

## OPEN BOOK EXAM

- 1) This examination consists of **two fictitious cases** with two questions each. Please **read** the questions **carefully** before answering them. Your responses should be complete, but as concise as possible.
- 2) You have got **two (2) hours** to complete all the questions.
- 3) This is an **open book** examination. You may consult all materials including books, presentations, materials posted on Moodle, as well as electronic sources.
- 4) However, any kind of **electronic communication** and the **use of AI technology** are **strictly prohibited**.
- 5) When quoting or paraphrasing, include an identifiable **reference** with a page number.
- 6) When finished, please upload the document on Moodle in the following format: "Exam\_Student Number.docx". Indicate your **student number**, but not your name, in the header of your document.

### Case I

Due to the exodus of highly skilled workers from Russia, Kyrgyzstan has been experiencing a significant economic upturn and is attracting foreign investments from across the globe. As part of its efforts to accommodate the expanding labour force and modernize and diversify its economy, the Kyrgyz government has decided to implement a new employment policy that requires all job applicants to disclose their religious affiliation specifically. The law declares that it pursues two goals. First, it aims to promote diversity and inclusivity in the workplace. Second, it responds to growing concerns about terrorist threats from certain religious groups. The government claims that it has gathered reliable intelligence that terrorist groups are trying to infiltrate companies, especially in the infrastructure and technology sectors, to be able to launch targeted armed and cyber-attacks.

One of the job applicants, a highly qualified Russian engineer and recent convert to Shi'a Islam, refuses to disclose her religious affiliation, stating that it is a private matter and should not be a factor in her application. The potential employer, a state-owned telecommunications company, informs her that the policy is mandatory and that she cannot proceed with her job application without providing this information. The applicant takes legal action against the employer, arguing that the policy is discriminatory and that it has precluded her from being hired. Specifically, she claims that if she were to provide such information, she would be at a disadvantage given that Kyrgyzstan is a predominantly Sunni country. Indeed, less than 1% of the Muslim population affiliates as Shi'a according to government estimates.

The employer, by contrast, argues that the new policy is necessary to ensure that they can provide appropriate accommodations for employees based on their religious needs and to promote a more diverse and inclusive workforce. They claim that they have never used this information to discriminate against any candidates and that they are committed to equal opportunity employment. As proof, the company points to the recent hiring of dozens of male and female Russian nationals, including Orthodox Christians, self-proclaimed atheists, and a Sunni Muslim, all of whom testify that their creeds have been respected. However, the company has not hired any Shi'a Muslim of any nationality to date. Leaks from the interior ministry reveal that the government has been gathering intelligence on certain Shi'a groups in their counter-terrorism operations.

A) Acting as legal counsel to the Russian applicant, which human rights treaties and specific provisions would you advise her to invoke? Explain how the relevant provisions apply in this scenario.

B) Is the government policy discriminatory? Provide a systematic and reasoned analysis that considers various legal options.

(turn page)

**Case II**

*In the mid-1960s, a small village in a European country was the site of a brutal government crackdown on a group of pro-democracy activists protesting the ruling dictatorship. The protesters were mostly young students who were demanding greater political freedom, free speech, and an end to widespread corruption. The government responded with a heavy-handed crackdown, which included beatings, arrests, and killing of dozens of protesters. A few families were able to identify the bodies of their loved ones immediately on-site, but many other protesters were never seen again and presumed dead, with their families never receiving any official confirmation of their fate. The government at the time denied any involvement in these disappearances, claiming that the protesters had fled the country or had killed each other due to infighting within the group.*

*Following a democratic revolution in the early 1990s, the families of the missing protesters have been fighting openly for justice and seeking redress from the government. They have organized protests and vigils, written letters to officials, and launched legal actions. However, their efforts have largely been in vain, with every elected government refusing to acknowledge wrongdoing, which they attribute entirely to the old regime. Legal actions by the families to receive compensation were dismissed by the highest national court on two occasions, the main argument being that the fate of the protestors is still uncertain and that the government is doing everything in its power to investigate the case. In 2012, a special unit was created within the Ministry of Justice to facilitate the investigation, mostly in reaction to the advocacy and persistent pressure by the families.*

*Recently, an investigative report by an independent journalist revealed that the dictatorial regime was responsible for the disappearances and had likely engaged in extrajudicial killings. The report also claims that relevant evidence was hidden and destroyed by influential bureaucrats within the Ministry of Justice who had transitioned from the old to the new democratic government. The families, consisting mostly of second-generation family members (such as nieces and nephews of the victims) by now, have decided to seek redress directly from the European Court of Human Rights (ECtHR), which has not previously dealt with the matter.*

*The state in question joined the Council of Europe and acceded to the European Convention on Human Rights (ECHR) in 1996. It is a party to all the protocols to the ECHR.*

*A) What violations of the ECHR have the families of the missing protesters possibly suffered? Explain how the relevant provisions apply to the facts at hand.*

*B) What arguments could the government put forward to contest the admissibility of the legal claims made by the family before the ECtHR? Evaluate how convincing these challenges are.*