

EKSAMEN I JURIDISKE VALGEMNER

Vår 2014

Dato: Torsdag 8. mai 2014

Tid: 10:00 – 14:00

JUS5530/JUR1530 – Refugee and Asylum Law

The language of examination for this course is English: students may answer in English ONLY, answers in any other language than English will be given a F (F for fail).

Please read the facts and answer the questions. Please refer to the materials in the annex as well as your readings. Good Luck!

Irina is a 21 year old woman from the Donestsk region of the Ukraine who recently moved to the United States to attend college in Miami, Florida. Irina studied international affairs and hoped to pursue a career in politics back in the Ukraine. Last week, Irina received a phone call from her mother- “Irina, your Uncle Igor has joined the leadership of the “Donestsk People’s Republic” and wants to help the region re-join Russia! He led a group of soldiers to the government buildings, broke down doors, hung up the Russian flag and appointed new police units. There were explosions everywhere.” Irina was very upset, “Mother, you know I think Igor is crazy and I don’t agree with him at all.” Irina’s mother told her not to come back to the Ukraine. “It is not safe for us here! It is complete chaos!” Irina’s mother had more bad news “Irina, you will not be able to access your bank account in the United States, because the account is frozen pursuant to a targeted sanction against your father by the US federal government!” Irina was very confused “Why would they punish my father?” Her mother explained that it was because he was the chairman of a company with produced high-technology items for the Russian military. “Your father actually agrees with Igor, he thinks that the Russian minority group has a right to be independent!” said her mother. Irina was distraught because she would not be able to pay her tuition, housing, or food. Irina ran outside of her dorm room and started crying. “How could they freeze the account without letting me explain why I am innocent?” wondered Irina. Her mother told her that her father was going to seek asylum in Brazil because he received a kidnapping threat from a pro-Ukraine security group and was afraid of being shot in the street. He wanted Irina to meet them in Rio. “Unfortunately, the sanction extends to our entire family, so the US federal government will seek to prevent you from travelling.” Irina talked to her friend Boris, who told her how to leave the US and reach South America without attracting the attention of the US Department of Homeland Security. She was given false documents and encouraged to leave by



Boris "There is no point in staying here and you really shouldn't go back to the Ukraine." Irina thought that Boris was right. She arrived in Brazil and was detained by the Brazilian police for illegal entry. She was brought in to see a lawyer who informed her that her father was indeed in Rio and had filed an application for asylum. The US authorities had informed their Brazilian counterparts that they considered Irina's entire family to be collectively responsible for actions that "undermine or threaten the territorial integrity, sovereignty, and independence of Ukraine." They suggested that the presence of the family in Brazil could affect its national security as well.

Question: BA and Masters Students: You are the lawyer who has been assigned representation of Irina. Please draft a memo identifying whether or not Irina would qualify as a refugee.

Masters Students: In addition, please explain whether or not Irina's father would qualify as a refugee.

The Annex contains excerpts from the Brazilian Law on the Implementation of the 1951 Convention, an article from the Washington Post, excerpts from the ICCPR and the IESCR.

The result of the exams will be announced on Thursday 29 May, at 15.00 hours. You can check the results in the StudWeb, or by contacting the Information Centre, phone 22 85 95 00.

After the exam results are announced, candidates have the right to be informed of the grounds for the result as long as a request is made within one week of the announcement. The names and contact information of the examiners can be found on the Faculty's website, or by contacting the Information Centre. The deadline for appeal is three weeks after the announcement of the results.

Oslo, 08.05.2014

Annex

A- The Brazilian Law on the Implementation of the 1951 Convention

Article 1. An individual shall be recognized as a refugee if:

I - due to well founded fear of persecution for reasons of race, religion, nationality, social group or political opinions, he or she is out of his or her country of nationality and cannot or does not wish to rely on the protection of such country:

II - having no nationality and being out of the country where he or she had previously retained permanent residence, cannot or does not wish to return to such country based on circumstances mentioned in item I above;

III - due to severe and generalized violation of human rights, he or she is compelled to leave his or her country of nationality to seek refuge in a different country.

SECTION II

On Extension

Article 2. The effect of the refugee condition shall be extensive to his or her spouse, ascendants and descendants, in addition to other members of the family group who are economically dependent of the refugee, provided such members are within the national territory.

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SECTION III

On Exclusion

Article 3. An individual shall not benefit from the condition of refugee if:

I - He or she already enjoys protection or assistance from an United Nations organism or institution, except the United Nations High Commissioner for Refugees --

UNHCR;

II - he or she is a resident in the national territory and enjoys rights and obligations related to the condition of Brazilian nationals;

III - he or she has committed crime against peace, crime of war, crime against humankind, hideous crime, participated in terrorist acts or drug trafficking; IV - he or she is considered guilty of acts contrary to the purposes and principles of the United Nations.

Article 5. A refugee shall enjoy the rights and be subject to the duties related to foreigners in Brazil, the provisions of this law, the 1951 Convention relating to the Status of Refugees, and the 1967 Protocol relating the Status of Refugees, and under the obligation of complying with the laws, regulations and provisions for the maintenance of public order.

TITLE II

On Entrance into National Territory; Request for Refuge

Article 7. A foreigner arriving in national territory may express his or her desire to request recognition as a refugee to any immigration authority at the border, who shall give the refugee the necessary information regarding the procedure for application.

Paragraph One. In no case his or her deportation shall be effected to the border of a territory where his or her life or liberty is threatened by reasons of race, religion, nationality, social group or political opinion.

Paragraph Two. The benefit envisaged in this Article may not be involved by a refugee considered to be dangerous to Brazilian security.

Article 8. Any irregular entrance into national territory shall not be an impediment for a foreigner to request refuge before competent authorities.

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Article 9. The authority to whom the request shall have been submitted shall hear the interested party and prepare a statement containing the circumstances related to the refugee entrance in Brazil and to the reasons that made him or her leave the country of origin.

Article 10. A request, properly submitted under the previous Articles, shall suspend any administrative or criminal procedure caused by irregular entrance, brought against the requester and his or her accompanying family group.

CHAPTER II

On Expulsion

Article 36. A refugee regularly registered shall not be expelled from the national territory except for reasons of national security and public order.

Article 37. Expulsion of a refugee from the national territory shall not result in his or her withdrawal to a country where his or her life, liberty or physical integrity may be at risk, and shall only be effected upon satisfaction of his or her admission to a country where there are not risks of persecution.

TITLE VI

On the Termination and Loss of Refugee Condition

CHAPTER I

On the Termination of Refugee Condition

CHAPTER II

On the Loss of Refugee Condition

Article 39. The following facts imply loss of a refugee condition:

I - Renunciation;

II - evidence that the facts alleged for recognition of the refugee condition are false, or existence of facts which, if known at the time of recognition, would have determined its denial;

III - practice of activities contrary to national security and public order;

B. Article from the Washington Post:

Ukraine riot police humiliated as separatist mob storms Donetsk building

DONETSK, Ukraine — This eastern Ukrainian city took another step toward mob rule Thursday as stone-throwing and stick-wielding pro-Russian separatists stormed the state prosecutor's office and forced dozens of riot police deployed to guard the building into a humiliating surrender.

The attackers were backed by a crowd of a couple of thousand men and women of all ages. They chanted "fascists" and "traitors" at the riot police and waved Russian flags, as well as the flag of the self-styled Donetsk People's Republic.

Pro-Russian militants storm government office in eastern Ukraine: Any hope of dialogue between the Russian and Ukrainian governments appear to be slipping ever further away Thursday, as protesters opposed to the Ukrainian government in Kiev stormed the general prosecutor's office in the eastern Ukrainian regional capital of Donetsk on Thursday, a day after they had taken over the city council building there.

Eastern Ukraine's separatists were 'nobodies' — until now. Their rise from obscurity feeds suspicion that Ukrainian rebel leaders are being propped up by Russia.

Among the pro-Russian crowds, a Ukrainian flag was pulled out. Arriving at the prosecutor's office, the mob ripped up stone walls at a nearby park to make rocks to use as projectiles. Some wearing black balaclavas, they smashed windows and quickly forced the riot police on the steps of the building to retreat inside, seizing some of their shields as they did so.

Gunshots and small detonations rang out, and clouds of tear gas enveloped the building as the struggle continued inside. At one point, a Ukrainian armored personnel carrier approached the building in an attempt to relieve the siege but swiftly retreated when the mob turned in its direction.

Later, a group of policemen cowered outside the building, crouched on the ground with their shields held over their heads, before finally surrendering. Stripped of their riot gear, they were led away through the crowd, their heads bowed as some separatists struck them.

An elderly woman carrying a small Russian flag on a pole shouted “parasites” as one policeman was put into an ambulance, while others in the crowd bayed for blood.

“They beat our guys! We should beat them, too. We should put them on their knees,” a man and a woman yelled. But a pro-Russian activist in a riot helmet defended the police. “They are just officers on duty, doing their job,” he shouted back.

A song called “The Russians Are Coming” blasted from the speakers of a car, as well as another popular song written during the Soviet war against Nazi Germany. The car flew a flag carrying an image of World War II-era Soviet leader Joseph Stalin.

Men with close-cropped hair and tattoos stood triumphantly on the steps of the captured building, banging confiscated batons on riot shields in unison as the crowd chanted “bravo.” Some carried pistols. A Ukrainian flag and plastic trident, the national emblem, burned in a small bonfire close by, along with scraps of wood and a pair of women’s high-heeled shoes.

Inside the building, looters grabbed items ranging from legal files to hard drives.

“For 23 years I wanted to be in the Soviet Union,” said a 35-year-old miner who gave his name only as Sergey. Asked why, he said: “I don’t want to live with gays.” Later, Sergey, who came to the demonstration with his wife and son, stood among the crowd with a rock in his hand.

Regional authorities said 15 people sustained injuries, including gunshot wounds, but did not specify whether they were police or demonstrators. One elderly woman complained that she had seen a demonstrator hit by a rubber bullet fired by the police.

The state prosecutor, a main target of the demonstrator's ire, was appointed by the national government in Kiev two months ago. He was investigating corruption charges against pro-Moscow former president Viktor Yanukovich, who was ousted in February after street protests in the capital and fled to Russia.

The Donetsk region of eastern Ukraine was the heartland of Yanukovich's support, and Thursday's violence appeared partly orchestrated to prevent any investigation into the sources of his wealth here, as well as to attack a symbol of Ukrainian rule.

The demonstration, on International Workers' Day, also known as May Day, began under a huge statue of another former Soviet ruler, Vladimir Lenin, before moving to the city's main police station. There, demonstrators forced the police to hang the flag of the Donetsk People's Republic outside the building. They demanded that police free seven separatists who were arrested the day before in what police said was an attempted bank robbery.

Demoralized, corrupt and poorly paid, the police in eastern Ukraine have been caught in the middle of the region's separatist uprising and have attracted the scorn and anger of both sides.

On Monday, riot police in Donetsk stood by and watched as a pro-Russian mob attacked a peaceful rally in which about 1,000 marchers called for Ukraine to remain united. The city council denied permission for another pro-Ukrainian rally on Tuesday, ostensibly because it represented a "threat to the people" of Donetsk, according to a letter seen by The Washington Post.

On Tuesday, the main police station in the city of Luhansk, capital of the neighboring region of the same name, was also stormed by a separatist mob and its windows smashed. Police requested instructions from Kiev as the mob gathered outside but did not receive any orders and ultimately had no choice but to give in, a police spokeswoman was quoted as saying.

Ukraine's acting president, Oleksandr Turchynov, said this week that the police were "helpless" to protect citizens and in some cases were actively colluding with pro-Russian insurgents.

C. International Covenant on Civil and Political Rights

Article I

1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.
2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.
3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

PART II

Article 2

1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such legislative or other measures as may be necessary to give effect to the rights recognized in the present Covenant.

3. Each State Party to the present Covenant undertakes:

(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;

(b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;

(c) To ensure that the competent authorities shall enforce such remedies when granted.

Article 3

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.

Article 4

1. In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.

2. No derogation from articles 6, 7, 8 (paragraphs 1 and 2), 11, 15, 16 and 18 may be made under this provision.

3. Any State Party to the present Covenant availing itself of the right of derogation shall immediately inform the other States Parties to the present Covenant, through the intermediary of the Secretary-General of the United Nations, of the provisions from which it has derogated and of the reasons by which it was actuated. A further communication shall be made, through the same intermediary, on the date on which it terminates such derogation.

Article 5

1. Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant.

2. There shall be no restriction upon or derogation from any of the fundamental human rights recognized or existing in any State Party to the present Covenant pursuant to law, conventions, regulations or custom on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent.

PART III

Article 6

1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

2. In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgement rendered by a competent court.

3. When deprivation of life constitutes the crime of genocide, it is understood that nothing in this article shall authorize any State Party to the present Covenant to

derogate in any way from any obligation assumed under the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide.

4. Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.

5. Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.

6. Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant.

Article 7

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

Article 9

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.

3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.

4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.

5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

Article 10

1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

2. (a) Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons;

(b) Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication. 3. The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.

Article 12

1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

2. Everyone shall be free to leave any country, including his own.

3. The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.

4. No one shall be arbitrarily deprived of the right to enter his own country.

Article 13

An alien lawfully in the territory of a State Party to the present Covenant may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case

reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority.

Article 14

1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (ordre public) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.

2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.

3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:

(a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;

(b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;

(c) To be tried without undue delay;

(d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;

(e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

(f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;

(g) Not to be compelled to testify against himself or to confess guilt.

4. In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.

5. Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.

6. When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.

7. No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.

Article 15

1 . No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of the lighter penalty, the offender shall benefit thereby.

2. Nothing in this article shall prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by the community of nations.

Article 17

1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.

2. Everyone has the right to the protection of the law against such interference or attacks.

Article 18

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.

3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others. 4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

Article 19

1. Everyone shall have the right to hold opinions without interference.

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others;

(b) For the protection of national security or of public order (ordre public), or of public health or morals.

Article 20

1. Any propaganda for war shall be prohibited by law.
2. Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.

Article 21

The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.

Article 23

1. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.
2. The right of men and women of marriageable age to marry and to found a family shall be recognized.
3. No marriage shall be entered into without the free and full consent of the intending spouses.

4. States Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. In the case of dissolution, provision shall be made for the necessary protection of any children.

Article 25

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

(a) To take part in the conduct of public affairs, directly or through freely chosen representatives;

(b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;

(c) To have access, on general terms of equality, to public service in his country.

Article 26

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Article 27

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

D. International Covenant on Economic, Social and Cultural Rights

Article 11

1. The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.