

BEFORE THE FIRST SECTION
EUROPEAN COURT OF HUMAN RIGHTS

Application No. 44253/19

BETWEEN:

Hungarian Helsinki Committee

Applicant

v.

Hungary

Respondent

WRITTEN SUBMISSIONS ON BEHALF OF THE INTERVENORS

The AIRE Centre (Advice on Individual Rights in Europe), ECRE (the European Council on Refugees and Exiles), and the Dutch Council for Refugees (DCR)

pursuant to the Registrar's notification dated 11th July 2024 on the Court's permission to intervene under Rule 44 § 3 of the Rules of the European Court of Human Rights

30 August 2024

A. Obligations under Articles 10 and 11 of the European Convention on Human Rights as applicable to human rights defenders upholding the rule of law

The protection scope of Articles 10 and 11 of the Convention

1. Article 10 of the European Convention on Human Rights (hereafter the Convention), the right to freedom of expression, “constitutes one of the essential foundations of [a democratic] society, one of the basic conditions for its progress and for the development of every[one]”.¹ It includes holding opinions, seeking, preparing or distributing information, and building and operating networks and funding.² It encompasses not only the substance of the ideas and information expressed but also the form in which they are conveyed.³ This Court held that freedom of expression extends to lawyers⁴ and persons who, without formal status, exercise similar functions by providing information and aid on issues of human rights and the rule of law.⁵ Freedom of expression is related to “the independence of the legal profession, which is crucial for the effective functioning of the fair administration of justice”.⁶ Interferences are only permitted when prescribed by law and necessary in a democratic society, and on the exhaustive grounds in Article 10(2) of the Convention.
2. Article 11 protects individuals’ right to act collectively in an area of mutual interest for which the Court has recognised a particular democratic value.⁷ It has previously protected the freedom of assembly with respect to holding meetings on migrants’ and refugees’ rights.⁸ Article 11 further protects the right to form a legal entity to exercise associated rights⁹, including the right to seek, receive and use assets and resources.¹⁰ In that regard, the Court has previously held that where the domestic law restricts the ability to receive grants or other financial contributions, one of the main sources of financing of NGOs, the association may be unable to engage in activities constituting the main purpose of its existence.¹¹ Without including these rights, the freedom to associate would therefore be “deprived of any meaning”.¹²
3. A link between Article 10 and Article 11 is particularly relevant where the authorities’ stance towards an association is a reaction to its views and statements.¹³

Protection of human rights defenders upholding the rule of law

4. Human rights defenders are defined by the UN Declaration on Human Rights Defenders as “anyone who [...] acts to promote or protect human rights, regardless of their profession or other status”.¹⁴ Their “distinctive feature is [...] what they do or

¹ *Handyside v United Kingdom*, ECtHR No. 5493/72, 7 December 1976, para. 49.

² *Bowman v United Kingdom [GC]*, ECtHR No. 24839/94, 10 February 1998, paras. 33 and 47.

³ *Morice v France [GC]*, ECtHR No. 29369/10, 23 April 2015, para. 134.

⁴ *Morice v France [GC]*, op. cit., para. 134.

⁵ *Magyar Helsinki Bizottsag v Hungary [GC]*, ECtHR No. 18030/11, 8 November 2016, para. 178.

⁶ *Morice v France [GC]*, op. cit., para. 135.

⁷ *Ecodefence and Others v Russia*, ECtHR No. 9988/13 and 60 others, 14 June 2022, para. 123; *Zhechev v Bulgaria*, ECtHR No. 57045/00, 21 June 2007, paras. 34-35.

⁸ *Yilmaz Yildiz and Others v Turkey*, ECtHR No. 4524/06, 14 October 2014, paras. 33 and 41.

⁹ *Koretsky and Others v Ukraine*, ECtHR No. 40269/02, 3 April 2008, para. 40.

¹⁰ *The Moscow Branch of the Salvation Army v Russia*, ECtHR No. 72881/01, 5 October 2006, para. 73.

¹¹ *Ramazanova and Others v Azerbaijan*, ECtHR No. 44363/02, 1 February 2007, para. 59.

¹² *Gorzelik and Others v Poland [GC]*, ECtHR No. 44158/98, 17 February 2004, para. 88.

¹³ *Zhechev v Bulgaria*, ECtHR No. 57045/00, 21 June 2007, para. 36.

¹⁴ UN Declaration on Human Rights Defenders; OSCE, ‘Guidelines on the protection of Human Rights Defenders’, para. 5; The EU Fundamental Rights Agency uses the term ‘human rights defenders’ in line with the 2008 EU guidelines on human rights defenders as those who “promote and protect universally recognised

*what cause or group they represent [...] provid[ing] direct services, such as legal advice and representation in respect of human rights claims”.*¹⁵

5. As expressed by the Council of Europe (CoE) Human Rights Commissioner in *Aliyev v Azerbaijan* before this Court, the engagement of human rights defenders materialises in activities that, on one side, are protected by Articles 10 and 11 of the Convention, and that, on the other side, should be perfectly legal in a well-functioning democracy.¹⁶ They engage in upholding the rule of law through monitoring of State conduct, providing legal information, assistance and representation. This is often done in close cooperation with the CoE institutions such as this Court, and the Committee of Ministers in respect of the implementation of judgements. They contribute to ensuring that the Convention rights are “*practical and effective, not theoretical and illusory*”, which this Court considers to be an essential feature of the Convention.¹⁷
6. Human rights defender organisations are of particular importance in the field of asylum given their role in ensuring access to and defence of the rights guaranteed by the Convention, which are, *inter alia*, the right to life, prohibition of torture and collective expulsion of aliens and the right to liberty and security, for the most vulnerable members of society such as migrants, asylum seekers and refugees.
7. **It is a well-established principle of international law, as well as a principle of customary law, that seeking asylum and requesting a residence title is a fundamental right.**¹⁸ The interveners submit that the Convention system and the rule of law require Contracting States to ensure access to this fundamental right and assist a person in the context of asylum by providing legal information, advice and representation, in order to render these rights available in practice. Human rights defenders providing such support assist the Contracting States in fulfilling their obligations under the Convention. Whether or not such asylum or residence title is granted is eventually a matter of decision by the State.

The rights of Human Rights Defenders under Articles 10 and 11 of the Convention

8. This Court has held that a variety of measures such as a “*formality, condition, restriction or penalty*” may constitute interferences with the rights under Articles 10 and 11 of the Convention.¹⁹ Pursuant to the Court’s case law, an interference may exist if a legal act creates a risk of prosecution, either directly or indirectly due to a lack of precision, and therefore compels individuals or organisations to modify their conduct, even if no prosecution materialises.²⁰ Restricting access to relevant areas for the purpose of obtaining information has previously been found to constitute an interference.²¹ Such relevant areas include reception centres for asylum seekers.²²

human rights and fundamental freedoms...”. See FRA, ‘Protecting human rights defenders at risk: EU entry, stay and support’ (11 July 2023) chapter 1.1.

¹⁵ Council of Europe Steering Committee for Human Rights, ‘Analysis on the impact of current national legislation’, CDDH(2017)R87 (13 July 2017) accessible at [168073e81e \(coe.int\)](https://www.coe.int/t/e/hudocdep/interdocs/2017/20170713_r87_en.asp), page 6.

¹⁶ Council of Europe Commissioner for Human Rights, ‘Third party intervention’ CommDH(2015)6 (16 March 2015) in case *Aliyev v Azerbaijan*, ECtHR No. 68762/14, 20 September 2018, para. 25.

¹⁷ *Magyar Helsinki Bizottság v Hungary [GC]*, ECtHR No. 18030/11, 8 November 2016, para. 121; Further citing see *Soering v. the United Kingdom*, ECtHR No. 14038/88, 7 July 1989, para. 87.

¹⁸ Universal Declaration on Human Rights, Article 14; Charter of Fundamental Rights of the EU, Article 18.

¹⁹ *Wille v Liechtenstein [GC]*, ECtHR No. 28396/95, 28 October 1999, para. 43.

²⁰ *Altuğ Taner Akçam v Turkey*, ECtHR No. 27520/07, 25 October 2011, para. 68; *Dudgeon v the United Kingdom*, ECtHR No. 7525/76, 22 October 1981, para. 41.

²¹ *Szurovecz v. Hungary*, ECtHR No. 15428/16, 8 October 2019, para 54; See also *Gsell v. Switzerland*, ECtHR No. 12675/05, 8 October 2009, paras. 49 and 61.

²² *Szurovecz v. Hungary*, ECtHR No. 15428/16, 8 October 2019, para 54.

Measures with a ‘*chilling effect*’ on the enjoyment of rights may also constitute interferences if, for example, these measures constitute *de facto* warnings²³ or if they, as highlighted by the European Commission for Democracy through Law, create stringent requirements for NGOs while granting authorities a wide margin of discretion.²⁴ Such ‘*chilling effect*’ can further occur when provisions lacking sufficient certainty develop overbreadth with the effect that organisations with a mandate to protect human rights and the rule of law may be deterred from carrying out these activities.²⁵

9. The rights to freedom of expression and association are of particular importance where they concern matters of public interests. For Article 10, this Court has held that “*a high level of protection [...] with the authorities thus having a particular narrow margin of appreciation, will normally be accorded where the remarks concern a matter of public interest*”.²⁶ As for the freedom to associate, this Court noted that the way in which this freedom is enshrined in national legislation and its practical application reflect the state of democracy in the country concerned, which is why “*the State’s power to protect its institutions and citizens from associations that might jeopardise them must be used sparingly, as exceptions [...] are to be construed strictly and only convincing and compelling reasons can justify restrictions*”.²⁷
10. This Court found that, without the freedom of expression and association, there is neither a “*healthy civil society*”²⁸ nor a “*democratic society*”.²⁹ Against that backdrop, interferences with the rights protected by Articles 10 and 11 of the Convention are to be subjected to close scrutiny, and must be **prescribed by law**, have a **legitimate aim** and be **necessary in a democratic society**.³⁰
11. Where a measure was open to abuse due to vagueness, and thus reinforce stigma and encourage discrimination incompatible with the notions of equality, pluralism and tolerance, it must be considered lacking a ‘*legitimate aim*’, as held in *Bayev and Others v Russia*.³¹ The public interest sets the benchmark against which the legitimacy of an aim should be tested, and where a State’s judgement in that regard is “*manifestly without reasonable foundation*”, the Court is invited to intervene.³²
12. ‘*Necessary in a democratic society*’ further entails the existence of a ‘*pressing social need*’, a measure ‘*proportionate*’ to the legitimate aim pursued, and supported by ‘*relevant and sufficient reasons*’.³³
13. The Contracting States enjoy a certain margin of appreciation for assessing the ‘*pressing social need*’. However, this is still subject to “*European supervision*” and

²³ *Ayuso Torres v Spain*, ECtHR No. 74729/17, 8 November 2022, paras. 42-43 and 58.

²⁴ European Commission for Democracy through Law (Venice Commission), Opinion on the Law on non-governmental Organisations (Public Associations and Funds) as amended of the Republic of Azerbaijan’ CDL-AD(2014)043-e (15 December 2014), paras. 91-93.

²⁵ *Andrey Rylkov Foundation and Others v Russia*, Nos. 37949/18, 18 June 2024, para. 65-66.

²⁶ *Morice v France [GC]*, op. cit., para. 125.

²⁷ *Ecodefence and Others v Russia*, op. cit., para. 123; *Tebieti Muhafize Cemiyeti and Israfilov v Azerbaijan*, ECtHR No. 37083/03, 8 October 2009, para. 67; further citing *Gorzelik and Others v Poland*, op. cit., paras. 88 and 94-95.

²⁸ *Ecodefence and Others v Russia*, op. cit., para. 88.

²⁹ *Stoll v Switzerland [GC]*, ECtHR No. 69698/01, 10 December 2007, para. 101(i).

³⁰ *Ramazanov and Others v Azerbaijan*, ECtHR No. 44363/02, 1 February 2007, para. 61.

³¹ *Bayev and Others v Russia*, ECtHR No. 67667/09 and 2 others, 20 June 2017, para. 83.

³² *Suljagic v Bosnia and Herzegovina*, ECtHR No. 27912/02, 3 November 2009, para. 42; *James and Others v the United Kingdom*, ECtHR No. 8793/79, 21 February 1986, para. 46; *Immobiliare Saffi v Italy*, ECtHR No. 22774/93, 28 July 1999, para. 49.

³³ *Animal Defenders International v the United Kingdom [GC]*, ECtHR No. 48876/08, 22 April 2013, para 100.

therefore to supervision by this Court, as held by the Grand Chamber.³⁴ It depends on the adequacy of the legal framework in force prior to the measures adoption³⁵, and this Court has previously required that measures should find their origin in some form of evidence and empiricism³⁶ in contrast to being based on presumption.³⁷

14. The requirement of ‘*proportionality*’ entails that a fair balance be struck on the basis of an overall examination of the interests concerned. The Court is invited, as it has previously done, to find a measure disproportionate where it goes beyond what a clear European consensus considers to be the limits of the margin of appreciation.³⁸
15. The interveners acknowledge that the individual human rights defenders protected by Articles 10 and 11 of the Convention do not enjoy immunity from criminal liability merely because an offense was committed within the performance of their function protected by those rights and freedoms.³⁹ However, as a general principle, a fair balance needs to be struck between the applicant’s interest and that of the community.
16. **The interveners submit (a) that the mere fact that a measure aims to achieve a legitimate aim does not mean that its design and its impact can hold up to that aim in light of the empirical reality and can thus be considered necessary in a democratic society; and (b) that where the interest of the applicant lies in upholding the rule of law and human rights, while this interest corresponds to the general interest of the community, interferences with their work cannot find justification in a fair balance of interests.**

B. Most careful scrutiny for human rights defenders as ‘legal watch-dogs’ upholding the rule of law

17. This Court has recognised the essential role certain actors play in the functioning of democracy and the rule of law.⁴⁰ The role under the Convention, and the corresponding protection afforded by this Court, depends on the capacity in which the actor engages with the public or with individuals. The interveners submit that human rights defenders engage with the public as ‘watchdogs’ ensuring a well-functioning democracy similar to members of the press, and, in the capacity of lawyers, as administrators of justice ensuring access to justice and a proper functioning of the rule of law.
18. Members of the press have a special position as “*public watchdogs*” due to their vital role in facilitating and fostering the public’s right to receive and impart information.⁴¹ Therefore, this Court considers safeguards in that regard to be of particular importance.⁴² The “*most careful scrutiny*” will be applied when assessing measures taken by national authorities which may have the effect of discouraging the participation of ‘*watchdogs*’ in the public debate on matters of legitimate public

³⁴ *Morice v France [GC]*, op. cit., para. 124.

³⁵ *Ecodefence and Others v Russia*, op. cit., para. 153.

³⁶ *Stomakhin v Russia*, ECtHR No. 52273/07, 9 May 2018, para. 90; *A. and Others v the United Kingdom [GC]*, ECtHR No. 3455/05, 19 February 2009, para. 186.

³⁷ *Ecodefence and Others v Russia*, op. cit., para. 166.

³⁸ *Animal Defenders International v The United Kingdom [GC]*, op. cit., para. 123; *Bayev and Others v Russia*, ECtHR No. 67667/09 and 2 others, 20 June 2017, para. 66.

³⁹ *Stoll v Switzerland [GC]*, op. cit., para. 102; *Pentikäinen v Finland [GC]*, ECtHR No. 11882/10, 20 October 2015, para. 91.

⁴⁰ *Magyar Helsinki Bizottsag v Hungary [GC]*, op. cit., para. 165; further citing *De Haes and Gijels v Belgium*, ECtHR No. 19983/92, 24 February 1997, para. 37.

⁴¹ *Magyar Helsinki Bizottsag v Hungary [GC]*, op. cit., para. 165-166; Further citing *Bladet Tromsø and Stensaas v. Norway [GC]*, ECtHR No. 21980/93, 26 May 1997, paras. 59 and 62.

⁴² *Magyar Helsinki Bizottsag v Hungary [GC]*, op. cit., para. 165; Further citing *Goodwin v the United Kingdom [GC]*, ECtHR No. 17488/90, para. 39; *Observer and Guardian v the United Kingdom*, ECtHR No. 13585/88, 26 November 1991, para. 59.

- concern.⁴³ The margin of appreciation in deciding whether there is a ‘*pressing social need*’ to limit that freedom is accordingly narrow.⁴⁴
19. The Grand Chamber has recognised that ‘*watchdog*’ functions are not limited to the press, but can also be exercised by NGOs when they draw attention to matters of public interest and thus perform a public monitoring function.⁴⁵ It characterises them as ‘*social watchdogs*’ that enjoy similar protection to the press under the Convention.⁴⁶ The Grand Chamber emphasises that the way in which such ‘*watchdogs*’ are able to carry out their activities can have a significant impact on the proper functioning of a democratic society and rule of law, and that it is therefore in the interest of democratic society to enable NGOs to monitor state activity.⁴⁷
 20. In accordance with the relevant Council of Europe materials⁴⁸, this Court attaches particular importance to the role of human rights defenders in the promotion and protection of human rights in the Member States. It reiterated in the case of *Taner Kılıç v. Turkey (no. 2)* their right to engage in human rights activities and that, by engaging in such activities, human rights defenders, NGO activists and their leaders contribute to the development and realisation of democracy and human rights.⁴⁹ Hence, principles for the protection of the press are applied *mutatis mutandis* to the interferences with the rights of human rights defenders when subjected to restrictive measures affecting activities in that regard.⁵⁰ The Court has recently held that Article 10(2) of the Convention leaves little room for restrictions where a matter of general interest is at issue, as the margin of appreciation is “*circumscribed by the strong interest of a democratic society*” in the proper functioning of ‘*watchdogs*’.⁵¹ NGOs involved in raising matters of public interest have thus consistently been accorded special protection by this Court.⁵²
 21. The interveners take note that this Court may distinguish between lawyers and journalists, highlighting that lawyers take part in the administration of justice and may - in that role - not fall within the category of “*watchdogs of democracy*”.⁵³ It is therefore essential to consider in what capacity the person or association engages with the public, as held by this Court in *Magyar Helsinki Bizottság v Hungary*.⁵⁴
 22. This Court has previously concluded that associations involved in human rights litigation can engage with the public in the capacity of ‘*watchdogs*’ warranting special

⁴³ *Österreichische Vereinigung Zur Erhaltung, Stärkung und Schaffung v. Austria*, ECtHR No. 39534/07, 28 November 2013, para. 33.

⁴⁴ *Animal Defenders International v The United Kingdom [GC]*, op. cit., para. 103; *Stoll v Switzerland [GC]*, op. cit., para. 102.

⁴⁵ *Magyar Helsinki Bizottság v Hungary [GC]*, op. cit., para. 166

⁴⁶ *Magyar Helsinki Bizottság v Hungary [GC]*, op. cit., para. 166; further citing *Animal Defenders International v The United Kingdom*, op. cit., para. 103

⁴⁷ *Magyar Helsinki Bizottság v Hungary [GC]*, op. cit., para. 167; further citing *Bladet Tromsø and Stensaas v Norway [GC]*, op. cit., 26 May 1997, paras. 59; See also *Ecodefence and Others v Russia*, op. cit., para. 124.

⁴⁸ See in this regard *Aliyev v Azerbaijan* para. 88-92 where the Court sets out the relevant material. These are in particular the Committee of Ministers ‘Declaration on Council of Europe action to improve the protection of human-rights defenders and promote their activities’, para. 1-2(i-viii); the Parliamentary Assembly ‘Resolution 2225 (2018) on protecting human rights defenders in Council of Europe member States’, para. 1, 3, 4, 5; and the Committee of Minister ‘Recommendation CM/Rec(2007)14 on the legal status of non-governmental organisations in Europe’.

⁴⁹ *Taner Kılıç v. Turkey (no. 2)*, ECtHR No. 208/18, 31 May 2022, para. 145.

⁵⁰ *Taner Kılıç v. Turkey (no. 2)*, op. cit., para. 147.

⁵¹ *Moldova National Youth Council v Republic of Moldova*, No. 15379/13, 25 June 2024, 65.

⁵² *Guseva v Bulgaria*, ECtHR No. 6987/07, 17 February 2015, para. 38; *Tarsaság a Szabadságjogokért v Hungary*, ECtHR No. 37374/05, 14 April 2009, para. 27.

⁵³ *Studio Monitori and Others v Georgia*, ECtHR No. 44920/09, 30 January 2020, para. 42; *Morice v France [GC]*, op. cit., para 148 and 168.

⁵⁴ *Magyar Helsinki Bizottság v Hungary [GC]*, op. cit., para. 18.

protection.⁵⁵ Human rights defenders further fulfil a role in ensuring access to justice and the proper functioning of the rule of law. **The interveners submit that human rights defenders upholding the rule of law should therefore enjoy protection within both capacities, both as ‘watchdogs’ and administrators of justice (‘legal watchdogs’).**

23. This Court has held that lawyers “*play a key role in ensuring that the courts, whose mission is fundamental in a State based on the rule of law, enjoy public confidence [and] for the members of the public to have confidence in the administration of justice they must have confidence in the ability of the legal profession to provide effective representation*”.⁵⁶ It has emphasised the legal profession’s “*central role [for the] maintenance of the rule of law*” and that “*the freedom of lawyers to practice their profession without undue hindrance is an essential component of a democratic society and a necessary prerequisite for the effective enforcement of the provisions of the Convention...*”.⁵⁷ This Court thus grants them a special status under the Convention.⁵⁸
24. In the context of regulating the legal profession, the Court reiterated in *Bagirov v Azerbaijan* that the “*proper functioning of the courts would not be possible without relations based on consideration and mutual respect between the various protagonists in the justice system, at the forefront of which are judges and lawyers*”.⁵⁹ It often found that “*persecution and harassment of members of the legal profession [...] strikes at the very heart of the Convention system [and] allegations of such persecution in whatever form [...] will be subject to especially strict scrutiny by the Court*”.⁶⁰
25. In *Alizev v. Azerbaijan*, this Court, following a series of measures that constituted a crackdown on civil society organisations, ruled on the special role of human rights lawyers who provide legal assistance before this Court and therefore act as key actors in making Convention rights available in practice. It noted that “*the applicant is a human-rights defender and, more specifically, a human-rights lawyer [and the Court] attaches particular importance to the special role of human-rights defenders in promoting and defending human rights, including in close cooperation with the Council of Europe, and their contribution to the protection of human rights in the member States. The Court also takes note of the fact that the applicant is the legal representative before the Court in a large number of cases...*”.⁶¹ As to the association in that case, the Court also emphasised its crucial role in representing applicants before the Convention institutions and thus for the cooperation with the Council of Europe.⁶²
26. Where the rule of law is at stake due to State interferences impairing the ability of lawyers to effectively defend their clients, even seemingly moderate measures can be deemed disproportionate. This Court has found that the moderate nature of fines does not suffice to negate the risk of a ‘*chilling effect*’ on the effective defence of clients, which in the context of lawyers is “*all the more unacceptable*”.⁶³
27. **The interveners submit that human rights defenders upholding the rule of law contribute to the well-functioning of a democratic society and draw public attention to matters of public interest such as human rights. In that capacity, they fulfil both a ‘legal watchdog’ function and a function in the administration of justice. Their unhindered contributions are of fundamental value for the proper**

⁵⁵ *Tarsasag a Szabadsagjogokert v Hungary*, op. cit., para. 27.

⁵⁶ *Morice v France [GC]*, op. cit., para. 132; with further references.

⁵⁷ *Elci and Others v Turkey*, op. cit., para. 669.

⁵⁸ *Rodriguez Ravelo v Spain*, ECtHR No. 48074/10, 12 January 2016, para. 40.

⁵⁹ *Bagirov v Azerbaijan*, ECtHR No. 81024/12 and 28198/15, 25 June 2020, para. 78.

⁶⁰ See *Elci and Others v Turkey*, op. cit., para. 669; see also *Aliyev v Azerbaijan*, op. cit., para. 181; *Yuditskaya and Others v. Russia*, ECtHR No. 5678/06, 12 February 2015, para. 27.

⁶¹ *Aliyev v Azerbaijan*, op. cit., para. 208.

⁶² *Aliyev v Azerbaijan*, op. cit., para. 215.

⁶³ *Morice v France [GC]*, op. cit., para. 127.

functioning of the legal system and for upholding the rule of law. The highest protection should be awarded where human rights defenders upholding the rule of law face interference with the exercise of their Convention rights, as their activities are in the interest of a democratic society.

C. Regional and international law on human right defenders upholding the rule of law

28. The Court reiterated that in interpreting the Convention, “*account must be taken of any relevant rules and principles of international law applicable in relations between the Contracting Parties*” and that it “*cannot be interpreted in a vacuum and should so far as possible be interpreted in harmony with other rules of international law of which it forms part*”.⁶⁴ In this context, the Court highlights “*the common international or domestic-law standards of European States [that] reflect a reality that the Court cannot disregard*”.⁶⁵ Further, a “*consensus emerging from specialised international instruments and from the practice of Contracting States may constitute a relevant consideration*”.⁶⁶
29. Article 53 of the Convention prohibits, *inter alia*, a construction of Convention rights which would limit the human rights and fundamental freedoms ensured under any other agreement to which the respondent State is a party. To ensure compliance with Article 53 ECHR, when construing the rights and freedoms which are defined in the Convention, this Court must guarantee at least the level of protection of those human rights and fundamental freedoms already guaranteed by other international agreements to which the relevant Contracting State is a party.

EU law

30. Article 2 of the Treaty on European Union (TEU) stipulates that the Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights.⁶⁷ Article 10(3) enshrines the right for every Union citizen to participate in the democratic life of the Union. The Charter of Fundamental Rights provides, *inter alia*, for the rights to protection of personal data⁶⁸, freedom of expression and information, including respect for freedom and pluralism of media⁶⁹, and to an effective remedy and a fair trial.⁷⁰
31. In the 2023 Rule of Law Report, the EU Commission states that human rights defenders are indispensable in bringing to life and protecting the values and rights enshrined in the Treaty of the European Union and Charter of Fundamental Rights.⁷¹ They play an important role in European democracies in upholding democratic values and the rule of law and should not fear retaliation. The Commission refers to human rights defenders as those who work to defend human rights, including the rights of people belonging to a racial or ethnic minority, labour rights or religious freedom.⁷²

⁶⁴ *Magyar Helsinki Bizottsag v Hungary [GC]*, op. cit., para 123.

⁶⁵ *Magyar Helsinki Bizottsag v Hungary [GC]*, op. cit., para 124.

⁶⁶ *Magyar Helsinki Bizottsag v Hungary [GC]*, op. cit., para 124.

⁶⁷ Treaty on the European Union, Article 2.

⁶⁸ Charter of Fundamental Rights of the European Union (the ‘Charter’), Article 8.

⁶⁹ Charter of Fundamental Rights of the European Union (the ‘Charter’), Article 11.

⁷⁰ Charter of Fundamental Rights of the European Union (the ‘Charter’), Article 47.

⁷¹ European Commission, ‘Recommendation 2022/758 of 27 April 2022 on protecting journalists and human rights defenders who engage in public participation from manifestly unfounded or abusive court proceedings’, para. 7.

⁷² European Commission Recommendation 2022/758, op. cit., para. 7.

32. The relevance of human rights defenders in the area of asylum law is reinforced by the comprehensive legal protection in the EU *acquis*. Asylum seekers should be provided, at first instance, with legal and procedural information free of charge, taking into account their particular circumstances.⁷³ Article 8(2) of Directive 2013/32 obliges Member States of the European Union to 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.⁷⁴ According to Article 10(4) of Directive 2013/33, legal advisers, counsellors and persons representing relevant NGOs recognised by the Member States need to have the possibility to “*communicate with and visit applicants in conditions that respect privacy*”.⁷⁵ While Member States can regulate their presence, limits may be imposed only where “*they are objectively necessary for the security, public order or administrative management of the [area], provided that access is not thereby severely restricted or rendered impossible*”.⁷⁶ Asylum seekers further have the right “*to consult, at their own cost, in an effective manner a legal adviser or other counsellor [...] at all stages of the procedure*”.⁷⁷ During appeal, subject to certain conditions, applicants should be granted free legal assistance and representation provided by persons competent to provide them under national law.⁷⁸ It is held to be in the interest of both Member States and asylum seekers that a correct recognition of international protection needs is ensured and that the parties involved comply with relevant obligations.⁷⁹
33. The Grand Chamber of the Court of Justice (CJEU) held in judgment *C-821/19* on Hungarian ‘Act no. VI of 2018 on the Amendment of certain laws related to measures against illegal migration’ that the amendment restricts the right of legal advisers to have access to and communicate with applicants. It further restricts the effectiveness of the right, under Article 22(1) of Directive 2013/32, to be able to consult a legal adviser or other counsellor, since that provision of criminal law is liable to discourage such persons from providing these services. Furthermore, criminalisation also limits the right to respond to the requests of asylum seekers. Therefore, the CJEU found an unlawful interference with the rights both of asylum seekers as well as legal advisers, formally, and in part through a ‘*chilling effect*’ on the exercise of those rights.
34. The European Union Guidelines on Human Rights confirm that human rights defenders are considered “*natural and indispensable allies in the promotion of human rights and democratisation*”.⁸⁰ While it relates to the EU’s support of human rights defenders abroad, it recognises that such individuals and groups play an important role in furthering the cause of human rights for example, seeking remedies for victims.⁸¹
35. **The interveners submit that the EU *acquis* recognises the fundamental role of human rights defenders in upholding the rule of law and provides clear guarantees for their unhindered work. As provisions of law they serve the proper functioning of the legal system and invoking them cannot be construed as a**

⁷³ Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast), recital 22.

⁷⁴ Directive 2013/32/EU, op. cit., Article 8(2).

⁷⁵ Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast), Article 10(4).

⁷⁶ Directive 2013/32, op. cit., Article 8(2); Directive 2013/33, op. cit., Article 10(4).

⁷⁷ Directive 2013/32, op. cit., Article 22(1).

⁷⁸ Directive 2013/32, op. cit., recital 23.

⁷⁹ Directive 2013/32, op. cit., recital 22. 2

⁸⁰ European Union External Action, ‘Information on EU Guidelines on Human Rights Defenders’, 21 June 2016. See [EU Guidelines on Human Rights Defenders | EEAS \(europa.eu\)](#) for information on the Guidelines.

⁸¹ See EU External Action, op. cit.

material effort to influence the outcome of an application but an effort only to uphold the rule of law .

International standards

36. The United Nations Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms contains a series of principles and rights that are based on binding human rights standards enshrined in other international instruments, representing a strong international consensus.⁸²
37. The Declaration establishes that “*everyone has the right, individually and in association with others, to promote and to strive for the protection and realisation of human rights and fundamental freedoms at the national and international level*”.⁸³ Article 6 notes further, with particular importance for human rights lawyers, that everyone and every association has the right to “*know, seek, obtain, receive and hold information about all human rights and fundamental freedoms, including having access to information as to how those rights and freedoms are given effect in domestic legislative, judicial or administrative system*” as well as to “*be protected in the event of the violation of those rights*”. It specifically addresses the right to “*offer and provide professionally qualified legal assistance or other relevant advice and assistance in defending human rights*”.⁸⁴ Both the right to seek information and assistance in the realisation of human rights as well as the right to offer such assistance for the protection of human rights are two sides of the coin of the ‘*right to defend rights*’, and both sides emphasise the importance of human rights defenders in upholding the rule of law.
38. Article 12(2) of the Declaration enshrines States’ positive obligation to “*ensure the protection [...] of everyone [...] against violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of [...] the legitimate exercise of the rights referred to in the present Declaration*”.⁸⁵ The Declaration therefore establishes the individual’s ‘*right to defend rights*’ as well as the State’s positive obligation to protect the realisation of that right.
39. In September 1990, the eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders adopted the Basic Principles on the Role of Lawyers. These have been formulated “*to assist Member States in their task of promoting and ensuring the proper role of lawyers [and] should be taken into account by Governments within the framework of their national legislation and practice...*”.⁸⁶ **As to their personal scope, they apply, as appropriate, to persons who exercise the functions of lawyers without having that formal status.**⁸⁷ The principles set out a number of rights and obligations aiming to ensure a well-functioning of the rule of law. They require Governments to ensure that everyone can “*call upon the assistance of a lawyer of their choice*”⁸⁸ and that lawyers “*(a) are able to perform all of their professional functions; (b) are able to travel and to consult with their clients freely both within their own country and abroad; and (c) shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in*

⁸² United Nations, ‘Declaration on Human Rights Defenders’, adopted by the General Assembly at the Fifty-third session, A/RES/53/144, 8 March 1999. Accessible at [Declaration on Human Rights Defenders | OHCHR](#)

⁸³ UN Declaration on Human Rights Defenders, op. cit., Article 1.

⁸⁴ UN Declaration on Human Rights Defenders, op. cit., Article 9(3)c.

⁸⁵ UN Declaration on Human Rights Defenders, op. cit., Article 12(2).

⁸⁶ United Nations, ‘Basic Principles on the Role of Lawyers’, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, on 7 September 1990. Accessible at [Basic Principles on the Role of Lawyers | OHCHR](#).

⁸⁷ UN Basic Principles on the Role of Lawyers, op. cit., preamble.

⁸⁸ UN Basic Principles on the Role of Lawyers, op. cit., para. 1.

accordance with recognized professional duties, standards and ethics".⁸⁹ Associations of lawyers need to be able "to counsel and assist their clients in accordance with the law and recognized professional standards and ethics" without interference.⁹⁰

40. The OSCE Office for Democratic Institutions and Human Rights issued Guidelines on the Protection of Human Rights Defenders. In a similar spirit as the UN Declaration on Human Rights Defenders, the Guidelines stress the State's obligation to take proactive steps to promote the full realization of the rights of human rights defenders, including their right to defend rights. These rights include *inter alia* the rights to freedom of opinion and expression, peaceful assembly and association, and unhindered access to and communication with international bodies, including international human rights mechanisms. **The OSCE stresses that "any legal provision that directly or indirectly lead to the criminalization of activities that are protected by international standards should be immediately amended or repealed".**⁹¹
41. The Guidelines' explanatory report clarifies that these do not "set new standards [but] reaffirm the rights set out in international human rights instruments".⁹² It underlines that international human rights mechanisms "depend on the information submitted by individuals and groups in order to support the implementation of international human rights standards by states". This report further affirms that where people find themselves deprived of their rights, effective remedies include "the right of the individual to seek and receive assistance from others in defending human rights and fundamental freedoms".⁹³
42. The vital role of human right defenders upholding the rule of law is further emphasised by the UN Human Rights Committee⁹⁴, the UN Human Rights Council⁹⁵, United Nations Special Rapporteur on the situation of human rights defenders⁹⁶, joint Guidelines by the Venice Commission and the OSCE Office for Democracy and Human Rights⁹⁷, as well as the European Network of Human Rights Institutions.⁹⁸
43. **The interveners submit that international standards represent a strong consensus in establishing, in essence, a fundamental right to (a) seek and receive information, assistance and representation with a view to the realization of human rights, (b) to offer and provide such legal information, assistance and representation with a view to defend human rights, and (c) to communicate and cooperate freely and without hindrance with national and international human rights mechanisms. With a view to ensuring the unhindered exercise of that**

⁸⁹ UN Basic Principles on the Role of Lawyers, op. cit., para. 16.

⁹⁰ UN Basic Principles on the Role of Lawyers, op. cit., para. 25.

⁹¹ OSCE Office for Democratic Institutions and Human Rights (ODIHR), 'Guidelines on the Protection of Human Rights Defenders', 2014, para. 24. Accessible at [119633.pdf \(osce.org\)](https://www.osce.org/odihr/publications/119633.pdf).

⁹² OSCE Guidelines on the Protection of Human Rights Defenders, op. cit., page 24.

⁹³ OSCE Guidelines on the Protection of Human Rights Defenders, op. cit., page 23.

⁹⁴ UN Human Rights Committee, "Concluding observations on the fourth periodic report of Azerbaijan" (CCPR/C/AZE/4) adopted by the UN Human Rights Committee on 16 November 2016.

⁹⁵ Human Rights Council, 'Resolution 22/6 on protecting human rights defenders' (A/HRC/RES/22/6) 21 March 2013 paras 3, 5, 9;

⁹⁶ Report of the Special Rapporteur on the situation of human rights defenders on his mission to Azerbaijan, presented to the Human Rights Council at its thirty-fourth session (27 February-24 March 2017).

⁹⁷ European Commission for Democracy through Law (Venice Commission) and OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR), 'Joint Guidelines on Freedom of Association', adopted at the 101st Plenary Session, December 2014, para. 127. They note that "*associations should not be treated differently [...] for defending human rights*". In para. 239, they note that "*Sanctions amounting to the effective suspension of activities [...] are of an exceptional nature. They should only be applied in cases where the breach gives rise to a serious threat [...] to fundamental democratic principles*".

⁹⁸ The European Network of National Human Rights Institutions (ENNHRI), 'National Human Rights Institutions and Human Rights Defenders. Enabling human rights and democratic space in Europe'. Accessible at [Publication-NHRIs-and-Human-Rights-Defenders-Enabling-Human-Rights-and-Democratic-Space-in-Europe.pdf \(ennhri.org\)](https://www.ennhri.org/publication-nhris-and-human-rights-defenders-enabling-human-rights-and-democratic-space-in-europe.pdf).

fundamental right, the consensus entails (d) a States' positive obligation to protect these rights by all means necessary.