

UČNI NAČRT PREDMETA / COURSE SYLLABUS

Predmet:	Kazensko pravo
Course title:	<i>Criminal Law</i>

Študijski program in stopnja Study programme and level	Študijska smer Study field	Letnik Academic year	Semester Semester
Pravo - 3. stopnja	Obče pravo	2.	1.
Law - 3rd degree	Common Law	2.	1.

Vrsta predmeta / Course type Izbirni / Elective

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
20	0	0	0	0	230	10

Nosilec predmeta / Lecturer: prof. dr. Anže Erbežnik/Prof. Dr. Anže Erbežnik

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

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

Vpis v 2. letnik podiplomskega študija.

Vsaj 80% prisotnost na predavanjih.

Prerequisites:

Enrollment in the 2n year of postgraduate study.

At least 80% attendance at lectures.

Vsebina:

Predmet obsega nekatere specializirane tematike kazenskega prava, primerne študiju na doktorski ravni, in sicer:

- 1) kazenskim materialno pravo ob predstavitvi strukture kaznivega dejanja in s poudarkom na načelu zakonitosti v smislu njegovega zgodovinskega razvoja, izzivov (npr. vojni zločini in zložini zoper človečnost, sojenje v Nurembergu, Mednarodno kazensko

Content (Syllabus outline):

The course consists of some specific topics of criminal law appropriate for PhD level:

- 1) Criminal law as regard the theoretical structure of an offence and emphasis on the principle of legality – its historical development, challenges (Nuremberg trials, ICTY, etc.), constitutional perspective and ECHR case-law;

<p>sodišče za nekdanjo Jugoslavijo itd.) in ustavnosodne presoje ter presoje ESČP;</p> <p>2) kazensko pravo EU s poudarkom na načelu vzajemnega priznavanja, Evropskega javnega tožilstva in podrobni analizi supremacije/primarnosti prava EU in problematiki nastajajoče federalne strukture ter morebitnega konflikta med obveznostmi EU in obveznostmi po nacionalnih ustavah in EKČP, primerno študiju na doktorski ravni;</p> <p>3) kazensko procesno pravo z vidika pravice do poštenega sojenja (s poudarkom na pravici do odvetnika in pravici do molka ter dopustnosti dokazov) z vidika Ustave RS in ESČP, primerno študiju na doktorski ravni.</p> <p>V zvezi z navedenim bodo predstavljeni in analizirani najzahtevnejši primeri ustavnosodne presoje, mednarodnega kazenskega prava, judikature ESČP in judikature nekaterih drugih sodišč (npr. US Supreme Court ali Bundesverfassungsgericht).</p>	<p>2) EU criminal law with emphasis on mutual recognition, European Public Prosecutor's Office (EPPO) and a detailed analysis of the issue of supremacy/primacy and possible conflicts between EU law, national constitutions and ECHR in the area of criminal law at PhD level;</p> <p>3) Criminal procedural law as regards fair trial (with emphasis on the right to a lawyer and the right to remain silent) – national perspective and ECHR at PhD level.</p> <p>As regards the above mentioned the legally most demanding cases of national constitutional and international criminal law, including ECHR case-law and some other national courts (US Supreme Court and Bundesverfassungsgericht) , will be presented and analysed.</p>
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Temeljna literatura in viri / Readings:

<p>Obvezna</p> <ul style="list-style-type: none"> - Avbelj et al. (ed.), Komentar Ustave RS, 2019 – izbrani člani - Dežman Z., Erbežnik A., Kazensko procesno pravo RS, 2. dopolnjena izdaja GV, Ljubljana, 2020 (izbrana poglavja) - Erbežnik A., Evolutivna teorija razvoja prava, 2012, GV založba - Peers S., EU Justice and Home Affairs Law, Vol. 2, Oxford, 2016 - Schabas, The International Criminal Court: A Commentary on the Rome Statute (Oxford Commentaries on International Law) 2nd Edition, 2017 (izbrana poglavja) <p>Priporočena</p> <ul style="list-style-type: none"> - Erbežnik A., Smiselnost uvedbe ločenih mnenj pred Sodiščem Evropskih skupnosti, Revus, 8/2008 - Erbežnik A., Sodnik kot varuh demokratične družbe, Pravnik, 4-5/2006 - Erbežnik A. Delni kopernikanski obrat Sodišča EU glede razmerja med nacionalnim ustavnim redom in pravom EU, Pravna praksa, št. 49-50/2017

- Erbežnik A., 'European Public Prosecutor's Office (EPPO) – Too Much, Too Soon, and without Legitimacy?' *European Criminal Law Review* 2 (2015)
- Erbežnik A., "The Principle of Mutual Recognition as a Utilitarian Solution, and the Way Forward", 2 *EuCLR* (2012)
- Kamisar et al., *Basic Criminal Procedure*, 14th ed., West, 2015 (izbrani primeri)
- Mitsilegas V., *EU Criminal Law after Lisbon: Rights, Trust and the Transformation of Justice in Europe*, Hart, 2016
- Rehnquist W., *The Supreme Court*, Vintage 2001
- Zupančič B. M., *On the European Court of Human Rights: An Insider's Retrospective (1998–2016)*, eleven, 2019
- Zupančič B. M., *The Owl of Minerva*, Eleven, 2008
- Zupančič B. M., *Pravo in prav*, Cankarjeva založba, 1990
- Zupančič B. M., *Prvine pravne kulture*, FDV, 1995

Cilji in kompetence:

- poznavanje in razumevanje pravnih pojmov, pravnih načel in pravil s področja kazenskega prava;
- razumevanje pomembnosti uporabe ustavnih načel s področja kazenskega prava za delovanje demokratične in pravne države in razvoj sposobnosti dostopati do domače in tuje sodne prakse;
- razumevanje in sposobnost uporabe temeljnih vrednot kazenskega prava v praksi na najzahtevnejši ravni;
- sposobnost samostojnega in avtonomnega študijskega dela;
- razvoj sposobnosti kritično analizirati pravne vire in pravna besedila na doktorski ravni;
- kritična refleksija obstoječih pravnih virov in ocena njihove potrebnosti in kakovosti;
- sposobnost kritične strokovne razprave in analize o temeljnih pojmi, načelih in pravil kazenskega prava;
- razumevanje in sposobnost ocene kakovosti delovanja institucij demokratične in pravne države pri uresničevanju načel in pravil kazenskega prava;
- sposobnost ustreznega navajanja domačih in mednarodnih pravnih virov, domače in mednarodne sodne prakse in elektronskih virov;

Objectives and competences:

- Knowledge and understanding of legal concepts, legal principles and rules in the field of criminal law;
- Understanding the importance of applying constitutional principles to the functioning of a democratic and rule of law and developing the capacity to access domestic and foreign jurisprudence;
- Understanding and ability to apply the values of criminal law in practice at the most demanding legal level;
- Ability to study independently and autonomously;
- Developing the ability to critically analyse legal sources and legal texts at level of doctoral studies;
- A critical reflection on existing legal sources and an assessment of their need and quality;
- Ability to critically discuss and analyse concepts, principles and rules of criminal law;
- Understanding and ability to assess the quality of functioning of democratic and rule of law institutions in the implementation of the principles and rules of criminal law;
- Ability to properly cite domestic and international legal sources, domestic and international jurisprudence and electronic resources;

- uporaba ustreznih metod pravnega raziskovanja, njihovih postopkov, analize in sinteze;
- razvoj etičnih sposobnosti pri uresničevanju načel in pravil kazenskega prava;
- sposobnost skupinskega dela in pripravljenosti za sodelovanja pri reševanju konkretnih primerov s področja kazenskega prava;
- razvoj komunikacijskih sposobnosti in veščin pri razumevanju in uresničevanju kazenskega prava;
- razvoj veščin javnega nastopanja in predstavitev pri obravnavi institutov kazenskega prava na najzahtevnejši ravni.

- Use of appropriate methods of legal research, their procedures, analysis and synthesis;
- Developing ethical skills in the implementation of the principles and rules of criminal law;
- Ability of teamwork and be willing to work together to solve specific cases in the field of criminal law;
- Developing communication skills and competences in the understanding and implementation of criminal law;
- Developing public speaking and presentation skills when dealing with criminal law institutes at the most demanding legal level.

Predvideni študijski rezultati:

- Seznanitev študentov s pojmom in razvojem splošnih in specifičnih vidikov kazenskega prava na doktorski ravni;
- Osvojitev temeljnih vprašanj vsebinskega in postopkovnega kazenskega prava;
- razvije zanimanje in znanje o kazenskem pravu na najzahtevnejši pravni ravni;
- razvije kritično razumevanje kazenskega prava;
- zmožen/na je kritične presoje ter analize in interpretacije dogodkov in usmeritev iz kazenskega prava;
- sposoben je kritično oceniti in se opredeliti do prakse kazenskopravnih organov, sodišč, ustavnega sodišča in mednarodnih sodišč glede kazenskega prava;
- sposoben je kritično obravnavati varstvo človekovih pravic in temeljnih svoboščin v nacionalnem, mednarodnem in kazenskem pravu EU;
- sposoben je ustrezno analizirati načelo zakonitosti, temeljna načela kazenskega postopka in razumeti dinamiko med nacionalnim, mednarodnim in kazenskim pravom EU.

Intended learning outcomes:

- To introduce students to the concept and development of general and specific aspects of criminal law at PhD level;
- Acquiring the fundamental knowledge of substantive and procedural criminal law;
- Developing the students' interest and knowledge of criminal law at the most demanding legal level;
- Developing a critical understanding of the events and guidelines relevant to criminal law;
- Ability to critically evaluate and define the practice of criminal law bodies, courts, the Constitutional Court and international courts;
- Ability to critically address the protection of human rights and fundamental freedoms in criminal law at national, international and EU level;
- Ability to critically judge, analyse and interpret the principle of legality and basic safeguards in criminal procedure, and to understand the relationship between national, international and EU criminal law.

Metode poučevanja in učenja:

Learning and teaching methods:

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

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 %) /

Načini ocenjevanja:

Weight (in %)

Assessment:

Način (pisni izpit, ustno izpraševanje, naloge, projekt)	Delež (v %) / Weight (in %)	Type (examination, oral, coursework, project):
Pisni izpit	80%	Written examination and seminar paper.
Seminarska naloga	20%	

Reference nosilca / Lecturer's references:

- Ustavno kazensko procesno pravo («Constitutional Criminal Procedural Law»), co-author, case-book, Pasadena, 2000 and 2003, 2nd ed.
- Kazensko procesno pravo RS («Criminal procedural law of the Republic of Slovenia»), co-author, book, GV Založba, 2003
- Sodnik kot varuh demokratične družbe («The Judge as a Guardian of democratic society»), article, Pravnik, No. 4-5/2006
- 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
- 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
- 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
- Evolutivna teorija razvoja prava («Evolutionary theory of law»), GV Založba, book, 2012
- The principle of mutual recognition as a utilitarian solution, and the way forward, EuCLR, No. 1/2012
- European Public prosecutor’s Office (EPPO) – too much, too soon and without legitimacy?, EuCLR, No. 2/2015
- The Needed Balances in EU Criminal Law, Hart Publishing, 2017, chapter in book