanu članom 49 (bivši član 43) Ugovora o funkcionisanju Evropske unije, zaključio da notari ne obavljaju djelatnost koja je direktno i specifično povezana sa vršenjem javnih ovlašćenja.[20] U svakoj od šest presuda Sud je na gotovo identičan način obrazložio ovaj stav i u dispozitivu konstatovao da su sve tužene države propisivanjem

[18] Član 18. Ugovora o funkcionisanju Evropske unije (raniji član 12. Ugovora EZ).

[19] Vidi *V. Korać*, Notari i notarski zapisi, Podgorica 2018, str. 242. Naime, Zakonom o izmjenama i dopunama Zakona o notarima iz 2016. godine propisano je da, pored državljanina Crne Gore, za notara može biti imenovano i lice koje je državljanin države članice Evropske unije.

[20] CJEU, case C-47/08 *European Commission v Kingdom of Belgium*; CJEU, case C-50/08 *European Commission v French Republic*; CJEU, case C-51/08 *European Commission v Grand Duchy of Luxemburg*; CJEU, case C-53/08; *European Commission v Republic of Austria*; CJEU, case C-54/08 *European Commission v Federal Republic of Germany*; CJEU, case C-61/08 *European Commission v Hellenic Republic*. Presude su dostupne na adresi http://curia.europa.eu/ (25.12.2018).

državljanstva kao uslova za pristup profesiji notara prekršile obaveze iz člana 43 Ugovora Evropske zajednice.[21] Najvažniji argument tuženih država da notari vrše javna ovlašćenja zbog toga što sačinjavaju javne i izvršne isprave Sud nije prihvatio ističući da sačinjavanje ovih isprava od strane notara nije direktno i u dovoljnoj mjeri povezano sa vršenjem javne vlasti, jer toj ispravi prethodi pravni posao nastao voljom stranaka, a kad je u pitanju izvršna isprava traži se još i saglasnost dužnika da se podvrgne prinudnom izvršenju.[22]

Iako se prepoznaje tendencija rušenja latinskog notarjata, nakon stavova Evropske Komisije i presuda Evropskog suda pravde u mnogim zakonodavstvima sve se više zapaža težnja ka liberalizaciji i usmjeravanju notarijata u pravcu slobodne profesije. Takav smjer kretanja normativnog regulisanja u teoriji je otvorio pitanje da li notarijat spada u domen pravosuđa ili u oblast zajedničkog tržišta pružanja usluga.[23] Od odgovora na ovo pitanje zavisi da li će notarijat uređivati komunitarno pravo ili pravo država članica. Ako notarijat spada u područje pružanja usluga na slobodnom tržištu nadležnost za njegovo normativno regulisanje pripada organima Evropske unije, u suprotnom notarijat ostaje u legislativi država članica.

Stiče se utisak da je previše restriktivnim tumačenjem izuzetka vezanog za javnu službu Sud donekle prekoračio granice ovlašćenja iz Ugovora o Evropskoj uniji i Ugovora o funkcionisanju Evropske unije. U nastojanju da zaštiti osnovni princip jednakosti i zabrane diskriminacije po bilo kom osnovu, a posebno po osnovu državljanstva, te omogući funkcionisanje zajedničkog tržišta, Sud je čitavim nizom presuda sužavao radna mjesta koja se mogu, prema komunitarnom pravu, smatrati direktno i određeno povezanim sa izvršavanjem javnih ovlašćenja. Teško se pravnom argumentacijom može osporiti hibridni karakter latinskog notarijata. Kao javna služba on nastupa sa autoritetom države, bez obzira na to što je notari obavljaju kao slobodan poziv. Djelatnost vršenja javnih ovlašćenja ostaje svojevrsna produžena ruka države, povezana sa prerogativima vlasti.[24]

---

[21] Komisija je tužila pojedinačno šest država (Austriju, Belgiju, Francusku, Njemačku, Grčku i Luksemburg), a u postupku je u svojstvu umješača učestvovalo još najmanje 13 država, i to na strani Komisije dvije (Velika Britanija i Sjeverna Irska), a na strani tuženih (npr. Njemačke) 11 država (Bugarska, Češka, Estonija, Francuska, Letonija, Litvanija, Mađarska, Austrija, Poljska, Slovenija, Slovačka).

[22] Vidi CJEU, case C-47/08 tač. 90-92 i 103; CJEU, case C-54/08 tač. 91-93 i 105; CJEU, case C-50/08 tač. 80-82 i 94; CJEU, case C-53/08 tač. 89-91 i 103.

[23] *S. Zimmerman, A. Schmitz-Vornmoor, op.cit.,* str. 1229.

[24] *V. Korać, op.cit*., str. 238. Dakle, sa pravnoteorijskog stanovišta moglo bi se zaključiti da hibridni karakter latinskog notarijata nije doveden u pitanje bez obzira na praksu

Naziv predmeta:		NOTARSKO PRAVO		
Šifra predmeta	Status predmeta	Semestar	Broj ECTS kredita	Fond časova
	Obavezni	VI	6	4P+1V
Studijski programi za koje se organizuje: Osnovne studije – Privatnopravni modul				
Uslovljenost drugim predmetima: Nema uslova				
Ciljevi izučavanja predmeta: Upoznavanje studenata sa osnovnim pitanjima organizacije rada notara				
Ime i prezime nastavnika i saradnika: Doc. dr Ljiljana Kadić Prof. dr Zoran Rašović Prof. dr Radoje Korać Prof. dr Snežana Miladinović				
Metod nastave i savladanja gradiva: Predavanja, vježbe, pisanje notarskih akata				
SADRŽAJ PREDMETA				
I nedelja II nedelja III nedelja IV nedelja V nedelja VI nedelja VII nedelja VIII nedelja IX nedelja X nedelja XI nedelja XII nedelja XIII nedelja XIV nedelja XV nedelja XVII -XX nedelja	Istorijski razvoj notarske službe. Ciljevi i značaj notarske djelatnosti. Modeli notarijata u Evropskoj uniji. Osnovna načela slobodnog notarijata evropsko-kontinentalnog tipa. Kodeks notarske deontologije. Proces ujednačavanja, evropska regulativa od značaja za notarsku djelatnost, praksa CJEU. Načela notarske djelatnosti Pojam i izvori notarskog prava Organizaciono notarsko pravo Djelatnost notara Notarski akti (isprave) Forma i postupak sačinjavanja notarskih akata Notarski akt kao javna i izvršna isprava Odgovornost notara Sačinjavanje notarskog zapisa o pravnim poslovima Nadležnost notara u nasljednom pravu Nadležnost notara u porodičnom pravu Nadležnost notara u obligacionom pravu Nadležnost notara u stvarnom pravu *Završni ispit, Popravni završni ispit*			
Obaveze studenta u toku nastave: Studenti su obavezni da pohađaju nastavu i rade kolokvijume				
Literatura: - Bikić, E., Povlakić, M., Suljević, S., Plavšić, M., Notarsko pravo, Sarajevo, 2013 ; - Đurđević, Dejan, Javnobeležnička delatnost, Beograd, 2014; - Pillebout, Jean-Francois, Yaigre, Jean, Droit professionnel notarial, Paris, 2015; - Trgovčević-Prokić, M., Ovlašćenja javnog beležnika, Beograd, 2007, - Bikić, E., Radović, M., Suljević, S., Notarijat u Crnoj Gori, Podgorica, 2010, - Velibor Korać, Notari i notarski zapisi, Podgorica 2018, - Sarah Torricelli-Chrifi, La pratique notariale, source du droit, Doctorat & Notariat, Defrénois 2015				

Evropskog suda pravde i stavove Evropske Komisije. Prije bi se moglo reći da je na djelu politički zahtjev u pravcu ujednačavanja notarske službe u Evropskoj uniji, i to postepenim pomjeranjem latinskog notarijata prema anglosaksonskom konceptu notarske službe. Radi ostvarivanja tržišnih sloboda, efikasnijeg funkcionisanja unutrašnjeg tržišta i ukidanja barijera u pružanju usluga, insistira se na notarijatu kao slobodnoj profesiji. *V. Korać, op.cit.*, str. 242 i dalje.

Oblici provjere znanja i ocjenjivanje:		
Seminarski rad	do 10 poena	
Vježbe	do 15 poena	Ocjene u zavisnosti od ukupnog broja poena
Klokvijum I	do 25 poena	E (50-59); D (60-69); C (70-79); B (80-89); A (90-100)
Završni ispit	do 50 poena	
Posebne naznake za predmet: nema		
Ime i prezime nastavnika koji je pripremio podatke:		
Napomena: nema		

Ishodi učenja. Nakon što student položi ovaj ispit biće u mogućnosti da: prepozna značenje i objasni smisao najvažnijih instituta notarskog prava u pravnom sistemu i izdvoji i objasni osnovna načela uređenja notarske službe; Uoči tendenciju ujednačavanja notarskog prava na nivou strukovnih organizacija, sagleda uticaj evropskih pravnih kretanja na notarsku službu i perspektive notarijata u evropskom pravnom prostoru, prepozna smisao i duh pozitivnopravnih rješenja notarske djelatnosti; uporedi organizaciju notarske službe sa različitim modelima i rješenjima u stranim pravima; objasni najvažnije notarske poslove i notarske isprave; objasni svrhu notarske forme; objasni način sačinjavanja notarskog zapisa i prepozna osnovne karakteristike notarskog postupka; razlikuje formu notarskog zapisa i formu notarske solemnizacije; objasni nezavisan i nepristrastan odnos notara prema učesnicima notarskog postupka; prepozna različite aktivnosti notara u pojedinim granama porodice građanskog prava.