

The 10th International Spring Course “Crime Prevention through Criminal Law and Security Studies” (Dubrovnik, 11-17 March 2018)

From 11th to 17th of March 2018, the tenth edition of international spring course “*Crime prevention through criminal law & security studies*” was held at the **Inter University Centre in Dubrovnik**. This year, the course covered the topic of wrongful convictions and DNA exonerations, or what is also known as the “Innocence projects”. It is a process of a person being proved innocent post-conviction through DNA testing and evidence. With more than 15 distinguished lecturers from various countries, and 40 course participants, including young researchers and students, it was a chance to get a broad perspective on the subject as a result of diverse, interdisciplinary approach to the study of this problem. During the course, not only did the participants attain theoretical knowledge on the issue, but they also had an opportunity to put theory into practice and participate in the fourth **Adriatic Moot Court Competition**. Overall, it was an opportunity for everyone to expand their existing knowledge and learn something new.

The course started with an introductory speech from one of its directors, **Davor De-renčinović**¹. He addressed some basic issues concerning criminal law and human rights, and gave a brief overview of the history of the course and its general concept. The second lecture of the day was delivered by **Richard Farkas**², who discussed the political implications of innocence projects. To begin with, he emphasized the importance of DNA and the difference that scientific progress makes in the entire criminal justice system. It is undeniable that innocence projects correct the miscarriage of justice and ultimately result in overturning wrongful convictions, after innocent people have already been incarcerated for years. At the same time, professor Farkas pointed out that there is an inevitable erosion of public support as wrongful convictions undermine the faith of people in the justice system in general. It becomes visible that the system is flawed and not always able to track down the real perpetrator of the crime. However, this shouldn't be seen as a strictly negative consequence. Instead, it should provide a basis for a procedural reform that will correct current flaws, specifically those provisions regulating eyewitness identification, police conduct and false or coerced confessions, and the problems regarding evidence preservation and forensic oversight.

While the innocence projects have a crucial role in the American criminal justice system concerning the problem of wrongful convictions, **Hans-Jörg Albrecht**³ addressed their

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meaning in European, continental law systems. Unlike in the US, most European countries have well established instruments to prevent wrongful convictions. The large number of available remedies include an appeal, retrial, and other extraordinary remedies. Additionally, an individual can make an attempt to bring their case before their Constitutional court, and the European Court of Human Rights. Such re-opening of criminal proceedings represents a compromise between two principals: the rule of law, where the final decision is to be trusted; and the search for truth and justice in each individual case. However, there is always room for improvement, especially regarding the DNA analysis and the legislation that might not always follow the scientific development at the same pace.

Day two has started with an interesting lecture from **Sunčana Roksandić Vidlička** and **Marta Dragičević Prtenjača**⁴. They analyzed the innocence projects in the United States and other countries where they have been introduced. The power of DNA evidence has grown - and for a good reason. DNA analysis is more definitive and less subjective than any other forensic techniques. The main question is – can innocence projects in such way be invoked in Croatian legal system? Professors think that there is no reason why it should not find a wider application in Croatian legal system since it would give legitimacy to the justice system and proof that system is mature enough to correct its own mistakes.

Lecture of **Dragan Primorac**⁵ was inspiring for many reasons, but DNA benefits outside of law perspective was the most interesting part. We have learned that absence of evidence is not evidence of absence and that it's the easiest to find out whether DNA sample belongs to a male or a female. We can even predict the age of a perpetrator (regarding the error of 9 years), his eye color, location of the sample... Today you can even discover your origin within this technology as well as the appearance and possible illnesses. Finally, he talked about how the identification cases of 90's mass graves in Croatia have been conducted.

Besa Arifi⁶ was talking about the innocence projects in Macedonia. She described the specific political crisis in Macedonia and presented some of the most important cases concerning possible wrongful convictions in Macedonia. Both in case Sopot and Monster the evidence was based solely on the Albanic entity of the accused. Sopot is a case about ethnic Albanian residents of the village of Sopot who were allegedly planting a mine that killed two NATO soldiers and one Macedonian civilian. In case Monster, on the other hand, 6 people, also Albanians in Macedonia, were accused of terrorism and convicted for life time imprisonment.

Andrej Božinovski⁷ was talking about the implications of a plea bargain procedure and its pros and cons. **Lara Šolić** and **Ana Marušić**⁸ have discussed the thought experiment in ethics – the Trolley Problem and the question – would you do something that might not be considered ethical in the eyes of others, but would serve the greater good? Also, we listened to some well constructed students' presentation as **Majid Ghorchi Beigi**⁹ talked about Criminal Justice system of Iran, and **Amet Ismani**¹⁰ presented details of the Macedonian "Sopoty case". **Diana Cachey**¹¹ had the final lecture in which she problematized human rights abuse in Kosovo in 2000's.

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⁵ Professor of forensic medicine at Pennsylvania State University and University of New Haven, United States.

⁶ Newly appointed Course director, Professor at the Faculty of Law, South East European University, Macedonia.

⁷ Newly appointed executive coordinator of the Course, legal advisor at the Macedonian judges association, part-external teaching assistant at the Faculty of Law, University of Skopje.

⁸ MA students, Faculty of Law, University of Zagreb.

⁹ Assistant Professor, Kharismi University, Tehran, Iran.

¹⁰ Amet Ismani, MA student, South East European University, Macedonia.

¹¹ Human rights lawyer, United States.

Martina Cagossi¹² came from neighboring Italy in order to talk about its innocence projects caused by wrongful convictions. She focused on the Italian status artis on wrongful convictions taking into consideration peculiarly accentuated problems with precautionary detention. In addition to that, she referred to a revision procedure which enables a revocation of a final judgment. Being aware of the much-needed progress in these areas, she mentioned some student activities at the University and the importance to adopt a global “supranational vision” of the problem of the wrongful convictions.

Ola Hermann Laurell¹³ was speaking about acquittal after the final force in the Swedish criminal justice system. The conditions that must be met for a retrial are that the sanction is above one year of imprisonment and that the evidence was not available to present earlier. After that, he analyzed the role of a public prosecutor as an objective tool, what is more, as a certain filter, who collects evidence both for and against the accused.

Michael Kilching¹⁴ successfully tried to figure out why the wrongful convictions are made. While it’s mostly a non-intentional systematic error, in other times we notice a possible state liability. In most legal systems citizens get financial profit if they are the victims of a wrongful conviction, but Kilching finds these errors as a normal systematic consequence as there is a various number of cases each year. He also says that the amount of the possible financial profit can depend on the duration of imprisonment, media portrait of a case and different regimes of each prison - exposure of inmate violence, allowed benefits, general prison climate.

Brian Howe¹⁵ is a proudly joined lawyer in Ohio innocence projects. He asked himself, now that DNA is available in investigations, does that mean the innocence projects are no longer necessary. Surprisingly, for that same reason general public is becoming more and more interested in these projects and the number of DNA exonerations are going up. Also, some traditional investigation methods are becoming less reliable. Famous case of Jennifer Thomson is the best example. This woman really closely studied her perpetrator during the assault. She later described him to the police who made an arrest. However, this man was proved to be innocent! Jennifer could not believe this, firmly trusting what she was seeing during the assault. Even the DNA proof didn’t stop her from saying “I know what I saw”. It took years for her to finally see the truth that was immediately spoken through DNA analyses. This shows how even the most convincing eyewitnesses might be wrong.

Aleksandar Maršaveski¹⁶ turned our attention on a topic that is very actual today although we live in democratic society whose whole system is, as we like to believe, based on transparency. It was about trials against political parties, but moreover about its political context. He explained how it is possible for one party in power to use that same power in order to suppress its political opposition. While it is a phenomenon mainly linked to Soviets or Communists, he furthermore talked about its appearance in U.S. trials as well.

On two final days of this spring course the participants were supposed to enter in the world of justice system of Croatia. But, it was not as simple as it may sound. Two cases were presented to them and they were related to the innocence projects which is, after all, the main topic of the course. Although there is a good foundation in Croatian current legislation to found these kind of projects, they still do not exist. This was an excellent way to educate participants, that came from all around the world, why is innocence project desirable. All the participants that applied for the Moot Court competition needed

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¹⁵ Assistant Professor of Clinical Law at the University of Cincinnati, United States.

¹⁶ Newly appointed Course director, Assistant Professor at the Criminal Law Chair at Zagreb University's Faculty of Law.

to come up with the best arguments for their client and, during that process, distinct the very purpose of these projects. Most creditable for writing the cases is **Steven Becker**¹⁷ and his creative way of thinking amended with his commendable career as a lawyer in United States of America. The cases were based on actual cases he handled, but a little bit altered, for the sake of interest. There were 32 participants of Moot Court, divided into eight groups. In semifinals there were two groups debating against each other, which is a total of four Moot Court competitions that day. There was only one competition held the next day, composed of only the best of the best - those were the participants that were distinguished by conquering top points in five categories of judging criteria: knowledge of the law, knowledge of the facts, analysis, presentation and time management. The cases were primarily based on DNA analysis which is used to collect firm evidence in order to identify perpetrators. For example, in one case it was argued that partial DNA match could not be used as evidence and that the analysis of a bite mark cannot accurately determine to whom it belongs to. But, the discussions were more about law than about science, despite this interdisciplinary approach. When the question was whether the defendant should have access to victim's health records (in retrial), some of the participants argued that it will cause secondary victimization of the victim, others said that the interest of criminal proceedings prevails over some other interests. Furthermore, they talked about Croatian DNA statute which was created for the purposes of this Moot Court. It was essential to define all the articles while focusing on given cases. The discussion was about the identity, technology, origin of the evidence and so on.

The course was concluded with two more presentations. **Xhemali Saiti**¹⁸ talked about wrongful convictions in Macedonia where the main problem is not acknowledging the presumption of innocence due to negative public opinion and unprofessionality of the law enforcement. Lastly, **Jamshid Gholamloo**¹⁹ referred to the similar topic, this time in Iran. Here the most to blame is false evidence.

All in all, this course was an amazing opportunity not only to learn, but also to meet different people from all over the world. Hearing their stories made us realize that we all face similar problems, no matter how far our countries are, or how different our cultures might seem. As this was the jubilee tenth edition, some of the participants took the opportunity to reminisce about their involvement in this course during all these years, especially having in mind the new friendships or work connections they had made, and the good times they had had. This year's discussions were constructive and very encouraging, therefore, if Croatia is about to introduce innocence projects in its legislation, there was no better start to it.

¹⁷ Founding Member of the Law Office of Steven W. Becker LLC, United States.

¹⁸ President of the Macedonian Association of Judges, Supreme Court of Macedonia.

¹⁹ Assistant Professor of Law and Criminology at the University of Tehran, Iran.