

EXAM

HUMR 5508

Human rights and Diversity – Leading Cases and Core Dilemmas

14 March 2013

This exam contains two sections: Short answer and Essay question. The “instructions for assignment” applies to the home exam as a whole (e.g. only one list of references for the entire exam and a limit of 4000 words). For the short answer section apply the guidelines for structure only in part: sect.(4) and (5) including correct references.

SHORT ANSWER

Answer EVERY question in this short-answer section (answer all four questions). Each question is worth 10% of your total examination grade (the entire short-answer section is, therefore, worth 40% of your total examination grade). As a general guideline, each answer should be no more than 1 page.

Short Questions:

1. Explain the notion of «victim» with regard to admissibility criteria. You should take into account relevant human rights instruments and case law at regional and universal levels.
2. How is the wording of Article 27 ICCPR, “shall not be denied”, interpreted by international organs? You should take into account relevant human rights instruments and case law.
3. What does the notion of “necessary”, or “necessary in a democratic society” in Article 18 of the ICCPR and Article 9 of the ECHR entail when interpreted in the context of these two articles? You should take into account relevant human rights instruments and case law at regional and universal levels.
4. In what way is the concern for "equality" central to the theory of both Susan Okin and Will Kymlicka?

ESSAY QUESTION

Your essay shall address ONE of the two “cases” below, (A) OR (B) (worth 60% of your total examination grade). As a general guideline, remember to take into account relevant case law from human rights organs and applicable theory.

Your essay should address the following questions:

- In what ways do these cases address human rights dilemmas of group autonomy vs. individual rights, and of majority vs. minority rights?
- What should be the outcome of the cases, based on the various human rights commitments of the United States of Wonderland and Southmenistan, and on international as well as regional case law?
- How could these dilemmas be approached from various positions in social theory?

(A) In the United States of Wonderland (USW) the tribe of Loners was the majority of the population on the lands of the province of Lonely Land at the time of the establishment of the USW in 1935. The tribe has lived on their lands for times immemorial, keeping up their traditional activities of hunting, gathering and fishing in the lakes and forests of northern Lonely Land province. The members of the tribe use the language Love as their common language and some still maintain their traditional beliefs in the forest and water gods. The Loners were headed by the Council of Elders and their traditional and elected chief, Chief Bollywood, an elderly man. The Chief was elected by the Council of Elders, an assembly of 15 persons who had significantly contributed to the tribe's welfare.

The constitutional charter of the USW recognized the rights of the tribes of the USW to continue their traditional way of life; it also recognized freedom of religion and belief and the equality between men and women. It also declared that the USW was a secular state and a constitutional democracy based on equal suffrage.

The tribe lived in a remote area of the province of Lonely land and had therefore not had much contact with the rest of the population of the USW, except for a number of Cristin missionaries, a religion which the majority of the population in the USW belonged to. A smaller number of the Loners had converted to Cristin, among them Amanda, a bright girl of 20 years. Amanda had her basic education in the missionary girls' schools of the Cristins, and she was now heading for university education in the capital city of USW. Amanda was used to wear her traditional Loners dress: red jacket, black trousers, riding boots and a black scarf to cover her hair, because the unmarried women of the Cristins could not wear the traditional fur hunters' hat of the Loners.

Amanda wished to become the first teacher of the Loners tribe and bring new knowledge back to the Loners. She entered proudly the USW State University in the capital city, the only university in the USW. However, soon the posters started to appear at the campus, calling for liberal young women to become role models and to "let their freedom and beautiful hair flow in the winds of modernity". Amanda started to have difficulties in attending the compulsory seminars in chemistry and physics, because the teachers of the university expressed that they were not comfortable in teaching a "non-modern" women having "covered" her hair and wearing old-fashioned men's clothing. During her second semester at the university, Amanda could not fulfill the course requirements due to the difficulties in attending seminars. She felt that she had to complain to the university authorities, despite that such behavior would not have been accepted in Lonely Land were the authority and wisdom of the Chief and Elders was undisputed. The university governing board, made a decision at the end of the second semester that the university and all students had to comply with the constitutional declaration that the USW was a secular state. Amanda tried to challenge the decision in the courts of the USW but failed to get the decision of the university changed. She could not see any other possibility than to present a complaint to the relevant organs of the United Nations.

The province of Lonely land had recently been become very attractive to large numbers of immigrants due to the widely publicized plans of the government to exploit its particular rich

natural resources, which consist of large findings of gold sand. The central government has given permission to private enterprises to start to exploit the findings of gold sand in Lonely land. In order to do so the companies have built roads through northern Lonely land and new towns for the immigrants in the close vicinity of the lake district in northern Lonely land in the traditional lands of the tribe of Loners. The Loners hunting, fishing and gathering became difficult since the companies claimed that they now should have control over the lands where gold sand could be found based on the agreements with the central government. The Loners saw that the wild life changed and became less, and that the newcomers did not respect the seasonal hunting and fishing traditions of the Loners. Moreover, the winter rites to worship the Great Powers of the Universe, which included the burning of great bonfires and big fireworks, were prohibited by the "Fire safety regulation" of the government of the province of Lonely Land. Chief Bollywood and the Council of Elders have meetings with the companies and the local government of Lonely Land trying to get the authorities to listen to their concerns with the development in Lonely Land. BUT no change takes place. Many Loners are arrested by the police for breaching the safety regulations of Lonely Land, and the young Loners fail to get jobs in the companies due to their lack of appropriate education. The Chief Bollywood and the Council of Elders now approach the central government demanding that their constitutional rights are respected. They claim that the activities of the companies in Lonely Land should be restricted and the traditional way of life and rites of the Loners should be respected in accordance with the constitution and international human rights law.

(B) Under the 1965 Agreement between Southmenistan and the Holy See, public schools in Southmenistan must offer optional classes in the doctrine of The Real Church. The instructors are public employees, but must be approved by local bishops. In 2011, a public school refused to renew the contract of one such teacher, a married, laicized priest named Juan Casanova, after the local bishop voiced his objections. The bishop argued that Casanova had "given scandal," an offense under canon law, by allowing himself to be photographed by a newspaper, along with his family, at a meeting of a group calling for optional priestly celibacy. Casanova claimed that the dismissal violated his rights to privacy, family life, and expression, but the Southmenistan Constitutional Court disagreed. Casanova now wants to take his case to the Regional Human Rights Court, which is the ECtHR.

In Southmenistan there are various religious groups that claim an equal right to offer optional classes to pupils belonging to their faith in the public school, just as the Real Church. The state supports the Real Church in its claim that it is not discriminatory that only the majority church offers such education, since – after all – it represents the established religion, as expressed for instance by the Southmenistan constitution. Furthermore, the state refuses to include any teaching about the indigenous people of Southmenistan, the Pastafaristas. The state also refuses the Pastafaristas claim at least to get education in their own language as a secondary language in the public school.