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# TAKING A CASE TO THE EUROPEAN COURT OF HUMAN RIGHTS

18 January 2021

9 a.m. to 1 p.m.

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## *General notes:*

- Please check at receipt of the exam the number of questions. The examination contains 6 questions.
- Write your answers directly into the document "Answer\_Module\_XXXXXXXXXX" and save it locally on your computer with your Student ID number.
- Write your Student ID number and your Examination serial number in the header on page 2.
- Pay attention to possible characters limitation in the task.
- For submission/upload, save the document with your Student ID number as a PDF file according to the example and upload it. Example: Answer\_criminology\_17301002.pdf
- Take enough time for the submission (at least 5 min). Nothing can be uploaded after the examination time has expired.
- You are responsible for uploading the exam in time. You will not be made aware of this.

## *Notes on solving the questions*

Your answers may not exceed a total of 6 pages, formatted as follows: font Arial (11 pt), single line spacing, min. page margin 2.5 cm on all sides (see note on p. 4 of the exam).

## *Notes on marking*

When marking the exam each question counts equally. Grading will consider the knowledge of class materials, students' analysis of the problem, as well as structure and style.

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We wish you a lot of success!

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## Facts

A. is a secondary school pupil of 15 years. He goes to school in a small village in the rural Canton Appenzell Ausserrhoden, Switzerland. On Wednesday, 13 August 2014, he starts to refuse shaking his female teachers' hands to say good morning as it is traditionally done every morning. A. explains his behaviour with his Muslim faith: he would not be allowed any physical contact with adult women, except for close relatives. According to A., this prohibition is not only of minor significance but forms part of an important catalogue of religious duties concerning everyday life. Soon later, on Wednesday, 1 October 2014, M., who attends the same class as A., also stops shaking hands with his female teachers. M. argues that his behaviour is part of his self-determined way of living. As immediately ordered disciplinary measure – which remained unsuccessful, though – the two boys are kept in after school.

These events spark a heated debate which quickly spreads to the whole Canton and subsequently to the entire country. Nationalist politicians object the influx of what they call 'foreign Muslim practices' that would undermine Swiss customs and traditions worthy of protection. Others are furious about a perceived lack of integration. Within weeks, draft legislation is prepared and after little debate the cantonal Education Act is amended.

With entry into force on 1 January 2015 it reads, in relevant parts, as follows:

### *Article 22a*

School management reports to the immigration authority any student whose behaviour at school indicates substantial deficiencies in integration.

### *Article 23*

para 1: Students shall contribute with their behaviour to a successful learning environment and to a productive class and school community, notably by respecting and participating in local customs and traditions.

para 2: Students follow the instructions of the school management and teaching staff, participate in common local rituals, such as shaking hands as a greeting ritual, and take care of school facilities, equipment and materials.

### *Article 35*

Legal guardians shall encourage their school-age children to attend all lessons and to follow the rules and instructions of the school, having regard to local societal values and rituals.

### *Article 70*

In case of sustained breach of behavioural duties, school management admonishes the student and his or her parents in written form. If necessary, the student and his or her parents are summoned to a personal meeting with the school director and the responsible teaching staff. In case of persistent and prolonged disrespect of essential behavioural norms, expulsion from school can be ordered on request of the school director by the municipal school authority.

A. and M. continue to refuse the handshake with female school staff. As a consequence, the school director issues a formal, written admonishment to the two boys' parents. As this measure proves unsuccessful, the school director and the responsible head teacher hold personal meetings with both students and their parents. On this occasion, the school director issues warnings concerning the possible expulsion of the children from school. After the meetings, these warnings are addressed to the students and their parents also in written form.

After his meeting with the school director, M. gives in and resumes shaking his female teachers' hands. He is frightened to damage his career and tired from the hassle related to his follies. A. and his parents, however, insist that it was, for religious reasons, impossible for A. to shake his female teachers' hands. After a number of further meetings, admonishments and warnings, A. is excluded from public school by the responsible authority on Wednesday, 10 February 2016. Incurring considerable costs (approximately CHF 60'000) for his parents, he finishes his compulsory education in a private boarding school in the city of St. Gall.

A. and his parents unsuccessfully exhaust all domestic remedies against what they perceive as a severe violation of A.'s religious freedom. The Federal Supreme Court's final judgment is issued on Friday, 3 June 2016. In response to this positive verdict of the Federal Supreme Court, some Appenzell Ausserrhoden schools declare for the future that they will rigorously apply the new legislation, including its Article 70. Other schools, however, refrain from making any concrete statements as to their position.

A.'s family then submits an application to the European Court of Human Rights. The registry receives the application, which conforms to all requirements, on Monday, 7 November 2017. The family complains of violations of Articles 8 (right to private life), 9 (freedom of religion), 14 + 9 (discrimination on religious grounds), 1 Protocol No. 1 (protection of property) as well as of Article 2 Protocol No. 1 (right to education). The applicants argue that A.'s expulsion from public school interfered with A.'s social relationships with his school friends. Further, they allege an interference with A.'s right to practice his religious duties and argue that A. was discriminated against on religious grounds. In addition, they claim that A.'s expulsion from school violated their property rights because they were left with no other choice than to spend significant amounts of money to pay for a private school where A. could complete his compulsory education. Finally, they allege a violation of A.'s right to education arguing that his change of school impaired his learning progress and that he was discriminatorily prohibited continued access to the state schooling system. Further, A.'s parents claim a violation of their right to have their religious convictions concerning their son's education respected.

When M. heard that his former colleague A. initiated legal proceedings, he spontaneously decides that he wants to do so too. He considers it unjust that he was kept in after school only because he refused to shake hands with female school staff. M. successfully convinces his – at the beginning reluctant – brother, who just finished his law degree, to take his case. On Monday, 8 August 2016, the Federal Supreme Court issues the final judgment in M.'s case. All complaints are rejected. 184 days later, on Wednesday, 8 February 2017, the registry of the European Court of Human Rights receives the application on behalf of M. who is by now formally represented by a lawyer admitted to the bar. The application is complete and satisfies all formal requirements. In his application, M. complains of a violation of Article 9. He argues, without further specifications, that his behaviour was based on deeply and genuinely held personal beliefs and convictions.

On Thursday, 27 April 2017, the registry of the European Court of Human Rights receives another complete application in accordance with all requirements. It is submitted on behalf of the Appenzell Interest-Group of Muslim Residents. This informal group, whose members meet regularly to discuss integration problems, preserve traditions and meet like-minded people, unites a large part of the Muslim residents of the Canton Appenzell Ausserrhoden, including several families with children in (pre-) school-age. Having followed the debate that led to the amendment of the Education Act, the members of the Interest-Group fear that the new regulations will be applied also to their children. Their domestic appeals against the amendments remain unsuccessful, though. The Federal Supreme Court's final judgment is issued on 17 October 2016. Frustrated and angry about what it perceives as Islamophobic law-making, the Interest-Group decides, after hesitating for a while, to turn to the European Court of Human Rights in the hope of receiving a judgment that declares the contentious legislative amendments in violation of the Convention. Having worked hard to complete its application over the extended Easter weekend, the Interest-Group's president finally sends the application off by fax late on Easter Monday, 17 April 2017. During the following Tuesday, 18 April 2017, he also posts the application dossier. Both in its own name and on behalf of its members, the Interest-Group alleges violations of Articles 9 and 14 (in combination with Article 9).

The Court joins the three applications, to the case of *A. and Others v. Switzerland*. Communicating the case, it submits the following questions to the parties:

### Questions

1. Do the applications comply with the six-month time-limit?
2. Do the applicants have victim status?
3. Do the applications fall within the Court's jurisdiction?
4. Are the complaints inadmissible based on the merits?
5. Are the complaints inadmissible for any other reason?
6. Please submit a brief (not more than one page) preliminary assessment of the merits of the case referring to the most important Convention principles and case-law applicable to the case.

The Court limits the parties' initial statements to six-pages (Arial 11, single line spacing, min. page margin 2.5 cm on all sides), requiring, nevertheless, observations concerning *each* of the questions.

As the Court joined their applications, the first (A. and his parents), second (M.) and third (Appenzell Interest-Group of Muslim Residents and its members) applicants and their counsels submit one joint response to the Court's pre-admissibility questions.

**Note:** Based on this set of facts, students are required to submit their 6-page observations on the case, essentially working with and referring to the ECtHR's case-law. Each student shall take the position of the applicants. You can start from the assumptions that all domestic remedies are exhausted in compliance with the requirements under Article 35 (1) ECHR and that the application falls within the Court's jurisdiction *ratione materiae*. That is, you need not discuss these two issues.