University of Ljubljana Faculty of social work





Bundesarbeitsgemeinschaft der Hochschullehrerinnen und Hochschullehrer des Rechts an Fachhochschulen / Fachbereichen des Sozialwesens in der Bundesrepublik Deutschland BAGHR e.V.

German – Slovene symposium

THE ROLE OF THE LAW IN SOCIAL WORK EDUCATION

BOOK OF ABSTRACTS

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PROF. DR. HEINZ PETER MORITZ Principle of social justice and the welfare state – Realisation by the Code of Social Law

I. <u>European</u> Columns of Social Rights (ESSR / ECSR)

Social Security differs very much in the 27 States of the EU. In 2016 the European Commission has offered it's conception of Social Rights. It was planned that we would have a final conception until 2018. but we don't have it until today. The competition would to be transfered into National Rights of each of the 27 EU-States.

The proposal of European Social Rights has the following three Columns (Vgl. Jugend und Bildung, Sozialpolitik, Ausgabe 1917/18, S.12):

| Equality of Opportunity and | Fair Labour | Social Protection and Social Inclusion, especially: -children rights -rights to social security -support to unemployed -minimum wage and social welfare -medicare -inclusion of handicapped people -rights of living quarters and for homeless people -access to water, electricity, energy |
|-----------------------------|-------------|--|
| Entrance to the Job Market | Conditions | and sanitation |

II. The Social State Principle and its Realisation by the German Code of Social Law

Social Legislation has started in Germany already in 1881 with regulations for retirees, sickness and accident insurance (only for the workers in person, not for the members of their families). This legislation was an answer to collective actions by the workers. Today basis for the social System in Germany are two articles of the German Constitution from 1949:

1. <u>The Social State Principle, Art 20 I and 28 I 1 of the German Constitution:</u>

- Art. 20 I GG: declares the Social State to the National Objective. That means that Judicative, Executive's and Legislative have the duty to realise the social system.
- Art. 28 I 1 GG: implies the same for all 16 Federal States (in Germany).
- 2. Realisation by the German Code of Social Law

The Social State Principle is to be realised by the Code of Social Law, which contains 12 Books and several bills which complete the code.

- Book 1: General Regulations
- Book 2: Basic security benefits for job-seekers (Unemployment benefit II) (*Help for people without a job who are able to work, minimum 3 hours/day*)

- Book 3: Employment promotion (*Help to get a new or better job, to qualify the employees*)
- Book 4, 5, 6: (Old age) pension insurance and health security
- Book 7: Occupational accident insurance
- Book 8: Youth welfare
- Book 9: Handicapped aid (*Help to integrate handicapped people into the community of fellow citizen*)
- Book 10: Social-Administrative Procedure
- Book 11: Long term care insurance
- Book 12: Social assistance (*Help for people and her family who cannot work and don't have other earnings*)

Furthermore there are many parts of Social Law which until now have not been integrated as an own book into the Code of Social Law, but they are part of social law. In § 68 SGB-I there are listed 25 bills, for example:

- Regulations about promotion of studies and education (*studentships are possible* for young people at school and especially in the university. Only 22,1 % of all students at the university get a studentship. The average is $456 \notin$ /month; the full studentship is to day $735 \notin$ /month)
- Family and child benefits (Kindergeld) (For the first and second child in the family the government pays 194 € /month, if they don't earn money themselves; for the third child 200 € for the fourth child and the following children 225 €)
- Accommodation allowance and housing benefits (*That means: If it's necessary the state can help to pay the rent for the flat. But the main problem is that there are not enough flats for all people who search for them*)
- Child support, especially for single mothers (*The government pays the alimony payment for the child, if the father doesn't pay; the government tries to get the money back from the father*)
- Adoption-intermediation of children by the government and so on.

PROF. EM. DR. HELGA SPINDLER Social Security Network in Germany - how it works

1.) The German Social Security system is a network of several regulatory fragments which are closely interwoven.

There are **not only the twelve Codes of Social Law**. Also important are the various **Codes of Labour Law**. The various rights and obligations are not just on paper, but their implementation is independently controlled - one can take legal action against the state's decision. Two special courts are responsible for this: The **labour courts** for compliance with labour law and the **social courts** for the social benefits. And a further remark: In Germany, **social security** is not just a policy for the poor, but also **covers the middle classes** by covering major life risks such as old age, illness and unemployment, as well as many family benefits. (child benefits, parental allowance, housing benefits). And it is not equal for all citizens. For example: civil servants have an own system instead of insurances; self-employed persons are less protected than employees, because it was originally thought, that they would earn enough and could build wealth and protect themselves. And in addition the central state provides for the **minimum subsistence level** from tax revenues: these are **basic benefits for job-seekers**, **the elderly** and **the handicapped** with full reduced earning capacity (who have no or not enough pensions), and, most recently, the regulation of a **minimum wage**. This is (**against-) poverty policy** in the strict sense.

2.) Special Labour Codes

Especially in labour law, the state sets in some cases only the framework for legal development, ensures for example the freedom of association, in particular the right to join trade unions (**collective labour law**, which for example allows to conclude collective labour agreements and to fight industrial disputes). But if employees and employers have signed an individual employment contract, they are obliged to pay social security contributions to social insurances and there are special **insurance authorities** that manage the contributions and distribute the benefits in accordance with the law.

Law on the **protection of young people at work** was introduced very early in german labour law; that includes age limits, work bans, and leave for school attendance. **Maternity protection** law also exist for a long time. Maternity protection includes protection against dismissal during pregnancy and after childbirth, employment bans before and after childbirth, entitlement to maternity pay and more.

There is also **for all employees protection against dismissal**. But in recent times this has been undermined by more and more fixed-term employment contracts and pseudo -self-employment. Everyone is entitled to a **minimum paid holiday** of 4 weeks/year. The core of the Working Hours Act is the "8-hour day", which today is adapted quite flexibly to the requirements of companies. In the event **of illness**, full payment of the salary is valid for the first 6 weeks of the illness, Recently, a **minimum wage** law of $8.84 \notin$ per hour has been agreed. However, these legal minimum rules are extended by significantly better conditions, if unions and employers agree to this in **collective bargaining agreements**. Then there are less working

hours, longer holidays and additional holiday pay, 13th month's salary and a more effective protection against dismissal.

3.) Social insurance financing

Since the time of Chancellor Bismarck, the codes of social insurance has been the most important pillars of social security. The Bismarck principles have been retained to this day. They are financed by contributions, half of which have been paid by the employer and half by the employee since the last century. To clarify the financing and the obligation to contribute, I would like to show a current calculation of wages. An approximate average wage in 2017 was $3,000 \in$. The minimum wage for full-time employees in 2018 is approx. $1.532 \in (8.84 \text{ per hour})$. From this wage (**gross wage**), tax and the employee's share of the insurance contributions must be paid directly to the social insurance agencies. After this remains a **net wage** of approx. $1.961 \notin / 1.132 \in$. In addition to the gross wage, the employer must pay a further $581 \notin / 286$ share for the insurance of the employee, plus contributions to occupational accident insurance and some other small contributions.

4.) Other social benefits and basic security benefits

The Fedaral Republic also uses taxes to finance many family benefits, such as **child benefit**, **parental allowance** (for those, who do not work because of child care in the first year; from $300 \in$, up to $1800 \in$, depending on the amount of previous work income), **housing benefit** and **education assistance**; all based on laws that exist since around 1960. The **municipalities** and the **federal states** finance **social assistance** and **youth welfare** and the accommodation costs of the basic security benefits for job seekers from taxes. Social assistance for employable recipients and their families 2004 has been transferred to the **Basic Income Support for Job Seekers**, SGB II, which is more focused towards job integration.

Example for calculating the minimum subsistence level for individuals and families 2018 (costs for accomodation and heating depend from the real coasts, which are reasonabel in the region, where the people live. The example is for an average region)

| Single: Standard basic needs rate : $416 \text{ Euro} + \text{accomodation } 390 + \text{heating } 56 = 862 \text{ Euro}$ | | |
|---|--|--|
| 2 Partners 2 Children, 4 und 12 years: Standard basic needs rates: 748 +240 + 296 + | | |
| accomodation $656 + heating 126 = 2066$ Euro | | |

PROF. DR. RAJKO KNEZ Main streamlines in the social rights' praxis of the Slovene Constitutional Court

When I was asked to talk about mainstream jurisprudence of the Slovene Constitutional Court regarding social rights, I did not know, at the outset, quite well how to begin. Namely, the set of rights, which can be directly or at least indirectly connected with social aspects, are rather comprehensive. Secondly, these rights are rights of second generation and of positive status. Slovene Constitution is, on the one hand not old, rather young, and on the other hand rich with the list of rights. Consequently, also the Constitutional Court is faced with the variety of cases that can relate to the social nature of human rights. This led me to the conclusion, that I shall approach structurally to a speech within the limited timeframe at the conference. I decided to concentrate to three main points, being focused primarily to the first one, i.e. how are social rights determined (more particular, how to determine their scope); secondly what is the role of the human dignity that is basically in the backstage of every social right and thirdly, can the decisions of the Constitutional Court be (really) commenting as that the Constitutional Court is safeguarding (only) the elites.¹

With respect to the first point, I have in mind a clash or an interplay between the economy and social rights. Namely, a (long) list of social rights is not of a help, if rights cannot be reached by the individual or even if reached, they are, in financial terms substantially low. Even if one accepts that states are genuinely struggling to make social rights efficient (i.e. to assure enough finances in the budget) one cannot hide an unpleasant feeling that unaccountable part of the society suffers the most and the elites are not substantially affected. Like the European Court of Human Rights (ECtHR),² also the Constitutional Court of Slovenia assesses the appropriateness of a measure that effects social rights. ECtHR adopted a minimum core concept; that is that the level of social rights suffices in cases where applicant attained the requisite level of severity that can engage Art. 3 of the ECHR. Art. 3 is an absolute right prohibiting inhuman and degrading treatment. The latter is less invasive than a torture. This is basically the edge, this is how the minimum is set. Slovene Constitutional Court tried to raise the assessments on a higher level. It assesses the appropriateness within the proportionality test and the test of reasonableness, but only when the state measure touches to the essence of the social right. However, giving the exact and clear stand whether the state measure effects the essence of the social right or not (i.e. the state measure "only" defines how the right is exercised) is not always easy.³ Every constitutional right has its essence into which the legislator shall not intervene.⁴ In case that the state measure (law, statute) touches upon the essence, the strict test

¹ Petrovič P., Pravice nam bodo izborile elite?, v: Mladina 40, z dne 5.10.2018. This kind of messages, as one can find in the media, can be very strong for public perception, not only the judiciary as such, but also for the society as such.

² Compare cases Von Volsem v Belgium (14641/89, unpaid elec. invoices), Pančenko v Latvia (40772/98, social distress), O'Rourke v GB (39022/97, homelessness), Budina v Russia (45603/05, insufficient pension).

³ The basic approach steams from the stand that the Constitution is not defining exactly the social rights; this is left to the legislator. Case Up-400/05 of 7.2.2006.

⁴ Case U-I-159/07 of 10.6.2010.

of proportionality will be used in order to assess the congruity with the Constitution. The Constitutional Court decide the essence of every social right, for instance also the essence of Article 50 which defines a right to social security⁵ by itself if it is was not defined by the Constitution itself.

A distinction between the essence and out-of-essence of social security right can be found in case Up-360/05, which relates to the retirement allowance. The Constitutional Court decided that a right to retiring allowance shall – in its essence – be at least at the level of social security.⁶ In case U-II-1/11 the Constitutional Court, again, decided that retiring allowance shall amount to *more than a simple life level minimum*. It shall amount to certain *social minimum*. To define social minimum, it is necessary to consider also payed contributions. In any case, life level minimum is not sufficient. And this is the essence of the right into which the legislator can only intervene by respecting the strict proportionality test. I understand the above decisions also in a sense that the Constitutional Court takes account the circumstances of the state finances and is setting a level of social rights accordingly. This is not unexpected, since in a case of *Airey V. Ireland* the ECtHR decided that it is aware that the further realisation of social and economic rights is largely depended on the situation notably financial situation of the state in question.⁷

With respect to human dignity as my second point, I would like to emphasise that this is not only a provision in the Constitution (Article 21^8), but it is also a feeling one shall have or develop. It is about how an individual is sensitive in its comprehension of a human, especially of a social right. Vast amount of cases touches also to a dignity in social cases. One among these cases is also *U-I-64/14* in which the Constitutional Court dealt with a right to a home. At stake was a question of procedural aspects and the access to the court issue in case that a demolition is threatened, and the Constitutional Court demanded the legislator to change the law in order to ensure appropriate and effective access to the court for adjudicating a validity of an administrative decision which would render certain person homeless. Measures that would cause a person being homeless touches also upon the dignity, which is in the background of the effects of such administrative decision. In order to justify such intervention solid objective grounds are needed. As I tried to argue in the concurring opinion (which throws light also to substantial and directly connected issues in Slovenia), grounds shall also steam from

Special protection in accordance with the law shall be guaranteed to war veterans and victims of war.«

⁵ Article 50 reads: (Right to Social Security)

[»]Citizens have the right to social security, including the right to a pension, under conditions provided by law. The state shall regulate compulsory health, pension, disability and other social insurance, and shall ensure its proper functioning.

⁶ As mentioned above, this is a higher level as accepted by ECtHR (which cannot demand specifically which social rights should be defined in national legal orders). The only level that can be used is above mentioned Art. 3

⁷ In case *U-I-146/12* where the Fiscal balance act was challenged, the Constitutional Court decided that mandatory retirement is not appropriate measure in order to balance the public expanses (however, it should not be discriminatory). Similarly, in case U-I-186/12 which also referred to the Fiscal balance act, the Constitutional Court decided that the State can decries the level of retiring allowance due to the state based economic reasons. ⁸ It reads: (Protection of Human Personality and Dignity)

Respect for human personality and dignity shall be guaranteed in criminal and in all other legal proceedings, as well as during the deprivation of liberty and enforcement of punitive sanctions.

Violence of any form on any person whose liberty has been restricted in any way is prohibited, as is the use of any form of coercion in obtaining confessions and statements.

environmental protection rules if fraudulently breached (namely, one the principal reason for demolitions of constructions is the illegality. This is especially a huge problem in case of agricultural land being used for illegal constructions).

Let me finish with last point regarding the reproach that Constitutional Court s safeguarding (only) the elites. This reproach came after the decision on the *Confiscation of proceeds of crime act*, which the Constitutional Court abrogated in a part, which enables the statute to be retroactively, applied (case *U-I-6/15*). The Constitutional Court cannot calculate (*iudex non calculate*) and its ruling can also imply messages that decrease the trust of the public. However, the Constitutional Court was not established for the public to like it, but to safeguard the rule of law. A retroactivity is strictly regulated in Slovene Constitution (Art. 155) and the Slovene Constitutional Court is not first in line to respect it. The first one is the legislator; wishing to confiscate an illegally obtained assets, that is of course a legitimate aim, it would had needed to react much sooner instead to use the institute of retroactivity without giving enough reasons and justifications for its application. One shall, before reaching a conclusion that the Constitutional Court safeguards the elite, observe who shall take the accountability – is the Constitutional Court indeed a problem, or the one who adopted the rule in the first place. Or at least giving solid and objective reasons for such a conclusion.

ASSOC. PROF. DR. JANA MALI Long Way to Long-term Care Legislation in Slovenia

It is predicted that by 2050 the number of older people will exceed the number of young people for the first time in history. Already, every tenth person is aged 60 years or older; the United Nations estimates that by 2050, one in every five people is likely to be 60 years or older and by 2150, one in every three (United Nations, 2009.). The projections made by the European Union suggest that the proportion of people aged 65 is likely to increase from 18.2% in 2013 to 28.1% by 2050. The presented trends dictate changes in the existing systems of care of older people, known as "systems of formal care," which are often informally farmed out to family members of older people. Public policy should respond to these changes, which is why, in this context, in the last decade, the need to establish a sustainable system of long-term care has been brought to attention more and more often.

Long-term care is a phenomenon that can be described as a response to demographic changes faced by all countries of the world. The rapid aging of the population and the simultaneous decrease in the percentage of the young population in modern industrial societies have radically affected the systems that until recently have been relatively stable. Higher life expectancy, the advance of medicine, the decrease in the share of active population and the increasing number of assistance-dependent persons has caused changes in family and intergenerational relations. While some think that the radical change in the above-mentioned ratio is a cause for alarm, it can also be perceived as an incentive to search for the new forms of co-existence and solidarity. Accordingly, long-term care will be a key factor in ensuring social stability in the future.

Since the system of long-term care in Slovenia that would be based on the Long-Term Care Act has not been established yet, while the demographic trends show a great need for long-term care, it is essential to clarify the needs of older people and respond to their needs (Mali, 2017). The response to their needs, in terms of forms of help and services, should be designed in a way as to meet the need for long-term care most effectively. In Slovenia, the institutional care of older people is one of the most developed forms of care for older people (Mali, 2011, 2014; Filipovič Hrast et al., 2014). The care trends follow the guidelines of providing the longest independent life of older people in the community as possible, staying in their home environment and not in an institution (Resolution on the National Programme of Social Protection 2013 - 2020, 2013).

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ASSOC. PROF. DR. UREK MOJCA Domestic Violence Legislation and the Implications for Women

In this contribution, we aim to present the development of organised help for victims of domestic violence. We aim to present the main perspectives of sectoral legislation and the essential gaps between legislation and its implementation in practice.

In the past domestic violence against women was primarily perceived as a private problem. In the area of providing help and services – there prevailed the so-called *family model* until the end of the 1980s in which the prevalent discourse mentioned dysfunctional families. In this area there was no social work doctrine and there was no support provided in other institutions (police, judiciary). The last few decades, however, have witnessed an attempt to take this issue into the public sphere and recognise it as a relevant social and political problem. Non-governmental organisations played a very important role at the end of 1980s and 1990s and they are still one of the most important players in the field.

With the adoption of the Family Violence Prevention Act in 2008 Slovenia recognised the need for the regulation of the field of domestic violence. One of the most important objective of the Act was to define the concept of domestic violence and thus reduce the possibility of different definitions of violent acts subject to personal system of values of a particular professional. The fundamental principles were: providing help in the shortest time possible, inter-institutional cooperation, support to victims in procedures and legal protection (free legal assistance) and others. Some of the main solutions provided in the Act are: The social work centre is the competent holder of the case and NGO's are obliged to immediately inform the social work centre, police and the State Prosecutor Office on instances of domestic violence. Multidisciplinary teams shall be formed at social work centres to deal with instances of domestic violence and participation in the team is obligatory for all invited persons. Social work centres may refer perpetrators of violence to the relevant educational and psychosocial programmes. The act has formed regional services for coordination and assistance to victims at Social Work Centres. There are many measures for providing safety to victims foreseen in the Act, such as police assistance when victim needs to enter the accommodation premises to take belongings; restraining order issued by police and its extension by the court; the court may also order the perpetrator of violence who lives in a common household with the victim to transfer the accommodation to the victim for exclusive use, and others.

However, there are still many challenges and gaps between good solutions in the legislation and their implementation, as reported by two NGO's (Association SOS line for women and children – victims of violence and Association for Non-Violent Communication). Let us mention only a few: the training for professional staff is not provided at regular intervals or systematically, the lack of trust among institutions and insufficient multidisciplinary cooperation; the victims of domestic violence report that the institutions force them in various ways to provide contacts of children with their father who was also violent against them; the secondary victimisation on behalf of institutions (especially in the work performed by independent experts); the uncoordinated state of numerous laws and regulations, due to which the victims' safety is not the centre of all the proceedings; the insufficient and/or inadequate offer of programmes of help for victims and programmes of work with perpetrators; the women who ask for the extension of restraining orders are rarely granted by the court, and many others.

PROF. DR. DRAGAN PETROVEC Punishment and prisons since 1950 till today (Crime policy in Slovenia; From Communism to Democracy)

Communist regimes differed with each other as strongly as today's democratic regimes differ from one another. Political rights in Slovenia, which were part of Yugoslavia, were rather limited, while social rights were emphasized above all by solidarity. The material differences between the citizens were small, and the punitive policy could have been the model for most of the Western democracies. For the last time, Slovenia executed the death penalty in 1956, and the highest prison sentence was 20 years. The number of serious crimes - murders - has declined in recent decades and is today among the lowest in Europe. In 1975, the practice of opening prisons, irrespective of the offenses and length of the sentence, began.

Independence and democracy achieved in 1991 caused a lot of collateral damage. Political freedom also resulted in the abuse of this same freedom. The hate speech has spread against many marginal groups, and the government and parliament have uncritically accepted ever-shaky legislation.

First, the highest prison sentence was increased from 20 to 30 years, and in 2008, as the first country in the world that never knew such sanctions, we introduced a life sentence.

The prisons were slowly but surely beginning to turn back to closed and controlled institutions. We were also the only country to double the number of prisoners in only 5 years. The number is still low, less than half of the EU average, but we have wasted all the good heritage of the past.

The poverty rate is slowly approaching the European average. The general principle of neoliberalist capitalism is being established, according to which everyone is responsible for his own destiny, whether it be poverty or wealth, freedom or imprisonment.

PROF. DR. VESNA LESKOŠEK Practice in social work in Slovenia

The field of social work in Slovenia deals with the wide range of the population who experience a variety of social, psychological, economic, medical and other hardships. The field is embedded in a variety of public services, yet it also acts within voluntary and private organizations in social services, education, health and legal authorities, the police, government and industry. It derives its present form from the various traditions and applications of a plethora of varied techniques – from counselling and therapy, group and community work and training in social skills to individual planning. Social work deals with all of these areas in terms of social justice and reduction of the harmful consequences of social transformation, in terms of the everyday circumstances and needs of people and in terms of global processes and structural change. The development and dissemination of theoretical concepts, models and methods of social work in the educational process and the practice of the Faculty for Social Work contribute to fundamental social values and objectives such as: quality of life for individuals, families and groups; social justice, dignity and equal opportunity; solidarity and social integration; antipoverty efforts and social exclusion.

The main field of practicing social work in Slovenia is social welfare services. Social welfare system underwent some fundamental changes in last decade. The paradigmatic change is actually in the redistribution mechanism form the redistribution of wealth to the redistribution of labour, what means in practice introduction of the workfare policy. This fundamental shift means that Slovene (and many other) social policies are serving economic policy and is subordinated to it. The main role of social policy is to direct people to the labour market.

The shifts within social policy affect social services. The distinct features of the neoliberal policies of a "downsized" state are the strengthening of defence, national security and corporate welfare, and introduction of welfare-to-work programs (workfare). The social services have thus become increasingly punitive. Disciplining practices and control over the behaviour imply the need for new, different work methods, which will activate and motivate "passive and dependent" recipients of financial benefits. Various disciplining methods are used to force or "nudge" people in the direction of desired choices, or desired behaviours that better comply with the social system. The important feature of those techniques is that they are simple and based on classification, ranking and moral assessments. The individuals who are subject to such assessments are constantly under public scrutiny, and they may be denoted as inappropriate or deviant.

Many studies deal with the issue of control within social services, which is a consequence of its dependence on the political system and the cultural context. The life paths of service users depend on staffs' decisions and their fundamental convictions about the nature of the problem and the role of the state in their resolution. We can conclude that the changes do not only affect everyday life of people living in poverty but also have an impact on services and professional staff that have the obligation to control and to influence behaviour of people. The change is therefore complex and affects not just service delivery and entitlements of people but also what we understand to be professional, ethical and just.

Agenda

09:30 Welcoming words and introduction -Prof. Dr. Vesna Leskošek, -Prof. Dr. Renate Oxenknecht-Witzsch, BAGHR, KU-Eichstätt -Prof. Dr. Helga Oberloskamp, TH Köln 09.45 Principle of social justice and the welfare state – Realisation by the Code of Social Law Prof. Dr. Heinz Peter Moritz, University of Applied Sciences Erfurt Social Security Network in Germany - how it works Prof. Dr. Helga Spindler, University Duisburg-Essen 10.15 Main streamlines in the social rights' praxis of the Slovene Constitutional Court Prof. Dr. Rajko Knez, Judge of the Slovene Constitutional Court Discussion 10.40 11.00 **Coffee break and Snacks** Long Way to Long-term Care Legislation in Slovenia 11.20 Assoc. Prof. Dr. Jana Mali, University of Ljubljana 11.40 **Domestic Violence Legislation and the Implications for Women** Assoc. Prof. Dr. Mojca Urek, University of Ljubljana 12.00 Punishment and prisons since 1950 till today Prof. Dr. Dragan Petrovec, University of Ljubljana, Institute of Criminology ot the Faculty of Law 12.20 **Final Discussion** 12.45 Lunch Break

- 14.00 **Practice in social work in Slovenia** *Prof. Dr. Vesna Leskošek*
- 14.45 **Presentation of the faculty and the curriculum**
- 15.30 Discussion and exchange of experience

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