

# DENIAL AND DEFECTION

The Visegrad countries and asylum in Europe, with a special emphasis on Hungary

Presentation by  
Boldizsár Nagy at Norwegian People's Aid  
Seminar:

Refugees: Who bears the responsibility

Oslo, 28 November 2017

## Immersion into the topic

A quote from the Visegrad Countries website, reproducing a Hungarian National News Agency(MTI) news piece, **dated 4 September 2017:**

„Responding to German Chancellor Angela **Merkel**, who said in a recent election debate that **Hungary's premier** had **failed to show solidarity** by refusing to help **refugees in 2015**, Foreign Minister Peter Szijjarto countered on Monday that Prime Minister Viktor **Orban** had ordered the authorities to **uphold Schengen rules** in all circumstances.”

[Szijjarto on Merkel remarks: Hungary upheld Schengen rules in 2015](http://www.visegradgroup.eu/news/szijjarto-on-merkel)

September 4th, 2017

<http://www.visegradgroup.eu/news/szijjarto-on-merkel> (20171127)

# THE ORDERS OF MAGNITUDE (STATISTICS)

# First time applications and recognitions, V4

Country	2015		2016		2017	
	Asylum applications	Number of persons receiving protection at first instance	Asylum applications	Number of persons receiving protection at first instance	Asylum applications	Number of persons receiving protection at first instance
<b>Czech Republic</b>	<b>1.525</b>	460	<b>1.475</b>	435	<b>1.175</b> until Sept.	90 Until Sept.
<b>Hungary</b>	<b>177.135</b>	505	<b>29.430</b>	395	<b>4.135</b> Until Nov.	880 Until Oct.
<b>Poland</b>	<b>12.190</b>	640	<b>12.305</b>	305	<b>5.685</b> Until Nov.	355 Until Oct.
<b>Slovakia</b>	<b>330</b>	80	<b>145</b>	225	<b>155</b> Until Oct.	45 Until Oct.

Source: Eurostat,

Asylum and first time asylum applicants by citizenship, age and sex Annual aggregated data (rounded) [migr\_asyappctza] Last update: 04-10-2017

Asylum and first time asylum applicants by citizenship, age and sex Monthly data (rounded)[migr\_asyappctzm] Last update: 22-11-2017

First instance decisions on applications by citizenship, age and sex Quarterly data (rounded)[migr\_asydcfstq] Last update: 22-11-2017

# Nationality of the largest asylum seeker groups and number of applicants in 2015

Czech Republic		Hungary		Poland		Slovakia	
Ukraine	565	Syria	64 080	Russia	6 985	Iraq	170
Syria	130	Afghanistan	45 560	Ukraine	1 575	Afghanistan	25
Cuba	125	Kosovo (UNSCR 1244 /1999)	23 690	Tajikistan	525	Ukraine	15
Vietnam	55	Pakistan	15 010	Syria	285	Unknown	15
China (including Hong Kong)	35	Iraq	9 175	Georgia	230	Cuba	5
Other	325	Other	16 920	Other	655	Other	40

# Main countries of origin, April – June 2017

CZECH REPUBLIC	#	(%)
Ukraine	80	30
Azerbaijan	30	11
Georgia	30	11
Armenia	25	9
Syria	15	6
Other	90	33

HUNGARY	#	(%)
Afghanistan	275	42
Iraq	175	27
Syria	120	18
Pakistan	25	4
Iran	20	3
Other	40	6

Czech Republic, Poland – Post-Soviet area  
Hungary – EU parallel, Slovakia: „exotic”

Source: [http://ec.europa.eu/eurostat/statistics-explained/images/b/be/Five\\_main\\_citizenships\\_of\\_first\\_time\\_asylum\\_applicants%2C\\_2nd\\_quarter\\_2017.png](http://ec.europa.eu/eurostat/statistics-explained/images/b/be/Five_main_citizenships_of_first_time_asylum_applicants%2C_2nd_quarter_2017.png)  
(20171126)

POLAND	#	(%)
Russia	570	78
Ukraine	55	8
Turkey	20	3
Armenia	10	1
Belarus	10	1
Other	65	9

SLOVAKIA	#	(%)
Vietnam	10	40
Sri Lanka	5	20
Other	10	40

# Diversity within the V4



## Diversity within the V4

	Hungary	Poland	Czech Republic	Slovakia
Rule of Law procedure / Article 7 procedure	Started	Started	Not an issue	Not an issue
Rhetoric on EU	Anti EU	Anti EU	Mixed (Babiš, Zeman)	Pro EU
„Core EU” Euro	Hesitant, not in close future	Hesitant, not in close future	In favour willing to adopt the euro	In favour already in
Attitude towards Russia	Very pro-Russian government	Anti Russian government	Distanced (but: Zeman)	Distanced
Attitude towards Germany	Distanced, negative	Negative	Positive	Positive
Posted workers directive amendment – vote in Council	Against	Against	For	For



# Diversity within the V4

	Hungary	Poland	Czech Republic	Slovakia
<b>Compulsory emergency relocation (2015)</b>				
<b>Decision</b>	Against	In favour	Against	Against
<b>CJEU procedure</b>	Suing Council for annulment	Intervening for annulment (after government change)	Refraining from intervention	Suing Council for annulment
<b>Persons relocated</b>	0	0	12	16
<b>Infringement proc. against the country started</b>	Yes	Yes	Yes	No

# Conceptual frame

Conceptual frame:  
Securitisation, Majority identitarian populism, and  
Crimmigration

## Securitization

Securitization refers to a set of **speech acts** and practices which posit a phenomenon or **process as threatening the well-being of the society** and calls for **extraordinary reaction** on behalf of the **securitizing agent**, most frequently entailing the demand to set aside the normal functioning of the legal system and its guarantees, as ‘extraordinary challenges require exceptional responses’.

# Conceptual frame: Securitisation, Majority identitarian populism, and Crimmigration

## Majority identitarian populism

“Majority identitarian populists claim to speak for what they see as the (current) majority group”. The populist actor distances herself/himself from an elite, which may be presented as conspiring against the people. Politicians may be presented as being complicit „in mass immigration or European integration or both (depending on the nature of the Other)”\*

\* Quotes from: G. Lazaridis & A. M. Konsta, *Identitarian Populism: Securitization of Migration and the Far Right in Times of Economic Crisis in Greece and the UK*, in *THE SECURITISATION OF MIGRATION IN THE EU: DEBATES SINCE 9/11* (G. Lazaridis & W. Khursheed eds., 2015) p. 186

Conceptual frame:  
Securitisation, Majority identitarian populism, and  
Crimmigration

## Crimmigration

Immigration is no longer seen as a purely a civil or administrative law matter. Ever more criminal law measures are applied to migrants solely because they circumvented immigration rules and border controls. These kinds of criminal sanctions have no element of rehabilitation, of preparing the “criminal” for participation in the society the rules of which she may have violated. Instead criminalization of immigration related acts solely serves the purpose of deterrence and retribution.

# THE CASE OF HUNGARY

# WHAT DOES HUNGARY DO INSTEAD OF PROTECTING THE REFUGEES?

**1.**  
**IT IS IN  
DENIAL**

**2.**  
**DETERS**

**3.**  
**OBSTRUCTS**

**4.**  
**PUNISHES**

**5.**  
**FREE RIDES**  
**Denies solidarity**

**6.**  
**BREACHES EU  
AND DOMESTIC  
LAW**

DESTROYING THE REMAINS OF A FAIR PROCEDURE:  
PROCEDURE APPLICABLE IN CASE OF A CRISIS SITUATION CAUSED  
BY MASS IMMIGRATION  
IN FORCE SINCE 28 MARCH 2017



The „new” transit zone at Rösztke . Images by  
the Immigration and Asylum Office



# The combined effect of the 2017 March amendment

The extension of the crisis situation to the whole country entitles the law enforcement agents **to escort almost every asylum seeker to the transit zone** at the border.

The government still **pretends that this is not a border procedure** and **no detention** is practiced in the transit zone (The justification originally openly spoke of detention but any reference to detention was removed from the justification a week later and the bill was replaced „due to a technical error”).

In effect this is an **accelerated border procedure** with **no** access to **genuine and effective legal remedy** and entailing **unlimited detention without court control**

## **UNHCR Statement, 7 March 2017**

**„In practice, it means that every asylum-seeker, including children, will be detained in shipping containers surrounded by high razor wire fence at the border for extended periods of time.**

**This new law violates Hungary’s obligations under international and EU laws, and will have a terrible physical and psychological impact on women, children and men who have already greatly suffered.”**

# The „Let us stop Brussels” government campaign, 2017



*"Let's stop Brussels!" / National Consultation 2017*



May be one  
should  
rather stop  
**Orbán**

as  
suggested  
by the  
popular  
reaction in  
the subway



# Government campaign on the „Soros Plan” 2017 October-November

## 1. **George Soros** wants to convince Brussels to resettle at least one million immigrants from Africa and the Middle East annually on the territory of the European Union, including Hungary as well.

Soros has been working for many years to change Europe and European societies. He wants to achieve his goal with the resettlement of masses of people from different cultural backgrounds. When presenting his plan, he described it like this: “[T]he EU has to accept at least a million asylum-seekers annually for the foreseeable future.” (Project Syndicate, September 26, 2015). The

European Parliament supports

a similar position. The public body has supported relocation programs and the establishment of immigration routes. (2015/2342. (INI))

### **Do you support this point of the Soros plan?**

YES

NO

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*(Six more such „questions”)*



## REMEDIAL ACTIONS

### INTERNATIONAL

- ECtHR judgments;
- UNHCR pressure – lower standing in the UN (E.g. no re-election to Human Rights Council)
- Allies distancing themselves

### EU

- Article 7 EU
- Rule of Law Procedure
- LIBE hearing
- Infringement procedures
- Conditionality EP proposal on Dublin IV.

### DOMESTIC

- Intensive NGO criticism
- Some of the major churches being critical
- EU-oriented politicians in FIDESZ dissatisfied

**Danger: the whole EU moving to similar direction – Valetta declaration, efforts to externalise protection**

## Orbán is not the trend-setter

The **Visegrad group and the neighbours** of Hungary do not take over the rhetoric **beyond the resistance to compulsory relocation**

**None of them** intentionally and consequently **replaces** the terminology related to **forced migration/refugees** with „**illegal migrants**” and „**migration**”.



The (other) **EU Member States** search for a **collective response** and a Common European Asylum Policy.

**No other** government (except for the Polish) **initiated a general confrontational relationship** to the EU („**Brussels**”)

**Hungary's policy** is determined by the **prime minister**. His motivations are **personal and non-transparent**.

# **HOW TO APPROACH SOLIDARITY RESPONSIBILITY SHARING**

# THE MATRIX OF FIELDS AND LEVELS OF ANALYSIS

Field /  Discipline  Level of analysis 	Moral and Political Philosophy	Practical, Political	Legal, Justice-oriented	Social, Sociological, Psychological
State / Community	Responsibility sharing or shifting?  Allocation of „burdens”	What is „in the interest of the state?” <ul style="list-style-type: none"> <li>• Ever fewer asylum seekers?</li> <li>• Minimum expenses?</li> <li>• Avoidance of social tensions?</li> </ul>	<ul style="list-style-type: none"> <li>• Compatibility with Geneva 51?</li> <li>• Criteria of fairness:                             <ul style="list-style-type: none"> <li>○ Procedural rights</li> <li>○ Substantive interpretation of definition</li> <li>○ Material reception conditions</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Social identity construction of receiving society : why to protect refugees, (or why not)</li> <li>• Selectivity according to country of origin</li> </ul>
Individual / Family	<ul style="list-style-type: none"> <li>• Freedom of movement (choice of residence)</li> <li>• Decresing vulnerability</li> </ul>	<ul style="list-style-type: none"> <li>• Can she reach her preferred destination?</li> <li>• Where is social integration the smoothest?</li> </ul>	<ul style="list-style-type: none"> <li>• ECHR, Article 3, 8, 13 issues (Torture, inhuman degrading teatment or punishment, right to privacy and family, effective remedies)</li> </ul>	<ul style="list-style-type: none"> <li>• Extended trauma</li> <li>• Loss of trust in democracy (and its superiority over authoritarian regimes)</li> </ul>

# Possible criteria of responsibility sharing/solidarity

Applied by → Criterion ↓	Commission COM (2015) 451 final Emergency relocation (120 000) COM (COM(2016) 270 final Dublin, Corrective allocation mechanism	EU Council Relocation decision	Germany Königsteini key
Total GDP	Yes/Yes	Yes	No
GDP/person	No/No	(Yes)	No
Tax income	No/No	No	Yes
Population (size)	Yes/Yes	Yes	Yes
Territory	No/No	No	No
Population density	No/No	No	No
UNemployment	Yes/No	Yes	No
Number of earlier applicants	Yes/No	Yes	No
Physical proximity to country of origin (Neighbour, same region)	No/No	No	No
Cultural proximity	No/No	No	No



# Possible criteria of responsibility sharing/solidarity



Applied by ↓ Criterion	Schmuck 1997	Hathaway & Neve, 1997	Schneider; Engler; Angevendt 2013
Total GDP	Yes (wealth")	No (Yes – external supporter)	Yes (five years average – within EU average)
GDP/fperson	(Yes)	No (Yes – external supporter)	No
Tax income	No	No	No
Population (size)	No	No	Yes
Territory	No	No	Yes (Compared to EU total)
Population density	No	No	No
UNoployment	No	No	Yes
Number of earlier applicants	No	No	No
Physical proximity to country of origin (neighbour, same region)	Yes	Yes	No
Cultural proximity	No	Yes	No

# Summarising

- The V4 is not a homogenous block, except for the refusal of compulsory relocation mechanisms, including the Dublin IV. corrective mechanisms, there is little unity and a great number of cracks.
- The suggested flexible solidarity mechanism envisaging intra EU solidarity is increasingly replaced by the belief that „genuine asylum seekers /Sic! - BN/ should be identified before entering the territory of the European Union. Our external borders have to be protected.”\*

\*Letter of the V4 Prime Ministers to the Prime Minister of Italy, Mr Paolo Gentiloni, (19 July 2017, <http://www.visegradgroup.eu/documents/official-statements/v4-letter-to-the-prime>)

## Summarising

- **Intercepting migrants in Libya** and forcing them back there is not a long term solution. Libya is not a safe third country. The **EU-Turkey deal** of 2016 March is also fragile, **hostage to momentary interests**.
- The EU must see and accept itself as **one protection space**, anyone who seeks asylum in any of the member states should be seen as requesting protection from the EU.

# Literature hints

- Commission: COM (2015) 451 final: Proposal for a Council DECISION
- establishing provisional measures in the area of international protection for the benefit of Italy, Greece and Hungary
- Commission COM (2016) 270 final: Proposal for a Regulation of the European Parliament and of the Council establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast)
- Hathaway, James A - Neve, Alexandre R : Making International refugee Law relevant Again: A proposal for Collectivized and Solution-oriented Protection  
*Harvard Human Rights Journal*, vol. 10 (1997) Spring, 115 – 211
- Schmuck, Peter H. „Refugee Burden Sharing: A Modest proposal” *Yale Journal of International Law*, Vol. 22 (1997) pp. 243 – 297
- Schneider, Jan – Engler, Marcus – Angenendt, Steffen: *European Refugee Policy Pathways to Fairer Burden-Sharing* Sachverständigenrat deutscher Stiftungen für Integration und Migration (SVR) Berlin, 2013

# Boldizsár Nagy's pertinent publications

~ Hungary's hypocritical migration policy Heinrich Böll Foundation 29 May 2015

<https://www.boell.de/en/2015/05/29/hungarys-hypocritical-migration-policy>

~ Parallel realities: refugees seeking asylum in Europe and Hungary's reaction EU Immigration and Asylum Law and Policy 4 November 2015 <http://eumigrationlawblog.eu/parallel-realities-refugees-seeking-asylum-in-europe-and-hungarys-reaction/>

~ (With Kees Groenendijk) *Hungary's appeal against relocation to the CJEU: upfront attack or rear guard battle?* EU Immigration and Asylum Law and Policy 16 December 2015 <http://eumigrationlawblog.eu>

~ Hungarian Asylum Law and Policy in 2015-2016. Securitization Instead of Loyal Cooperation *German Law Journal* Vol. 17, (2016) No. 6, pp. 1032 – 1081;

~ The aftermath of an invalid referendum on relocation of asylum seekers: a constitutional amendment in Hungary Blog: EU Immigration and Asylum Law and Policy, published on 10 November 2016.

<http://eumigrationlawblog.eu/the-aftermath-of-an-invalid-referendum/>

~ *Sharing the Responsibility or Shifting the Focus? The Responses of the EU and the Visegrad Countries to the Post-2015 Arrival of Migrants and Refugees* Global Turkey in Europe Working Paper 17, May 2017 Italian Institute of International Affairs 20 p.

[http://www.iai.it/sites/default/files/gte\\_wp\\_17.pdf](http://www.iai.it/sites/default/files/gte_wp_17.pdf)

~ *Restricting access to asylum and contempt of courts: Illiberals at work in Hungary* Blog: EU Immigration and Asylum Law and Policy, published on 18 September 2017

<http://eumigrationlawblog.eu/restricting-access-to-asylum-and-contempt-of-courts-illiberals-at-work-in-hungary/>

~ (with the contribution of Pál Sonnevend): Kein Asyl, keine Solidarität. Ungarns Asylrecht und Asylpolitik in 2015-2017. In: Fruzsina Molnár Gábor (ed.) *Freiheit und Verantwortung: Grund- und Menschenrechte im Wandel der Zeit in Ungarn und in Deutschland*, Heidelberg, Universitätsverlag Winter, 2018, forthcoming;

~ Renegade in the club. Hungary's resistance to EU efforts in the asylum field. *Osteuroparecht*, 2018 forthcoming

# Thanks!

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