

The protection of Human Rights in the Hungarian Fundamental Law (as approved in 2011): commentary and considerations.

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1. Introduction to the contemporary political situation of Hungary

Hungary is now passing through its third *Fidesz* government mandate¹. During the second and the current mandates, *Fidesz* has been approving some laws, at a constitutional and ordinary level, that have been considered controversial for their contents by both international public opinion and European institutions.

Here below are listed some of the most controversial among them:

- The 2011 new Constitution. It has been contested for three aspects: the risk to the independence of the Central Bank, the Authority for privacy, as well as interventions retirement age of judges, also targeted here to weaken independence of the category forcing a replacement with new, more loyal to the government levers;
- The 2013 approval of the constitutional reform. The text deprives the Constitutional Court of its core competencies, since the body can no longer raise substantive objections to the contents of a law and may not cancel a law adopted by two-thirds of parliament, but only raise objections to the form;
- The 2014 law that introduces a tax on advertising proposed by the executive of Orban. This law was made in order to affect economically all the private broadcast companies, not in line with the Government political view, as private broadcast companies needs advertising to survive;

¹ The first mandate was in 1998 and the second one was in 2010.

- The 2014 proposal bill for a tax on Internet use that has been withdrawn due to the national and international protests;
- The 2015 proposal for the reintroduction of the death penalty in Hungary. Even if a bill proposal has not been presented yet, the reintroduction of death penalty in the Hungarian criminal law it's still a heavy program point on the *Fidesz* reforms agenda;
- Orban's September 2015 rejection to the Junker Commission programme of "migrants quotas" repartition;
- The 2015 declaration of state of emergency and 2015/2016 construction of fences at the borders with Serbia² and Croatia³;



Source: Pexereca - Own work, CC BY-SA 4.0

² More at: <http://www.bbc.com/news/world-europe-34252812>

³ More at: <http://www.nytimes.com/2015/10/17/world/europe/hungary-croatia-refugees-migrants.html>

As a matter of fact, attempted border entries have fallen tremendously, from the 138,396 total for the month of September 2015⁴, the average daily number of intercepted migrants for the first two weeks of November 2015 went down to 15, with a daily reduction of more than 4500.

- The 2015 amendment to the Asylum Law authorizing the government to issue a list of “safe countries of origin⁵” and “safe third countries of transit”. As a result, asylum applications by people from “safe countries of origin” could be rejected, and those who transited through “safe third countries” before reaching Hungary could be returned to the transit country. This amendment made possible for Hungary to return asylum seekers to transit countries denying the asylum.

⁴ Source: Hungarian Police, data available at <http://www.police.hu/hirek-es-informaciok/hatarinfo/elfogott-migransok-szama-lekerdezes?honap>

⁵ European Union about „Safe country of origin“ available at: http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/background-information/docs/2_eu_safe_countries_of_origin_en.pdf

2. Constitution and Human Rights

The European Convention of Human Rights (ECHR) has been established in 1950, its main function is to work as a warning dog for the respect of the Human Rights in the countries adhering to the Council of Europe. Hungary, constitutionally speaking, has plenty of protections for Human rights, in accordance not only with ECHR but also to the Charter of Fundamental Rights of the European Union (2000) and the Universal Declaration of Human Rights (1948), indeed it has more than twenty articles as a guard dog to the human rights protection principles. But if on a theoretical basis Hungary represent one of the most laudable examples of constitutional protection of human rights, on the other hand it is needed to consider the recent events that have occurred in Hungary and the measures that the government has lately adopted to face the contemporary migrations flows coming from the middle-east.

So what is here carried out is an analysis of the human rights related parts of the 2011 Constitution, the *Foundation* section and the *Freedom and Responsibility* section of the Hungarian Fundamental Law (as approved in 2011). A commentary about the constitutional protection of human rights principles is made in the next pages, to show up how some of the contents do protect human rights and some others clashes with them and how some of the law controversial law reforms currently adopted represent a violation of some human rights fundamental principles.

3. Controversial aspects that led to the constitutional reform

June 29, 2010, with the Parliamentary resolution 47/2010 the Hungarian Parliament established an *ad hoc* committee for the drafting of the constitutional reform text, composed by 45 Members, 30 of which were delegates from the Coalition Government (KDNP-Fidesz).

With another Parliamentary resolution, the 9/2011, it has been admitted to debate every single proposal for amendments that got at least half of the votes of a Parliamentary Group. However, the draft presented in March, in the National Assembly discussed in just nine days, was the product of the work of a Committee consisting of only three members, all appointed by the government.

The Budapest government refused to submit to a referendum the text of the new Constitution approved by the Parliament, preferring an unusual Popular consultation in the form of a "questionnaire" that have been shipped to every Hungarian citizen before the draft of the Constitution was made public. In this questionnaire the citizen was asked to respond to twelve questions with a very general content, and even though just a small amount of citizens responded (around 11% of all the Hungarian citizens), the Government took it as enough to consider the new Constitution as approved by the Hungarian people⁶.

⁶ More at: ANU Centre for European Studies Briefing Paper Series Hungary's 2011 Constitution: Key Features and Political Background Krisztina Osvát and Szabolcs Osvát

4. The 2011 Constitution

The new Constitution⁷, as approved in 2011, is divided in three parts:

- A first part from letter A to T is about the fundamental principle to which all the Hungarian law will have to be inspired and interpreted by the judges.
- A second part from I to XXXI is about Freedom and Responsibilities.
- A third part from 1 to 54 is about the Institutional organization of Hungary.

Only the first and second parts can be considered Human Rights related and only some of the articles are relevant to Human rights.

4.1 Clashes and protections

Paying attention to the terminology used in the following articles, what meets the eye at first is that in most of the articles of this constitutional text, the terms “may” and “shall” are used instead of terms as “have to” or “must”. The usage of these terms means that Hungary “shall” make a right to be respected but it is not obliged to do so, there is no bond to

⁷ Text available at:
www.kormany.hu/download/2Fe%2F02%2F00000%2FThe%2520New%2520Fundamental%2520Law%2520of%2520Hungary.pdf

be respected. Anyway the ordinary law produced by the parliament has to fit these constitutional principles and the judgements have to be sentenced in conformity with these constitutional principles, the European Union Charter of Fundamental Rights (as a binding part of the EU law for EU countries), the European Convention of Human Rights (binding as International Law and as the European Union accedes to the convention as stated in Art.6, II of the Treaty on the European Union) and the Universal Declaration of Human Rights (binding as International Law), as stated in the Rule of Law principle.

4.1.2 First part: *Foundation Section*

In this section the fundamentals of the Hungarian political and juridical system are listed. Anyway only some of them are human rights related: Article L and Article R.

ARTICLE L

The content of Article L seems likely to produce a wide discrimination against lesbian, gay, bisexual, transgender and intersexual. The family is hereby defined as a union "based on marriage between a man with a woman, the direct descendants or custody" and is considered "as the basis of the survival of the nation"⁸. So there is no way for other kind of unions to be seen and recognized.

⁸ The Fundamental Law of Hungary, Article L, page 7, Budapest 25 April 2011

Article 12 of the ECHR just says that a Man and a Woman of a legal age must have the right to get married as stated by national law. So as far as it can seem that there is some kind of discrimination for LGBT, the ECHR says that it is up to the national laws to permit or not to get the right to marry, so at this time there are no clashes or violations.

ARTICLE R

This article is really important to understand how the law has to be read in Hungary. The interpretation of the laws has to be made keeping in mind the fundamentals of the new Constitution and if we take a look to what we do find at the beginning of the Constitution we can understand how the law has to be read, by which binding point of view:

“WE, THE MEMBERS OF THE HUNGARIAN NATION, at the beginning of the new millennium, with a sense of responsibility for every Hungarian, hereby proclaim the following: We are proud that our king Saint Stephen built the Hungarian State on solid ground and made our country a part of Christian Europe one thousand years ago. We are proud of our forebears who fought for the survival, freedom and independence of our country. We are proud of the outstanding intellectual achievements of the Hungarian people. We are proud that our people has over the centuries defended Europe in a series of struggles and enriched Europe’s common values with its talent and diligence. We recognise the role of Christianity in preserving nationhood. We value the various religious traditions of our country. We promise to preserve the intellectual and spiritual unity of our nation

torn apart in the storms of the last century. We proclaim that the nationalities living with us form part of the Hungarian political community and are constituent parts of the State. We commit to promoting and safeguarding our heritage, our unique language, Hungarian culture, the languages and cultures of nationalities living in Hungary, along with all man-made and natural assets of the Carpathian Basin. We bear responsibility for our descendants; therefore we shall protect the living conditions of future generations by making prudent use of our material, intellectual and natural resources. We believe that our national culture is a rich contribution to the diversity of European unity. We respect the freedom and culture of other nations, and shall strive to cooperate with every nation of the world. We hold that human existence is based on human dignity. We hold that individual freedom can only be complete in cooperation with others. We hold that the family and the nation constitute the principal framework of our coexistence, and that our fundamental cohesive values are fidelity, faith and love. We hold that the strength of community and the honour of each man are based on labour, an achievement of the human mind. We hold that we have a general duty to help the vulnerable and the poor. We hold that the common goal of citizens and the State is to achieve the highest possible measure of well-being, safety, order, justice and liberty. We hold that democracy is only possible where the State serves its citizens and administers their affairs in an equitable manner, without prejudice or abuse. We honour the achievements of our historical constitution and we honour the Holy Crown, which embodies the constitutional continuity of Hungary's statehood and the unity of the nation. We do not recognise the suspension of our historical constitution due to foreign occupations. We deny any statute of limitations for the inhuman crimes committed

against the Hungarian nation and its citizens under the national socialist and the communist dictatorship. We do not recognise the communist constitution of 1949, since it was the basis for tyrannical rule; therefore we proclaim it to be invalid. We agree with the Members of the first free National Assembly, which proclaimed as its first decision that our current liberty was born of our 1956 Revolution. We date the restoration of our country's self-determination, lost on the nineteenth day of March 1944, from the second day of May 1990, when the first freely elected organ of popular representation was formed. We shall consider this date to be the beginning of our country's new democracy and constitutional order. We hold that after the decades of the twentieth century which led to a state of moral decay, we have an abiding need for spiritual and intellectual renewal. We trust in a jointly-shaped future and the commitment of younger generations. We believe that our children and grandchildren will make Hungary great again with their talent, persistence and moral strength. Our Fundamental Law shall be the basis of our legal order; it shall be an alliance among Hungarians of the past, present and future. It is a living framework which expresses the nation's will and the form in which we want to live. We, the citizens of Hungary, are ready to found the order of our country upon the common endeavours of the nation.⁹

This article contains plenty of recalls to the Christian identity of Hungary and Europe and to the value of the Nation. All these contents can lead to a very tight and straight interpretation of the *corpus legis*, giving to the judge and to the ordinary legislator a tool for limiting someone's rights, just due to her/his nationality or faith. As this article

⁹ The Fundamental Law of Hungary, National Avowal, page 2, Budapest 25 April 2011

is part of the Foundation section, it assumes the value of a pillar of the whole constitutional text and that is why all these references to the Christian identity can harm the impartiality of the public authorities before the faith of people living in Hungary. And one example of the reflection that these references to Christianity can make is the construction of the fences at the southern borders, as according to Viktor Orban, Hungarian Prime Minister, they have been made for “defending European lifestyles, contrasting this with Islam.¹⁰” but as the UN High Commissioner for Human Rights Zeid Ra’ad Al Hussein said in his official press release in Geneva on 17 September 2015 migrants “have put themselves at the mercy of smugglers because they had no other option to escape from war and misery. Other avenues for entry – including resettlement programs as well as regular migration channels – were simply not there. I am extremely concerned at the repeated failures of the European Union to agree firm and principled action to respond to the crisis in Hungary and elsewhere. Current events highlight the urgent need for bolder and more human-rights driven migration and asylum policies in Europe.¹¹” So Orban’s government cannot consider the measures it has adopted not even as an effective solution and the EU cannot too.

4.1.3 Second Part: *FREEDOM AND RESPONSIBILITY* section

¹⁰ United Nations Human Rights, Office of the High Commissioner, Geneva, 17 September 2015

¹¹ *Ibidem*

Article I

As stated in Article I, 1 Human Rights are recognized by the Constitution as fundamental rights to be respected and the primary obligation of the Hungarian Republic should be to protect them and make them to be respected.

But, as shown in Article I, 3, a fundamental right listed in the Constitution, even one among Human Rights are, can be restricted *“to allow the effective use of another fundamental right or to protect a constitutional value, to the extent absolutely necessary, proportionate to the objective pursued and with full respect for the essential content of such fundamental right”*.

So Article I, 3 represents a danger for the protection of Human rights in Hungary as it gives a lawful chance to derogate the protection of a fundamental right if any other right that is considerable fundamental, contained in the Hungarian constitutional law, is considered to be in danger. And practically that is how Human Rights can be lawfully restricted. That’s the reason why, the principle contained in this article can be the keystone to understand how it can be possible that the Hungarian government is feeling to be in the right position even though it is violating Human Rights facing the contemporary migration flows crisis coming from the middle-east.

Article II

Looking to Article II we can assume that human dignity would not be violated at any time for any reason and that all the human beings, even the *foetus*, have to be protected from the moment of conception as a human being. So even the *foetus*, considered as already a human being, is a right holder, holding most of the civil and human rights, as for example the right to life.

So the ordinary law has to follow this principle and an abortion law would hardly be passed as constitutionally fitting in the Hungarian juridical system.

Article III

Article III represent a constitutional protection against any inhuman treatment as punishments or servitude, human traffic as well as experiment on human beings for any kind of purpose without their consent and usage of human body to get any kind of financial gain. All these cases are prohibited by the Constitution and have to be against the (ordinary) law.

Article IV

Article IV gives the right to liberty and security to everyone, not making exceptions for non-Hungarian citizens, saying that a life imprisonment without *Parole* can be made only if the judge finds out a person to have committed intentionally and violently a crime. It is expected constitutionally a compensation for anyone whose liberty has been restricted without a lawful reason.

Article V

Article V gives the chance to anyone, without making exceptions for foreigners, to repeal any illegitimate attack to his person or property; however is up to the efficiency of the juridical system to make it happened and practically this principle can be not respected.

Article VI

The freedom to have a private life, family, private communication and to have a good reputation is guaranteed by article VI. This article is modelled on the dispositions stated in Art. 8 of ECHR.

Article VII

Article VII makes in theory Hungary a good place for anyone to practice his own religion. But on the other hand it must be taken into account that tons of references to Christianity¹² are made in the first part of the Constitution, so it seems that Christianity is the basic religion of Hungary, as far as other faiths are free to be practiced. Furthermore, Hungary's PM Viktor Orban commenting on the construction of fences at the southern border that he is protecting the Christian Europe from the Muslims.

Article VIII

The right to gather in a peaceful way and to create or join an organization (including political parties and trade unions) is guaranteed by Article VIII and modelled on Art. 11 of ECHR. In practice political plurality is guaranteed by the presence of more than 20 parties to vote at national elections¹³.

Article IX

Freedom of speech and diversity of the press should be one of the

¹² Look back at pages 10-12 about Art. R

¹³ Source: National Elections Office, data available at http://valasztas.hu/hu/ogyv2014/861/861_0_index.html

pillars of contemporary democracies. Article IX provides protection for this right fitting what is stated in Art. 10 of ECHR, but as far as we know, it has not been protected that so much during last years in Hungary. In fact taxes for private broadcasting, not aligned to the Government as the public broadcasting, have been putted in order not encourage the private broadcasting and trying to make their life hard, financially speaking¹⁴.

Article X

Article X guarantees constitutionally the independence of scientific research, artistic productions, teaching, and higher education. The Government can only with an Act manage and supervise the Higher education system.

Article XI

Article XI provide only to Hungarian citizens the right to education and that can be a problem for foreigners trying to get education in Hungary, as even if it can be guaranteed by ordinary law, this right is not provided to foreigners by Constitution. Art. 2 of *Protocol* attached to the ECHR says “*No person shall be denied the right to education*” and there is no restriction provided due to nationality o citizenship, so in

¹⁴ For more info: <http://budapestbeacon.com/news-in-brief/ec-launches-investigation-into-hungarys-advertising-tax/20711>

this case the constitution does not respect the principle stated by Art. 2 of the Protocol to (Paris, 20.III.1952).

Article XII

Article XII is the result of a historical heritage that Hungary has from the Communist period they have been through. So differently from the Communist period, now Hungary gives, as a liberal and democratic country, the chance to anyone to choose his own job. In this article it is explained that disable people willing to work must have the have the opportunity to do so.

Article XIII

Article XIII is another result of a historical heritage and follows the principles stated in Art. 1 of Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms (Paris, 20.III.1952). As before the private property was limited, now it is a right to be defended. Private property however can be expropriated by the State for public interests to be realised (as public buildings and creations for the community) just in case compensation is given back to the owner of the expropriated good.

Article XIV

Article XIV speaks about the freedom of Hungarian citizens abroad to come back at any time in Hungary and about the occasion for foreigners to be expelled just in case it is predicted by the law, but collective expulsions are always forbidden, as stated also in Art. 3 of the Protocol No. 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms securing certain rights and freedoms other than those already included in the Convention and in the First Protocol thereto (Strasbourg, 16.IX.1963). It is good to hear that collective expulsion are prohibited at a constitutional level as during the past, most of the modern states that has been created after the fall of the European empires were interested by expulsion of national minorities living near the borders, especially in the Slavic and Balkan areas. Furthermore, Hungary guarantee asylum to non-Hungarian citizens having a persecution in action in their home country.

Article XV

Hungary, in accordance with Art.. 14 of ECHR, recognizes the equality of every human being before the law, with no distinction for race, colour, sex, language, religion, national origin. But the interesting thing is that some of the rights provided by the constitution are only available for Hungarian citizens.

Article XVI

Article XVI provides the constitutional protection and the necessary cares of the child in order to guarantee his proper development in both physical and mental level and this should be the main duty for the parents. Interesting is that also the parents are protected when getting old, as grown up children have to take care of them. This Article follows the guidelines provides in Arts. 3, 17, 18, 23, 24, 27, 28, 29, 32 of the Convention of the Rights of the Child (CRC, 2 September 1990).

Article XVII

Article XVII provides workers some social rights as the right to organize in order to conclude collective agreements and to defend their interests as workers. This article also provides workers of paid leaves and two weekly days of rest.

Article XVIII

Here, the Constitution guarantees the prohibition of children employment but this prohibition can be avoided by an Act where it is said that there is no risk to their mental, moral and physical situation, and this is really awkward as any ordinary Law could make this

prohibition useless. This article recalls the provisions stated in Art. 32 of the CRC.

Article XIX

Here Social Security is considered one of the principle aims of the Hungarian State for the Hungarian citizens. In art. XIX, 2 it talks about “other persons in need” but it does not specifies if it is about the nationality or whatever else, so as far as we know social security it is only a prerogative of the State for Hungarian citizens. Impressing is the disposition contained in Art. XIX, 4 in which it is said that a pension system based on solidarity has been guaranteed by the State for the next generations and that protects women.

Article XX

Here it is sentenced that everyone, with no exceptions to foreigners, should have the right to physical and mental health (not to be violated by the State or someone else) and to make people to stay healthy the State fight GMOs, ensures access to healthy food and drinkable water and other improving important aspects that makes the society healthy.

Article XXI

The right to live in a healthy environment is here protected, as anyone who pollutes the environment has to be persecuted by law.

Article XXII

Article XXII is pretty interesting and important for its content, as rights for a decent housing and access to public services are equally guaranteed to all the people in Hungary, no matter about their citizenship.

Article XXIII

Here the political rights (active and passive) are provided both to European Union and Hungarian (adult) citizens while only the active political right is recognized to (adult) refugees.

Article XXIV

Here is constitutionally provided to everyone the right to have a fair treatment by the local authorities in a reasonable term of time and every one should be compensated if any unlawfully event occurred due to wrong unlawful behaviour of the authorities. This right is provided to anyone, regardless of the nationalities. This article is modelled on Arts. 5, 6, 7 of ECHR.

Article XXV

Anyone in Hungary can submit proposal or complaints to any public organ, at an individual or a jointly level, anytime. This article fits the dispositions given in Arts. 5, IV-V of ECHR.

Article XXVII

The freedom of movement is here provided constitutionally to anyone who stays lawfully in Hungary. The freedom of movement as guaranteed by the Hungarian Fundamental Law is provided also in Art. 2 of ECHR.

Article XXVIII

It is provided to anyone the right to have any charge against him adjudicated by a reasonable term, in a fair and public trial and judged by an impartial court. Until the final judgment no one can be considered guilty for the crime he is in charge. Anyone has to have a defense guaranteed and furthermore no one shall be prosecuted or convicted for a criminal offence for which he or she has already been finally acquitted or convicted in Hungary or, within the scope specified in an international treaty or a legal act of the European Union, in another State. Plus, anyone has the right to act against any public authority or court decision that might have violated his own rights. This protection for anyone is guaranteed in conformity to Arts. 6 and 7 of the ECHR.

Article XXIX

Article XXIX represents a real protection to all the national minorities living in Hungary. Every Hungarian citizen who owns some other nationality can freely express and preserve his own identity, using their mother tongue and propagate their own culture in their own languages. Plus they have the chance to establish their own governments at any national and sub-national level. However the nationality has to be recognized by the State first. This principle can be found also in Art. 14 of ECHR and Art. 1 of Protocol No. 12 to the ECHR (Rome, 4.XI.2000).

Article XXX

Anyone should pay the taxes to cover the finances to pay the common needs of the community. A reduced contribution is expected for people raising children. This principle is inspired to the provisions contained in Art. 1 of Protocol of ECHR (Paris, 20.III.1952).

5. Controversial aspects about building of border fences

After having analysed these parts and these articles of the Fundamental Law of Hungary, it is possible to summarize the violations of the constitutional protection of human rights that occurred related to the construction of fences at the southern borders of Hungary.

The most controversial measure adopted by Hungary that we can discuss about is, as we already explained, the construction of fences at the southern border. Due to this controversial measure most of the human rights violation that are now happening, and happened in the last two years, occurred in Hungary. Building fences at the southern borders just made a 'rights-free zone' where no one has the jurisdiction so no one has to protect people human rights, except for the UN.

Furthermore in this way in Hungary the right to asylum has practically ceased to exist, while the right to due process and the right to counsel are also being violated as a large number of expert organizations and NGOs have raised their voices against these practices (the Hungarian Helsinki Committee, for instance, has even pointed out that the expulsion and transport of asylum seekers to the Serbian border also violates an agreement between the EU and Serbia)

The 2015 new passed laws and also the amendments passed to the National Defense Law, authorizing the army to use live ammunition during a state of emergency not only in the border areas but throughout the country, go against every international agreement signed by Hungary as well as against European Community rights

directly in force in Hungary and also the Hungarian Fundamental Law and basic concepts of law.

So human rights and the rule of law can be at risk, even though Article I,3 and Article 54 of the Fundamental Law somehow give the power to the Hungarian restrict some fundamental principles just due to emergency situations, article 15, I of the ECHR says that *“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.”*

Moreover closing borders with other EU countries, as Croatia, is against the free movement of goods and people across borders expressed by the Treaty on the European Union (Art. 3, II TEU).

And declaring countries as Serbia as “safe third country”, as Hungary did, is just a mechanism used to shift its responsibility for asylum procedure to third countries, without a thorough assessment of whether an applicant individually would be at risk of serious human rights violations.

According to Amnesty International, *“Hungary is violating the human rights of refugees by blocking their access to a meaningful asylum procedure on its territory. Amendments of the law criminalizing the “illegal” entry of refugees and migrants and intended to shift Hungary’s responsibility towards those in need of international protection must be repealed.”*

So building these fences has represented on one hand a violation of

human rights principles contained in the Universal Declaration of the Human Rights and in the European Convention on Human Rights, and on the other hand it represent a violation of the following constitutional rules of the 2011 Fundamental Law of Hungary:

- As Article I, 1-2 states that “1.The inviolable and inalienable fundamental rights of MAN shall be respected. It shall be the primary obligation of the State to protect these rights. 2. Hungary shall recognize the fundamental individual and collective rights of man.

-As the Fundamental Law states in the National Avowal of the Constitution that Human dignity has to be protected for anyone in Hungary,

-As Article Q says:

“(1) In order to create and maintain peace and security and to achieve the sustainable development of humanity, Hungary shall strive for cooperation with all the peoples and countries of the world.

(2) In order to comply with its obligations under international law, Hungary shall ensure that Hungarian law be in conformity with international law.

(3) Hungary shall accept the generally recognized rules of international law. Other sources of international law shall become part of the Hungarian legal system by promulgation in legal regulations.”

- As Article U condemns the Communist regime for “...depriving citizens and certain groups of citizens of their fundamental human rights...”

- As Article II states that “Human dignity shall be inviolable. Every

human being shall have the right to life and human dignity.”

- As Article III states that “No one shall be subject to torture, inhuman or degrading treatment or punishment, or held in servitude.”

- As Article XIV, 2 states that “No one shall be expelled or extradited to a State where he or she would be in danger of being sentenced to death, being tortured or being subjected to other inhuman treatment or punishment.”

- As Article XIV, 3 states that “Hungary shall, upon request, grant asylum to non-Hungarian citizens being persecuted or having a well-founded fear of persecution in their native country or in the country of their usual residence for reasons of race, nationality, membership of a particular social group, religious or political belief, if they do not receive protection from their country of origin or from any other country.”

6. Conclusions

Speaking of the Hungarian Constitution we can assume that it is really a moot one. At a first glance it seems that the constitutional legislator has been working tough to make all the fundamental Human Rights covered by the constitutional text. But on the other hand, what comes out is that the constitutional legislator worked hard as well to get the chance of derogation to any kind of fundamental principle at any time. That's the main problem of the Hungarian constitution, every Human Rights principle is listed over there, and every one of them can be lawfully violated.

Speaking of the construction of fences at Croatian and Serbian borders we can say with no doubts that it consists of several EU and International law violations:

- Art. 3, II of the TEU about Freedom of movement within EU borders;
- Art. 14 of the ECHR (discriminating for religion reasons, as Orban says they are defending the Christian Europe by the Muslims);
- Art. 15, I and 18 of the ECHR about restrictions of fundamental rights;

Violation of Protocols added to the ECHR:

- Protocol 6 (Strasbourg, 28.IV.1983), Article I & II about Death Penalty (as the government has on its agenda to reintroduce it);

- Protocol 12 (Rome, 4.XI.2000), Art. 1, about the prohibition of discrimination *“on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status”*;

- Protocol 13 (Vilnius, 3.V.2002), Arts 1 & 2 on the Protection of Human Rights and Fundamental Freedoms concerning the abolition of the Death Penalty.

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