JUDGMENT AGAINST HUNGARY IN CASE C-821/19

OVERVIEW

On 16 November 2021, the Grand Chamber of the Court of Justice of the European Union (the ***Court***) issued its judgment in Case No C-821/19 (*European Commission v Hungary*) (the ***Judgment***). The International Service for Human Rights has been following the case closely and, together with Pravno-informacijski center nevladnih organizacij, has previously published an analysis of the underlying issues (the ***Observations***).[1]

The Court ruled in the Judgment that three elements of Hungary's "Stop Soros" legislation violate EU law:

- First, the new ground for deeming asylum applications inadmissible if an applicant arrives at the Hungarian border via a country where they have not been subjected to persecution or serious harm, or where an "adequate level of protection is provided" (the ***Inadmissibility Ground***) violates EU law. Article 38(2)(a) of Directive 2013/32/EU (the ***Asylum Procedures Directive***) requires: (i) a connection between an asylum seeker and a third country that is more substantive than mere transit through a country that might otherwise be deemed "safe"; and (ii) a case-by-case analysis of the safety of a specific country for each applicant. The Inadmissibility Ground failed to satisfy these requirements.

- Second, Hungary's introduction of a new criminal offence for intentionally engaging in certain "organising activity" aimed at enabling the initiation of asylum proceedings by persons who are not persecuted in their home country, their country of habitual residence or the country through which they arrived in Hungary, or whose fear of direct persecution is "groundless" (the ***New Offence***) restricted the rights conferred under Article 10(4) of Directive 2013/33/EU (the ***Reception Conditions Directive***, together with the Asylum Procedures Directive, the ***Directives***) and Articles 8(2) and 22(1) of the Asylum Procedures Directive (all three provisions together, the ***Relevant Provisions***) in a manner that could not be justified.

    - The New Offence's criminalisation of certain types of assistance for asylum seekers restricts the rights to access and communication protected under Article 8(2) of the Asylum Procedures Directive and Article 10(4) of the Reception Conditions Directive.

    - Article 22(1) of the Asylum Procedures Directive confers on asylum applicants the right to consult a legal adviser or other counsellor on matters relating to their asylum applications. The chilling effect that the New Offence has on those providing such services inevitably restricts the protection conferred to asylum applicants.

    - Those restrictions could not be justified on the basis that they were intended to target assistance provided for purposes of misusing the asylum procedure

[1] Observations Relating to Case C-821/19 *Commission v Hungary*. Available at: https://ishr.ch/wp-content/uploads/2021/11/ishr_pic_observations_on_case_c-821_19_1.pdf.

because the New Offence discourages the provision of any assistance whatsoever and thus cannot be regarded as necessary to prevent fraudulent or abusive conduct.

- Those restrictions also could not be justified on the basis that they seek to restrict illegal immigration because the New Offence is not capable of pursuing the stated objective. Under EU law, once an asylum seeker makes an application for international protection to a Member State, and until a decision on the application is rendered, the asylum seeker cannot be considered to be unlawfully present in the territory of that Member State. It follows that providing assistance to asylum seekers for purposes of making or lodging an asylum application cannot facilitate illegal immigration. Specifically, it could result in the prosecution of a person who assists with an asylum application that is contrary to Hungarian law but does so on the basis that those requirements are inconsistent with international or EU law. Moreover, the New Offence places the burden on those providing assistance to determine in advance whether the person they are assisting could lodge a successful application under Hungarian law.

- Third, the amendment of Hungary's Police Law to provide that any person subject to criminal proceedings for allegedly committing the New Offence is automatically banned from being within eight kilometres of the Hungarian border (the ***Related Ban***) also violates EU law. By preventing those suspected of having committed the New Offence from accessing Hungary's borders (*ie* where asylum seekers have been required to make applications for international protection), the Related Ban limits the rights guaranteed under the Relevant Provisions and infringes Article 12(1)(c) of the Asylum Procedures Directive (guaranteeing asylum applicants the opportunity to communicate with the UNHCR or any other organisation providing legal advice or counselling once their applications are lodged) by limiting access to asylum applicants once they have formally lodged their applications. Because the Related Ban takes effect for the purposes of implementing the New Offence, which is contrary to EU law, it cannot be justified.

As a result, Hungary is now under an obligation to rescind the provisions found to be in violation of EU law. The principle of the primacy of EU law means that, even before any such formal steps are taken, the Hungarian authorities are obliged not to apply and/or implement those provisions of the Hungarian legislation found to be incompatible with EU law. Those providing aid and assistance to asylum seekers should thus be able to do so without incurring the risk of criminal prosecution. If Hungary fails to comply with the Judgment, the European Commission (the ***Commission***) has the ability to ask the Court to impose a monetary penalty.

BACKGROUND

The Judgment addressed the enactment of the so-called "Stop Soros" legislation, which comprised a series of amendments made by the Hungarian Parliament to that country's asylum legislation in June 2018.

The "Stop Soros" package included:

i. The Inadmissibility Ground. A new ground for deeming asylum applications inadmissible. That is, if an applicant arrives at the Hungarian border via a country where they have not been subjected to persecution or serious harm, or where an "adequate level of protection is provided", their application will automatically be rejected.

ii. The New Offence. A new criminal offence of "facilitating and assisting illegal immigration". This provision made it a criminal offence to, among other things, intentionally engage in "organising activity" aimed at enabling the initiation of asylum proceedings by persons who are not persecuted in their home country, their country of habitual residence or the country through which they arrived in Hungary, or whose fear of direct persecution is "groundless". The law set out a non-exhaustive definition of "organising activity" as including the organisation of border monitoring, the making or dissemination of information materials, or the establishment or operation of a network. The offence is punishable by confinement (a form of detention in a low-security penal institution for up to 90 days) or even imprisonment of up to one year under certain circumstances.

iii. The Related Ban. The enactment of the New Offence was also accompanied by an amendment of Hungary's Police Law to provide that any person subject to criminal proceedings for allegedly committing the New Offence is automatically banned from being within eight kilometres of the Hungarian border.

As explained in the Observations, the initial effect of the Inadmissibility Ground was that virtually all asylum applications were rejected by the Hungarian asylum authority. This was because asylum applications could only be lodged at the Hungarian-Serbian border, meaning that applicants were obliged to travel through Serbia. Since Hungary regarded Serbia as a safe third country, all asylum applications were considered inadmissible because the applicants could, in theory, have sought asylum in Serbia.[2]

The New Offence has an obvious potential chilling effect on asylum support work, as recognised by the Special Rapporteur on the human rights of migrants:

> The uncertainty about the scope of application of this provision creates a chilling effect on civil society organizations engaged in activities that could fall under the offence, depending on how the provision is interpreted and applied. Organizations that are affected may apply self-censorship and reduce or terminate services, which further hinders asylum seekers and migrants from exercising their right to seek asylum and international protection, as many of them rely on the services provided by civil society organizations, such as legal advice and

[2] Observations Relating to Case C-821/19 *Commission v Hungary*, paras 27-29. Available at: https://ishr.ch/wp-content/uploads/2021/11/ishr_pic_observations_on_case_c-821_19_1.pdf.

representation, in their asylum- or protection-seeking processes.[3]

In November 2019, the Commission lodged formal infringement proceedings against Hungary before the Court under Article 258 of the Treaty on the Functioning of the European Union, claiming that Hungary violated the Directives.

On 19 March and 14 May 2020, after the Commission filed its application in this case but before the Judgment was handed down, the Court issued judgments against Hungary in two separate cases, each of which held that that the Inadmissibility Ground was contrary to EU law.[4]

On 25 February 2021, Advocate General Rantos issued his opinion in this case. His view was that:

i. The Inadmissibility Ground violates EU law, as confirmed by the 19 March and 14 May 2020 judgments.[5]

ii. The New Offence (by itself and/or in conjunction with the Related Ban) is inconsistent with EU law.[6] In particular, as also set out in the Observations,[7] the fact that only intentional acts are sanctioned under the New Offence (*ie* providing assistance while knowing that an application does not meet the legal requirements to succeed) does not provide an adequate safeguard. Doubts as to the merit of an asylum application are inherent in the process. Moreover, the Inadmissibility Ground coupled with the requirement to lodge applications at the Hungarian-Serbian border meant that anyone providing assistance to asylum seekers under these circumstances did so knowing that it was very likely the applications would be rejected; they would therefore risk prosecution under the New Offence.[8]

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3 United Nations, General Assembly, *Report of the Special Rapporteur on the human rights of migrants,* A/HRC/44/42/Add.1, 11 May 2020, para 56.

4 Case C-564/18, *LH v Bevándorlási és Menekültügyi Hivatal,* Judgment, 19 March 2020, ECLI:EU:C:2020:218, para 55; Joined Cases C-924/19 PPU and C-925/19 PPU, *FMS, FNZ, SA and SA junior v Országos Idegenrendészeti Főigazgatóság Dél-alföldi Regionális Igazgatóság and Országos Idegenrendészeti Főigazgatóság,* Judgment, 14 May 2020, ECLI:EU:C:2020:367, paras 148-165. *See also* Observations Relating to Case C-821/19 *Commission v Hungary*, paras 36-38. Available at: https://ishr.ch/wp-content/uploads/2021/11/ishr_pic_observations_on_case_c-821_19_1.pdf.

5 Case C-821/19, *European Commission v Hungary*, Opinion of Advocate General Rantos, 25 February 2021, ECLI:EU:C:2021:143, paras 2, 19-26.

6 Case C-821/19, *European Commission v Hungary*, Opinion of Advocate General Rantos, 25 February 2021, ECLI:EU:C:2021:143, paras 42, 47, 48-54.

7 Observations Relating to Case C-821/19 *Commission v Hungary*, para 61. Available at: https://ishr.ch/wp-content/uploads/2021/11/ishr_pic_observations_on_case_c-821_19_1.pdf.

8 Case C-821/19, *European Commission v Hungary*, Opinion of Advocate General Rantos, 25 February 2021, ECLI:EU:C:2021:143, paras 31-35.

iii. The Related Ban, considered in isolation, is not inconsistent with EU law.[9]

THE JUDGMENT

The Court considered whether the Inadmissibility Ground, the New Offence, and the Related Ban complied with the Directives and EU law.

The Inadmissibility Ground

As anticipated in the Observations,[10] the Court referred to its recent jurisprudence and confirmed that the Inadmissibility Ground is incompatible with Article 33(2) of the Asylum Procedures Directive.[11] Specifically, applications will be denied as inadmissible based on an unlawful application of the "safe third country" concept – that is, by reference to country of transit (*eg*, Serbia). Article 38(2)(a) of the Asylum Procedures Directive[12] requires a connection between an asylum seeker and a third country that is more substantive than mere transit through a country that might otherwise be deemed "safe". The same provision also requires the adoption of a methodology ensuring a case-by-case analysis of the safety of a specific country for each applicant. Hungary failed to satisfy these requirements.[13]

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9 Case C-821/19, *European Commission v Hungary*, Opinion of Advocate General Rantos, 25 February 2021, ECLI:EU:C:2021:143, paras 48-54.

10 Observations Relating to Case C-821/19 *Commission v Hungary*, paras 36-39. Available at: https://ishr.ch/wp-content/uploads/2021/11/ishr_pic_observations_on_case_c-821_19_1.pdf.

11 "Member States may consider an application for international protection as inadmissible only if: (a) another Member State has granted international protection; (b) a country which is not a Member State is considered as a first country of asylum for the applicant, pursuant to Article 35; (c) a country which is not a Member State is considered as a safe third country for the applicant, pursuant to Article 38; (d) the application is a subsequent application, where no new elements or findings relating to the examination of whether the applicant qualifies as a beneficiary of international protection by virtue of Directive 2011/95/EU have arisen or have been presented by the applicant; or (e) a dependant of the applicant lodges an application, after he or she has in accordance with Article 7(2) consented to have his or her case be part of an application lodged on his or her behalf, and there are no facts relating to the dependant's situation which justify a separate application."

12 "The application of the safe third country concept shall be subject to rules laid down in national law, including: (a) rules requiring a connection between the applicant and the third country concerned on the basis of which it would be reasonable for that person to go to that country; (b) rules on the methodology by which the competent authorities satisfy themselves that the safe third country concept may be applied to a particular country or to a particular applicant. Such methodology shall include case-by-case consideration of the safety of the country for a particular applicant and/or national designation of countries considered to be generally safe; (c) rules in accordance with international law, allowing an individual examination of whether the third country concerned is safe for a particular applicant which, as a minimum, shall permit the applicant to challenge the application of the safe third country concept on the grounds that the third country is not safe in his or her particular circumstances. The applicant shall also be allowed to challenge the existence of a connection between him or her and the third country in accordance with point (a)."

13 Case C-821/19, *European Commission v Hungary*, Judgment (Grand Chamber), 16 November 2021, ECLI:EU:C:2021:930, paras 34-42.

The New Offence

As regards the New Offence, the Court analysed (i) whether it amounts to a restriction of the relevant rights guaranteed under the Directives; and, if so, (ii) whether such restriction can be justified under EU law.

Whether the New Offence restricts rights guaranteed under the Directives

The Court began by establishing whether the activities criminalised under the New Offence overlap with those protected under the following provisions of the Directives:

i. Article 8(2) of the Asylum Procedures Directive – setting out Member States' obligation to ensure effective access by organisations and persons providing advice to asylum applicants present at border crossing points, including transit zones.[14] Under EU law, an asylum seeker *makes* an asylum application and thus becomes an asylum applicant before formally *lodging* an application with the relevant authorities. As noted by the Advocate General, an application is considered to have been *made* as soon as an asylum seeker informs the national authorities that they are seeking international protection. No additional formalities are necessary.[15]

ii. Article 12(1)(c) of the Asylum Procedures Directive – setting out Member States' obligation to guarantee asylum applicants the opportunity to communicate with the UNHCR or any other organisation providing legal advice or counselling, with respect to the procedures applicable at the examination phase (*ie*, the procedures that take place after an application is lodged).[16]

iii. Article 22(1) of the Asylum Procedures Directive – setting out Member States' obligation to provide asylum applicants the opportunity to consult in an effective manner a legal adviser or other counsellor on matters relating to their asylum applications, at all stages of the process.[17]

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14 "Member States shall ensure that organisations and persons providing advice and counselling to applicants have effective access to applicants present at border crossing points, including transit zones, at external borders. Member States may provide for rules covering the presence of such organisations and persons in those crossing points and in particular that access is subject to an agreement with the competent authorities of the Member States. Limits on such access may be imposed only where, by virtue of national law, they are objectively necessary for the security, public order or administrative management of the crossing points concerned, provided that access is not thereby severely restricted or rendered impossible."

15 Case C-821/19, *European Commission v Hungary*, Opinion of Advocate General Rantos, 25 February 2021, ECLI:EU:C:2021:143, para 41.

16 "With respect to the procedures provided for in Chapter III, Member States shall ensure that all applicants enjoy the following guarantees: […] (c) they shall not be denied the opportunity to communicate with UNHCR or with any other organisation providing legal advice or other counselling to applicants in accordance with the law of the Member State concerned".

17 "Applicants shall be given the opportunity to consult, at their own cost, in an effective manner a legal adviser or other counsellor, admitted or permitted as such under national law, on matters relating to their applications for international protection, at all stages of the procedure, including following a negative decision."

iv. Article 10(4) of the Reception Conditions Directive – setting out Member States' obligation to ensure that family members, legal advisers, counsellors, and non-governmental organisations are able to communicate with and visit asylum applicants present at detention facilities, in conditions that respect privacy.[18]

The Court remarked that the scope of the New Offence is:

> […] limited solely to stages of the asylum procedure preceding the actual examination of the application for asylum by the determining authority, so that that provision can supress only assistance provided to third-country nationals or stateless persons for the purposes of submitting, and then in actually lodging, their application for asylum […].[19]

In other words, the offence does not concern assistance provided after an asylum application is formally lodged. On that basis, the Court clarified that the rights and activities provided for in the Relevant Provisions also encompass activities carried out *before* an application is formally lodged, including assistance with lodging such an application. They therefore come within the scope of the New Offence.[20] Conversely, Article 12(1)(c) of the Asylum Procedures Directive concerns activities occurring during the examination phase (that is, after an application is lodged). Accordingly, it does not come within the scope of the New Offence.[21]

The Court then confirmed that the concept of "organising activity" criminalised under the New Offence also encompasses assistance provided for purposes of making or formally lodging an asylum application ("even where it is given to only one person sporadically and not for profit"). This includes activities protected under the Relevant Provisions, particularly with respect to the rights of organisations, and also includes the provision of legal advice.[22]

The Court considered that the fact that the New Offence only sanctions intentional acts does not exclude activities protected under the Directives from its scope. As the Court noted, each of the three Relevant Provisions includes assistance given to an applicant by a person knowing that the application would be unsuccessful.[23] Accordingly, the Court concluded that there is

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18 "Member States shall ensure that family members, legal advisers or counsellors and persons representing relevant nongovernmental organisations recognised by the Member State concerned have the possibility to communicate with and visit applicants in conditions that respect privacy. Limits to access to the detention facility may be imposed only where, by virtue of national law, they are objectively necessary for the security, public order or administrative management of the detention facility, provided that access is not thereby severely restricted or rendered impossible."

19 Case C-821/19, *European Commission v Hungary*, Judgment (Grand Chamber), 16 November 2021, ECLI:EU:C:2021:930, paras 76-78.

20 Case C-821/19, *European Commission v Hungary*, Judgment (Grand Chamber), 16 November 2021, ECLI:EU:C:2021:930, paras 79-80.

21 Case C-821/19, *European Commission v Hungary*, Judgment (Grand Chamber), 16 November 2021, ECLI:EU:C:2021:930, paras 81-82.

22 Case C-821/19, *European Commission v Hungary*, Judgment (Grand Chamber), 16 November 2021, ECLI:EU:C:2021:930, paras 83-90.

23 Case C-821/19, *European Commission v Hungary*, Judgment (Grand Chamber), 16 November 2021, ECLI:EU:C:2021:930, paras 91-92.

overlap between the conduct sanctioned under the New Offence and the activities protected under the Relevant Provisions.[24]

Having reached that conclusion on the overlap, the Court considered whether the New Offence amounts to a restriction of the rights protected under the Relevant Provisions. The Court held that it did for the following reasons.

i. While the New Offence does not *formally prohibit* persons or organisations from accessing or communicating with asylum applicants present at Hungary's external borders or in detention facilities, the criminalisation of certain types of assistance nevertheless *restricts* the rights to access and communication protected under Article 8(2) of the Asylum Procedures Directive and Article 10(4) of the Reception Conditions Directive.[25]

ii. Article 22(1) of the Asylum Procedures Directive confers on asylum applicants the right to consult a legal adviser or other counsellor on matters relating to their asylum applications. While asylum applicants themselves are not at risk of conviction for committing the New Offence, the chilling effect that the provision has on those providing such services inevitably restricts the protection conferred to asylum applicants. Moreover, the Court held that Article 22(1) of the Asylum Procedures Directive indirectly confers a right on those providing assistance to respond to requests from asylum seekers. This right is also limited by the New Offence.[26]

Whether the restriction can be justified under EU law

The Court was not persuaded by Hungary's purported justifications for enacting the New Offence, namely, to combat (i) assistance provided for purposes of misusing the asylum procedure; and (ii) the facilitation of illegal immigration based on deception.[27]

The Court noted that Member States are not precluded from criminalising activities that come within the scope of the rights guaranteed under the Relevant Provisions, but which amount to an abusive or fraudulent exercise of those rights. The Court also accepted that the New Offence could cover such abusive or fraudulent behaviour. That said, the scope of the New Offence goes well beyond that legitimate aim because it also criminalises activities performed without any intention to mislead the authorities. This is not permitted under EU law.[28]

i. The New Offence could lead to the prosecution of a person who knows that an asylum application does not satisfy Hungarian law requirements, but who nevertheless

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24 Case C-821/19, *European Commission v Hungary*, Judgment (Grand Chamber), 16 November 2021, ECLI:EU:C:2021:930, para 93.

25 Case C-821/19, *European Commission v Hungary*, Judgment (Grand Chamber), 16 November 2021, ECLI:EU:C:2021:930, para 95.

26 Case C-821/19, *European Commission v Hungary*, Judgment (Grand Chamber), 16 November 2021, ECLI:EU:C:2021:930, paras 96-98.

27 Case C-821/19, *European Commission v Hungary*, Judgment (Grand Chamber), 16 November 2021, ECLI:EU:C:2021:930, para 110.

28 Case C-821/19, *European Commission v Hungary*, Judgment (Grand Chamber), 16 November 2021, ECLI:EU:C:2021:930, paras 112-117, 133.

provides assistance because they consider those requirements to be contrary to international[29] or EU law. For example, the New Offence denies applicants the assistance that would be required to challenge the lawfulness of the Inadmissibility Ground under EU law by, among other things, deterring lawyers from providing legal assistance.[30]

ii. Moreover, as also noted in the Observations,[31] the Court observed that the effect of the New Offence is to place the burden on those providing assistance to determine in advance whether the person whom they would be assisting could successfully lodge an application under Hungarian law, or otherwise risk criminal prosecution. The Court deemed this to be unacceptable.[32]

The Court thus concluded that the New Offence strongly discourages the provision of *any* assistance whatsoever and cannot be regarded as necessary to prevent fraudulent or abusive conduct.[33]

As regards the facilitation of illegal immigration, the Court observed that the New Offence is not a measure capable of pursuing the stated objective. Under EU law, once an asylum seeker makes an application for international protection to a Member State, and until a decision on the application is rendered, the asylum seeker cannot be considered to be unlawfully present in the territory of that Member State. Thus, the provision of assistance for purposes of making or lodging an asylum application cannot facilitate illegal immigration.[34]

Therefore, the Court concluded that the restrictions were not justified and held that Hungary's enactment of the New Offence is in breach of the Relevant Provisions.[35]

The Related Ban

As regards the Related Ban, the Court departed from the Advocate General's opinion and held that the ban *per se* violates EU law.

In the Court's view, preventing those suspected of having committed the New Offence from accessing Hungary's borders (*ie* where asylum seekers have been required to make

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29 The Judgment did not address how the New Offence contravenes international law. For a detailed analysis in this respect, *see* Observations Relating to Case C-821/19 *Commission v Hungary*. Available at: https://ishr.ch/wp-content/uploads/2021/11/ishr_pic_observations_on_case_c-821_19_1.pdf.

30 Case C-821/19, *European Commission v Hungary*, Judgment (Grand Chamber), 16 November 2021, ECLI:EU:C:2021:930, paras 118-122.

31 Observations Relating to Case C-821/19 *Commission v Hungary*, paras 60, 64. Available at: https://ishr.ch/wp-content/uploads/2021/11/ishr_pic_observations_on_case_c-821_19_1.pdf.

32 Case C-821/19, *European Commission v Hungary*, Judgment (Grand Chamber), 16 November 2021, ECLI:EU:C:2021:930, paras 128-129.

33 Case C-821/19, *European Commission v Hungary*, Judgment (Grand Chamber), 16 November 2021, ECLI:EU:C:2021:930, paras 132-133.

34 Case C-821/19, *European Commission v Hungary*, Judgment (Grand Chamber), 16 November 2021, ECLI:EU:C:2021:930, paras 136-142.

35 Case C-821/19, *European Commission v Hungary*, Judgment (Grand Chamber), 16 November 2021, ECLI:EU:C:2021:930, para 144.

applications for international protection) limits the rights guaranteed under the Relevant Provisions. The Related Ban also infringes on Article 12(1)(c) of the Asylum Procedures Directive (guaranteeing asylum applicants the opportunity to communicate with the UNHCR or any other organisation providing legal advice or counselling once their applications are lodged) by limiting access to asylum applicants once they have formally lodged their applications.[36] The Court explained that the Related Ban cannot be justified under EU law because it is applied in relation to a provision that it itself is contrary to EU law.[37]

IMPLICATIONS

The Judgment clearly establishes that Hungary's "Stop Soros" legislation violates EU law. As a result, Hungary is now under an obligation to rescind the provisions found to be in violation of EU law.

The initial response from the Hungarian government to the Judgment was ambivalent. It simply stated that:

> Hungary respected the European Court of Justice's ruling regarding the Stop Soros package of laws, but Hungary reserved the right to take action against foreign-funded NGOs, including any activities by organizations funded by George Soros seeking political influence or promoting migration.[38]

Hungary's Minister of Justice also noted that she deemed the Court's decision regrettable and stated that Hungary "will continue to defend Europe", "[w]hether the Brussels bubble likes it or not".[39]

However, under the principle of the primacy of EU law, the Hungarian authorities (including prosecution authorities and judges) are obliged to refuse to apply and/or implement those provisions of the Hungarian legislation that are not compatible with EU law even before Hungary takes formal steps to rescind the elements of its laws found to be incompatible with EU law. Thus, those providing aid and assistance to asylum seekers should in theory be able to do so without incurring the risk of criminal prosecution. If Hungary fails to comply with the Judgment, the Commission has the ability to ask the Court to impose a monetary penalty.

In terms of the Judgment's potential wider implications, the Court's reasoning is framed in terms of the Directives and EU law. Neither the Advocate General nor the Court expressly

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36 Case C-821/19, *European Commission v Hungary*, Judgment (Grand Chamber), 16 November 2021, ECLI:EU:C:2021:930, paras 155-162.

37 Case C-821/19, *European Commission v Hungary*, Judgment (Grand Chamber), 16 November 2021, ECLI:EU:C:2021:930, para 163.

38 *Hungary Today*, "Gov't to ECJ Ruling: We Will Prevent Hungary from Becoming 'Immigrant Country'", 17 November 2021. Available at: Gov't to ECJ Ruling: We Will Prevent Hungary from Becoming 'Immigrant Country' (hungarytoday.hu).

39 *Hungary Today*, "Gov't to ECJ Ruling: We Will Prevent Hungary from Becoming 'Immigrant Country'", 17 November 2021. Available at: Gov't to ECJ Ruling: We Will Prevent Hungary from Becoming 'Immigrant Country' (hungarytoday.hu).

relied on or invoked rules and instruments of international law.[40] It follows that there is no express endorsement by the Court of international law rules or instruments such as the 1951 Convention on the Status of Refugees (the ***Refugee Convention***) or instruments addressing the protections to be afforded to human rights defenders. However, given the extent to which the Directives give effect to international obligations, including obligations under the Refugee Convention, the Judgment implicitly endorses those international obligations to the extent they have been incorporated into EU law through the Directives.

40 *See* Observations Relating to Case C-821/19 *Commission v Hungary*, paras 128-179. Available at: https://ishr.ch/wp-content/uploads/2021/11/ishr_pic_observations_on_case_c-821_19_1.pdf.