

Law and Society in Europe

Supervisor: Prof Elisabeth Lambert Abdelgawad

Other instructors:

Claudia Lam, Adviser, Office of the Commissioner for Human Rights, Council of Europe

Paul Lemmens, Judge at the European Court of Human Rights

Module entirely taught in English

Course Objectives

It seems obvious that law affects all aspects of our lives and has become increasingly important. The aim of this module is to make students, even with no legal background, understand how law works and how it structures our social, economic and political relationships. This seminar is to explore how the law both reflects and defines basic social values. To what extent does law either control what we do or allow us to achieve what we want? Is the law the same thing as justice? The central theme of this module should lead the students to understand law as an instrument of political and social change as well as the limits of legal impact. Legal rules empower and constrain individuals, groups, organizations and communities, but certainly not with the same strength; how do various communities (NGOs, transnational corporations, etc...) try to use law and to affect the content of law? After an introductory seminar, various topics will be addressed. Students are required to read in advance SOME of the materials listed for each seminar (all available online). Students will be challenged to think about social justice and what it means to practice law in the public interest. We will focus on developing the crucial skills of critical thinking and analysis, problem-solving and collaboration.

Topics: Description & Reading Materials

- 1. INTRODUCTORY SEMINAR: Elisabeth Lambert Abdelgawad, (Monday 26th September 2016, 10h11h30, Room Table ronde, MISHA): definition of law, role of norms, law families and relativity/universality of norms/globalization & law/distribution of work for the following seminars/**

Reading materials:

Eric C. Ip, "Globalization and the future of the law of the sovereign state", I CON (2010), vol.8, n°3, 636-655;

P. Lundy & M. McGovern, "Whose justice? Rethinking transitional Justice from the bottom-up", JI of law and society, vol.35, n°2, 2008, 265-292; Ralf Michaels, "Global problems in Domestic Courts", in the law of the future and the future of law, 2011;

Thomas Pogge, "Cosmopolitanism and sovereignty", Ethics, vol.103, issue 1, Oct. 1992; Boaventura de Sousa Santos, "Law: a map of misreading. Toward a postmodern conception of law", JI of law and society, vol.14, n°3, 1987, 279-302;

André-Jean Arnaud, "From limited realism to plural law. Normative approach versus cultural perspective", Ratio Juris, vol.11, n°3, Sept. 1998;

M. Delmas-Marty, "Towards a truly common law, Europe as a laboratory for legal pluralism", CUP;

M. Delmas-Marty, "Ordering pluralism", Max Weber Lecture n°2009/06; Thomas Pogge, "Priorities of global justice", *Metaphilosophy*, vol.32 (n°1/2), Jan. 2001;

Thomas Pogge, "Real world justice", *The Journal of Ethics*, vol.9, n°1/2, Current debates in global justice (2005), 29-53; John Rawls, "The Law of Peoples", *Critical Inquiry*, vol.20, n°1, 1993, 36-68;

P. Lalouche, "Law, society and normativity", in *The Law of the Future and the Future of Law*, 407-416 (2011);

T. Fujitani, "The law, governance, and society in the context of globalization, renewed formation of the law and sovereign States", *Japanese Yearbook of International Law*, vol.57 (2014), 195-216.

2. Thematic Seminar 1: Elisabeth Lambert Abdelgawad, Research Professor in Law (1h30, Monday 3rd October 2016, 10h-11h30, Room Table ronde, MISHA): Deontology, Ethics, morality and Law

Reading materials:

J. P. Thiroux & K. W. Krasemann, *Ethics: theory and practice*, 11th ed., 2012, Pearson;

Michael Blake, *Distributive Justice, State Coercion, and Autonomy*, *Philosophy and Public Affairs*, Vol. 30, No. 3. (Summer, 2001), pp. 257-296;

Anthony D'Amato & Edward J. Eberle, *Three Models of Legal Ethics*, Northwestern University School of Law Scholarly Commons, 2010;

J. Berleur, *Morality, Ethics, Deontology, Law and enforcement: a tentative clarification*;

3. Thematic Seminar 2: Claudia Lam, Adviser, Office of the Commissioner for Human Rights, Council of Europe (3h00, Friday 7th October, 10h-13h, Room Table ronde, MISHA): Women's rights and gender equality, de jure and de facto equality, direct and indirect discrimination, stereotypes and prejudice against women, women's access to justice

Reading materials:

Nils Muižnieks, Council of Europe Commissioner for Human Rights, "Protect women's sexual and reproductive health and rights", *Human Rights Comment*, 21 July 2016

Nils Muižnieks, Council of Europe Commissioner for Human Rights, *Report on Poland 2016*, paragraphs 128-196

European Court of Human Rights Registry Press Unit, *Factsheet on gender equality*, April 2016

United Nations, Office of the High Commissioner for Human Rights, *Women's rights are human rights*, New York and Geneva, 2014

4. Thematic Seminar 3: Elisabeth Lambert Abdelgawad, Research Professor in Law (1h30, Monday 10th October 2016, 10h-11h30, Room Table ronde, MISHA): Fairness, Equity, justice, perception of injustice and mobilization movements

Reading materials:

P. Lundy & M. McGovern, "Whose justice? Rethinking transitional justice from the bottom up"; John Rawls, *A Theory of Justice*, revised edition, 1999;

John Rawls, Justice as fairness, Part V Morality and its critics; Thomas Pogge, An egalitarian Law of Peoples, Philosophy and Public Affairs;

Samantha Besson, Human rights, institutional duties and cosmopolitan responsibilities, Oxford Journal of legal studies, vol.23(3)2003;

Simon Caney, "International Distributive Justice", Political studies, 2001, vol.49, 974-997;

S. Jacquot & T. Vitale, "Law as weapon of the weak? A comparative analysis of legal mobilization by Roma and Women's Groups at the European level", HAL, Journal of European Public Policy, 2014, 21(4), 587-604;

C. GuibetLafaye, "Institutionalization of social justice and constitutionalization of socio-economic equality", in Global Justice, Pringer, 2012, available on HAL;

J. Ham & K. Van den Bos, "Not fair for me! The influence of personal relevance on social justice inferences", JI of Experimental social psychology, 2008(44)3, 699;

L. M. Friedman, "The law and society movement", Stanford Law Review, vol.38, n°3, 1986, 763-780;

Donald J. Black, "The mobilization of law", The Journal of legal studies, vol.2, n°1, 1973, 125-149;

5. Thematic Seminar 4: Claudia Lam, Adviser, Office of the Commissioner for Human Rights, Council of Europe (3h00, Monday 17th October 2016, Room Table ronde, MISHA): Trafficking in human beings and forced labour, legal definitions and real world, victim-centered and human rights-based approach to combating human trafficking and forced labour

Reading materials:

Council of Europe's Action against trafficking in human beings' website: two leaflets on the anti-trafficking Convention (victim's rights and monitoring mechanism)

Nils Muižnieks, Council of Europe Commissioner for Human Rights: "Improving protection for victims of forced labour and human trafficking", Human Rights Comment, 12 November 2015

European Court of Human Rights Registry Press Unit, Factsheet on Slavery, Servitude and Forced Labour, May 2016

United Nations -Office of the High Commissioner for Human Rights, UN Recommended Principles and Guidelines on Human Rights and Human Trafficking, 2002.

6. Thematic Seminar 5: Elisabeth Lambert Abdelgawad, Research Professor in Law (1h30, Monday 31th October 2016, 10h-11h30, Room Table ronde, MISHA): Responsibility, remedies, harm and the state-corporate crime theory (+ Students' ORAL Presentations)

Reading materials:

Ronald C. Kramer, Raymond J. Michalowski, David Kauzlarich, The Origins and Development of the Concept and Theory of State-Corporate Crime, Crime & Delinquency, vol. 48 No. 2, April 2002 263-282;

Thomas Pogge, World Poverty and Human rights, Ethics & International Affairs; 2005; 19, 1;

O. Hayden Griffin & Bryan Lee Miller, *OxyContin and a Regulation Deficiency of the Pharmaceutical Industry: Rethinking State-Corporate Crime*, DOI 10.1007/s10612-010-9113-9, Springer online 2010;

Ronald C. Kramer, *Climate Change: A State-Corporate Crime Perspective*, *Environmental Crime and its Victims*, September 18, 2012, Delft, The Netherlands;

S. Bruce & Paul J. Becker, *State-Corporate Crime and the Paducah Gaseous Diffusion Plant*, *Western Criminology Review* 8(2), 29–43 (2007)

R. S. Katz, "The corporate crime of Dow chemical and the failure to regulate environmental pollution", *CritCrim* (2010) 18:295-306; Simon Chesterman, "The turn to Ethics: Disinvestment from Multinational Corporations for Human rights violations – the case of Norway's sovereign wealth fund", *NY University Public Law and legal theory*, 7-302008;

M. Finnemore & K. Sikkink, "International Norm Dynamics and Political change", *International Organization*, vol.52, n°4, 887-917.

7. Thematic Seminars 6 & 7, Introduction to The European Court of Human Rights, Monday 14 or Monday 28th November 2016, 10h-13h, 3h00, Institute of Political Studies Building Judge Paul Lemmens, European Court of Human Rights (3h): The European Court of human rights and Democratic values

Reading materials:

ECtHR, *Lambert v/France* case, GC, 5.6.2015, Application no.46043/14, available on: HUDOC. Conference on the long-term future of the ECtHR, Oslo Proceedings, 2014, online:

<http://www.coe.int/t/DGHL/STANDARDSETTING/CDDH/REFORMECHR/Publications/Proceedings-Oslo-2014.pdf>

PACE, Council of Europe, *Impact of the ECHR in States Parties: selected examples*, January 2016, online:

<http://website-pace.net/documents/19838/419003/AS-JUR-INF-2016-04-EN.pdf/12d802b0-5f09-463f-8145b084a095e895>

Paul Lemmens, *The contribution of the ECtHR to the rule of law*, 2015, in *The contribution of international and supranational Courts to the rule of law*, 225-241.

8. Elisabeth Lambert Abdelgawad, Research Professor in Law, 3h00, Monday 14 or Monday 28th November 2016, 10h-13h, 3h00, Room Table ronde, MISHA: Law and social changes, the implementation of judgments of the European Court of human rights and remedies afforded to victims; AND Oral Presentations.

Reading Materials:

Council of Europe, "Enhancing national mechanisms for effective implementation of the ECHR", Oct. 2015, online:

<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680598bd8>

S. F. Moore, "Law and social change: the semi-autonomous social field as an appropriate subject of study", *Law & Society review*, vol.7, n°4, 1973, 719-746

Assessment

Euroculture students have to write a research paper to be typed in size 12, Times New Roman font (deadline: 31st December, length: a total of between 2500 to 3000 words, references in footnotes included). The topics are listed below. Each topic can be chosen ONLY by one student. The students must inform the supervisor of the topic selected during the introductory seminar.

IEP students have the choice between

- Writing a paper to be typed in size 12, Times New Roman font (deadline: 31st December, length: a total of between 2000 to 2500 words, references in footnotes included). The topics are listed below
- or preparing an oral presentation for the last seminar (Monday 31st October 2016 10h-11h30, Monday 14 or Monday 28th November 2016, 10h-13h, 3h00, Room Table ronde, MISHA); the presentation (with a PPT) should last 10 minutes, the topics are listed below).

All the students are to send a first draft proposal of the presentation/academic paper to E. Lambert Abdelgawad by e-mail (with research questions, state of the art, methodology, topics covered, bibliography, global overview of the structure) on 4th November at the latest so that individual feedback can be provided (about 2 pages) (earlier for those who have the presentation scheduled on Monday 31st October).

Topics for the academic papers:

- 1/ How corporations have tried to impact the Transatlantic Trade and Investment Partnership?
- 2/ Legal actions to denounce air pollution plans in Europe;
- 3/ Parent company responsibility for subsidiary: quid with the draft law in France?
- 4/ Reflections on Liability for accidents involving driverless cars
- 5/ State of emergency in France and Turkey: how governments and European institutions react
- 6/ Denouncing the ECHR (art.58): recent developments and reflections
- 7/ Imposing a maximum wage in name of social justice?
- 8/ Theft and poverty before Courts: is theft ever justifiable?
- 9/ The Burkini debate and the cultural perspective
- 10/ Introducing a universal basic income? Reflections on the Canadian example
- 11/ Should Nature be recognized legal personality ? Reflections upon the New Zealand perspective
- 12/ The access to affordable essential medicines as a human right
- 13/ The Bento Rodrigues dam disaster in Brazil (Nov. 2015) and the seek for justice
- 14/ The Occupy Wall Street Movement: what has it achieved?
- 15/ The diesel vehicles before the National Green Tribunal in India
- 16/ Fukushima radiation victims and the battle to seek justice
- 17/ Podemos' contribution to the social justice agenda.

Topics for an oral presentation:

- 1/ The Rana Plaza Donors Trust Fund;
- 2/ The Permanent Peoples' Tribunal about Canadian mining in Latin America;
- 3/ The J.K. and others v/Sweden Grand Chamber case before the ECtHR (expulsion to Irak)
- 4/ Introducing a universal basic income? Reflections on the finish example
- 5/ The Inter American Court H.R. in the Case of the Miguel Castro Castro Prison v. Peru and the compliance measures
- 6/ The Ivanova and Cherkezov v. Bulgaria case before the ECtHR (demolition of a house built with no planning permission)