

UČNI NAČRT PREDMETA / COURSE SYLLABUS

Predmet:	Primerjalno pravo – izbrana poglavja
Course title:	Comparative law – selected chapters

Študijski program in stopnja Study programme and level	Študijska smer Study field	Letnik Academic year	Semester Semester
Doktorski študij, 3. stopnja	Pravo	1.	2.
Doctoral studies, 3rd level	Legal studies	1.	2.

Vrsta predmeta / Course type

Univerzitetna koda predmeta / University course code:

Predavanja Lectures	Seminar Seminar	Vaje Tutorial	Klinične vaje work	Druge oblike študija	Samost. delo Individ. work	ECTS
15	8				102	5

Nosilec predmeta / Lecturer:

Jeziki / Predavanja / Lectures:
Languages: Vaje / Tutorial:

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

Izpolnjevanje pogojev za vpis na doktorski študij Pravo in osnovno znanje s področja predmeta, ki ustreza znanju na tem področju, pridobljenem na ravni prve in (ali) druge stopnje študija prava.

Prerequisites:

General conditions for enrolment into the Doctoral Programme in Legal Studies with a basic knowledge of the subject at the level of first and (or) second cycle programme in Legal Studies.

Vsebina:

Teme pod točko I in VIII so obvezne.

Študent se lahko v dogovoru z nosilcem predmeta osredotoči na posamezen pravni sistem, pri čemer mora poznati temeljne značilnosti ostalih pravnih sistemov.

Učni načrt zajema naslednje teme:

I. Temeljne značilnosti primerjalnega prava: 1. Različnost prava (poznavanje tujega prava in primerjalno pravo, pravna razdrobljenost in zблиževanje prava); 2. Zgodovina in sodobni razvoj primerjalnega prava; 3. Razmerje med primerjalnim pravom in drugimi pravnimi panogami (razmerje do zgodovine prava, filozofije

Content (Syllabus outline):

Topics I and VIII are obligatory.

Student may in consultation with the lecturer focus on particular legal system, while gaining basic knowledge on other legal systems.

Topics:

I. Basic features of the discipline of comparative law. 1. Diversity of law (knowledge of foreign legal systems and comparative law), legal fragmentation and mutual convergence of legal systems); 2. History and modern development of comparative law ; 3. Comparative law and other legal disciplines (legal history, sociology of law, international law and conflicts of law); 4. Methodology and aims of

prava, pravne sociologije ter do mednarodnega javnega in zasebnega prava); 4. Metodologija in naloge primerjalnega prava; 5. Delitev prava v velike pravne družine (sisteme) in možnosti oziroma perspektive prihodnjega poenotenja prava.

II. Rimsko - germanska pravna družina: 1. Zgodovinski razvoj (obdobje običajnega prava, obdobje razvoja javnega prava, kodifikacije, vpliv na druga (neevropska) svetovna okolja); 2. Sodobne značilnosti rimsko - germanske pravne družine (pravni viri in pomembnejše pravne ustanove, vloga ustavodajnega in zakonodajnega urejanja, vloga sodne in upravne prakse, običajno pravo, skupne značilnosti in razlike med posameznimi pravnimi redi, pravna teorija, pojem pravne države (*Rechtsstaat*)).

III. Common law pravna družina: 1. Angleško pravo (zgodovinski razvoj, razmerje med common law in equity, pomembnejše pravne ustanove, pregled pravnih virov, angleško razumevanje ustavnosti, vloga sodne prakse, vloga zakonodaje, običajno pravo, pravna teorija, načelo vladavine prava - rule of law); 2. Pravo Združenih držav Amerike (zgodovinski razvoj, ustavnost in federalizem, pomembnejše pravne ustanove, pregled pravnih virov, vloga sodne prakse, vloga zakonodaje, pravna teorija).

IV. Kitajsko pravo: 1. Tradicionalno kitajsko pravo (pomen kozmičnega reda, pomen in funkcija zakona, Konfucijanstvo, šola legalistov, prvenstvo kazenskega prava, vpliv na sodobno kitajsko (državno) pravo); 2. Pravo Ljudske Republike Kitajske (obdobje 1911-1949, obdobje od 1949 dalje, ohranitev nekaterih vidikov tradicionalnega pravnega mišljenja, sodobni pravni pomen konfucijanstva, sodobne gospodarske reforme in pravo, tradicionalni in sodobni pravni viri, tuji vplivi na kitajsko pravo, temeljne značilnosti pomembnejših pravnih panog).

V. Japonsko pravo: 1. Zgodovinski razvoj (fevdalni sistem in tradicionalni pravni viri, obdobje Meidži in postopna evropeizacija japonskega prava, vpliv evropskega prava in prava ZDA po drugi svetovni

comparative law; 5. Systematisation into legal families (systems) and possible future unification of law.

II. Romano-German legal family: 1. Historical Development (customary law, the development of public law, codification, influence on other (non-European) environments). 2. Modern characteristics of Romano-German legal family (sources of law and important legal institutions, the role of constitutional and statutory regulation, the importance of case-law and administrative decision-making, customary law, common features and differences among legal systems within the family, legal theory, the concept of *Rechtsstaat*).

III. Common law family: 1. English law (historical development, the interplay between common law and equity, legal institutions, overview of sources of law, the English understanding of constitutionalism, customary law, legal theory, the rule of law). 2. The Law of the United States (historical development, constitutionalism and federalism, legal institutions, the importance of case-law, legal theory).

IV. Chinese Law: 1. Traditional Chinese law (the importance of cosmic order, understanding and function of laws, Confucianism, Legalism, priority of criminal law, influence on modern Chinese (state) law; 2. Chinese People's Republic Legal System (from 1911 to 1949, from 1949 onwards, the preservation of some features of traditional legal thought, importance of Confucianism today, economic reforms and law, traditional and modern sources of law. Foreign influences on Chinese law, basic features of some prominent branches of law).

V. Japanese Law: 1. Historical Development (feudal system and traditional legal sources, Meiji Period and gradual europeisation of Japanese Law, the influence of European legal systems and the US law after World War II); 2. Modern Japanese Law (influences of traditional legal thought on modern Japanese Law, sources of law, the role of legislation and case-law, the comparison of Japanese and western law, basic features of some prominent branches of law).

VI. Islamic Law: 1. Historical development,

vojni); 2. Sodobno japonsko pravo (vpliv tradicionalne pravne misli na sodobno japonsko pravo, pravni viri, vloga zakonodaje in sodne prakse, splošna primerjava japonskega in zahodnega prava, temeljne značilnosti pomembnejših pravnih panog).

VI. Islamsko pravo: 1. Zgodovinski razvoj in nastanek islamskega prava, enotnost in raznolikost islamskega prava; 2. Pravni viri, pravni pomen Korana, Šeriat in fikih, Suna, idžma, kijas); 3. Temeljne značilnosti posameznih pravnih panog; 4. Razmerje med islamskim pravom in državo.

VII. Drugi religiozni in tradicionalni pravni sistemi: 1. Hinduistično pravo (zgodovinski razvoj, pravni viri, dharma kot osrednji pojem hindujskega tradicionalnega prava, recepcija angleškega prava (common law), razmerje med hinduističnim pravom in common law v zakonodajni in sodni praksi, razmerje med hinduističnim tradicionalnim pravom in sodobnim državnim pravom Indije, temeljne značilnosti posameznih pravnih panog); 2. Pravne ureditve Afrike in Madagaskarja (raznolikost afriških vrst običajnega prava, temeljne značilnosti afriškega tradicionalnega prava, vpliv krščanstva in islama, vpliv kolonialnega prava, uveljavljanje modernega (državnega) prava v Afriki, nekateri splošni vidiki razmerja med tradicionalnim in državnim pravom v zakonodajni in sodni praksi).

VIII. Pomen primerjalnopravne analize: 1. Povzetek temeljnih razlik in podobnosti med velikimi pravnimi družinami in sistemi; 2. Metode primerjalnega prava (funkcionalna metoda in njene alternative, strukturalizem, hermenevitična metoda). 3. Ključni (metodološki) problemi primerjalnega prava. 4. Podobnosti in razlike v različnih pravnih kulturah (kulturni in mišljenjski okviri ter predpostavke oblikovanja pravnih virov in njihovih razlag, razlike v pravnem vrednotenju in vedenju itd.); 5. Pomen primerjalnopravnega študija.

formation of Islamic law, unity and diversity of Islamic law; 2. Sources of law, legal importance of Ku'ran, shari'a and fiqh. Sunna, ijma and quiyas. 3. Basic features of some prominent branches of law. 4. Islamic law and the State.

VII. Other religious and traditional legal systems: 1. Hindu Law (historical development, sources of law, dharma as the root concept in Hindu traditional law, the reception of English common law, the interplay between traditional Hindu law and modern Indian law, basic features of some prominent branches of law. 2. Legal systems of Africa and Madagaskar (plurality of African customary law, the influence of Christianity and Islam, the influence of colonial law, introduction of modern (state) law in Africa, some general aspects of the interplay of traditional and state law in legislation and case-law).

VIII. The importance of comparative legal analysis: 1. Summary of basic differences and similarities between legal families and systems. 2. Methods of comparative law (functional method and its alternatives, structural method, hermeneutical method). 3. Basic methodological problems of comparative law. 4. Similarities and differences between different legal cultures (cultural and conceptual frameworks and presuppositions for the formations of legal sources and legal decision-making, differences in legal values and behaviour etc.). 5. The importance of comparative legal studies.

Temeljni literatura in viri / Readings:

Zweigert Konrad, Kötz Hein: Introduction to comparative law, Clarendon Press, Oxford 1998.

De Cruz Peter: Comparative law in a changing world, Routledge-Cavendish, London, New York 2007

Patrick Glenn H.: Legal traditions of the world : sustainable diversity in law, Oxford University Press, Oxford, New York : Oxford 2000.

Réne David, Günther Grassmann (nosilca): Uvod v velike sodobne pravne sisteme, Prva knjiga, Ljubljana 1998 in Druga knjiga, Ljubljana 1999.

Geoffrey Samuel: An Introduction to Comparative Law Theory and Method, Hart Publishing, Oxford and Portland 2014.

Mario G. Losano: I grandi sistemi giuridici : introduzione ai diritti europei ed extraeuropei, Laterza, Roma 2000.

Gianmaria Ajani: Sistemi giuridici comparati (2. izdaja), G. Giappicheli editore, Torino 2006.

The Oxford Handbook of Comparative Law (ur. M. Reimann, R. Zimmermann), Oxford University Press, Oxford 2006.

Bernhard Grossfeld: Core Questions of >Comparative Law, Carolina Academic Press, Durham 2005.

John W. Head: Great Legal Traditions, Carolina Academic Press, Durham 2011.

Bogdan Michael: Comparative Law, Kluwer, Norstedts Juridik, Deventer 1994.

Constantinesco Léontin-Jean: Rechtsvergleichung I, II, III, Carl Heymans Verlag, Köln, Berlin, Bonn, München 1971, 1972 in 1983.

Watson Alan: Legal Transplants, An Approach to Comparative Law, University of Georgia Press, Athens, London 1993.

Jackson Vicki C., Tushnet Mark V.: Comparative constitutional law, Foundation Press, Thomson/West, New York 2006.

McHugh James T.: Comparative Legal Traditions, P. Lang, New York 2002

Venter Francois: Constitutional comparison : Japan, Germany, Canada and South Africa as constitutional states, Dordrecht : Kluwer Law International, Cape Town, Juta 2001.

Häberle Peter: Rechtsvergleichung im Kraftfeld des Verfassungsstaates : Methoden und Inhalte, Kleinstaaten und Entwicklungsländer, Duncker & Humblot, Berlin 1992

Schlesinger Rudolf B.: Comparative law : cases, text, materials, Foundations Press, Mineola, New York 1988.

Comparing legal cultures (ur. D. Nelken), Dartmouth, Aldershot 1997.

Comparative legal cultures(ur. C. Varga), Dartmouth, Aldershot 1991.

Islamic law and legal theory (ur. I. Edge), Dartmouth, Aldershot, Singapore, Sydney, 1996.

Japanese law and legal theory (ur. K. Fujikura), Dartmouth, Aldershot, Singapore, Sydney, 1996.

Jewish law and legal theory (ur. M.P. Golding), Dartmouth, Aldershot, Singapore, Sydney, 1994.

Hindu law and legal theory (ur. V.P. Nanda, S.P. Sinha), Dartmouth, Aldershot, Singapore, Sydney, 1996.

Japanese legal system : text and materials (ur. M. Dean), Cavendish Publishing, London 1997.

Comparative legal traditions : text, materials and cases on the civil and common law traditions, with special reference to French, German, English and European law (ur. M.A. Glendon, W.M. Gordon), West Publishing, St. Paul, Minnesota 1994.

Markesinis B.S.: Foreign law and comparative methodology : a subject and a thesis, Hart Publishing, Oxford 1997.

Hiroshi Oda: Japanese Law, Oxford University Press, Oxford 1999.

Cilji in kompetence:

Objectives and competences:

Sposobnost sistematičnega in metodološko utemeljenega primerjanja različnih pravnih sistemov, prepoznavanje različnih dejavnikov, ki vplivajo na različno zasnovo in delovanje pravnih sistemov.

The students will gain the ability to compare different legal system in systematic and methodologically sound manner and will be able to recognise various factors, that lead to different structure and operation of legal systems.

Predvideni študijski rezultati:

Znanje in razumevanje:

Študent bo z uspešno opravljenim izpitom poznal temeljne značilnosti najpomembnejših svetovnih pravnih družin, poglobljeno poznal enega ali več pravnih sistemov in obvladoval metodologijo primerjalnega prava.

Intended learning outcomes:

Knowledge and understanding:

The student will become acquainted with basic characteristics of the most prominent legal families and gain detailed knowledge of at least one legal family. The student will also have to master the methodology of comparative law.

Metode poučevanja in učenja:

Predavanja – predmet predavanj so izbrane teme, ki jih nosilec predmeta vsako leto določi glede na njihovo pomembnost in aktualnost.
Seminar – na seminarjih študentje pod vodstvom nosilca predmeta analizirajo lastnosti posameznih pravnih družin, konkretne pravne sisteme ali pravne institute v primerjalnopравни perspektivi na podlagi izbranih besedil
Drugo – izdelava seminarske naloge, ki je posvečena poglobljeni obravnavi problema ali niza problemov s področja primerjalnega prava.
Individualni študij za izpit.

Learning and teaching methods:

The lectures comprise of selected topics, chosen by the lecturer each year according to their importance and relevance.

Seminars engage students in comparative analysis of specific legal families and its institutions, under the guidance of the lecturer on the basis of selected texts.

Others - students have to submit a paper elaborating on selected topic from the field of comparative law.

Preparing for exam.

Načini ocenjevanja:	Delež (v %) / Weight (in %)	Assessment:
<p>Način (pisni izpit, ustno izpraševanje, naloge, projekt)</p> <p>Izpit je usten.</p> <p>Pri ocenjevanju se upošteva ocena, ki jo študent dobi za izdelano seminarsko nalogo.</p>	<p>100%</p>	<p>Type (examination, oral, coursework, project):</p> <p>Oral exam.</p> <p>The grade is awarded on the basis of aral exam and the quality of the submitted paper.</p>

Reference nosilca / Lecturer's references:

1. ŽAGAR, Mitja, NOVAK, Aleš. La protección de las minorías nacionales en la Europa Central y del este a través del derecho constitucional e internacional. *Hum. iura*, str. 19-68.
2. NOVAK, Aleš. O definiciji prava. *Zb. znan. razpr. (Prav. fak. 1991)*, 2001, letn. 61, str. [81]-101.
3. NOVAK, Aleš, PIRC, Janez, KEJŽAR, Barbara, ŠETINC, Manca, FERLE, Tina. Comparing constitutional

protection of human rights in Europe : what can we learn from comparative analysis?. V: BREZIGAR, Sara (ur.), LAVSKIS, Peter (ur.), SOLEM, Knut Erik (ur.), ŽAGAR, Mitja (ur.). *International, constitutional, legal and political regulation and management of ethnic pluralism and relations, including prevention, management and/or resolution of crises and conflicts as components of diversity management : thematic issue*, (Razprave in gradivo, št. 52, 2007). Ljubljana: Inštitut za narodnostna vprašanja, 2007, 2007, št. 52, str. 70-119, tabele.

4. ŽAGAR, Mitja, NOVAK, Aleš. Constitutional and international protection of national minorities in Central and Eastern Europe. V: ŽAGAR, Mitja (ur.), JESIH, Boris (ur.), BEŠTER, Romana (ur.). *The constitutional and political regulation of ethnic relations and conflicts : [selected papers]*, (Ethnicity, 2). Ljubljana: Institute for Ethnic Studies, 1999, str. 177-214, tabela.