

HUMR5140 – Human Rights in International and National Law

Take-home exam, autumn 2017

Assignment announced on: 10 November, 13:00 (1:00 p.m.)

Deadline for submission on: 20 November 13:00 (1:00 p.m.)

Chose **two** of the topics below and provide a detailed and structured answer, making good use of the sources of international human rights law. Each answer counts for 50% of the total grade.

1. Compare the three regional human rights courts, namely the European, Inter-American and African, in terms of their scope of personal jurisdiction (access), of subject-matter jurisdiction (rights), and in terms of their effectiveness.
2. Human rights are often the first casualties of a crisis threatening a State's national security. Several major human rights treaties take account of these threats by authorizing States to "escape" temporarily from some of their treaty commitments during such times. Indeed, States facing emergency situations have derogated from their human rights obligations under international law. Examples include the United Kingdom, France, Turkey, and Ukraine. What is the function of derogations under international human rights treaties? What are the main legal limitations imposed on such derogations by human rights courts or the UN treaty bodies?
3. What is the function of the 'margin of appreciation' doctrine used by the European Court of Human Rights (ECtHR) in its case law? And, what are some of the main legal consequences for the European system of human rights protection arising from the application by the Court of this doctrine?
4. States have adopted different ways of transposing into domestic law international legal obligations incumbent upon them by virtue of international human rights treaties, regional human rights treaties, and customary international law. Thus, Article 22 of the Constitution

of Kosovo, entitled 'Direct Applicability of International Agreements and Instrument', provides as follows:

Human rights and fundamental freedoms guaranteed by the following international agreements and instruments are guaranteed by this Constitution, are directly applicable in the Republic of Kosovo and, in the case of conflict, have priority over provisions of laws and other acts of public institutions:

- (1) Universal Declaration of Human Rights;
- (2) European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols;
- (3) International Covenant on Civil and Political Rights and its Protocols;
- (4) Council of Europe Framework Convention for the Protection of National Minorities;
- (5) Convention on the Elimination of All Forms of Racial Discrimination;
- (6) Convention on the Elimination of All Forms of Discrimination Against Women;
- (7) Convention on the Rights of the Child;
- (8) Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment.

What method of implementation is this and what are its advantages and shortcomings?

5. Please identify and outline the two critiques of the international human rights legal system that you find most compelling from amongst those discussed during this course. Explain:
 - (i) why you find them persuasive; and
 - (ii) whether there are reforms or changes that could be made to the international human rights legal system which would adequately address those critiques.