

- Courseware (/courses/LouvainX/Louv2.01x/1T2014/courseware)
- Course Info (/courses/LouvainX/Louv2.01x/1T2014/info)
- Discussion (/courses/LouvainX/Louv2.01x/1T2014/discussion/forum)
- Wiki (/courses/LouvainX/Louv2.01x/1T2014/course_wiki)
- Progress (/courses/LouvainX/Louv2.01x/1T2014/progress)
- Reading Materials (/courses/LouvainX/Louv2.01x/1T2014/pdfbook/0/)
- Syllabus (/courses/LouvainX/Louv2.01x/1T2014/3517b9300b554b118f11224b8c05eb10/)

THE LEGALITY CONDITION - EXERCISE 4 (1/1 point)

4. "X and Y are members of what they call a religious faith, but they are prohibited from exercising their religion because of an executive decree having labelled them a 'sect', and thus prohibiting their activities. X and Y are concerned that it is only the Executive, through decrees, that defines what 'sects' are and designates a particular religious group as 'sect'. They argue that this should be discussed openly in Parliament, with a possibility for opposition political parties to have their views heard and for the media to report about the debates to the general public. Restrictions to human rights, they argue, should not be left to the sole Government to decide."

- ☒ Provided the definition of a 'religious sect' is clear, it does not matter whether this definition is provided by the government or by parliament; ✓
- ☐ It is impossible to define what a 'religious sect' is, and this should be left to a case-by-case determination by courts;
- ☐ X and Y are right, only a parliamentary assembly should be allowed to determine what religious groups may be prohibited as constituting 'sects'.

EXPLANATION

Response 3 is the one adopted by the Inter-American Court of Human Rights. Article 30 of the American Convention on Human Rights reads : "The restrictions that, pursuant to this Convention, may be placed on the enjoyment or exercise of the rights or freedoms recognized herein may not be applied except in accordance with laws enacted for reasons of general interest and in accordance with the purpose for which such restrictions have been established." In an Advisory Opinion of 1986 delivered at the request of Paraguay, the Inter-American Court of Human Rights comments as follows on the word "laws" that appears in that provision:

"In order to guarantee human rights, it is ... essential that state actions affecting basic rights not be left to the discretion of the government but, rather, that they be surrounded by a set of guarantees designed to ensure that the inviolable attributes of the individual not be impaired. Perhaps the most important of these guarantees is that restrictions to basic rights only be established by a law passed by the Legislature in accordance with the Constitution...

Such a procedure not only clothes these acts with the assent of the people through its representatives, but also allows minority groups to express their disagreement, propose different initiatives, participate in the shaping of the political will, or influence public opinion so as to prevent the majority from acting arbitrarily. (The law thus enacted) must (not only be) formally proclaimed but there must also be a system that will effectively ensure their application

and an effective control of the manner in which the organs exercise their powers."

However, the position of the Inter-American Court of Human Rights is an isolated one. Neither the Human Rights Committee nor the European Court of Human Rights, for instance, consider that only laws in the formal sense (adopted by parliament) may restrict human rights: they consider that restrictions are "in accordance with the law" if the regulatory framework that defines the use of restrictions is detailed enough, and protective enough of the individual, to avoid arbitrariness in the imposition of restrictions or resulting in a chilling effect on the exercise of individual freedoms. It does not matter whether this regulatory framework is the result of case-law, or collective agreements, or any other regulatory technique. (Note however the position adopted by the Human Rights Committee in its *General Comment No. 34* on Article 19 of the ICCPR (freedoms of opinion and expression), which it adopted in 2011, discussed next).

[Check](#)[Hide Answer\(s\)](#)

Help

About (<https://www.edx.org/about-us>) Jobs (<https://www.edx.org/jobs>)
Press (<https://www.edx.org/press>) FAQ (<https://www.edx.org/student-faq>)
Contact (<https://www.edx.org/contact>)



EdX is a non-profit created by founding partners Harvard and MIT whose mission is to bring the best of higher education to students of all ages anywhere in the world, wherever there is Internet access. EdX's free online MOOCs are interactive and subjects include computer science, public health, and artificial intelligence.



(<http://www.meetup.com/edX-Global-Community/>)



(<http://www.facebook.com/EdxOnline>)



(<https://twitter.com/edXOnline>)



(<https://plus.google.com/108235383044095082735/posts>)



(<http://youtube.com/user/edxonline>)

© 2014 edX, some rights reserved.

Terms of Service and Honor Code -
Privacy Policy (<https://www.edx.org/edx-privacy-policy>)