

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
II. stopnja	Pravo	1	1
II. level	Law	1	1

Vrsta predmeta / Course type

Obvezni / Compulsory

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:

izr. prof. dr. Anže Erbežnik /Assoc. Prof. Dr. Anže Erbežnik

Jeziki /**Languages:****Predavanja /****Lectures:**

Slovenščina/Slovenian

Vaje / Tutorial:

Slovenščina/Slovenian

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

Sluшатeljem 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, eskuzija 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

Prerequisites:

Students will benefit from prior knowledge about the basic topics of criminal law and procedure, as well as the general placement of Slovenia in the European and international legal space. They must understand concepts such as crime and its elements, guilt, penalty of criminal proceedings, the privilege against self-incrimination, etc. They must also be familiar with the basics of Slovenian constitutional order and of EU law in the broader sense of national institutions and EU institutions, principle of separation of powers, legislative process, laws, regulations, jurisdiction, understanding the concepts of primary and secondary EU law, the fundamental principles of the EU, such as supremacy and subsidiarity, the EU acts, etc.

EU itd.	
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Vsebina:

Content (Syllabus outline):

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 kazenskimi 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 smrtno kazni),

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 for the interpretation of fundamental rights related to criminal law,
- (d) the importance of the exclusionary rule,
- (e) terrorism, human rights and criminal law.

II. EU Criminal Law:

- (a) historical development,
- (b) a situation before and after the Lisbon Treaty,
- (c) the principle of primacy (supremacy) of EU law and the so-called "solange" issues in the criminal law field,
- (d) review of EU instruments in the field of criminal substantive law,
- (e) the principle of mutual recognition in the field of EU criminal law and the review of instruments in this regard,
- (d) European Arrest Warrant,
- (e) EU instruments for gathering evidence in criminal law,
- (f) a review of harmonization directives in the field of criminal procedural law,
- (g) European Public Prosecutor's Office,
- (h) Future challenges (e-evidence, admissibility of evidence).

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 (the right to respect for private and family life),
- (f) Protocols No. 6 and No. 13 of the Convention (abolition of the death penalty),
- (g) Protocol No. 7 to the Convention (*ne bis in*

(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 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.

idem).

IV. The Basics of US Constitutional Criminal Law , with emphasis on the 4th and 5th Amendment to the US Constitution:

- (a) a brief introduction to the constitutional structure of the United States,
- (b) 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 importance 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.

V. International criminal courts:

- (a) a historical overview,
- (b) International Criminal Court,
- (c) International Criminal Tribunal for the former Yugoslavia (ICTY),
- (d) International Criminal Tribunal for Ruanda (ICTR)

Temeljni literatura in viri / Readings:

Obvezna literatura:

1. prosojnice in gradivo s predavanj po posameznih sklopih/powerpoints and material delivered before each lecture
2. Erbežnik A., Evolutivna teorija razvoja prava, 2012, GV založba
3. Dežman Z., Erbežnik A., Kazensko procesno pravo RS, 2. dopolnjena izdaja GV, Ljubljana, 2020 (izbrana poglavja)
4. Erbežnik A., Načelo vzajemnega priznavanja v EU kot slaba utilitaristična rešitev, Dignitas, 47-48/2010
5. Erbežnik A., Vprašanje ekskluzije: Primerjava Evropskega sodišča za človekove pravice ter slovenskega in hrvaškega sistema, Revus, 11/2009
6. Zupančič B. M. Et al., Ustavno kazensko procesno pravo, Pasadena, 2000 (izbrana poglavja: str. 529-726, 781-866, 949-1204)

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. Erbežnik A., 'European Public Prosecutor's Office (EPPO) – Too Much, Too Soon, and without Legitimacy?' European Criminal Law Review 2 (2015)
6. Erbežnik A., "The Principle of Mutual Recognition as a Utilitarian Solution, and the Way Forward", 2 EuCLR (2012)
7. Kamisar et al., Basic Criminal Procedure, 14th ed., West, 2015 (izbrani primeri)
8. Mitsilegas V., EU Criminal Law after Lisbon: Rights, Trust and the Transformation of Justice in Europe, Hart, 2016
9. Peers S., EU Justice and Home Affairs Law, Vol. 2, Oxford, 2016
10. Rehnquist W., The Supreme Court, Vintage 2001
11. Schabas, The International Criminal Court: A Commentary on the Rome Statute (Oxford Commentaries on International Law) 2nd Edition, 2017 (izbrana poglavja)
12. Zupančič B. M., On the European Court of Human Rights: An Insider's Retrospective (1998–2016), eleven, 2019
13. Zupančič B. M., The Owl of Minerva, Eleven, 2008
14. Zupančič B. M., Pravo in prav, Cankarjeva založba, 1990
15. Zupančič B. M., Prvine pravne kulture, FDV, 1995

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

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;

- nacionalnih/nadržavnih/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.

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

- Understanding the role of national/supra-national/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;
- 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.

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;

- spretnosti s poudarkom na komunikaciji v mednarodnem okolju,
- etična refleksija in zavezanost profesionalni etiki v pravnem okolju,
- kolegialnost do sodelavcev in sodelavnost, delo v skupini ter strpno sprejemanje in upoštevanje tvornih kritik in pripomb.

- 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.

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 temeljnih kazensko-pravnih 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.

Intended learning outcomes:

At the end of the program, students should be trained for independent work in the field of international and supra-national criminal law in terms of integrating the acquired knowledge, either at national level or in international environment. They will have knowledge about the basic jurisprudence of the national constitutional court, the European Court of Human Rights, the EU Court of Justice and the US Supreme Court, namely knowledge about case-law which is the basis for understanding the historical development of fundamental rights in criminal law and their contemporary concept.

They will understand the foundations of the institutes, which are found in abstract form, for example, in the criminal procedural codes (for example, a deeper understanding of the judicial authorization requirement for intrusions into privacy and personal liberty), in criminal law in general (legality, fair trial and individual aspects thereof, etc.), in EU criminal law (mutual recognition, primacy of EU law and the so-called "solange" dilemma, harmonization instruments, etc.). At the same time, they will also be trained for further independent research of the area, and consequently for further in-depth scientific work in the area concerned.

Metode poučevanja in učenja:**Oblike dela:**

- ☒ Frontalna oblika poučevanja
☒ Delo v manjših skupinah oz. v dvojicah
☒ Samostojno delo študentov
☒ e-učenje
☐ 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
☐ 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

Delež (v %) /

Weight (in %) **Assessment:****Načini ocenjevanja:**

Ocenjuje se pisni izpit.

100%

Written examination.

Nekatere reference nosilca / Some references of the lecturer

1. Ustavno kazensko procesno pravo (»Constitutional Criminal Procedural Law«), co-author, case-book, Pasadena, 2000 and 2003, 2nd ed.
2. Kazensko procesno pravo RS (»Criminal procedural law of the Republic of Slovenia«), co-author, book, GV Založba, 2003
3. Sodnik kot varuh demokratične družbe (»The Judge as a Guardian of democratic society«), article, Pravnik, No. 4-5/2006
4. 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
5. 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
6. 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

7. Evolutivna teorija razvoja prava (»Evolutionary theory of law«), GV Založba, book, 2012
8. The principle of mutual recognition as a utilitarian solution, and the way forward, EuCLR, No. 1/2012
9. European Public prosecutor's Office (EPPO) – too much, too soon and without legitimacy?, EuCLR, No. 2/2015
10. The Needed Balances in EU Criminal Law, Hart Publishing, 2017, chapter in book