

Deviance within the system: How the Visegrad countries impact refugee protection within the EU

Presentation by

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At the IASFM conference

„Disrupting Theory, Unsettling Practice: Towards
Transformative Forced Migration Scholarship and Policy”

In the panel:

„A Systems Approach to Refugee Movement and Politics”

July 28,

„University of Ghana, Accra””

Two billboards, March 2018, Hungary



For us: Hungary first!

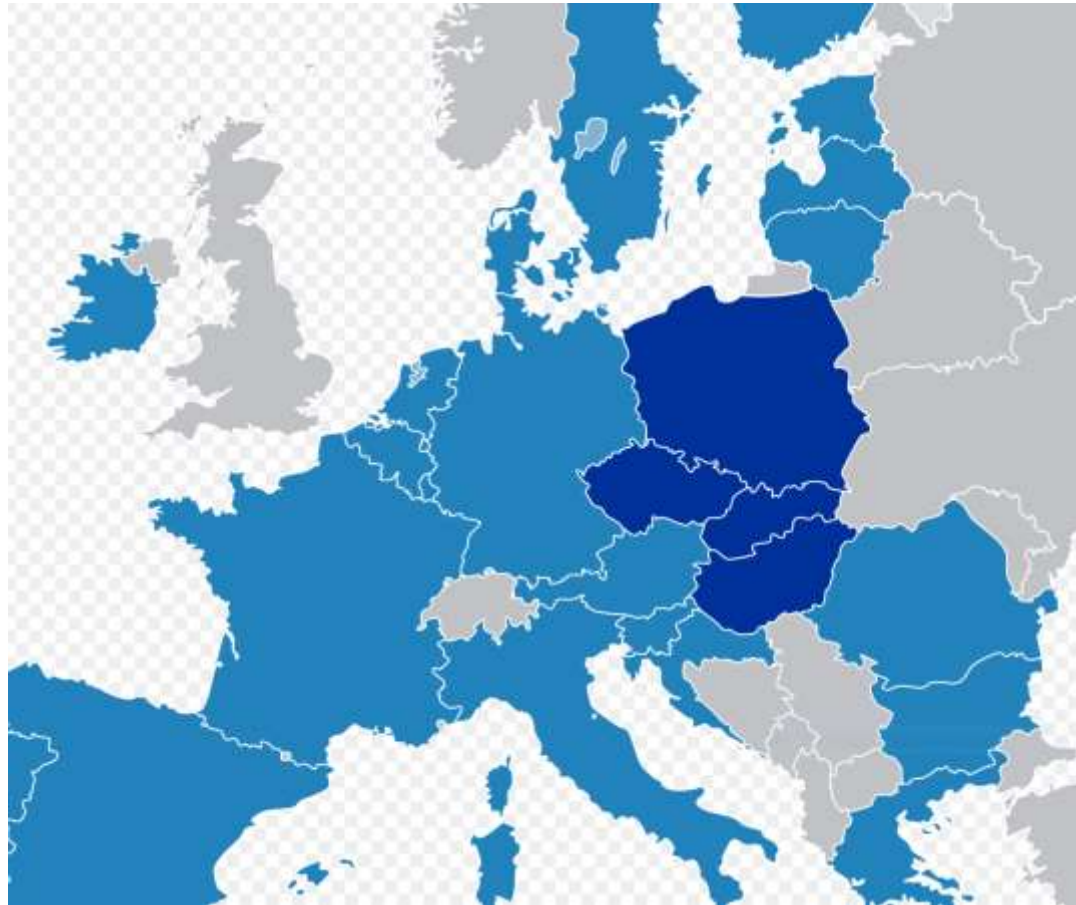
Billboard for the candidate of the ruling FIDESZ-KDNP party, István Simicskó, Minister of Defence, for the national elections, 8 April 2018

The UN wants us to continuously receive (settle into Hungary) migrants

Hungary decides, not the UN



Different roles of the Visegrád countries (Czech Republic, Hungary, Poland, Slovakia) in the system



First time applications and recognitions, V4

Country	2015		2016		...	2019		2020	
	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	Asylum applications	Number of persons receiving protection at first instance
Czech Republic	1.525	460	1.475	435		1.915	135	1.160	105
Hungary	177.135	505	29.430	395		500	60	115	135
Poland	12.190	640	12.305	305		4.070	265	2.785	370
Slovakia	330	80	145	225		230	30	280	35

Source: Eurostat,

Asylum and first time asylum applicants by citizenship, age and sex Annual aggregated data (rounded) [migr_asyappctza] visited: 20210726

First instance decisions on applications by citizenship, age and sex Quarterly data (rounded)[migr_asydcfstq] visited: 20210726

Even in 2015 the composition of the groups arriving into the V4 was different

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, January - March 2021

CZECHIA		#	(%)	POLAND		#	(%)
Ukraine	2140	60	36	Belarus	560	255	56
Georgia	1495	25	15	Afghanistan	10715	60	13
Moldova	700	10	6	Ukraine	2140	25	5
Syria	18360	10	6	Russia	810	25	5
Vietnam	390	10	6	Turkey	2870	15	3
Other		50	31	Other		75	18

Czech Republic, Poland – Post-Soviet area
Hungary – outlier, Slovakia: „semi exotic”

HUNGARY		#	(%)	SLOVAKIA		#	(%)
				Afghanistan	10715	25	36
				Morocco	2200	20	29
				Libya	425	5	7
				Syria	18360	5	7
				Turkey	2870	5	7
Other		10	100	Other		10	14

Blue figure = EU 27, 1st Q 2021

Conclusion on the number of asylum seekers and refugees - the place in the system

Migration in general and asylum in particular were **a non-issue in the V4 before 2015 – except in Hungary** that experienced the arrival of large number of refugees in 1989 -1995 from Romania and (former) Yugoslavia

The contribution of the V4 countries to the protection of those who need it, **is bordering the insignificant**, not only at a global, but also at the EU scale.

The four countries **show different profiles** as to the countries of origin:

Poland and the Czech Republic - **post Soviet area**

Slovakia – idiosyncratic composition

Hungary – in the past general **EU pattern** with a relative Afghan overrepresentation – presently: absolutely no participation

THE ILLUSORY UNITY OF THE VISEGRAD COUNTRIES

(CZECH REPUBLIC, HUNGARY, POLAND, SLOVAKIA)

Diversity within the V4

	Hungary	Poland	Czech R.	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	Enemical, 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
UN Global Compact on Refugees (Vote in UN)	Against	Not present	For	For
UN Global Compact on Migration (vote in UN)	Against	Against	Against	Not present

Diversity within the V4

	Hungary	Poland	Czech Republic	Slovakia
Compulsory emergency relocation (2015) and infringement for failing to relocate (judgment of 2020)				
Decision	Against	In favour	Against	Against
CJEU procedure	Suing Council for annulment	Intervening for annulment (after government change)	Refraining from intervention	Suing Council for annulment
Persons relocated	0	0	12	16
Infringement for defying relocation found in 2020 by CJEU	Yes	Yes	Yes	Not sued

Signs of Deviance

Collective and individual deviations

V4 as a group / all members similarly

Certain members

Acting against the EU **values, rules and decisions**

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Hard law infringement

- **Denial of relocation** in 2015-16

- **Pushback** (Poland, Hungary)
- **Denial of protection** (Hungary)
- **Criminalisation** of irregular arrival (Hungary)
- **Inhuman treatment, illegal detention** (Hungary)

Policy / values

- **Denial of sharing responsibility** („Flexible solidarity”)
- Engendering **anti refugee discourse**

- **Harassment** of civil sector (Hungary)

Viesgrad 4 Ministers for interior declaration, 26 June 2018

„We believe that the **countries of the European Union** should seek to establish an **asylum system** that takes into account **the real needs and capacities of our societies** and the commitment of our countries to **national sovereignty**. We are convinced that **an effective return system is an integral part of a comprehensive migration management** and commit to undertake all efforts needed to further increase the rate of return of illegally staying third country nationals.

We **do not consider any system of automatic allocation** of asylum seekers between Member States as a single measure of solidarity **acceptable**, since it only results in uncertainty and further security risks, and since it generates secondary movements as well.”

Not the EU jointly

How are needs of the society relevant for protecting the persecuted?

Replacing protection with the assumption that asylum is denied

Contradiction: Dublin is also an automated allocation system, which they accepted

No reasonable explanation why not to allocate – only racist and xenophobic slogans

Déjà vu – prime ministers' statement 2021, July 9

„The deteriorating security situation in the EU's southern and eastern neighbourhood and especially in Afghanistan give rise to serious concerns. They stressed that uncontrolled illegal migration represents one of the most serious threats to the security and cohesion of the European Union and that citizens expect credible actions in tackling this phenomenon. [T]hey emphasized that the protection of borders ... along the relevant routes is an effective way to combat illegal migration.

The V4 leaders recalled that the reform of the EU asylum policy has to be based on a consensus among all Member States and has to be adopted as a package, ensuring proper balance between responsibility and solidarity. They reiterated ... that with a view to avoiding further pull factors, mandatory relocation is not a viable solution to stem illegal migration flows.”

Source: [The Visegrad Group: the Czech Republic, Hungary, Poland and Slovakia | Joint Statement of the Prime Ministers of the Visegrad Group \(20210726\)](#)

Deteriorating situation = Belarus, Afghanistan – those who escape need protection still they call it „ illegal migration” (not arrival of refugees)

Securitisation – cultural essentialism (xenophobia)

Reduction to „illegality” reacting with law-enforcement

Obscure threat – not based on TFEU

Flat refusal, with softened argumentation

HUNGARY'S IDIOSYNCRATIC ACTIONS

WHAT DID HUNGARY DO INSTEAD OF PROTECTING THE REFUGEES BETWEEN 2015-2020?

1.
IT WAS IN DENIAL

2.
DETERRED
Asylum
seekers

3.
OBSTRUCTED
access to
territory and
procedure

4.
PUNISHED
asylum
seekers and
helpers

5.
FREE RODE
Denied solidarity

7.
ENGENDERED
HATRED

6.
BREACHED
INTERNATIONAL,
EU AND
DOMESTIC LAW

ENTIRELY ERADICATING ASYLUM UNDER COVID-19 IN 2020

- Access to the territory flatly denied from March 2020 (No entry into the transit zone)
- From June 18 2020 asylum may not be requested in Hungary (Few specific exemptions exist)
- Persons without the right to stay or arriving at the border are instructed to approach either the Belgrade or the Kyiv embassy of Hungary
- There a letter of intent (to apply for protection if allowed into Hungary) must be submitted
- In 60 days it is decided if the person gets a travel certificate to enter Hungary
- Only in Hungary can she submit an application
- Rule is silent on regularly staying persons – presumably they also are expected to leave

Infringement procedure underway:

15 July 2021:

„The Commission considers that this requirement is an unlawful restriction to access the asylum procedure and is contrary to the Asylum Procedures Directive, read in light of the Charter of Fundamental Rights, as it precludes persons who are on Hungary's territory, including at the border, from applying for international protection there.

The Commission also considers that addressing the COVID-19 pandemic, which is the stated objective of the Hungarian law, cannot justify such a rule.”

Reflections based on the systems approach

ARAR'S AND FITZGERALD'S POINTS

Linkages among states (involving the V4)

- The domino of arrivals starting with the march of Syrian and other refugees and others in September 2015. Austria letting them in, on condition Germany takes them over – constant arrival in the North thereafter
- The dialectics of pushbacks (Hungary-Serbia, Poland –Belarus)
- Diaspora's and human smugglers' infrastructure determining destination
- The use of the V4 as a pressure group within the EU against relocation
 - The New Pact reflecting „flexible solidarity”

Historical processes

- Hungary receiving refugees in the early nineties from neighbouring countries with Hungarian minorities (and former annexation - Bosnia!)
- Poland allowing Ukrainians in refugee like situation to appear as regular migrants
- The orientation of the refugees from the Post-Soviet area to Slavic language speaking countries

Feedback mechanism

- The gradual closing of the Western Balkan route starting with the Hungarian fence
- That leading to the Turkish-EU member states statement in 2016

ARAR'S AND FITZGERALD'S POINTS

Integration of state policies into analysis

Hungary destroyed its once developed asylum system.

The reasons for that are **not linked to the number** of arrivals.

The securitising, majority identitarian populist **discourse and the measures** amounting to crimmigration serve purely domestic purposes of those running the country: by creating a **parallel reality** and **common enemy** the pro-government voting constituency can be kept in one bloc, enabling 2/3 majority in parliament – thereby state capture for personal goal

In Slovakia, The Czech Republic and Poland anti refugee (xenophobic, racist, religiously discriminating) discourse was used as campaign tool before the elections after 2015 even when actual numbers of asylum seekers have not justified them. There – just like in Hungary - a parallel reality was created in a securitising manner

ARAR'S AND FITZGERALD'S POINTS

Role within the global / regional **system**

Geographic proximity is morally irrelevant – then who should provide the public good of protection globally and regionally?

Why would Lebanon be more obliged to protect Syrian refugees (or Iran to protect Afghanis, or Kenya Somalis, etc.) **than Italy, Germany or Finland?**

Protection globally is a **public good** to which every member state of the global community should contribute. **Free riding** is immoral and antisocial

The **impact of the V4 on the EU:**

- Effectively **blocking a** rational and practical **responsibility sharing**
- **Pushing the EU towards externalisation** – acting against the core values of the EU
- **Promoting the securitising approach** as reflected in the New Pact

Demise or solidarity

EU at present

Increases coercive tools

(keeping out, penalizing for entry, detaining, transferring between countries by force = more of the policy which did not work)

Pursues externalisation

Struggles with finding a principle for (flexible) solidarity

„Deterrence paradigm“
Gammeltoft-Hansen and Tan

EU should „Sollen“

See itself as a unified protection space

Introduce significant resettlement quotas and/or humanitarian visas

Contribute more to stopping the crises in the countries of origin

Open up wider routes of regular immigration

Effectively remove those without the right to stay

(SOME) AVAILABLE OPTIONS

Decision making on asylum requests at the European level by EU agencies, on behalf of the EU (K. Hailbronner, G Goodwin-Gill)

Decision making at national level under national law, but with the active and intensive participation of EU staff (Heijer, Rijpma, Spijkerboer)

Conceivable arrangement: asylum seekers choose their country of preference which conducts the RSD. All costs associated with the reception, the procedure, the integration or the removal are aggregated and redistributed across the EU

Boldizsár Nagy's selected publications

~ (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;

~ ~*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;

~ From Reluctance to Total Denial. Asylum Policy in Hungary 2015 - 2018, in: Vladislava Stoyanova and Eleni Karageorgiou (eds) *The New Asylum and Transit Countries in Europe During and in the Aftermath of the 2015/2016 Crisis*, Brill, 2019, pp. 17 – 65;

~ (With Kriszta Kovács): In the hands of a populist authoritarian: The agony of the Hungarian asylum system and the possible ways of recovery in: Vladislava Stoyanova and Stijn Smet(eds) *Migrants' Rights, Populism and Legal Resilience in Europe* (CUP, 2021 forthcoming

THANKS!

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