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| Title | EU HUMAN RIGHTS AND CRIMINAL JUSTICE |
| Lecturers: | Dr. Petra Bárd senior lecturer, Department of criminology (ELTE) e-mail: petra.bard@ajk.elte.hu |
| Brief description | <p>The course is embedded in the general framework of the balance drawn between human rights and civil liberties on the one hand and public order, public security, crime prevention and prosecution on the other. From another viewpoint the course will demonstrate the shift away from national criminal sovereignty and the gradual move towards the intergovernmental method in the area of EU criminal justice.</p> <p>The first aim of the course is to give a good understanding of the European Union's fundamental rights protection mechanism including the case law elaborated throughout the past decades, and also including the most recent developments in the jurisprudence of the Court of Justice of the European Union (CJEU). Content and status of the Charter of Fundamental Rights will be discussed, the role of the Fundamental Rights Agency, the relationship between the Charter and the European Convention on Human Rights, as well as that of the highest European courts, the CJEU and the European Court of Human Rights will be explored. The course aims at making students understand the overall fundamental rights protection system of the Union, the tensions and interplay between the various organs responsible for the enforcement of human rights on the European continent, and to provide students with an intelligent approach to handle human rights cases involving a European element.</p> <p>The second aim of the course is to introduce students into European criminal justice. Course participants will be made familiar with the initial steps taken under the headings 'Justice and Home Affairs' and later 'Police and Judicial Cooperation in Criminal Matters', i.e. under the former third pillar of the European Union. The Lisbon Treaty, i.e. Title IV of the Treaty on the Functioning of the European Union currently in force will be addressed in more detail and how criminal law is addressed in an area of freedom, security and justice by most of the Member States. Relevant parts of the Tampere, Hague and Stockholm multi-annual programs, and the Action Plan implementing the last will be singled out. Institutional actors in the area of criminal justice, and the strengthened role of the European Parliament will be presented before discussing the merits of police</p> |

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| | <p>cooperation, judicial cooperation, external cooperation in criminal justice (with an emphasis on EU-US counter-terrorism co-operation), mutual recognition (including a discussion on the European Arrest Warrant). Leading cases of the Court of Justice of the European Union will highlight the main issues in the development of EU criminal justice.</p> <p>COURSE MATERIALS: The main course materials are the English-language book chapters and articles indicated at the online platform. A number of materials required for the successful completion of this course are however purposefully not reproduced. The skill to locate legal materials quickly and efficiently is an asset that scholars and legal practitioners cannot afford to ignore. Successful acquisition of these materials is considered to be part of class participation. All materials not reproduced at the online platform are available electronically on the world wide web free of charge. Students are required to obtain their own copies thereof. Xerox-copies of materials located by another student are not acceptable for the purposes of the course. Materials can only be accepted in English language.</p> |
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| <p>Schedule</p> | <p>1. History of EU integration Vertical and horizontal separation of powers The legislative process, legal instruments and their nature The Court of Justice. Enforcement of EU law in front of national and EU courts, with a special focus to the right to an effective remedy</p> <p>The class addresses the history of European integration starting with the initial calls for a „United States of Europe” and the main integration theories will be discussed. Principles of vertical separation of powers will be addressed, and the division of powers between the institutions will be scrutinised. The various EU legislative processes will be addressed, and the legal instruments issued by these will be analysed. Students are required to consult the website of the European Union discussing the main EU lawmaking procedure, the so-called ordinary legislative process.</p> <p>2. The single market, citizenship and fundamental rights Equal treatment</p> <p>The single market and the emerging concept of European citizenship will be evaluated in light of the ECJ’s case law. The respective sources of primary and secondary EU law addressing discrimination – first and foremost workplace discrimination – will be studied.</p> |
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| | <p>3. Fundamental rights in a multi-level legal system</p> <p>Discussion of the initial case-by-case development of Community-wide fundamental rights protection will be followed by later instruments tackling discrimination and other aspects of fundamental rights. The Charter of Fundamental Rights will be discussed and compared to the European Convention on Human Rights.</p> <p>The possible EU accession to the European Convention on Human Rights and its consequences will be addressed.</p> <p>4. History and principles of the AFSJ, The road to a European Union criminal law</p> <p>Mutual trust and mutual recognition</p> <p>Mutual trust, human rights and the rule of law</p> <p>The origins of the idea of a European Union criminal justice system will be addressed, including also promising, but ultimately failed attempts, such as the Corpus Juris project. The relevance of the three-pillar system created by the Maastricht Treaty; the Area of Freedom, Security and Justice created by the Amsterdam Treaty; the multi-annual Tampere, Hague and Stockholm programs and the relevant provisions of the Lisbon Treaty will be discussed.</p> <p>The concept of mutual trust and the principle of mutual recognition will be introduced. Existing legal instruments will be discussed as examples illustrating the operation of the principle of mutual recognition in practice. The European Arrest Warrant will be singled out from among these instruments in order to highlight the success and difficulties of mutual recognition-based EU laws.</p> <p>The principle of mutual recognition in EU criminal justice presupposes mutual trust, suggesting that all member states share with the EU the same foundational values, including the rule of law, respect for human rights and that judicial decisions are the outcome of fair and independent processes. The class addresses how mutual trust can be rebutted and what consequences rebuttal has. Conclusions are derived with special regard to CJEU jurisprudence.</p> |
| <p>Materials/Recommended readings</p> | <p>Class 1</p> <p><i>Readings:</i></p> <ul style="list-style-type: none"> • Weiler, The political and legal culture of European integration, ICON, 2011 • The development of European integration, in: Craig and de Búrca, EU Law, 2008 [recommended] • Piris, The difficult ratification of the Lisbon Treaty, in: Piris, The Lisbon Treaty, 2010 [recommended] |

- de Witte, Direct effect, primacy and the nature of the legal order, in: Craig and de Burca, 2011 [recommended]
- Jacobs, The Lisbon Treaty and the Court of Justice, in: Biondi et al., EU law after Lisbon, 2012 [recommended]

Assignment: Please visit the website of the European Parliament for the ordinary legislative procedure and read it in conjunction with Article 294 TFEU.

<http://www.europarl.europa.eu/aboutparliament/en/0081f4b3c7/Law-making-procedures-in-detail.html>

Class 2

Readings:

- Bell, Equal treatment, in: Craig and de Burca, EU law, 2011
- Rosas/Amati, *Civis Europeus Sum*, in: EU constitutional law, 2012 [recommended]

Oral assignment:

- Case C-135/08 Janko Rottmann and Case C-34/09 Ruiz Zambrano [Curia website]
- Case C-364/10 Hungary v. Slovakia [Curia website]
- Case C-13/05 Chacón Navas,
- Case C-303/06 Coleman,
- Joined Cases C-335/11 and C-337/11 Ring and Werge,
- Case C-354/13 Karsten Kaltoft

Class 3

Readings:

- Douglas Scott, The EU and Human Rights after the Treaty of Lisbon, 2011

Oral assignment:

- Please find and consult the Charter of Fundamental Rights of the European Union. Please prepare for our discussion about clashes between EU law and the ECHR by consulting the following two cases:
 - *Bosphorus v Ireland*, Application No. 45036/98, 30 June 2005.
 - *Michaud v France*, Application No. 12323/11, 6 December 2012 [available at the ECtHR's website]

Class 4

Readings:

- Allan Rosas and Loma Armati, Broadening Horizons? In: Rosas and Armati, EU Constitutional Law, 2010, 163-177

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| | <ul style="list-style-type: none"> • Constitutional Principles of Union Law, in: André Klip, European Criminal Law, Antwerp: Intersentia, 2012, 49-80 [recommended] • The Journey of Criminal Law in the EU, in: Ester Herlin-Karnell, The Constitutional Dimension of European Criminal Law, Oxford, Hart, 2012, 10-41 [recommended] • Valsamis Mitsilegas, Mutual recognition, in: Mitsilegas, EU Criminal Law, Oxford: Hart, 2009, 115-160 • Kochenov/Bárd, Rule of Law Crisis in the New Member States of the EU: The Pitfalls of Overemphasising Enforcement, 2018, https://reconnect-europe.eu/wp-content/uploads/2018/07/RECONNECT-KochenovBard-WP_27072018b.pdf [recommended] • Bárd, In courts we trust, or should we? Judicial independence as the precondition for the effectiveness of EU law, 2022, https://onlinelibrary.wiley.com/doi/full/10.1111/eulj.12425 <p><i>Oral assignment:</i></p> <ul style="list-style-type: none"> ➤ Case C-105/03 Criminal proceedings against Maria Pupino, 16 June 2005 [Curia website] ➤ Articles 2 and 7 TEU ➤ Joined Cases C-404/15 and C-659/15 PPU, Aranyosi and Căldăraru [Curia website] ➤ Case C-216/18 PPU LM [Curia website] ➤ Joined Cases C-508/18 OG (Public Prosecutor’s office of Lübeck) and C-82/19PPU PI (Public Prosecutor’s office of Zwickau) [Curia website] ➤ Case C-509/18 PF (Prosecutor General of Lithuania) [Curia website] |
| Assessment/Exam | <p>The final grade is based on presence, in-class participation [30%; including presence, oral assignments and active participation in discussions] and a final exam [70%]. The final examination is comprised of a case study and an essay question.</p> |