**Land and Ethnicity**

**András L. Pap**

**Course description**

The course is designed to provide a comprehensive overview of the major issues and questions within the purview of minority protection. Following a theoretical introduction and general discussions about the concept and evolution of minority rights and various rights-based approaches to recognizing minorities, such as individual rights, collective rights, self-determination, land-rights equality, discrimination and affirmative action, separate sessions are dedicated to the analysis of specific and specialized legal regimes and institutions. These include the assessment of indigenous rights, refugee protection as well as the scrutiny of legal and political dilemmas concerning hate speech, hate crimes, the legal conceptualization of minority identity and the processing of ethno-national data.

There will be weekly meetings in a seminar format.

**Readings**

This interdisciplinary course is designed to engage and challenge students in critical debates. The subject combines several areas of legal studies—human rights, legal theory, theory of EU law, rights of ethnic minorities—with various fields within the social sciences. Besides reading excerpts from books and academic articles, students will also become familiar with a wide range of case law dealing with the topic. Each session is designed to combine academic articles and excerpts from books with legal texts or reports and policy recommendations by international organizations, and with the analysis of case law and jurisprudence. Students will not be given ready answersat the outset; instead, they will be encouraged to take an active part in debating and understanding the analyzed issues.

For each class, there are mandatory readings. Recommended materials are also made available, and are either directly assigned to students for presentation, or provide background information for complex issues which students need to present as a starting point for class discussions. All presenters are expected to be familiar with the recommended readings and are required to prepare send notes to the entire group by 13,00 on Tuesday, the day before class. Late notes and failure to show up or present at class without prior notice will be penalized.

Given the highly intensive cooperation of students the course builds on, missing classes for students who have assignments or presentations is only acceptable for medical reasons, and a doctor’s note will be required. In such cases, if absent students were to present court cases, the relevant notes need to be sent before class or other forms of subsidiary arrangements need to me made, such as for example the swapping assignments with colleagues.

Class attendance, presentations and the timely delivery of assignments will be continuously monitored.

Given the fact that the seminar builds on rigorous debates and critical assessment of the readings, it may happen that the assessment of certain topics transgresses classes and the discussion of some issues is moved to the next class. This is due to the nature of the course. Should some readings end up not being discussed by the end of the course, the students responsible for those presentations will not be penalized for this.

Most readings are available in the syllabus (via weblink), the remaining will be mailed. (In case you face difficulties accessing the readings, please indicate at papa@ceu.edu.)

**Grading information**

Students are expected to attend all seminars, read all the required readings and prepare to be active in seminar discussions. It is absolutely essential to read assigned materials prior to each session.

In addition to this, students are required to

1. give presentations on the assigned mandatory and recommended readings in class,
2. as well as on a chosen case study on class 10-11, and
3. need to submit a final essay on a chosen case study or incorporating and critically analyzing readings discussed during the course. The 7th and 8th class is partially reserved for the discussion of the paper-proposals. Abstracts for the papers need to be submitted by the 9h class.
4. Students will be asked to sign up for seminar presentations. Choices will be discussed in class. The presenters will be expected to sum up the main arguments of the mandatory and recommended readings and pose some key questions for class discussion. The presentation should be supported by an outline or a response paper of 1-3 pages which discusses some of the selected themes of the reading, to be submitted via e-mail by 13,00 the day prior to the class. Unless otherwise indicated, presentations should be reactions to the readings rather than summaries. Case-presenters need to prepare notes including references to the law and important/useful quotes. The notes need to be sent the class.
5. Students are also asked to make a presentation on class 10-11. Choices will also be discussed in class. The case presentationshould be 10 minutes (timing will be strictly monitored) and be followed by a short Q&A.  Presentations must be accompanied by a power point presentation (which needs to be 10 slides, excluding cover, references and end slide)  In the presentation students should aim to cover the following things: Introduce the topic/case; summarize the main issue(s) (and how these link to the course); mention and define important concepts and theory; and critically reflect on the relevant empirical/theoretical class material
6. The term paper should be either a case study (similar to those presented on class 10-11) or an original research paper that has at least 1000 and no more than 1500 words, double-spaced, with bibliography added. All students are expected to submit a project proposal at the 9th class. The proposal shouldoutline the main questions asked and be discussed with the instructor. The topic should relate to the broad themes of the course and class discussions. The paper should follow the genre of a scholarly essay either as a case study or as a literature review. The 7th and 8th class is partly dedicated for the discussion of the paper-projects. Both the outline and final research paper are expected to be products of each student's individual effort. Evaluation will be based on the quality of research, its originality, quality of grammar, accuracy of spelling, and soundness of content. It constitutes plagiarism if a student quotes or adopts ideas from a source without appropriate attribution (for example, by failing to utilize endnotes or footnotes properly). Similarly, direct quotations must be attributed and indicated by quotation marks.

Please note that late papers submitted after the deadline will be marked down by half of a letter grade per day.

A group of students have an option to present a mock trial case instead of a final essay. The description of the case, plaintiff/defendant notes and the court’s judgment need to be submitted and presented by the last class. The written documentation needs to be at least 2500 words.

**Course evaluation:**

Class participation (including in-class presentations): 50%

Class presentation of a national report/case study 25%

Final essay/mock case: 25%

On class 7, general feedback will be provided and individual consultations can be held to discuss overall class performance and the quality of the presentations.

**COURSE DESIGN:**

**Class 1. September 20. Introduction. The concept of rights, human rights and minority rights**

**Class 2. September 27. The concept of rights, human rights and minority rights: international documents**

**Class 3. October 4. International documents continued, conflicts of individual and collective rights**

**Class 4. October 11. Race, ethnicity, nationality, religion; identity and classification: Definition-making and data processing**

**Class 5. October 18. Equality and discrimination: The morphology of discrimination, concepts and institutional responses.**

**Class 6. October 25. Equality and discrimination continued, reversed discrimination/affirmative.**

**Class 7. November 8. Special legal regimes I. Indigenous rights, refugee protection. Participation feedback. Discussing final paper and presentation topics.**

**Class 8. November 15. Special legal regimes II. Ethnic profiling and data collection in law enforcement, hate crimes, hate speech, refugee procedures. Discussing final paper and presentation topics.**

**Class 9. November 22. Special legal regimes III. The political representation of minorities and ethnic registers. Abstract for final paper and presentation due.**

**Class 10-11. November 29. Double session, class roundtable: national reports and case studies**

**READINGS AND PRESENTATIONS:**

**Class 1. September 20. Introduction. The concept of rights, human rights and minority rights**

**Class 2. September 27. The concept of rights, human rights and minority rights: international documents**

Human rights and minority rights

*Reading*

Louis Henkin: Age of Rights, Introduction: The human rights idea, p.1-10

Brunner, Georg – Küpper, Herbert: European Options of Autonomy: A Typology of Autonomy Models of Minority Self-Governments. In: **Kinga Gál** (ed.), **Minority governance in Europe,** Budapest: LGI & ECMI, 2002,pp. 11-37

*Recommended reading*

Sen, Amartya: Human Rights and Asian Values, The New Republic, July 14-July 21, 1997 pp. 1-5.

https://www.carnegiecouncil.org/publications/archive/morgenthau/254/\_res/id=Attachments/index=0/254\_sen.pdf

A compilation of thematic commentaries to the FCNM

https://rm.coe.int/16806b6a0b

Minority rights: International standards and guidance for implementation

<https://www.refworld.org/docid/4db80ca52.html>

European Commission for Democracy through Law (Venice Commission) Compilation of opinions and reports concerning the protection of national minorities

https://www.venice.coe.int/webforms/documents/?pdf=CDL-PI(2018)002-e

Human rights documents:

Universal Declaration of Human Rights

<https://www.un.org/en/universal-declaration-human-rights/>

International Covenant on Civil and Political Rights

<https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

International Covenant on Economic, Social and Cultural Rights

https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx

European Convention on Human Rights

<https://www.echr.coe.int/Documents/Convention_Eng.pdf>

American Convention on Human Rights

<https://treaties.un.org/doc/publication/unts/volume%201144/volume-1144-i-17955-english.pdf>

African Charter on Human and Peoples' Rights

<https://www.achpr.org/legalinstruments/detail?id=49>

Asian Human Rights Charter

https://www.refworld.org/pdfid/452678304.pdf

Charter of Fundamental Rights of the European Union

<https://www.europarl.europa.eu/charter/pdf/text_en.pdf>

Minority rights:

Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities

<https://www.ohchr.org/EN/ProfessionalInterest/Pages/Minorities.aspx>

Framework Convention for the Protection of National Minorities

https://www.coe.int/en/web/minorities/at-a-glance

[European Charter for Regional or Minority Languages](http://www.coe.int/t/dg4/education/minlang/default_en.asp)

https://www.coe.int/en/web/european-charter-regional-or-minority-languages

Non-ethnic Minorities

[Convention on the Rights of Persons with Disabilities](https://en.wikipedia.org/wiki/Convention_on_the_Rights_of_Persons_with_Disabilities)

https://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx

[The Convention on the Elimination of All Forms of Discrimination against Women](http://www.un.org/womenwatch/daw/cedaw/cedaw.htm)

https://www.ohchr.org/en/professionalinterest/pages/cedaw.aspx

Convention on the rights of the child

https://www.ohchr.org/en/professionalinterest/pages/crc.aspx

Council of Europe Recommendation on the promotion of human rights of older persons

https://search.coe.int/cm/Pages/result\_details.aspx?ObjectID=09000016805c649f

[The Yogyakarta Principles](https://en.wikipedia.org/wiki/The_Yogyakarta_Principles)

<https://yogyakartaprinciples.org/>

**Presentations:**

1. Universal Declaration of Human Rights
2. International Covenant on Civil and Political Rights
3. International Covenant on Economic, Social and Cultural Rights
4. European Convention on Human Rights
5. American Convention on Human Rights
6. African Charter on Human and Peoples' Rights
7. Asian Human Rights Charter
8. Charter of Fundamental Rights of the European Union
9. Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities
10. Framework Convention for the Protection of National Minorities
11. [European Charter for Regional or Minority Languages](http://www.coe.int/t/dg4/education/minlang/default_en.asp)
12. [Convention on the Rights of Persons with Disabilities](https://en.wikipedia.org/wiki/Convention_on_the_Rights_of_Persons_with_Disabilities)
13. [The Convention on the Elimination of All Forms of Discrimination against Women](http://www.un.org/womenwatch/daw/cedaw/cedaw.htm)
14. Convention on the rights of the child
15. Council of Europe Recommendation on the promotion of human rights of older persons
16. [The Yogyakarta Principles](https://en.wikipedia.org/wiki/The_Yogyakarta_Principles)
17. the case for Asian values and delegitimizing the human rights discourse
18. The Minority Safepack-case (<https://www.fuen.org/en/article/Minority-SafePack-The-European-Commission-turned-its-back-on-national-minorities>)

PRESENTATION STRUCTURE:

1. parties
2. “substance”
3. enforce mechanism

**Class 3. October 4. International documents continued, conflicts of individual and collective rights**

*Reading*

Kymlicka, Will: Multicultural Citizenship, Individual Rights and Collective Rights, pp. 34-48

Okin Moller, Susan: Is Multiculturalism Bad for Women?, In: Joshua Cohen, Matthew Howard and Martha C. Nussbaum (Eds.) Is Multiculturalism Bad for Women?, Princeton, New Yersey: Princeton University Press, 1999., pp. 9-24

Kymlicka, Will: Liberal Complacencies, Id. pp. 31-34

Sassen, Saskia: Culture Beyond Gender, Id. pp. 76-78

*TO BE EMAILED*

Harmful Traditional Practices Affecting the Health of Women and Children

*Recommended reading*, https://www.ohchr.org/sites/default/files/Documents/Publications/FactSheet23en.pdf

Bideault v. France

 https://www.stradalex.com/nl/sl\_src\_publ\_jur\_int/document/echr\_11261-84

Eliminating Virginity Testing: An Interagency Statement

<https://www.who.int/reproductivehealth/publications/eliminating-virginity-testing-interagency-statement/en/#:~:text=An%20interagency%20statement&text=As%20shown%20in%20a%20systematic,a%20history%20of%20vaginal%20intercourse>

# Controversial 'virginity tests' sold by UK clinics,

<https://www.bbc.com/news/newsbeat-55078634>

Virginity Testing Evidence-Based Guiding Note, <https://www.humanitarianresponse.info/sites/www.humanitarianresponse.info/files/documents/files/virginity_testing_eng.pdf>

Eliminating Virginity Testing: An Interagency Statement

<https://www.who.int/reproductivehealth/publications/eliminating-virginity-testing-interagency-statement/en/#:~:text=An%20interagency%20statement&text=As%20shown%20in%20a%20systematic,a%20history%20of%20vaginal%20intercourse>

Controversial 'virginity tests' sold by UK clinics,

<https://www.bbc.com/news/newsbeat-55078634>

Virginity Testing Evidence-Based Guiding Note, <https://www.humanitarianresponse.info/sites/www.humanitarianresponse.info/files/documents/files/virginity_testing_eng.pdf>

[*http://www.whrin.org/wp-content/uploads/2017/10/2017-UNREPORT-final.pdf*](http://www.whrin.org/wp-content/uploads/2017/10/2017-UNREPORT-final.pdf)

Virginity testing

<https://www.who.int/publications/i/item/WHO-RHR-18.15>

<https://www.acog.org/clinical-information/policy-and-position-statements/statements-of-policy/2020/virginity-testing>

<https://www.humanitarianresponse.info/sites/www.humanitarianresponse.info/files/documents/files/virginity_testing_eng.pdf>

<https://www.bbc.com/news/newsbeat-55078634>

https://uk.moyens.net/football/ronaldos-girlfriend-undergoes-surgery-restore-her-virginity-she-prepares-for/

**Presentations**

1. **Bideault v. France**
2. **contextualize the Kymlicka-Moller-Sassen-debate through the harmful traditional practice of virginity testing**

**Class 4. October 11. Race, ethnicity, nationality, religion; identity and classification: Definition-making and data processing**

*Reading*

András L. Pap: Murphy’s law on the free choice of identity? Legal and political difficulties in defining minority communities and membership boundaries, Columbia Human Rights Law Review

https://privpapers.ssrn.com/sol3/cf\_dev/AbsByAuth.cfm?per\_id=2170812

*Recommended reading*

Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation

<https://eur-lex.europa.eu/eli/reg/2016/679/oj>

Oshea v. The City of San Francisco

<https://www.ravellaw.com/opinions/a909c072e5e43b56a45e7158b726f696>

Patrick Simon: „Ethnic” statistics and data protection in the Council of Europe countries. Study Report. Institut National d’Etudes Demographiques Strasbourg, 2007

<https://ec.europa.eu/migrant-integration/librarydoc/ethnic-statistics-and-data-protection-in-the-council-of-europe-countries-a-study-report>

Rogers Brubaker (2015): The Dolezal affair: race, gender, and the

micropolitics of identity, Ethnic and Racial Studies, DOI: 10.1080/01419870.2015.1084430

https://www.tandfonline.com/doi/abs/10.1080/01419870.2015.1084430?journalCode=rers20

Anthony R. Enriquez: Assuming responsibility for who you are: the right to choose “immutable” identity characteristics

<https://www.nyulawreview.org/issues/volume-88-number-1/assuming-responsibility-for-who-you-are-the-right-to-choose-immutable-identity-characteristics/>

Camille Gear Rich: Elective Race: Recognizing Race Discrimination in the Era of Racial Self-Identification

<https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2506379>

Tseming Yang: Choice and Fraud in Racial Identification: The Dilemma of Policing Race in Affirmative Action, the Census, and a Color-Blind Society

https://repository.law.umich.edu/mjrl/vol11/iss2/3/

Jessica Clarke: Against Immutability, Yale Law Journal, 125:2 2015

https://www.yalelawjournal.org/article/against-immutability

Suzie Navot: A new chapter in Israel’s “constitution”: Israel as the Nation State of the Jewish People

[verfassungsblog.de/a-new-chapter-in-israels-constitution-israel-as-the-nation-state-of-the-jewish-people/](https://verfassungsblog.de/a-new-chapter-in-israels-constitution-israel-as-the-nation-state-of-the-jewish-people/)

**Presentations:**

1. **The European data protection legal regime, + Is the Sandler video in violation of data protection norms? (https://www.youtube.com/watch?v=6YSOZP\_M6eM)**
2. **Ethnicity in the census**
3. **The fluidity of ethnic affiliation in light of the Dolezal and the Irish firefighter (Oshea) cases**
4. **The Jews and Israel: race, ethnicity, nationality (law of return, nation state law)**

**Class 5. October 18. Equality and discrimination: The morphology of discrimination, concepts and institutional responses.**

*Readings*

Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin

https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A32000L0043

McCrudden, Cristopher: Thinking about the Discrimination Directives, European Anti-Discrimination Law Review no. 1 (April 2005) pp. 17–21.

https://www.migpolgroup.com/\_old/public/docs/39.EuropeanAnti-discriminationLawReview-Issue1\_EN\_04.05.pdf

*Recommended* *readings*

Verloo, Mieke: Multiple Inequalities, Intersectionality and the European Union, European Journal of Women's Studies 13, no. 3 (2006) pp. 211–28.

https://hal.archives-ouvertes.fr/hal-00571275/document

Helen O’Nions: Warehouses and window-dressing: a legal perspective on educational segregation in the EU

https://www.waxmann.com/index.php?eID=download&id\_artikel=ART101657&uid=frei

A comparative analysis of non-discrimination law in Europe 2020

https://www.equalitylaw.eu/publications/comparative-analyses

EU legislation and policies to fight racial and ethnic discrimination

https://www.europarl.europa.eu/thinktank/en/document.html?reference=EPRS\_BRI(2021)690525

Korematsu v. United States, 323 U.S. 214 (1944)

<https://supreme.justia.com/cases/federal/us/323/214/>

Plessy v. Ferguson, 163 U.S. 537 (1896)

https://supreme.justia.com/cases/federal/us/163/537/

Brown v. Board of Education, 347 U.S. 483 (1954)

https://supreme.justia.com/cases/federal/us/347/483/

Loving v. Virginia, 388 U.S. 1 (1967)

https://www.oyez.org/cases/1966/395

D.H. v. Czech Republic

https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22002-2439%22]}

Horváth and Kiss v. Hungary

PAP, András László. Harassment: A Silver Bullet to Tackle Institutional Discrimination, But No Panacea for all Forms of Dignity and Equality Harms. Intersections. East European Journal of Society and Politics, [S.l.], v. 5, n. 2, july 2019.

<https://intersections.tk.mta.hu/index.php/intersections/article/view/497>

Kimberle Crenshaw: Mapping the Margins: Intersectionality, Identity Politics, and Violence against Women of Color, Stanford Law Review, [Vol. 43, No. 6 (Jul., 1991)](https://www.jstor.org/stable/i252725)

<https://www.jstor.org/stable/1229039>

ILO [Violence and Harassment Convention, 2019 (No. 190)](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:::NO:12100:P12100_ILO_CODE:C190:NO)

<https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C190>

CHEZ Razpredelenie Bulgaria AD v Komisia za zashtita ot diskriminatsia

<https://curia.europa.eu/juris/document/document.jsf?docid=165912&doclang=EN>

EU Framework for National Roma Integration Strategies up to 2020

<https://ec.europa.eu/info/policies/justice-and-fundamental-rights/combatting-discrimination/roma-eu/roma-equality-inclusion-and-participation-eu/eu-roma-national-integration-strategies-2020_en>

Bernard Rorke - Orhan Usein (eds.) A decade lost. Reflections on Roma inclusion 2005–2015,

<https://www.rcc.int/romaintegration2020/romadecadefold//decade%20implementation/5.%20Decade%20Secretariat%20Reports/A%20Lost%20Decade.pdf>

**Presentations**

1. **Intersectionality**
2. **The morphology of discrimination: the case of the Roma**
3. **The Korematsu- case + 2016 echoes**
4. **The Plessy-case**
5. **The Brown- case**
6. **Loving v. Virginia**
7. **The D.H. v. Czech Republic case**
8. **CHEZ Razpredelenie Bulgaria AD v Komisia za zashtita ot diskriminatsia**

**Class 6. October 25. Equality and discrimination continued, reversed discrimination/affirmative.**

*Readings*

Affirmative Action, [Stanford Encyclopedia of Philosophy](https://plato.stanford.edu/index.html),

https://plato.stanford.edu/entries/affirmative-action/

*Recommended* *readings*

University of California Regents v. Bakke, 438 U.S. 265 (1978)

<https://supreme.justia.com/cases/federal/us/438/265/>

Grutter v. Bollinger, [539 U.S. 306](http://en.wikipedia.org/wiki/Case_citation) (2003)

<https://supreme.justia.com/cases/federal/us/539/306/>

Fisher v. Texas (2013)

<https://www.oyez.org/cases/2012/11-345>

Schuette v. Bamn

<https://www.law.cornell.edu/supremecourt/text/12-682>

Students for Fair Admissions, Inc. v. President and Fellows of Harvard College

<https://www.scotusblog.com/case-files/cases/students-for-fair-admissions-inc-v-president-fellows-of-harvard-college/>

[https://ballotpedia.org/Students\_for\_Fair\_Admissions,\_Inc.\_v.\_President\_%26\_Fellows\_of\_Harvard](https://ballotpedia.org/Students_for_Fair_Admissions%2C_Inc._v._President_%26_Fellows_of_Harvard)

https://harvardlawreview.org/2021/05/students-for-fair-admissions-inc-v-president-and-fellows-of-harvard-college/

**Presentations**

1. **Reversed discrimination/Affirmative action: philosophical and policy dilemas**
2. **University of California Regents v. Bakke, 438 U.S. 265 (1978):**
3. **Grutter v. Bollinger,** [539 U.S. 306](http://en.wikipedia.org/wiki/Case_citation) **(2003)**
4. **Fisher v. Texas (2013)**
5. **Schuette v. Bamn (2014)**
6. **Students for Fair Admissions, Inc. v. President and Fellows of Harvard College**
7. **legacy admissions**

[**https://www.chronicle.com/article/feds-release-guidance-in-wake-of-supreme-courts-ruling-on-admissions**](https://www.chronicle.com/article/feds-release-guidance-in-wake-of-supreme-courts-ruling-on-admissions)

**https://www.nytimes.com/2023/07/26/us/legacy-admissions-colleges-universities.html**

**Class 7. November 8. Special legal regimes I. Indigenous rights, refugee protection. Participation feedback. Discussing final paper and presentation topics.**

*Mandatory readings*

Indigenous & Tribal People’s Rights in Practice, A guide to ILO Convention No. 169., pp. 9-27online/books/WCMS\_171810/lang--en/index.htm

UN Convention on Refugees

<https://www.ohchr.org/EN/ProfessionalInterest/Pages/StatusOfRefugees.aspx>

*Recommended* *readings*

Giovanna Gismondi: Denial of Justice: The Latest Indigenous Land Disputes Before the European Court of Human Rights and the Need for an Expansive Interpretation of Protocol 1.

<https://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1136&context=yhrdlj>

Jose Aylwin – Johannes Rohr: The UN Guiding Principles on Business & Human Rights and Indigenous Peoples Progress achieved, the implementation gap and challenges for the next Decade, 2021

https://www.iwgia.org/en/resources/publications/305-books/4419-the-un-guiding-principles-on-business-human-rights-and-indigenous-peoples-%E2%80%93-progress-achieved,-the-implementation-gap-and-challenges-for-the-next-decade.html

ILO Convention on Indigenous and Tribal Populations, 1957 (No.107)

https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\_ILO\_CODE:C107

ILO Convention concerning Indigenous and Tribal Peoples in Independent Countries (1989)

https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\_ILO\_CODE:C169

UN Declaration on the Rights of Indigenous Peoples (2007)

https://www.un.org/development/desa/indigenouspeoples/declaration-on-the-rights-of-indigenous-peoples.html

Banda, Fareda –Chinkin, Christine: Gender, Minorities and Indigenous Peoples, pp. 1-36.

https://minorityrights.org/wp-content/uploads/old-site-downloads/download-115-Gender-Minorities-and-Indigenous-Peoples.pdf

Sandra Lovelace v. Canada, Communication No. 24/1977: Canada 30/07/81, UN Doc. CCPR/C/13/D/24/1977.

https://www.escr-net.org/caselaw/2010/sandra-lovelace-v-canada-communication-no-241977-canada-300781-un-doc-ccprc13d241977

Mississippi Band of Choctaw Indians v. Holyfield, 490 U.S. 30 (1989)

<https://supreme.justia.com/cases/federal/us/490/30/>

Adoptive couple v. Baby girl

<https://www.oyez.org/cases/2012/12-399>

Solangel Maldonado: Race, culture, and adoption: lessons from Mississippi band of Chocta w Indians v. Holyfield

Mashpee Tribe v. New Seabury Corp.

https://www.casemine.com/judgement/us/5914c544add7b049347d2f32

Rice v. Cayetano

<https://www.oyez.org/cases/1999/98-818>

Morton v Mancari

<https://supreme.justia.com/cases/federal/us/417/535/>

Cuison Villazor, Rose: Blood Quantum Land Laws and the Race versus Political Identity Dilemma, California Law Review, June, 2008, pp. 16

<https://www.semanticscholar.org/paper/Blood-Quantum-Land-Laws-and-the-Race-versus-Dilemma-Villazor/36e2db510eec601f6a6afb6d2dd8a472a1d9c53b>

Samantha K. Nikic, Liberte, Egalite, Fraternite: The United Nations Declaration of the Rights of Indigenous Peoples Fails to Protect Hopi Katsinam from the Auction Block in France, 41 Brook. J. Int'l L. (2015).

<https://brooklynworks.brooklaw.edu/bjil/vol41/iss1/9/>

# Haaland v. Brackeen

/https://www.supremecourt.gov/opinions/22pdf/21-376\_7l48.pdf

Jessica Dixon Weaver, The Changing Tides of Adoption: Why Marriage, Race, and Family Identity Still Matter, 71 SMU L. REV. 159 (2018)

<https://scholar.smu.edu/smulr/vol71/iss1/14/>

Jennings, P. K. (2006). The Trouble with the Multiethnic Placement Act: An Empirical Look at Transracial Adoption. Sociological Perspectives, 49(4), 559–581. <https://doi.org/10.1525/sop.2006.49.4.559>

https://journals.sagepub.com/doi/pdf/10.1525/sop.2006.49.4.559?casa\_token=7hoQqIUee0EAAAAA:2fpaIGo6s9zwItm2mHQ8h4yRUSUBN8T5H4JnSRmpb7UsTqOUChdwS1rDoDOjBiOGhxPG6sGIyMM

Bartlett, K. T. (1999). Comparing Race and Sex Discrimination in Custody Cases. Hofstra L. Rev., 28, 877.

# Palmore v. Sidoti, 466 U.S. 429 (1984)

https://supreme.justia.com/cases/federal/us/466/429/

McClain, L. C. (2020). Palmore v. Sidoti: The Troubling Effects of ‘Private Biases’. In Painting Constitutional Law (pp. 122-140). Brill Nijhoff.

https://scholarship.law.bu.edu/cgi/viewcontent.cgi?article=1905&context=faculty\_scholarship

**Presentations:**

1. **the indigenous legal regime (ILO, UN)**
2. **the Lovelace-case**
3. **Mississippi Band of Choctaw Indians v. Holyfield**
4. **Adoptive couple v. Baby girl**
5. **Haaland v. Brackeen**
6. **Palmore v. Sidoti, 466 U.S. 429 (1984) + McClain, L. C. (2020).**

**Class 8. November 15. Special legal regimes II. Ethnic profiling and data collection in law enforcement, hate crimes, hate speech, refugee procedures. Discussing final paper and presentation topics.**

*Mandatory readings*

Hate Crime Laws, A Practical Guide, OSCE ODHIR Part I. pp. 16-57

https://www.osce.org/odihr/36426

Hate speech factsheet, ECHR

https://www.echr.coe.int/documents/fs\_hate\_speech\_eng.pdf

*Recommended readings*

András L. Pap: Ethnicity and Race-Based Profiling in Counter-Terrorism, Law Enforcement and Border Control, European Parliament, 2008 pp. 1-63

<https://www.europarl.europa.eu/thinktank/en/document.html?reference=IPOL-LIBE_ET%282008%29408326>

[Preventing unlawful profiling today and in the future: a guide](https://fra.europa.eu/sites/default/files/fra_uploads/fra-2018-preventing-unlawful-profiling-guide_en.pdf)

https://www.osce.org/files/f/documents/7/a/25974.pdf

McCleskey v. Kemp

<https://www.oyez.org/cases/1986/84-6811>

Floyd v. City of New York <https://casetext.com/case/floyd-v-city-of-ny-2>

*Recommended readings*

Ensuring justice for hate crime victims: professional perspectives, FRA

<https://fra.europa.eu/sites/default/files/fra_uploads/fra-2016-justice-hate_crime-victims_en.pdf>

Pap, A., & Kovács Szitkay, E. (2022). Race, Ethnicity, Biotechnology and the Law. European Law Enforcement Research Bulletin, (6), 169-177.

<https://bulletin.cepol.europa.eu/index.php/bulletin/article/view/539/411>

Pap, Andras L: Neglect, Marginalization, and Abuse: Hate Crime Legislation and Practice in the Labyrinth of Identity Politics, Minority Protection, and Penal Populism, Nationalism Studies, 2020

<https://www.cambridge.org/core/journals/nationalities-papers/article/neglect-marginalization-and-abuse-hate-crime-legislation-and-practice-in-the-labyrinth-of-identity-politics-minority-protection-and-penal-populism/8C75584B29DDC53C2EE9FD59F89C11B5>

Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law

<https://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX%3A32008F0913>

ECRI Hate Speech

<https://rm.coe.int/ecri-general-policy-recommendation-no-15-on-combating-hate-speech/16808b5b01>

Thomas M. Keck: Hate Speech and Double Standards, Constitutional Studies, 95-122

Giniewski v. France  (2006)

<https://futurefreespeech.com/giniewski-v-france/>

Ibragim Ibragimov and Others v. Russia 28 August 2018

<https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22001-185293%22]}>

Perinçek v. Switzerland 15 October 2015 (Grand Chamber)

https://hudoc.echr.coe.int/app/conversion/docx/pdf?library=ECHR&id=001-158235&filename=

Delfi AS v. Estonia 16 June 2015

<https://hudoc.echr.coe.int/app/conversion/pdf/?library=ECHR&id=001-155105&filename=001-155105.pdf>

National Socialist Party v. Skokie, 432 U.S. 43 (1977)

<https://supreme.justia.com/cases/federal/us/432/43/>

Virginia v. Black et al (2003)

<https://supreme.justia.com/cases/federal/us/538/343/>

Israel’s Efforts to Limit Use of Holocaust Terms

<https://www.nytimes.com/2014/01/16/world/middleeast/israels-efforts-to-limit-use-of-holocaust-terms-raise-free-speech-questions.html>

Germany's top court rules against Facebook on users' data

https://www.dw.com/en/germanys-top-court-rules-against-facebook-on-users-data/a-

UNHCR Handbook on Procedures, Para 1-168

<https://www.unhcr.org/4d93528a9.pdf>

<https://www.un.org/en/sections/issues-depth/refugees/>

Michael Kagan: Refugee Credibility Assessment and the “Religious Imposter” Problem: A Case Study of Eritrean Pentecostal Claims in Egypt

<https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1917592>

[Ireland - High Court, 27 April 2012, H.M v Minister for Justice and Law Reform, [2012] IEHC 176](http://www.asylumlawdatabase.eu/en/case-law/ireland-high-court-27-april-2012-hm-v-minister-justice-and-law-reform-2012-iehc-176#content)

<https://www.asylumlawdatabase.eu/en/case-law/ireland-high-court-27-april-2012-hm-v-minister-justice-and-law-reform-2012-iehc-176>

[Sweden - Migration Court of Appeal, 30 November 2011, UM 7850-10](http://www.asylumlawdatabase.eu/en/case-law/sweden-migration-court-appeal-30-november-2011-um-7850-10#content)

<https://www.asylumlawdatabase.eu/en/case-law/sweden-migration-court-appeal-30-november-2011-um-7850-10>

Hathaway, James C- William S. Hick: Is there a Subjective Element in the Refugee Convention's Requirement of 'Well-Founded Fear'?

<https://repository.law.umich.edu/cgi/viewcontent.cgi?article=2481&context=articles>

Credibility assessment manual 1-2, Hungarian Helsinki Committee

<https://helsinki.hu/wp-content/uploads/Credibility-Assessment-in-Asylum-Procedures-CREDO-manual.pdf>

Hathaway, James C.: Is there a Subjective Element in the Refugee Convention's Requirement of 'Well-Founded Fear'?

https://repository.law.umich.edu/cgi/viewcontent.cgi?article=2481&context=articles

# White South African man not a legitimate refugee, judge says

https://www.theglobeandmail.com/news/national/white-south-african-man-not-a-legitimate-refugee-judge-says/article1315387/

Julianna Beaudoin - Jennifer Danch: No Refuge: Hungarian Romani Refugee Claimants in Canada

https://digitalcommons.osgoode.yorku.ca/ohlj/vol52/iss3/1/

 [Gender-based asylum claims and non-refoulement: Articles 60 and 61 of the Istanbul Convention](https://rm.coe.int/conventionistanbularticle60-61-web/1680995244).

<https://rm.coe.int/conventionistanbularticle60-61-web/1680995244>

# CJEU: Case C‑472/13 Andre Lawrence Shepherd v Bundesrepublik Deutschland, 26 February 2015

# <https://www.asylumlawdatabase.eu/en/content/cjeu-case-c%E2%80%9147213-andre-lawrence-shepherd-v-bundesrepublik-deutschland-26-february-2015>

**Presentations:**

1. **McCleskey v. Kemp**
2. **Floyd v. City of New York**
3. **the refugee protection legal regime**
4. **Hate speech: The general question and the legal framework (ECRI, EU Framework decision, facebook vs Germany, etc.)**
5. **Giniewski v. France  (2006)**
6. **Ibragim Ibragimov and Others v. Russia 28 August 2018**
7. **Perinçek v. Switzerland 15 October 2015 (Grand Chamber)**
8. **Delfi AS v. Estonia 16 June 2015**
9. **National Socialist Party v. Skokie, 432 U.S. 43 (1977)**
10. **Virginia v. Black et al (2003)**

**Class 9. November 22. Special legal regimes III. The political representation of minorities and ethnic registers. Abstract for final paper and presentation due.**

*Mandatory readings*

Andrew Reynolds: Reserved Seats in National Legislatures: A Research Note, Legislative

Studies Quarterly, Vol. 30, No. 2 (May, 2005), pp. 301-310

https://onlinelibrary.wiley.com/doi/abs/10.3162/036298005X201563

*Recommended readings*

Lucy Claridge: Discrimination and political participation in Bosnia and Herzegovina Sejdic and Finci v. Bosnia and Herzegovina, MRG, pp. 1-8

[*https://minorityrights.org/wp-content/uploads/old-site-downloads/download-787-Briefing-Paper-Discrimination-and-political-participation-in-Bosnia-and-Herzegovina.pdf*](https://minorityrights.org/wp-content/uploads/old-site-downloads/download-787-Briefing-Paper-Discrimination-and-political-participation-in-Bosnia-and-Herzegovina.pdf)

Advisory committee on the FCNM commentary on the effective participation of persons belonging to national minorities in cultural, social and economic life and public affairs

<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016800bc7e8>

Venice commission Report on electoral rules and affirmative action for national minorities’ participation in decision-making process in European countries, 2004, pp. 1-18

<https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2005)009-e>

Sejdic and Finci v. Bosnia and Herzegovina

http://hudoc.echr.coe.int/app/conversion/pdf/?library=ECHR&id=001-96491&filename=001-96491.pdf&TID=igauxmghdq

Pilav v. Bosnia and Herzegonvina

https://international.vlex.com/vid/pilav-v-bosnia-and-642250905

Collateral Damage of the Dayton Peace Agreement: Discrimination Against Minorities in Bosnia and Herzegovina, Twenty Years On, Minority Rights Group International, 2015

Bosnia and Herzegovina: Ethnic Discrimination a Key Barrier

<https://www.hrw.org/node/336681/printable/print>

The Hungarian Minority Self-Government System as a Means of Increasing Romani Political Participation

**Presentations:**

1. **Models of participation (Venice Commmission, FCNM AC)**
2. **Sejdic and Finci v. Bosnia and Herzegovina, Pilav v. Bosnia and Herzegonvina Rice v. Cayetano, Morton v Mancari**
3. **The Hungarian Minority Self-Government System**

**Class 10-11. November 29. Double session, class roundtable: national reports and case studies**

Students need to concisely prepare a presentation on a chosen topic critically analyzing readings, or a case study or a country report. The presentation needs to be 10 minutes (timing will be strictly monitored) and be accompanied by a power point presentation (which needs to be 10 slides, excluding cover, references and end slide). The content or topic of the presentation can be linked to the final paper.