

29th World Congress of the International Association for Philosophy of
Law and Social Philosophy (IVR)
7 -13 July 2019, University of Lucerne, Switzerland
Dignity, Democracy, Diversity

Special Workshop 61

(UN)CHANGING IDEAS OF EQUALITY AND LIBERTY AND THEIR CONTEMPORARY LEGAL MEANING

Convenors: Gülriz Uygur, Jasminka Hasanbegović, Ana Dimiškovska, Konstantinos Papageorgiou.

Wednesday 10 July, 16.00-20.00, HS 2

From antiquity onwards, the idea of equality in the social, legal and political context has been treated as closely connected to the ideas of morality and justice. The concept of equality, moreover, is related to another fundamental philosophical and legal idea – that of liberty and human dignity – in a complex and multidimensional way. Thus, according to some opinions, they are inseparable one from another, because, it is argued, in the absence of equality, liberty or dignity has no real value. According to the others, however, liberty and equality are antagonistic to each other. Having in mind the different social consequences that result from different understanding of the concepts of equality, liberty and dignity, and of their mutual relationship, the main idea of this workshop is to contribute to the clarification of their contemporary legal meaning in the light of the most influential current theoretical as well as practical legal stances.

The elaboration of the topic includes (but it has not been exhausted by) theoretical, jurisprudential, as well as practical and case approach to equality, equity, liberty, freedoms, rights, or dignity within a certain frame of analysis. It encompasses various fields, such as gender issues, rule of law concerns, civil procedure, tax law, moral autonomy, international environmental law, global justice, secular state law, freedom of conscience, international watercourse law, uneven geographies, relational autonomy, etc.

Keywords: Equality, Liberty, Freedom, Dignity, Legal/Social Meaning thereof.

LIST OF SW 61 PARTICIPANTS WITH THEIR PRESENTATIONS TOPICS

1. Gülriz Uygur, *Gender Equality: the Problem of Gender Ideology*
2. Isabel Trujillo, *Liberty and Equality as the Morality of the Rule of Law*
3. Konstantinos Papageorgiou, *Moral Equality and beyond: A Diagram of Issues*
4. Ana Dimiškovska, *“All People Are Equal, but Some Are More Equal than Others”:
Presumption of Equality and Distributive Justice*

5. Nevhis Deren-Yildirim, *The Principle of Equality of Arms in Civil Procedure*
6. Funda Başaran Yavaşlar, *Ability to Pay Principle as Tool for Equality in Tax Law*
7. Vassilis Voutsakis, *Moral Autonomy and Liberty*
8. Bojana Čučković, *From Equality towards Equity and Differentiated Responsibilities – A Contemporary International Environmental Law Perspective*
9. Kostas Koukouzelis, *Global Justice and Equality*
10. Marko Božić, *Equality, Liberty and Dignity: Their Specificities from Secular State Perspective*
11. Anne Kühler, *Freedom of Conscience and Equality*
12. Mihajlo Vučić, *Access to Water in the Context of the International Watercourse – A Theory of the Community of Interest*
13. Vassiliki Christou, *Equality of Opportunity and the Just City: Correcting Uneven Geographies*
14. Nadire Özdemir, *A Challenge to the Liberal Understanding of Personal Autonomy: Relational Autonomy*
15. Milica Novaković, *Boys in the Age of (Formal) Equality: The Curious Case of Khamtokhu and Aksenchik*
16. Jasminka Hasanbegović, *Academic Freedoms and Dignity: The Curious Case of John Finnis*

SW 61 PARTICIPANTS' ABSTRACTS

61 SW 1 - Professor Dr. **Gülriiz Uygur**
Ankara University School of Law, Ankara, Turkey
gulrizuygur@gmail.com guygur@law.ankara.edu.tr

GENDER EQUALITY: THE PROBLEM OF GENDER IDEOLOGY

At the present time, gender ideology, or anti-gender activism, threatens gender equality and tends to dominate in every part of the world (Poland, France, US, Colombia, Turkey, etc.). As a reaction against the rights of women and gender minorities, it argues that feminist and

LGTBI+ movements subvert traditional family and social values. The main problem is how to defeat this ideology. Since this ideology generally has religious or conservative basis, it is very difficult to fight against it. In Turkey, similar to European countries, defenders of this ideology have been mobilized against the Istanbul Convention. They claim that it legitimizes LGBTBI+ rights and destroys the family. In this paper, the author will make an attempt to discuss what should be done nowadays in order to deal with this problem in the context of universities.

61 SW 2 - Professor Dr. **Isabel Trujillo**
University of Palermo, Italy
isabel.trujillo@unipa.it

LIBERTY AND EQUALITY AS THE MORALITY OF THE RULE OF LAW

The paper is based on the possibility of identifying a specific legal balance between liberty and equality, different from political settings and some theoretical perspectives admitting their opposition. The framework is the institutional tradition of liberalism. The challenge is to show how the main features of the rule of law as the heart of the concept of law satisfy some demands of liberty and equality in a specific way. This aim is pursued analyzing different readings of the rule of law.

61 SW 3 - Professor Dr. **Konstantinos Papageorgiou**
National and Kapodistrian University of Athens Law School, Athens, Greece
albericogentili@gmail.com

MORAL EQUALITY AND BEYOND: A DIAGRAM OF ISSUES

Equality is a value inextricably connected with our common political and moral life and it is rightly viewed as a foundational virtue of democratic polities. But, even if so fundamental a value, it is not always clear *why* and *how* exactly we have a claim to be treated as equals and *what* this claim implies. Philosophers through the ages have exploited and put the idea to use for many different purposes. To pick only one example: In Aristotle's case equality was not thought of as a faculty of persons but was rather a requirement of just exchange and distribution.

In recent decades' many seminal contributions by distinguished philosophers have exploited the ground made fertile by John Rawls. Despite this very detailed, sometimes almost esoteric, debate there still seems to be many issues unsettled to an extent that one wonders if we have made any progress at all in solving any of them. Why and how are we equal and if so, then what does «equality» entail for moral agents and citizens?

In this paper, inspired to a certain extent by critics of Luck Egalitarianism, I will try to sketch a rough diagram of issues in the hope of preparing the ground for a fairer but also more plausible conception of equality. A question lurking from the very beginning concerns the so-called

problem of the *basis of equality*, which has been raised a long time ago by Bertrand Williams and others and has been taken up recently by Jeremy Waldron. If what makes us capable of moral personality is so disparately distributed in each one of us then what is the necessary «threshold» for saying that we are worthy to be treated as equal moral persons? If we are *de facto* so different and what renders us equal is represented in each one of us to such a diverse degree, then how can we share the common features that render us capable of equal moral personality? We will not have time to properly deal with this problem but hopefully we will have something to say towards the end of the paper.

But even if we take a notion of moral equality for granted we will still have to bridge the idea of moral equality of persons with the expectation to be treated as equals by others and most importantly by the state. In my paper I would like to explore a way the idea of moral personality triggers and informs our claim to equality but at the same time I will hope to be able to reveal and then accommodate an interesting difficulty, namely the relatively limited scope of the argument from moral personality to a more complex equality. If moral personality cannot carry the full weight, then we must either downplay our hopes of finding the right fit between our claim to equality and the state's duty or must seek an alternative justification for our claim. My initial intuition is that the moral personality approach lacks an aspect whose absence seems critical for many egalitarian theories. On the other hand moral personality seems to be the only point of entry for an egalitarian argument with normative import. Is there a way to avoid this dilemma?

61 SW 4 - Professor Dr. **Ana Dimiškovska**

Ss. Cyril and Methodius University Faculty of Philosophy, Skopje, North Macedonia

ana@zf.ukim.edu.mk

“ALL PEOPLE ARE EQUAL, BUT SOME ARE MORE EQUAL THAN OTHERS”: PRESUMPTION OF EQUALITY AND DISTRIBUTIVE JUSTICE

The well-known Aristotle's formulation according to which justice is preserved when equals are treated the same, and unequals are treated differently, expresses what is known as “the formal principle of justice”. However, the aspects and the degree in which individuals, groups and situations are equal or unequal to one another must be determined in a specific and justifiable way in every particular legally relevant occasion.

In this paper, an attempt is made to explore some aspects of the conceptual connection between the ideas of equality and justice, putting the emphasis on the distributive justice - the kind of justice that expresses the proportional or relative form of equality (“giving everyone his/her due”). The main point of the paper is to elaborate on some paradoxical aspects of the concept of equality in distribution of social goods and burdens, based on its relational nature, on the one hand, and on its normative and axiological implications, on the other.

The presumption of equality, understood as “a *prima facie* principle of equal distribution for all goods politically suited for the process of public distribution” (Gosepath, 2007), is usually regarded as a plausible starting point for constructing a theory of distributive justice (*ibid.*). Such a theory should provide a substantialization of the formal and procedural character of the presumption of equality, by specifying the objects and the recipients of the just distribution, as

well as the circumstances in which there can be exceptions to equal distribution or justifiable forms of inequality. The problem of criteria of justification of inequality in distribution is the focal point of the analysis in the paper. This is due to the fact that this problem is not only one of the main points of disagreement between the representatives of different theories of distributive justice, but also the ground on which, in practical circumstances, some people and groups of people are indeed treated, expressed in an Orwellian manner, as “more equal than others”.

61 SW 5 - Prof. Dr. **Nevhis Deren-Yildirim**
Koç University Law School/ Istanbul, Turkey
nyildirim@ku.edu.tr

THE PRINCIPLE OF EQUALITY OF ARMS IN CIVIL PROCEDURE

The Criminal Law and the Administrative Law are more familiar with the expression of “Equality of Arms” than the private law is. Article 6 Paragraph 1 of the European Convention on Human Rights guarantees the equality of arms indirectly. The European Court of Human Rights (=ECtHR) suggests that the requirement of equality of arms is the most significant one among the principles concerning the notion of a fair hearing in cases concerning civil rights and obligations (27 October 1993, No: 14448/88). The European Court of Justice (=ECJ) imported it in its Eurofood v Italy decision (Case 341/04 Eurofood IFSC Ltd., on May 2 2006) to insolvency proceedings. But neither the Swiss Civil Procedure Act nor the Turkish Civil Procedure Act do not contain an explicit provision on the principle of equality of arms. Nevertheless, civil procedure lawyers tend to highlight the constitutional characteristics of the Civil Procedure Law in the recent years.

The Court fees, the cross-appeal, the defendant’s answer, counter-claim, the impartiality of the judge, the protection the foreign parties in the trial, the representation by an advocate, the notification, the burden of proof are among the issues which are in touch with the principle of equality of arms in the civil procedure.

The UNCITRAL Model Law on Commercial Arbitration lays down an explicit provision about the principle of equality of arms, so the Turkish International Arbitration Act and the Civil Procedure Act in the part of domestic arbitration, too.

The origin of the principle of equality of arms is brought into connection with the principle of equality, the fair trial, the (social) equality of chances, the fairness, the right to be heard, the principle of social state, etc. by the doctrine. Consequently, these various connections render the origin of the principle controversial.

ABILITY TO PAY PRINCIPLE AS A TOOL FOR ENSURING EQUALITY IN TAX LAW

In a rule of law, the equality is the principle to be applied in the implementation of justice. The principle of equality is guaranteed by an explicit regulation almost in all constitutions of the states. It is clear that this principle, which is mandatory for all fields of law, should be applied in tax law in order to provide tax justice.

The principle of equality in the decisions of the Constitutional Court orders that those with equal legal status should be treated equally, and those with different legal status - in accordance with this difference - should be treated differently. Therefore, it is forbidden to treat people who have different legal statuses equally, and to treat those with equal legal status differently. The principle of equality is divided into two as the principle of substantive equality and procedural equality. While the principle of procedural equality requires the existence of legal rules and administrative practice to ensure that the rules of substantive law are applied equally to all, the principle of substantive equality is related to the equal treatment of all persons with equal legal status. The criterion which reveal people who have equal legal status and who have different legal status in tax law is the financial power which is acquired from public finance field. In this context, the principle of substantive equality is presented in the tax law as the ability to pay principle: people with equal ability to pay have equal legal status and must be taxed equally; but those with different ability to pay have different legal status and should therefore be taxed differently.

This constitutional principle, which is compulsory for all types of taxes, is explicitly provided in the constitutions of many states. In countries where this principle is not explicitly provided in constitution, this principle has been accepted as the fundamental principle of a tax system in accordance with the tax justice on the basis of equality principle. It cannot be expected from anyone to pay taxes on a hypothetical ability to pay that he/she does not really have. The principle is not concerned with whom, where and how financial ability is achieved. It merely considers the height (amount) of financial ability and it orders the equal taxation of those with equal financial ability.

Financial ability is the income that the taxpayer can save and use as it wishes. Therefore, it is unacceptable that the expenses associated with the acquisition of revenue and the expenses for suitable life in human dignity represent financial ability.

The ability to pay principle is a principle that should be considered in terms of all tax types. In particular, it has a great influence to determine the tax object and tax base. However, it should be accepted in taxes on income and wealth, especially in income tax. It has a more limited application area in taxes on expenditures. However, when we consider the tax burden accumulated in the middle and low-income people in many countries, especially in recent years, it is necessary to apply the principle better in the value-added tax first, which is the general expenditure tax. The VAT and SCT system in many countries is completely contrary to tax justice.

61 SW 7 - Associate Professor Dr. **Vassilis Voutsakis**
National and Kapodistrian University of Athens Faculty of Law
vvoutsak@law.uoa.gr

MORAL AUTONOMY AND LIBERTY

According to deontology, autonomy cannot be but moral and hence it should obey to rational principles. On the other hand, rights include, among others, the right to do moral wrong; thus rights encompass personal rather than moral autonomy. The question is whether these two notions, personal autonomy and moral autonomy, should be radically distinguished from each other.

A possible answer might be traced in the works of Kant and Hohfeld. On the one hand, Kant supported that, although you might do something morally evil, others are not entitled to judge you. On the other hand, Hohfeld distinguished among liberties, claims, powers and immunities: although you might be under the moral obligation to do the right thing, you also have the moral liberty against the others not to interfere with your doing it.

61 SW 8 - Associate Professor Dr. **Bojana Čučković**
University of Belgrade Law Faculty, Belgrade, Serbia
cuckovic@ius.bg.ac.rs

FROM EQUALITY TOWARDS EQUITY AND DIFFERENTIATED RESPONSIBILITIES - A CONTEMPORARY INTERNATIONAL ENVIRONMENTAL LAW PERSPECTIVE

In an international community consisted of unequal States, equity may be perceived as a substitute for equality. However, even though equality and equity are present through various emanations in general international law, their evolution appears to be rather authentic whereas the use of equity and differentiated responsibilities instead of equality and equal responsibilities seems to be most frequent in international environmental law (IEL). The subject matter of the analysis will be the relationship between the principles of equality, equity and differentiated responsibilities in the specific context of international law for the protection of the environment. By tracing these three principles throughout the texts of relevant international environmental instruments and agreements, the author would argue upon a number of claims.

The first claim is that the evolution of the relationship between equality and equity in IEL is a reverse one as compared to general international law. Namely, in international law, the principle of sovereign equality came to life rather late and was born out of obvious inequalities that existed between States in an attempt to disguise substantive inequalities by proclaiming formal equality. In IEL, to the contrary, the principle of equality represented a starting point stipulated in the 1972 Stockholm Declaration on Human Environment, which, twenty years later, was

substituted by the principles of equity and ‘common but differentiated responsibilities’ (CBDR). The 1992 Rio Declaration on Environment and Development did not refer to the principle of equality but instead relied abundantly on equity and provided for the first and most famous recognition of the CBDR principle by stipulating that not all States contributed to the present environmental degradation in the same manner and that, therefore, not all States should have the same commitments towards both the environment and each other.

The second issue to be analyzed concerns the modes of integrating Rio principles of equity and differentiated responsibilities into specific international environmental agreements, with a particular focus on the international climate change regime, protection of the ozone layer, biological diversity and international watercourses. Although relevant provisions of the respective conventions all aim at achieving equity among contracting parties, the author will argue that differentiation through which equity is to be achieved is multiple and can be identified at various levels. Firstly, there appears to be a differentiation at the level of primary treaty norms and differentiation at the level of their implementation. Secondly, differentiation may encompass a group of States or may be established between countries on an individual basis, independently of the common characteristics that they share with other countries. Thirdly, regarding the very basis for differentiation, differentiated responsibilities of contracting parties may be considered to be based on the principle of common but differentiated responsibilities, whereas others could hardly be linked to this principle.

Moving along these considerations, the third matter to be questioned relates to the changes regarding the CBDR principle that were introduced by the 2015 Paris Agreement on Climate Change. Although some authors claim that differentiation through taking account of ‘particular conditions and capabilities’ of a contracting party may be considered as a novel element of the CBDR principle, the author will argue that such a solution may also be understood as an abolishment of the CBDR principle with regard to differentiation at the level of primary treaty norms, with its subsistence exclusively at the level of their implementation. If differential treatment is perceived as a means to achieve equity and equality, this detachment from CBDR may be understood as a necessity caused by the fact that circumstances have changed and that greater significance should be attached to current environmental and economic factors than to historical reasons.

The final claim is that, due to the novel solutions contained in the Paris Agreement, a change has occurred in contemporary IEL regarding the relationship between the principles of equality, equity and differentiated responsibilities. Namely, differentiation based on different national circumstances may only be understood as a direct application of the principle of equity and cannot be considered to emanate from the principle of common but differentiated responsibilities. Differentiation is no longer a separate principle of IEL through which equity is achieved between developed and developing countries in a world of substantive inequality. It rather became a constituent element of an insufficiently defined new concept of equity which is to be achieved through equally undefined and vague differentiation based on individual capabilities of each member of the international community.

61 SW 9 - Assistant Professor Dr. **Kostas Koukouzelis**
University of Crete Philosophy and Social Studies Department
koukouze@uoc.gr

GLOBAL JUSTICE AND EQUALITY

The paper wants to present and evaluate current discussions about global distributive justice, and to that extent, prospects about global equality, that is, whether the latter is desirable from a normative point of view, plus what should be its content. It proceeds by trying to locate the most plausible *grounding* of possible duties of global distributive justice. Starting with presenting critically Thomas Nagel's famous skepticism, it evaluates current proposals by distinguishing them into relational and non-relational alternatives. It subsequently defends a relational cosmopolitan grounding of our duties of justice (cosmopolitan republicanism), ultimately based on securing freedom conceived as non-domination. Furthermore, in relation to the *content* of those duties the paper suggests that equality of (natural) resources, equality of opportunity or equality of welfare cannot exhaust the content of our duties of global justice. Instead, we should look at eradicating domination, which means that equality should aim at securing a certain (political) status. Cosmopolitan republicanism, although it shares some of the insights of other proposals, occupies an intermediate position between 'weak cosmopolitanism', which aims to respect the conditions that are universally necessary for human beings to lead minimally adequate lives, and 'strong cosmopolitanism', which takes inequalities as such between persons across borders to be a concern of justice. It aims both to guarantee minimum conditions, and fight gross inequalities as long as they create dominating effects.

61 SW 10 - Assistant Professor Dr. Dr. **Marko Božić**
Union University Law Faculty, Belgrade, Serbia
bozicmr@gmail.com

EQUALITY, LIBERTY AND DIGNITY: THEIR SPECIFICITIES FROM SECULAR STATE PERSPECTIVE

It is commonly believed that the secularism is a standard of liberal-democratic constitutionalism. But what does this secularism really mean? At the constitutional level, all European countries are secular, meaning that the State is religiously neutral. But the following legal framework of these constitutional premises ranges from laical approach, where religion belongs strictly and exclusively to the private sphere, as in French political tradition, to so-called State churches, common in Scandinavian or Greek political tradition. Hence, the questions: What do constitutional acts recognize as a common denominator in this matter? Which kind of secular politics do they justify? How do Equality, Liberty and Dignity as

fundamental values affect these dilemmas once they are interpolated in constitutional discourse on secularism? These questions seem plausible in the light of old “law and religion” controversies but arise even more in conjunction with the current migrant and economic crisis and a threat of populist response on it.

61 SW 11 - Senior Assistent Dr. **Anne Kühler**
University of Zurich Law Institute, Zurich, Switzerland
anne.kuehler@rwi.uzh.ch

FREEDOM OF CONSCIENCE AND EQUALITY

Paradoxically, although freedom of conscience is regarded as a fundamental human or constitutional right, when it is not conceived to be a synonym for freedom of religion, its practical relevance is comparatively small. This has, among others, to do with the fact that this right is often invoked when exemptions from generally applicable laws are requested, as in the case of conscientious objection to military service. The aspect of opposition to state (or the law’s) authority that is often contained in claims of conscience renders the legal acknowledgment of freedom of conscience a difficult, highly controversial and markedly political issue and States have been very reluctant to the idea of granting such a right. Hence, current discussions on freedom of conscience focus on questions such as whether individuals should be exempted from generally applicable laws when they put forth claims of conscience, and who should be accomodated. A prominent view on this is that there should be no exemptions to general laws with neutral purposes at all, except for exemptions which do not shift burdens or risks onto others. However, I argue that the aspect of the burden that others in the community must bear is not the only important aspect of the problem.

61 SW 12 - Research Fellow Dr. **Mihajlo Vučić**
Institute of International Politics and Economics, Belgrade, Serbia
mihajlovucic@gmail.com

ACCESS TO WATER IN THE CONTEXT OF THE INTERNATIONAL WATERCOURSE – A THEORY OF THE COMMUNITY OF INTEREST

Theory of the community of interest is a framework for guidance of individual states’ use of the waters running through an international watercourse. The interest of a state that shares a

watercourse is to maximize its share of use and to keep as much sovereignty as it is possible in the course of this practice. Therefore a legal framework that limits one state's activities in order to secure access to water for all the users that rely on the watercourse for its supply is needed. This framework is employed as a general guidance for conclusion of individual treaties on management and use of particular watercourses. The author in this article presents the key elements of the community of interest theory, its legal status in public international law, the manner of its implementation in individual treaties and other sources of international water law, and concludes that this theory serves as the best available legal vehicle to secure free access to water as an individual human right, and equal access to water of dependable communities from the opposite sides of states' borders.

61 SW 13 - Attorney at Law Dr. **Vassiliki Christou**
University of Athens
vchristou@outlook.com.gr

EQUALITY OF OPPORTUNITY AND THE JUST CITY: CORRECTING UNEVEN GEOGRAPHIES

Geography may affect real opportunities one may need to accomplish her life plan. Geography may produce inequalities in that respect. Although most of us would agree that such inequalities ought to be treated as a matter of injustice in the basic framework of a society, in other words as a constitutional matter, it is less clear how far state, i.e. the legislator, may intervene to cure or prevent from spatially determined inequalities.

For example, after the seminal Supreme Court opinion *Brown v. Board of Education* (1954) against racial segregation at schools, the Supreme Court also had to rule, in *Brown II* (1955), that school busing was a constitutional obligation, because, without transferring pupils from "black" areas to "white" areas and "white" schools, the ruling of *Brown I* could not be enforced. Another, more contemporary question is whether city authorities should enforce fair housing policies subsidizing poor population to rent a home at more expensive areas, if this is more convenient for their life, e.g. if this is closer to work, to friends or relatives, and, in any case, if they so wish. Such a fair housing policy is against social segregation and, additionally, it promotes diversity.

However, both busing as well as subsidizing are not half effective egalitarian policies, if compared to acting proactively and designing a "just city" from the beginning. For example, instead of subsidizing a rent, one could contemplate facilitating all kinds of housing in each urban neighborhood, as well as diverse leisure and cultural options, and generally design a city in a more inclusive, rather than exclusive way. In that respect, I am viewing diversity not as a good in itself or as a cultural choice our society values, but as a way to accommodate equality, and more precisely equality of opportunities.

In this context, two, at least, issues have to be discussed. First, judicial control of diversity can only be marginal to avoid interference with democratic policy making and limit to antidiscrimination cases. Second, somebody could argue that diversity threatens to abolish particular ways of life, and, in that respect, it turns against specific opportunities or options one may wish to have. Therefore, it is important to distinguish between aspects of diversity that form part of the principle of equality and, in other words, are obligatory, and aspects that form part of a public policy open to democratic deliberation.

61 SW 14 - Research Assistant Dr. **Nadire Özdemir**
Ankara University Faculty of Law, Ankara, Turkey
naozdemir@ankara.edu.tr

A CHALLENGE TO THE LIBERAL UNDERSTANDING OF PERSONAL AUTONOMY: RELATIONAL AUTONOMY

Personal autonomy emerges as a concept frequently used in political, social and legal debates. It is constantly evolving in scope since its definition is the subject of an on-going discussion. Feminist scholars also contributed to this discussion with their reinterpretation of the meaning of autonomy and its importance in individuals' lives. Feminists have opposed the liberal understanding of autonomy, and suggested redefining it instead of a total rejection. This presentation aims to discuss this reformulation, as a challenge to the liberal understanding of personal autonomy. "Relational autonomy" that has roots in ethics of care is an alternative approach to the liberal theories that are based on abstract legal rights and rational human beings. This theory has the understanding that individuals develop and enjoy their autonomy within the context of their relationships with other individuals. After a short description of the concept, this presentation aims to discuss the contribution of relational autonomy to the agency theories in political philosophy and justice theories in jurisprudence.

61 SW 15 - Legal Consultant **Milica Novaković**, LL.B, LL.M. from Universities of Belgrade and Geneva Faculties of Law
milica.novakovic@mids.ch

BOYS IN THE AGE OF (FORMAL) EQUALITY: THE CURIOUS CASE OF KHAMTOKHU AND AKSENCHIK

This paper reports on the case of the European Court of Human Rights *Khamtokhu and Aksenchik v. Russia*. According to the Russian Criminal Code men aged under 18, women, and men older than 65 cannot be sentenced to life imprisonment for any offense. The applicants in

this case, both male aged between 18 and 65 at the time of sentencing, argued that there was no reasonable or objective justification for different treatment of the above listed categories and categories they belonged to, and complained that the fact that they had been sentenced to life imprisonment exposed them to discriminatory treatment on account of their sex and age, in breach of the European Convention of Human Rights. But, much to surprise of both the applicants and other interested in the outcome of the proceedings, the Grand Chamber of the European Court concluded that there was no discrimination either on account of sex or age in this case. Subject of this paper is the assessment and reasoning of the European Court regarding the alleged discriminatory treatment on account of sex. More particularly we will analyze the European Court's omission to make a difference between the categories of sex and gender, a confusion that caused later wrongful application of international sentencing standards and penological objectives, which consequently brought to the unexpected conclusion that there was a public interest for 'exemption of female offenders from life imprisonment by way of a general rule' in Russian legislation. The analysis will rely on the formal and substantive equality theories, as well as a necessity to distinguish between sex and gender in order to secure the most reasonable and objective adjudication in discrimination cases.

61 SW 16 - Professor Dr. **Jasminka Hasanbegović**
University of Belgrade Law Faculty, Belgrade, Serbia
hasanbegovic.j@gmail.com

ACADEMIC FREEDOMS AND DIGNITY: THE CURIOUS CASE OF JOHN FINNIS

This paper focuses – through the lens of the Finnis's case – on the search for answers to the questions: Where do the boundaries of academic freedom and free speech lie? Did Finnis overstep them with his “extremely discriminatory views against many groups of disadvantaged people” presented in his papers from 1992 to 2011 as it is said in the *Petition to stop John Finnis teaching at Oxford University because of his discrimination?* Are Finnis's views phobic? My main theses on this are: The boundaries of academic freedom and freedom of speech have not been overstepped, but these freedoms were abused. Some of these views, as abstractly expressed opinions, are phobic, but there is no tangible proof on any discriminatory or phobic behaviour by Finnis towards anybody.

The thesis on the abuse of academic freedom of speech is substantiated in three steps.

First, by defining the concept of the abuse of right (or freedom, or right to freedom) while distinguishing between the abuse and the overstepping or breach of rights.

Second, by reviewing what is and what is not a best academic practice in Finnis's use of the said freedom, while (a) indicating academic rules on teaching, some well-known even before Kant, especially the duty to discuss different and in particular opposite views and interpretations of a given subject, (b) examining a feasible scholarly rationale of Finnis's views on bestiality and the like, and (c) explaining the principal academic rule or duty to confine oneself to their

proper subject, discipline and its content matter, because Finnis is a professor of law and legal philosophy and not a professor of either Roman Catholic moral dogmatic theology, or Ethics of human sexual behaviour.

Third, and directly built on the previous, by discussing a sphere unregulated by law (German *rechtsfreier Raum*) in order to identify and explain where in the legal practice as well as theory one should place specific phenomena that Finnis discusses and takes views on, which are deemed as unacceptable by the signatories of the Petition in the Oxford academic community.

The paper ends by questioning of both the reasons and the morality of almost no reaction to Finnis's writings in the same academic and wider scholarly communities for thirty years, and the relevance of that silence to Finnis's academic responsibility.

SW61 PARTICIPANTS' EMAILS:

gulrizuygur@gmail.com guygur@law.ankara.edu.tr isabel.trujillo@unipa.it
albericogentili@gmail.com ana.dimishkovska@gmail.com ana@fzf.ukim.edu.mk
nyildirim@ku.edu.tr fundabasaran@hotmail.com vvoutsak@law.uoa.gr cuckovic@ius.bg.ac.rs
koukouze@uoc.gr bozicmr@gmail.com anne.kuehler@rwi.uzh.ch mihajlovucic@gmail.com
vchristou@outlook.com.gr naozdemir@ankara.edu.tr milica.novakovic@mids.ch
hasanbegovic.j@gmail.com