An institution capable of defending itself: the European Court of Human Rights responding to claims of 'excessive interference' and becoming a more robust institution

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Abstract

In recent years, Council of Europe member states have increasingly criticised the European Court of Human Rights for 'excessive interference' in their domestic affairs, with the current source of political outrage and public incandescence being domestic immigration, asylum, and deportation policies' conflict with the European Convention on Human Rights. Although the Court's jurisprudence can be criticised for doctrinal inconsistency, overly liberal interpretations of its case law, and contextual insensitivity, current critiques are mainly political. In my view, this is unsurprising, given the inherently political nature of human rights law.

But the Court and the Convention it defends are under sustained pressure on two fronts. Amongst Council of Europe member states, a growing populist backlash against immigrants, asylum seekers, and refugees has seen the Court been portrayed as a 'blocker' of deportations, leading to politicians and Europe calling for the Convention's reform and some going as far to suggest outright withdrawal. Outside the Council, assertive authoritarian states, like Belarus, seek to leverage this anger by manufacturing humanitarian crises at its frontiers with Council member states. If the Court wishes to ensure the Convention's survival, it needs to adapt, even if that means conceding certain points to its detractors to win the overall argument.

1.1. Introduction

In this article, I will suggest a series of reforms to the European Convention on Human Rights[1] (hereinafter ECHR/the Convention) system, in response to a Council of Europe (CoE) member state proposing to leave the ECHR on the grounds of 'excessive interference'. This will be followed by an analysis of how these reforms can safeguard the integrity of the European Court of Human Rights (hereinafter ECtHR/the Court). I will choose to centre the discussion of this essay on the issue of migration, asylum, and deportation, given the current political climate and debate surrounding this issue, with certain Convention states sustaining pushes for reform to the Convention system to facilitate easier deportations, with certain political parties even agitating for the denunciation of, and withdrawal from, the ECHR.[2]

I will divide this discussion into three sections. In the first section, I will discuss the political and doctrinal grounds for Convention states claiming 'excessive interference', primarily focussing on the controversy surrounding the Court's inconsistent deployment of the 'European consensus' doctrine, as well as the quasi-legislative capacity that it can draw from the 'living instrument doctrine'. I will then briefly consider these issues with this essay's central theme, illustrating potentially controversial judgments in the ECtHR's case law, before outlining my proposed reforms in the third section. These reforms will focus on both procedural and substantive issues, such as deportations to third countries and the 'instrumentalisation' of

[1] Convention on the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) ETS No. 005 (ECHR)

[2] Dominic Casciani, 'Would leaving the ECHR really 'stop the boats'?' (*BBC News*, 9 October 2025) <https://www.bbc.co.uk/news/articles/cm283eqje03o> accessed 1 January 2026; Ministry of Justice (United Kingdom), 'Joint Statement to the Conference of Ministers of Justice of the Council of Europe' (GOV.UK, 10 December 2025) para 6, bullet point 5 <https://www.gov.uk/government/news/joint-statement-to-the-conference-of-ministers-of-justice-of-the-council-of-europe> accessed 30 December 2025; HC Deb 29 October 2025, vol 771, div 331, cols 357-8; Presidenza del Consiglio dei Ministri, 'Lettera aperta sulle Convenzioni internazionali' (Governo Italiano, 22 May 2025) <https://www.governo.it/sites/governo.it/files/Lettera_aperta_22052025.pdf> accessed 30 December 2025

immigration by states hostile to states party to the ECHR, as a tool of hybrid warfare, respectively.[3]

2.1. 'Excessive interference': political and doctrinal concerns

2.1.1. Political concerns

Concerns over the far-reaching nature of the Convention and the Court by Contracting Parties, with respect to the sovereignty of their legal systems, also date back to the Convention's inception. Only Denmark and Ireland accepted both the individual right to petition and the Court's compulsory jurisdiction, when the Convention entered into force in 1953, with the other Contracting Parties opting instead to not adopt the then-optional clause.[4] However, upon the ratification of Protocol No. 11, the right to individual petition was enshrined into the ECHR for all Contracting Parties under art 34, amending the existing text of the ECHR and explicitly prohibiting any interference with this right.[5] Although the UK attempted to ensure that the right to individual petition (art 34) remained optional during Protocol 11's negotiations, these attempts were unsuccessful.[6] This right is qualified by strict admissibility criteria under art 35, which has been amended under Protocols No. 14 and 15 to include (among other provisions) a single-judge formation to examine the admissibility of cases, as well as reduce the admissibility period from six to four months.[7]

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[3] MoJ (UK) (n 2); Richard Milne and James Shotter, 'Belarus 'weaponising' illegal migration, Lithuania says' (Financial Times, 15 June 2021) <https://www.ft.com/content/0ad28032-6102-41a0-ad8d-b80460e52867> accessed 30 December 2025

[4] Ed Bates, 'The Birth of the European Convention on Human Rights—and the European Court of Human Rights' in Jonas Christoffersen and Mikael Rask Madsen (eds.) *The European Court of Human Rights between Law and Politics* (OUP 2014) 40; Kanstantsin Dzehtsiarou, *European Consensus and the Legitimacy of the European Court of Human Rights* (CUP 2015) 144-8

[5] Protocol No 11 to the Convention on the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) ETS No. 155 (ECHR) art 34

[6] Alexander Horne and Vaughne Miller, 'Parliamentary Sovereignty and the European Convention on Human Rights' (*House of Commons Library*, 6 November 2014) <https://commonslibrary.parliament.uk/parliamentary-sovereignty-and-the-european-convention-on-human-rights/> accessed 8 January 2026

[7] Protocol No. 14 to the Convention on the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) CETS No. 194 (ECHR) arts 6-7; Protocol No. 15 to the Convention on the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) CETS No. 213 (ECHR) art 4

Given that forty-six nations are party to the ECHR,[8] each with their own unique legal systems and set of cultural values, it is unsurprising that the ECtHR's rulings may prove controversial. When the Court ruled in *Hirst v. the United Kingdom (No. 2)* and *Greens and MT v. the United Kingdom* that the UK's blanket ban on prisoner voting violated its obligations under art.3 of Protocol No.1 to hold free elections at reasonable intervals by secret ballot, the Court was accused of "attempting to overrule British law on prisoner voting",[9] and was in direct conflict with the sovereignty of the British parliament.[10] The reaction of the UK's parliament to the ECtHR's rulings *Hirst (No. 2)* and *Greens and MT* cases is a clear source of legal friction, as the reaction of British parliamentarians can be understood as representing public opinion, as a majority of Britons polled in 2012 were in favour of retaining the blanket ban.[11]

2.1.2. Doctrinal concerns

The above case studies of *Hirst (No. 2)* and *Greens and MT* are substantially intertwined with doctrines the Court employs in its judgments, namely the 'European consensus' and 'living instrument' doctrines, from which complaints of 'excessive interference' can arise. These doctrines were first elaborated upon by the Court in *Tyrer v the United Kingdom*.[12] In this case, the Court argued that the ECHR: required interpretation "in light of present-day conditions",[13] and that if the laws and practice of other CoE member States evidence "commonly accepted standards", the respondent State's margin of appreciation is reduced.[14]

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[8] Council of Europe, 'The Council of Europe and the European Union: different roles, shared values' (no date) <https://www.coe.int/en/web/portal/european-union> accessed 5 January 2026

[9] David Davis, '7. Britain must defy the European Court of Human Rights as Strasbourg is exceeding its authority' in Spyridon Flogaitis, Tom Zwart and Julien Fraser (eds.) *The European Court of Human Rights and its discontents* (Edward Elgar 2013) 70; Peter Hollobone, MP also refers to "interference" by ECtHR in UK affairs in HC Deb 11 January 2011, vol 521, col 2WH

[10] ECHR (n 1) Protocol No 1, art 3; *Hirst v. the United Kingdom (No. 2)* (2006) 42 EHRR 41; *Greens and MT v. the United Kingdom* (2011) 53 EHRR 21

[11] Joel Rogers de Waal, 'Public says no to prison votes' (*YouGov UK*, 25 November 2012) <https://yougov.co.uk/politics/articles/5267-public-says-no-prison-votes> accessed 7 January 2026

[12] *Tyrer v the United Kingdom* (1979) 2 EHRR 1

[13] Ibid, para 31

[14] Ibid

These doctrines have been employed since by the Court, in cases concerning both substantive (negative) and procedural (positive) obligations of states party to the ECHR,[15] upon which said doctrines can be criticised. The substantive criticism of this doctrine is its majoritarian nature: consensus suggests a majoritarian approach to human rights adjudication that conflicts with their inherently anti-majoritarian nature, especially when considering the protection of minorities and their rights under art 14 of the ECHR and states party to Protocol No.12 of the Convention.[16]

However, given that this essay focuses on Contracting Parties' criticisms of the ECHR and its application by the ECtHR, I will instead discuss the procedural issue with the doctrine of European consensus. The procedural criticism of the 'European consensus' doctrine focuses instead on how consensus is identified and applied in the Court's reasoning.[17] The ECtHR's jurisprudence reveals, if anything, an inconsistent application and broad interpretation of both the source and meaning of consensus. Dzehtsiarou establishes four conceptions of 'European consensus' that the Court has deployed: legal consensus based on Contracting Parties' national laws and treaty obligations; consensus based on international trends; internal consensus (i.e. public opinion), and; expert consensus.[18] For the sake of brevity, I will discuss the Court's use of 'European consensus' based on international trends and internal consensus, and the problems their inconsistent application presents.

In the *Tyrer* case, the Manx attorney general argued that corporal punishment did not outrage public opinion on the Isle of Man (internal consensus), which the Court then balanced with

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[15] Kanstantsin Dzehtsiarou, *European Consensus and the Legitimacy of the European Court of Human Rights* (CUP 2015) 17-20

[16] Dzehtsiarou (n 14) 115; Eyal Benivenisti, 'Margin of Appreciation, Consensus, and Universal Standards' (1999) 31 *J. Int'l Law & Pol*. 843; ECHR (n 1) art 14; Protocol No. 12 to the Convention on the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) CETS No. 177 (ECHR)

[17] Dzehtsiarou (n 14) at 115

[18] Ibid, at 71

penal standards from other CoE member states (external consensus), with external consensus overriding internal consensus in the Court's judgment.[19] The Court contrasted this somewhat in *A, B and C v Ireland*[20], noting that although there was external consensus on the liberalisation of abortion laws, Ireland's internal consensus was that abortion laws should remain restricted.[21] In this case it should be acknowledged that, were the Court to override what could be understood as a 'hard' consensus in Ireland, based on the outcomes of legally-binding referenda on the issue, this could have represented excessive interference and cast doubt over the Convention system's legitimacy.[22] Returning to the case study of *Hirst (No. 2)*, although the Court acknowledged that no European consensus existed on prisoner voting, the judgment overrode what could be described as a 'soft' internal consensus on retaining the blanket ban on prisoners' right to vote, as previously illustrated by public and parliamentary opinion on the matter.[23] This implicit differentiation between 'hard' and 'soft' consensuses by the ECtHR, in either affording or denying a state's margin of appreciation in the Convention's application, thus provides fertile ground for accusing the Court of 'excessive interference'.

Meanwhile the Court's application of the 'European consensus' doctrine, based on international trends, in the case of *Christine Goodwin v the United Kingdom*[24], was arguably a controversial evolution of this doctrine. In this case, the Court relied on the notion of an "emerging international trend" amongst *some* CoE states and third states[25], to rule that the UK's absence of legal recognition for sex changes, as well as the impossibility for transsexuals to marry, were violations of the Convention.[26] In other words, the argument could be made that

[19] *Tyrer* (n 12) para 31
[20] *A, B and C v Ireland* (2011) 53 ECHR 13
[21] Ibid, paras 226 and 235
[22] Dzehtsiarou (n 14) at 62-3
[23] de Waal (n 11); HC Deb 11 Jan. 2011 (n 9); Horne and Miller (n 6)
[24] *Christine Goodwin v the United Kingdom* (2002) 35 EHRR 447
[25] Ibid, para 85
[26] Ibid, judgment paras 1-2

the Court's reasoning was based on an unstable foundation of international *trends* outside of the CoE, undermining the transparency and predictability of this doctrine's use in future judgments, as well as overriding the UK legislature through the creation of new rights. Unsurprisingly, the employment of the 'living instrument' doctrine has also been heavily criticised on similar grounds, especially in contentious cases, for giving the Court a *de facto* legislative capacity to create new rights, as seen in the reaction to *Verein KlimaSeniorinnen Schweiz and Others v Switzerland*.[27] The living instrument is also contentious due to its inconsistent application, which undermines the Court's credibility, which calls into question the legitimacy of its processes, as this reduces the predictability of the outcomes of cases.[28]

3.1.'Excessive interference' in the Court's jurisprudence on asylum and deportation cases

3.1.1. Substantiating the 'excessive interference' claim

As the above section highlighted, the ECtHR is susceptible to significant criticism on political and doctrinal grounds; this section will focus on criticisms of the Court's case law on the issue of asylum and deportation. One issue with the ECtHR's asylum cases is the lowered threshold for abuse it employs, i.e. living conditions in detention centres and receiving states, when assessing cases for art 3 violations. In *MSS v Belgium and Greece*, the Court argued that this lowered threshold to prove a violation vis-a-vis the applicant's treatment by the receiving state's authorities, concerning the burden of proof on the part of the applicant,[29] was legitimised by an international consensus, which indicated that asylum seekers are "a particularly

[27] Marc Bossuyt, 'The judges in Strasbourg are just making up new human rights' (*Brussels Report*, 15 April 2024) <https://www.brusselsreport.eu/2024/04/15/the-judges-in-strasbourg-are-just-making-up-new-human-rights/> accessed 9 January 2026; *Verein KlimaSeniorinnen Schweiz and Others v Switzerland* (2024) 79 EHRR 1, partly dissenting partly concurring opinion of Judge Eicke

[28] Kanstantsin Dzehtsiarou, 'European Consensus and the Evolutive Interpretation of the European Convention on Human Rights' (2011) 12(10) *German LJ* 1730, 1742

[29] *M.S.S v Belgium and Greece* (2011) 53 EHRR 2 para 352

underprivileged and vulnerable group in need of special protection".[30] Criticism of this judgment through the lens of 'excessive interference' can be inferred from judge Sajó's dissenting opinion, who argued that the Court unnecessarily restricted states' margin of appreciation by 'homogenising' asylum seekers, despite their heterogeneity as a group.[31] Bossuyt extends Sajó's dissenting opinion on the *MSS* judgment, arguing that the application of the *MSS* precedent by the Court has seen the creation of new categories of 'vulnerability' that interferes with states' asylum policies, as well as expanded the Convention to protect social rights by considering applicants' essential characteristics.[32]

The Court has been accused of adopting a more 'liberal' interpretation of the Convention in certain controversial asylum and deportation cases, and arguably demonstrated 'excessive interference', by applying art 3 to living conditions in Convention parties, and receiving third states.[33] In *Rahimi v Greece*[34], the ECtHR judged that the failure of Greek authorities to ensure the accommodation and care of the applicant constituted an art 3 violation; the Court similarly attributed indirect responsibility of living conditions in receiving third states to deporting ECHR states in *Sufi and Elmi v the United Kingdom*.[35] The risk of materially unsafe conditions for deportation, as well as that of *refoulement*, is clearly a substantial concern for the Court in deciding the outcome of asylum and deportation cases. As *Ilias and Ahmed v Hungary* demonstrated, even if a Convention state reserves the right to deport asylum seekers to a third/unconnected state (i.e. not nation of the applicant's origin), there must be substantial guarantees that the deportee will not be subject to torture or degrading treatment.[36] This is

[30] *M.S.S v Belgium and Greece* (n29) para 251
[31] ibid, partly concurring and partly dissenting opinion of judge Sajó, part II
[32] Marc Bossuyt, 'Is the European Court of Human Rights on a slippery slope?' in Flogaitis, Zwart and Fraser (eds) (n 9) 27-36
[33] ibid 31-3
[34] *Rahimi v Greece* App no. 8687/08 (ECtHR 5 April 2011)
[35] *Sufi and Elmi v the United Kingdom* App nos. 8319/07 and 11449/07 (ECtHR 28 June 2011) para 291
[36] *Ilias and Ahmed v Hungary* (2020) 71 EHRR 6 para 137

complicated by the fact that adjudicators need to consider a factual assessment of the situation in the applicant's country of origin alongside the 'likelihood' or 'possibility' of persecution; striking balance between these subjective and objective elements requires serious consideration, with substantial room for error from which Convention states could claim 'excessive interference'.[37]

3.1.2. Problematising the 'excessive interference' claim

Although I agree with Bossuyt that the Court's evolution of art 3 from a civil right to a social right may undermine the Court's credibility, his argument that the *Sufi and Elmi* judgment marks a "future prohibition on the removal of any asylum seeker"[38] fundamentally ignores the absolutist nature of art 3, of which a dilution for asylum and deportation cases would represent a 'slippery slope' for undermining the Convention's object and purpose, especially if Convention states collude on how to minimally, or not at all, comply with their obligations.[39] I also take further issue with this argument, insofar that Bossuyt's criticism could be interpreted as attempting to absolve Convention states of implementing proper risk assessments, by implying that Convention states cannot be held responsible for the conditions in receiving states. Whilst I concede that Convention states cannot be *directly* responsible for the material conditions in receiving states, the Court's jurisprudence suggests that removals to third states with unstable political environments are permissible, provided that (*inter alia*) a proper risk

[37] UN High Commissioner for Refugees (UNHCR), *Note on Burden and Standard of Proof in Refugee Claims* (16 December 1998) <https://www.refworld.org/policy/legalguidance/unhcr/1998/en/23696> accessed 10 January 2026

[38] Bossuyt (n 30) 32

[39] Veronica Fikfak, 'ECHR Reform: A Danger of Contagion in Relation to Article 3' (*UK Const. L. Blog*, 9 December 2025) <https://ukconstitutionallaw.org/2025/12/09/veronika-fikfak-echr-reform-a-danger-of-contagion-in-relation-to-article-3/> accessed 10 January 2026; Simon Kuper, 'Europe's second-class citizens' (*Financial Times*, 18 December 2025) <https://www.ft.com/content/432948ca-2f30-4ad0-a3cf-109d8fc3312b> accessed 10 January 2026

assessment has been conducted by the deporting state, even if the deporting state has received diplomatic assurances from the receiving states that the applicant is at no risk of harm.[40]

I would therefore contend that these claims of 'excessive interference' in the Court's assessment of asylum and deportation cases, while to some extent legitimate, are primarily political in nature. Whilst I do not wish to suggest that the Court's judgments should be free from criticism, this should be based on factually accurate and sober reports of the Court's judgments; opportunistic politicians and media outlets have taken to sensationalising and misrepresenting the Court's judgments, with deleterious consequences for the Convention system's legitimacy in the court of public opinion.[41] However, given the political pressure the Court is subject to, how can it adapt to safeguard the Convention's existence?

4.1. Proposed reforms to the Convention system

4.1.1. Doctrinal prioritisation and clarification

The first section of this essay contended that the ECtHR's employment of doctrines in interpreting its precedent has been inconsistent. Although the Court has not fully committed itself to *stare decisis* in its judgments, to allow for the deployment of the 'living instrument' doctrine, this means that the unpredictability of the Court's judgment undermines legal certainty and consistency, threatening its legitimacy.[42] A clear example of this was the difference in rulings between *K.R.S v the United Kingdom* and the *MSS* case, despite the

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[40] See *A. A. v Sweden* App no. 4677/20 (ECtHR, 13 July 2023); *Khasanov and Rakhmanov* App nos. 28492/15 and 44975/15 (ECtHR, 29 April 2022); *Saadi v Italy* (2008) 49 EHRR 30; *Soering v the United Kingdom* (1989) 11 EHRR 439

[41] Victoria Adelmant, Alice Donald, and Başak Çali, 'The European Convention on Human Rights and Immigration Control in the UK: Informing Public Debate' (*Bonavero Institute of Human Rights*, 4 September 2025) <https://www.law.ox.ac.uk/sites/default/files/2025-09/European%20Convention%20on%20Human%20Rights%20and%20Immigration%20Control%20in%20the%20UK_4%20Sept%202025.pdf> accessed 12 January 2026; Ashifa Kassam, ''Who's it going to be next time?': ECHR rethink is 'moral retreat', say rights experts' (*The Guardian*, 13 December 2025) <https://www.theguardian.com/law/2025/dec/13/europe-echr-rethink-moral-retreat-say-human-rights-experts> accessed 12 January 2026

[42] Tom Zwart, 'More human rights than Court: Why the legitimacy of the European Court of Human Rights is in need of repair and how it can be done' in Flogaitis, Zwart and Fraser (eds) (n 9) 84-6

material similarities between the cases and six-month gap between them.[43] By more explicitly binding itself to its own case law, under the doctrine of *stare decisis*, the Court's future jurisprudence would become more predictable and consistent.

A benefit of this would be fewer legal conflicts with Convention states, especially in cases that are morally sensitive (e.g. *Hirst No.2*).[44] In such cases, the Court should also consider whether internal consensuses exist on certain issues when deciding a state's margin of appreciation, should there be an absence of 'hard' or 'external' consensuses. In my view, this would help the ECtHR approach contentious cases with greater context-sensitivity in its judgments, which could help de-fang the narrative of the ECtHR being a 'foreign court' by its detractors.[45] However, the Court should still have the prerogative to deploy the living instrument and European consensus doctrines, particularly for *sui generis* cases.

4.1.2. Institutional safeguarding

This reform proposes that, to safeguard its integrity, the Court should establish specialist tribunals, as well as ensure that it is more transparent in the information it releases and assertive in challenging misrepresentations of its judgments. The first sub-component is clear in its scope: for cases that are morally sensitive and complex (e.g. asylum and deportation), provided they are admissible, the Court would refer cases to dedicated permanent or *ad-hoc* chambers. These chambers would also consult and coordinate with national governments and courts, with a dual purpose of understanding national contexts and establishing pathways to ensure the effective implementation of judgments. Implementing such a reform may be beyond the scope of the Convention, which warrants further investigation, but in my view, this would have the

[43] ibid; *K.R.S. v the United Kingdom* (2008) 48 EHRR SE8; *MSS* (n 28)
[44] *Hirst (No. 2)* (n 10)
[45] Pablo Castillo-Ortiz, ''A Foreign Court': ECHR-scepticism in Comparative Perspective' (*UK Constitutional Law Association Blog*, 25 June 2024) Available at: <https://ukconstitutionallaw.org/2024/06/25/pablo-castillo-ortiz-a-foreign-court-echr-scepticism-in-comparative-perspective/> accessed 25 September 2026

benefit of 'translating' the Court's case law for all Convention parties. The second sub-component would ensure that the Court publishes more detailed breakdowns of its caseloads in annual reports, which would also enable it to (within reason) challenge politicians and media outlets that misrepresent its judgments, giving the Court an ability to robustly defend itself and hold its critics to account.

4.1.3. Scoping deportation cases

The joint statement by the Ministers of Justice calls for the Court to respect the right of Convention parties to enter into third-country deportation agreements, provided that the rights of irregular migrants and asylum seekers can be guaranteed.[46] This is a welcome recognition by Convention states of their procedural obligations to ensure the safety and security of individuals they are deporting; in these instances it may be prudent for the Court to disregard its homogenisation of asylum seekers in the *MSS* case, and instead assess the legality of their deportations on the grounds of individually protected characteristics.[47] This serves a dual purpose: the first is that deporting states would have greater clarity in their risk assessments regarding any potential violations of the convention, helping states with stricter asylum processes establish consensuses on which third states could be considered 'safe'; the second purpose is that, by de-homogenising asylum seekers as a *sui generis* protected categories, applicants would be active *claimants* of Convention rights instead of passive beneficiaries.[48]

4.1.4. Securing the Convention from external threats

[46] MoJ (UK) (n 2) para 6 point 3
[47] *MSS* (n 28)
[48] Ekaterina Yahyaoui Krivenko, 'Reassessing the Relationship between Equality and Vulnerability in relation to Refugees and Asylum Seekers in the ECtHR: The *MSS* Case 10 Years On' (2022) 34(2) *IJRL* 192; Victoria Oluwatobi Isa Daniel and Brid Ní Ghráinne, 'Revisiting *MSS v Belgium and Greece* and Interim Measures before the European Court of Human Rights' (2024) 43(2) *Refugee Survey Quarterly* 127

This final reform concerns the 'instrumentalisation' of migration.[49] Using large-scale human flight has been used by Convention states such as Turkey to gain diplomatic leverage over other states[50], but the alleged use of this tactic by non-Convention state Belarus serves an insidious role in attempting to destabilise Europe, by encouraging populist backlash against the Convention system, and bringing security-conscious Convention states' border policies into conflict with their obligations to provide routes to asylum.[51] The response to such an existential threat, which cynically uses highly vulnerable individuals as coercive leverage, must carefully balance security considerations with the need to avoid securitising a sensitive human rights issue.[52]

To counteract this, Convention states that may be subject to hybrid measures, i.e. (in this case Latvia, Lithuania, and Poland) can reserve the right to close their borders entirely with the hostile state, caveated by the existence of clear, safe, and legal routes for individuals to claim asylum in those Convention parties from third states (in line with their legal obligations). However, in instances concerning dissidents from the hostile state seeking asylum, exceptional measures must be in place to ensure that they can exercise their right to claim asylum. Moreover, the Court must also be more assertive in scrutinising the abuse of extradition

[49] Consiglio dei Ministri (n 2) para 13 point 3; MoJ (UK) (n 2) para 6 point 5

[50] *Agence-France Presse*, 'Turkish president threatens to send millions of Syrian refugees to EU' (*The Guardian*, 11 February 2016) <https://www.theguardian.com/world/2016/feb/12/turkish-president-threatens-to-send-millions-of-syrian-refugees-to-eu> accessed 14 January 2026; 'Turkey threatens to let asylum-seekers flood into Europe' (*The Economist*, 5 March 2020) <https://www.economist.com/europe/2020/03/05/turkey-threatens-to-let-asylum-seekers-flood-into-europe> accessed 14 January 2026

[51] Aurel Sari, 'Instrumentalized migration and the Belarus crisis: Strategies of legal coercion' (Hybrid CoE Paper 17, April 2023) 17-20 <https://www.hybridcoe.fi/wp-content/uploads/2023/04/20230425-Hybrid-CoE-Paper-17-Instrumentalized-migration-and-Belarus-WEB.pdf> accessed 15 January 2026

[52] Mirko Forti, 'Belarus-sponsored Migration Movements and the Response by Lithuania, Latvia, and Poland: A Critical Appraisal' (*European Forum, Insight*, 11 July 2023) <https://www.europeanpapers.eu/europeanforum/belarus-sponsored-migration-movements-and-response-by-lithuania-latvia-and-poland> accessed 15 January 2026

requests, such as that of Belarus using Interpol Red Notices to engage in transnational repression of dissidents.[53]

5.1. Conclusion

Owing to the Convention's nature as an instrument that intersects law and politics, as well as its ambition to harmonise human rights standards in over forty countries, it is understandable why the Court's judgments come under considerable scrutiny from Convention states. The inconsistent application of its various legal doctrines is also another understandable source of frustration, particularly when the Court can seemingly apply or override its precedent on a whim; when applied to the current political climate surrounding immigration and pressure governments face from populist and authoritarian movements, one can appreciate why there is a desire for reform among Convention states.

In my proposed reforms for the Court, I aimed to strike a balance between the need for the Court to consider and be responsive to external pressures, whilst ensuring that the object and purpose of the Convention is not undermined. The Court should be able to consider 'soft' consensuses in Convention states, whilst understanding that public and political opinion can be ill-informed and vacillate; the Court must be able to build a more consistent body of jurisprudence, to improve the predictability of outcomes, and; the Court should reserve the right to challenge misrepresentations of its judgments, to safeguard its legitimacy from those that wish to undermine the Convention. However, the Court should not also be ignorant of the fact that the Convention is limited in its capacity to respond to hybrid threats to both the Convention and its member states; these threats seriously imperil the Convention system and

[53] Ben Keith and Jacqueline Jahnel, 'Repression through Interpol: How Belarus Turns Police Cooperation Into A Tool Of Transnational Repression And Creates Challenges For Europe' (*Verfassungsblog*, 9 January 2026) <https://verfassungsblog.de/repression-through-interpol/> accessed 15 January 2026

the protection of human rights more broadly, and I believe the only way to ensure the Convention's survival against these threats will be through substantial modernisation.