

ERASMUS + STRATEGIC PARTNERSHIP IN HIGHER EDUCATION - New Quality in Education for Gender Equality
- Strategic Partnership for the Development of Master`s Study program LAW AND GENDER, LAWGEM -
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LAWGEM

Master`s Study Program
Law and Gender

Syllabus Form

LAWGEM



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Program: Master Academic Studies – Law and Gender
Course title: Feminist Judgements
Teachers: Prof. Dr. Ivana Krstić, Prof. Dr. Tanasije Marinković, Prof. Dr. Maja Lukić Radović (University of Belgrade), Prof. Dr. Isabel Villar Fuentes, Prof. Dr. Fuensanta Rabadán Sánchez-Lafuente, Prof. Dr. Antonio Álvarez, Prof. Dr. María Acale (Universidad de Cádiz), Ass. Prof. Marco Evola (LUMSA University), A/Prof. Dr. Sofia Strid (Orebro University), Ass. iur. Christina Backes (Saarland University)
Course status: Mandatory
Number of ECTS: 8 ECTS
Requirements: Bachelor Degree or equivalent
<p>Aims of the course:</p> <p>The aim of this course is to teach students on how to implement feminist perspective in the analysis of court decisions. One of the objectives of the course is to explore critical accounts of the law. Students will focus on two particular facets: the role of judgments in the course, and the issue of where feminist judging sits within this. Students will seek to identify the gender of the judges involved, and the distinctions (if any) between judgements.</p> <p>However, the most relevant part of the course is to put theory into practice in judgment form, by writing the ‘missing’ feminist judgments in key cases in the vein of the ‘feminist judgements’ projects around the world. The cases chosen are significant decisions coming from different jurisdictions: U. S. jurisdiction, EU member states, judgments of the Court of Justice of the EU (CJEU), judgments of the European Court of Human Rights (ECtHR), as well as views of the Committee on the Elimination of all Forms of Discrimination against Women (CEDAW) and other UN treaty bodies. Judgments will come from a broad range of substantive areas. Each case will be accompanied by a commentary, prepared by students, on facts of the case, legal issues, reasoning of the court and how the feminist judgment deals with it differently.</p> <p>Finally, students will be equipped to discuss cases from the national jurisdiction from the feminist perspective and to provide critique on the approach taken by domestic courts.</p>
<p>Course result:</p> <p>After the completion of the course students should:</p> <ul style="list-style-type: none"> - understand the importance of legal writing and legal reasoning; - acknowledge if greater representation of women in courts guarantees the implementation of gender perspective in legal judgments; - understand how gender perspective and analytical method change the interpretation of facts of

the case and lead to a significant difference in a decision;

- be able to write a legal decision implementing gender perspective;

- identify potential roles within judiciary introducing feminist perspective in writing legal judgments, or in writing any other legal or policy document.

Course content:

1. Introduction - what is legal reasoning and legal writing, gender bias in court decisions
2. Mainstreaming applied to court decisions; Feminist movement and strategic litigation; Rewriting court decisions: Feminist judgements projects around the world
3. Feminist judgements in different context: Civil Law and Common Law systems - Particularities of international and transnational decision making
4. Feminist jurisprudence of the CEDAW: main issues and standards
5. Feminist jurisprudence of the ECtHR: main issues and standards
6. Feminist jurisprudence of the CJEU: main issues and standards
7. Analyses of opinions in the area of family law
8. Analyses of opinions in the area of reproductive rights
9. Analyses of opinions in the area of employment and social security law
10. Analyses of opinions in the area of private law
11. Analyses of opinions in the area of criminal law
12. Analyses of opinions in the area of public law
13. Analyses of opinions in the area of tort law
14. Analyses of opinions in the area of tax law
15. Rewriting decision - exercise for the final exam

Literature:

Required reading:

D. S. Gordon, B. C. Lewis, C. Spivack, *Feminist Judgments*, Cambridge University Press, 2020;

R. Hunter, C. McGlynn, E. Rackley (eds), *Feminist Judgments: From Theory to Practice*, Hart Publishing, 2010;

Selected judgments from U. S. jurisdiction;

Selected judgments from EU jurisdiction;

Opinions of the Committee on the Elimination of Discrimination Against Women;

Selected judgments of the Court of Justice of the EU (CJEU);

Selected judgments of the European Court of Human Rights (ECtHR);

Selected judgments from national jurisdiction.

Additional reading:

A.C. McGinley, N. B. Porter, *Feminist Judgments: Rewritten Employment Discrimination Opinions*, Cambridge University Press, 2020;

B. J. Crawford, A. C. Infanti, *Feminist judgments: Rewritten Tax Opinions*, Cambridge University Press, Cambridge 2017;

E. Rackley, *Women, Judging and the Judiciary: From difference to diversity*, Routledge, New York 2013;

E. Brems (ed.), *Diversity and European Human Rights — Rewriting Judgments of the ECHR*, Cambridge University Press, Cambridge 2015;

Gender Equality and Women's Empowerment: Constitutional Jurisprudence, UN Women, New York 2017;

J. S. Kenney, *Gender and Justice: Why Women in the Judiciary Really Matter*, Routledge, New York, 2013;

J. Conaghan, *Gender, Law and Jurisprudence*, in R. Auchmuty (ed.) *Great Debates in Gender and Law*, Palgrave Macmillan 2018;

L. Berger, M. Stanchi, B. J. Crawford *et al*, *Teaching with Feminist Judgments: A Global Conversation*, Pace Law Faculty Publications, Pace University, Winter 2020;

L. Berger, M. K. Stanchi, B. J. Crawford, “Learning from Feminist Judgments: Lessons in Language and Advocacy”, *Texas Law Review*, Vol. 98, 2019.

K. Mutcherson, *Feminist judgements: Reproductive Justice Rewritten*, Cambridge University Press, Cambridge 2020;

K. M. Stanchi, L. Berger, B. J. Crawford, *Feminist judgments: Rewritten Opinions of the United*

States Supreme Court, Cambridge University Press, Cambridge 2016;

M. Chamallas, L. M. Finley (eds.), *Feminist judgments: Rewritten Tort Opinions*, Cambridge University Press, Cambridge 2020;

R. Rebouchè, *Feminist Judgments: Family Law Opinions Rewritten*, Cambridge University Press, Cambridge 2020;

R. West, C. G. Bowman, *Research Handbook on Feminist Jurisprudence*, Edward Elgar Publishing, 2018;

R. West, "Jurisprudence and Gender", *The University of Chicago Law Review*, Vol. 55, No. 1, 1988;

U. Schultz, G. Shaw, *Gender and Judging*, Hart Publishing, 2013.

Instruction method:

Primary interest is in active involving students in their own knowledge acquisition and in stimulating their critical thinking for better understanding the implementation of gender perspective in every legal branch, including this one. Learning approach will be insofar based on collaborative, inquiry-based, student-centred approach to teaching.

Apart from introductory lectures, where students will learn about the importance to introduce gender perspective in legal reasoning and decision, students will have practical classes, which will engage them to think critically, to implement feminist method. Students will receive assignment in case reading and will have to prepare questions for discussion.

For case discussion, students will prepare: facts of the case, arguments, legal issues, majority and dissenting judgments, judicial preferences/partiality/values. Then, students will discuss the same judgment from the feminist perspective: how to apply feminist method and what would be the result in a case that this method was implemented.

Finally, students will be prepared to write a feminist/alternative judgment in the second case for their exam: to summarize facts, arguments, conclusions, reasons, reflection on values, gender issues, wider context.

Exams (maximum number of points 100)

Students will have one written exam. Pre-exam activities will be also taken into account: Students will receive a hypothetical judgment and will need to rewrite it, bearing in mind gender perspective. They will receive maximum 50 points for the written text, and maximum 50 points for their active participation during classes.

Each university will articulate exam instructions in accordance with his/her own system of exams' holding.

Grading system for the course

Grading system: A, B, C, D, E, F /10, 9, 8, 7, 6, 5 (failed)