SUMMER SCHOOL
PROTECTION OF ETHNIC MINORITIES
September 2017
FOR THE READER
Europa-Institut, Saarland University
Centre for South East European Law School Network (SEELS)

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FINANCED BY
The Reader at hand is a product of the project “Reflecting ethnic heterogeneity and tolerance towards national minorities in the legal education in South East Europe and Germany” more precisely the Summer School “Protection of Ethnic Minorities” that took place in Durrës, Albania from the 3rd to the 10th of September 2017. The Project as well as the Summer School was organized and carried out with the financial support of the German Academic Exchange Service (DAAD) and the Federal Foreign Office of Germany.
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The past two and a half decades have been, indeed, quite challenging for the ethnically hetero-
genic states in the South Eastern European region (hereafter: SEE) which faced not just changes in their economic and legal systems, but also serious ethnic tensions and (armed) conflicts, thereby jeopardizing the entire global corpus of human and citizens’ rights. For this reason, the SEE states introduced new constitutions and laws, entered into Stabilization and Association Agreements with the European Union and adopted numerous international Conventions and cogent standards which protect minority rights as a special segment within the overall human rights protection process: Framework Convention for National Minorities of the Council of Europe and the European Charter for Regional or Minority Languages. Following the introduction of these rules, the SEE states have struggled with implementation and especially with raising public awareness, as a key prerequisite for reconciliation, democratization and future progress without conflicts. They, along with the Western European states, invested in public campaigns, strengthening, reformation and (even sometimes) transformation of their institutions, implementation of anti-discrimination standards, and improvement of the minority rights regime in general.

Overall, initial progress has been achieved and the legal framework for the protection of minorities is in line with European standards for most of these countries, with the result that larger scale conflicts have not occurred for more than a decade. However, the enforcement and implementation of minority rights still needs to be strengthened, since minorities still struggle in various parts of their daily lives.

Therefore, we have found that now is the time to start evaluating the activities already conducted and (more importantly) to dedicate time and means to those which have been lagging behind. Only when the legal standards are fully implemented can the SEE states become even more inclusive for minorities and therefore progressive, stable and developed; states where individual and collective rights are truly cherished as core values. This regional stability and progress is, in our view, crucial in the modern, globalised world, where the social processes and conflicts in one region can affect other regions, and even continents (such as the ongoing refugee and migrant crisis). The ethnic diversities within a state should be considered an asset, rather than a burden.
Speaking of the activities that have been lagging behind we at Europa-Institut and South East European Law School Network, as institutions focused on higher legal education, have detected: (1) a lack of a culture of respect for minority rights, (2) a lack of formal legal education on minority rights in Germany and the SEE states and (3) a lack of a unified approach when teaching minority rights.

These shortcomings are, from our perspective, important factors, which prevent the aforementioned progress and stability in a modern globalised world. Firstly, the law students are the people who will be implementing the various international and domestic rules on minority rights protection in the future, so that they ought to have a deeper knowledge and understanding of them. This cannot be achieved, if minority rights are, primarily, only dealt with in general human rights courses. Secondly, minority rights are set out in, and regulated by, complex legal rules. Only if our future lawyers have extensive knowledge of such legal rules, they will be implemented and further developed in such a manner as to avoid tensions and promote understanding among the different groups. Thirdly, the unification of minority rights education is crucial so that all the modern states implement the same standards and thresholds. This also requires that the higher education institutions collaborate on an international level, meaning that the best and most relevant experiences are identified and transposed into curricula for minority rights courses. Finally, it cannot be expected that the future generations will have awareness of minority rights, if the higher education institutions do not actively promote them.

Bearing all this in mind and based on our experiences and feedback in other projects where this topic was identified as crucial for the development and improvement of the SEE region, we developed the concept for the project “Reflecting ethnic heterogeneity and tolerance towards national minorities in legal education in South East Europe and Germany”. The goal is to promote and advance minority rights education in Germany and SEE states with multiple activities and efforts.

The most important activities and efforts are, in that respect, the Summer School “Protection of Ethnic Minorities” and the Reader on minority rights. Both are aimed at bringing the higher education institutions in SEE and Germany a step closer to unified and accessible modules on minority rights. The Summer School is intended to enable a group of students from SEE and Germany to jointly follow lectures and learn more on minorities (and their rights), while the Reader, which is accessible online, will enable all the interested students to read and learn more in respect to minority rights while getting an insight on the different perspectives in the different states and regions.

Bearing in mind the aforesaid, we sincerely hope that the Reader, as a non-formal publication – collection of lectures –, shall be an useful and informative tool, one that is going to arouse the readers' interest in learning more on minority rights.

September 2017

Prof. Dr. Thomas Giegerich
Director
Europa-Institut, Saarland University

Prof. Dr. Gordana Bužarovska,
Manager
Centre for South East European Law School Network (SEELS)
PART I

CONCEPT OF MULTICULTURALISM AND THE RIGHT OF PARTICIPATION

by Ljubomir D. Frčkoski
I. INFORMATION OF THE LECTURER

Ljubomir D. Frčkoski: Faculty of Law “Iustinianus Primus” – Skopje / Full Time Professor of International Public Law, International Human Rights Law

II. BASIC INFORMATION ABOUT THE LECTURE

Title of the lecture: Concept of Multiculturalism and the right of participation

LECTURE SUMMARY AND OBJECTIVES

The political debates and arguments which surround questions of ethnicity, race and cultural difference have covered the idea of the nation as a community. For the critics and advocates of national identity and cultural difference, multiculturalism has often been a specifically national debate. This lecture challenges the national frames to reference of these debates by investigating contemporary theories, policies and practices of cultural pluralism across the EU countries. It also searches the institutional arrangements and norms reflecting this within the EU regime.

The Lecture combines general theoretical discussions of the principle of cultural pluralism, nationalism, and minority identities with informative studies of specific local histories and political conflicts.

The lecture further identifies / elaborates some of the main conditions for successful outcome of the project: institutional building and successful functioning of democracy in multicultural societies.

In this regard, the emphasis is places on the following:

• the process of creating INCLUSIVE politics / representativeness. Namely, the transformation of political representation from predominantly indirect (as standard in liberal democracies) towards “mirror, inclusive, deliberative” representation, showing the tendency of so-called REDEMOCRATIZATION of democratic societies by inclusion of culture diversities. The change that includes culture pluralism is not at all simple; on the contrary, it is turbulent. Such change, because of its symbolism and struggle of symbols of diverse cultures, mostly involves the public sphere of political representativeness in said struggles and then goes down institutionally to level of civil networking and micro communities and life styles.

• the preservation of legal system and preservation of society as “governable”. This is very important in the first part of the intervention, because eventual downfall of these societies in a (more serious) conflict would make then ungovernable and fallen from within on longer term. This “urgent” plan / condition requires that at least two pillars be set in advance: the first pillar address design of a constitutional frame that will protect and promote individual human rights and will also provide inclusion and efficient representation of different groups; the second pillar is equally important: protective mechanisms for creating neutral and efficient administration.

• developing a clear and open orientation towards political promotion of identities. This condition is closely related to the first one – inclusiveness, and treats it very clearly and openly. Namely, as it is important that an identity of a political community be expressed in the political sphere and in the sphere of institutional building, it is also important to be expressed in the civil sphere or that of life styles, manner of life (semi-public, semi-private). If this condition is met, then it will enable identities to “be relaxed” from convulsion and fear that they will be by-passed in distribution of power; this in turn enables better chances for development and multiple and
overlapping identities. By this, chances are made to construct a consensually based structure of authority and later in perspective a symbiotic “national identity”.

- the participation in employment and development of market economy, having share in resources and social opportunities.
- the development of civic virtues, especially tolerance and accepting others as being different and equally valuable in atmosphere of freedom for communication between cultural discourses.
- keeping the society “open” for international soft arbitration (expert assistance or political stimulus) in sensitive normative zones of regulating culture rights.
- international networking of such countries in wider security and economic integration processes. This condition can be shown to be vital to implementation prospects of any agreement in a given such country, and can permanently solve culture conflicts, or at least to pull them out of their violent stage.

With development prospects that are provided by wider integration processes and their “soft power” (power to make reforms by offering assistance and examples, and not pressure and threats), multicultural states have opportunities for longer stabilization and development. Special problem are countries in transition that assume form of “illiberal democracies’ and the lecture will also elaborate on this. Such countries, in addition to the previously cited negative tendencies, also have painful experiences with their own political elites who, instead of leading the process towards democracy thus mobilizing even minimal common basis for consensus, easily slip into ethnic nationalism and populism. Instead of understanding the specially underlined role of responsible leadership towards democracy and constitutional state, the opposite is very frequent – negative mobilization on grounds of ethnic nationalism, connected to organized crime and endemic corruption. Thus, the notorious bad equilibrium of transition is created. Given such atmosphere, culture groups become closed or entrapped in permanent antagonism, while interethnic conflict lives in collective group narrations with realistic or imagined events and dynamics.

BRIEF DESCRIPTION OF THE PREVIOUS KNOWLEDGE EXPECTED

The students should have knowledge in human rights, minority rights, constitutionalism and negotiation conflicts.

III. OUTPUTS OF THE LECTURE

AT THE END OF THE LECTURE THE STUDENTS WILL BE EXPECTED TO

- be familiar with the scientific theoretical explication of the basic notions and instruments for protection of cultural identity of persons, normative framework standards of multicultural societies (the instruments and policies that preserve the multiculturality of societies) as well as with their political philosophy and jurisprudence foundation
- have an insight in all the current political and legal debates for concrete legal categories, especially the relation between the individual and collective rights, the right to cultural identity, the balancing universality of human rights with different cultural practices, as well as the positive practices of tolerance and dialog
IV. METHODOLOGY THAT WILL BE USED DURING THE LECTURE

The topic's material will be lectured using the current methods for systematic an integral study of the theoretical aspects of the specialized area. The lecture topics will be analyzed in-depth, critically and in a comparative manner.

The students will work in groups and individually. They will be engaged in analyzing the relevant international and EU policies and in formulating legal arguments and opinions that will be further argued and analyzed in order to build their critical and competent attitudes.

V. LITERATURE

BOOKS


LEGISLATION (NATIONAL AND INTERNATIONAL)

1. Constitution of Republic of Macedonia
2. Framework Agreement / Amendments to the Constitution of R. Macedonia
PART II

WHO IS A MINORITY? THEORY AND PRACTICE

by Damir Banović
I. INFORMATION OF THE LECTURER

Damir Banović: University in Sarajevo – Law Faculty / Senior Teaching Assistant

II. BASIC INFORMATION ABOUT THE LECTURE

Title of the lecture: Who is A Minority? Theory and Practice
Key words: Minority, Ethnicity, Politics of Identity, Collective Rights, Anti-discrimination

DESCRIPTION OF THE LECTURE CONTENT

The lecture under the title “Who is A Minority? Theory and Practice” will present the concept of collectiveness as the criteria in further analytical differentiations between a majority and minority. Also, the idea of identity will be presented throughout three different concepts: essentialism, constructivism and identity in dialogue. Factual contexts effect and shape relation majority vs. minority. Thus, empirical research and social theory provide valuable sources in conceptual framing of an idea of minority. Furthermore, is the factual existence enough to constitute a minority? Does the number matters? What is the importance of political organization or political claims to recognize a group as minority?

The lecture will also emphasize the importance of interdisciplinary knowledge: why is it important do draw parallels and how can it be applied in law? Moreover, what is the relevance of comparative approach and what are its limits?

These and similar issues will be addressed at the Summer School.

BRIEF DESCRIPTION OF THE PREVIOUS KNOWLEDGE EXPECTED

Students should have a basic knowledge of law, legal procedures, human rights and legal standards. Also, students should have a basic idea of the national, regional and international law as well of the political system.

III. AIM AND RESULTS OF THE LECTURE

1. Understanding minorities interdisciplinary
2. Recognizing contextual character and the need for both analytical and sociological concepts
3. Raising knowledge of legal concepts related to the minorities

AT THE END OF THE LECTURE THE STUDENTS WILL BE EXPECTED TO

• be able to understand the majority vs. minority relation in a broader concept of the interdisciplinary research. The concept of minority is highly contextual which awaits both sociological, legal anthropological and legal (positivistic) approach. Understanding minorities interdisciplinary should help students to understand better and to apply easily legal concept of minorities.

• gain knowledge of the international, regional and selected national legal provisions related to minority vs. majority context. The multilevel approach from the “top to bottom” and from the “bottom to top”, as well as the combination of social theory, legal theory and legal practice should skill the students to recognize minority issues and to successfully find, interpret and apply legal provisions.
IV. METHODOLOGY THAT WILL BE USED DURING THE LECTURE

The course is based on PowerPoint Presentations combined with Ex Cathedra lectures. Moreover, the lecture include interactive elements, e.g. group works and case-study analyzes.

V. LITERATURE

BOOKS

ACADEMIC PAPERS / ARTICLES

LEGISLATION (NATIONAL AND INTERNATIONAL)
1. International Covenant on Civil and Political Rights (1966)
2. Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (1992)

CASE LAW / JURISPRUDENCE
1. U-5/98.Decision on the constituency of peoples. The Constitutional Court of Bosnia and Herzegovina
PART III

MINORITY PROTECTION: PROHIBITION OF DISCRIMINATION AS AN IMPORTANT ELEMENT

by Thomas Giegerich
I. INFORMATION OF THE LECTURER

Thomas Giegerich: Europa-Institut Professor, Director of the Europa-Institut

II. BASIC INFORMATION ABOUT THE LECTURE

Title of the lecture: Minority Protection: Prohibition of Discrimination as an Important Element
Key words: Prohibition of Discrimination, Minorities, Language, Education

LECTURE SUMMARY AND OBJECTIVES

Both the Council of Europe and the European Union adhere to and try to implement the principle of equal rights and non-discrimination for all. Their respective efforts reinforce and complement one another. Since 1950, Art. 14 of the European Convention on Human Rights (ECHR) of 1950 has set out an accessory prohibition of discrimination based on a non-exhaustive list of problematic grounds. The exact content of this provision has been clarified by numerous decisions of the European Court of Human Rights (ECtHR). All the EU Member States are bound by the ECHR whose provisions are used by the Court of Justice of the EU (ECJ) as a means to interpret EU law. It took the Council of Europe Member States fifty years to draw up an independent and comprehensive prohibition of discrimination which is included in Protocol No. 12 of 2000. While the Protocol has meanwhile entered into force only a minority of the Convention States (and only nine of the EU Member States) have ratified it. Apparently, many of them are disinclined to give the ECtHR the final say on whether or not distinctions they make in their laws are “reasonable”. The European Union is about to accede to the ECHR, but not Protocol No. 12.

Art. 14 ECHR expressly prohibits discrimination because of association with a national minority. But there are several other prohibited grounds of distinction that also protect members of minorities: Race, colour, language and religion.


The anti-discrimination law of the EU reaches much further and is much better implemented. The Treaties as such have always included prohibitions of discrimination on grounds of nationality that are directly applicable in national court proceedings and override contrary national legislation. Their exact scope has been clarified by the case-law of the CJEU that tends to be strict.

With the entry into force of the Treaty of Lisbon, the Charter of Fundamental Rights of the EU (CFR) was promoted to the rank of primary EU law, on a par with the Treaties and to be enforced by the ECJ. The Charter includes several provisions on equality before the law and non-discrimination (Art. 20–26). Where these correspond to rights guaranteed by the Treaties, they shall be exercised under the conditions and within the limits defined therein (Art. 52 [2] ChFR). Where the Charter rights correspond to rights guaranteed by the ECHR, their meaning and scope shall be no less extensive than those laid down by the Convention (Art. 52 [3] ChFR). It must always be remembered, however, that the Charter rights are primarily addressed to the institutions etc. of the EU. The Member States are only subject to those rights where they are implementing Union law (Art. 51 [1] ChFR).

The Treaty of Amsterdam of 1997 introduced the provision now contained in Art. 19 (1) of the Treaty on the Functioning of the EU (TFEU). That provision does not as such prohibit discrimination based on other grounds than nationality which are set forth in an exhaustive list including the most
problematic grounds (such as sex, racial or ethnic origin and sexual orientation). It only identifies kinds of discrimination that deserve to be combated and empowers the Council of the EU and the European Parliament jointly to enact secondary legislation for that purpose. The fact that any legislation based on Art. 19 (1) TFEU requires unanimity in the Council (consisting of a minister from each Member State) shows that the Member States wanted to keep EU anti-discrimination under their control.

Meanwhile, several anti-discrimination directives have been enacted on the basis of Art. 19 (1) TFEU or other Treaty provisions. The most important of these in terms of minority protection is the COUNCIL DIRECTIVE 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (OJ L 180, p. 22).

It should also be remembered that there are further anti-discrimination provisions in various treaties concluded by the EU with third States. Those provisions prohibit discrimination of third-state nationals on grounds of nationality. According to the case-law of the ECJ, they are usually directly applicable and override both contrary secondary EU law and national law.

Objectives:
1. Raising awareness for the non-discrimination of minorities
2. Legal framework of antidiscrimination (Council of Europe and EU)
3. Antidiscrimination rules which apply also to minorities
4. Introduction to case-law of the European Court of Human Rights and the Court of Justice of the EU

BRIEF DESCRIPTION OF THE PREVIOUS KNOWLEDGE EXPECTED

Students should know the general framework of the European Convention of Human Rights as well as the structure of European Union Law. It is expected that they are familiar with the Charter of Fundamental Rights of the European Union.

III. OUTPUTS OF THE LECTURE

AT THE END OF THE LECTURE THE STUDENTS WILL BE EXPECTED TO

• know the legal framework of antidiscrimination in the context of minorities
• apply case-law concerning the prohibition of discrimination of minorities
• understand the Interaction of the Council of Europe and the EU level of antidiscrimination law

IV. METHODOLOGY THAT WILL BE USED DURING THE LECTURE

The lecture is based on PowerPoint Presentations combined with case-studies on specific cases.

V. LITERATURE

BOOKS
1. Agarin, Timofey / Cordell, Karl: Minority Rights and Minority Protection in Europe, 2016


ACADEMIC PAPERS / ARTICLES

1. EU Agency for Fundamental Rights, Second EU minorities and discrimination survey: Roma (2016)


LEGISLATION (NATIONAL AND INTERNATIONAL)

1. Art. 14 ECHR

2. Protocol No. 12 to the ECHR

3. European Charter for Regional or Minority Languages

4. Framework Convention for the Protection of National Minorities

5. Art. 21 Charter of Fundamental Rights


7. Art. 27 International Covenant on Civil and Political Rights (1966)

CASE LAW / JURISPRUDENCE

1. Belgian Linguistic Case, ECtHR, No. 1474/62 etc.

2. Nachova v. Bulgaria, ECtHR, No. 43577/98 etc.

3. D.H. v. Czech Republic, ECtHR, No. 57325/00 etc.

4. Timichev v. Russian Federation, ECtHR, No. 55762/00 etc.

5. Sejdić and Finci v. Bosnia and Herzegovina, ECtHR, No. 27996/06

6. Šlaku v. Bosnia and Herzegovina, ECtHR, No. 56666/12

7. Partei Die Friesen v. Germany, ECtHR, No. 65480/10

8. CHEZ, CJEU, Case C-83/14, ECLI:EU:C:2015:480

OTHER (PLEASE SPECIFY)

1. Giegerich, Thomas: Script on Antidiscrimination Law
PART IV

HATE CRIMES AND HATE SPEECH AGAINST MINORITIES

by Tanasije Marinković
I. INFORMATION OF THE LECTURER

Tanasije Marinković: University of Belgrade Faculty of Law

II. BASIC INFORMATION ABOUT THE LECTURE

Title of the lecture: Hate Crimes and Hate Speech Against Minorities

Key words: Hate Speech, Minorities, Political Rights, Freedom of Speech, European Court of Human Rights, Constitutionalism, Secularism

OBJECTIVES OF THE LECTURE

Hate speech belongs to a group of hate crime, offences that are aggravated, in the eyes of the law, by evidence of a certain motivation (racial, ethnic, religious etc.). The objective of the lecture is to help students recognize better hate speech and understand why it is harmful not only for the group (racial, ethnic and religious) against whom it is directed, but also for the society in whole. In that respect, the particular attention will be paid to the fact that hate speech usually takes form of political speech, which generally enjoys high level of legal protection in liberal democracies. The balancing test developed in the case law of the European Court of Human Rights, under the standard of “necessary in democratic society”, will be used to assess when the political speech has to be limited for the purpose of the protection of racial, ethnic and religious minorities. In order to fully grasp the variety and specificities of the Court’s case-law treating the hate speech, an adequate connection will be made between freedom of speech and other political rights: freedom of thought, conscience and religion; freedom of assembly; freedom of association; and a right to free elections. Finally, the lecture will address the issue of importance of an effective legal combat against hate speech in contemporary societies which are typically multicultural.

CONTENT OF THE LECTURE

The lecture begins by mapping out political rights and pointing out their interconnection, the specificity of the freedom of speech being that it is a *lex generalis* to other political rights in the European system of protection of human rights, i.e. it is at the core of all political rights. This will be followed by the presentation of the main arguments in favor of political rights, as they have been developed in the history of legal and political thought: security against corrupt or tyrannical government; opportunity of exchanging error for truth; self-fulfillment; precondition for protection and legitimacy of all human rights.

After these introductory remarks the focus of the lecture will be on the notion of protected values – freedom of conviction, expression, assembly and association, and free elections – and the conditions under which enjoyment of these values may be restricted. The latter will be explained on the basis of a threefold test – legality, legitimacy and necessity of restriction in democratic society – as applied by the European Court of Human Rights. Also, the reference will be made to the concept of prohibition of abuse of rights. It is in this context of legitimate restriction of political rights and prohibition of abuse of rights that the hate speech will be addressed, as a type of act which is not only motivated by hate, but which is also intended to bring about and incite hate against an identifiable, minority group.

Next segment of the lecture deals with the typical examples of hate speech in the Court’s case-law: ethnic hate (*Pavel Ivanov v. Russia*; *W. P. and Others v. Poland*; *Balsyte-Lideikiene v. Lithuania*; *Dink v. Turkey*), negationism and revisionism (*Garaudy v. France*; *M'Bala M'Bala v. France*; *Perincek v. Switzerland*;
Lehideux and Isorni v. France), racial hate (Glimmerveen and Hagenbeek v. the Netherlands; Jersild v. Denmark; Féret v. Belgium; Faber v. Hungary), religious hate (Norwood v. the United Kingdom; Belkacem v. Belgium; Soulas and Others v. France; Le Pen v. France), hate speech and internet (Delfi AS v. Estonia; Pihl v. Sweden).

Relying on these examples a conceptual distinction will be made between different ways of libeling a group, through hate speech: factual claims; expressing opinions; vicious characterizations; and, direct calls for violence and exclusion. This taxonomy will help understand better what the principle harms in hate speech are: the general public good of inclusiveness to which liberal democracies are committed; and the dignity and reputation of vulnerable minorities, i.e. a basic sense of security as they live their lives, go about their businesses, and raise their families. Accordingly, hate speech appears as an attack on public order, both in narrow and brother sense: keeping the peace and maintenance of legal status of each and every individual (J. Waldron).

The lecture closes with the pledge that liberal democracies must take a more robust approach towards the protection of atmosphere of mutual respect against vicious attacks motivated by racial, religious and ethnic hatred. This call is justified by the argument that the twentieth century rivalry between liberal democracy and Marxist-Leninism is only a fleeting historical phenomenon compared to the long-standing conflict between Islam and Christianity. In other words, “in this new world, local politics is politics of ethnicities”, while “global politics is the politics of civilizations” (S. Huntington). Hence, appropriate long term, constitutional remedies have to be sought for the challenges of our time (including the fight against terrorism): secularism, i.e. public sphere has to be neutral in relation to different religious, philosophical and moral values, precisely as a response to the fact of “reasonable pluralism” (J. Rawls); and, an overall, effective fight against hate speech through political, legal and educational means.

BRIEF DESCRIPTION OF THE PREVIOUS KNOWLEDGE EXPECTED

Students should know European human rights law, comparative constitutional law and legal and political theory.

III. OUTPUTS OF THE LECTURE

AT THE END OF THE LECTURE THE STUDENTS WILL BE EXPECTED TO

• have a notion of protected political rights: freedom of conviction, expression, assembly and association, and free elections
• understand conditions under which these political rights may be legitimately restricted
• differentiate the notion and types of hate speech, and harm in hate speech
• explain how to fight effectively against hate speech

IV. METHODOLOGY THAT WILL BE USED DURING THE LECTURE

The lecture is based on PowerPoint Presentations as well as case analysis and give also the opportunity for brainstorming sessions.
V. LITERATURE

BOOKS

ACADEMIC PAPERS / ARTICLES

LEGISLATION (NATIONAL AND INTERNATIONAL)
1. European Convention on Human Rights
2. Recommendation No. R 97 (20) of the Committee of Ministers of the Council of Europe to Member States on “hate speech”, 30 October 1997
3. General Policy Recommendation No. 7 of the European Commission against Racism and Intolerance (ECRI) on national legislation to combat racism and racial discrimination, 13 December 2002
4. Recommendation 1805 (2007) of the Parliamentary Assembly of the Council of Europe on “blasphemy, religious insults and hate speech against persons on grounds of their religion”, 29 June 2007
CASE LAW / JURISPRUDENCE

Judgments and decisions of the European Court of Human Rights:

1. Pavel Ivanov v. Russia, ECtHR, No. 35222/04
2. W. P. and Others v. Poland, ECtHR, No. 42264/98
3. Balsyte-Lideikiene v. Lithuania, ECtHR, No. 72596/01
4. Dink v. Turkey, ECtHR No. 2668/07 etc.
5. Garaudy v. France, ECtHR, No. 65831/01
6. M’Bala M’Bala v. France, ECtHR, No. 25239/13
7. Perincek v. Switzerland, ECtHR, No. 27510/08
8. Lehideux and Isorni v. France, ECtHR, No. 24662/94 etc.
9. Glimmerveen and Hagenbeek v. the Netherlands, ECtHR, Nos. 8348/78 and 8406/78
10. Jersild v. Denmark, ECtHR, No. 15890/89
11. Féret v. Belgium, ECtHR, No. 15615/007
12. Faber v. Hungary, ECtHR, No. 40721/08
13. Norwood v. the United Kingdom, ECtHR, No. 23131/03
15. Soulas and Others v. France, ECtHR, No. 15948/03
16. Le Pen v. France, ECtHR, NO. 18788/09
17. Delfi AS v. Estonia, ECtHR, No. 64569/09
18. Pihl v. Sweeden, ECtHR, No. 74742/14
PART V

CRITICAL ASSESSMENT OF THE UN REGIME ON MINORITY PROTECTION

by Enis Omerović
I. INFORMATION OF THE LECTURER

Enis Omerović: University of Zenica, Faculty of Law / Assistant Professor

II. BASIC INFORMATION ABOUT THE LECTURE

Title of the lecture: Critical Assessment of the UN Regime of Minority Protection

Key words: United Nations, Minority Rights, Minority Protection, National / Ethnic Minorities, Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities

LECTURE SUMMARY AND OBJECTIVES

A brief overview on the development of international protection of minorities and minority rights in international law, particularly within the auspices of the United Nations. The goal is to understand the whole process of the development, including the justifications as well as needs for the protection of minorities, particularly national and ethnic, on an international level and stage.

An analysis of core UN documents on this issue, including the Declaration from 1992, Article 27 of the ICCPR, Article 30 of the CRC, including instruments adopted within the OSCE. The goal is to perceive the way and the extent of the protection of minorities within the UN.

Rights (and duties) of minorities according to international (UN) instruments.

An assessment of main UN bodies dealing with the subject-matter – to understand the jurisdiction and mechanisms, and the legal and political possibilities for minorities to be protected in every country in the world.

Case law – review of several cases (views / decisions) that were brought before the Human Rights Committee (HRC), quasi-judicial body dealing with cases that cover violations of those human rights and fundamental freedoms contained in the ICCPR, mainly within the meaning and scope of its Article 27.

Comparison between the UN “system” and the regional system – European mainly (Council of Europe) – in the field of the minority protection. The goal is to better understand the international (the UN) protection of minorities, and, on the other side, in which relation the international protection is found to be towards regional, preferably the European protection of this group of individuals. Where is the difference in this sense between general international law and particular international law (custom)?

How protected they are and do they receive a sufficient protection in the UN? – The main question through the whole lecture – in concluding remarks a comprehensive answer will be given.

BRIEF DESCRIPTION OF THE PREVIOUS KNOWLEDGE EXPECTED

Students should know the organisation, structure and function of the United Nations, the universal human rights (and fundamental freedoms) protection with an emphasis on the International Covenant on Civil and Political Rights from 1966 as well as the creation of general customary international law.
III. OUTPUTS OF THE LECTURE

AT THE END OF THE LECTURE THE STUDENTS WILL BE EXPECTED TO

• become familiar with Article 27 of the ICCPR from 1966 (as well as with Article 30 of the Convention on the Rights of the Child from 1989)
• become familiar with the Helsinki Final Act from 1975 and its role and importance in this respect
• learn and to be able to distinguish main provisions of the Declaration of the UNGA on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities from 1992
• critically analyze its reach and legal power in contemporary international law and relations
• be familiar with the Human Rights Committee and its decisions in relation to the protection of national / ethnic minorities
• find out more about other UN initiatives and mechanisms in this regard
• gain the ability to critically assess and independently analyze this topic and to detect disadvantages of the present UN instruments and the UN bodies (such as the Office of the High Commissioner for Human Rights (OHCHR), Commission on Human Rights (UNCHR), the Independent Expert on minority issues, the Forum on Minority Issues (est. in 2007 replacing the Working Group on Minorities), Human Rights Council (UNHRC), etc)
• gain the ability to make a comparison between the UN “system” and the regional, mainly the European “system” for the protection of national / ethnic minorities
• be ready to give their own legal solutions in order to improve international protection of national minorities

IV. METHODOLOGY THAT WILL BE USED DURING THE LECTURE

The lecture explores, explains and critically assesses the UNGA Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities from 1992. Other international documents related to the topic will be presented. Other notions and international legal categories needed for comprehensive understanding of this issue will be explained. The case law on this subject-matter that would help student to make a recognition of main disadvantages related to legal solutions of the protection of national minorities under the auspices of the United Nations will be jointly elaborated. The UN “system” and the regional “system” which exists on the European soil will be compared.

V. LITERATURE

BOOKS
1. Degan, Đ.: Međunarodno pravo (International Law), 2011, Školska knjiga, Zagreb, pp. 507–519

5. Åkermark, A. S.: Justifications of Minority Protection in International Law, 1997, Brill Nijhoff

ACADEMIC PAPERS / ARTICLES


LEGISLATION (NATIONAL AND INTERNATIONAL)

1. International Covenant on Civil and Political Rights (adopted and opened for signature, ratification and accession by General Assembly Resolution 2200A (XXI) of 16 December 1966)

2. Helsinki Final Act (Final act of the 1st CSCE Summit of Heads of State or Government adopted on 1 August 1975)


4. Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (adopted by the UNGA in its Resolution A/RES/47/135 dated 18 December 1992)

CASE LAW / JURISPRUDENCE


2. HRC, C. No. 1334/2004, Mr. Rakhim Mavlonov and Mr. Shansiy Sa’di v. Uzbekistan, 2009


OTHER (PLEASE SPECIFY)


2. Report of the Secretary-General to the UN General Assembly, Effective promotion of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, 1997

3. Report of the Secretary-General to the UN General Assembly, Effective promotion of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, 1999

4. Report of the Secretary-General to the UN General Assembly, Effective promotion of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, 2001

5. Report of the Secretary-General to the UN General Assembly, Effective promotion of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, 2003

6. Report of the Secretary-General to the UN General Assembly, Effective promotion of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, 2005


8. Report of the Secretary-General to the UN General Assembly, Effective promotion of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, 2013

9. Report (from 2016) of the Special Rapporteur on minority issues, Rita Izsàk-Ndiaye in accordance with General Assembly Resolution 68/172

10. Report of the Secretary-General to the UN General Assembly, Effective promotion of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, 2017


12. United Nations, Guidance Note of the Secretary-General on Racial Discrimination and Protection of Minorities, 2013


14. HRC, General Comment No. 23, UN Doc. CCPR/C/21/Rev.1/Add.5 1994
PART VI

CASE STUDY OF THE EUROPEAN COURT OF HUMAN RIGHTS REGARDING MINORITIES

by Maša Marochini Zrinski
I. INFORMATION OF THE LECTURER

Maša Marochini Zrinski: Faculty of Law, University of Rijeka / Assistant Professor

II. BASIC INFORMATION ABOUT THE LECTURE

Title of the lecture: Case Study of the European Court of Human Rights Regarding Minorities
Key words: Minorities, European Court of Human Rights, European Convention on Human Rights, Prohibition of Discrimination

LECTURE SUMMARY AND OBJECTIVES

The European Convention on Human Rights is an international treaty that protects mainly civil and political rights, drafted within the Council of Europe in 1949, opened for signature in 1950, and entered into force in 1953. Over the years, the Convention was amended several times through the addition of Protocols. In 1998, the previous Commission and the old Court, which both had set on a part-time basis, were replaced by the single permanent Court. The right of individuals to petition the new Court became compulsory for Contracting States. The Convention system now encompasses almost the entire European continent, with its 47 Contracting States and covers 822 million people. It is the oldest and the most effective system for the protection of individual human rights in the world. The European Court of Human Rights is an international court that consists of 47 judges that work on their individual capacity and since 1998 it has sat as a full-time court and individuals can apply to it directly. It rules on individual or state applications alleging violations of the civil and political rights set out in the European Convention on Human Rights. After this short introduction, it is clear the European Convention on Human Rights consists of mainly civil and political rights and only regarding those rights the Court can deliver a judgment based on an application lodged by an individual or a group of individuals (or a State) but not from a group (or a minority group).

The focus of this lecture will be on minority rights, i.e. on the protection of minorities through the jurisprudence of the European Court of Human Rights. The Convention itself does not consist of a provision that protects minorities' rights as such and many minorities concerns fall outside the Convention altogether, so they do not fall within the competence of the Court.

Main provision within the Convention that deals with minorities rights is Article 14 that prohibits discrimination in general and states: “The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”

Even this, main provision prohibiting discrimination does not cover all minorities in its text but only national minorities while other minorities are covered with the phrase “or other status”. However, the biggest case law regarding minorities is related to the Article 14 of the Convention. Article 14 is specific since it only applies to rights and freedoms set forth in the Convention and its Protocols; meaning it only complements other substantive provision. Briefly, it is not an autonomous provision and can never be claimed alone.

Generally, Article 14 prohibits direct and indirect discrimination and obviously, not every difference in treatment will amount to discrimination. In its case law, the Court set out its approach to Article 14:
1. the allegations of a violation of Article 14 fell within the ambit of a substantive article claimed in conjunction with Article 14 OR: Does the complaint of discrimination fall within the scope of protected right?

2. there was a difference in treatment between the applicant and other persons in analogous situations

3. there was an objective and reasonable justification for the difference in treatment of individuals in analogous positions

Based on the above stated “test” one might say that direct discrimination occurs where: “one person is treated less favourably than another is, has been or would be treated in a comparable situation on grounds of racial or ethnic origin” or, there must be a “difference in the treatment of persons in analogous, or relevantly similar, situations”, which is “based on an identifiable characteristic”.

On the other side discrimination may result not only from treating people in similar situations differently, but also from offering the same treatment to people who are in different situations. The latter is labelled ‘indirect’ discrimination because it is not the treatment that differs but rather the effects of that treatment, which will be felt differently by people with different characteristics.

The elements of indirect discrimination are:
- a neutral rule, criterion or practice
- that affects a group defined by a “protected ground” in a significantly more negative way
- by comparison to others in a similar situation

Besides Article 14 that prohibits discrimination, there is also Article 1 of Protocol 12 of the Convention that was opened for signature in 2000 and came into force in 2005. Currently, only 20 states adopted this provision. Protocol No. 12 provides for a general prohibition of discrimination and removes Article 14 limitation and guarantees that no-one shall be discriminated against on any ground by any public authority. Since it only came into force in 2005 and since only 20 states have ratified it, there have only been few cases that have reached the Court and been decided under Protocol 12. One of those cases is Sejdić and Finci v. Bosnia and Herzegovina that will be discussed during this lecture.

The case law of the European Court of Human Rights on discrimination of minorities is enormous, where the seminal case concerning minorities that can be mentioned is Belgian linguistic case from 1968 that will be briefly presented in the lecture.

Because of the large amount of case law that either directly or indirectly concerns minorities the focus of this lecture will be on the judgments concerning people of Roma origin since through these cases a really good overview of the Court’s case-law regarding minorities can be given.

For that reason following cases concerning Roma minority will be presented and discussed; cases where the applicants claimed a violation of: Article 2 in conjunction with Article 14 (Nachova and Others v. Bulgaria); Article 3 in conjunction with Article 14 (Šečić v. Croatia; Bekos and Koutropoulos v. Greece); Article 6 in conjunction with Article 14 (Paraskeva Todorova v. Bulgaria); Article 8 in conjunction with Article 14 (group of so called UK cases concerning Roma housing, Yordanova and Others v. Bulgaria, Moldovan (no. 2) and Others v. Romania); Article 1 of Protocol 1 in conjunction with Article 14 (Munoz Diaz v. Sposin); Article 2 Protocol 4 in conjunction with Article 14 and Article 1 of Protocol 12 (Sejdić and Finci v. Bosna and Herzegovina); two extremely relevant cases concerning education (Article 2 of Protocol 1) of Roma pupils (D.H. and Others v. Czech Republic and Oršuš and Others v. Croatia);
and Article 4 of Protocol 4 in conjunction with Article 14 (Čonka v. Belgium).

Several other cases concerning Roma minorities where Article 14 has not been invoked will be briefly presented at the end of the lectures.

**The objective of this lecture is to provide an in-depth knowledge to students on the European Court of Human Rights case law concerning minorities, particularly of those of Roma origin and for them to gain general knowledge on the European Court of Human Rights working methods.**

**BRIEF DESCRIPTION OF THE PREVIOUS KNOWLEDGE EXPECTED**

Only some general knowledge on the international law and Council of Europe system for human rights protection (mainly the European Convention on Human Rights) is expected. Preferably, students should also know how the European Court of Human Rights operates and delivers its judgments.

**III. OUTPUTS OF THE LECTURE**

**AT THE END OF THE LECTURE THE STUDENTS WILL BE EXPECTED TO**

- have acquired appropriate knowledge on the protection of minorities within the Council of Europe through the European Convention on Human Rights, specifically through the jurisprudence of the European Court of Human Rights
- have the competence in independent study as well as in the use of disposable electronic data basis on the topic

**IV. METHODOLOGY THAT WILL BE USED DURING THE LECTURE**

The European Court of Human Rights jurisprudence including case study of the most relevant judgments concerning minorities will be analysed.

**V. LITERATURE**

**BOOKS**

**ACADEMIC PAPERS / ARTICLES**
LEGISLATION (NATIONAL AND INTERNATIONAL)


CASE LAW / JURISPRUDENCE

1. Belgian Linguistic, ECtHR, No. 1474/62 etc.
2. Nachova and Others v. Bulgaria, ECtHR, No. 43577/98 etc.
3. Šečić v. Croatia, ECtHR, No. 40116/02
4. Bekos and Koutropoulos v. Greece, ECtHR, No. 15250/02
5. Paraskeva Todorova v. Bulgaria, ECtHR, No. 37193/07
6. Chapman v. United Kingdom, ECtHR, No. 2797/02
7. Moldovan (No. 2) and Others v. Romania, ECtHR, No. 41138/98
8. Yordanova and Others v. Bulgaria, ECtHR, No. 25446/06
9. Munoz Diaz v. Spain, ECtHR, No. 49151/07
10. D.H. and Others v. Czech Republic, ECtHR, No. 57325/00
11. Oršuš and Others v. Croatia, ECtHR, No. 15766/03
12. Sejdić and Finci v. Bosnia and Herzegovina, ECtHR, No. 27996/06 etc.
13. Čonka v. Belgium, ECtHR, No. 51564/99
PART VII

CRITICAL ASSESSMENT OF THE COUNCIL OF EUROPE REGIME OF MINORITY PROTECTION / FRAMEWORK CONVENTION

by Dovilė Gailiūtė
I. INFORMATION OF THE LECTURER

Dovilė Gailiūtė: Mykolas Romeris University, Faculty of Law, Associate Professor and Vice-Dean for International Relations and Studies

II. BASIC INFORMATION ABOUT THE LECTURE

Title of the lecture: Critical Assessment of the Council of Europe Regime of Minority Protection / Framework Convention

Key words: Council of Europe, Framework Convention, Minority Protection

LECTURE SUMMARY AND OBJECTIVES

The Council of Europe’s action on the protection of national minorities is based on the principle that the protection is part of the universal protection of human rights. The Council of Europe’s most comprehensive text for protecting the rights of persons belonging to national minorities is the Framework Convention for the Protection of National Minorities (FCNM). The Convention is the first legally binding multilateral instrument concerned with the protection of national minorities in general. Its aim is to protect the existence of national minorities within the respective territories of the Parties. The Convention seeks to promote the full and effective equality of national minorities by creating appropriate conditions enabling them to preserve and develop their culture and to retain their identity.

Article 1 of the Framework Convention stipulates that “the protection of national minorities and of the rights and freedoms of persons belonging to those minorities forms an integral part of the international protection of human rights, and as such falls within the scope of international co-operation”. Therefore, the Framework Convention recognizes the interaction between general individual human rights and specific rights granted to persons belonging to national minorities. For instance, Article 9 not only guarantees the classical right to freedom of expression, but stipulates that “the right to freedom of expression of every person belonging to a national minority includes freedom to hold opinions and to receive and impart information and ideas in the minority language, without interference by public authorities and regardless of frontiers”. The Convention sets out principles relating to persons belonging to national minorities in the sphere of public life, such as freedom of peaceful assembly, freedom of association, freedom of expression, freedom of thought, conscience and religion, and access to the media, as well as in the sphere of freedoms relating to language, education, transfrontier co-operation, etc.

Therefore, the lecture will focus on the presentation of the Framework Convention, analysis of its content and catalogue of rights guaranteed by the document.

The Framework Convention does not contain a definition of “national minority” as there is no general definition agreed upon by all Council of Europe member states. Each party of the Framework Convention is therefore, left with a margin of appreciation to assess which groups are to be covered by the Convention within their territory. Therefore, in the lecture we will discuss advantages and disadvantages of such regulation regime.

The Advisory Committee, set up in 1998, has a key role in monitoring the implementation of the Framework Convention by states. Its task is to ensure that the standards of the Convention are applied by all the concerned countries, in the various fields of interest for persons belonging to national minorities. States are required to submit a report containing full information on legislative
and other measures taken to comply with the principles of the Framework Convention within one year of the entry into force. Further reports have to be made on a periodical basis. Therefore, role and activities of the Advisory Committee, as well as the monitoring procedure will be discussed during the lecture.

Moreover, in addition to Framework Convention other Council of Europe documents are also important for the protection of national minorities:

- The European Convention on Human Rights, because its universally applicable individual rights can also be claimed by persons belonging to national minorities;
- The European Social Charter, which protects minorities in social and economic fields;
- The European Charter for Regional or Minority Languages, which focuses on protection and promotion of minority languages.

In addition to these documents, the Council of Europe's European Commission against Racism and Intolerance (ECRI) makes an important contribution to the fight against discrimination of persons belonging to minorities. Therefore, during lecture other instruments of the Council of Europe regime of minority protection will be presented and analysed in brief.

The discussions during the lecture will raise the critical questions:

- whether the protection granted on the basis of general human rights can effectively preserve the identity of a national minority or whether there is a need for special legal provisions;
- whether it is possible / necessary to adopt common definition of “national minority” in the Council of Europe regime;
- whether the margin of appreciation left for the states in minority protection is not too wide
- whether the monitoring procedure is efficient tool for the minority protection, etc.

This lecture is designed to provide a comprehensive overview of the Council of Europe regime of minority protection, to assess it critically, to analyse its major issues and challenges, mainly focusing on the Framework Convention.

**BRIEF DESCRIPTION OF THE PREVIOUS KNOWLEDGE EXPECTED:**

Basic knowledge of Public International Law and Protection of Human Rights Law.

**III. OUTPUTS OF THE LECTURE**

**AT THE END OF THE LECTURE THE STUDENTS WILL BE EXPECTED TO**

critically discuss Council of Europe regime of minority protection, to identify the particularities of the regime, the issues in the implementation and monitoring process and to suggest possible solutions concerning the matters of the protection of national minorities in the Council of Europe.

**IV. METHODOLOGY THAT WILL BE USED DURING THE LECTURE**

The lecture will be accompanied by discussions and critical analysis.
V. LITERATURE

BOOKS

ACADEMIC PAPERS / ARTICLES

LEGISLATION (NATIONAL AND INTERNATIONAL)
1. Framework Convention for the Protection of National Minorities (FCNM)
2. European Charter for Regional or Minority Languages
3. European Social Charter
4. European Convention on Human Rights

CASE LAW / JURISPRUDENCE
Thematic commentaries of the Advisory Committee.
http://www.coe.int/en/web/minorities/thematic-commentaries

OTHER (PLEASE SPECIFY)
Explanatory Report to the Framework Convention for the Protection of National Minorities
https://rm.coe.int/16800cb5eb
PART VIII
EU PROTECTION OF MINORITY RIGHTS – ACCESSION CRITERIA

by Helga Špadina
I. INFORMATION OF THE LECTURER
Helga Špadina: Assistant Professor of Law, Faculty of Law Osijek, Croatia

II. BASIC INFORMATION ABOUT THE LECTURE
Title of the lecture: EU Protection of Minority Rights – Accession Criteria
Key words: Minorities, Rights, EU, Accession

LECTURE SUMMARY AND OBJECTIVES
Lecture will focus on protection of national minorities in the context of the EU Copenhagen accession criteria and the EU external policy agenda. It will explore existing institutional structure for protection of the minority rights in the EU and links to regional organizations that are actively involved in protection of minority rights. Lecture will also include questions related to the EU enlargement strategy and procedure of pre-accession monitoring of compliance of legislation and practices in the area of protection of minority rights through Progress Reports and other tools developed to assess preparedness of candidate country for the fully-fledged EU membership. Lecture will also explore notion of so-called “double standards” related to the external aspect of minority rights (i.e. for EU candidate countries) and the internal aspect (i.e. protection of national minorities in EU Member States). The overall objective of lecture is to present EU accession criteria linked to full respect of rights of national minorities and give students overview of existing regulations and practices applicable to the pre-accession procedures in the EU candidate countries.

BRIEF DESCRIPTION OF THE PREVIOUS KNOWLEDGE EXPECTED
Students are expected to possess necessary previous knowledge on European law, EU institutional framework and regional human rights mechanisms. Students are also expected to apply knowledge gained at the Summer School on specific sub-topics of the protection of minority rights.

III. OUTPUTS OF THE LECTURE
AT THE END OF THE LECTURE THE STUDENTS WILL BE EXPECTED TO
• demonstrate and apply principles of minority protection in the context of the EU accession criteria
• interpret legal norms related to the EU protection of minorities
• be able to identify legal framework of EU minority protection, institutional structure and applicable procedures of pre-accession monitoring of harmonization of national legislation

IV. METHODOLOGY THAT WILL BE USED DURING THE LECTURE
Methodology will include case studies of several EU candidate countries, analysis of applicable legal norms at the regional and international level and the theoretical considerations of the topic of protection of minority rights.
V. LITERATURE

BOOKS

ACADEMIC PAPERS / ARTICLES
5. Ram, Melanie H.: European Union Aspirations and Obligations: The EU Influence on Minority Rights in Candidate States, Presented at Humboldt University Berlin, June 14–16, 2001

LEGISLATION (NATIONAL AND INTERNATIONAL)
1. Framework Convention for the Protection of National Minorities
PART IX

THE RIGHT TO SELF-DETERMINATION IN INTERNATIONAL LAW WITH SPECIFIC REFERENCE TO KOSOVO INDEPENDENCE

by Petra Perišić
I. INFORMATION OF THE LECTURER

Petra Perišić: Assistant professor, Faculty of Law, University of Rijeka, Croatia

II. BASIC INFORMATION ABOUT THE LECTURE

Title of the lecture: The right to self-determination in international law with specific reference to the Kosovo independence
Key words: Self-Determination, People, Minority, Declaration of Independence of Kosovo

LECTURE SUMMARY AND OBJECTIVES

The lecture will be divided into two parts. In the first part, the right to self-determination in international law will be analyzed. The second part will comprise a case study, that is, the analysis of the Kosovo independence in light of the international documents granting the right to self-determination and the advisory opinion of the International Court of Justice on the matter.

The right to self-determination represents one of the most ambiguous concepts in international law. It, at the same time, signifies a dynamic process which is in line with the development of human rights, and a possibly destructive phenomenon which potentially threatens the stability of the existing states.

Many international documents grant the right to self-determination. The United Nations Charter states that one of the purposes of the United Nations is “to develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples”. Two International Covenants of 1966 start with the identical provision of Article 1, which says that “all peoples have the right to self-determination”. Beside these treaties, there are several UN General Assembly resolutions granting the right to self-determination, most important being The Friendly Relations Declaration, The Declaration on Granting of Independence to Colonial Countries and Peoples and the Definition of Aggression.

However, in spite of the fact that international law grants the right to self-determination, it is not clear who exactly its holders are and in what way it should be exercised.

With regard to the first question, it must be emphasized that it is peoples, not national minorities who are entitled to exercise this right. Having said that, two problems arise. The first is how to differentiate a “people” from a “national minority”. The second problem is how to determine the legitimate representative of the “people” – is it a government of a certain country or possibly an insurgent movement in that country.

Two kinds of the right to self-determination will be discussed – the internal and the external one. The former refers to the right to freely determine, without external interference, political status and to pursue economic, social and cultural development, while the latter means the right to establish a sovereign and independent state, the free association or integration with an independent state or the emergence into any other political status freely determined by a people. The issue of internal self-determination is far less controversial than the external one. That is why more attention will be payed to the external self-determination. Issues such as who is entitled to exercise such a right and in what way will be analyzed.

The second part of the lecture will deal with a specific case from the state practice, namely the proclamation of the Kosovo independence. Based on what had been said in the first part of the
lecture, it shall be observed whether the circumstances of this particular case justify the invocation of the right to self-determination.

Our analysis will comprise several issues. First is whether Kosovars are the “people” or the “national minority”. Arguments pro and con identification of Kosovars as the national minority shall be advanced.

Second, it will be discussed whether the right to internal self-determination had been violated in case of Kosovo. If such a violation is established, the existence of the right to external self-determination might be examined.

One of the most important features of our analysis will be the advisory opinion of the International Court of Justice on the Accordance with international law of the unilateral declaration of independence in respect of Kosovo. The Court dealt with two issues: first, whether the said Declaration was in accordance with the Security Council Resolution 1244 of 1999 on Kosovo, and second, whether the Declaration was in accordance with general international law. The Court, however, stuck to the narrow question posed by the General Assembly and stated its opinion only on the compatibility of the Declaration of independence with international law, while it failed to answer a more challenging question, that on the legal consequences of the Declaration.

Finally, comparison between the Kosovo case and some other cases of self-determination claims will be made. The reaction of the international community in the case of Kosovo will be compared to its reaction in some other similar cases. Recognition or non-recognition of Kosovo as a state does not seem to be only a matter of states’ belief of legality or illegality of the respective Declaration of independence, but also a pragmatic political decision. For instance, states which fear similar self-determination claims on their own territory are less likely to recognize Kosovo.

Upon the analysis of all of the circumstances of the case, as well as the Court’s advisory opinion, students will be encouraged to state their own opinion on the issue. It must be stressed that international law rules on self-determination are vague and the reaction of the international community to the Kosovo case is incoherent. Therefore, students will not be expected to give “yes” or “no” answers to the questions related to Kosovo independence. Rather, an elaborated opinion, supported by legal arguments will be encouraged.

The overall objective of the lecture is to provide students with the basic knowledge on the right to self-determination. It is a highly controversial issue of international law. Although international documents grant this right, it is not specified who and under what conditions can enjoy it. This lack of clarity has practical implications when specific self-determination claims emerge. It is thus the idea of this lecture to show students the complexity of the issue by working on particular examples from the state practice. Although other examples will be presented as well, the main focus will be on the Kosovo case.

**BRIEF DESCRIPTION OF THE PREVIOUS KNOWLEDGE EXPECTED**

Students are expected to have a basic knowledge of public international law. This includes, for instance, knowledge on the sources of international law (treaties, customary international law, etc.), subjects of international law (states, international organizations), peaceful settlement of disputes (especially International Court of Justice) etc.
Part IX

III. OUTPUTS OF THE LECTURE

AT THE END OF THE LECTURE THE STUDENTS WILL BE EXPECTED TO

- define and explain the right to self-determination
- recognize two types of self-determination (internal and external) and explain the difference between them
- detect shortcomings in the legal regulation of the right to self-determination
- highlight the difference between a “people” and a “minority”, as holders of the right to self-determination
- analyze the International Court of Justice’s advisory opinion on the legality of the Kosovo Declaration of independence
- create their own opinion on the legal consequences of the Kosovo Declaration of independence
- compare the case of Kosovo to some other instances of self-determination claims
- reflect on possible improvements of the law on self-determination

IV. METHODOLOGY THAT WILL BE USED DURING THE LECTURE

In elaborating the subject matter of the lecture, various international documents will be analyzed (legally binding treaties, General Assembly resolutions in form of declarations, Security Council resolutions).

In addition, analysis of judicial decisions will be made (practice of the International Court of Justice – both judgements and advisory opinions) and national courts (for example, Supreme Court of Canada).

Finally, opinions of distinguished authors will be analyzed.

V. LITERATURE

BOOKS


ACADEMIC PAPERS / ARTICLES


LEGISLATION (NATIONAL AND INTERNATIONAL)


CASE LAW / JURISPRUDENCE


2. Western Sahara, Advisory Opinion, ICJ Reports 1975, p. 12


4. Legal Consequences of the Construction of the Wall in the Occupied Palestinian Territory, Advisory Opinion, ICJ Reports 2004, p. 136


OTHER (PLEASE SPECIFY)


2. Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, A/RES/25/2625

3. Declaration on the Granting of Independence to Colonial Countries and Peoples, A/RES/1514 (XV)

4. Definition of Aggression, A/RES/29/3314
PART X

HATE CRIMES AND DISCRIMINATORY VIOLATIONS

by Elena Mihajlova Stratilati
I. INFORMATION OF THE LECTURER

Elena Mihajlova Stratilati: Faculty of Law “Iustinianus Primus”, Skopje, University Ss. Cyril and Methodius in Skopje

II. BASIC INFORMATION ABOUT THE LECTURE

Title of the lecture: Hate crimes as discriminatory violations
Key words: Hate Crimes, Dignity, Discrimination

LECTURE SUMMARY AND OBJECTIVES

Hate crimes are new concept in the academic research. Clearly, they are not a new phenomenon and it is important to bear in mind that what is currently being addressed as "hate crimes" has a long historical line. What is however new in this context is the cultural plurality of societies as a result of increased migration and postmodern awakening of old identities. Not to forget the strong role that globalization has in the facing of cultures to each other. Thus, the hate crimes that are otherwise older are placed in this new context.

The first part of the lecture gives an overview of some of the wider and elaborated definitions that are central for our conceptual understanding of hate crimes. (Definitions extracted from current theoretical sources, international acts and cases of international jurisprudence).

Following this understanding the second part of the lecture tries to analyze the unique harm or injury that hate crimes are causing and to illuminate more precisely the discriminatory violence and how it brings further humiliation to the victim.

BRIEF DESCRIPTION OF THE PREVIOUS KNOWLEDGE EXPECTED

Students should have basic knowledge of human rights law, international law and criminal law.

III. OUTPUTS OF THE LECTURE

AT THE END OF THE LECTURE THE STUDENTS WILL BE EXPECTED TO

• be able to know the nature and scope of the concept of hate crimes
• be able to recognize them
• know where and how to find the adequate international legal norms
• interpret and apply these rules; to have insight into fundamental values, rights and institutions upon which their international law regulations are being based

IV. METHODOLOGY THAT WILL BE USED DURING THE LECTURE

The lecture will be using current methods for systematic an integral study of the theoretical aspects of the specialized area. The course topics will be analyzed in-depth, critically and in a comparative manner.

The students will be engaged in analyzing the relevant European Human Rights Court decisions, formulating legal arguments and opinions that will be further argued and analyzed. They will build their critical and competent attitudes also through their participation in case simulations within
the dominant procedures for prohibition of hate crimes. This Lecture places significant emphasis on preparation, class participation and discussion.

V. LITERATURE

BOOKS

ACADEMIC PAPERS / ARTICLES
2. Stratilati, Elena Mihajlova: Hate Crimes as Discriminatory Violations, LeXonomica, Vol. 8, No. 2, pp. 115–123, University of Maribor, Faculty of Law, Slovenia, December 2016

LEGISLATION (NATIONAL AND INTERNATIONAL)
1. International Convention on the Elimination of All Forms of Racial Discrimination, UN

CASE LAW / JURISPRUDENCE
European Court of Human Rights:
1. Natchova and Others v. Bulgaria, ECtHR, No. 43577/98 etc.
2. Angelova and Iliev v. Bulgaria, ECtHR, No. 55523/00
3. Secic v. Croatia, ECtHR, No. 40116/02
4. Milanovic v. Serbia, ECtHR, No. 44614/07
5. Skorjanec v. Croatia, ECtHR, No. 25536/14