

Without a Home and Hungary: Assessing Hungary's Legal Responsibilities to Syrian Refugees and Its Derogation of Rights Due to a Declared State of Emergency

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I. INTRODUCTION

The rights and obligations due to refugees is a complex system with many moving parts. In 1948 the United Nations created the Universal Declaration of Human rights.^[1] This was followed in 1950 with the European Convention on Human Rights (ECHR).^[2] Here, member nations first outlined the fundamental rights for nations belonging to the European Council.^[3] In order to recognize the role of fundamental rights in the European Union and to consolidate the rights protected by the ECHR^[4], the European Union Charter of Fundamental Rights was drafted.^[5] After the Treaty of Lisbon, which now forms the basis for the European Union, the Charter was given full legal effect over member nations.^[6] Hungary, as a member of the European Union, is subject to obligations outlined in these treaties or as mandated by the Union.^[7]

This comment will assess Hungary's responsibilities to asylum seekers. This is in response to Hungary's declaration of a state of emergency and the State's subsequent legislation regarding border security. This comment will begin by outlining Hungary's new legislation. Because an individual's status is of great importance in the context of treaty law, this comment will then provide an explanation of the differences between asylum seeker, refugee, and migrant worker. This will be followed by an analysis of Hungary's new border laws and accused treatment of Syrian refugees against the three treaties that Hungary has entered into as a party. This will include an analysis of the need for migrant worker protection. Next, this comment will look at the potential venues for action against this legislation and the obstacles faced when a State declares a state of emergency and derogates rights afforded to asylum seekers. Finally, this comment will look at what action has already been taken and what lies ahead.

II. Hungary's New Border Policies

Hungary has implemented several new policies to thwart the influx of refugees crossing its borders.^[8] Changes to the Police Act and the National Defense Act allow the use of non-lethal weapons on Refugees such as net guns and rubber bullets.^[9] This new legislation allows the military to be deployed to help process people at border crossings.^[10] The military is also allowed to detain suspects at the border.^[11] Additionally, when crimes related to the endangerment of the state border are suspected, the police may cooperate with security agencies when conducting intelligence activities in the hopes of detecting possible terrorism-related offenses.^[12] According to this legislation, police may enter private homes with a written order to achieve this end.^[13] However, the European Court of Human Rights (ECtHR) recently ruled in *Szabó and Vissy v. Hungary* that broad secret surveillance activities conducted by the Hungarian Anti-Terrorism Task Force violated the rights of the applicants by failing to provide effective safeguards and proper judicial oversight.^[14] It is unclear how Hungary will implement the use of its anti-terrorism task force moving forward.

Hungarian Prime Minister Viktor Orban, was quoted as saying “Eastern European nations have to protect themselves from the ‘brutal threat’ of mass migration into their countries, until the EU organises [sic] a communitarian response to the refugee crisisFalse [t]he migrants are not just banging on our door: they’re breaking it down.”^[15] This quote came after the Hungarian National Assembly introduced several emergency measures to deal with the “mass migration” crisis in Hungary.^[16] The measures establish “transit zones” aimed at holding asylum seekers while their applications are processed.^[17] These security measures provide strict penalties for anyone who violates them.^[18] For instance, anyone who is caught breaching or damaging the fence may face criminal charges and may be imprisoned for up to three years or deported.^[19] This is a violation of both the Refugee Conventions provision for unlawful entry into a country^[20] and the ECHR due process provision regarding the criminalization of actions by asylum seekers.^[21] In accordance with the Refugee Convention, expulsion is only an option after a proper hearing and is never appropriate when the refugee is fleeing a life threatening situation.^[22] Additionally, the Charter provides that the severity of the penalty must not be disproportionate to the criminal offence.^[23] These provisions and others will be discussed further below.

III. The Differences Between an Asylum Seeker and a Refugee

Syria is a nation at war with itself with approximately 4.8 million Syrians registered as refugees.^[24] It is important to note that there are distinct differences between an asylum seeker, a refugee, and a migrant.^[25] An asylum seeker is someone who has applied for asylum under the 1951 United Nations Convention on the Status of Refugees.^[26] The application must be based on a well-founded fear of persecution on account of race, religion, nationality, political belief or membership of a particular social group if the individual is returned to his or her home country.^[27] The individual remains an asylum seeker as long as there is a pending application or an appeal against the refusal of refugee status.^[28] A refugee is an asylum seeker whose application has been successful.^[29] Often times this word is used to describe someone fleeing from civil war or a natural disaster but does not necessarily mean that they fear persecution as

defined by the 1951 Convention on Human Rights.^[30] In contrast, an economic migrant is a person who has left his or her own country and seeks, by lawful or unlawful means, to find employment in another country.^[31] While one can see the technical differences in the classifications, it is important to remember that under this system every refugee was at one point an asylum seeker.^[32] Like the European system, in order to obtain refugee status in the United States, a person must be in a situation of special humanitarian concern.^[33]

What is perhaps a bit ironic is that a Hungarian revolution in 1956 caused more than 200,000 citizens to flee into Austria.^[34] The mass influx of Hungarians into Austria led the United Nations Commissioner on Human Rights to declare that when a group arrives en masse, such as the Syrians who are entering Europe now, that they are recognized prima facie as refugees.^[35] Hungary's policies and subsequent treatment toward Syrian asylum seekers and refugees has sparked an international debate regarding a host nation's responsibility to these displaced people.^[36]

IV. The United Nations Refugee Convention

After World War II, an influx of refugees spread throughout Europe.^[37] In 1948, in response to the growing refugee problem, the United Nations set out to create a common standard for all people and all nations under the Universal Declaration of Human Rights.^[38] For the first time, fundamental human rights were identified and universally protected.^[39] Born out of the necessity for global refugee oversight, the United Nations High Commissioner for Refugees (UNHCR) was created.^[40] In 1951, the Convention relating to the Status of Refugees stood as a multilateral treaty empowering the UNHCR to supervise the implementation of its provisions.^[41] This, combined with the 1967 Protocol, which removes the geographic constraints of the 1951 convention, clarifies the rights of refugees and creates a universal doctrine.^[42] These are still globally recognized instruments available for the protection of refugees.^[43]

The current international issue regarding Hungary is due to the flood of Syrian refugees into Europe because of civil war.^[44] Approximately 40% of the one million refugees entering Europe are from Syrian.^[45] It has been argued that civil war alone is not a factor in establishing refugee status.^[46] However, when a group arrives en masse they are recognized prima facie as refugees.^[47] Because of the broad language of the Refugee Convention, a member nation has to accord some deference to the definition of refugee found in other binding treaties.^[48] This creates an expansive role for member nations when enforcing provisions of the Refugee Convention.

A. Refugee Status under the U.N. Refugee Convention

For a country to be obligated to a refugee, the person's status as an asylum seeker must first be established.^[49] As defined by the United Nations Refugee Convention of 1951 and as amended by the 1967 Protocol (Refugee Convention),^[50] a refugee is a person "outside his or her country of nationality or habitual residence; has a well-founded fear of being persecuted because of his or her race, religion, nationality, membership of a particular social group or political opinion; and is unable or unwilling to avail him or herself of the protections of that country, or to return there for fear of persecution."^[51] The Refugee Convention empowers the UNHCR to recognize refugee status under prior treaty arrangements, or other regulations, laws and decrees as well.^[52] There are multiple exceptions to revoke the rights of a refugee, for example, if they have committed a crime or are guilty of acts contrary to the United Nations.^[53]

On the 14th of March 1984, Hungary deposited its accession to the Refugee Convention availing itself to the rights of refugees and asylum seekers.^[54] The first obligation of a member nation to the Refugee Convention is to allow the refugee to stay the same amount of time that they would have been afforded had they not been a refugee.^[55] It is important to note, a refugee is exempt from reciprocity.^[56] This means that a member country must: 1) treat a refugee the same as an alien in general,^[57] 2) continue to accord refugees the rights and benefits they were already entitled to,^[58] and 3) consider favorably the possibility of rights and benefits beyond those that already exist.^[59] Hungary also cannot create any special provisions or legislate against the people of a particular country.^[60] The Refugee Convention does provide some protection for a member nation by providing that, in a time of war or national crisis, a country can take measures against a particular person.^[61] A plain reading of the Refugee Convention requires Hungary to treat Syrian refugees the same as it would any other visiting alien or asylum seeker.^[62] However, Hungary has declared a state of emergency due to the influx of refugees which does pave the way for the host nation to take certain precautions.^[63] This will be discussed further below.

B. Lawful and Unlawful entry into a Country

When a refugee has entered into a country lawfully, she must not be treated differently than any other lawful citizen.^[64] Importantly, this includes access to the courts.^[65] Things such as housing, employment, and education are to be made available to lawful entrants.^[66] However, if a refugee enters a country unlawfully due to life threatening conditions, there can be no penalties imposed.^[67] But the illegal entrant must present herself to the authorities immediately.^[68] Additionally, illegal entrant's movements cannot be restricted after he or she has been admitted into the country.^[69] Regardless of how a refugee enters a country, the refugee must be afforded certain rights.^[70] It has been reported that Hungary is charging refugees criminally for entering the country illegally.^[71] If this allegation is found to be true, it would be a violation of the Refugee Convention.^[72]

Once a refugee is in the country, several rules are in place regarding his expulsion.^[73] When a refugee has entered into the country lawfully he or she cannot simply be expelled.^[74] A refugee can only be expelled after he or she has been afforded the proper due process of law and only after having adequate time to seek legal admission into another country.^[75] Lastly, the refugees

cannot be expelled to countries or frontiers in which their lives may be in danger.^[76] Hungary is suspected of prosecuting those who enter illegally as criminals, detaining them, and then ordering their deportation.^[77] However, it is extremely dangerous to deport these Syrian refugees anywhere near their home country or back to the Middle East.^[78] According to the Refugee Convention, deportation from Hungary would only be an option after the refugee has a fair hearing and the time to seek asylum elsewhere.^[79] Hungary is suspected of not allowing refugees equal access to the legal process or the time needed to process asylum applications.^[80]

V. Other Convention's Addressing Human Rights

There have been several conventions throughout the world that have addressed human rights.^[81] Every region of the world is covered by some form of treaty or convention.^[82] For example, the Organization of African Unity Convention on Refugees was held in 1966.^[83] In addition, a portion of the globe receives protection from the Asian-African Legal Consultative Organization Bangkok Principles, known simply as the Bangkok Principles, agreed to in 2001.^[84] Conventions such as these are considered “soft law” and only apply to a region or a limited number of states.^[85] As long as Hungary has availed itself to the laws of treaties and conventions such as these, it can be held responsible for violating the principles found within.

A. The International Covenant on Civil and Political Rights (ICCPR)

The International Covenant on Civil and Political Rights (ICCPR), convened in 1966, focuses on the principles of non-discrimination.^[86] 144 nations, including Hungary, signed this document.^[87] This covenant uses broad language such as “everyone,” “all persons,” and “no one” to ensure that the rights found within are applied to both nationals and non-nationals.^[88] The non-discrimination clauses in the ICCPR require each nation to respect and ensure the rights recognized to all individuals within its territory without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.^[89] Although nationality is not specifically stated, the provisions held within are not exclusive.^[90]

The ICCPR is overseen by the Human Rights Committee (HRC), falling under the umbrella of the United Nations Office of the High Commissioner.^[91] The HRC has addressed the meaning of the non-discrimination clause by stating, in general, “the enjoyment of Covenant rights is not limited to citizens of States Parties but must also be available to all individuals, regardless of nationality or statelessness, such as asylum seekers, refugees, migrant workers and other persons, who may find themselves in the territory or subject to the jurisdiction of the State Party.”^[92]

Thus, the general rule is that each one of the rights of the ICCPR must be guaranteed without discrimination between a member's citizens and aliens.^[93] Guaranteed within Article 2 of the ICCPR, aliens generally receive the benefit of the requirement of non-discrimination.^[94] Under the ICCPR, this guarantee applies to aliens and citizens alike.^[95] By signing the ICCPR,^[96] Hungary must not discriminate against refugees simply because of their nationality.^[97] Thus, if it is allowing asylum seekers from other countries full and proper access to its judicial system and asylum application process, then it must do the same for Syrian refugees.

B. Protections for Migrant Workers

In 1990, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (Migrant Worker Convention) was convened.^[98] Here, Resolution 45/158 was adopted with the hope of addressing the problems that were created by the irregular migration of displaced workers.^[99] The Migrant Worker Convention applies to workers who are transient between nations and specifically provides protection to refugees and stateless persons.^[100] The Migrant Worker Convention provides that "migrant workers and members of their families are free to leave any State, including their own State of origin without restrictions unless otherwise provided by law and are necessary."^[101] It continues by providing that no migrant worker or member of the workers family will be subjected to torture or to cruel, inhuman or degrading treatment or punishment.^[102]

The Migrant Worker Convention goes on to explain the process of exportation. Article 19 states: "no migrant worker shall be held guilty of any criminal offence on account of any act or omission that did not constitute a criminal offence under national or international law at the time the offense was committed."^[103] Lastly, the resolution makes clear that workers and their families shall not be subject to collective expulsion.^[104] This is similar to the provision found in the Refugee Convention in which illegally entering a country is not necessarily deemed unlawful.^[105]

Unfortunately, refugees seeking entrance into Hungary are not covered by the Migrant Worker convention as Hungary has not signed it. The promotion and protection of migrant workers in Europe has been identified as an important issue.^[106] As stated in a study done by the Office of the High Commissioner (OHCHR) for the UNHR: "under core international treaties, States have the obligations to protect effectively the human rights of everyone, including migrant workers and their families, including when they are in an irregular situation."^[107] Many European Union members have opposed initiatives that would provide this level of protection for migrant workers.^[108] As a policy issue, this is a glaring hole in the rights of third-country citizens throughout Europe.^[109] Hungary is accused of trying to systematically deny Syrian refugees access as well as engaging in collective expulsion.^[110] Hungary's treatment of refugees by using tear gas and water cannons to dispel them from the border is cruel and degrading treatment.^[111] Although refugee status affords separate protections, revised migrant worker protections may provide a shield in the future.^[112] Specifically, safeguards should be provided for a massive relocation of potential migratory workers when passing through a country seeking work outside of their home state due to civil war or unrest.^[113]

VI. The European Convention on Human Rights

The European Convention on Human Rights (ECHR) or, as it is formally known, the Convention for the Protection of Human Rights and Fundamental Freedoms, was convened in 1950.^[114] The convention was organized by the Council of Europe, of which Hungary is a member nation.^[115] This convention established the ECtHR.^[116] This is particularly important because the ECtHR is one of the current forums in which to try violations of human rights within international law.^[117] The ECHR contains many of the same provisions outlined in the previously discussed ICCPR and both are often discussed together when evaluating issues of international human rights.^[118]

The ECHR sets out 18 articles and two groups of ratified protocols aimed at securing fundamental human rights.^[119] The ECHR declares that a member nation has the duty to prevent the foreseeable loss of life.^[120] The ECHR also prohibits degrading treatment or punishment.^[121] There is a foreseeable loss of life if Syrian refugees are deported out of Hungary.^[122] Furthermore, it is probable that the methods Hungary is employing to deter refugees will result in the loss of human life.^[123] Article Three of the ECHR prohibits torture which includes the unlawful detention of a person if she entered the country legally.^[124] The ECtHR has used the Article Three torture provision on a very limited basis.^[125] But, it has been noted as stating that the convention is a “living instrument” and that it would be open to applying this to treatment that is degrading in the future.^[126]

Additionally, the ECHR outlines the minimum rights to be found in a fair criminal proceeding.^[127] These rights include: Everyone charged with a criminal offence is (a) to be informed promptly, in a language which they understand and in detail, of the nature and cause of the accusation against them (b) to have adequate time and facilities for the preparation of their defense; (c) to defend themselves in person or through legal assistance of their own choosing or, if they do not have sufficient means to pay for legal assistance, to be given it free when the interests of justice so require; (d) to examine or have examined witnesses against them and to obtain the attendance and examination of witnesses on their behalf under the same conditions as witnesses against them (e) to have the free assistance of an interpreter if they cannot understand or speak the language used in court.^[128] It has been reported that Hungary has denied asylum seekers the right to adequate counsel, interpreters, and time to prepare a defense.^[129]

Article 14 of the ECHR prohibits discrimination based on “sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”^[130] Many of the provisions stated in the ECHR echo those found in the Refugee Convention.^[131] Article 15 of the ECHR allows for the derogation of law based on a public emergency.^[132] To allow for derogation from the responsibilities listed in the ECHR, the exigencies of the situation must be actual or imminent, involve the entire nation, and threaten the life of the community.^[133] For example, Hungary is systematically discriminating against

refugees from Syria, a derogation of ECHR Article 14.[\[134\]](#) Hungary has derogated these rights due to a declared state of emergency based on the mass migration of refugees and the tightened border controls in neighboring countries.[\[135\]](#) The issue of derogation of duties based on the declaration of a state of emergency, the lynchpin of this discussion, is further discussed below.

VII. European Union Charter of Fundamental Rights

The latest instrument created to protect European individual rights is the European Union Charter of Fundamental Rights (The Charter).[\[136\]](#) The purpose of The Charter is to reaffirm rights outlined in the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Social Charters adopted by the Union, case law of the Court of Justice of the European Union, and case law of the European Court of Human Rights.[\[137\]](#) Additionally, because of social changes, The Charter clarifies several issues and consolidates them into one document.[\[138\]](#)

The Charter is consistent with the European Convention on Human Rights and the Council of Europe has stated that when the Charter contains rights that stem from the ECHR, their meaning and scope are the same.[\[139\]](#) The charter grants the right to asylum in accordance with the Refugee Convention.[\[140\]](#) Like the ECHR, the Charter provides that no one may be extradited if there will be serious risk of death or bodily harm. [\[141\]](#) The Charter also prohibits collective expulsion.[\[142\]](#) When the Treaty of Lisbon took effect in December of 2009, the Charter became legally binding on national governments belonging to the European Union.[\[143\]](#)

VIII. Available European Courts

There are two courts that handle Asylum issues in the European Union; the European Court of Human rights and the European Court of Justice (ECJ).[\[144\]](#) The European Union (EU) itself is not a party to the ECHR.[\[145\]](#) Yet, all of the EU's members belong to the ECHR thus subjecting each State to the authority of the European Court of Human Rights (ECtHR) on an individual basis.[\[146\]](#) This means that a claim against legislation passed by the EU cannot be brought in the ECtHR.[\[147\]](#) However, a claim against a member nation's law may be brought in the ECtHR.[\[148\]](#) The proper venue for a claim brought by the European Commission, which is the executive arm of the EU, is the European Court of Justice.[\[149\]](#) Both the ECJ and the ECtHR provide relief to asylum seekers.[\[150\]](#)

A. The European Court of Human Rights (ECtHR)

The European Court of Human Rights (ECtHR) was established to ensure the enforcement of the Convention and its protocols.^[151] This court has been recognized by all 47 member states as having jurisdiction over these issues.^[152] The ECtHR has over 10,000 judgments, leading many to believe that the ECHR is a living instrument.^[153] This court has had recent experience with regards to the treatment of large numbers of asylum seekers flooding into a country. In *Khlaifia and Others v. Italy*, the court looked to article 5(2) of the ECHR with regards to the detention of certain refugees in Italy.^[154] During a time of crisis, a wave of over 25,000 arrivals placed extreme obligations on the Italian system.^[155] The court found no sympathy for Italy finding that the detainees were deprived of their liberty contrary to Article 5(1) of the ECHR because there was no legal basis in domestic law for their detention.^[156]

Hungary is suspected of illegally detaining refugees and charging them criminally.^[157] However, there is legal basis in Hungary's domestic law because of the new border regulations.^[158] Like in *Khlaifia*,^[159] the court will use the ECHR in an effort to evaluate the legality of these regulations and determine if these refugees have been given a fair hearing and equal access to the legal system.^[160] It is important to note is that under the ECHR Article 3, anyone arrested or detained in contravention to the ECHR has the right to compensation.^[161] If Hungary's regulation is struck down by the court, this provision will allow the court to award reparations to thousands of refugees.

B. The Court of Justice of the European Union (CJE)

The Court of Justice of the European Union (CJE) was first established in 1952.^[162] The CJE is made up of two courts: the Court of Justice and the General Court.^[163] The CJE's mission is to "ensure that the law is observed in the interpretation and application of the Treaties."^[164] As part of this mission, the CJE reviews the legality of the acts of the institutions of the European Union, ensures that the member states comply with obligations under the treaties, and interprets European Union law at the request of the national courts and tribunals.^[165] The CJE, as the judicial authority of the European Union, primary task is to work with member country's courts to ensure uniform application and interpretation of EU law.^[166]

The CJE recognizes its obligation to apply EU law to protect citizens and to nullify any conflicting national provision, meaning primacy of EU law over national law.^[167] In the original treaties that established the European Union, there was not a "Bill of Rights" that enumerated the fundamental guarantees of the EU- this was left to the Member States.^[168] This was remedied by the introduction of the Charter of Fundamental Rights of the European Union.^[169] The Charter has given the Court much more latitude when dealing with derogations from a provision held within a treaty, specifically, when that derogation affects a fundamental right. Of note, an infringement by a member state may give rise to an obligation to pay compensation from public funds or the imposition of a pecuniary penalty by the Court.^[170]

IX. Derogation of Duties Based on a State Emergency

Derogation is the “legally mandated authority of a State to allow suspension of certain individual rights in exceptional circumstances of emergency or war.”^[171] There are several definitions of public emergency mostly depending on the reviewing authority. In *Lawless v. Ireland* the European Commission of Human Rights provided that, for the purposes of a derogation in accordance with Article 15, of the ECHR,^[172] a public emergency is “a situation of exceptional and imminent danger or crisis affecting the general public as distinct from particular groups and constituting a threat to the organized life of the community which composes the state in question.”^[173] The UN Human Rights Committee noted that derogation measures taken under Article 4 of the ICCPR^[174] are of an “exceptional and temporary nature and may only last as long as the life of the nation concerned is threatened and that, in times of emergency, the protection of human rights becomes all the more important, particularly those rights from which no derogations can be made.”^[175] These examples of different interpretations of derogation procedures by enforcing bodies illustrates the variances in how these rules are applied where there is a declaration of state emergency.

No matter the state of emergency, some rights are considered non-derogable. For example, the ECHR provides for the right of life, freedom from torture, right to a fair trial, and freedom from inhumane or degrading treatment.^[176] However, the UN Human Rights Committee’s General Comment 29, regarding derogations during a state of emergency, provides that when a right is derogated, the committee has a duty to conduct a careful analysis of each article of the covenant based on the situation.^[177] In the Committees’ words, “States parties may in no circumstances invoke article four of the covenant as justification for acting in violation of humanitarian law or peremptory norms of international law, for instance by taking hostages. . . through arbitrary deprivations of liberty or by deviating from fundamental principles of fair trial, including the presumption of innocence.”^[178] Concerns exist when derogation procedures are put into place due to a state of emergency.^[179] Once these procedures are recognized by an enforcing body such as the UNHCR, they can be used to create an emergency regime.^[180] The fear is that the longer a regime is in place, the greater the risk that the reasoning behind the derogation may no longer exist, leaving the new legislation inherently validated.^[181] Meaning, if the new legislation is not checked by an official body, then the legislation must be valid and can remain valid.

Recognizing the frailty of due process rights during a time of emergency, the ECtHR evaluates a violation of a fundamental right with a heightened level of scrutiny.^[182] In *Demir and Others v. Turkey*, three members of the People’s Social Democratic Party were arrested and convicted of offenses related to terrorism after being detained between seventeen and twenty three days.^[183] In evaluating whether the State overstepped the bounds of derogation, the court weighed factors such as the nature of the rights affected by the derogation as well as the circumstances leading to, and the duration of, the emergency.^[184] The State plead that the measures taken where to

protect the community from terrorism.^[185] The court accepted the idea that a public emergency existed that threatened the life of the nation, but made note that where necessary the authorities could “develop forms of judicial control which are adapted to the circumstances compatible with the Convention (ECHR).”^[186] This heightened scrutiny may be a sign that the ECtHR is ready to take a more activist role when evaluating derogation procedures.

X. Pending Action

The European Commission (the Commission) initiated an infringement procedure against Hungary in December of 2015.^[187] The Commission found pieces of the Hungarian legislation to be incompatible with EU law.^[188] The Commission has outlined three concerns.^[189] First, there is no possibility to refer to new facts and circumstances in the context of appeals.^[190] Additionally, Hungary does not automatically suspend decisions in which an applicant appeals the initial verdict.^[191] This forces applicants to leave the country before the time limit for lodging an appeal expires, or before an appeal has been heard.^[192]

Second the Commission is concerned with the rights regarding language translation and interpretation.^[193] Hungarian law now allows for fast-tracked criminal proceedings with regards to irregular border crossings but does not respect the right to interpretation and translation in criminal proceedings.^[194] These rights ensure that the accused person, if she does not understand the language of the proceedings, is provided with a written translation of all essential documents, including any judgment.^[195] Lastly, the Commission is concerned that the fundamental right to effective remedy and fair trial under the Charter^[196] has been infringed.^[197] Under the new Hungarian law, judicial review of decisions rejecting an asylum application by a personal hearing is only optional.^[198] Lastly, a court secretary, who lacks judicial independence, issues these judicial decisions.^[199] This too is in violation of the Charter.^[200]

Procedurally, Hungary had two months to respond to the formal notice of infringement issued in December of 2015.^[201] In January of 2016, it was reported that Hungary responded to the issues presented in the notice, however these have not been published.^[202] The next step is for the Commission to send a “reasoned opinion” asking the member nation to explain how they attempted to comply with its obligations under European Union law.^[203] The last step is to refer the case to the European Court of Justice.^[204] A potential penalty recommended by the Commission to the court may be a lump sum of damages based on the overall time the infraction stood and a daily penalty for each day after the court ruling that the infringement has not ended.^[205]

XI. Conclusion

The issues at the Hungarian borders have serious international consequences. If allowed to continue, a precedent may be set that could be to the detriment of refugees around the world. Pleas have been made to the UNHCR for a united European response in helping Syrian refugees at the Hungarian border.^[206] The public outcry over these unfortunate circumstances places even greater pressure on the European Commission and the Courts to do something.^[207] The Human Rights Committee has been very protective of the derogation of due process rights.^[208] This, along with the newly formed European Union Charter of Fundamental Rights points towards a shift in the sentiment of those charged with the enforcement of refugee rights within Europe. Fortunately, a claim has been brought against Hungary which will likely end with the European Court of Justice making a decision that will strengthen refugee rights.^[209] Otherwise, laws that allow State derogation of fundamental rights, such as the case with Hungary, will provide a roadmap for abuse, circumventing years of treaty and human rights law aimed at protecting asylum seekers.

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[1]. G.A. Res. 217 (III), U.N Doc. A/RES/3/217A (Dec. 10, 1948).

[2]. Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950, E.T.S. No. 5 (entered into force Sept. 3, 1953; ratified by 41 States), as amended by Protocol No. 11, May 11, 1994, E T.S. No. 155 [hereinafter ECHR].

[3]. *Id.* at pmb1.

[4]. *EU Charter of Fundamental Rights*, European Commission (last updated Oct. 29, 2016), http://ec.europa.eu/justice/fundamental-rights/charter/index_en.htm (“The Charter of Fundamental Rights of the EU brings together in a single document the fundamental rights protected in the EU. The Charter contains rights and freedoms under six titles: Dignity, Freedoms, Equality, Solidarity, Citizens’ Rights, and Justice. Proclaimed in 2000, the Charter has become legally binding on the EU with the entry into force of the Treaty of Lisbon, in December 2009.”).

[5]. Charter of Fundamental Rights of the European Union, Oct. 10, 2012 O.J. (C 326) 02 [hereinafter *The Charter*].

[6]. *EU Charter of Fundamental Rights*, *supra* note 4.

[7]. Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union art. 4(3), Oct. 26, 2012, 2012 O.J. (C 326) 01 [hereinafter TFEU] (“The Member States shall take any appropriate measure, general or particular, to ensure

fulfilment of the obligations arising out of the Treaties or resulting from the acts of the institutions of the Union.”).

[8]. Wendy Zeldin, *Hungary: New Law Permits Army’s Use of Non-Lethal Weapons Against Illegal Migrants*, Library of Congress (Nov. 6, 2015), <https://www.loc.gov/law/foreign-news/article/hungary-new-law-permits-armys-use-of-non-lethal-weapons-against-illegal-migrants/> (last visited Oct. 2, 2016) (On September 21, 2015, the National Assembly of Hungary approved legislation with 151 votes in favor, 12 opposed, and 27 abstentions in the 199-member Parliament).

[9]. *Id.*

[10]. *Id.*

[11]. *Id.*

[12]. *Id.*

[13]. *Id.*

[14]. *Szabó and Vissy v. Hungary*, App No. 37138/14 Eur. Ct. H.R. 45 (2016).

[15]. Gianluca Mezzofiore, *Migrant Crisis: Hungary Approves Use of Army, Rubber Bullets and Tear Gas Against Refugees*, IBTIMES (Sept. 21, 2015, 4:03 PM), <http://www.ibtimes.co.uk/migrant-crisis-hungary-approves-use-army-rubber-bullets-tear-gas-against-refugees-1520596>.

[16]. Zeldin, *supra* note 8.

[17]. *Id.*

[18]. *Id.*

[19]. *Id.*

[20]. United Nations Convention Related to Refugees, July 28, 1951, art. 20, 19 U.S.T. 6577, 189 U.N.T.S. 150. Reference to the Convention also includes the 1967 United Nations Protocol relating to the Status of Refugees (“Protocol”), Jan. 31, 1967, 19 U.S.T. 6223, T.I.A.A. No. 6577, 606 U.N.T.S. 267 (1967) [hereinafter Refugee Convention].

[21]. ECHR, *supra* note 2 at art. 5(1).

[22]. Refugee Convention, *supra* note 20 at art. 16.

[23]. The Charter, *supra* note 5 at art. 49.

- [24]. Syria Regional Refugee Response (last updated Sept. 30, 2016), <http://data.unhcr.org/syrianrefugees/regional.php>.
- [25]. Harry Mitchell, *The Distinction Between Asylum Seekers and Refugees*, Migration Watch UK (Jan. 24, 2006), https://www.migrationwatchuk.org/pdfs/BP8_11.pdf.
- [26]. *Id.*
- [27]. *Id.*
- [28]. *Id.*
- [29]. *Id.*
- [30]. *Id.*
- [31]. *Id.*
- [32]. *See generally id.*
- [33]. 8 U.S.C. § 1157(c)(1).
- [34]. Rupert Colville, *Fiftieth Anniversary of the Hungarian uprising and refugee crisis*, UNHCR (Oct. 23, 2006), <http://www.unhcr.org/en-us/news/latest/2006/10/453c7adb2/fiftieth-anniversary-hungarian-uprising-refugee-crisis.html>.
- [35]. *See generally id.*
- [36]. *Hungary: Failing to Protect Vulnerable Refugees*, Human Rights Watch (Sept. 20, 2016, 12:01 AM), <https://www.hrw.org/news/2016/09/20/hungary-failing-protect-vulnerable-refugees>.
- [37]. Katherine Zobre, *History of the UNHCR*, The Borgen Project, (May 15, 2013), <http://borgenproject.org/history-of-the-unhcr/> (“WWII left around 400,000 people homeless refugees strewn across Europe.”).
- [38]. The Universal Declaration of Human Rights, 1949 Y.B. on H.R. 327, available at: <http://www.un.org/en/universal-declaration-human-rights/>.
- [39]. *See id.*
- [40]. Zobre, *supra* note 37.
- [41]. *See* Refugee Convention, *supra* note 20.
- [42]. *Id.*

- [43]. Zobre, *supra* note 37.
- [44]. Lucy Rodgers, David Gritten, James Offer and Patrick Asare, *Syria: The story of the conflict*, BBC News (Mar. 11, 2016), <http://www.bbc.com/news/world-middle-east-26116868>.
- [45]. *Migrant crisis: Migration to Europe explained in seven charts*, BBC News (Mar. 4, 2016), <http://www.bbc.com/news/world-europe-34131911>.
- [46]. Memorandum from the U.N. Secretariat on Expulsion of Aliens, U.N. Doc. A/CN.4/565 (July 10, 2006) (citing *The Movement of Persons across Borders*, 23 *Stud. Transnat'l L. Pol'y* § 13.02, 100 (Louis B. Sohn & T. Buergenthal, eds., 1992)).
- [47]. Colville, *supra* note 34.
- [48]. William Thomas Worster, *The Evolving Definition of the Refugee in Contemporary International Law*, 30 *Berkeley J. Int'l L.* 94, 105 (2012).
- [49]. See Kate Jastram & Marilyn Achiron, Office of the United Nations High Comm'r for Refugees, *Refugee Protection: A Guide to International Refugee Law* 8 (2001).
- [50]. Refugee Convention, *supra* note 20 at art. 1.
- [51]. *Id.* at art. 1(A).
- [52]. *Id.* at art. 35(2)(c).
- [53]. *Id.* at art. 1(F)(a).
- [54]. States Parties to the 1951 Convention relating to the Status of Refugees and the 1967 Protocol, Apr. 22 1954, 189 U.N.T.S. 137.
- [55]. Refugee Convention, *supra* note 20 at art. 6.
- [56]. *Id.* at art 7.
- [57]. *Id.* at art 7(1).
- [58]. *Id.* at art 7(3).
- [59]. *Id.* at art 7(4).
- [60]. *Id.* at art 8.
- [61]. *Id.* at art 9.
- [62]. See generally *id.*

[63]. Jane Onyanga-Omara, *Hungary declares state of emergency amid migrant crisis*, USA Today (Sept. 17, 2015, 2:27 PM), <http://www.usatoday.com/story/news/world/2015/09/15/hungary-migrants-state-of-emergency/72295914/>.

[64]. Refugee Convention, *supra* note 20 at art. 6 (“For the purposes of this Convention, the term ‘in the same circumstances’ implies that any requirements (including requirements as to length and conditions of sojourn or residence which the particular individual would have to fulfil for the enjoyment of the right in question, if he were not a refugee, must be fulfilled by him, with the exception of requirements which by their nature a refugee is incapable of fulfilling.”).

[65]. *Id.* at art 16

[66]. *Id.* at art 17, 21, 22.

[67]. *Id.* at art. 31(1).

[68]. *Id.*

[69]. *Id.* at art. 31(2) (“The Contracting States shall not apply to the movements of such refugees restrictions other than those which are necessary and such restrictions shall only be applied until their status in the country is regularized or they obtain admission into another country. The Contracting States shall allow such refugees a reasonable period and all the necessary facilities to obtain admission into another country.”).

[70]. *Id.*

[71]. Josie Ensor, *Hungary accuses Croatia of ‘people smuggling’ as migrant crisis deepens*, The Telegraph (Sept. 19, 2015, 5:49 PM), <http://www.telegraph.co.uk/news/worldnews/europe/croatia/11876768/Croatia-forces-Hungary-to-open-borders-to-refugees-as-crisis-deepens.html>.

[72]. Refugee Convention, *supra* note 20 at art 31(1) (“The Contracting States *shall not impose penalties, on account of their illegal entry* or presence, on refugees who, coming directly from a territory where their life or freedom was threatened.” (emphasis added)).

[73]. *Id.* at art. 33.

[74]. *Id.* at art. 32.

[75]. *Id.*

[76]. *Id.* at art. 33.

[77]. Press Release, European Comm’n, Comm’n Opens Infringement Procedure Against Hungary Concerning Its Asylum Law, IP/15/6228 (Dec. 10, 2015); *See also* Lauren Frayer,

Hungary Steps Up Arrest And Deportation Of Migrants, NPR (Oct. 12, 2015, 4:04 PM), <http://www.npr.org/sections/parallels/2015/10/12/447166825/hungary-steps-up-arrest-and-deportation-of-migrants> (“Hungary’s overwhelmed immigration system didn’t have space to detain the Yazidis after their own sentencing. So it ordered them to a detention facility in the far north of Hungary — hundreds of miles from the Serbian border where they are supposed to be deported. Hungarian officials also told them they can’t provide transportation there.”).

[78]. Rodgers, *supra* note 44.

[79]. Refugee Convention, *supra* note 20 at art. 32(2) (“The expulsion of such a refugee shall be only in pursuance of a decision reached in accordance with due process of law.”).

[80]. Press Release, European Comm’n, *supra* note 77; *See also* Frayer, *supra* note 77 (“It’s an entirely different story on the Serbian frontier, where migrants are immediately arrested. Within a few days, most are put on trial at a special tribunal in the southern Hungarian city of Szeged. Each morning, groups of migrants climb out of police vans and trudge into the courthouse, under guard. Instead of evaluating their asylum claims, Hungary puts these migrants on criminal trial, under a law that took effect last month making it illegal to breach Hungary’s border fences. Migrants can be punished with up to three years in prison. “They don’t know anything about the procedure. The translators should explain it to them, with the lawyers’ help,” says defense lawyer Timea Kovacs. But court translators are paid by police, she says. They’re sometimes biased.”).

[81]. *See Tools for the protection of the displaced*, UNHCR, <http://www.unhcr-centraleurope.org/en/resources/legal-documents/international-refugee-law.html> (last visited Oct. 1, 2016).

[82]. *See generally id.*

[83]. *See id.*

[84]. Asian-African Legislative Consultative Committee, Principles Concerning Treatment of Refugees (1966) reprinted in UNHCR, Collection of International Instruments and Other Legal Texts Concerning Refugees and Others of Concern to UNHCR 201 (1979), available at: <http://www.aalco.int/Final%20text%20of%20Bangkok%20Principles.pdf>.

[85]. Worster, *supra* note 48 at 115.

[86]. International Covenant on Civil and Political Rights, Mar. 23, 1976, 999 U.N.T.S. 14668 [hereinafter ICCPR].

[87]. *Id.* at 172.

[88]. *Id.* at art. 10(1) (“All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.”).

[89]. *Id.* at art. 2(1).

[90]. *Id.* at art 47 (“Nothing in the present Covenant shall be interpreted as impairing the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources.”).

[91]. *Id.* at art 28.

[92]. UNHCR, *Extracts of selected General Comments and Recommendations of the United Nations Human Rights Treaty Bodies relating to nationality and statelessness*, General Comment 31 at para. 10, <http://www.unhcr.org/4517ab402.pdf>.

[93]. *Id.* at para. 10 (“States Parties are required by article 2, paragraph 1, to respect and to ensure the Covenant rights to all persons who may be within their territory and to all persons subject to their jurisdiction. This means that a State party must respect and ensure the rights laid down in the Covenant to anyone within the power or effective control of that State Party, even if not situated within the territory of the State Party. As indicated in General Comment 15 adopted at the twenty-seventh session (1986), the enjoyment of Covenant rights is not limited to citizens of States Parties but must also be available to all individuals, regardless of nationality or statelessness, such as asylum seekers, refugees, migrant workers and other persons, who may find themselves in the territory or subject to the jurisdiction of the State Party. This principle also applies to those within the power or effective control of the forces of a State Party acting outside its territory, regardless of the circumstances in which such power or effective control was obtained, such as forces constituting a national contingent of a State Party assigned to an international peace-keeping or peace-enforcement operation.”).

[94]. ICCPR, *supra* note 86 at art. 2.

[95]. UNHCR *Extracts of selected General Comments*, *supra* note 92 at para. 10.

[96]. ICCPR, *supra* note 86 at 172.

[97]. *Id.* at art. 10(1).

[98]. Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, adopted by GA Res. 45/158 art. 2, Dec. 18, 1990 2220 U.N.T.S 39481 [hereinafter Migrant Worker Convention].

[99]. *Id.* at pmb1.

[100]. *Id.* at art. 3.

[101]. *Id.* at art. 8(1).

[102]. *Id.* at art. 10.

[103]. *Id.* at art. 19(1).

[104]. *Id.* at art. 22.

[105]. Refugee Convention, *supra* note 20 at art. 31(1) (“The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of article 1, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.”).

[106]. See Marie d’Auchamp, *Rights Of Migrant Workers In Europe*, UNHR Office of the High Commissioner, 10 (2011), [hereinafter OHCHR], http://europe.ohchr.org/Documents/Publications/Migrant_Workers.pdf (“This study analyses developments in Europe over the last 10 years that are relevant for the promotion and protection of the rights of migrant workers as per the provisions of the ICRMW. It aims at identifying and analysing [sic] the challenges and opportunities for ratification by EU Member States and other European States of this international human rights instrument, thus ensuring the path towards universal ratification of all core international human rights instruments in Europe.”).

[107]. *Id.* at 10.

[108]. *Id.* at 15 (“Overall, the Member States have shown significant resistance to proposals by the European Commission particularly when they are aimed at harmonizing the level of rights of migrants and unanimity in

Council, which was required for the adoption of new EU legislation in this area until the Lisbon Treaty, was exceedingly difficult to achieve.”).

[109]. *Id.* at 17 (“The fact that EU Member States fail to maintain this level of commitment when it comes

to the rights of third-country nationals gives rise to critical appraisal of the consistency of their (and the

EU’s) internal and external human rights policies.”).

[110]. Frayer, *supra* note 77.

[111]. Holly Yan, Ben Wedeman, Milena Veselinovic and Tim Hume, *Refugee crisis: Hungary uses tear gas, water cannons on migrants at border*, CNN (Sept. 16, 2015, 3:02 PM), <http://www.cnn.com/2015/09/16/world/europe-migrant-crisis/>.

[112]. See generally d’Auchamp *supra* note 106.

[113]. *Id.*

- [114]. ECHR, *supra* note 2.
- [115]. Council of Europe, *Hungary 47 States, one Europe*, <http://www.coe.int/en/web/portal/hungary> (last visited Oct. 1, 2016) (Hungary became the 24th Member State of the Council of Europe on 6 November 1990).
- [116]. ECHR, *supra* note 2, at art. 19.
- [117]. *Id.* at art. 32 (“The jurisdiction of the Court shall extend to all matters concerning the interpretation and application of the Convention and the Protocols thereto which are referred to it as provided in Articles 33, 34, 46 and 47.”).
- [118]. *See* Ryszard Cholewinski, *Economic and Social Rights of Refugees and Asylum Seekers in Europe 4-5* (Oxford University 1999) (Prepared for the Workshop on Refugee and Asylum Policy and Practice in Europe and North America).
- [119]. ECHR, *supra* note 2 at pmb1. (“Considering that this Declaration aims at securing the universal and effective recognition and observance of the Rights therein declared.”).
- [120]. *Id.* at art. 2.
- [121]. *Id.* at art. 3.
- [122]. Rodgers, *supra* note 44.
- [123]. Yan, *supra* note 111.
- [124]. ECHR, *supra* note 2 at art. 3.
- [125]. *See Selmouni v. France*, App. No. 25803/94, Eur. Ct. H.R. 26 (1999).
- [126]. *Id.* at 31.
- [127]. ECHR, *supra* note 2 at art. 6.
- [128]. *Id.*
- [129]. Frayer, *supra* note 77; Nóra Köves, *Hungarian refugee policies may lead to massive human rights violations*, Heinrich Boell Foundation (Nov. 3, 2015), <https://www.boell.de/en/2015/11/03/hungarian-refugee-policies-may-lead-massive-human-rights-violations> (“The maximum penalty is 20 years’ imprisonment, and in all cases expulsion from Hungary and consequently also the territory of the EU and the Schengen zone for at least two years. In addition, as actual practice demonstrates, even those who request asylum in the transit zones are expelled.”).

The right to due process is being violated in other ways as well: in the case of injunctive relief, it is the head of the National Judicial Office who appoints the judges, who in turn are allowed to direct the proceedings without assessors, while access to remedies has been made so complicated that at the moment it is practically an empty right.”).

[130]. ECHR, *supra* note 2 at art. 14.

[131]. Compare Refugee Convention, *supra* note 20 at art. 16, 31, 32, 33 (Access to courts, refugees unlawfully in the country of refugee, expulsion all require fair treatment and due process), with ECHR, *supra* note 2 at art 6, 7 (basic rights in a criminal proceeding); compare Refugee Convention, *supra* note 20 at art 9 (In a time of war or national crisis a country can take measures against a particular person), with ECHR, *supra* note 2 at art 15 (derogation in time of emergency).

[132]. ECHR, *supra* note 2 at art 15.

[133]. *Id.*

[134]. ECHR, *supra* note 2 at art. 14 (Prohibition of discrimination); Frayer, *supra* note 77.

[135]. Cassandra Vinograd, *Europe's Refugee Crisis: Hungary Declares State of Emergency Over Migrants*, NBC (Mar. 9, 2016, 10:58 AM), <http://www.nbcnews.com/storyline/europes-border-crisis/europe-s-refugee-crisis-hungary-declares-state-emergency-over-migrants-n534746> (“Hungary’s Interior Ministry said the state of emergency over ‘mass migration’ was declared because ‘we do not know what reaction’ tightened border restrictions in neighboring nations ‘could trigger among refugees’ and migrants. Slovenia, Croatia and Serbia put new measures in place requiring EU visas at their borders in an attempt to limit the number of migrants crossing effectively cutting off the well-traveled Balkans route. Hungary’s Interior Minister Sándor Pintér said there are an estimated 10,000 people in those countries without ‘valid’ permits.”).

[136]. *EU Charter of Fundamental Rights*, *supra* note 4.

[137]. The Charter, *supra* note 5 at pmb1.

[138]. *Id.*

[139]. *Id.*

[140]. *Id.* at art. 18.

[141]. *Id.* at art. 19.

[142]. *Id.*

[143]. See *EU Charter of Fundamental Rights*, *supra* note 4.

[144]. See generally Christian Kaunert & Sarah Léonard, *The development of the EU asylum policy: venue shopping*

in perspective, 19 JOURNAL OF EUROPEAN PUBLIC POLICY, 1406-1407 (2012).

[145]. *Id.* at 1407.

[146]. *Id.*

[147]. See *id.*

[148]. See generally *id.*

[149]. *The Institution: General Presentation*, Curia, *infra* note 162.

[150]. See generally Kaunert *supra* note 144.

[151]. ECHR, *supra* note 2 at art. 19 (“To ensure the observance of the engagements undertaken by the High Contracting Parties in the Convention and the Protocols thereto, there shall be set up a European Court of Human Rights, hereinafter referred to as “the Court”. It shall function on a permanent basis.”).

[152]. *Id.* at art. 32 (The ECHR was presented in front of the Council of Europe and signed by all member nations).

[153]. *European Court of Human Rights (ECtHR)*, Council of Europe, http://www.coe.int/t/democracy/migration/bodies/echr_en.asp (last visited Oct. 1, 2016) (“In almost fifty years the Court has delivered more than 10 000 judgments. These are binding on the countries concerned and have led governments to alter their legislation and administrative practice in a wide range of areas. The Court’s case-law makes the Convention a powerful living instrument for meeting new challenges and consolidating the rule of law and democracy in Europe.”).

[154]. *Khlaifia and Others v. Italy*, 16483/12 Eur. Ct. H.R. 3 (2015).

[155]. *Id.* at 12.

[156]. *Id.* at 25-6.

[157]. Frayer, *supra* note 77.

[158]. Zeldin, *supra* note 8.

[159]. *Khlaifia*, *supra* note 154.

[160]. See Refugee Convention, *supra* note 20 at art. 16, 31, 32, 33 (Access to courts, refugees unlawfully in the country of refugee, expulsion all require fair treatment and due process); see also ECHR, *supra* note 2 at art 6 (Right to a fair trial).

[161]. ECHR, *supra* note 2 at art. 3.

[162]. *The Institution: General Presentation*, Curia, http://curia.europa.eu/jcms/jcms/T5_5119/en/ (Curia is the official website of the European Union Court of Justice and General Court). (last visited Oct. 1, 2016).

[163]. *Court of Justice: Presentation*, Curia, http://curia.europa.eu/jcms/jcms/Jo2_9089/presentation. (last visited Oct. 1, 2016).

[164]. *The Institution: General Presentation*, Curia, *supra* note 162.

[165]. *Id.*

[166]. *Id.*

[167]. *Court of Justice: Presentation*, Curia, *supra* note 163.

[168]. *Id.*

[169]. *EU Charter of Fundamental Rights*, European Commission, *supra* note 4.

[170]. *Court of Justice: Presentation*, Curia, *supra* note 163.

[171]. Oren Gross & Fionnuala Ní Aoláin, *Law in Times of Crisis: Emergency Powers in Theory and Practice* 257 (2006).

[172]. ECHR, *supra* note 2 at art. 15 (“Derogation in time of emergency: 1. In time of war or other public emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligations under this Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law. 2. No derogation from Article 2, except in respect of deaths resulting from lawful acts of war, or from Articles 3, 4 (paragraph 1) and 7 shall be made under this provision. 3. Any High Contracting Party availing itself of this right of derogation shall keep the Secretary General of the Council of Europe fully informed of the measures which it has taken and the reasons therefor. It shall also inform the Secretary General of the Council of Europe when such measures have ceased to operate and the provisions of the Convention are again being fully executed.”).

[173]. *Lawless v. Ireland*, 1 Eur. Ct HR (ser.B) at 84 (1960-61) (Commission Report).

[174]. ICCPR, *supra* note 86 at art. 4 (“1. In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the

present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, [sic] sex, language, religion or social origin. 2. No derogation from articles 6, 7, 8 (paragraphs 1 and 2), 11, 15, 16 and 18 may be made under this provision. 3. Any State Party to the present Covenant availing itself of the right of derogation shall immediately inform the other States Parties to the present Covenant, through the intermediary of the Secretary-General of the United Nations, of the provisions from which it has derogated and of the reasons by which it was actuated. A further communication shall be made, through the same intermediary, on the date on which it terminates such derogation.”).

[175]. Human Rights Comm., General Comment 29, 72nd Sess., U.N. Doc. CCPR/C/21/Rev.1/Add.11 at para. 2 (Aug. 31, 2001).

[176]. ECHR, *supra* note 2 at art. 2, 3, 6.

[177]. Human Rights Comm., General Comment 29, *supra* note 175 at para. 6.

[178]. *Id.* at para. 11.

[179]. Gross & Aoláin, *supra* note 171 at 260.

[180]. *Id.*

[181]. *Id.*

[182]. *Id.* at 286.

[183]. *Demir and Others v. Turkey*, App. No. 71/1997/855/1062–1064, Eur. Ct. H.R. 13 (1998).

[184]. *Id.* at 13-5.

[185]. *Id.* at 15.

[186]. *Id.* at 15.

[187]. Press Release, European Comm’n, *supra* note 77.

[188]. *Id.* (The specific legislation in question is the recast Asylum Procedures Directive (Directive 2013/32/EU) and the Directive on the right to interpretation and translation in criminal proceedings (Directive 2010/64/EU)).

[189]. *Id.*

[190]. *Id.*

[191]. *Id.*

[192]. *Id.*

[193]. *Id.*

[194]. *Id.*

[195]. *Id.*

[196]. The Charter, *supra* note 5 at art. 47 (“Right to an effective remedy and to a fair trial; Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article. Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented. Legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice.”).

[197]. Press Release, European Comm’n, *supra* note 77.

[198]. *Id.*

[199]. *Id.*

[200]. The Charter, *supra* note 5 at art. 47.

[201]. Press Release, European Comm’n, *supra* note 77.

[202]. *Hungarian Govt Sends Response To EC On Criticism Of Asylum Law*, Xpatloop (Jan. 1, 2016), http://www.xpatloop.com/news/hungarian_govt_sends_response_to_ec_on_criticism_of_asylum_law.

[203]. Press Release, European Comm’n, *supra* note 77.

[204]. *Id.*

[205]. *Id.*

[206]. *Europe must change course on refugee crisis response, stresses UN agency*, UN News Centre (Sept. 16, 2015), <http://www.un.org/apps/news/story.asp?NewsID=51894#.V5UN47grLIU>.

[207]. *See generally id.*

[208]. Gross & Aoláin, *supra* note 177 at 300.

[209]. Press Release, European Comm'n, *supra* note 77.