

Course title: <i>Gender Competent Criminal Law</i>
Teacher/Teachers: Doc. Dr. Ivana Marković
Course status: optional
Number of ECTS: 3 ECTS
Requirements: /
<p>Aim of the course:</p> <p>The starting point will be the relation between Criminal Law and Gender, taking into consideration provisions made by the Council of Europe Convention on preventing and combating violence against women and domestic violence (also known as the <i>Istanbul Convention</i>) from 2011. It contains basic provisions on Criminal Law and gender, penalties and the perpetrator, being essential for Gender Competent Criminal Law, both for providing a new basis, as well as enhancing development regarding respective offences.</p> <p>The foundation of the study will be twofold. On the one side, we will analyze singular models of implementation of the gender perspective in Criminal Law. The aim of this part will be to answer the question on why we need to take the gender perspective into account in Criminal Law. At the same time, and this will be our second baseline, the traditional division into a General Part and a Special Part of Criminal Law will be the structure of our course.</p>
<p>Course outcome:</p> <p>The course is designed to give a general and critical overview of the specific manifestations and considerations of gender within the traditional Criminal Law. Legal sources from various countries and cultural backgrounds, as well as relevant case law are examined. Particular emphasis is put on justification and sentencing in General Part, as well as on the most gender related crimes from the Special Part. The students will be able to dogmatically analyze current and future legal solutions in an area of law, which so far has been overlooked by Gender Studies and also overlooked by traditional teaching of Criminal Law, but which entails the most severe legal consequences.</p>
<p>Course content:</p> <ol style="list-style-type: none"> 1. General Part of Gender Competent Criminal Law: <ol style="list-style-type: none"> 1.1. Typicity: Identification of legally protected rights 1.2. Unlawfulness: Justifications <ol style="list-style-type: none"> 1.2.1. self-defense 1.2.2. provocation 1.2.3. excess 1.3. Guilt: <ol style="list-style-type: none"> 1.3.1. mental disorder 1.3.2. <i>actiones liberae in causa</i> 1.3.3. mistake of law 1.4. Sentencing: 1.5. Punishments entailing imprisonment 1.6. Probation 1.7. Restraining to approach and communicate with the injured party 2. Special Part of Gender Competent Criminal Law: <ol style="list-style-type: none"> 2.1. Criminal offences under the <i>Istanbul Convention</i> and their implementation in the respective national law: <ol style="list-style-type: none"> 2.1.1. psychological violence 2.1.2. stalking 2.1.3. physical violence 2.1.4. sexual violence, including rape

- 2.1.5. forced marriage
- 2.1.6. female genital mutilation
- 2.1.7. forced abortion and forced sterilization
- 2.1.8. sexual harassment
- 2.2. Gender-related hate crimes

Literature:**Required reading:**

1. F. Agnello, „A New ‘Gender’ Definition in International Law: the Convention on Preventing and Combating Violence against Women and Domestic Violence”, *Spanish yearbook of international law*, No. 18, 2013/2014.
2. D. Britton, *The Gender of Crime*, Rowman & Littlefield, 2018.
3. K. Fitz-Gibbon, *Homicide Law Reform, Gender and the Provocation Defence*, Palgrave Macmillan, 2014.
4. J. Hodge, *Gendered Hate. Exploring Gender in Hate Crime Law*, Northeastern University Press, Boston, 2011.
5. R. Hunter and Sh. Cowan, *Choice and Consent – Feminist engagements with law and subjectivity*, Routledge-Cavendish, 2007.
6. R. Kapur, „‘Faith’ and the ‘good’ liberal: The construction of female sexual subjectivity in anti-trafficking legal discourse”. In: V. Munro and C.F. Stychin, (eds), *Sexuality and the law*, Abingdon, Oxford, New York, 2007.
7. D. Nicolson and L. Bibbings, *Feminist Perspectives on Criminal Law*, Cavendish, 2000.
8. D. Russell and R. Harmes, *Femicide in Global Perspective*, Teachers College, 2001.
9. E.R. Pohlreich, Erol Rudolf, „Ehrenmorde“ im Wandel des Strafrechts: Eine vergleichende Untersuchung unter Berücksichtigung des römischen, französischen, türkischen und deutschen Strafrechts, Duncker & Humblot, Berlin, 2009.
10. D. Nadj, *International Criminal Law and Sexual Violence against Women: the Interpretation of Gender in the Contemporary International Criminal Trial*, Taylor & Francis Ltd, 2018.

Additional reading:

1. A. Gasztold, *Feminist Perspectives on Terrorism*, Springer, 2020.
2. B. Maletzky, *Sexual abuse and the sexual offender, Common Man or Monster?*, Karnac, 2016.
3. A. Gill, C. Strange and K. Roberts, „Honour” Killing and Violence, Palgrave Macmillan, 2014.
4. U. A. Musa, *Gender Justice in Islamic Law – homicide and bodily injuries*, Hart 2018.
5. U. Andresson, M. Edgren and et al., *Rape Narratives in Motion*, Palgrave Macmillan, 2019.
6. S. Baer, *Rechtswissenschaft. In: Braun, Christina Von and Stephan, Inge (Hg.), Gender Studies: Eine Einführung*, Stuttgart, 2000.
7. R. Weitzer, The Social Construction of Sex Trafficking: Ideology and Institutionalization of a Moral Crusade. In: *Politics & Society*. 35. Jg., 2007.
8. K. Varol, *Ehre – Ehrenmord – Blutrache: Eine dogmatische Untersuchung zum deutschen und türkischen Strafrecht*, Verlag Dr. Kovač, 2016.
9. J. Burmeister, *Die schuldangemessene Bewertung von Ehrenmorden im deutschen Strafrecht: Differenzierte Schuldmerkmale auf Tatbestandsebene bei sonstigen niedrigen Beweggründen*, Peter Lang, 2011.
10. I. Loughan, *Manifest Madness: Mental Incapacity in Criminal Law*, Oxford University Press, 2012.
11. L. Knafla, (ed.), *Crime, Gender, and Sexuality in Criminal Prosecutions*, Greenwood, 2002.
12. N. Prasad, (ed.), *Geschlechtsspezifische Gewalt in Zeiten der Digitalisierung: Formen und Interventionsstrategien*, transcript Verlag, 2021.

13. R. Grey, *Prosecuting Sexual and Gender-based Crimes at the International Criminal Court: Practice, Progress and Potential*, Cambridge University Press, 2019.
14. M. Plaxton, *Implied consent and sexual assault: intimate relationships, autonomy, and voice*, McGill-Queen's University Press, 2015.
15. J. Deigh and D. Dolinko, *The Oxford Handbook of Philosophy of Criminal Law*, Oxford University Press, 2011.
16. M. Acale Sánchez, Penal and Custodial Control of Female Criminality in Spain from a Gender Perspective. *Social Sciences*, vol. 8, No. 2, 2019.

Instruction methods:

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. The learning method will be insofar based on a collaborative, studentcentred approach to teaching. The teaching method includes normative analysis of the provisions, relevant case-law and case studies focusing on complex legal issues; thus providing students with an opportunity to apply sources of law to facts of hypothetical cases. Also, comparative approach will be conducted.

The interactive lectures will include introductory presentations by the lecturer, discussions in seminar classes, writing assignments etc. Students are required to write seminar papers on a given topic, especially on those issues which are not in the focus of the lectures itself and prepare their oral presentations with 15 minutes duration.

Students are required to prepare for the lectures and to participate in the discussion. Their efforts as well as results of this engagement will be taken into account for the final grade.

Number of classes of active lectures:	Theoretical classes: 30	Practical classes: 15
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Evaluation of knowledge (maximum number of points: 100)

Pre-exam obligations	Points	Final exam	Points
Activities during lectures and practical work	40	Oral or written exam	40
Seminar paper	20		