

FROM RELUCTANCE TO TOTAL DENIAL.

ASYLUM POLICY IN HUNGARY 2015 -2017

Presentation by

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international conference:

*Asylum at the Frontiers of Europe: Realities
and Legal Challenges*

Lund University, 11 May 2017

Viktor Orbán, Prime Minister of Hungary, giving an interview to the national public radio, on 28 April, 2017

„If Hungary is attacked, the Prime Minister must go to the scene of the attack.”

„We have troublesome and quarrelsome political opponents backed by financial speculators who incite these representatives [of the EP] to attack Hungary from time to time.”

„The other, weightier, issue is our legislation on **migrants**, which has been **targeted by the Commission, George Soros and NGOs**. They want Hungary to **dismantle the fence**, to change its legislation, and **to let in illegal migrants**; or, even if we don't let everyone in, **to at least provide freedom of movement** within Hungary for people appealing against rejection of their entry applications. **Such free movement is not possible today**: we've prevented it, and this is what the “**container camp**” and the transit zone are all about. So there has been **an attack on Hungarian policy against illegal immigration**, and we are approaching the end of a lengthy process of consultations which may well result in the launch of infringement proceedings”

THE ORDERS OF MAGNITUDE (STATISTICS)

APPLICATIONS AND RECOGNITIONS IN HUNGARY

Year	Applicant	Recognised as refugee	Subsidiary protection	Non- refoulement
2000	7 801	197	–	680
2001	9 554	174	–	290
2002	6 412	104	–	1 304
2003	2 401	178	–	772
2004	1 600	149	–	177
2005	1 609	97	–	95
2006	2 117	99	–	99
2007	3 419	169	–	83
2008	3 118	160	88	42
2009	4 672	177	64	156
2010	2 104	83	132	58
2011	1 693	52	139	14
2012	2 157	87	328	47
2013	18 900	198	217	4
2014	42 777	240	236	7
2015	177 135	146	356	6
2000–2015 Total	287 469	2 310	1 560	3 834

Source:
Hungarian
Statistical office
http://www.ksh.hu/docs/hun/xstadat/xstadat_eves/i_wvnv03.html

ARRIVALS, COUNTRIES OF ORIGIN, HUNGARY, 2016

Citizenship	2016
Afghan	11 052
Syrian	4 979
Pakistani	3 873
Iraqi	3 452
Iranian	1 286
Moroccan	1 033
Algerian	710
Turkish	425
Somali	331
Bangladeshi	279
Kosovar	135
other	1 877
Total	29 432

Source:
Immigration and
Asylum Office:
Booklet on Statistics
http://www.bmbah.hu/index.php?option=com_k2&view=item&layout=item&id=492&Itemid=1259&lang=en
20170305)

HUNGARIAN DECISIONS 2015-2016

	2015	2016
Total number of applicants	177 135	29 432
Refugee Status	146	154
Subsidiary Protection	356	271
Non-refoulement	6	7
Termination of procedure	152 260	49 479
Rejection	2 917	4 675
Pending Cases (on December 31 of present year)	36 694	3 413

Source:

Immigration and Asylum Office:: Booklet on Statistics

http://www.bmbah.hu/index.php?option=com_k2&view=item&layout=item&id=492&Itemid=1259&lang=en 20170305)

HUNGARIAN DATA - 2017 FIRST QUARTER

	Q1 2016	Q1 2017
Total number of registered asylum seekers	7 182	1 290
European	150	25
Non-European	7 032	1 265

Number of decisions made by the Asylum Authority

	Q1 2016	Q1 2017
Acknowledgement as refugee	39	19
Acknowledgement as subsidiary protected person	109	53
Acknowledgement as person authorised to stay	4	7
Termination	29 577	1 622
Refusal	846	2 131

Citizenship	Q1 2017	In the % of all the cases
Afghan	536	41,55%
Iraqi	258	20,00%
Syrian	201	15,58%
Pakistani	104	8,06%
Algerian	54	4,19%
Iranian	25	1,94%
Moroccan	18	1,40%
Nigerian	11	0,85%
Turkish	10	0,78%
Palestinian	7	0,54%
other	66	5,12%
Total	1 290	100,00%

From bad to worse

2015 - 2017 several amendments of the Asylum Act and related acts

2015 twice, 2016 and 2017

All of them tightening the rules, restricting access to territory and procedure

From harmonisation with EU law and utilising its (restrictive) tools to aggressively attacking the EU asylum policy

ACCESS TO TERRITORY

The fences

The first fence

A barbed wire dual fence at the Serbian-Hungarian border called a “temporary security border closure” completed on 15 September 2015 and its continuation at the Hungarian-Croatian border, completed on 16 October 2016



Fences

The second (parallel) fence

Started on 27 February 2017 finished on 28 April 2017, a second 155 km long line of fence, only at the Serbian-Hungarian border, a few meters from the first, equipped with electronic devices to register any attempt to cross and alarm the law enforcement agents. (Video and night vision devices, touch sensors)



Source: Ásotthalomnál már épül az okoskerítés (The clever fence being built at Ásotthalom) Délmagyar, 27 February 2017 at http://www.delmagyar.hu/szeged_hirek/asotthalomnal_mar_epul_az_okoskerites/2509001 and Elkészült a második kerítés (The second fence is ready) <http://www.origo.hu/itthon/20170428-elkeszult-a-ketsoros-keritesrendszer-masodik-keritese-a-magyar-szerb-hatarszakaszon.html> (20170504)

Punishment of irregular crossing of the fence

A maximum of **three years imprisonment** threatens all who **cross the fence illegally** (Article 352 A of the penal Code).

The **damaging of the fence** is a separate crime with a maximum penalty of **five years** imprisonment. (Article 352 B)

Crossing the international border at sections **where no fence** has been erected—e.g. the Hungarian-Romanian border — **remains a minor offence.**

The relocation of control beyond Hungary

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externalisation

- Repeated calls by the government to stop asylum seekers and other migrants before they reach the EU-s external borders. Suggestions to establish reception centres in Libya or Egypt.

See also the „German-French note” of 17 February 2017

- V. Orbán, PM: „**The European Union should set up a ,giant refugee city’ on the Libyan coast and process asylum claims there** from refugees arriving from other African countries, Hungarian Prime Minister Viktor Orban said on Saturday [24 September 2016]” - speaking in Vienna after a summit of European and Balkans countries on the refugee crisis, Reuters reported.

The relocation of control – expanding the border internally
Spreading it first to an 8 km wide zone then to the whole country

„Border procedure” = the „8 km rule” in force since 6 July 2016 = Art 71/A of the Asylum Act (2007/LXXX,)

„Procedural rules for a crisis situation caused by mass immigration” = apply on the whole territory = Art. 80 H – K of the Asylum Act, in force since 28 March 2017

If an “illegally present” third country national is apprehended

- “within an 8 kilometre strip from the border line or border sign of the external border” of the EU,
- anywhere in the country /after 28 March 2017 until crisis situation in force/
- then this person may be forcefully escorted to the fence and pushed through using the doors available in the fence
- with a view towards making this person submit their application for protection from outside, by approaching the transit zone from the external side—i.e. from the Serbian green border.

The fiction of not having entered Hungary – border procedure

Asylum Act, § 71/A

„If the foreigner submits his/her application

a) **before entering** the territory of Hungary, [or after being escorted through the gate to the external side of the border] in the transit zone” then

- he/she is **not entitled to stay on the territory** of Hungary (and to a temporary residence permit). (§ 71/A (2))
- „**After** the expiry of **4 weeks** from filing the application, the alien police **authority shall authorise entry** [into Hungary] on the basis of the law” (§ 71/A (4))

 No guarantees related to detention apply, neither are most of the reception conditions provided.

The fiction of not having entered Hungary

Amuur v France (App. No. 17/1995/523/609 (June 25, 1996),

„Despite its name, the international zone does not have extraterritorial status.” (§ 52);

„holding the applicants in the transit zone of Paris-Orly Airport was equivalent in practice, in view of the restrictions suffered, to a deprivation of liberty” (§ 49)

„The mere fact that it is possible for asylum-seekers to leave voluntarily the country where they wish to take refuge cannot exclude a restriction on liberty... Furthermore, this possibility becomes theoretical if no other country offering protection ... is inclined or prepared to take them in” (§ 48)

Border and crisis procedures – coerced removal

Government regulation 36/2017. (III. 6.) extends crisis situation caused by mass immigration till **7 September 2017.**

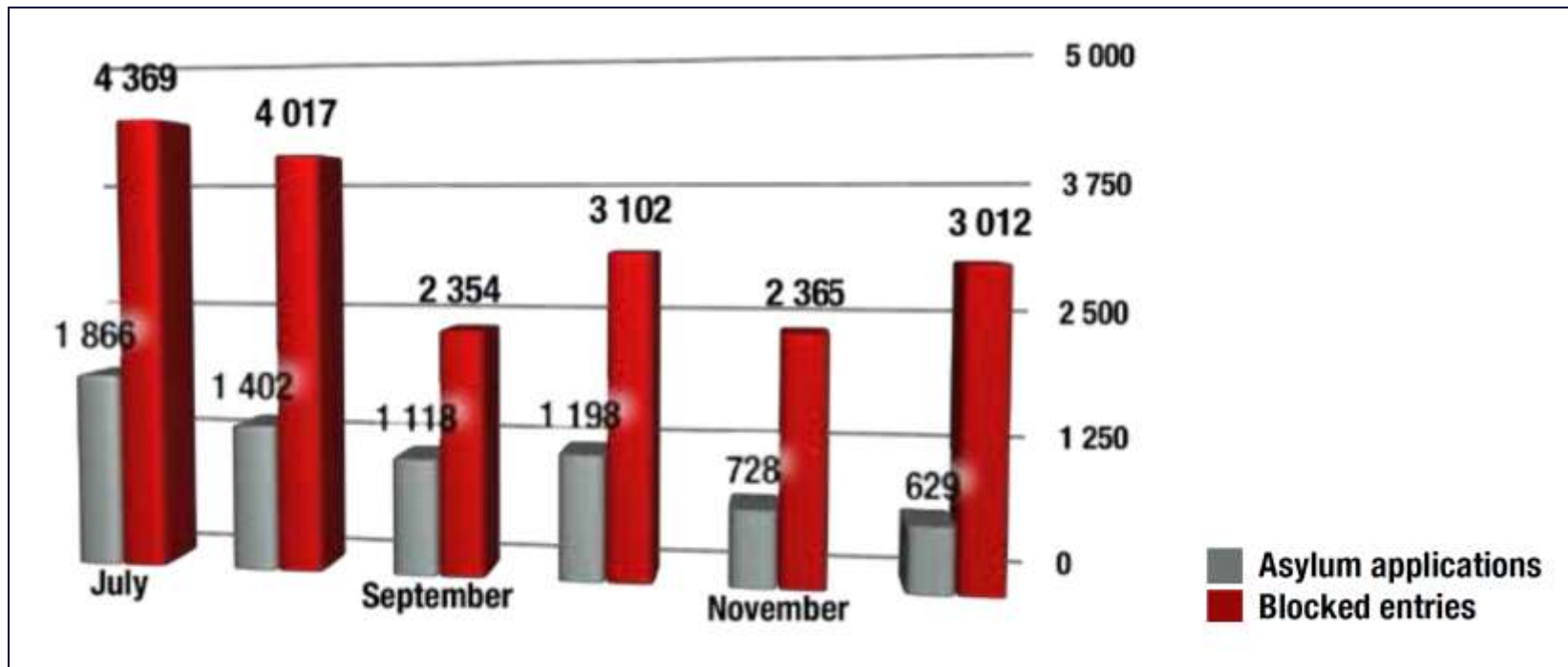
None of its preconditions fixed in the law are met.

(For conditions see the notes to this slide)

No return decision or expulsion order adopted, no procedure according to the return directive (DIRECTIVE 2008/115/EC) applied, **no judicial control over the use of coercion.**

The „other side of the fence” is **still Hungarian jurisdiction** for a few meters. **Re-entering Serbia** through the green border is **illegal according to Serbian law**

Push backs to beyond the fence (Blocked entry)



„[B]etween 5 July and 31 December 2016, 19,219 migrants were denied access (prevented from entering or escorted back to the border) at the Hungarian-Serbian border”

Pushed Back at the Door: Denial of Access to Asylum in Eastern EU Member States

[Report, covering: Bulgaria, the Czech Republic, Hungary, Poland, Slovenia]

Hungarian Helsinki Committee, 2017, pp. 12 - 13

Violence at the border - Informal collusion with Serbia

Repeated reports on violence against those pushed back

„ ,While acknowledging the authorities' recent efforts to address police violence, **we remain very concerned about highly disturbing reports of serious incidents of ill-treatment and violence against people crossing the border into Hungary**, including by State agents,' **Grandi** said. ,These unacceptable practices must be brought to an end and I urge the Hungarian authorities to further investigate any allegation of abuse and violence,' he added.”

UNHCR urges suspension of transfers of asylum-seekers to Hungary under Dublin
10 April 2017

<http://www.unhcr.org/news/press/2017/4/58eb7e454/unhcr-urges-suspension-transfers-asylum-seekers-hungary-under-dublin.html> (20170507) See also *Pushed Back at the Door: Denial of Access to Asylum in Eastern EU Member States*

Gentlemen's agreement with Serbian authorities: signing up for a list – daily 5-6 admissions to each of the two transit zones – waiting in Serbia

→ **max 3500 – 4000** application/year

ACCESS TO RSD

**THE EXCEPTIONAL BECOMES THE
RULE**

Transit zones in the border procedure

Since September 15, 2015 – the completion of the fence

The “transit zones” at the Serbian Hungarian border (at **Röszke** and at **Tompa**) are parts of the fence.



They consist of a series of containers which host public officials responsible for refugee status determination procedures.

- Police who record the flight route,
- Refugee officer deciding on admissibility of the claim
- Judge — or a court clerk— in a “court hearing room,” or through internet communication to adjudicate the case.

Border procedures – if no crisis situation announced

On 15 September 2015 a new **border procedure** was introduced,
only applicable **in the transit zone**.

**Not linked to crisis situation,
only to arrival from the south**

Detention + extremely **fast procedure** + **no real** access to **legal assistance** + dramatically **reducing legal remedies**.

Fiction of not having entered Hungary.

The procedure **only** extends to the **admissibility** phase. Once admissible (no safe third country), or belonging to a vulnerable group the applicant is to be allowed to enter the country and the normal reception conditions must be provided.

Decision on admissibility within **8 days**. Time for appeal: **7 days**. „Court” review: within **8 days**

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 procedure applicable in case of a crisis situation caused by mass immigration

Personal scope: **all asylum seekers** (except if detained or regularly in Hungary)

Material scope: **admissibility + merits**

Procedure:

- **Escorting back** to the transit zone/gate in the fence **from the whole territory** of Hungary (not only from the 8 km stripe)
- **First decision** (admissibility or merits) – if accelerated procedure: within **15 days**, if „normal” within **60 days**.
- **Appeal: 3 days** (No appeal if denies fingerprint or leaves the zone)
- Court hearing may be done by **clerk** (apprentice judge, not a full judge) . **No presence** required hearing may take place **over electronic device**.
- **In principle 128 days** (60 + 8 + 60) for completion of the two stage procedure (administrative + court review), —→ **detention during the whole procedure**, including appeal (Border procedure: 8 days to decide)

The combined effect of the 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.”

SAFE THIRD COUNTRY RULES

Serbia – not a safe third country

„ In any event, **UNHCR maintains** the position taken in its observations on the Serbian asylum system in August 2012 **that asylum-seekers should not be returned to Serbia.**”

UNHCR: *Hungary as a country of asylum*, **May 2016**, p. 25

NGOs share the view (Hungarian Helsinki Committee, ProAsyl)

Practically all irregularly arriving asylum seekers come through Serbia, and presently **their application is declared inadmissible** on safe third country grounds.

DUBLIN – FREE RIDING

Dublin

Transfer to Hungary blocked in several states either in individual cases or in general

(Austria, Belgium, Czech Republic, Finland, France, Italy, Luxembourg, the Netherlands, Norway, Slovakia, Sweden, Switzerland, UK)

Hungarian Helsinki Committee info as of December 2016

www.helsinki.hu/wp-content/uploads/Summary-bans-Dublin-transfers.pdf (20170507)

After the entry into force of the new legislation on 28 March 2017 **UNHCR** issued a communication calling for the **stop of all Dublin transfers**:

“Given the **worsening situation** of asylum-seekers in Hungary, I **urge States to suspend any Dublin transfer** of asylum-seekers to this country **until** the Hungarian authorities bring their **practices and policies in line with European and international law**,” – Filippo **Grandi**, UN High Commissioner for refugees

Dublin

Ibrahimi and Abasi v SSHD – High Court judgement of 5 August 2016. [2016] EWHC 2049 (Admin)

„...the presumption that Hungary qua EU Member State adheres to the *acquis Communautaire* and can be relied upon to respect relevant international law and ECHR rights of the Claimants cannot carry much weight. The objective facts suggest otherwise.” (§ 159)

Judge Green established the risk of refoulement (§ 160)

DETENTION

„The Special Rapporteur would like to emphasize that there is no empirical evidence that detention deters irregular migration or discourages persons from seeking asylum. Despite increasingly tough detention policies being introduced over the past 20 years in countries around the world, the number of irregular arrivals has not decreased. This may be due, inter alia, to the fact that migrants possibly see detention as an inevitable part of their journey”

Para 8 of the report

TWO MAJOR FORMS OF DETENTION

„Asylum detention”

– since 2013 July 1 Article 31/A

in order to conduct the asylum procedure and to secure the Dublin transfer

- a) the **identity or citizenship** unclear
- b) Application only to **delay or frustrate** the performance of the expulsion,
- c) to establish **basis of claim** when risk of **absconding**
- d) national **security or public order**,
- e) **airport procedure**, or
- f) **Dublin transfer**

Maximum duration: 6 months

Holding in the „transit zone”

Under **border procedure** (Art. 71/A) **four weeks**

In situations of crisis caused by mass immigration:
unlimited! (Until final /court/ decision)

Government: denies that it is detention.

ECtHR it is!

Ilias and Ahmed judgment
2017

The third form is „alien’s detention” in principle transformed into asylum detention if the detained applies for asylum

ILIAS AND AHMED V. HUNGARY

(APPLICATION NO. 47287/15)

ECTHR JUDGMENT, 17 MARCH 2017

Transit zone = state territory under state control → Hungary
can not claim „not entered territory”

„The applicants in the present case were confined for over three weeks **to the border zone** – a facility which, for the Court, bears a strong resemblance to an international zone, both **being under the State’s effective control irrespective of the domestic legal qualification.**”

ILIAS AND AHMED v. HUNGARY

(APPLICATION NO. 47287/15)

ECTHR JUDGMENT, 17 MARCH 2017

„The difference between deprivation of and restriction upon liberty is one of degree or intensity, and not of nature or substance” (53)

„The notion of deprivation of liberty within the meaning of Article 5 § 1 contains both an **objective element** of a person’s **confinement in a particular restricted space for a not negligible length of time**, and an additional **subjective element** in that the person **has not validly consented** to the confinement in question” (§ 53)

Holding asylum seekers in the „transit zone” „amounts to deprivation of liberty irrespective of its domestic characterisation.” (§ 66)

Ilias and Ahmed **could only leave if they gave up their application** and illegal re-entered Serbia – that can not be expected, detention was against their will.

Summarising

Contempt of the law

- **Building the fence** in violation of domestic law on the environment and on construction
- **Extending the crisis situation** (in time and geographically) without meeting the legal conditions
- Repeatedly **curtailing the procedural and the material rights of the asylum seekers**, in respect of effective remedies, access to reception conditions and in an increasing measure concerning their human dignity
- **Ignoring EU law (and international law) on** preconditions of **return** to a (safe) third country
- Constantly **violating the Dublin regulation** by hindering take charge and take back
- **Breaching the rights of minors** to interpretation and translated documents in the criminal procedure
- Rule on **keeping** even **minors** of the age of 14 – 18 **detained**

FROM RELUCTANCE TO TOTAL DENIAL

„New Asylum Countries” published 15 years ago:

I offered **an optimistic and a pessimistic reading** of the previous 10 years of asylum law in Hungary

In 2017 the reading is **pessimistic**:

In 2015 the large number of arriving persons **justified extraordinary measures**, especially aimed at accelerating and simplifying the procedure. All that **(largely) within the frame of the EU acquis**

By 2017 Hungary **has left EU and International refugee law behind**: the earlier reluctance to obey the law turned into **a total denial**. The non-performance of the obligations **is based on the denial of reality**. The figure of the asylum seeker has been replaced by the „Threatening Other”, the „illegal migrant” who according to the securitising language used is nothing but a threat to the culture and to the national security.

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 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**.

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

Thanks!

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