

# NYU Prague

## SOC-UA9413P01, Contemporary Issues in Law: Law and Human Rights in Central Europe Fall 2018

### Instructor Information

- Tomáš Rychlý (guest speakers: Zdeněk Kühn, Jiří Přibáň)
- **Email:** tr1580@nyu.edu
- **Office hours:** To be agreed on *ad hoc* basis
- **Telephone:** +420 602 279 323

### Course Information

- SOC-UA9413P01
- Contemporary Issues in Law: Law and Human Rights in Central Europe
- **Co-requisite or prerequisite:** None
- Monday, 4.30 PM – 7.20 PM
  - Toyen - RD

### Course Overview and Goals

This course explores the development of the rule of law and human rights issues in post-communist Central Europe and in Europe in general. We will also refer to transitional systems outside the post-communist region. Although dealing with Central European region, we will often talk about American situation as well.

First, we will face a short introduction into the history of the Central European region and its culture of human rights, and try to delineate this region. Next, we will examine the historical, national and international context of making constitutionalism and the rule of law in Central Europe. We will try to understand what human rights mean. We will face the debates that occurred when emerging democracies dealt with the legacy of communist regimes. On several case studies, we will explain several basic attitudes towards the former communist regimes, its apparatchiks, its agents, and collaborators (lustration laws and dealing with the communist crimes). We will compare these approaches with those found elsewhere (South Africa, Latin America). Furthermore, we will examine contemporary human rights debates surrounding abortion, free speech, social rights, the relation between religion and the state, the discrimination against minorities, gay rights, gender discrimination, affirmative action etc. We will address the rise of Islamophobia in Europe, the relating issues of freedom of speech and political correctness. We will also analyze the Western legal transplants in Central Europe and the post-communist application of basic rights. Finally, we will deal with the European Union and the challenges the Union faces in the late 2010s.

Lectures combined with class discussion, one field trip to the Brno Supreme Administrative Court will be organized as well.

**Upon Completion of this Course, students will be able to:**

- get basic orientation in the problems of human rights in Central Europe and EU
- get basic information about the legal and constitutional systems in the region
- will become familiar with the region's past and current problems vis-à-vis human rights

## Course Requirements

Failure to submit or fulfill any required course component results in failure of the class.

### Class Participation

The students should be ready for the classes; are supposed to read the recommended materials and be active during the class debates.

### Assignment 1

Midterm oral exam: students will join two teams proposing to ban a far right or far left political party or defending the party, the exam is made as moot court. Each presentation approximately 20 minutes, followed up by a discussion – up to 2 hours in total.

### Assignment 2

In class presentation of the research paper: students will present the current state of their research one month before the end of the term.

### Assignment 3

Final research paper (12 pages, Times New Roman, 1.5 paragraph, including footnotes; a list of literature is not included in the page limit). Students should consult the topic with a professor within one month after the beginning of our classes

### Grading of Assignments

The grade for this course will be determined according to the following formula:

<b>Assignments/Activities</b>	<b>% of Final Grade</b>
Class Participation	25 %
Assignment 1 (Mid-term oral exam):	20 %
Assignment 2 (In class presentation)	25 %
Assignment 3 (Final Research Paper)	30 %

### Letter Grades

Letter grades for the entire course will be assigned as follows:

<b>Letter Grade</b>	<b>Percent</b>
<b>A</b>	90% and higher
<b>A-</b>	87.5% - 89.99%
<b>B+</b>	82.5% - 87.49%
<b>B</b>	80% - 82.49%
<b>B-</b>	77.5% - 79.99%

Letter Grade	Percent
C+	72.5% - 77.49%
C	70% - 72.49%
C-	67.5% - 69.99%
D+	62.5% - 67.49 %
D	60% - 62.49%
D-	57.5% - 59.99%
F	57.49% and lower

## Course Schedule

### Topics and Assignments

Week/Date	Topic	Reading	Assignment Due
Session 1 Monday, September 3	0. Overview of the course 1. History of Central Eastern European Region	Wolff, L. Inventing Eastern Europe: The Map of Civilization on the Mind of the Enlightenment, Stanford University Press 1994. Chapter Two, Two Possessing Eastern Europe: Sexuality, Slavery, and Corporal Punishment, pages 50 – 88	
Session 2 Monday, September 10	2. Communism: Theory and Practice 3. Communist Law and Human Rights in Central Europe	Lenin, V.I. State and Revolution (1917). Excerpts Markovits, I. Pursuing One's Rights Under Socialism. 38 Stanford L. Rev. 689 (1986). Excerpts.	
Session 3 Monday, September 17	4. The 1989 Revolutions, Their Constitutional Meaning 5. The Concept of Human Rights in Transition; Drafting New Constitutions after the Fall of Communism	<a href="http://www.vaclavhavel.cz">Havel, V.</a> The Power of the Powerless (1978), <a href="http://www.vaclavhavel.cz">www.vaclavhavel.cz</a> , excerpts Vrba, J. The Debate about Michal Pullmann's <a href="#">Book The End of the Experiment</a> , <a href="http://www.cultures-of-history.uni-jena.de/index.php?id=7">http://www.cultures-of-history.uni-jena.de/index.php?id=7</a> Sadurski, W. Enduring and Empowering: The Bill of Rights in the Third Millennium: Postcommunist Charters of Rights in Europe and the U.S. Bill of Rights, 65 Law & Contemp. Prob. 223 (2002) The US Bill of Rights, the Hungarian and Czech constitutions compared (excerpts) US Bill of Rights Spiewak, P. The Battle for a Constitution. East European Constitutional Review, Number 2 & 3, 1997 (excerpts) Brodsky, C. Hungary's Dangerous Constitution (2015)	

Week/Date	Topic	Reading	Assignment Due
Session 4 Monday, September 24	6. – 7. The Concept of Human Rights in Central Europe. The Global Problems of the 21st Century (guest speaker <b>Jiří Příbáň</b> )	The Czech Bill of Rights (excerpts). The Preamble to the Polish Constitution Pawel Spiewak, The Battle for a Constitution. East European Constitutional Review, Number 2 & 3, 1997 (excerpts) Roper v. Simmons (US Supreme Court 2005, excerpts) US District Court for the Central District of California “The island of Bougainville case” Preamble to the Polish Constitution Hirschl, R. The Theocratic Challenge to Constitution Drafting in Post-Conflict States, 49 Wm. & Mary L. Rev. 1179 (2008)	
Session 5 Monday, October 1	8. – 9. Transitional Justice. Lustration (guest speaker <b>Jiří Příbáň</b> )	Boed, R. An Evaluation of the Legality and Efficacy of Lustration as a Tool of Transitional Justice. Columbia Journal of Transnational Law. Vol. 37, 1999 Priban, J. Constitutional justice and retroactivity of laws in postcommunist Central Europe. In: Priban, J. - Roberts, P. and Young, J. (eds.) Systems of Justice in Transition: Central European Experiences Since 1989, Aldershot: Ashgate 2003, pp. 29-49 Streletz, Kessler and others v Germany, European Court of Human Rights 2001	
Session 6 Monday, October 8	10. The Separation of Powers. Presidential vs. Parliamentary Systems. 11. Judiciary under Dictatorship, Transition and Democracy	Garlicki, L. The Presidency in the New Polish Constitution, East European Constitutional Review, Number 2 & 3, 1997 Ackerman, B. The New Separation of Powers. Harvard Law Review (2000) Kühn Z. The Judiciary in Central and Eastern Europe: Mechanical Jurisprudence in Transformation? Martinus Nijhoff, Brill 2011, chapters 2 and 4 (excerpts)	
Fall Break October 13-21	Fall Break		
Session 7 Monday, October 22	Midterm exam		
Session 8 Monday, October 29	12. Large corporates and human rights: from supporting coup d’etat to “corporate social responsibility”	Peter Kornbluh: The Pinochet File, A Declassified Dossier on Atrocity and Accountability, The New Press 2004, p. 97 - 105	

Week/Date	Topic	Reading	Assignment Due
		Charles Wright Mills: The Power Elite, Oxford University Press; 1/18/00 edition Alan Wolfe: <a href="#">The Power Elite Now</a> , The American Prospect no. 44, May-June 1999 <a href="http://www.uni-muenster.de/PeaCon/eliten/PowerEliteNow-Wolfe.htm">http://www.uni-muenster.de/PeaCon/eliten/PowerEliteNow-Wolfe.htm</a>	
Session 9 Monday, November 5	14. Legal Transformation of Social Rights and the Social Welfare State	Sadurski, W. Enduring and Empowering: The Bill of Rights in the Third Millennium: Postcommunist Charters of Rights in Europe and the U.S. Bill of Rights, 65 Law & Contemp. Prob. 223 (2002) (excerpts) Czech Bill of Rights Ackerman, B. The New Separation Of Powers. Harvard Law Review, January, 2000, vol. 113, 633 ff. (excerpts) Sachs, A. The Judicial Enforcement of Socio-Economic Rights. The Grootboom Case	
Make-up Day Friday, November 9 (9am-5pm)	Make-up day for missed classes		
Session 10 Monday, November 12	15. Gay Rights in Europe 16. Discrimination and Affirmative Action (guest speaker: <b>Zdeněk Kühn</b> )	Eskridge, W. Jr., Comparative Law and the Same-Sex Marriage Debate: A Step-by-Step Approach Toward State Recognition, 31 McGeorge L. Rev. 641 (2000) Finnis, J. M. Law, Morality, and "Sexual Orientation" 69 Notre Dame L. Rev. 1049 (1994) D.H. and others v. Czech Republic (European Court of Human Rights, 2006 – 2007) Dworkin, R. M. The Court and the University, NY Rev Books, May 15, 2003 Grutter v. Bollinger (US Supreme Court, 2003) Belinda, C. 'We Have No Martin Luther King.' Eastern Europe's Roma Minority. World Policy Journal Winter 2001/2002, Vol. 18, Issue 4	
Session 11 Monday, November 19	18.-19. The Separation of State and Religion in Europe. American and European Islamophobia	S.A.S. v. France (European Court of Human Rights, 2014) <a href="#">The Burkini case of the French Council of State</a> : <a href="http://english.conseil-etat.fr/Activities/Press-releases/The-Council-of-State-orders-a-decision-banning-clothes-demonstrating-an-">http://english.conseil-etat.fr/Activities/Press-releases/The-Council-of-State-orders-a-decision-banning-clothes-demonstrating-an-</a>	

Week/Date	Topic	Reading	Assignment Due
		obvious-religious-affiliation-to-be-suspended	
Session 12 Monday, November 26	Make-up day for missed classes		
Session 13 Monday, December 3	20-21. Constitutionalism in Central Europe and EU: Contemporary Issues II (guest speaker <b>Jiří Příbáň</b> )	No readings required for this class	
Session 14 Monday, December 10 (last day of classes)	Trip to Brno Supreme Administrative Court (subject to further agreement, will take place most likely on Wednesday or Thursday) Including lecture at the Supreme Administrative Court	No readings required for this class	
Session 15 Monday, December 17	Final exam		

## Course Materials

### Required Textbooks & Materials

- Electronic coursepack

### Resources

- **Access your course materials:** [NYU Classes](https://nyu.edu/its/classes) (nyu.edu/its/classes)
- **Databases, journal articles, and more:** [Bobst Library](https://library.nyu.edu) (library.nyu.edu)
- **Assistance with strengthening your writing:** [NYU Writing Center](https://nyu.mywconline.com) (nyu.mywconline.com)
- **Obtain 24/7 technology assistance:** [IT Help Desk](https://nyu.edu/it/servicedesk) (nyu.edu/it/servicedesk)
- **NYU Prague library:** [Tritius Catalog](https://nyu.tritius.cz/?lang=EN) (https://nyu.tritius.cz/?lang=EN)

## Course Policies

### Attendance and Tardiness

Absences only for medical reasons and for religious observance will be excused. To obtain an excused absence, you are obliged to supply either a doctor's note or corroboration of your illness by a member of the housing staff (either an RA or a Building Manager). To be excused for religious observance, you must contact the instructor and the Academic Director via e-mail one week in advance of the holiday. Your absence is excused for the holiday only and does not include days of travel associated with the holiday. Unexcused absences will be penalized with a 2% percent deduction from your final course grade for every week of classes missed.

Please note that Friday, November 9 (9am – 5pm) is reserved as a make-up day for missed classes. Do not schedule any trips for this day.

## **Late Submission of Work**

Late submission of work will result in lowering of a student's Final Grade.

## **Academic Honesty/Plagiarism**

According to the Liberal Studies Program Student Handbook, plagiarism is defined as follows:

**Plagiarism is presenting someone else's work as though it were one's own. More specifically plagiarism is to present as one's own a sequence of words quoted without quotation marks from another writer, a paraphrased passage from another writer's work; facts or ideas gathered, organized and reported by someone else, orally and/or in writing. Since plagiarism is a matter of fact, not of the student's intention, it is crucial that acknowledgment of the sources be accurate and complete. Even where there is no conscious intention to deceive, the failure to make appropriate acknowledgment constitutes plagiarism.**

The College of Arts and Science's Academic Handbook defines plagiarism similarly and also specifies the following:

**“presenting an oral report drawn without attribution from other sources (oral or written), writing a paragraph which, despite being in different words, expresses someone else's idea without a reference to the source of the idea, or submitting essentially the same paper in two different courses (unless both teachers have given their permission in advance).**

**Receiving help on a take-home examination or quiz is also cheating – and so is giving that help – unless expressly permitted by the teacher (as in collaborative projects). While all this looks like a lot to remember, all you need to do is give credit where it is due, take credit only for original ideas, and ask your teacher or advisor when in doubt.”**

“Penalties for plagiarism range from failure for a paper, failure for the course or dismissal from the university.” **(Liberal Studies Program Student Handbook)**

## **Disability Disclosure Statement**

Academic accommodations are available for students with disabilities. Please contact the Moses Center for Students with Disabilities (212-998-4980 or [mosescsd@nyu.edu](mailto:mosescsd@nyu.edu)) for further information. Students who are requesting academic accommodations are advised to reach out to the Moses Center as early as possible in the semester for assistance.