

Legal and political responses to the refugee (law) crisis in the Visegrad countries

Presentation by

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„Borders, Borderlands and Migration”

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



THE ORDERS OF MAGNITUDE (STATISTICS)

First time applications and recognitions, V4

Country	2015		2016		2017		2018	
	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 Jan-May	Protection 1st Q
Czech Republic	1.525	460	1.475	435	1.445	145	645	45
Hungary	177.135	505	29.430	395	3.390	1.295	405	245
Poland	12.190	640	12.305	305	5.045	510	1.765	130
Slovakia	330	80	145	225	160	65	90	5

Source: Eurostat,

Asylum and first time asylum applicants by citizenship, age and sex Annual aggregated data (rounded) [migr_asyappctza] Last update: 24-08-2018

Asylum and first time asylum applicants by citizenship, age and sex Monthly data (rounded)[migr_asyappctzm] Last update: 24-08-2018

First instance decisions on applications by citizenship, age and sex Quarterly data (rounded)[migr_asydcfstq] Last update: 29-08-2018

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 2018

CZECH REPUBLIC			HUNGARY		
	#	(%)		#	(%)
Ukraine	75	25	Afghanistan	115	41
Georgia	40	13	Iraq	100	36
Iraq	25	8	Syria	25	9
Uzbekistan	20	7	Iran	20	7
Russia	15	5	Pakistan	10	4
Other	125	42	Other	10	4

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

Source: <https://ec.europa.eu/eurostat/statistics-explained/pdfscache/13562.pdf> (20180830)

POLAND		
	#	(%)
Russia	405	69
Ukraine	45	8
Azerbaijan	15	3
Iraq	15	3
Belarus	10	2
Other	100	17

SLOVAKIA		
	#	(%)
Iraq	10	18
Azerbaijan	5	9
Iran	5	9
Syria	5	9
Vietnam	5	9
Other	25	45

THE OVERALL PICTURE

Isolationism – ethnicism - engagement

Hungary

	Regular	Irregular („illegal“)	Forced
Ideology / political discourse	„Migration is bad“ Péter Szijjártó, Hungarian Minister of Foreign Affairs in the UN (HRC) Withdrawal from Global Compact on Migration negotiations	Securitization We protect Europe Crimmigration	Securitization and denial They are „illegal immigrants“ Resisting relocation and resettlement
Practice	Settlement bond Ethnic preference Large scale emigration from Hungary	Hardly any removal	Barring access to territory , obstructing access to protection, constant detention

Visegrad four (Czech Republic, Hungary, Poland, Slovakia)

	Regular	Irregular	Forced
Ideology / political discourse	EU mobility: welcome	Emphasis on „defending“ the external border	Resisting relocation and resettlement Slovakia, Poland: religious preference
Practice	Czech Republic: ethnicisation after separation from Czechoslovakia	Hardly any removal	Poland: access for Ukrainians as if they were regular migrants

The European Union

	Regular	Irregular	Forced
Ideology / political discourse	EU's core principle – full openness for EU+ citizens Global regular migration beneficial	Voluntary departure preferred Need for more effective removals	Ad hoc and permanent relocation (responsibility sharing). Resettlement of 50 000 Disembarkation system to save lives
Practice	Family unification and competition for qualified workforce from 3rd countries	Efforts to prevent access to territory Restoration of internal border controls	Germany, Sweden, Austria left alone Hypocritical efforts for externalisation (Turkey, Libya) Hotspots and planned controlled centers

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

THEORETICAL 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. Khurshheed 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.

HUNGARY'S IDIOSYNCRATIC ACTIONS

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 INTERNATIONAL, EU AND DOMESTIC LAW

7.
ENGENDERS HATRED

DENIAL

- **Never calling** persons arriving irregularly **as asylum seekers/ refugees** - only using „illegal immigrants”
- **Denying the refugeehood** (asylum seeker quality) = denial of the personality and fate – denying **the agency of the migrants** - denying the duty to assist
- **Denying** that **NGO-s** assisting migrants **are performing a socially useful function** – calling them „fake civil organisations” and agents of George Soros
- In general, **denying the benefits of (regular) migration** and denying that Hungarians living abroad are in fact migrants (Withdrawal from the Global Compact on Migration - 2018 June)
- **Denying the autonomy** of the **European Parliament, the Venice Commission, the European Court of Human Rights even the UN** - claiming they are all influenced by George Soros (EP, Sargentini Report, vote, 2018 September 12)

In essence: creating a **parallel reality**, in which the **asylum seekers are potential terrorists** and **cultural threats** against whom the country must be defended.

Any actor speaking or acting on their behalf is an agent of the **evil** George Soros and so the **enemy of the nation**

**Securitisation, majority
identitarian populism**

DETERRENCE

- The **fence at the borders of Hungary and Serbia and Croatia** (the Western Balkan route) completed on 15 September and 15 October, 2015 - In fact only diverted the route.
 - **Four** different legal **forms of detention**
 - **Starving asylum seekers** denied protection at first instance (suspended after repeated ECtHR interventions) 2018
-
- **Immigration tax** (Since 2018) of an immigration supporting activity „that is directly or indirectly aimed at promoting immigration (the permanent relocation of people from their country of residence to another country” (excluding persons enjoying EU rights)
 - a) **media campaigns** and media seminars and participating in such activities;
 - b) **organising education**;
 - c) building and operating **networks** or
 - d) propaganda activities that **portray immigration in a positive light**.
 - **Stigmatising the civil sector** (NGOs) Obligation to register as such and indicate on every publication that the NGO is an „**organisation receiving foreign funding**” (2017)

OBSTRUCTION

- Applying **safe third country** rules to **Serbia** (since 2015)
- **2018: new inadmissibility ground**: the person came through a county where the person had not been subject to persecution or the risk of serious harm, or „**adequate protection**” is available
 - more permissive than EU safe third country rules
- Declaring „**crisis situation caused by mass immigration**” – applying exceptional rules and powers – practically no regular RSD procedure is conducted. **Asylum procedures are only conducted in the transit zones at the border** (for the whole country since 2017) Extending the crisis situation without its conditions being met since 2015
- **Accelerated and inadmissible procedures** – short deadlines – removal decision before appeal phase ends
- **Removal from the whole territory** of the country if found in an irregular situation and applying for international protection (since 2017) „escort through the fence”
- **Limited access to the transit zone** - the only entry point (1 person/day in Röszke and Tompa respectively)
- **Closure** of the major open **refugee reception centers** (in 2015-2016)
- **Denial** of all **integration** assistance - 1 month in reception center after recognition (since 2016)

PUNISHMENT

■ Criminalising

- the **crossing of the fence** and assisting it (crime since 2015)
- „**Aiding and abetting illegal immigration**” (crime since 2018)

a new crime beyond the already existing human smuggling and assisting illegal residence - seriously **condemned by the Venice Commission and OSCE**
Venice Commission Opinion 919/2018 - CDL-AD(2018)013

- **Banning everyone from within 8 kilometers of the Schengen external border** – including inhabitants, if guilty in aiding and abetting illegal immigration (since 2018)
- **Extending the crime of human smuggling** to acts purely within the country (since 2015)

NO SOLIDARITY WITH THE EU – FREE RIDING

- „Waving through” approximately 240 000 persons without registering, fingerprinting (2015)
- Encouraging registered asylum seekers to move on to Austria/Germany (170 000) (In 2015)
- Diverting the Western Balkan route to Croatia and Slovenia with the fence (2015)
- Denial of participating in
 - Relocation of asylum seekers from Greece and Italy (since 2015)
 - Resettlement from outside of the EU (since 2015)
- Vehemently objecting any proposal (including „Dublin IV”) of a compulsory solidarity mechanism within the EU (since 2015-2016)
- Practically not receiving Dublin transfers from other EU countries (since 2015)

BREACHES OF LAW

International law:

- **Articles 31 and 33 of the Geneva Convention** relating to the Status of Refugees (No punishment for irregular entry, non-refoulement)
- **Article 3** (Inhuman treatment) and **5** (rules on detention) **of the European Convention of Human Rights**
 - EU law:
- **Infringement procedures** started:
 - 2015, extended in 2017: **procedural matters, reception conditions, rules on return** - Referred to the CJEU in July 2018
 - 2017: Non performance of the **relocation** decisions - Referred to the CJEU in December 2017
 - 2017: Hungarian law on **foreign-funded NGOs** – breaches freedom of association, private life and freedom of movement of capital
 - 2018: Criminalising assistance to asylum seekers – letter of formal notice July 2018
 - Domestic law:
- **Freedom of expression** rules, **privacy rules**, lack of basis for crisis situation, breach of **environmental rules** when building the fence,

ENGENDERS HATRED

Against the asylum seekers and migrants in general:

- **Three „national consultations”** (letters to every adult = 8 million persons)
 - 2015 Combining migration and terrorism
 - 2017 „Let us stop Brussels” – against the „EU” „forcing in illegal immigrants”
 - 2017 „Stop Soros” again against the planned compulsory allocation system (Dublin IV)
- **Referendum, 6 October 2016:** Should the EU be „entitled to prescribe the mandatory settlement of non-Hungarian citizens in Hungary without the consent of the national Assembly” – outcome invalid due to the relatively small participation rate
- **Amendment of the Fundamental Law** (failed in 2016, succeeded in 2018 due to the regained 2/3 majority)
„Foreign population may not be settled into Hungary”



Against the civil and academic sector

involved in asylum and migration matters
Constant – frequently in personam –
attacks in pro-government media.

„Sargentini prepares for the next week meeting of the EP with the people of Soros in Budapest and Brussels” - Article in the pro-government daily, Magyar Hirlap online, 5 September 2018



**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	In preparation	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
UN Global Compact on Migration	Withdrew	In	In	In

Diversity within the V4

	Hungary	Poland	Czech Republic	Slovakia
Compulsory emergency relocation (2015)				
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 proc. against the country started	Yes	Yes	Yes	No

CONCLUSION

**DEMISE OR
SOLIDARITY**

**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

HUNGARY AND THE V4

The V4 are

united against compulsory allocation of asylum seekers and on the wish to externalise refugee protection (limit irregular in-migration) but

divided on their vision of the EU and many core issues

and the Czech Republic, Poland and Slovakia refrained from denying refugees' and migrants' rights guaranteed in international and EU law.

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

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**

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**

„Deterrence paradigm“
Gammeltoft-Hansen and Tan

(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 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
- ~ *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/>
- ~ Renegade in the club. Hungary's resistance to EU efforts in the asylum field. *Osteuroparecht, Fragen zur Rechtsentwicklung in Mittel- und Osteuropa sowie den GUS-Staaten* 63. Jahrgang, Heft 4|2017 „Rechtsdurchsetzung durch die EU“ pp. 413 – 427

Boldizsár Nagy's pertinent publications

- ~ Magyarország a nemzetközi vándorlásban [Hungary in international migration] in: *Az interkulturális megközelítés - Pedagógiai segédanyag az Artemisszió Alapítvány képzéseihez [Intercltural approach – pedagogical materials for the trainings of the Artemisszio Foundation]* Budapest Artemisszó Alapítvány, 2017, pp. 76-86
- ~ (with many others) Guild, Elspeth and Basaran, Tugba (eds) First Perspectives on the Zero Draft (5 February 2018) for the UN Global Compact on Safe, Orderly and Regular Migration Queen Mary University of London, School of Law, Legal Studies Research Paper No. 272/2018
- ~ (with the contribution of Pál Sonnevend) Kein Asyl, keine Solidarität. Ungarns Asylrecht und Asylpolitik in 2015-2017 in: Darák, Péter; Kube, Hanno; Molnár-Gábor, Fruzsina; Reimer, Ekkehart Hrsg.), *Freiheit und Verantwortung: Grund- und Menschenrechte im Wandel der Zeit in Ungarn und in Deutschland* (Heidelberg, Universitätsverlag Winter, 2018) pp 145 – 177
- ~ with Pál Sonnevend: Das Asylrecht als Mittel der Isolation – Das Beispiel Ungarns, in: Anderheiden, Michael; Brzózka, Helena, Hufeld, Ulrich; Kirste, Stephan (eds) *Asylrecht und Asylpolitik in der Europäischen Union Eine deutsch-ungarische Perspektive [Asylum Law and Asylum Policy in the European Union. A German-Hungarian Perspective]* Nomos, Baden-Baden, pp. 217 - 256
- ~ 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, pp. 17 – 65 forthcoming

THANKS!

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„Government info” –billboards on the streets in Hungary, April 2018

