

The case of the Tabalunian referendum

1. The state of **Westland** is a federal state of 25 million inhabitants, located in Europe and bordering the Mediterranean sea.
2. In 2017, Westland has seen an influx of an estimated 50 000 migrants arriving directly by boat on Westland's shores from various departure points in North Africa. This group of arriving migrants generally includes both persons looking for a better life (but who face no persecution in their country of origin), as well as persons fleeing from persecution who may be considered to be refugees. This influx has caused some strain on Westland's infrastructure, but primarily, it has caused political upheaval.
3. The province in Westland most affected by migration is the **coastal province of Tabalunia**, which has an independent Provincial Government. The Westland Constitution provides that Westland is an indivisible federal state. The language spoken in Tabalunia and the ethnic composition of the population of Tabalunia does not differ from the rest of Westland, although politically, the province of Tabalunia tends to differ from the rest of Westland, as described below.
4. In the July 4, 2017 **parliamentary elections to the Westland Federal Parliament**, the New Change Party (NCP) became the main opposition party (99 seats in parliament), while the Conservative Party maintained a very narrow parliamentary majority (101 seats in parliament). The Conservative Party had had a parliamentary majority in the previous electoral term as well.
5. The NCP Party already holds a strong majority in the Tabalunian Provincial Assembly and has formed the Tabalunian Provincial Government which is in office since 2015.
6. **During the federal election campaign**, the NCP Party made various exaggerated and inflammatory statements about migrants and the risks posed by the migration phenomenon. Although the NCP party also made statements based on facts and reliable sources, many claims and so-called facts were unsubstantiated, exaggerated or entirely false. Overall, migrants have been portrayed by the NCP Party as posing an existential threat not only to the province of Tabalunia, but also to the state of Westland as a whole, a threat which the NCP Party can solve by banning and deporting all migrants from Westland.
7. The NCP declared in 2017 that if the federal Westland Government won't act against migration, its provincial government in Tabalunia would hold a referendum for independence of the province in order to establish a new state which would be "tough on migration" and which would reject all migrants, regardless of origin or their reasons for arriving on Tabalunian soil.
8. The Conservative Party, in its electoral campaign to the federal parliament, in response, stated that all migrants to Westland must be processed and persons without any right to stay in Westland territory (for example, those who do not obtain asylum) must be deported in accordance with Westland laws.

9. The NCP Party had stated incorrectly in the campaign that acute medical care for illegal migrants is costing the Westland public health insurance scheme 5 000 000 USD a month (whereas the true amount is less than one half), money which the NCP Party claims would otherwise be spent on severely ill “Westland taxpayers”.
10. The NCP Party had also stated that migrants have been applying their own religious laws and have been ignoring local law in their interactions between one another (when in fact, this has only occurred in a few isolated incidents).
11. Such information was spread primarily through social-media and through the “Westland Patriot” newspaper owned by a close business associate of the founder of the NCP Party. The Patriot is the most widely-read newspaper in Tabalunia and is the second-most widely circulated newspaper overall in Westland.
12. After the federal election results were announced on July 5, 2017 and a Conservative Government was again formed, albeit with a razor-thin one-seat majority, the NCP Party, together with the Westland Patriot newspaper, held and organized more than 50 public gatherings and demonstrations throughout Tabalunia and elsewhere in Westland. In each case, the crowd was instructed to chant that the new Conservative Party Federal Government should be toppled, regardless of the election results, or that Tabalunia should, failing this, seek independence. Several high-profile Westland military generals of Tabalunian origin as well as several high-profile Westland judges of Tabalunian origin have been seen attending the demonstrations and chanting, together with the crowd. The demonstrations have been peaceful and no action was taken by any authority to ban them.
13. In October 2017, the Conservative Party-supported Federal Government of Westland admitted that the migrant-flow may have placed some strain on Westland infrastructure, but has stated that “Westland can deal with the migration flow” and that “This is not a severe crisis, it can be dealt with.” This calm approach is in sharp contrast not only with the approach of the NCP Party, but also to the NCP-supported Tabalunian Provincial Government in Tabalunia, which comments the situation as being an urgent one.
14. On January 1, 2018, the Tabalunian Provincial Government declared a provincial state of emergency due to the migration flow. On January 10, 2018, the Tabalunian Provincial Assembly adopted a declaration expressing dismay that the Westland federal Parliament has “not addressed or acknowledged the existential threat posed to Tabalunia and Westland by the migration crisis” and also adopted a provincial law calling for a referendum for independence of Tabalunia to be held on August 1, 2018.
15. A reliable Westland Government investigation started after the federal elections and completed in January 2018 concluded that the Government of the state of Latusia may have financed the activities of the NCP Party and Westland Patriot newspaper, including the organizing of such demonstrations, likely due to having an interest in destabilizing the political establishment in

Westland. Latusia and the NCP Party, as well as the Westland Patriot newspaper, have denied any such allegations.

16. On January 31, 2018, the Westland Constitutional Court ruled that the referendum in Tabalunia cannot be held, as it would violate the Westland Constitution, which states that Westland is indivisible as a state.
17. The Constitutional Court expressly rejected the argument that the people of the province of Tabalunia have a right to self-determination under international law which must be respected in the interpretation of the constitution and domestic law. The Westland Provincial Government has stated that it intends to go forward with organizing the referendum at all costs.
18. In February 2018, federal law-enforcement authorities in Westland took strict measures to counter what the Federal Government considers to be much more than a political contest affected by false-news and false-facts.
19. The Federal Government believes that the NCP Party, supported by the Westland Patriot newspaper and possibly by money and other help from the Government of Latusia, was using fake news and was hi-jacking the topic of migration to try to boost its federal election results with a view to take over federal power in Westland, now or in the future, or alternatively, to gather support for an independence vote in the upcoming provincial Tabalunian independence referendum.
20. The NCP Party has stated, on the other hand, that it is simply representing its voters and the fears and concerns they have, and that it fully respects democratic processes and that its actions are protected under laws protecting free speech and freedom of association.
21. On January 31, 2018, Westland Police arrested the entire leadership of the NCP Party (including the chairperson of the party, who is also the Prime Minister of Tabalunia and member of the Tabalunian Provincial Assembly), as well as 10 key reporters employed at the Westland Patriot newspaper who were authors of a long series of articles about migrants, published both prior to and after the summer 2017 parliamentary elections. Their articles had portrayed migrants as a risk to Westland's economy and society as a whole and were based upon information from unnamed sources - information which the Government considers to be false.
22. The reporters have been charged with conspiracy to commit the crime of sedition, since their articles were consistently cited by the NCP both during the campaign and also now during the public gatherings organized by the Westland Patriot newspaper. In Westland, the crime of sedition is defined as "an act of inciting revolt against a lawful authority with the goal of destroying or overthrowing it"ⁱ and is punishable by a term of imprisonment of up to life in prison.ⁱⁱ

23. After a quick trial, the reporters were found guilty and sentenced to a 15 year prison term. As a result, the Westland Patriot newspaper has effectively ceased operations, since its core reporters are now serving their sentences.
24. In relation to the leadership of the NCP party, the Westland Police allege that they have also committed the crime of conspiring to commit the crime of sedition and the crime of misappropriation of public funds,ⁱⁱⁱ both by initiating the vote in the Tabalunian Provincial Assembly to organize the independence referendum as well as by using Tabalunian Provincial Government funds to fund preparatory work on the referendum.
25. The leadership has been jailed on remand and is awaiting trial – meanwhile, preparations for the provincial referendum have practically ceased, given the disarray caused by the arrests and by the fact that the Prime Minister of Tabalunia is among those arrested.
26. The Prime Minister of Tabalunia has not been allowed to exercise his political functions while imprisoned and awaiting trial, although his mandate has not officially terminated. He has not been allowed to sign any Tabalunian Provincial Government or Tabalunian Provincial Assembly official documents, including documents which would be needed in order for the Tabalunian Provincial Government to proceed with planning the referendum. He has not been allowed to submit legislative proposals to the Tabalunian Provincial Assembly (including proposals connected to the planned referendum) in the exercise of his individual mandate as a member of the Assembly. His lawyer has been informed that no such official documents may be given to the Prime Minister for signature during attorney-client meetings in the prison and the Prime Minister has also been told not to submit any such documents to his lawyer during attorney-client meetings in the prison facilities and these restrictions have, thus far, been complied with.

Students should prepare written pleadings to the European Court of Human Rights on behalf of:

- As Applicant 1: the 10 imprisoned reporters
- As Applicant 2: the imprisoned leadership of the NCP Party
- As Respondent: the Government of Westland.

It is to be assumed that the ECHR has jurisdiction to hear the case.

Instructions to moot court teams:

Pleadings no. 1-A and no. 1-R:

Applicant: prepare written pleadings on behalf of the 10 imprisoned reporters in an application to the ECHR against Westland (pleading no. 1-A)

Respondent: prepare written pleadings on behalf of the Government of Westland, in response to the application lodged by the 10 imprisoned reporters (pleading no. 1-R).

It is to be assumed that that such an application is procedurally admissible and it is to be assumed that a hearing will be ordered by the ECHR. Focus on all issues involving possible violations of the ECHR in both the application and the response.

Pleadings no. 2-A and no. 2-R:

Applicant: prepare written pleadings on behalf of the imprisoned leadership of the NCP Party in an application to the ECHR against Westland (pleading no. 2-A).

Respondent: prepare written pleadings on behalf of the Government of Westland, in response to the application lodged by the imprisoned leadership of the NCP Party (pleading no. 2-R).

It is to be assumed that that such an application is procedurally admissible and it is to be assumed that a hearing will be ordered by the ECHR. Focus on all issues involving possible violations of the ECHR in both the application and the response.

Oral hearings:

It is to be assumed that both applications will be joined by the ECHR and that only one oral hearing will be held.

ⁱ Westland Criminal Code, Art. 11, § 4(a).

ⁱⁱ Westland Criminal Code, Art. 11, § 4(a).

ⁱⁱⁱ Westland Criminal Code, Art. 37, § 15.
