Course description

The course is designed to provide a comprehensive overview of the major issues and questions within the purview of minority protection. Following a theoretical introduction and general discussions about the concept and evolution of minority rights and various rights-based approaches to recognizing minorities, such as individual rights, collective rights, self-determination, land-rights equality, discrimination and affirmative action, separate sessions are dedicated to the analysis of specific and specialized legal regimes and institutions. These include the assessment of indigenous rights, refugee protection as well as the scrutiny of legal and political dilemmas concerning hate speech, hate crimes, the legal conceptualization of minority identity and the processing of ethno-national data.

There will be weekly meetings in a seminar format. Seminar discussions of the required readings will have two parts: a general discussion, in which all students are expected to participate, and individual student presentations that explore, contest, or specify the major arguments of the required readings.

Readings

This interdisciplinary course is designed to engage and challenge students in critical debates. The subject combines several areas of legal studies—human rights, legal theory, theory of EU law, rights of ethnic minorities—with various fields within the social sciences. Besides reading excerpts from books and academic articles, students will also become familiar with a wide range of case law dealing with the topic. Each session is designed to combine academic articles and excerpts from books with legal texts or reports and policy recommendations by international organizations, and with the analysis of case law and jurisprudence. Students will not be given ready answers at the outset; instead, they will be encouraged to take an active part in debating and understanding the analyzed issues.

For each class, the reader contains the mandatory readings. Recommended materials are also available on the e-learning site. Readings are either directly assigned to students for presentation, or provide background information for complex issues which students need to present as a starting point for class discussions. All presenters are expected to be familiar with the recommended readings and are required to prepare send notes to the entire group by 13:00 on Sunday, the day before class. Late notes and failure to show up or present at class without prior notice will be penalized.

Given the highly intensive cooperation of students the course builds on, missing classes for students who have assignments or presentations is only acceptable for medical reasons, and a doctor’s note will be required. In such cases, if absent students were to present court cases, the relevant notes need to be sent before class or other forms of subsidiary arrangements need to be made, such as for example the swapping assignments with colleagues.

Class attendance, presentations and the timely delivery of assignments will be continuously monitored.

Given the fact that the seminar builds on rigorous debates and critical assessment of the readings, it may happen that the assessment of certain topics transgresses classes and the discussion of some issues is moved to the next class. This is due to the nature of the course. Should some readings end up not being discussed by the end of the course, the students responsible for those presentations will not be penalized for this.
**Grading information**

Students are expected to attend all seminars, read all the required readings and prepare to be active in seminar discussions. It is absolutely essential to read assigned materials prior to each session.

In addition to this, students are required to

(i) give presentations on the assigned mandatory and recommended readings, as well as on the case studies of their chosen countries on classes 7 and 12.

(ii) submit a final essay on a chosen case study or incorporating and critically analyzing readings discussed during the course. The last class is partially reserved for the discussion of the paper-proposals. Abstracts for the papers which are not case studies need to be submitted by the 11th class.

(i) Students will be asked to sign up for seminar presentations and national reports for classes 7 and 12. Choices will be discussed in class. The presenters will be expected to sum up the main arguments of the mandatory and recommended readings and pose some key questions for class discussion. The presentation should be supported by an outline or a response paper of 1-3 pages which discusses some of the selected themes of the reading, to be submitted via e-mail by 13.00 the day prior to the class. Unless otherwise indicated, presentations should be reactions to the readings rather than summaries. Case-presenters (either acting as plaintiffs, defendants or as the court) need to prepare notes including references to the law and important/useful quotes. The notes need to be brought to class in print and after the class, sent along.

(ii) The term paper should be either a case study (similar to those presented on class 7 and 12) or an original research paper that has at least 1000 and no more than 1500 words, double-spaced, with bibliography added. All students are expected to submit a project proposal at the 11th class. The proposal should outline the main questions asked and be discussed with the instructor. The topic should relate to the broad themes of the course and class discussions. The paper should follow the genre of a scholarly essay either as a case study or as a literature review. The last class is partly dedicated for the discussion of the paper-projects. Both the outline and final research paper are expected to be products of each student's individual effort. Evaluation will be based on the quality of research, its originality, quality of grammar, accuracy of spelling, and soundness of content. It constitutes plagiarism if a student quotes or adopts ideas from a source without appropriate attribution (for example, by failing to utilize endnotes or footnotes properly). Similarly, direct quotations must be attributed and indicated by quotation marks.

Please note that late papers submitted after the deadline will be marked down by half of a letter grade per day.

A group of students have an option to present a mock trial case instead of a final essay. The description of the case, plaintiff/defendant notes and the court’s judgment need to be submitted and presented by the last class. The written documentation needs to be at least 2500 words.

The requirements and grading breakdown of the seminar are as follows: Maximum points: 20

- Seminar presentation, the quality of the notes and the country reports for classes 7 and 12 (late response papers will be noted) max. 7 points
- Active seminar participation: max. 8 points
- Final essay/mock case: max. 5 points

**Grades:**

0-10 – D/failed
At around mid-term, individual consultations will be held to discuss overall class performance and the quality of the presentations.
COURSE DESIGN:

Class 1. January 9. 11,00-15,10. Introduction. The concept of rights, human rights and minority rights
Class 2. January 16. 11,00-15,10. The concept of rights, human rights and minority rights, Conflicts of individual and collective rights
Class 5. February 6. 11,00-15,10. Definition-making and data processing
Class 6. February 13. 13,30-15,10. Definition-making and data processing continued
Class 7. February 20. 11,00-15,10. The fluidity of ethno-national identification: student presentations on national discourses, policies and frameworks for ethno-national classification and identification
Class 8. February 27. 11,00-15,10. Special legal regimes I.: Indigenous rights, Refugee protection
Class 9. March 6. 11,00-15,10. Special regimes II. The political representation of minorities and ethnic registers; ethnic data collection in law enforcement; ethnic profiling, Hate crimes and genocide
Class 10. March 13. 11,00-15,10. Special regimes IV. Hate speech
Class 11. March 20. 11,00-15,10. Special regimes V. The case of the Roma
Class 12. March 27. 11,00-15,10. Class roundtable: national case studies for political participation of minorities, hate crimes and hate speech legislation
READINGS AND PRESENTATIONS:


Readings

Human rights:
- Universal Declaration of Human Rights
- International Convention Civic and Political Rights
- International Convention on Economic, Social and Cultural Rights
- European Convention on Human Rights

Minority rights:
- UN Declaration on the rights of persons belonging to national or ethnic, religious and linguistic minorities
- Framework Convention for the Protection of National Minorities
- European Charter for Regional or Minority Languages
- Non-ethnic Minorities
- The Yogyakarta Principles
- Convention on the Rights of Persons with Disabilities
- The Convention on the Elimination of All Forms of Discrimination against Women
- Convention on the rights of the child
- Council of Europe Recommendation on the promotion of human rights of older persons
- Kymlicka, Will: Liberal Complacencies, Id. pp. 31-34
- Sassen, Saskia: Culture Beyond Gender, Id. pp. 76-78

Complete List of all Tumblr Sexualities (So far)

Cases:
- K v. France, Bideault v. France (ECHR)
- The Sandra Lovelace-case
- Adoptive couple v. Baby girl

Recommended
- The Hungarian minority rights act
- A compilation of thematic commentaries to the FCNM
- Minority rights: International standards and guidance for implementation
- Commentary of the working group on minorities to the UN Declaration on the rights of persons belonging to national or ethnic, religious and linguistic minorities
- European Commission for Democracy through Law (Venice Commission) Compilation of opinions and reports concerning the protection of national minorities


Helen O’Nions: Warehouses and window-dressing: a legal perspective on educational segregation in the EU

Korematsu v. United States, 323 U.S. 214 (1944) summary pp. 1-6

Korematsu day, pp. 1-3

Plessy v. Ferguson, 163 U.S. 537 (1896)
D.H. v. Czech Republic (excerpts)
Horváth and Kiss v. Hungary
Identity politics, neoliberalism, political correctness, trigger warnings – and institutional discrimination, a provocative media compilation

Recommended:
Amnesty International Submission to the European Commission on the implementation of the Equality Directives
Korematsu v. United States, 323 U.S. 214 (1944) Full text
D.H. v. Czech Republic, Full text
Roma Education: The Promise of D.H., Roma Rights 1, 2008
Harvard Roma segregation report
Amnesty International: Five more years of Injustice
Cernshaw: Intersectionality

Presentations
19) The anti-discrimination legal framework
20) Summary of the McCrudden, Cernshaw and the Mieke readings
21) Presentation on the morphology of discrimination
22) The Korematsu-case + 2016 echoes
23) Plessy-case
24) The Brown-case
25) The D.H. and the Kiss case
26) CHEZ Razpredelenie Bulgaria AD v. Komisia za zashtita ot diskriminatsia (European Court of Justice)
27) Horváth and Kiss v. Hungary
28) Discussant on „Identity politics, neoliberalism, political correctness, trigger warnings – and institutional discrimination, a provocative media compilation”, Henry, McCrudden readings

Class 4. January 30. Reversed discrimination/Affirmative action
Young, Iris Marion: Justice and the Politics of Difference, Princeton University Press, pp. 193-225
Fisher v. Texas (2013) Summary
These countries tried women-only transport. Here's what happened, Telegraph.
Damon Tweedy: The Case for Black Doctors

Recommended:
Fisher v. Texas (2013) Full text
Schuette v. Bann
Presentations:
  29) affirmative action pros
  30) affirmative action cons
  31) presentation and discussion on discrimination based on the women-only commute cases
    (i) The Bakke-case
    32) --- Applicant
    33) -- State
    34) -- court
    35) The Bollinger-case
    The Fisher-case
    36) --- Applicant
    37) -- State
    38) -- court
    39) The Schuette v. Bann-case

Class 5. February 6. Definition-making and data processing
Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation
Oshea v. The City of San Francisco
Recommended
Anthony R. Enriquez: Assuming responsibility for who you are: the right to choose “immutable” identity characteristics
Tseming Yang: Choice and Fraud in Racial Identification: The Dilemma of Policing Race in Affirmative Action, the Census, and a Color-Blind Society
Jessica Clarke: Against Immutability, Yale Law Journal, 125:2 2015
Torres-Milin: The legal meaning of identity

Presentations:
40) Presentation of the European data protection legal regime
41) Presentation of the census-question
42) Presentation of the data protection vs. data processing debate
43) Presentation of the legal aspects of the “fluidity of ethnic affiliation in light of the Dolezal and the Irish firefighter (Oshea) cases
44) Summary of the Tehranian-reading
45) Summary of the Pap-reading
46) The Mashpee-case (incl. Torres-Milin)

Class 6. February 13. Definition-making and data processing continued (100 minutes only)

Class 7. February 20. The fluidity of ethno-national identification
Roundtable discussion: student presentations on national discourses, policies and frameworks for ethno-national classification and identification – with written notes

Class 8. February 27. Special legal regimes I.: Indigenous rights, Refugee protection
Mashpee Tribe v. New Seabury Corp.
ILO Convention on Indigenous and Tribal Populations, 1957 (No.107)
UN Declaration on the Rights of Indigenous Peoples (2007)
Indigenous & Tribal People’s Rights in Practice, A guide to ILO Convention No. 169., pp. 9-27
Rice v. Cayetano, Summary
Morton v Mancari, Summary
UN Convention on Refugees
UNHCR Handbook on Procedures, Para 1-168
Marta Falconi: Germans Acquitted After Rescuing Migrants at Sea, The Associated Press, ROME October 7, 2009
Building a legal fence: Changes to Hungarian asylum law jeopardise access to protection in Hungary, Hungarian Helsinki Committee
ECJ Gay refugee-cases
Recommended:
Banda, Fareda –Chinkin, Christine: Gender, Minorities and Indigenous Peoples, pp. 1-36.
http://www.interior.gov/tribes/trace-ancestry.cfm
Rice v. Cayetano, Full text
Morton v Mancari, Full text
Asylum in Hungary, A guide for foreigners who need protection, Hungarian Helsinki Committee
V. Bader: The Ethics of Immigration’, Constellations, vol. 12, no. 3 (2005), pp. 331–361
Canadian unease at white 'refugee'
Canada press compilation
Zsuzsa Vidra (ed.) Roma Migration to and from Canada: The Czech, Hungarian and Slovak Case, CEU, 2013
Julianna Beaudoin - Jennifer Danch: No Refuge: Hungarian Romani Refugee Claimants in Canada
Gender-related asylum claims in Europe
Sabine Jansen-Thomas Spijkerboer: Fleeing homophobia
Credibility assessment manual 1-2, Hungarian Helsinki Committee
Atheist Afghan granted religious asylum in UK
The Shepherd-case
Samantha K. Nikic, Liberte, Egalite, Fraternite: The United Nations Declaration of the Rights of Indigenous Peoples Fails to Protect Hopi
Political background of the refugee crisis in Hungary - how refugees halt Fidesz's decline

Presentations:
Presentation of the
47) indigenous legal regime
48) the Rice-case
49) the Mancari-case
50) indigenous cases in Europe (Gismondi)
51) “cultural genocide”
52) Presentation of the refugee protection legal regime
53) Migrants or refugees?! Presentation of the debate
54) Presentation on procedures for applying for refugee protection in Hungary
55) Presentation on gender and refugee law
56) credibility assessment in refugee claims
57) presentation and discussion on refugee law based on the white South African case
58) presentation and discussion on rescuing irregular migrants
59) presentation and discussion on the Canadian Roma refugee case
60) the atheist case
61) the Shepherd-case

Class 9. March 6. Special regimes II. The political representation of minorities and ethnic registers; ethnic data collection in law enforcement; ethnic profiling, Hate crimes and genocide
Advisory committee on the FCNM commentary on the effective participation of persons belonging to national minorities in cultural, social and economic life and public affairs
The constitution of Bosnia-Hercegovina
Lucy Claridge: Discrimination and political participation in Bosnia and Herzegovina Sejdic and Finci v. Bosnia and Herzegovina, MRG, pp. 1-8
The Case of Pilav v. Bosnia and Herzegovina
András L. Pap: Ethnicity and Race-Based Profiling in Counter-Terrorism, Law Enforcement and Border Control, European Parliament, 2008 pp. 1-63
Data in Focus Report 4: Police Stops and Minorities, 2010, pp. 20
ipodtell-me-when-your-jaw-dropsFloyd v. NY. (Summary)
McCleskey v. Kemp
Floyd press compilation and summary
Ensuring justice for hate crime victims: professional perspectives, FRA 2016
Erik Eckholm: Amish Sect Leader and Followers Guilty of Hate Crimes, The New York Times,
Convention on the Prevention and Punishment of the Crime of Genocide
Gregory H. Stanton: The Ten Stages of Genocide
Wiliam Schabas: Genocide in international law
Lemkin’s concept of genocide
Rome statute of the International Criminal Court
Recommended
OSCE Hungarian minority national self-government report
Sejdic and Finci v. Bosnia and Herzegovina, full text
Andrew Reynolds, Electoral systems and the protection and participation of minorities, Minority rights Group International, 2006
Finci press compilation
Ethnic origin and disability data collection in Europe: measuring inequality – combating discrimination, OSI
Julie Ringelheim: Processing Data on Racial or Ethnic Origin for Antidiscrimination Policies: How to Reconcile the Promotion of Equality with the Right to Privacy? NYU School of Law, The Jean Monnet Working Paper Series
I can stop and search whoever I want’: Police stops of ethnic minorities in Bulgaria, Hungary and Spain, Open Society Justice Initiative, New York, 2007
Office for Democratic Institutions and Human Rights: Addressing violence, promoting integration. Field assessment of violent incidents against Roma in Hungary: Key developments, findings and recommendations, June-July 2009, pp. 1-70
FRA: Making hate crime visible in the European Union: acknowledging victims’ rights
FRA: Data in Focus Report. Minorities as Victims of Crime
FRA: Hate crime in the European Union
Harvard Report on anti-Roma violence in Hungary
Abdu v. Bulgaria
Jones: Origins of genocide
Barbara Harrf-Ted Gurr: Systematic early warning in humanitarian emergencies
Genocide tribunals

Presentations:
62) The effective participation and political representation of minorities
63) The Finci and the Pialav-cases
64) Presentation of the racial profiling dilemma
65) McCleskey applicant
Class 10. March 13. Special regimes III. Hate speech

Thomas M. Keck: Hate Speech and Double Standards, Constitutional Studies, 95-122
Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law
ECRI General Policy Recommendation No. 15 on Combating Hate Speech
National Socialist Party v. Skokie, 432 U.S. 43 (1977), Summary
Brandenburg v. Ohio, 395 U.S. 444 (1969), Summary
Garaudy v. France, 2003, Summary
R. A. V. v. City Of St. Paul, Minnesota, Summary
Virginia v. Black et al, Summary
Israel’s Efforts to Limit Use of Holocaust Terms

Recommended
Mark Scott --Melissa Eddy: Facebook Runs Up Against German Hate Speech Laws, NYT nov. 28, 2016
Hate speech factsheet, ECHR
National Socialist Party v. Skokie, 432 U.S. 43 (1977), Full text
Brandenburg v. Ohio, 395 U.S. 444 (1969), Full text
Garaudy v. France, 2003, Full text
R. A. V. v. City Of St. Paul, Minnesota, Full text
Virginia v. Black et al, Full text

Presentations:
75) The general question (ECRI, EU Framework decision, facebook vs Germany, etc.)
Presentation of the hate speech dilemma
(i)Skokie,-
76) --- Applicant
77) --- State
78) --- court
(ii) Brandenburg,-
79) --- Applicant
80) --- State
81) --- court
(iii) Garaudy-,
--- Applicant
--- State
--- court
(iv) R.A.V.-,
--- Applicant
--- State
--- court
(v) (Black) - cases – prepare with written notes and arguments.
--- Applicant
--- State
--- court
(vi) The Israeli case

Class 11. March 20. Special regimes IV.

Roma-issues: Terminology and political contextualization
Rita Izsák: Report of the Special Rapporteur on minority issues
Andras L. Pap: Racial, Ethnic, or National Minority? Legal Discourses and Policy Frameworks on the Roma—In Hungary and Beyond
Yaron Matras-Daniele Viktor Leggio-Mirela Steel: ‘Roma Education’ as a Lucrative Niche: Ideologies and Representations
Report on the implementation of the EU Framework for National Roma Integration Strategies 2015
Council of Europe Descriptive Glossary of terms relating to Roma issues
Nancy Fraser: From Redistribution to Recognition? Dilemmas of Justice in a ‘Post-Socialist’ Age
ERI, OSI
Bernard Rorke - Orhan Usein (eds.) A decade lost. Reflections on Roma inclusion 2005–2015,
Yaron Matras: Roma Rights Quarterly (Roma Rights Quarterly), issue: 1 / 2005, 31-44
Recommended
Pitfalls and Bias
Katya Dunajeva - Heather Tidrick: Roma/Gypsy youth empowerment and Romani language: the case study of Hungary
Tina Gažovičova: Romani pupils in Slovakia: Trapped between Romani and Slovak languages
Decade of roma inclusion progress report
National social inclusion strategy – extreme poverty, child poverty, the roma – (2011–2020) (Hungary)
Information for the European Commission on the implementation of the national social integration strategy in Hungary in 2014

Presentations:
92) Redistribution, recognition: political and policy contextualization and conceptualization
93) the ERI-debate
94) the Morphology of Roma discrimination
95) Naming and othering: terminology
96) the Decade of Roma inclusion and domestic instruments

Class 12. March 27. Class roundtable: national case studies for political participation of minorities, hate crimes and hate speech legislation