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Global Public Service Lawyering: Theory and Practice

In cooperation with New York University School of Law, New York

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Holly Maguigan is Professor of Clinical Law and Faculty Director for 2003 of the Global Public Service Law Project at New York University School of Law. Professor Maguigan teaches a criminal defense clinic and developed a new clinic in 2001 entitled *Comparative Criminal Justice: Focus on Domestic Violence* under the auspices of the Project. She is an expert on the criminal trials of battered women. Her research and teaching are interdisciplinary. Of particular importance in her litigation and scholarship are the obstacles to fair trials experienced by people accused of crimes who are not part of the dominant culture. Professor Maguigan is a member of the Family Violence Prevention Fund's National Advisory Committee on Cultural Considerations in Domestic Violence cases. She serves on the boards of directors of the National Clearinghouse for the Defense of Battered Women, the Society of American Law Teachers, and the William Moses Kunstler Fund for Racial Justice. She received her J.D. from the University of Pennsylvania in 1972, her M.A. from the University of California at Berkeley in 1969, and her A.B. from Swarthmore College in 1966.

Frank Upham is Professor of Law and Faculty Director of the Global Public Service Law Project at New York University School of Law. Professor Upham is an expert in Japanese Law and has a strong interest in the role of law in economic development around the world. He was a Japan Foundation Fellow and Visiting Scholar at Doshisha University Law Faculty, Kyoto, in 1977, and a Research Fellow of the Japan Society for the Promotion of Science and Visiting Scholar of the Faculty of Law, Sophia University, Tokyo, in 1986. Before coming to NYU in 1994, he taught at Ohio State, Harvard, and Boston College law schools. One of Professor Upham's major publications, *Law and Social Change in Postwar Japan*, received the Thomas J. Wilson Prize in 1986, and is generally viewed as the standard reference for discussions of Japanese law. He graduated from Harvard Law School in 1974 and from the Woodrow Wilson School of Public and International Affairs at Princeton University in 1967. Professor Upham founded the Global Public Service Law Project in 1998.

Ágnes Kövér is Professor of Law and Executive Chair of the Foundation for Clinical Legal and Street Law Programs at ELTE School of Law. She has been a Lecturer at the Central European University in Budapest, Senior Researcher at the National Institute of Criminology in Hungary, and Visiting Professor at New York University School of Law. Professor Kövér is an expert on prisoners' rights and criminal justice reform, and has lectured and wrote on the comparative constitutional and civil rights of prisoners in Central and Eastern Europe and the United States,

comparative prison reform, reinforcing civil society through non-profit law, and clinical legal education. She is Chair of the National Association of Nonprofit Human Services of Hungary, and a frequent guest on television and radio programs discussing the reform of legal education and of the criminal justice system in Hungary. She received her Ph.D. in Criminal Law and Criminology from the Hungarian Academy of Sciences in 1995, her M.A. in Sociology from ELTE University in 1985, and her J.D. from JATE University School of Law and Political Science in 1981.

Arnold F. de Vera received his Bachelor's of Law in 1995 from the University of the Philippines and his LL.M. in Public Service Law from New York University School of Law in 2002. He joined the Alternative Legal Assistance Center, Inc., (SALIGAN), a legal resource non-government organization, in 1996. As coordinator of the labour unit, Mr. de Vera has worked on implementing SALIGAN's four-point program on policy advocacy, legal literacy, publication, and litigation. Mr. de Vera also conducts an eight-month comprehensive paralegal training program designed to reduce workers' dependence on lawyers, and conducts training seminars among workers' groups. He edits SALIGAN'S bi-annual publication and has taught courses in Business Law and Labour Law at the Ateneo de Manila University.

Diana Hortsch is Lecturer-in-Law and Director of the Global Public Service Law Project at New York University School of Law. She co-teaches the course "Global Public Service Lawyering: Theory and Practice" and manages all Project activities. She is a member of the Council on International Affairs at the Association of the City of the Bar of New York and has been a member of the Oregon State Bar since 1998. She is currently pursuing a M.S. in Management of International Public Service Organizations at the Robert F. Wagner School of Public Service at New York University. Ms. Hortsch received her A.B. in Political Science & African Studies from Bryn Mawr College in 1993, and her J.D. from New York University School of Law in 1998.

Pavol Zilincik is the Executive Director of the Public Interest Law Program at the Center for Environmental Public Advocacy (CEPA), Slovakia. He graduated from the Law Faculty of Comenius University in Bratislava, Slovakia, in 1991. In 1992, he co-founded CEPA, where he also worked as a lawyer and trainer on educational activities for grassroots activists. Mr. Zilincik has litigated several environmental and human right cases, including the forced relocation of small municipalities and free access to governmental information. He has trained law students, victims of human rights abuses, as well as judges and judge-candidates. He was a member of several expert teams that helped prepare new environmental and human rights legislation in Slovakia. He is a member of the Environmental Law Alliance Worldwide (ELAW), and a board member of the Slovak National Center for Human Rights. He has co-authored several manuals for citizens and activists, and has contributed chapters to *Access to Environmental Information in Europe* (Kluwer Law, London, 1996), and *Street Law – Law for Everyone* (co-author, Open Society Foundation, 1998).

Mia Serban is a Romanian lawyer who holds LL.M. and S.J.D. degrees in comparative constitutional law from Central European University in Budapest. Between 2000 and 2002, she was a Program Associate for the Ford Foundation, where she focused on strengthening civil society and public interest law in Eastern Europe, strengthening constitutionalism in Africa, and civil liberties post-September 11th. With the September 11th Fund, she helped make emergency grants for legal services, immigration services, and anti-bias assistance to victims, families and communities directly affected by the September 11th attacks. Mia's most recent publication is *Constitutionalism in Transition: Africa and Eastern Europe* (International Conference on Comparative Constitutionalism, May 17-20, 2001, Warsaw), Helsinki Foundation for Human Rights, 2003. She is currently a Ph.D. student in the Institute for Law and Society at NYU, and a Fellow with the Global Public Service Law Project at NYU School of Law.

Course Objectives

This is a three-week advanced course for public service lawyers in the region to examine the emerging global phenomenon of public service lawyering and the forms it has taken in Central and Eastern Europe. The course is organized around two substantive themes: *social and economic*

rights, and *ethnicity, citizenship and political exclusion*; embedded in each conversation are certain core topics, including globalization, the role of the state, and strategies used by public interest lawyers. The curriculum aims to ensure that lawyers learn from each other, trade practical lawyering strategies, and reflect critically on the underlying assumptions and ideologies behind their work.

The course also aims to propose alternative models of public service lawyering and challenge the current paradigm in the region; increase the body of public service lawyering knowledge in the region by introducing recent research and practice from around the world; and encourage the development of public service law capacity – oriented towards practice, policy-making, teaching, and research – within institutions in the region, both country-based and cross-regionally.

Intended Level of Instruction

This is an advanced course for lawyers who have at least two years of work experience in a public service law setting – government, non-governmental and international organizations – and a professional focus on social and economic rights, or the rights of ethnic and religious minorities. The target audience also includes advanced doctoral students focusing on public law (i.e. constitutional law, administrative law, public international law, human rights), and junior post-doctoral academics and researchers whose main area of expertise is in public law.

The core feature of all the participants will be a commitment to the practice of public interest law and an interest (or expertise) in reflecting on practical lawyering strategies in a comparative setting. At all times, the focus of all participants will be on the special challenges faced by individuals, organizations, and states in the region and more broadly in the developing and transitional world.

Framework for the Course

The developments of the past decade – the fall of communism, the emergence of new democratic states, and the emphasis on globalization – promise enormous benefits for those concerned with individual human rights and the welfare of developing and transitional countries. These benefits will remain unrealized, however, without effective and responsive legal institutions and a skilled and active human rights and public interest bar. The last decade has seen a dramatic increase in the activities and numbers of activist lawyers. The globalization of human rights norms, the growth of international and domestic civil society, and the efforts of private foundations and NGOs have created an environment where lawyers concerned with justice can survive if not thrive. Although human rights and public interest lawyering are context-specific activities, these lawyers share similar values and face similar challenges. They are all committed to the use of the law and legal institutions as tools to achieve social justice and human rights, and they all face, in differing combinations, underdeveloped and corrupt judiciaries, repressive regimes, extreme poverty, and the lingering effects of colonialism and communism. Nonetheless, they have experienced tremendous successes in their work over the past two decades.

There is thus a crucial need to deepen and broaden those successes by giving these lawyers – also identified as public service lawyers – the tools and knowledge that they need to pursue more effectively human rights and social justice within their given societies, and on the international stage. In this context, public service law is defined to cover virtually any effort to use the law to achieve social change and improve the conditions of vulnerable people and underrepresented interests. Public interest lawyering strategies include impact litigation, the provision of legal services, community or labor organizing, legislative advocacy, law reform, clinical legal education, and legal literacy training.

The emergence of public interest lawyering in Central and Eastern European has been encouraged by and developed through consultative processes and collaborations between NGO leaders, professionals from a variety of fields, and local and foreign donors. After more than a decade, a synopsis of areas where public interest lawyers, non-governmental organizations, and academics in the region have been particularly active includes human rights, women's rights, minority rights (especially Roma), the environment, and access to justice. In terms of strategies employed, they have mostly focused on impact litigation, advocacy and public campaigns at the domestic and international levels, street law programs, and clinical legal education. There has also been a concerted effort to build a regional infrastructure for the development of public interest

law in these countries, most notably through the establishment in 1997 of the Public Interest Law Initiative in Transitional Societies.

Despite significant successes and rapid growth in the past fifteen years in creating and strengthening a public interest law sector in the region, its overall development has been unequal. The legal systems and the practice of law in the region remain heavily encumbered by the past, offering few points of entry into public service lawyering, few professional opportunities for public interest-minded lawyers, and very few institutional channels for their work. In the sphere of civil society, public interest lawyering remains overwhelmingly an urban elite activity, challenged by deficient legal and regulatory structures, difficult relationships with government, and an uneven public understanding of the role of public interest law. There is only a small cadre of experienced and committed public interest lawyers, who draw significant resources and support from outside sources, rather than from within their constituencies. In short, public interest lawyering has yet to put down roots in these countries, continues to lack opportunities on the domestic scene, and continues to work in relatively hostile political and legal environments. There are more opportunities for public service lawyers who want to work within the government. As the countries of the region are at different levels of economic and political transition, however, the impact of public service lawyers working with the government varies widely depending on country and issues.

While public interest lawyers from the region have been active in professional networks within and outside of Central and Eastern Europe, the unique historical experience of these countries and the rapid development of public interest lawyering left little time for reflection, learning and the creation of strong reciprocal links within the emergent global movement of public service lawyering. Particularly with regard to the two topics that will be discussed during this course, and the larger questions of globalization and the role of the state, Central and Eastern Europe makes a distinct contribution to the global public interest lawyering discourse and speaks with a different voice.

Course Description

The course will examine public interest lawyering in Central and Eastern Europe from a global perspective. Within the two themes of the seminar – social and economic rights, and ethnicity, citizenship and political exclusion – we will examine the effectiveness of impact litigation versus other approaches to social change, the appropriateness of public interest law for non-Western societies, the impact of economic markets on the developing world, the effectiveness of international legal and political norms in domestic law, and the role of lawyers and legal institutions in addressing these issues.

The general readings will address multiple foreign legal systems from a comparative perspective. The discussion will focus on theories of public interest lawyering, the role of public interest lawyers, and the impact of globalization on the work of public interest lawyers. Within the two sub-groups, the discussion will focus on the theories, specific strategies, and obstacles faced by public interest lawyers active in the two areas. In the Social and Economic Rights sub-group – including here only health, education, social security, and housing – the discussion will focus on the exceptionality of public interest lawyering for social and economic justice in the region; distinguishing it from progressive lawyering in other regions; and identifying potential directions of work in Central and Eastern Europe.

In the Ethnicity, Citizenship and Political Exclusion sub-group we will debate the role of public service lawyers in achieving full and equal political participation for ethnic minorities that traditionally have been disadvantaged, with a primary (but not exclusive) focus on the Roma in Central and Eastern Europe. The strategies used by public interest lawyers, government lawyers, and various civil society participants will be compared both within the region, and with other regions and countries. For example, the Dalits in India will receive special attention.

Methodology

The class will be divided into two groups, based on the two themes: social and economic rights, and ethnicity, citizenship and political exclusion. Discussions based on readings, hypotheticals, and field visits will be held with the class as a whole. The preparation and presentation of case studies will be done in the two sub-groups. One to three field visits will be organized during the

course. We will visit public interest law organizations in Budapest to orient the participants to the range of public interest law practice in the country and consider how it might inform their work at home.

The core of the course consists of case studies written by and based on the participants' own experiences. The case studies are prepared and presented by a team of three (teacher, student-author, student-discussion leader). Each case study is analysed by the group via an interactive discussion focused on the key lawyering and strategy questions raised by the case. Participants must be familiar with the topic, the development of the case over time, the legal organizations involved, and the reasons for the actions that were taken by lawyers and non-lawyers. The case studies should give a detailed picture of the decisions that public service lawyers make in a specific set of circumstances. The case can be any controversy, does not need to involve litigation, does not need to be fully resolved or completed, and does not need to have been "successful." Participants are expected to utilize as many primary documents as possible, as well as relevant secondary sources. They should reflect on what the case illustrates about effective and ineffective public service lawyering in his or her home community.

Preliminary course schedule

Week 1

TIME	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY
9:30 to 12:30	PI Law – General		PI Law – General		Field Visit
2:00 to 5:00	Case Studies	PI Law – Themes (sub-groups)	Case Studies	PI Law – Themes (sub-groups)	Hypotheticals

Week 2

TIME	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY
9:30 to 12:30	PI Law – General Presentation: example case study		PI Law – General		PI Law – General
2:00 to 5:00	Case Studies	PI Law – Themes (sub-groups)	PI Law – General Presentation: example case study	Case Studies: Presentation (sub-groups)	PI Law – Themes

Week 3

TIME	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY
9:30 to 12:30	Case Studies: Presentation (sub-groups)		Case Studies: Presentation (sub-groups)	PI Law – Themes (sub-groups)	Wrap-up
2:00 to 5:00	Field Visit	Case Studies: Presentation (sub-groups)	PI Law – General	Case Studies: Presentation (sub-groups)	Wrap-up

For more detailed biographies, updated course description, syllabus, reading lists please check <http://www.ceu.hu/sun/index.html>

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