2. HOW IS CARRIED OUT OF THE PROTECTION OF A RIGHT WHICH IS NOT REGULATED IN THE CONSTITUTION IN YOUR LEGAL SYSTEM? WHAT KIND OF BALANCING IS DONE WHEN A RIGHT UNCOUNTED IN THE CONSTİTUTİON IS INTERFERING WITH A CONSTITUTIONAL RIGHT?

2.1. Professor Dr. Carmen Thiele - Germany	*That depends:* *Rights that are not written in the constitution but have been created by the federal constitutional court (right to informational self-determination; common personality right etc.):* *Are treated exactly like rights that are written in constitution.* *Right that are not written in the constitution and are not accepted by the federal constitutional court or scholar's opinion:* *Are not binding but can reach the same status as written rights as soon as the federal constitutional court accepts them.* *When two human rights collide, the conflict is solved with a mechanism called "praktische Konkordanz" That means: No right can succeed fully, and no right can lose fully. The verdict must be written in a way that preserves as much as possible from both rights.*
2.2. Professor Juliano Benvindo - Brasil	*The Brazilian Constitution of 1988 has one of the most extensive list of human rights in the world. The whole Article 5, with its seventy-two clauses, is oriented to human rights and the mechanisms to protect them. Other parts of the Constitution are also aimed at protecting social rights (Art. 7, for example). In such a configuration, it is quite rare to find the type of conflict between unenumerated rights and those that are found in the constitutional text. Moreover, when this happen, usually the Supreme Court will interpret this unenumerated right in a way that is embraced by an enumerated right. By the same token, the Brazilian Supreme Court has historically been quite open to hypotheses that, in principle, did not seem to be part of our constitutional system, interpreting them as embraced by one or other clause.*
2.3. Catherine Willis-Smith/LL.M Candidate – South Africa	
2.4. Dr. Jur. Marton	*(Human) Rights not regulated per se in the Hungarian constitution (Fundamental Law) can still appear in the constitution as state objectives (i.e. regulatory objectives), meaning e.g. the protection of biodiversity, the assurance of humane*

SULYOK - Hungary	*living conditions (amounting to dignified living) – they are all contained in the constitution (Fundamental Law), but are not protected as fundamental rights but state objectives. (usual wording suggests Hungary's "commitment to ensuring" these.)* *Also, there are constitutional values (e.g. the right to life of the fetus), which are not protected as fundamental rights but have the potential of limiting fundamental rights (in the previous example, the mother's right to self-determination), in case fundamental rights' limitations are to be considered.* *Other rights (and underlying principles) not appearing in the constitution are made part of the constitutional legal order through ensuring the harmony of public international law and domestic law (under Article Q) of the Fundamental Law) - this way IHR conventions are promulgated in the national legal order in the form of laws (Acts of parliament, normally).* *Regarding the Law of the EU, the issue of the rights contained in the Charter of Fundamental Rights is problematic. As the Charter's scope only extends to Member States when they implement EU law, it is a point of debate what is understood under this on a case-by-case basis. E.g. in front of the Hungarian Constitutional Court (HCC), no references to the* *Charter are to be expected as directly informing a decision on a so-called 'rights issue', because the HCC is not a Member State institution that implements EU law. It protects the constitution and implements the protections afforded by the Fundamental Law irrespective of any eventual EU context. (Regardless, in some of the cases there is a reference to the Charter, but merely as an additional supporting argument that would not be binding on its own) Based on the leading cases of the HCC, in cases involving the limitation of a fundamental right, the normal exercise of balancing (under Article I (3) of the Fundamental Law) is necessity and proportionality (a. legitimate aim, b. necessity for the realization of another fundamental rights or constitutional value, c. suitability of the limitation to achieve aim, d. use of the least restrictive means in limitation (i.e. limitation proportional to the intended aim)* *Other tests – in addition to necessity and proportionality – exist for specific circumstances (also based on HCC jurisprudence): a, "rationality test" – in the case of discrimination, the test measures whether the discriminatory differentiation between two groups had an objectively reasonable and rational cause. b, "public interest test" – in the case of limiting the right to property (typically through expropriation), the balancing is done by looking at the underlying public interest, whether it is substantiated or not.*

	Relevant regulatory framework: *Fundamental Law of Hungary (in English as of June 2018: https://www.kormany.hu/download/f/3e/61000/TheFundamentalLawofHungary_20180629_FIN.pdf)* *sp. Article I (3) on limiting fundamental rights* *For English summaries and decisions of the HCC visit: www.hunconcourt.hu*
2.5. Benjamin Danpullo, LL.M - Nigeria	*There are cultural, or customary/traditional methods of protection of rights not counted/regulated in my countrys constitution. For instance, the right of LGBT persons although is not recognized in my country laws, but there are some cultures where people of that sexual orientation are given some form of tolerance and acceptability. So, traditional rulers in those communities provide the balance in such situations.*
2.6. Professor Dr. THIO Li-ann - Singapore	*Our courts in Singapore are not activist courts although they have been willing to find certain unwritten constitutional rights e.g. right to vote, right to a judicial remedy etc…Our jurisprudence is largely confined to our fundamental liberties in Part IV of the Constitution and rights like "life and personal liberty" have been narrowly construed to mean bodily integrity. Singapore courts have not followed the expansive approaches of e.g. Indian/Bangaldeshi courts who find in the right to life a right to livelihood or a right to a clean environment.* *• Singapore adopts a communitarian approach towards balancing rights and public goods and gives great weight to public order issues.* *It rejects the idea of rights as trumps and the courts presume the constitutionality or legality of executive or legislative action which restrict rights.* *• There are some cases where the courts appear to place on co-equal terms written rights (right to free speech) versus unwritten 'rights' (freedom not to be offended) but the jurisprudence is immature.*
2.7. Prof. Dr. iur Yiren Lin - Taiwan	*Es ist durch zwei Seite zu intrepretieren.* *1. Art. 22 der Verfassung der Republik China ist als Auffangsgrundrecht gewählt. Es lautet: "Alle anderen Rechte und Freiheiten des Volkes, die der sozialen Ordnung oder dem öffentlichen Wohl nicht zuwiderlaufen, werden durch die Verfassung gewährleistet". Diese Artikel zeigt sich die Offenheit der Verfassung. Durch die Verfasungsauslegung unserer Verfassungsgerichtsbarkeit können die schutzwürdige Interesse im sozialen Wandel nachhinein als Verfassungsgüter anzuerkennen.*
2.8.	*For people who are well educated and usually reside in cities, they can express their aspirations to the government and legislators. However, for the general public who live mostly in rural areas with low education levels, the channeling of aspirations is*

Dr. Sri Wahyun Kadir - Indonesia	*likely to be hampered, except in the case of large cases and blow up by social media. Even though at this time, the government has implemented a 9-year compulsory and free education for equalization education in rural communities, but due to the geographical location far from the city center, the commom people in the village often just accept what happens with their lives. This accepting life attitude is also usually based on the strength of their religious faith.* *What kind of balancing is done when a right uncounted in the Constitution is conflicted with a constitutional right?* *The government and parliamentarians should be able to provide solutions to this, they should be more proactive to the public to protect anything including rights that are not taken into account even if they are contrary to constitutional rights, that is the task of the government and the members of the council. Always giving room for discussion and accepting aspirations is more useful for knowing what is happening. Existing socialization, and listening to people's aspirations directly are a keys to success. The government have done it already, because Indonesia is heading towards as a welfare state even though Indonesia is currently still in the developing country stage. But of course there is still a minimum standard that is not achieved, if this is faced with the vastness of the Indonesian state which is far from the center of government, although with the autonomous government system for each province, but there is still much that must be done by the government, especially meeting the needs of the right education, work and so on. The State of Indonesia is an archipelago which is spread geographically and becomes an obstacle in the fulfillment of minimum rights. With the current democratic governance system in the form of representation, especially by granting broad autonomy rights to each Province, however the problem of the extent of the territory is still an obstacle. This makes the fulfillment of people's basic rights not in good management.*
2.9. Professor Marina Calamo Specchia - Italy	*The Article 2 of the Italian Constitution states "The Republic recognizes and guarantees the inviolable rights of man, both as an individual and in social formations where his personality takes place": the Constitutional Court, by an extensively interpretation of some written rights in the Constitution, has recognized the right to privacy that does not appear in the Constitution as a right of the personality but it is derived by a judicial interpretation of the art. 15 of the Constitution: it is considered by the Italian Constitutional Court as an inviolable human right (Constitutional Court sent. N. 81/1993). This means that the elasticity of the constitutional rules allows the Court an integrative interpretation of the constitutional provisions put in place to protect human rights and fundamental freedoms in the aim of a strengthening of the protection of human persons.*
2.10. Josef Martin	*Peru has signed the Universal Declaration of Human Rights and the Inter-American Convention on Human Rights. Our 1993 constitution includes in its first 2 articles the*

Zielinski Flores - Peru	*fundamental rights of the person and in its article 3 indicates that the rights not listed they are also protected by the constitution whenever they merge "in the dignity of man, or in the principles of sovereignty of the people, of the democratic State of law and of the republican form of government."* *This last article focuses precisely on the protection of the person in his dignity, in accordance with the treaties signed by Peru at the international level.*
2.11. Dr. Martín Risso Ferrand – Uruguay	*Article 72 of our Constitution determines that rights that are not established by the express text but are inherent to the human personality or derive from the republican form of government, have Constitutional status as well.* *In cases of contradiction between two human rights provisions, whatever the nature of the rule or its hierarchy or its source, the most favorable regulation should be applied, that is the regulation that gives the right more breadth, the one that offers the right a better guarantee. This is called the "preference guideline for regulations".*
2.12. Professor Dr. Shinar Adam – Israel	*Constitutional rights trump non-constitutional rights. When a right that is non-constitutional is identified, it is often balanced against countervailing interests, if there is no superseding law.*
2.13. Assist. Professor Sombhojen Limbu – Nepal	*We have a youngest Constitution (The Constitution of Nepal 2015) in the World. We have thirty one fundamental rights in the supreme law so our challenges to effectively enforce such rights for alien and citizen in the country. Actually we have mixed legal system (Common, Civil, and Traditional legal system). So we have incorporated some fundamental human rights in our Constitution which has no classification based on existing legal system. When conflict arises between human rights activists and the Constitution the Supreme Court of Nepal shall have jurisdiction to interpret.*
2.14. Suzan Tavares da Silva – Portugal	*In the Portuguese Constitution, we have an "open clause" that admits a category of "material fundamental rights", which are liberty rights not contained within the constitution but regulated as constitutional rights. This "material fundamental rights" category is not a formal category of rights so any right of this kind can be qualified as a constitutional right by a Court and then balanced as having the same weight when a conflict emerges with a formal constitutional right.*
2.15. Assist. Professor Zewdu Mengesha - Ethiopia	*The courts are allowed to take judicial notice if the rights are promulgated in the national and regional legal Gazettes. Therefore even if these rights are not listed under the Constitution, it is possible to protect these rights so long as these rights are incorporated under the different domestic legislations and international instruments to which my country is a party.*

	It is clearly incorporated under the constitution that the constitution is the supreme law of the country and any legislation and acts contrary to this document is null and void.
2.16. Dr. Alexander Kim - Russia	*It depends from region of my country.*
2.17. Prof. Dr. Vasanthi Nimushakavi - India	*The Indian Constitution is considered the founding document for all powers and rights and it is difficult to contemplate that there are rights which the constitution does not implicitly if not explicitly endorse. If there is any right which comes into conflict with a constitutional right, the constitutional right shall prevail. Similarly the right against defamation which is a private rights will give way to the right to speech and expression which is a constitutional right*
2.18. Massimiliano Buriassi - Italy	*Risp. Si applica il diritto internazionale privato. Prevale la tutela del diritto costituzionalmente garantito*
2.19. Professor Dr. Ahmed Aubais Alfatlawi - Iraq	*In the Iraqi legal system, there are rights ,that mentioned as general principles in the constitution. In contrast, there are rights that , mentioned in different laws and organized in the form of special laws. Therefore, there are two levels in the Iraqi legal system, the first one is legi generali. While the second is lex speciales, and when the contradiction between them or when there is a gap in a right not regulated by the Constitution or a special law, in this case the Federal Supreme Court is the interpretation body, to determine according to the jurisprudence of the agreed solution to determine the rights not organized according to the Constitution or Iraqi laws.*
2.20. Professor Dr. Hyungnam Kim - South Korea	*According to interpretation about Article 10(All citizens shall be assured of human dignity and worth and have the right to pursue happiness) & Clause 1, Article 37(Freedoms and rights of citizens shall not be neglected on the grounds that they are not enumerated in the Constitution) of Korean Constitution, it has been well protected by the Korean Constitutional Court. Balancing test which is a subordinate principle of Proportion Principle of Korean Constitutional Court will do. Specific standards of balancing are Ranks of Constitutional Rights, Double Standard of the U.S. Supreme Court.*
2.21.	*Constitutional court of Slovak republic repeatedly emphasized, that if a special regime of a specific human right or freedom is prescribed by an international treaty,*

Associate Professor Tomáš Ľalík, Ph.D - Roman Lysina, Ph.D Candidate - Slovakia	*Slovakia must adhere to this regime. To assess the scope of a right, it is of a great value to respect the scope set out in the international treaties, provided that Slovakia is bound by such a treaty. In the case of conflict between human rights, usually test of proportionality is applied.* *Some more detailed information may be found here : https://www.academia.edu/14583838/Understanding_the_binding_effect_of_the_case-law_of_the_ECtHR_in_domestic_legal_order* *Rights and freedoms are found in the Constitution. There is no such thing as statutory rights and freedoms. All rights have their origin in the Constitution even when such connection is rather remote. The Constitutional Court applies in most of the cases test of proportionality.*
2.22. Professor Dr. Mohammad Javad Javid - Iran	*Natural rights or in other words human rights relating to human nature in perspective of natural law is vast and infinite , it must be discovered . As England doesnot have Constitution because they believe this philosophy behind that rights are limitless and cannot be exactly mentioned and enumerated one by one within the positive frame work. I think perfection even in legal aspect just like philosophy is a process- based and passage of time is healing. Time is healing to create customary law and then positive legalisation in order to protect. In my view, rights must be discovered and then legislation must be in parallel with nartural law. Every law(positive law) must be in parrallel with natural law to be permanet. All laws and positive one should be based on narural rights and law in order to be called Universal. This aligning and in parallel relationship can result in the root and true foundation of all rights, that particularly are not pluralistic and infinite because are viewd as the mother rights or stem rights.*
2.23. Professor Dr. Adrienne Stone - Australia	*Question 2(a): Protection of subconstitutional rights* *Rights that are not mentioned in the Constitution are protected in a variety of ways.* *Interpretive presumptions* *Fundamental common law rights are protected through an interpretive presumption known as the principle of legality. This presumption holds that legislation will be interpreted so as not to derogate from common law rights except where the law manifests a clear intention to do so. Further, as mentioned above, the statutory charters of rights impose a requirement that courts, as far as possible, interpret legislation consistently with human rights. Finally, there is a presumption that legislation is to be interpreted consistently with rules of international law, at least in circumstances of ambiguity. This gives international human rights law a role to play*

	in statutory interpretation, even where a statute does not purport directly to incorporate international human rights law. *Judicial and executive enforcement* *The federal and state legislatures have enacted statutes that protect various human rights. Some of these statutes give either executive agencies or the courts a role in enforcing these rights. For instance, the Racial Discrimination Act 1975 (Cth) renders certain acts unlawful, and its commands may be enforced through conciliation by the Australian Human Rights Commission and the federal courts. Similar regimes exist at the state and territory level.* *Parliamentary scrutiny regimes* *At both the national level , human rights are protected through the parliamentary process. At the nation level as well as in the three subnational jurisdictions with statutory bills of rights, bills introduced into Parliament must be accompanied by a statement that assesses the law's compatibility with human rights. Further, in those jurisdictions and in New South Wales, parliamentary committees are required to scrutinise bills for their compatibility with specified human rights.* *Question 2(b): Conflict between constitutional and subconstitutional rights* *Section 109 of the Australian Constitution provides that Commonwealth law prevails over state law in circumstances of inconsistency. Likewise, the Constitution is supreme over inconsistent federal law. Thus, constitutional rights will prevail over sub-constitutional rights where they come into conflict.*
2.24. Professor Dr. Mark Tushnet - USA	*Rights other than those protected by the Constitution are protected through ordinary statutory or "common" law. Those protections can be modified freely by the legislature. But, if a statutory right conflicts with a constitutional one, the constitutional right automatically prevails (except under quite narrow circumstances).*
2.25. Professor em. Dr. iur Reinhard Mußgnug - Germany	*The rights guaranteed by the constitution enjoy priority.*
2.26. Professor Dr. Mabid	*In the 2012 Constitution, such rights and more were guaranteed. This constitution is the first to encompass economic rights. Unfortunately, it was cancelled in favor of a constitution that sets the stage for military rule.*

Ali Mohammed Al-Jarhi - Egypt	
2.27. Assoc. Professor Dr. Patrick Emerton - Australia	*The Constitution in my legal system (Australia) does not protect rights, except in a couple of cases: there is a national non-establishment provision (but no comparable rule applies to sub-federal entities), and a provision which prohibits sub-federal entities discriminating on the basis of residence in a different region.* *There is therefore no doctrine of balancing non-constitutional and constitutional rights.* *As I noted in my answer to 1, there are constitutional doctrines that occupy, in functional terms, some of the space that would otherwise be occupied by rights doctrine. These are generated by way of a technique of constitutional implication which has been developed over the past 100 years of constitutional adjudication. Exactly how those techniques work, and the legitimacy of the results derived by their application, remain matters of debate among scholars and among some judges. See (eg) the entries by Jeffrey Goldsworthy and Patrick Emerton in Rosalind Dixon and Adrienne Stone (eds), The Invisible Constitution in Comparative Perspective (CUP 2018); the entry on "Ideas" in Cheryl Saunders and Adrienne Stone, The Oxford Handbook of the Australian Constitution (OUP 2018).*
2.28. Professor Dr. Hajer Gueldich - Tunis	*Even though a right is not regulated in the Tunisian constitution, there are international treaties that had been signed and ratified by the Tunisian Republic guaranteeing its protection such as the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and culture rights, the African Charter on Human and People's Rights, etc. that ensure the first, the second and most of the third human rights generations.* *Our new constitution of 2014, after the Tunisian revolution triggering the Arab spring, though it might not be perfect, but it is proudly dedicated to protecting liberties and freedom of every individual, thus providing an acceptable harmony with global human rights.* *Alongside the question of the coherence of the various elements defining the identity of the* *Tunisian State, the constitutional debates raised the issue of rights and freedoms and how they could be reconciled with the religious framework. The joint reference made in several provisions to Islam, human rights and the civil State created a lack of clarity as to the general positioning of the constitutional text with regard to guaranteeing rights and freedoms.*

	The reference to human rights in the preamble (Paragraph 3 of the preamble) of the Constitution of 27 January 2014, emphasizing its openness to the universal principles of human rights, provides as follows: "Expressing our people's commitment to the teachings of Islam, to their spirit of openness and tolerance, to human values and the highest principles of universal human rights". *It's important to observe that these rights and liberties are not without any limitation. Therefore, these freedoms may be limited as this limitation is necessary for the protection of security or public order, as well as public health or morality.* *Theses liberties, including the religious freedom, are limited by national defense, public health or public morals, as provided by article 49 of the Tunisian Constitution according to which: " The limitations that can be imposed on the exercise of the rights and freedoms guaranteed in this Constitution will be established by law, without compromising their essence. Any such limitations can only be put in place for reasons necessary to a civil and democratic state and with the aim of protecting the rights of others, or based on the requirements of public order, national defense, public health or public morals, and provided there is proportionality between these restrictions and the objective sought.* *Judicial authorities ensure that rights and freedoms are protected from all violations. No amendment may undermine the human rights and freedoms guaranteed in this Constitution".* *Moreover, even in a case a right uncounted in the Constitution is interfering with a constitutional right, no breach of the human's right is in play.* *According to the Article 20 of the Constitution, " International agreements approved and ratified by the Assembly of the Representatives of the People have a status superior to that of laws and inferior to that of the Constitution.".* *Moreover, our jurisprudence has had recently their share of prevailing international and regional treaties over the constitution.* *Besides, as part of the African Union, Tunisians can have the option of presenting their cases in front of the African Court of Human and People's Rights.* *In addition, we are proud to have Prof. Rafaa Ben Achour (Tunisian Professor at the University of Carthage) as one of the respective judges of the Court elected in 2014 for a mandate of 6 years. Tunisia protect human rights by offering the chance to any individual to access the African Court.*
2.29. Asst. Professor Narender Nagarwal - India	*Ans: In the Constitution of India, enough provisions have been incorporated for the protection of vulnerable, religious and linguistic minorities of India. We have affirmative action policies for the Dalits (India's most oppressed community, earlier known as untouchables) and Disabled group. But the issue is that these policies and rights frequently violated by certain people who are sitting on top and have racist thoughts. Similarly, the Constitution of India also provides a guarantee for the protection of human rights of women, tribes, religious and linguistic minorities.*

	Apart from that, we have the institutional framework to implement the human rights of all vulnerable and deprived groups like the National Commission for Minorities, National Commission for Women, Commissioner for Linguistic Minorities and National Human Rights Commission which has the mandate to examine the complaint and take appropriate action.
2.30. Professor Gerd Oberleitner - Austria	*The Austrian Federal Constitution contains basic rights, in addition to basic rights in other federal laws, so that human rights provisions can be derived from constitutional as well as other legal sources.*
2.31. Professor Dr. Adnan Oweida - Jordan	*In my country, the rights enshrined in the Constitution, such as the right to expression and the right to freedom of movement, the right to equality of opportunity and the achievement of justice, are ignored. This ignorance remains and continues as long as America is satisfied with the government of my country. But there are rights that are not enshrined in the Constitution but are socially rejected, such as the right of women to abortion, but my Government sponsors this right to the satisfaction of the West. My Government is prepared to change the Constitution and add women's rights to the satisfaction of Western States.*
2.32. Dr. Andres Cervantes Valarezo - Ecuador	*From a practical perspective, in the recent Ecuadorian constitutional history there has not been a memorable conflict between explicit and implicit constitutional rights. However, article 11.7 of the Constitution of the Republic of Ecuador (2008) states "the recognition of the rights and guarantees established in the Constitution and in international human rights instruments, shall not exclude other rights derived from the dignity of the people, communities, peoples and nationalities, that are necessary for their full development". This means that the legal system provides three sources of fundamental rights: those explicitly enshrined in the constitutional text, those derived from international human rights instruments - or from the interpretation of the organs with jurisdiction over those instruments - and finally other rights that are derived and recognized from the concept of human dignity.* *A case that might satisfy the question raised could be the one regarding the equal marriage between people of the same sex. Article 67 of the Constitution states that "marriage is the union between man and woman." Notwithstanding, the Constitutional Court argued under the Advisory Opinion 24/17 of the Inter-American Court of Human Rights that the axiological nature of the constitution was the guarantee of the rights and equality of people, so the fundamental norm could not be interpreted in the sense that it established a prohibition on equal marriage (restrictive or literal interpretation). On contrary, the Constitutional Court ruled that there was a legal loophole in the constitution. That legal loophole was resolved using*

	the pro persona interpretation. In general, conflicts between constitutional rights are solved, in Ecuador, using the balancing technique as developed by the German jurist Robert Alexy. The criteria of necessity, suitability and strict proportionality are used in addition to the method of interpretation pro persona in case of doubt.
2.33. Asst. Professor Dr. Manal Totry-Jubran - Israel	*There is no constitution in my country (Israel) there are 2 major "basic law" that protect some human rights. In cases where a right is not regulated in the basic law, the Supreme Court might provide protection, depending on the type of right and issue.* *The kind of balancing is horizontal. The protected constitutional right usually over comes the not protected constitutional right.*
2.34. Dr. Maria Paula Garat - Uruguay	As said, in Uruguay there is no distinction between constitutional rights and other rights. All rights are recognized because of article 72 that states: *"La enumeración de derechos, deberes y garantías hecha por la Constitución, no excluye los otros que son inherentes a la personalidad humana o se derivan de la forma republicana de gobierno".*
2.35. Professor Luis G. Francheschi - Kenya	*Chapter 4 of the Constitution of Kenya contains the Bill of Rights. This Bill is quite wide and comprehensive. It states that the rights and fundamental freedoms contained therein do not exclude other rights or fundamental freedoms that are not provided for in the Bill of Rights. These rights and freedoms not contemplated by the Bill of Rights but accepted by the Kenyan legal system are also quite ample and include those rights granted by acts of parliament, customary law and even international instruments ratified by Kenya.* *Hence one can only seek recourse for a right recognized in the law, i.e. in the Constitution, an Act of Parliament, customary law, a ratified treaty, etc. At the same time, the Constitution is the supreme law of the land, thus stating a clear hierarchy of laws. Therefore, no right created or contemplated under customary law may at any time contravene or be inconsistent with the rights stated in the constitutional bill of rights. In case of contradiction, the matter is considered by the courts and treated on a case by case basis.*
2.36. Professor Hugh Corder - South Africa	*The general approach of the south afrıcan legal system would be to accord a hıgher status to those rıghts protected ın the bıll of rıghts ın chpater 2 of the 1996 constıtutıon. Thıs does not mean that rıghts recognısed ın law lose theır status as such; ıt just means that, dependıng on the context, they may have to gıve way to rıghts recognısed ın the constıtutıon.*

2.37. Asst. Professor Umar Rashid - Pakistan	*Ans) For rights not protected by Constitution, their protection is based on the statutory provisions which provide for such rights.* *I am not aware of any right that might conflict with a constitutional right. If however, there is a right that might be accepted in international human rights law, but is incompatible with principles of Islam (as interpreted by courts or mainstream Islamic scholars), then that right remains unprotected, and will be considered unconstitutional, since it contradicts Islamic principles. So for examples homosexuality is not protected by the legal system.*
2.38. Assist. Professor Simon Alexander Wood - Malaysia	*there are certain rights that are protected for example in criminal law and procedure laws rights to an independent fair hearing are provided and more recent legislation protecting the rights to privacy, however many rights are not protected at all. Generally rights not in the constitution carries little or no wait within the legal system so exsample the courts have repeatedly refused to apply international human rights in domestic cases -rights protected in the constitution will always prevail and often in a literal and pedantic way too*
2.39. Professor Merris Amos-UK	*The professor has chosen not to publish her answers.*
2.40. Ştefan Bogrea - PhD student at human rights law / Advocate - Romania	*Rights not regulated in the Constitution can pe protected by ordinary laws. However, if this is the case, their limitations, pursuant to the Constitutional Court's case law, have less stringent conditions than those set forth for the limitation of constitutional rights.* *When balancing between Constitutional and non-constitutional rights, the classic, three-part proportionality test is used.*
2.41. Asst. Professor Dr. Cristina Tomulet - Romania	*To answer the first question, if a right is only regulated by law and not by the Constitution, its protection mechanisms are also regulated by law and they can vary depending on the nature of the right in question. Generally, any right regulated by law can be protected by access to a court, which has the competence to remedy the violation of that right according to law.* *To answer the second question, in the Romanian legal system the Constitution has a higher legal force than any other source of law. However, I find conflicts between constitutional rights and legal rights hard to imagine because constitutional rights are more general in character and legal rights are, as a rule, either particularisations of the constitutional rights either additional rights to the ones prescribed in the Constitution of lesser importance that could not very often*

	enter into conflict with constitutional rights. In the first situation, there should normally be no conflict between the two categories of rights. Legal rights, which are particularisations of constitutional rights, should be interpreted in accordance with the Constitution, as it is interpreted by the Constitutional Court. However, if a legal right is regulated in a manner contrary to the Constitution, the said regulation can be declared unconstitutional by the Constitutional Court. In the second situation, even though the possibility of a conflict between the two categories of rights is unlikely, given the higher legal force of the Constitution, the constitutional right will prevail over the legal right or the legal right could receive an interpretation which could remove the conflict between the rights in question. At the same time, if the legal right is regulated in a manner contrary to the Constitution, the said regulation can be declared unconstitutional by the Constitutional Court.
2.42. Professor Dr. Mahendra P. Singh - India	*In the global legal world, it is increasingly recognized that every modem legal system is applying balancing as the means of applying legal principles. Balancing has subsequently over the period of time become an essential methodological criterion for weighing rights in conflict with constitutional rights.* *In India the supreme court of India has not only balanced socio economic rights but also widened its scope under Article 21 of the Constitution of India which has resulted on notable development in human rights. The inclusion of right to clean environment, health and medical care, right to education under the umbrella of right to life have led to constitutionalization of human rights. However, the ground realities how rights are regulated and put into practice are far from satisfactory. Article 21 of the Constitution, which guarantees right to life and personal liberty has thus become the reservoir of all those rights which are not expressly mentioned in the constitution.*
2.43. Professor Dr. Stephanie Wattier - Belgium	*S.W.: In Belgium, the Constitutional Court is the guardian of the Constitution and its human rights. When a right is not regulated by the Constitution, the Constitutional Court uses a praetorian method to "correct" this lack. This method is called the "combinatory method" by the Belgian doctrine. It consists, for the Court, to consider every international human right in the light of articles 10 and 11 of the Belgian Constitution (principle of equality and non-discrimination). This means that every Belgian has, equally and without any kind of discrimination, all the rights of all the international Covenants and Treaties signed by the Belgian State.*
2.44. Dr. Malika Tastanova M. Narikyev - Kazakhstan	*The professor has chosen not to publish her answers.*

2.45. Professor Dr. Jasna Baksic - Bosnia and Herzegovina	*Ustav BiH izričito ne spominje rodni identitet I seksualnu orijentaciju kao zabrananjene osnove diskrimininacije. Iz ustavnih osnova drugi osnovi I lična svojstva kao zabranjenih osnova diskriinacije Zakon o zabrani diskriminacije BiH uvrstio je rodni identitet I seksualnu orijentaciju kao svojstva na osnovu kojihse zabranjuje diskriminacije I propisuje jednaka prava za sve građane I građanske. U realnosti populacija LGBTQ osoba je izložena višestrukoj diskriminaciji u oblastima zapošljavanja, zdrvstvene zaštite I obrazovanja . Česta je primjena nasilja nad članovima/icama ove populacije. Od verbalnog nasila, preko emocionalnog, ekonomskog do fizičkog nasilja. Kao najmalobrojnija manjina ova populacija ne uživa zaštitu ni članova iz svoje etničke/relegijske/ zajednice ali veoma često ni među članovima svoje porodice. U smislu ljudskih prava ova populacija se može smatrati najranjivijom populacijom. Zbog vladajućih negativnih sterereotipa kao I utjecaja religijskih zajednica koje ne podržavaju drugačiju seksualnu orijentaciju od heteroseksualne, određene nasilne grupe članove I članice ove populacije biraju kao metu svojih napada. Na društvenim mrežama oni su predmet govora mržnje a u stvarnosti I fizičkih napada. Političke stranke u BiH imaju različite stavove prema ovoj populaciji.* *Stavovi političkih stranaka idu od otvorenog osporavanja prava članovima/icama ove populacije vidljivosti I braka/partnerstvo do podržavanja izjednačavanja u pravima ove populacije. Sudeći prema stavovima iznesenim u javnosti većina političkih stranaka konzervativne ideologije I "tradicionalnih vrijednosti" su protiv a u unutar liberalnih I lijevo orijentiranih političkih stranaka pojedinci iz njihovog članstva podržavaju gej populaciju.* *Međunarodna zajednica , nevladine organizacije I dio akademske zajednice su uglavnm propmotori cjelovitog pristupa ljudskim pravima koji uključuje I LGBTQ osobe. Rade na edukaciji službenika državnih organa da bi unaprijedili zaštitu.* *Prva protesna šetnja za zahtjevom za jednaka prava za sve I građansku ravopravnost održana je u Sarajevu oktobra 2019 uz izuzetne mjere obzbjeđenja. Skup je ocjenjen kao okupljanje visokog sigurnosnog rizika. Islamska zajednica u BiH I Katolička crkva izrazile su protivljenje ovom okupljanju ali su iznjele I zahtjeve za suzdržavanje od nasilja. Bio je održan u isto vrijeme I kontraskup protivnika parade. Učesnici predhodne manifestacije Queer feest održanog 2008.godine)nasilju od članova I članice selefijske zajednice (takođe manjinske u BiH) I od navijačkih skupina.* *Priznavanje građanske ravnopravnosti još uvijek je u fazi borbe za priznavanje I u tradicionalnom, konzervativnom I patrijarhalnom društvu nailazi na bojne prepreke.*
2.46. Assist. Professor Dr. İwona Wroblewska - Poland	

2.47. Professor Kwadwo Appiagyei-Atua - Gana	The first part of the question is not clear. With respect to the second part, the 1992 Fourth Republican Constitution provides specifically for certain rights, including the rights of persons with disability, women and children. Article 33(5) seeks to cover for other rights which may not be directly recognized in the constitution thus: The rights, duties, declarations and guarantees relating to the fundamental human rights and freedoms specifically mentioned in this Chapter shall not be regarded as excluding others not specifically mentioned which are considered to be inherent in a democracy and intended to secure the freedom and dignity of man.
2.48. Paidamwoyo Mukumbiri - Zimbabwe	*The Constitution is the supreme law of the land and it takes precedence. If a right is not provided in a Constitution courts are permitted to draw inspiration from the international and regional human rights ratified.*
2.49. Professor Dr. Helen Irving - Australia	*The Australian Constitution does not include provisions specifically identified as 'human rights'. Australia, however, has multiple pieces of legislation that give effect to international law, prohibiting discrimination. These include: the Racial Discrimination Act (1975); Sex Discrimination Act (1984); Disability Discrimination Act (1992); Age Discrimination Act (2004). These are federal Acts. There are State counterparts, also. There is a federal Human Rights Commission, established in 1986. This body investigates human rights and receives complaints from individuals about human rights breaches. There is a Human Rights (Parliamentary Scrutiny) Act (2011), which establishes the federal Parliamentary Committee on Human Rights. The Committee has the function of reviewing Bills before they are passed by parliament, for conformity with international human rights law. All Bills must include a 'statement of compatibility' with international human rights law, and must identify and explain any exemptions from international human rights law. As human rights legislation in Australia is passed by parliament drawing upon constitutional powers, direct clashes between legislation and constitutional powers do not arise. As the Constitution itself does not include reference to human rights, no balancing is required. Judicial review may occur where legislation is challenged for restricting implied constitutional limitations on power (the main implied limitation is the implied freedom of political communication. It is not a personal right); the courts will use a 'proportionality' test, which involves asking where the legislation in question is sufficient, necessary, and adequate in balance, with regard to the legislation's purpose.*

2.50. Dr. Faridah Jalil - Malaysia	*Besides the Constitutional provisions, other rights can be conferred under ordinary legislations. For example, the right of indigenous people is not specifically spelt out in the Constitution and is conferred in ABORIGINAL PEOPLES ACT 1954. The courts may in the exercise of power to interpret the Constitutional provisions expand the meaning of the words used in the constitution. For example the word 'life' under Art 5 is interpreted to include the right to 'clean environment'*
2.51. Dr. Tatiana Khramova - Russia	*Constitution of the Russian Federation* *Article 55* *The listing in the Constitution of the Russian Federation of the fundamental rights and freedoms shall not be interpreted as a rejection or derogation of other universally recognized human rights and freedoms.* *Also, the Constitutional Court interprets unlisted rights in the light of constitutional provisions thus making them constitutional rights. (If you need specific cases, let me know and I'll find them – T.K.).*
2.52. Eduardo G. Esteva Gallicchio - Uruguay	*In the Uruguayan system the solution results from article 72 of the Constitution: "The enumeration of rights, duties and guarantees made by the Constitution does not exclude others that are inherent to human personality or derive from the republican form of government". It is necessary and sufficient that a right be inherent in human personality or that derives from the republican form of government to recognize it as a right with constitutional hierarchy. It has been understood for the last twenty years that if the rights are included in international human rights treaties ratified by Uruguay, they could enter as rights with constitutional rank by article 72. Article 332 of the Constitution establishes the immediate application of the precepts of the Constitution that recognize rights to the individuals, even if the regulation has not been issued. "The precepts of the present Constitution that recognize rights to individuals (…) will not cease to be applied for lack of the respective regulation, but that this will be supplied by resorting to the foundations of analogous laws, general principles of law and generally accepted doctrines".* *If there is a conflict between rights expressly mentioned by the Constitution and rights that enter it by the opening clause of Article 72, for example by the Inter-American Convention on Human Rights, a conventionality control is carried out that determines the preference for the recognized right by the inter-American system. Naturally, in case the international protection to be superior to the national.*
2.53. Dr. Aldana Rohr - Argentina	The National Constitution is the main source of Argentine law from which minimum guarantees and procedural principles emanate. According to it "*This Constitution, the laws of the Nation enacted by Congress in pursuance thereof, and treaties with foreign powers, are*

	the supreme law of the Nation". This mean that, at national level, the protection of a right can be regulated by the Constitution itself, by a national law or by a treaty. The Republic of Argentina has a representative, republican, and federalist form of government. The system of government is presidential - which means, among other things, that the President is responsible for maintaining relations with international human rights bodies - and based on the separation of powers into executive, legislative and judicial branches. The country is organized into a federal system comprising 23 provincial States and the Autonomous City of Buenos Aires. Each Province enacts its own constitution, by which it must provide for its own administration of justice and municipal autonomy, and regulate the scope and content of its institutional, political, administrative, economic and financial system. Each Province has the authority to regulate the promotion and protection of human rights, without prejudice to National Government's role in overall policy-setting and coordination[1]. Our legal system has been established as a monistic system, meaning that the incorporation of sources of international human rights law is automatic, once international treaties come into force internationally. The same happens with international customary law[2]. The normative basis for this assertion is directly found in constitutional norms "*This Constitution, the laws of the Nation enacted by Congress in pursuance thereof, and treaties with foreign powers, are the supreme law of the Nation; and the authorities of each Province are bound thereby, notwithstanding any provision to the contrary included in the provincial laws or constitutions…"*[3], and *"…treaties in accordance with the principles of public law laid down by this Constitution*"[4]. Before the last reform of the Constitution, which has held in 1994, there was no kind of hierarchical priority between national laws and treaties with foreign powers. It was clear that the Constitution was considered as the supreme law, as well as the preeminence of the federal norms over provincial ones. This lack of an explicit normative hierarchy left the determination of the prevailing legal standard in

[1] A/HRC/WG.6/1/ARG/1 page 3
[2] Section 118 of National Constitution
[3] Section 31 of National Constitution.
[4] Section 27 of National Constitution.

	each particular case-law to the discretion of the Judiciary bodies. Notwithstanding, from the conjugation of sections 31 and 27 of the Constitution, it emerged that international treaties and national laws were ordered hierarchically below the Constitution. When treaties and laws were in contradiction, the principle *lex posterior derogat priori* used to be applied[5]. In 1992, the Supreme Court interpreted the application of section 27 of the Vienna Convention, concluding that it required of the organs of the Argentine government to give precedence to the treaty in cases of conflict with any national rule or even in cases where there is failure to make the (international) provision effective [...][6]. The question of the prevailing normative hierarchy was expressly resolved with the latest amendments that arose from the 1994 Constitutional Convention, particularly with the incorporation of Section 75. 22, related to the Legislative Power scope. *" [...] Treaties and concordats have a higher hierarchy than laws. The American Declaration of the Rights and Duties of Man; the Universal Declaration of Human Rights; the American Convention on Human Rights; the International Pact on Economic, Social and Cultural Rights; the International Pact on Civil and Political Rights and its empowering Protocol; the Convention on the Prevention and Punishment of Genocide; the International Convention on the Elimination of all Forms of Racial Discrimination; the Convention on the Elimination of all Forms of Discrimination against Woman; the Convention against Torture and other Cruel, Inhuman or Degrading Treatments or Punishments; the Convention on the Rights of the Child; in the full force of their provisions, they have constitutional status, do no repeal any section of the First Part of this Constitution and are to be understood as complementing the rights and guarantees recognized herein. They shall only be denounced, in such event, by the National Executive Power after the approval of two-thirds of all the members of each House. In order to attain constitutional hierarchy, the other treaties and conventions on human rights shall require the vote of two-thirds of all the members of each House, after their approval by Congress. [...]"*[7].

[5] Martín y Cía. Ltda. S. A. c. Gobierno Nacional, Administración Gral. de Puertos, CSJN, 06/11/1963.

[6] Ekmekdjian Miguel A. c. Sofovich, Gerardoy otros, CSJN, 07/07/1992.

[7] The mention of the hierarchy of treaties in section 75, related to the powers of Congress, has been criticized by the doctrine, as the first part of the Constitution address the question through its sections 27 and 31. The reason for this legislative technique can be found in the fact that the Constitutional Convention decided not to amend sections that composed the First Part of the National Constitution (sections 1 to 35). Indeed, it could have incorporated in the new part, with the new rights and guarantees contained in sections 36 to 43 (Act 24.309).

	The inclusion and special status reserved for certain human rights instruments in the constitutional text —including two "declarations"[8], that reflect customary law —gave them primacy over other treaties, and consequently over the laws of Congress. In the same way, so far, cconstitutional status has subsequently also been granted to the Inter-American Convention on the Forced Disappearance of Persons, the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity and Convention on the Rights of Persons with Disabilities[9]. It is relevant to emphasize that with the ratification of the International Convention on the Protection of All Persons from Forced Disappearance, the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the Protocol of the International Pact on Economic, Social and Cultural Rights, the Protocol of the Convention on the Rights of the Child on a communications procedure and the Inter-American Convention on Protecting the Human Rights of Older Persons, Argentina has ratified most of the existing international and regional human rights instruments.
2.54. Roman Schuppli - Switzerland	*No formal ranking or prioritisation can be inferred from the Federal Constitution's catalogue of rights, so the individual guarantees are fundamentally of equal rank. The principle, which the Federal Supreme Court had shaped at an early stage, according to which the constitutional norms "coexist with equal legal force", applies in principle both to the relationship between fundamental rights (no matter if written or unwritten) and to the relationship between fundamental rights and other constitutional norms. Solely, the guarantee of human dignity occupies a special position: It not only constitutes the supreme guiding principle of the state, but is also an important element for the interpretation and concretisation of the other rights, in particular the core contents of fundamental rights. A certain prioritisation also results from the fact that individual fundamental rights (e.g. the prohibition of torture) or fundamental right contents (in particular the core contents) have*

[8] Inter-American Court Of Human Rights Advisory Opinion Oc-10/89 July 14, 1989 Interpretation Of The American Declaration Of The Rights And Duties Of Man Within The Framework Of Article 64 Of The American Convention On Human Rights concluded that "47.That the Declaration is not a treaty does not, then, lead to the conclusion that it does not have legal effect, nor that the Court lacks the power to interpret it within the framework of the principles set out above"

[9] There are currently 14 international instruments which enjoy this status. By the agreed legislative constitutional procedure, the Inter-American Convention on Forced Disappearance of Persons (1996), Convention on Imprescriptibility of War Crimes and Crimes against Humanity (2003) and Convention on the Rights of Persons with Disabilities (2014) were incorporated in the group of human rights instruments with constitutional hierarchy.

	absolute validity; likewise, the permissible restrictions must satisfy a particularly strict examination regarding certain guarantees (e.g. in the case of the prohibition of discrimination). However, there are no guarantees which would generally take precedence over other rights. *(Excerpt from KIENER REGINA, Grundrechte in der Bundesverfassung, in: Verfassungsrecht der Schweiz, 2. Ed., forthcoming)*
2.55. Dr. Ljubomir Frckoski – Macedonia	*The Professor has send a book.*
2.56. Assoc. Professor Juan Pablo Beca F. - Chile	*If a right is not considered in the constitution is not protected, unless it is considered in a law and/or a Human Right treaty. In this case there is not a particular judicial action deemed to protect it (as habeas corpus or other), but it can –and should- be considered by any court.* *If case of a conflict, the regulation (law, constitution or treaty) that prevails is the one that better protects the right in the given case, according with the favor persaonae principle, stated in article 29 c of the American Convention on Human Rights*
2.57. Professor Simon Rice - Australia	In Australia there are no explicit constitutional human rights protections. Human rights are the subject of executive discretion, legislative action, and common law principles. There is no formal provision for balancing conflicting rights, nor any accepted principles for doing so, in Australian law and public life. Conventional processes for assessing the proportionality of rights limiting measures are not widely understood or accepted in Australia.
2.58. Dr. Renata Bedö - Hungary	
2.59. Damir Banović - Bosnia and Herzegovina	If the right is not regulated in the Constitution, the Constitutional Court will find the appellation inadmissible (or any other Court). It that sense, no balancing will take place.
2.60. Dr. Lilla Berkes, PhD candidate) - Hungary	Most of these rights are derived from constitutional rights so the objective side of a constitutional right guarantees the protection of rights regulated not in the constitution but in acts, too. The main difference is that the State has a wider discretion at limitation of

	these kinds of rights; meanwhile if the State restricts a fundamental right, a test of necessity and proportionality is used[10].
2.61. Professor Dr. iur. Jorge León - Peru	La Constitución Política del Perú cuenta con una cláusula de apertura para derechos que no hayan sido positivizados en la Constitución (artículo 3)[11], también conocida como "*numerus apertus*". Se trata de una cláusula que señala que los derechos descritos en el Capítulo I Derechos Fundamentales de la Persona no excluyen los demás que la Constitución garantiza. Por otro lado, existe una disposición normativa que establece que la interpretación de los derechos de la Constitución se realiza de conformidad con la Declaración Universal de Derechos Humanos y con los tratados y acuerdos internacionales sobre las mismas materias ratificados por el Perú (Cuarta Disposición Final Transitoria)[12]. En este marco constitucional, cuando se han presentado discusiones sobre derechos humanos no reconocidos de manera expresa por nuestro texto constitucional se ha recurrido a estos textos. Se puede mencionar el caso de derecho a la verdad[13], derecho de acceso al agua potable[14], derecho a la alimentación[15]. En ese sentido, el valor de los derechos fundamentales reconocidos por la Constitución de manera expresa y los derechos fundamentales humanos gozan de la misma valía, por lo que de estar ante un conflicto entre derechos se tendrá que coordinar, complementar o integrar.
2.62. Professor Thierry Rambaud – France	An article was sent by the Professor.
2.63. Mario Campora - Melisa	Our constitution ruled in their article 31 and 75.24 the law hierarchy[16]. We first have the constitution and the human rights treaties announced in the article 75.22 or others approved by a special procedure, then other treaties, federal law, and finally other laws.

[10] Basic Law Article I section (3)The rules for fundamental rights and obligations shall be laid down in an Act. A fundamental right may only be restricted to allow the effective use of another fundamental right or to protect a constitutional value, to the extent absolutely necessary, proportionate to the objective pursued and with full respect for the essential content of that fundamental right.

[11] Artículo 3. "La enumeración de los derechos establecidos en este capítulo no excluye los demás que la Constitución garantiza, ni otros de naturaleza análoga o que se fundan en la dignidad del hombre, o en los principios de soberanía del pueblo, del Estado democrático de derecho y de la forma republicana de gobierno."

[12] "Cuarta Disposición Final Transitoria. Las normas relativas a los derechos y a las libertades que la Constitución reconoce se interpretan de conformidad con la Declaración Universal de Derechos Humanos y con los tratados y acuerdos internacionales sobre las mismas materias ratificados por el Perú."

[13] https://www.tc.gob.pe/jurisprudencia/2004/02488-2002-HC.html

[14] https://www.tc.gob.pe/jurisprudencia/2014/00666-2013-AA.html

[15] https://www.tc.gob.pe/jurisprudencia/2004/02488-2002-HC.html

[16] Art. 31 and 75.24, Argentinean Constitution.

Szlajen - Argentina	Article 33 said that declarations, rights and guarantees establish in the Constitution cannot be understood to deny other rights or guarantees not enumerate[17]. Before the constitutional reform of 1994, our Supreme Court established in the "Ekmekdjian" case that a treaty could be violated not only because a contrary law, but also because the legislators don´t pronounce and that international law was over national law, because in another way the state could be internationally responsible, so the rules must apply directly[18]. With the reform of 1994, the article 75.22 gives constitutional hierarchy to human rights treaties in their validity conditions and establish that they don´t repeal any article of the Constitution so they must be understood as complementary to the constitution[19]. That means that the different courts have to analyzed both instruments in an harmonic way and in the way they were ratified and according the interpretation of the authorities design for that[20]. Our Supreme Court have said that the constituents of 1994 decided that the some treaties have constitutional hierarchy considering in the conditions of their validity and that means that they have to be interpreted in the way that the international courts do[21]. It is important to clarify that here in Argentina we have a diffuse and indirect control of constitutionality and conventionality, that means that a person must present a case in a court and that court may control the constitutionality of the law or the act[22]. The last resort would be the Supreme Court but only if the case pass all the other instances[23]. In addition, the Interamerican Human Rights Court has said, in the same way that the European Human Rights Court did, that human rights treaties are life instruments, so their interpretation must be accord to the evolution and changes, in respect of the article 29 of the Convention[24]. A few years ago the present composition of the Argentinean Supreme Court in "Fonteveccia" case change the jurisprudence of the Court and try to set a limit to the Interamerican Human Rights System. In 2011 the Interamerican Human Rights Court decided that Argentina was responsible for the violation of the right of freedom of thought and expression and order to leave without effect a decision of the Supreme

[17] Art. 33, Argentinean Constitution.

[18] Supreme Court of Justice, Case "Ekmekdjian, Miguel Angel c/ Sofovich, Gerardo s/ recurso de heho", setence of 07/07/1992.

[19] art. 75.22, Argentinean Constitution.

[20] Interamerican Court of Human Rights, OC-1/82, 09/24/1982, "Other Treaties", parr. 23 y 25 and OC- 23/17, 11/15/2017, about enviroment, parr.16.

[21] Supreme Court of Justice, "Giroldi" Case, 1995, parr. 11.

[22] Bridart Campos, G. J., "Manual de la Constitución Reformada", Tomo I, quinta reimpresión, Buenos Aires, p. 359/372.

[23] *Op. Cit.*

[24] Interamerican Court of Human Right, Case "Atala Riffo and girls vs. Chile", sentence of 02/24/2012, sec. N° 239, parr. 83.

	Court[25]. The 14th of February the Court decided not to obey that decision because it understood that Argentina doesn´t have the obligation to apply that kind of reparation and if they did they would violated other rights like legal security[26]. Finally in the control sentence the Interamerican Court explain the obligation of the state and the different ways that it could accomplish[27]. Finally, the 5th of December of 2017 the Supreme Court publish a resolution that said that his first sentence was declared opposite to the American Convention of Human Rights[28]. The first kind of decisions take off strength to international humans rights and their protection systems. Also it reduce the certainty that after a resolution of an international tribunal our state will obey that decision and will protect the human rights. In addition five states, Argentina, Brasil, Colombia, Paraguay and Chile, made declaration in order to limit the power of the Interamerican System[29]. It has been 40 years since the American Commission of Human Rights visit our country during the last military and civil government[30]. That visit was very important to show what was happening in our country and to start to weaken the military government[31]. Of course, nowadays we don´t have the same problems that we did at that time, but we have new ones according to our times, like pourness, inequality, discrimination because our nationality, gender or sexual orientation, refugees, and a lot more, so we need to increase the importance of the Interamerican System in order to protect persons from the States Power.
2.64. Dr. Alaa Nafea Kttafah - Iraq	**ج/ في البدء اود ان نؤكد بان حماية الحقوق لاتقاس بمدى تنظيمها او النص عليها في الدستور او النظام القانوني ، كون حقوق الانسان نابعة من ضمير وارادة القائمين على السلطة وموجودة في المباديء العامة للعدالة والقانون والنص عليها لايضيف سوى امكانية رسم طريق للاعتراض على انتهاكها ، ومثال ذلك نجد ان جميع الدول العربية تنص دساتيرها على حماية حقوق الانسان وتفصيل هذه الحقوق لكن لاتجد لها سبيل للتطبيق عكس دول توصف بانها لاتملك دساتير مكتوبة مثل المملكة المتحدة التي تعد من دول ذات الدستور غير المقنن ، تصان فيها الى حد كبير حقوق الانسان .. اذن فالمسالة المتعلقة بحماية الحقوق غير المنصوص عليها امر مرجوع الى ارادة طالب الحماية الذي يمكنه الاستناد الى المفهوم العام للحماية حتى غير المنصوص على جزئياتها في الدستور ..** **الشق الاخر من السؤال المتعلق بالموازنة بين الحق غير المنصوص عليه مع ذلك المنصوص عليه في النظام الدستوري فمن المؤكد ان يميل الرجحان للحق المنصوص عليه كونه نابع من ارادة المشرع الدستوري**

[25] Interamerican Court of Human Right, Case “Fontevecchia and D’amico vs. Argentina”, sentence of 11/28/2011, sec. N° 238.
[26] Supreme Court of Justice, “Ministerio de Relaciones Exteriores y Culto s/ Sentencia dictada en el caso Fontevecchia D’amito vs. Argentina por la Corte Interamericana de Derechos Humanos”, 02/14/2017, par. 7 and next.
[27] Interamerican Court of Human Right, Case “Fontevecchia and D’amico vs. Argentina”, control sentence of 10/18/2017.
[28] Argentinian Supreme Court of Justice, Resolution 4015/2017, 12/5/2017.
[29] Chancellery of Chile, press realese, 04/23/2019 and the answer of 43 academics in Mexico, 05/09/2019.
[30] https://www.pagina12.com.ar/216885-a-cuarenta-anos-de-la-visita-de-la-cidh
[31] *Op. Cit.*

2.65. Professor Silvina Ramirez - Argentina	La formulación de esta pregunta es contradictoria, porque si el derecho no está en la constitución no podría estar en conflicto con un derecho constitucional. Sin embargo, interpretándola en un sentido amplio, cuando el Sistema judicial argentino no garantiza la protección de un derecho, siempre existe la vía del Sistema interamericano de derechos humanos para canalizarlo.
2.66. Agnieszka Bień-Kacała - Poland	*The professor has chosen not to publish her answers*
2.67. Professor Dr. Claire Breen - Australia	
2.68. Marwan Al-Moders - Bahrain	*The Professor has send articles.*
2.69. Dhia Al Uyun - Indonesia	*Hak asasi manusia diatur dalam Konstitusi Indonesia yaitu Undang-undang Dasar Negara Republik Indonesia Tahun 1945. Konstitusi ini dijelaskan dalam Undang-undang Nomor 39 Tahun 1999 Tentang hak asasi manusia. Hak Asasi bersifat particular dan deklaratif. Partikular mengakui hak asasi manusia dalam kedudukannya hak sebagai ciptaan tuhan. Deklaratif artinya melakukan pengakuan, tanpa penegakan karena dalam UU 39 Tahun 1999 tidak mengatur sanksi kecuali genosida dan kejahatan terhadap kemanusiaan.* *Ketika terjadi konflik maka Mahkamah Konstitusi berwenang untuk menafsirkannya. Meskipun hak tidak diatur, namun dapat menjadi sumber hukum tata negara yang digali oleh hakim. Namun, hal ini bergantung pada pengetahuan dan pengalaman hakim.*