

UČNI NAČRT PREDMETA / COURSE SYLLABUS

Predmet:	Ustavno in mednarodno kazensko pravo
Course title:	Constitutional and International Criminal Law

Študijski program in stopnja Study programme and level	Študijska smer Study field	Letnik Academic year	Semester Semester
Pravo - 2. stopnja		1	1
Law – 2nd degree		1	1

Vrsta predmeta / Course type Obvezni / mandatory

Univerzitetna koda predmeta / University course code:

Predavanja Lectures	Seminar Seminar	Sem. vaje Tutorial	Lab. vaje Laboratory work	Teren. vaje Field work	Samost. delo Individ. work	ECTS
40	0	0	0	0	160	8

Nosilec predmeta / Lecturer: prof. dr. Anže Erbežnik /Prof. Anže Erbežnik, PhD

Jeziki / Languages: **Predavanja / Lectures:** Slovenski jezik/Slovenian/Angleški jezik/English
Vaje / Tutorial:

Pogoji za vključitev v delo oz. za opravljanje študijskih obveznosti:

Slušateljem bo za lažje razumevanje podane snovi koristilo predhodno poznavanje osnovne tematike kazenskega materialnega in procesnega prava, kakor tudi širše umeščenosti Slovenije v evropski in mednarodni pravni prostor. Tako morajo razumeti pojme, kot so kaznivo dejanje in njegovi elementi, krivda, sankcije, potek kazenskega postopka, privilegij zoper samoobtožbo, eskluzija itd. Hkrati morajo poznati tudi osnove slovenske ustavne ureditve in prava EU v širšem smislu: nacionalne institucije in institucije EU, načelo delitve oblasti, zakonodajni postopek, zakoni, podzakonski predpisi, pristojnosti sodišč, razumevanje konceptov primarne in sekundarne zakonodaja EU, temeljna načela EU, kot sta supremacija in subsidiarnost, akti EU in zakonodajni postopek, pristojnosti Sodišča EU itd.

Vsaj 80% prisotnost na predavanjih.

Prerequisites:

Students will benefit from prior knowledge of the basic topics of criminal law and procedure, as well as Slovenia's general position within the European and international legal space. They should understand concepts such as crime and its elements, guilt, penalties, criminal proceedings, the privilege against self-incrimination, etc. They should also be familiar with the fundamentals of Slovenian constitutional order and EU law, including national and EU institutions, the principle of separation of powers, the legislative process, laws, regulations, jurisdiction, as well as the concepts of primary and secondary EU law, and the fundamental principles of the EU, such as supremacy and subsidiarity, EU legal acts and legislative procedure, CJEU, etc.

At least 80% attendance at lectures

Vsebina:**I. Osnove ustavnega kazenskega prava:**

- (a) ustavna načela v zvezi s kazenskim pravom,
- (b) razumevanje koncepta delitve oblasti in vloge sodišč v demokratični družbi,
- (c) pomen ustavnega sodstva za razlago temeljnih pravic, povezanih s kazenskim pravom,
- (d) pomen ekskluzijskega pravila,
- (e) terorizem, človekove pravice in kazensko pravo.

II. Kazensko pravo EU:

- (a) zgodovinski razvoj,
- (b) stanje pred in po Lizbonski pogodbi,
- (c) načelo supremacije (primarnosti) prava EU in »solange« problematika na kazenskopravnem področju,
- (d) pregled instrumentov EU s področja kazenskega materialnega prava,
- (e) načelo vzajemnega priznavanja na področju kazenskega prava EU in pregled instrumentov v zvezi s tem,
- (d) evropski nalog za prijetje in predajo,
- (e) instrumenti EU za pridobivanje dokazov,
- (f) pregled harmonizacijskih direktiv na področju kazenskega procesnega prava,
- (g) Evropsko javno tožilstvo,
- (h) Bodoči izzivi (e-dokazi, dopustnost dokazov).

III. Kazenskopravni vidiki Evropske konvencije o varstvu človekovih pravic (EKČP):

- (a) 2. člen (pravica do življenja),
- (b) 3. člen (prepoved mučenja),
- (c) 6. člen (pošten postopek),
- (d) 7. člen (ni kazni brez zakona),
- (e) 8. člen (pravica do spoštovanja zasebnega in družinskega življenja),
- (f) 6. in 13. protokol h Konvenciji (odprava smrtnih kazni),
- (g) 7. protokol h Konvenciji (prepoved ponovnega sojenja o isti stvari).

IV. Osnove ustavnega kazenskega prava ZDA, s poudarkom na 4. in 5. amandmaju k Ustavi**Content (Syllabus outline):****I. Basics of constitutional criminal law:**

- (a) Constitutional principles relating to criminal law,
- (b) Understanding the concept of separation of powers and the role of courts in a democratic society
- (c) The importance of judicial judiciary in interpreting fundamental rights related to criminal law
- (d) The significance of the exclusionary rule
- (e) Terrorism, human rights and criminal law.

II. EU Criminal Law:

- (a) Historical development
- (b) The situation before and after the Lisbon Treaty
- (c) The principle of primacy (supremacy) of EU law and the so-called "Solange" issues in the area of criminal law
- (d) Review of EU instruments in the field of substantive criminal law
- (e) The principle of mutual recognition in EU criminal law and an overview of related instruments
- (d) The European Arrest Warrant
- (e) EU instruments for gathering evidence in criminal law, with special focus on electronic evidence
- (f) Review of harmonisation directives in EU criminal procedural law
- (g) The European Public Prosecutor's Office
- (h) Future challenges (e-evidence, admissibility of evidence, artificial intelligence (AI)).

III. Criminal law aspects of the European Convention on Human Rights (ECHR):

- (a) Article 2 (right to life)
- (b) Article 3 (prohibition of torture)
- (c) Article 6 (fair trial)
- (d) Article 7 (no punishment without law)
- (e) Article 8 (right to respect for private and family life)
- (f) Protocols No. 6 and No. 13 (abolition of the death penalty)
- (g) Protocol No. 7 (*ne bis in idem*).

ZDA:

- (a) kratek uvod v ustavno strukturo ZDA,
- (b) Bill of Rights (amandmaji 1-10 k Ustavi ZDA),
- (b) razvoj ustavnosodne presoje - Marbury v. Madison in Dred Scott v. Sandford,
- (c) kratka analiza 14. amandmaja k Ustavi ZDA in njegov pomen za kazensko pravo,
- (d) analiza 5. amandmaja z vidika privilegija zoper samoobtožbo,
- (e) analiza 4. amandmaja z vidika nedopustnih preiskav in zasegov,
- (f) ekskluzija nezakonitih dokazov.

V. Mednarodna kazenska sodišča:

- (a) zgodovinski pregled,
- (b) Mednarodno kazensko sodišče,
- (c) Mednarodno kazensko sodišče za nekdanjo Jugoslavijo
- (d) Mednarodno kazensko sodišče za Ruando.

IV. The Basics of U.S. constitutional criminal law , with emphasis on the 4th, 5th and 6th Amendments to the U.S. Constitution:

- (a) A brief introduction to the constitutional structure of the United States
- (b) The Bill of Rights (Amendments 1-10 to the US Constitution)
- (b) Historical overview of constitutional review - Marbury v. Madison and Dred Scott v. Sandford
- (c) A brief analysis of the 14th Amendment to the US Constitution and its significance for criminal law
- (d) Analysis of the 5th Amendment in the light of the privilege against self-incrimination
- (e) Analysis of the 4th Amendment in the light of inadmissible searches and seizures
- (f) The exclusionary rule
- (g) Confrontation Clause of the 6th Amendment.

V. International criminal courts:

- (a) Historical overview
- (b) The International Criminal Court (ICC)
- (c) The International Criminal Tribunal for the former Yugoslavia (ICTY)
- (d) The International Criminal Tribunal for Ruanda (ICTR).

Temeljna literatura in viri / Readings:**Obvezna literatura/Obligatory materials:**

1. Erbežnik A., Dežman Z., **Uvod v kazensko procesno pravo RS in EU, GV Založba, 2022 (izbrana poglavja – Temeljna načela in Kazensko procesno pravo EU)**
2. Prosojnice in gradivo s predavanj po posameznih sklopih/powerpoints and material delivered before each lecture
3. Erbežnik A., *Evolutivna teorija razvoja prava*, 2012, GV založba
4. Erbežnik A., *‘European Public Prosecutor’s Office (EPPO) – Too Much, Too Soon, and*

without Legitimacy?’ European Criminal Law Review 2 (2015)

https://www.researchgate.net/publication/304445792_European_Public_Prosecutor's_Office_EPPO_-_too_much_too_soon_and_without_legitimacy

5. Erbežnik, A, EU criminal law and the way forward in the case of the EPPO

https://www.researchgate.net/publication/351885700_EU_CRIMINAL_LAW_AND_THE_WAY_FORWARD_IN_THE_CASE_OF_THE_FUNCTIONING_OF_THE_EPPO

6. Erbežnik, A., The Directive on the presumption of innocence: Genesis, eucrim, 2016(2)

https://www.researchgate.net/publication/330583094_The_Directive_on_the_Presumption_of_Innocence_and_the_Right_to_Be_Present_at_Trial_Genesis_and_description_of_the_new_EU-Measure

7. Erbežnik A., “The Principle of Mutual Recognition as a Utilitarian Solution, and the Way Forward”, 2 EuCLR (2012)

https://www.researchgate.net/publication/263342565_The_Principle_of_Mutual_Recognition_as_a_Utilitarian_Solution_and_the_Way_Forward

8. Erbežnik A., A new EU system of cross-border gathering of e-evidence - analysis and open questions, Dignitas, 98(2023)

https://www.researchgate.net/publication/378157333_A_new_EU_system_on_cross-border_gathering_of_e-evidence_-_analysis_and_open_questions_Dignitas_no_982023_pp_47-72_httpprevijenova-unisiindexphpdignitasarticleview327292

9. Flader, B., Erbežnik A, Toolkit for Handling and Admissibility of Electronic Evidence Empowering Legal Practitioners to Critically Review E-Evidence from the Procedural Rights Perspective, 2024

https://www.researchgate.net/publication/382952245_Toolkit_for_Handling_and_Admissibility_of_Electronic_Evidence_Empowering_Legal_Practitioners_to_Critically_Review_E-Evidence_from_the_Procedural_Rights_Perspective?_tp=eyJjb250ZXh0Ijp7ImZpcnN0UGFnZSI6InB1YmxpY2F0aW9uIiwicGFnZSI6InByb2ZpbGUuLCJwcmV2aW91c1BhZ2UiOiJwdWJsaWNhdGlvbiJ9fQ

10. Kamisar et al., Basic Criminal Procedure, 15th ed., West, 2019 (izbrani primeri)

Priporočena literatura:

1. Avbelj et al. (ed.), Komentar Ustave RS, 2019
2. Erbežnik A., Smiselnost uvedbe ločenih mnenj pred Sodiščem Evropskih skupnosti, Revus, 8/2008
3. Erbežnik A., Sodnik kot varuh demokratične družbe, Pravniki, 4-5/2006
4. Erbežnik A. Delni kopernikanski obrat Sodišča EU glede razmerja med nacionalnim ustavnim

redom in pravom EU, Pravna praksa, št. 49-50/2017

5. Bachmaier Winter, L, et al., Admissibility of Evidence in EU Cross-Border Criminal Proceedings: Electronic Evidence, Efficiency and Fair Trial Rights (Hart Studies in European Criminal Law), Hart, 2024
6. Rehnquist W., The Supreme Court, Vintage 2001
7. Schabas, The International Criminal Court: A Commentary on the Rome Statute (Oxford Commentaries on International Law) 2nd Edition, 2017 (izbrana poglavja)
8. Šepec, M. (ur.), et al., Komentar k ZKP, GV založba, 2023.

Cilji in kompetence:

Študenti/ke bodo pridobili naslednje predmetno specifične kompetence:

- sposobnost za prepoznavanje razvoja in temeljev ustavnega in mednarodnega kazenskega prava na podiplomski ravni,
- razumevanje vloge nacionalnih/naddržavnih/mednarodnih sodišč pri nastanku takšnega prava,
- poznavanje kazenskega prava EU na podiplomski ravni,
- poznavanje delovanja Evropskega sodišča za človekove pravice (ESČP) in določb EKČP kazenskopravne narave, primerno podiplomski ravni,
- poznavanje osnov sistema ustavnega kazenskega prava ZDA, s poudarkom na 4., 5. in 6. amandmaju;
- poznavanja razvoja mednarodnih kazenskih sodišč.
- sposobnost za reševanje konkretnih strokovnih problemov ustavnega in mednarodnega kazenskega prava z uporabo znanstvenih metod in postopkov,
- razumevanje in uporaba kritične analize in razvoja pravnih teorij ter njihova uporaba v reševanju konkretnih strokovnih problemov na področju ustavnega in mednarodnega kazenskega prava,
- sposobnost za uporabo sodobne informacijsko – komunikacije tehnologije in informacijskih sistemov pri preučevanju ustavnega in mednarodnega kazenskega prava, primerno podiplomski ravni.

Diplomanti magistrskega programa Pravo s pridobljenimi znanji lahko nadaljujejo

Objectives and competences:

Students will gain the following subjects specific competences:

- Ability to recognise the development and basis of constitutional and international criminal law at post-graduate level;
- Understanding the role of national/supranational/international courts in the development of such law;
- Understanding EU criminal law at postgraduate level;
- Knowledge on the European Court of Human Rights (ECtHR) and the provisions of the ECHR on criminal law;
- Knowledge of the constitutional foundations of the US system of constitutional criminal law, especially the 4th, 5th and 6th Amendment 4;
- Knowledge of the development of international criminal courts;
- Ability to solve concrete legal problems of constitutional and international criminal law by using the scientific method and procedures;
- Understanding and use of critical analysis and development of legal theories, as well as their use on concrete questions of constitutional and international criminal law;
- Ability to use modern technology – communication tools and data systems while conducting research in the area of constitutional and international criminal law at post-graduate level.

Graduates of the Master's program in Law, with the acquired knowledge, can continue academic education in doctoral programs that require a solid foundation in legal knowledge. By

akademski tip izobraževanja na doktorskih programih, ki zahtevajo temeljno pravno znanje. Z uspešnim zaključkom programa Pravo, diplomanti pridobijo najvišji raven pravnih znanj, ki jim zagotavlja dobro osnovo za zaposlitev na kateremkoli pravnem področju v Sloveniji in tujini.

Študenti/ke bodo pridobili naslednje splošne kompetence:

- sposobnost analize, sinteze in predvidevanja rešitev ter posledic na področju ustavnega in mednarodnega kazenskega prava,
- obvladovanje raziskovalnih metod in procesov s področja družboslovja ter razvoj kritične in samokritične presoje na družboslovnem področju,
- sposobnost uporabe znanj s pravnega področja,
- avtonomnost pri strokovnem delu in sprejemanju pravnih odločitev,
- razvoj komunikacijskih sposobnosti in spretnosti s poudarkom na komunikaciji v mednarodnem okolju,
- etična refleksija in zavezanost profesionalni etiki v pravnem okolju,
- kolegialnost do sodelavcev in delo v skupini ter strpno sprejemanje in upoštevanje tvornih kritik in pripomb.

Naštete kompetence se bodo razvijale v okviru različnih predmetov, se medsebojno dopolnjevale in združevale v okviru celotnega študijskega programa ter odrazile v diplomantu magistrskega študijskega programa Pravo.

Predvideni študijski rezultati:

Posledično naj bi slušatelji po koncu programa bili usposobljeni za samostojno delo na področju mednarodnega in supra nacionalnega kazenskega prava v smislu vključevanja pridobljenega znanja bodisi na nacionalni ravni bodisi v mednarodnem okolju. Pri tem bodo poznali temeljno judikaturu nacionalnega ustavnega sodišča, ESČP, Sodišča EU in Vrhovnega sodišča ZDA, torej judikaturu, ki je temelj za razumevanje zgodovinskega razvoja

successfully completing the Law program, graduates gain the highest level of legal knowledge, providing a strong foundation for employment in any legal field in Slovenia and abroad.

Students will gain the following general competences:

- Ability of analysis, synthesis and prediction of solutions and consequences in the area of constitutional and international criminal law;
- Understanding of research methods and procedures in the area of humanities, as well as critical and self-critical thought in that area;
- Ability to use legal knowledge in the mentioned legal area;
- Scientific work autonomy and autonomous legal decision-making;
- Development of communication skills, especially as regards communication in international fora;
- Ethical reflection and professional ethics in law;
- Team-work and ability to be exposed to legal criticism and take it into account.

The acquired competencies will develop within the framework of various subjects, complement each other, and integrate throughout the entire study program, reflecting in the graduate of the Master's study program in Law.

Intended learning outcomes:

At the end of the program, students should be equipped for independent work in the field of international and supranational criminal law, integrating the acquired knowledge at either at national level or in an international environment. They will possess knowledge of the fundamental jurisprudence of the national constitutional court, the European Court of Human Rights, the EU Court of Justice, and the U.S. Supreme Court, specifically an understanding of the case law that

temeljnih kazenskopravnih pravic kakor tudi njihovega sodobnega pojmovanja.

S tem bodo razumeli temelje institutov, ki jih v abstraktni obliki najdejo npr. v ZKP (npr. globlje razumevanje pomena sodne avtorizacije pri posegih v zasebnost in svobodo, razumevanje pomena ekskluzije, pomena Miranda pouka kot učinkovitega sredstva za zaščito privilegija zoper samoobtožbo itd.), v kazenskem pravu na splošno (zakonitost, pošten postopek in posamični njegovi vidiki itd.), v kazenskem pravu EU (vzajemno priznavanje, primarnost prava EU in »solange« problematika, harmonizacijski instrumenti itd.) . Hkrati bodo tudi usposobljeni za nadaljnje samostojno spremljanje zadevnega področja ter iskanje virov in judikature ter s tem za nadaljnje poglobljeno znanstveno delo na zadevnem področju.

forms the basis of comprehending the historical development of fundamental rights in criminal law and their modern-day concept.

They will understand the foundations of the various legal principles found in abstract form, such as those in criminal procedural codes(for example, a deeper understanding of the judicial authorisation requirement for intrusions into privacy and personal liberty), criminal law in general (legality, fair trial and its individual aspects, etc.), and EU criminal law (mutual recognition, primacy of EU law, the so-called "Solange" dilemma, harmonisation instruments, etc.). Additionally, they will be for further independent research in this field, enabling them to pursue more advanced scientific work in the area.

Metode poučevanja in učenja:

Oblike dela:

- Frontalna oblika poučevanja
- Delo v manjših skupinah oz. v dvojicah
- Samostojno delo študentov
- e-učenje
- Kombiniran način študija
- drugo (vpišite) _____

Metode (načini) dela:

- Razlaga
- Razgovor/ diskusija/debata
- Delo z besedilom
- Proučevanje primera
- Igra vlog
- Druge vrste nastopov študentov
- Reševanje nalog
- Študijski obiski podjetij ipd.)
- Vključevanje gostov iz prakse
- Udeležba na okrogli mizi, na konferenci

Learning and teaching methods:

Types of learning/teaching:

- Frontal** teaching
- Work in smaller groups or pair work
- Independent students work
- e-learning
- Combined study mode
- other _____

Teaching methods:

- Explanation
- Conversation/discussion/debate
- Work with texts
- Case studies
- Role-play
- Different presentation
- Solving exercises
- Field work (e.g. company visits)
- Inviting guests from companies
- Attending round table and conference

Načini ocenjevanja:	Delež (v %) / Weight (in %)	Assessment:
pisni/ustni izpit	85%	Written/oral examination
sodelovanje	15%	class participation

Nekatere reference nosilca / Some references of the lecturer

1. Sodnik kot varuh demokratične družbe (»The Judge as a Guardian of democratic society«),

article, Pravnik, No. 4-5/2006

2. Ustavno sodišče RS ter evropski nalog za prijetje in predajo ali “kdo se boji Virginije Woolf” (»Slovenian Constitutional Court and the European Arrest Warrant or who is afraid of Virginia Woolf«), article, Pravna praksa, No. 1/2008
3. Vprašanje ekskluzije: primerjava Evropskega sodišča za človekove pravice ter slovenskega in hrvaškega sistema (»Exclusionary rule – comparison between ECtHR, Slovenian and Croatian system), article, Revus, No. 11/2009
4. Ustavna analiza slovenskega pouka Miranda in izločitev dokazov (»Constitutional analysis of the Slovenian »Miranda« warnings system and admissibility of evidence«), article, Pravnik, No. 3-4/2010
5. Evolutivna teorija razvoja prava (»Evolutionary theory of law«), GV Založba, book, 2012
6. The principle of mutual recognition as a utilitarian solution, and the way forward, EuCLR, No. 1/2012
7. European Public prosecutor’s Office (EPPO) – too much, too soon and without legitimacy?, EuCLR, No. 2/2015
8. The Needed Balances in EU Criminal Law, Hart Publishing, 2017, chapter in book
9. Uvod v kazensko procesno pravo RS in EU, GV Založba, 2022, so-avtor
10. A new EU system of cross-border gathering of e-evidence - analysis and open questions, Dignitas, 98(2023)
11. Toolkit for Handling and Admissibility of Electronic Evidence Empowering Legal Practitioners to Critically Review E-Evidence from the Procedural Rights Perspective, 2024, so-avtor
12. Cambridge Handbook of Electronic Evidence, Cambridge University Press, 2024 (v postopku objave), so-avtor.