



# **EUROPE AT THE EDGE OF PLURALISM**

## **Legal Aspects of Diversity in Europe**

**13-14 JUNE 2013 POZNAN, POLAND**

**CALL FOR PAPERS**



## International Conference

### Europe at the Edge of Pluralism: Legal Aspects of Diversity in Europe

13–14 June 2013, Poznan, Poland

#### Speakers

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Prof. Roman Wieruszewski (Director of the Poznan Human Rights Centre, former vice-President of the UN Human Rights Committee)

Prof. Kimmo Nuotio (Dean of the Law Faculty, University of Helsinki)

Prof. Zdzisław Kędzia (Head of Chair of Constitutional Law, Faculty of Law, Adam Mickiewicz University in Poznan)

Prof. Kristin Henrard (Professor of Minority Protection, Erasmus School of Law, Erasmus University Rotterdam)

Dr Maria-Teresa Gil Bazo (Lecturer in Law, Newcastle Law School) - tbc

#### Organisers:

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- Poznan Human Rights Centre, Polish Academy of Sciences
- Faculty of Law, University of Helsinki

#### Introduction

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Recent social and political changes in European societies pose many theoretical and practical questions concerning different notions of pluralism in Europe. Lately this debate on pluralism and multiculturalism has focused on issues dealing with the very identity of Europe and its future developments. It centres on such legal areas as protection of human rights, constitutional aspects of European integration, regulation of migration and European citizenship, as well as inclusion of minorities. It reveals tensions between cultural and constitutional pluralism which reverberate in evolution and interpretation of EU law, international law, and domestic law. Both the European Court of Human Rights and the Court of Justice of the European Union more frequently face cases where they must strike a balance between conflicting constitutional traditions and developing European approaches. Recent cases, such as *Kadi and Al Barakaat International Foundations v. Council of the European Union*, *Lautsi v. Italy*, or *M.S.S. v. Belgium and Greece* go to the very heart of relationships between different legal regimes. At the same time, the equally important issues of inclusion and rights protection risk being pushed to the margins.

This conference seeks to address theoretical and practical responses of European legal systems to the problems posed by the era of diversity. Is Europe prepared to respond to these challenges in an inclusive and pluralistic manner?

The Conference solicits proposals for papers that address any of the following themes:

1. *Multiculturalism – A New Identity for Europe?*
2. *Migration Law, Human Rights and Beyond*
3. *National minorities in Europe – A Need to (Re)Define?*
4. *Religion in a Diverse Europe – Between Identities and Freedom of Conscience?*
5. *Hate Speech Dilemmas in a Diverse Europe*
6. *Europe – Identities, Memory and Law*
7. *Borders of Pluralism*

Abstracts of maximum 300 words, including name and affiliation, should be submitted by **Friday 15<sup>th</sup> of February 2013** to [law-diversity-conference@helsinki.fi](mailto:law-diversity-conference@helsinki.fi) with an indication of the panel to which the abstract is proposed.

Authors of selected abstracts will be notified by 15<sup>th</sup> of March 2013.

Full-length papers (max 5000 words) should be submitted by 31<sup>st</sup> of May 2013.

More information available at [www.helsinki.fi/law/research/diversity\\_conference.html](http://www.helsinki.fi/law/research/diversity_conference.html)

## **Panels**

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### **1. Multiculturalism – A New Identity for Europe?**

***Persons responsible: Dr Massimo Fichera, Faculty of Law, University of Helsinki***

As a result of increased migration to the EU, both internal and external, European states are ceasing to be monocultural and are increasingly diverse. The effects of this phenomenon reverberate in the interpretation of regional human rights documents, the evolution of EU law and changes in domestic law. But multiculturalism is often presented as a challenge for the liberal democratic understanding of universally recognised human rights and neutralism and often problematised as a legal conflict relating to ethnicity, language or religion. Moreover, discussion of multicultural coexistence is affected by the growing pluralism of different legal regimes enjoying jurisdiction in the same territory, as well as the resistance of European countries to initiatives and judgements taken on a European level, designed to enhance pluralism and diversity.

This session seeks to analyse theoretical and practical problems related to multiculturalism in Europe understood in its broadest sense (i.e. beyond its purely institutional dimension as the EU) such as:

- How to understand equality in a multicultural society?
- How can and should the European legal system(s) respond to the conditions of cultural pluralism?
- Does a conceptualisation of European identity in legal-cultural terms make any sense?

## **2. Migration Law, Human Rights and Beyond**

*Person responsible: Dr Magdalena Kmak, Faculty of Law, University of Helsinki*

Even though immigration remains one of the most important issues in contemporary Europe, the policy of the EU towards migration is fraught with paradoxes. On the one hand, it is involved in production of the freedom of movement, which is perceived as one of the most important benefits of the European project. On the other hand, we can observe an increased focus on coercive measures applied towards certain categories of third-country nationals, especially those coming from poor and developing countries, aiming to restrict their freedom of movement and deprive them of most basic rights.

Protection of the rights of immigrants has been traditionally limited by the reference to the rights of states to enforce their sovereign powers and decide who may enter and reside on their territory. In consequence, the relationship between human rights and migration law can be characterised as one of constant negotiation between the preferences and obligations of states. On the other hand, critical approaches to migration and human rights go beyond such an understanding of the role of rights as being external to power and see them as constituting its inherent part. This dialectics between rights and power is illustrated by human rights' dependence on the state, which effectively compromises their universality.

This session seeks to analyse different ways of managing migration movements in the EU, in particular by looking at various aspects of the relationship between human rights and migration. We welcome abstracts addressing the following issues from both theoretical and practical legal perspectives:

- Can the EU effectively control migration and at the same time respect its human rights obligations?
- What are the relations between human rights and migration in the light of recent legal and political developments in European Union?
- What new forms of rights can be conceived in relation to migration?

## **3. National Minorities in Europe – A Need to (Re)Define?**

*Person responsible: Ms Grażyna Baranowska, Poznan Human Rights Centre*

Minority rights protection has a long tradition in Europe and is embraced by more states as time passes. However, it has always been restricted to certain minorities and rights. Despite the fact that the scope and beneficiaries of protection differ from country to country, its essence seems now to be widely accepted in Europe. Due to increased internal and external migration to the EU, newly formed national and ethnic minorities are becoming a sensitive issue for Europe. Many states hesitate to recognise those groups as minorities and therefore fail to grant them rights accorded to other minorities. In this context the lack of an agreed definition of a national minority at the European level is becoming a pressing problem.

Issues for the conference debate:

- Legal status of minorities composed of immigrants – what kind of status are they granted? Is there any possibility of a unified status in Europe?
- Political and cultural rights of national minorities
- Is it beneficial to distinguish between religious and national minorities?

## **4. Religion in a Diverse Europe – Between Identities and Freedom of Conscience?**

*Person responsible: Dr Dorota Anna Gozdecka, Faculty of Law, University of Helsinki*

The relationship between religion, identities and democracy in Europe has proven to be complex and moulded into a wide variety of divergent rules and practices. In legal discourses on inclusion freedom of religion occupies a pivotal position. In recent years, due to the growing diversity of European societies, this freedom has received increased attention. Problematic cases such as *Lautsi v. Italy* or *Sahin v. Turkey* illustrate how the complexity of the European legal landscape makes reaching a consensus regarding interpretation of terms such as ‘state neutrality’ or ‘religious pluralism’ extremely challenging. In Europe, reactions to religious garments, religious symbols and other signs of presence of religion in the public sphere reveal the depth of normative conflicts, which touch upon the very core of freedom. Divergent approaches to the core of freedom of religion have led to many simplifications in interpretation of notions such as democracy, equality, tolerance or secularism. In these diverse discourses it is often the inclusion, which remains secondary and identities of religious or non-religious ‘others’ that remain without adequate recognition.

This session seeks to address the following problems:

- What are the problems of interpretation of religious freedom in Europe?
- Does ‘state neutrality’ adequately respond to an increasingly pluralist world?
- Can law adequately respond to the need of inclusion and protection of religious minorities?

## **5. Hate Speech Dilemmas in a Diverse Europe**

*Person responsible: Dr Aleksandra Gliszczyńska-Grabias, Poznan Human Rights Centre*

Undoubtedly, there is an inextricable interdependence of freedom of speech and democracy. This fundamental freedom is a must in every democratic state. However, in today’s diverse and multicultural Europe, indicating the boundaries of free speech remains an increasingly topical issue, particularly in regard to the propagation of ‘hate speech’ and ‘extreme views’. Moreover, the question about the hierarchy of conflicting rights and values arises whenever the issue of restricting an individual freedom indispensable for democracy comes under discussion. These issues make for an important dilemma, not only for those dealing with the legal dimension of ‘hate speech’ but also for others interested in public life and debate within democratic, multiethnic and multinational societies. There is a need for an in-depth analysis of the essence of the conflict between freedom of speech and the necessity of protecting other rights and other values. In this context the “other rights and values” are especially those connected with the protection of minority rights and respect for minorities’ culture, religion and traditions.

Issues for the conference debate:

- Boundaries of free speech – when the critique ends and hate starts
- Extreme political parties and organisations in Europe and their ‘hate propaganda’ towards minorities – what consequences for the legislation?
- Legal and social instruments of counteracting ‘hate speech’ in Europe

## **6. Europe - Identity, Memory and the Law**

***Persons responsible: Dr Monica Lopez Lerma, Dr Stiina Löytömäki, Faculty of Law, University of Helsinki***

In light of current debates concerning European identity and the proliferation of politics of memory in various European countries, in particular with regard to 'dark aspects' of the European past, this session explores interrelations between memory, law and identity politics. Despite the rich body of research concerning memory and memorial practices, the questions of how memory is expressed in the legal realm require more consideration. The law is increasingly invoked both in the construction of the past as a series of injustices and in efforts to seek acknowledgment and reparation for past wrong-doing. A certain 'cosmopolitisation' of human rights also seems to have set a standard according to which both the past and different efforts to deal with the past are to be evaluated. The seminar will encourage discussion of these issues from a historic perspective, looking at what traces of an irredeemable past can still tell us about the present condition of law in Europe.

Issues for the conference debate:

- What is the relationship between national memories, European memory and the construction of a European identity?
- Why is the role of law so prevalent in present-day memory and identity politics?
- What or who should be the agents of memory—law, citizens, the EU? How and who should decide which memories to recover and which should be passed over in silence?
- How is collective identity formed, sustained, and transformed, and what role do memory and forgetting play in this process? Should we have a duty to remember past crimes in Europe?

## **7. Borders of Pluralism**

***Persons responsible: Mr Ukri Soirila, Ms Margareta Klabbers, Faculty of Law, University of Helsinki***

Europe is constructed of countless borders, be they concrete or virtual— borders that pluralism is usually understood to cross, both inside and between states. Yet plurality also requires drawing new borders between plural systems and groups with their own views of the good life. This stream seeks to analyse what happens at the myriad thresholds of the pluralist Europe. According to Giorgio Agamben, the primary function of the sovereign is to trace the threshold between inside and outside. While pluralism is usually understood to challenge sovereign power, pluralism can also increase the margin of discretion of national authorities who are supposed to reconcile competing views and interests. This is the case with the margin of appreciation doctrine of the European Court of Human Rights, for example. Rather than giving birth to new political actors, pluralism may, therefore, end up legitimating the nearly unlimited decision-making power of certain experts, and turning political conflicts into learned governance. Instead of the included and the excluded, this session concentrates on those on the threshold between inside and outside – those who are included only through their exclusion, such as unidentified victims of human trafficking, human beings on the threshold between national borders or applicants that try to challenge the views of governments regarding fundamental aspects of human life.

Issues for the conference debate can include but are not limited to:

- Law, geography and territorial/jurisdictional thresholds
- Politics vs. policing/governance of pluralism
- Biopolitics and the borders of human life