

# **ERWEITERUNG DER EUROPÄISCHEN UNION UND TITEL IV EGV RECHTSAKTE (VISA, ASYL, EINWANDERUNG)**

Vortrag an der Tagung internationales, europäisches  
und österreichisches Asyl- und Flüchtlingsrecht

Rechtsakademie,  
Universität Salzburg,  
18 Oktober 2003.

# Photo of Javier Balauz



# Photo of Javier Balauz



# The structure of this talk

- The accession process
- The conceptual dilemma. Freedom of movement (and migration) vs. sovereign control (security)
- A closer look at Hungarian and Central European data and processes
- General (theoretical) considerations
- Critical elements in the acquis and its reception
  - Civilize or brutalize?
  - Wandering concepts – moving target
  - Taking critical stock of the EU legislative process
  - National laws under scrutiny
- What lies ahead?
- Conclusion in an indeterminate mood – competing narratives of the past
- Nine intriguing questions

# The accession process

- In 1993 the Copenhagen European Council made the historic promise that „ the countries in Central and Eastern Europe that so desire shall become members of the Union. Accession will take place as soon as a country is able to the obligations of membership by satisfying the economic and political conditions". That political declaration, made at the highest level, was a solemn promise that will be honoured.
- ....
- This is more than just an enlargement. It means, in fact, bringing our continent together. We are moving from division to unity, from a propensity for conflict to stability, and from economic inequality to better life-chances in the different parts of Europe.

Strategy Paper Regular Reports from the Commission on  
Progress of Accession by each of the Candidate Countries  
November 8, 2000

- The Copenhagen European Council stated:  
"membership requires that the candidate country has achieved stability of institutions guaranteeing democracy, the rule of law, human rights, and the respect for and protection of minorities".
- Article 6 Maastricht Treaty:  
"The Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms and the rule of law".
- Art. 7 Maastricht (and 58 of planned Constitution): sanctions in case of serious and persistent breach of Art 6 principles

# THE ASSOCIATED COUNTRIES AND THE EUROPEAN UNION

| <i>Country</i>        | <i>Association Agreement signed on</i> | <i>Accession application submitted on</i> | <i>Accession Treaty, Act of Accession and Annexes signed on</i> |
|-----------------------|--|---|---|
| <b>Bulgaria</b>       | <b>1-3-1993</b>                        | <b>14-12-1995</b>                         | <b>?</b>  |
| <b>Cyprus</b>         | <b>19-12-1972</b>                      | <b>3-07-1990</b>                          | <b>16-4-2003</b>  |
| <b>Czech Republic</b> | <b>6-10-1993</b>                       | <b>17-1-1996</b>                          | <b>16-4-2003</b>  |
| <b>Estonia</b>        | <b>12-6-1995</b>                       | <b>24-11-1995</b>                         | <b>16-4-2003</b>  |
| <b>Hungary</b>        | <b>16-12-1991</b>                      | <b>31-3-1994</b>                          | <b>16-4-2003</b>  |
| <b>Latvia</b>         | <b>12-6-1995</b>                       | <b>13-10-1995</b>                         | <b>16-4-2003</b>  |
| <b>Lithuania</b>      | <b>12-6-1995</b>                       | <b>8-12-1995</b>                          | <b>16-4-2003</b>  |
| <b>Malta</b>          | <b>5-12-1970</b>                       | <b>3-7-1990</b>                           | <b>16-4-2003</b>  |
| <b>Poland</b>         | <b>16-12-1991</b>                      | <b>5-4-1994</b>                           | <b>16-4-2003</b>  |
| <b>Romania</b>        | <b>8-2-1993</b>                        | <b>22-6-1995</b>                          | <b>?</b>  |
| <b>Slovakia</b>       | <b>6-10-1993</b>                       | <b>27-6-1995</b>                          | <b>16-4-2003</b>  |
| <b>Slovenia</b>       | <b>10-6-1996</b>                       | <b>10-6-1996</b>                          | <b>16-4-2003</b>  |
| <b>Turkey</b>         | <b>12-9-1973</b>                       | <b>14-4-1987</b>                          | <b>?</b>  |



## Major steps of negotiations

- 1996 – 97: Questionnaire to candidates and avis based on responses
- 31 March 1998 negotiations start with 6 states (Cz, Cy, Ee, Hu, Pl, SI)
- 15 February 2000 negotiations start with the next 6 states (Bg, Lv, Lt, Mt, Ro, Sk)
- Nice, 2000 EU ready for enlargement by end 2002
- Laeken, 2001 December negotiations could be concluded with 10 by end of 2002
- December 2002: negotiations actually completed with all, except for Romania and Bulgaria (who are expected to conclude them by 2004)
- 16 April 2003 Athens: signing of the Accession treaty the Act of Accession its 17 annexes, appendices thereto and 9 protocols

# Support for the accession as expressed in the referenda

| Country        | Binding,    | Date              | Turnout | In favour | Against |
|----------------|-------------|-------------------|---------|-----------|---------|
| Malta          | Non-binding | 8 March 2003      | 91      | 53.65     | 46.35   |
| Slovenia       | Non-binding | 23 March 2003     | 60.29   | 89.61     | 10.39   |
| Hungary        | Binding     | 12 April 2003     | 45.62   | 83.76     | 16.24   |
| Lithuania      | Binding     | 10-11 May 2003    | 63.3    | 91.04     | 8.96    |
| Slovakia       | Binding     | 16-17 May 2003    | 52.15   | 92.46     | 6.20    |
| Poland         | Binding     | 7-8 June 2003     | 58.85   | 77.45     | 22.55   |
| Czech Republic | Binding     | 13-14 June 2003   | 55.21   | 77.33     | 22.67   |
| Estonia        | Binding     | 14 September 2003 | 64.06   | 66.83     | 33.17   |
| Latvia         | Binding     | 20 September 2003 | 72.53   | 67.7      | 32.3%   |
| Cyprus         |             | No referendum     |         |           |         |

## Next steps

- Ratifications in Member states and accession states to occur by 1 May 2004
- 2003-2004 Interim period: active observer status in EU working parties etc. – participation without a vote
  - Consultation may be asked if interests seriously affected by the rule in preparation
  - Convention, and IGC, 2003 October: full rights
- Entry into force of Accession treaty: 1 May 2004
  - ==Full membership (with derogations and safeguards but not in justice and home affairs)

The conceptual dilemma.  
Freedom of movement (and  
migration) vs. sovereign control  
(security)

# The impact of the idea of Schengen and the AFSJ

- Responses to the dilemma:
  - Up to Maastricht (1992) (sovereignty)
  - Maastricht-Amsterdam (sovereignty but Schengen and „matters of common interest”)
  - After Amsterdam (1 May 1999):
    - Genuine freedom (for EU citizens) with
      - flanking measures
      - closer cooperation, opt ins and opt outs
    - Emerging common policy on regular, illegal and forced migration of third country nationals

# The message of the Tampere European Council Conclusions (1999)

- 2. ... The challenge of the Amsterdam Treaty is now to ensure that freedom, which includes the right to move freely throughout the Union, can be enjoyed in conditions of security and justice accessible to all. ...
- 3. This freedom should not, however, be regarded as the exclusive preserve of the Union's own citizens. Its very existence acts as a draw to many others world-wide who cannot enjoy the freedom Union citizens take for granted. It would be in contradiction with Europe's traditions to deny such freedom to those whose circumstances lead them justifiably to seek access to our territory.

This in turn requires the Union to develop common policies on asylum and immigration, while taking into account the need for a consistent control of external borders to stop illegal immigration and to combat those who organise it and commit related international crimes.....

- 4. The aim is an open and secure European Union, fully committed to the obligations of the Geneva Refugee Convention and other relevant human rights instruments, and able to respond to humanitarian needs on the basis of solidarity. A common approach must also be developed to ensure the integration into our societies of those third country nationals who are lawfully resident in the Union.

## The Commission's view in 2003

- While immigration should be recognised as a source of cultural and social enrichment, in particular by contributing to entrepreneurship, diversity and innovation, its economic impact on employment and growth is also significant as it increases labour supply and helps cope with bottlenecks. In addition, immigration tends to have an overall positive effect on product demand and therefore on labour demand.

COMMUNICATION FROM THE COMMISSION  
TO THE COUNCIL, THE EUROPEAN PARLIAMENT,  
THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE  
AND THE COMMITTEE OF THE REGIONS  
*ON IMMIGRATION, INTEGRATION AND EMPLOYMENT*

Brussels, 3.6.2003

COM (2003) 336 final, p. 10



# A closer look at Hungarian and Central European data and processes

# Phases of the development of the asylum system.

## Inflows, disappearances and laws (1989-2003)

### 1. Up to October 1989:

no formal rules on refugee protection  
only ideological phrase in the Constitution

### 2. 1989-1998:

First set of rules (not Acts of Parliament) on:

- procedure
- rights accompanying status
- incorporation of the 1951 Geneva Convention into Hungarian law

Temporary and subsidiary protection developed in practice

1993 Act on entry and stay of foreigners: detailed *non-refoulement* rule;

- BUT: geographic limitation – UNHCR proceeds in case of non-European asylum seekers

# Phases of the development of the asylum system.

## Inflows, disappearances and laws (1989-2003)

### 3. 1998 March 1 - 2002 January 1:

#### New Asylum Act and implementing Government decrees

- abolishes the geographic limitation
- incorporates three major forms of protection:
  - \* Convention status
  - \* temporary protection in mass influx
  - \* a weak subsidiary protection
- the restrictive techniques developed by the EU member states appear

### 4. 2002 January 1 -

- The Act is amended. It brings further harmonisation with the (old) *acquis* of the mid-nineties but removes subsidiary protection to the law on foreigners.

The refugee administration loses its independence

### 5. 2004 ? Further amendments planned

| Overview of the number of asylum seekers arriving in Hungary 1989-2003 |            |                          |              |            |                          |            |                          |            |                        |            |
|--|------------|--------------------------|--------------|------------|--------------------------|------------|--------------------------|------------|------------------------|------------|
|  | Year       | Total number of arrivals | From Romania | % of total | From former Soviet Union | % of total | From (former) Yugoslavia | % of total | From outside of Europe | % of total |
| First phase  | 1988       | 13173 *                  | 13173        | 100        |                          |            |                          |            |                        |            |
|  | 1989       | 17448                    | 17365        | 99,52      |                          |            |                          |            |                        |            |
|  | 1990       | 18283                    | 17416        | 95,26      | 488                      | 2,67       |                          |            |                        |            |
| subtotal   |            | 48904                    | 47954        |            | 488                      |            |                          |            |                        |            |
| Second phase   | 1991       | 53359                    | 3728         | 6,99       | 738                      | 1,38       | 48485                    | 90,87      |                        |            |
|  | 1992       | 16204                    | 844          | 5,21       | 241                      | 1,49       | 15021                    | 92,70      |                        |            |
| subtotal   |            | 69563                    | 4572         |            | 979                      |            | 63506                    |            |                        |            |
| Third phase  | 1993       | 5366                     | 548          | 10,21      | 168                      | 3,13       | 4593                     | 85,59      |                        |            |
|  | 1994       | 3375                     | 661          | 19,59      | 304                      | 9,01       | 2386                     | 70,70      |                        |            |
|  | 1995       | 5912                     | 523          | 8,85       | 315                      | 5,33       | 5046                     | 85,35      |                        |            |
|  | 1996       | 1259                     | 350          | 27,80      | 268                      | 21,29      | 559                      | 44,40      |                        |            |
|  | 1997       | 2109                     | 131          | 6,21       | 90                       | 4,27       | 329                      | 15,60      | 1411                   | 66,90      |
| subtotal   |            | 18021                    | 2213         |            | 1145                     |            | 12913                    |            | 1411                   |            |
| Fourth phase   | 1998       | 7118                     | 124          | 1,74       | 99                       | 1,39       | 3333                     | 46,82      | 3351                   | 47,08      |
|  | 1999       | 11499                    | 16           | 0,14       | 264                      | 2,30       | 5111                     | 44,45      | 6008                   | 52,25      |
|  | 2000       | 7801                     | 36           | 0,46       | 304                      | 3,90       | 692                      | 8,87       | 6592                   | 84,50      |
|  | 2001       | 9554                     | 76           | 0,80       | 171                      | 1,79       | 214                      | 2,24       | 8974                   | 93,93      |
|  | 2002       | 6412                     | 15           | 0,23       | 197                      | 3,07       | 97                       | 1,51       | 5971                   | 93,12      |
|  | 2003       | 1621                     | 12           |            | 297                      |            | 78                       |            |                        |            |
| Subtotal   | Jan-August | 44005                    | 279          |            | 1332                     |            | 9515                     |            | 30896                  |            |
| Grand total  |            | 180493                   | 55018        |            | 3944                     |            | 85944                    |            | 32307                  |            |

\* Figures relating to the years 1989-1992 do not show consistency in OIN and UNHCR publications. These are the figures used at those times.

Source: Compilation of Boldizsar Nagy on the basis of web data and other data of the Office for Immigration and Nationality of the Ministry of the Interior

# The country of origins of the applicants in Hungary, 2003 January - August

- **Countries with more than 30 applicants**

|                               |             |
|-------------------------------|-------------|
| • <b>Armenia</b>              | <b>31</b>   |
| • <b>Afghanistan</b>          | <b>357</b>  |
| • <b>China</b>                | <b>59</b>   |
| • <b>Georgia</b>              | <b>169</b>  |
| • <b>India</b>                | <b>35</b>   |
| • <b>Islamic Rep. of Iran</b> | <b>120</b>  |
| • <b>Iraq</b>                 | <b>250</b>  |
| • <b>Nigeria</b>              | <b>43</b>   |
| • <b>Russian Federation</b>   | <b>76</b>   |
| • <b>Somalia</b>              | <b>78</b>   |
| • <b>Turkey</b>               | <b>50</b>   |
| • <b>Viet Nam</b>             | <b>46</b>   |
| • <b>Yugoslavia, FR</b>       | <b>78</b>   |
| • <b>Total</b>                | <b>1392</b> |

# The country of origins of the applicants in Hungary, 2003 January – August

## Countries with less than 30 applicants

|                                 |           |                                  |           |
|---------------------------------|-----------|----------------------------------|-----------|
| • <b>Algeria</b>                | <b>24</b> | • <b>Liberia</b>                 | <b>13</b> |
| • <b>Angola</b>                 | <b>4</b>  | • <b>Lebanon</b>                 | <b>1</b>  |
| • <b>Egypt</b>                  | <b>16</b> | • <b>FYR Macedonia</b>           | <b>2</b>  |
| • <b>Azerbaijan</b>             | <b>4</b>  | • <b>Rep. of Moldova</b>         | <b>9</b>  |
| • <b>Bangladesh</b>             | <b>18</b> | • <b>Occupied Palestinian T.</b> | <b>16</b> |
| • <b>Belarus</b>                | <b>1</b>  | • <b>Pakistan</b>                | <b>24</b> |
| • <b>Bosnia and Herzegovina</b> | <b>2</b>  | • <b>Poland</b>                  | <b>3</b>  |
| • <b>Cameroon</b>               | <b>4</b>  | • <b>Romania</b>                 | <b>12</b> |
| • <b>Congo Dem. Rep.</b>        | <b>2</b>  | • <b>Senegal</b>                 | <b>9</b>  |
| • <b>Cuba</b>                   | <b>1</b>  | • <b>Sierra Leone</b>            | <b>3</b>  |
| • <b>Eritrea</b>                | <b>1</b>  | • <b>Sudan</b>                   | <b>11</b> |
| • <b>Ethiopia</b>               | <b>2</b>  | • <b>Slovakia</b>                | <b>1</b>  |
| • <b>France</b>                 | <b>1</b>  | • <b>Stateless</b>               | <b>3</b>  |
| • <b>Gambia</b>                 | <b>1</b>  | • <b>Stateless – Palestine</b>   | <b>8</b>  |
| • <b>Ghana</b>                  | <b>2</b>  | • <b>Syrian Arab Rep.</b>        | <b>2</b>  |
| • <b>Guinea</b>                 | <b>1</b>  | • <b>Tunisia</b>                 | <b>2</b>  |
| • <b>Côte d'Ivoire</b>          | <b>1</b>  | • <b>Unknown (Egypt?)</b>        | <b>15</b> |
| • <b>Kenya</b>                  | <b>1</b>  | • <b>Ukraine</b>                 | <b>8</b>  |
|                                 |           | • <b>Zimbabwe</b>                | <b>1</b>  |

Source: UNHCR Budapest Branch Office based on OIN data arranged by B Nagy

## Procedures started, Convention or other status recognized 1989 - 2002

| Year         | New arrivals | Refugee Determination Procedure |                              |                    |              |                      |
|--------------|--------------|---------------------------------|------------------------------|--------------------|--------------|----------------------|
|              |              | started                         | Convention Status recognized | Authorized to stay | Rejected     | Procedure terminated |
| 1989         | 3641         | 36                              | 35                           | n.a.               | 1            | 0                    |
| 1990         | 15309        | 3520                            | 2561                         | n.a.               | 318          | 548                  |
| 1991         | 10267        | 921                             | 434                          | n.a.               | 150          | 223                  |
| 1992         | 5547         | 458                             | 472                          | n.a.               | 71           | 58                   |
| 1993         | 5366         | 468                             | 361                          | n.a.               | 45           | 21                   |
| 1994         | 3375         | 207                             | 239                          | n.a.               | 29           | 13                   |
| 1995         | 5912         | 130                             | 116                          | n.a.               | 32           | 5                    |
| 1996         | 1259         | 152                             | 66                           | n.a.               | 42           | 31                   |
| 1997         | 2109         | 177                             | 27                           | n.a.               | 106          | 57                   |
| 1998         | 7118         | 7118                            | 362                          | 232                | 2790         | 1174                 |
| 1999         | 11499        | 11499                           | 313                          | 1776               | 3537         | 5786                 |
| 2000         | 7801         | 7801                            | 197                          | 680                | 2978         | 4916                 |
| 2001         | 9554         | 9554                            | 174                          | 297                | 2995         | 4565                 |
| 2002         | 6412         | 6412                            | 104                          | 1304               | 2578         | 5073                 |
| <b>Total</b> | <b>95169</b> | <b>48453</b>                    | <b>5461</b>                  | <b>4289</b>        | <b>15672</b> | <b>22470</b>         |

Source: OIN Website ([www.bmbah.hu](http://www.bmbah.hu) - visited 8 October 2003) with adjustments of B Nagy

# Nationality of asylum seekers recognized under the Geneva Convention

| Nationality  | Year      |             |            |            |            |            |            |           |           |            |            |            |            |            | Total       |
|--------------|-----------|-------------|------------|------------|------------|------------|------------|-----------|-----------|------------|------------|------------|------------|------------|-------------|
|              | 1989      | 1990        | 1991       | 1992       | 1993       | 1994       | 1995       | 1996      | 1997      | 1998       | 1999       | 2000       | 2001       | 2002       |             |
| Romanian     | 27        | 2522        | 255        | 79         | 26         | 17         | 14         | 2         | -         | 1          | -          | 2          | 10         |            | 2955        |
| Soviet       | 5         | 26          | 23         | 1          | -          | -          | -          | -         | -         | -          | -          | -          | -          | -          | 55          |
| Russian      | -         | -           | -          | 4          | -          | -          | 4          | -         | -         | 2          | -          | 5          | 4          | 4          | 23          |
| Armenian     | -         | -           | -          | 3          | 1          | 8          | 4          | -         | -         | -          | -          | 7          | 11         | 7          | 34          |
| Georgian     | -         | -           | -          | -          | -          | 20         | 6          | 1         | 6         | -          | -          | 12         | 7          |            | 52          |
| Yugoslav     | 1         | 1           | 150        | 381        | 314        | 193        | 79         | 55        | 20        | 35         | 37         | 10         | 2          | 9          | 1287        |
| Croat        | -         | -           | -          | -          | 17         | -          | 9          | 2         | -         | -          | -          | -          | -          | -          | 28          |
| Afghan       | -         | -           | -          | -          | -          | -          | -          | -         | -         | 177        | 127        | 82         | 52         | 10         | 448         |
| Iraqi        | -         | -           | -          | -          | -          | -          | -          | -         | -         | 43         | 60         | 37         | 48         | 46         | 234         |
| Kamerunian   | -         | -           | -          | -          | -          | -          | -          | -         | -         | 22         | 19         | 8          | 3          | 5          | 57          |
| Algeriani    | -         | -           | -          | -          | -          | -          | -          | -         | -         | 10         | 1          | 6          | 8          |            | 25          |
| Nigerian     | -         | -           | -          | -          | -          | -          | -          | -         | -         | 15         | 6          | 3          | 2          | 3          | 29          |
| other        | 2         | 12          | 6          | 4          | 3          | 1          | -          | 6         | 1         | 57         | 63         | 25         | 27         | 20         | 227         |
| <b>Total</b> | <b>35</b> | <b>2561</b> | <b>434</b> | <b>472</b> | <b>361</b> | <b>239</b> | <b>116</b> | <b>66</b> | <b>27</b> | <b>362</b> | <b>313</b> | <b>197</b> | <b>174</b> | <b>104</b> | <b>5357</b> |

Source: Office of Immigration and Nationality of the Ministry of Interior



# Applications by country of asylum and main origin: 2002

Excerpts from the UNHCR statistics on 29 industrialized countries

| Origin                 | BUL | CZE   | HUN   | POL*  | ROM | SVK   | SVN | TOT    |
|------------------------|-----|-------|-------|-------|-----|-------|-----|--------|
| Iraq                   | 946 | 201   | 2,006 | 136   | 381 | 1,245 | 131 | 44,914 |
| Yugoslavia, FR         | *   | 39    | 100   | -     | -   | 44    | 86  | 31,394 |
| Turkey                 | 47  | 32    | 124   | *     | 42  | 34    | 73  | 27,396 |
| China                  | -   | 499   | 82    | 35    | 90  | 1,764 | 15  | 25,184 |
| Afghanistan            | 864 | 26    | 2,160 | 541   | 35  | 1,669 | *   | 23,966 |
| Russian Federation     | 13  | 671   | 44    | 2,323 | *   | 618   | 23  | 19,121 |
| India                  | *   | 346   | 64    | 137   | 127 | 1,611 | 6   | 13,687 |
| Nigeria                | 169 | 35    | 125   | 6     | 14  | 57    | 5   | 12,776 |
| Colombia               | -   | *     | -     | -     | -   | -     | *   | 12,304 |
| Dem. Rep. of the Congo | 19  | 5     | *     | 7     | -   | *     | -   | 12,001 |
| Somalia                | 30  | 14    | 213   | *     | 34  | 199   | 9   | 10,922 |
| Iran (Islamic Rep. of) | 142 | 9     | 160   | 12    | 53  | 79    | 54  | 10,746 |
| Mexico                 | -   | -     | -     | -     | -   | -     | -   | 10,710 |
| Pakistan               | 13  | 24    | 40    | 50    | 36  | 168   | 24  | 9,438  |
| Algeria                | 9   | 72    | 34    | *     | *   | 25    | 67  | 9,314  |
| Sri Lanka              | -   | 30    | 8     | 35    | *   | 96    | *   | 8,262  |
| Armenia                | 364 | 463   | 26    | 209   | *   | 102   | *   | 7,977  |
| Georgia                | 15  | 641   | 91    | 36    | 7   | 55    | 12  | 7,950  |
| Bosnia and Herzegovina | -   | *     | *     | -     | *   | *     | 26  | 7,877  |
| Ukraine                | 9   | 1,658 | 15    | 87    | *   | 47    | 13  | 7,045  |

Source: UNHCR: ASYLUM APPLICATIONS LODGED IN EUROPE, NORTH AMERICA, AUSTRALIA, NEW ZEALAND AND JAPAN: JANUARY – DECEMBER 2002  
Table 9. In this form compiled by Boldizsar Nagy

# Comparative table on applications and on Convention and other forms of protection in the Czech Republic, Hungary, Poland and Slovakia, 1998-2002

|           | Asylum applications submitted |        |       |        |        | Convention status recognized |      |      |      |      | Other form of protection provided |       |      |      |       |
|-----------|-------------------------------|--------|-------|--------|--------|------------------------------|------|------|------|------|-----------------------------------|-------|------|------|-------|
|           | 1998                          | 1999   | 2000  | 2001   | 2002   | 1998                         | 1999 | 2000 | 2001 | 2002 | 1998                              | 1999  | 2000 | 2001 | 2002  |
| <b>Cz</b> | 4.080                         | 8.549  | 8.787 | 18.037 | 10.769 | 160                          | 100  | 133  | 83   | 103  | -                                 | -     | -    | -    | -     |
| <b>H</b>  | 7.370                         | 11.499 | 7.801 | 9.554  | 6.412  | 440                          | 310  | 197  | 174  | 104  | 230                               | 1.780 | 680  | 290  | 1.304 |
| <b>P</b>  | 3.370                         | 2.864  | 4.589 | 4.533  | 5.153  | 60                           | 50   | 78   | 291  | 280  | -                                 | -     | -    | -    | -     |
| <b>Sk</b> | 510                           | 1.313  | 1.556 | 8.151  | 9.700  | 50                           | 30   | 10   | 18   | 20   | -                                 | -     | -    | -    | -     |

Source: Compilation by Boldizsár Nagy based on sources listed below which frequently contradict each-other. My preference usually went for the latest UNHCR publication

## UNHCR:

- 2001 UNHCR POPULATION STATISTICS (PROVISIONAL) Population Data Unit 7 June 2002
- 2002 UNHCR POPULATION STATISTICS (PROVISIONAL) Population Data Unit 4 August 200
- UNHCR: TRENDS IN ASYLUM DECISIONS IN 38 COUNTRIES, 1999-2000 , Geneva, 22 June 2001
- ASYLUM APPLICATIONS LODGED IN: INDUSTRIALIZED COUNTRIES: LEVELS AND TRENDS, 2000-2002, Geneva, March 2003

## EUROPEAN COUNCIL ON REFUGEES AND EXILES: Country report 2002

Silvia Morgades Gil: Reconciling the acquis of the European Union concerning asylum and the international standards for the protection of human rights: some challenges for the candidates to the EU enlargement in: Barbé, Esther y Johansson-Nogués, Elisabeth (eds.) Beyond Enlargement: The New Members and New Frontiers of the Enlarged European Union Institut Universitari d'Estudis Europeus., Barcelona, 2004 [http://selene.uab.es/\\_cs\\_iuee/catala/obs/working\\_ocasionals\\_archivos/WP\\_quadern\\_41.htm](http://selene.uab.es/_cs_iuee/catala/obs/working_ocasionals_archivos/WP_quadern_41.htm) visited 13 Oct 2003

# Comparative table on denials of protection and terminations of procedure, without decision on the substance in the Czech Republic, Hungary, Poland and Slovakia, 1998-2002

|    | Protection denied |       |       |       |       | Procedure terminated without decision on merits |       |       |        |       |
|----|-------------------|-------|-------|-------|-------|---|-------|-------|--------|-------|
|    | 1998              | 1999  | 2000  | 2001  | 2002  | 1998  | 1999  | 2000  | 2001   | 2002  |
| Cz | 580               | 1.870 | 2.520 | 7.033 | 6.529 | 2.150   | 7.040 | 4.287 | 11.016 | 8.598 |
| H  | 2.950             | 3.450 | 2.978 | 2.995 | 1.274 | 1.170   | 5.800 | 4.956 | 4.565  | 5.073 |
| P  | 1.390             | 2.200 | 2.626 | 2.862 | 4.706 | 1.760   | 865   | 1.206 | 1.820  | 491   |
| Sk | 40                | 180   | 123   | 130   | 303   | 220   | 1.030 | 1.366 | 5.247  | 8.030 |

Source: as at the previous table

**THE DOUBLE ROLE OF THE CENTRAL AND EASTERN EUROPEAN  
CANDIDATE STATES  
ASYLUM SEEKERS ARRIVING IN AND COMING FROM\* THE CEES  
2001**

| Country    | Arrival in the country | Citizens of the country in the EU |
|------------|------------------------|-----------------------------------|
| Bulgaria   | 2428                   | 1242                              |
| Czech Rep. | 18087                  | 1820                              |
| Estonia    | 12                     | 155                               |
| Hungary    | 9554                   | 577                               |
| Latvia     | 14                     | 178                               |
| Lithuania  | 256                    | 652                               |
| Poland     | 4506                   | 1254                              |
| Romania    | 2431                   | 4908                              |
| Slovakia   | 8151                   | 2145                              |
| Slovenia   | 1511                   | 20                                |

**THE DOUBLE ROLE OF THE CENTRAL AND EASTERN EUROPEAN CANDIDATE  
STATES  
ASYLUM SEEKERS ARRIVING IN AND COMING FROM THE CEES  
2002**

|                | Arrival in the country<br>(in comparison with<br>previous year) | Citizens of the<br>country applying<br>in EU member<br>states |
|----------------|---|---|
| Bulgaria       | 2888 +18,9 %  |   |
| Czech republic | 8481 - 53,1 %   | 2418 + 32,8   |
| Estonia        | 9 - 25 %  |   |
| Hungary        | 6412 -32,9 %  |   |
| Latvia         | 30 + 114,3 %  |   |
| Lithuania      | 294 +14,8 %   |   |
| Poland         | 5153 +14,4 %  |   |
| Romania        | 1108 -54,4 %  | 5531 +13,7 %  |
| Slovakia       | 9739 +19,5 %  | 2838 + 31,1 %   |
| Slovenia       | 702 -53,5 %   |   |

<http://www.unhcr.ch/cgi-bin/texis/vtx/statistics/...>

23 March 2003

General (theoretical) considerations

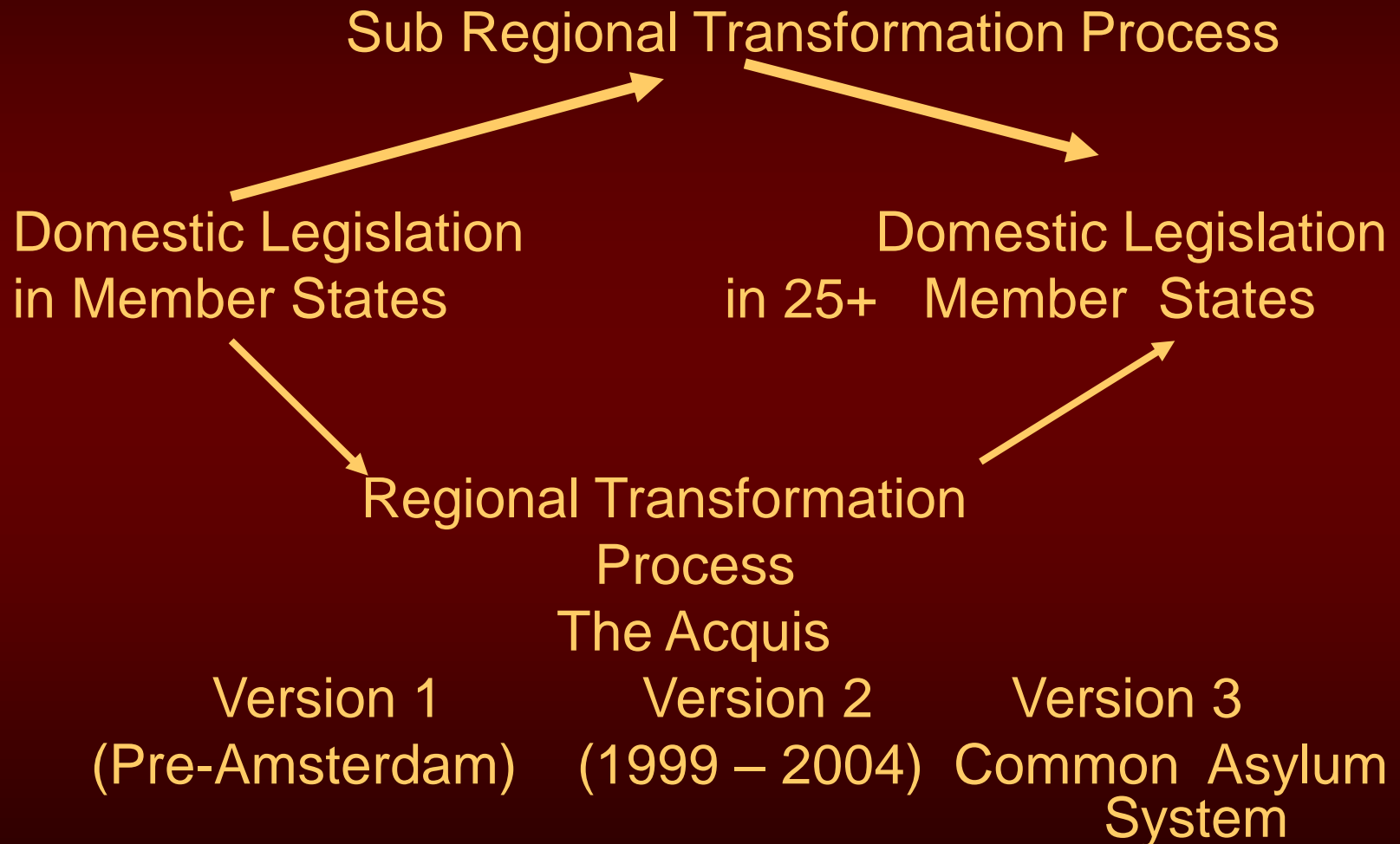
# The Transformation of Asylum In Europe

## The Construction of a Common European Asylum Regime and its effects on the accession states

### Stages of Transformation

- **Formative Stage**  
central norms, notions and principles  
conceived on the national level
- **Transformative Stage**  
regionalisation of national norms and  
practices
- **Reformative Stage**  
regionalised legal instruments reconsidered

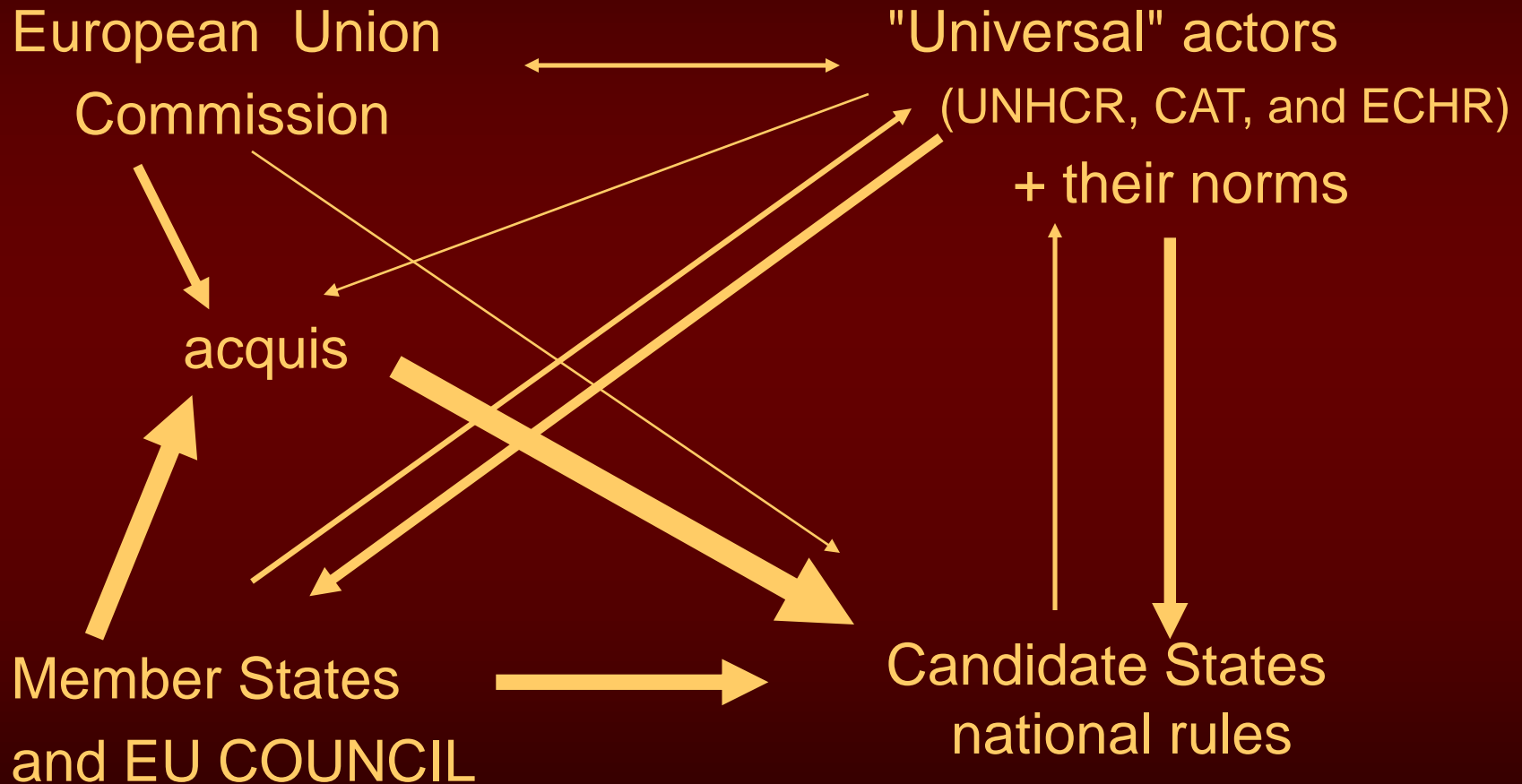
# Processes of Transformation





# Universalism – regionalism – bilateralism

## A scheme on influences in the asylum field



# OVERVIEW OF CERTAIN RECENT (2001-2002) STEPS TAKEN IN THE FIELD OF MIGRATION IN SELECTED ACCESSION COUNTRIES, BASED ON THE COMMISSION'S REPORTS

| Country | Visa policy<br>Alignment<br>recently: R<br>Additions<br>needed: A | Equipment<br>needs<br>Consular: C<br>Border Guards:<br>B<br>Police: P<br>Judiciary: J | Administrative<br>capacity<br>increased<br>recently: R<br>To be added<br>more: A | Asylum and migration<br>related legislation<br>Recently amended: Ra or<br>Rm<br>To be amended: Aa or Am | Reinforce fight<br>against illegal<br>migr<br>(traffickers,<br>smugglers) | Border<br>management<br>improvement<br>called for |
|---------|---|---|--|---|---|---|
| Bu      | R, A  | C, B,   |  | Aa  | Y   | Y   |
| Cy      | A   |   | A  | Ra  |   | Y   |
| Cz      | R   |   |  | Ra, Rm  |   | Y   |
| Ee      | A   | J, B  | R, A   | Ra, Rm, Aa, Am  | Y   | Y   |
| Hu      | R, A  |   | A  | Ra, Rm, Aa  |   |   |
| La      | R   | J   | R  | Ra, Am  |   | Y   |
| Li      | R,A   |   | A  | Ra, Rm, Aa, Am  |   | Y   |
| Ma      | A   | C, B  | A  | Am  | Y   |   |
| Po      | R, A  | C, B  | A  | Rm, Aa, Am  |   | Y   |
| Sl      |   | B,  | A  | Ra, Rm,   |   | Y   |

This table only serves illustrative purposes and does not reflect changes which occurred since late 2002

See further: [http://europa.eu.int/comm/justice\\_home/fsj/enlargement/fsj\\_enlarge\\_intro\\_en.htm](http://europa.eu.int/comm/justice_home/fsj/enlargement/fsj_enlarge_intro_en.htm)

Critical elements in the acquis  
and in its reception

# Harmonization – key concepts and the impact of the acquis

## Civilize?

- Extended protection categories (subsidiary, temporary)
- Gender and culture sensitive procedural minimum standards
- Substantive requirements and standards on the reception of asylum seekers
- Considerable support by way of pre-accession strategy tools (Phare, etc.) and the Refugee Fund
- Solidarity with certain vulnerable groups – especially in European context

## Brutalize?

- A generally restrictive, exclusionist approach, based on the presumption of non-genuine claims
- Restrictive interpretation of the definitions pushing to categories with less rights
- Non-access, non-entry techniques (visas, carrier sanctions, interception, border surveillance, detention)
- Efforts to shift responsibility for status determination and care (safe third country rules, readmission agreements, processing in the region of origin)

# Wandering concepts forming a moving target

## A schematic example

|  | 1992 London resolutions | 1995 EU Council resolution | 2000 Original Commission proposal for a council directive | 2002 Amended Commission proposal for the directive | 2003 Most recent version of the proposal |
|--|-------------------------|----------------------------|---|--|--|
| Eligibility / Admissibility Procedure (EP) |                         |                            |   |  |  |
| Border procedure (BP)                      |                         |                            |   |  |  |
| Airport procedure (AP)                     |                         |                            |   |  |  |
| Accelerated procedure (AP)                 |                         |                            |   |  |  |
| Manifestly unfounded application (MUA)     |                         |                            |   |  |  |
| Safe (host) third country (STC)            |                         |                            |   |  |  |
| Country of first asylum (CFA)              |                         |                            |   |  |  |
| Safe country of origin (SCO)               |                         |                            |   |  |  |
| Removal before final rejection             |                         |                            |   |  |  |

See lecture notes!

# Taking (critical) stock of the legislative process

- Still limited transparency in key moments
- Gradual erosion of the level of standards
- Expansion of permissive rules allowing states' discretion
- Delays in the adoption of the most important directives
- Extremely complicated legal fabric as a consequence of the varied geometry (Denmark, Ireland, Uk, Iceland, Norway)

# Critical elements in the present situation characterizing one or more new member states

- Legal
  - Substantive law
    - Protection categories
    - Interpretation of terms
    - Exclusion grounds
    - Detention
  - Procedural law
    - Access to the process
    - Access to lawyer
    - Appeals
      - Not effective remedy if only on points of law
      - Lack of personal hearing on appeal
      - No deadline for appeal court
  - Frequent changes in the law – no predictability and stability

# Critical elements in the present situation characterizing one or more new member states

- Practical
  - Disappearance of applicants
  - Fragile situation during procedure
  - Integration
  - Xenophobia



## Example: subsidiary protection in the draft EU directive and in Hungarian law

- **The Commission's approach**
  - Subsidiary protection is a full protection status intended to extend protection to further categories of persons in need of it. It is part of refugee/asylum law.
  - Unless otherwise requested by the applicant the claim to subsidiary protection is investigated in a single asylum procedure.
  - The guiding principle is the approximation the rights of refugees and the rights of those enjoying subsidiary protection.
  - The freedom of movement is unlimited
- **The Hungarian legislator's approach**
  - Humanitarian residence permit is the exception to be granted to those who otherwise should leave the territory. It is an aliens' law measure
  - The authorised to stay status may not be requested, but is established as a side product of another aliens law procedure (aimed at expulsion e.g.).
  - There are substantive differences in the substantive rights, for example in the field of employment or family unification.
  - The protected person must live in a designated place and not permitted departure leads to alien policing detention.

What lies ahead?

# What is ahead?

## Schengen and the new Member States

- Article 8 of the Schengen Protocol: all new Member States must accept the Schengen acquis in full.
- However, the implementation and application of those provisions of the Schengen acquis directly connected to the abolition of controls on persons will be delayed.
  - Two categories of obligations emerge
    - 1.: Upon accession = 1 May 2004
    2. When lifting internal border controls: in 2007 at earliest

# What is ahead?

## Schengen and the new Member States

### ***Category one (to be applied immediately upon accession)***

- **CROSSING EXTERNAL BORDERS**  
crossing, conditions for entry, *excluding rules on persons to be refused* common standards for external border control and surveillance, co-operation and information exchange
- **VISAS** (the quality of travel document to which a visa may be affixed)
- **ACCOMPANYING MEASURES**  
carrier sanctions, smuggling of persons
- **POLICE COOPERATION**

# What is ahead?

## Schengen and the new Member States

***Category two (to be applied when the Council unanimously so decides after evaluation of the preparedness)***

- **CROSSING INTERNAL BORDERS**  
Abolition of checks at the internal border
- **CROSSING EXTERNAL BORDERS**  
Refusal of persons for whom an alert has been issued
- **VISAS**  
Common Schengen visa, long term visa
- **SCHENGEN INFORMATION SYSTEM**  
SIS alerts and the whole acquis

# ACT OF ACCESSION

## ARTICLE 35

- A Schengen Facility is created as a temporary instrument to help beneficiary Member States between the date of accession and the end of 2006
- Uses:
  - border crossing infrastructure
  - investments in any kind of operating equipment
  - training of border guard
  - support to costs for logistics and operations.

# ACT OF ACCESSION

- 2. The following amounts shall be made available under the Schengen Facility in the form of lump sum grant payments as of the date of accession to the beneficiary Member States listed below:

|             | 2004                       | 2005  | 2006  |
|-------------|----------------------------|-------|-------|
|             | (EUR million, 1999 prices) |       |       |
| • Estonia   | 22,9                       | 22,9  | 22,9  |
| • Latvia    | 23,7                       | 23,7  | 23,7  |
| • Lithuania | 44,78                      | 61,07 | 29,85 |
| • Hungary   | 49,3                       | 49,3  | 49,3  |
| • Poland    | 93,34                      | 93,33 | 93,33 |
| • Slovenia  | 35,64                      | 35,63 | 35,63 |
| • Slovakia  | 15,94                      | 15,93 | 15,93 |

# The role of the new member states in the formation of the EU asylum acquis

- Until accession: the urge to submit to the EU expectations and conditions
- Transitory phase: 2003 April – 2004 May (?)  
Comments on the two key directives (definition, procedure) invited, without voting rights
- After accession:
  - Qualified majority voting after adoption of the Common Asylum System (Treaty of Nice) – what alliances will form? (Border states vs. core states?)
  - Will there be a true sharing of cases or their consequences – beyond Dublin?
  - Will the new member states reproduce the same pressure on the external neighbours as they had to endure?



# Gains and losses of new member States after accession –from an etatist perspective

- Gains
  - Effective participation in decision making: no more "ready made"-s
  - One Schengen visa entitles to visit them all
  - More chance to screen out persons representing risk
  - Access to financial resources Title IV fields (Refugee Fund, border surveillance and control)
- Losses
  - National bodies (Parliament, Government, central authorities) have less impact on domestically applicable rules ("Waning of sovereignty")
  - No control over visa lists
    - minorities in Non-EU neighbors
    - trade relations
    - petty trade, seasonal (informal) work
    - psychological barrier
  - Increased costs related to asylum procedures, refugees and border surveillance and control

# Gains and losses of new member States after accession –from an etatist perspective

- Gains, continued
  - Norm-based expectation of responsibility sharing in case of large scale influx
  - Visa free and legally arriving asylum seekers can not be returned to them
  - Through COTONOU type and bilateral readmission agree-ments: better chance to effectively return illegal foreigners
- Losses, continued
  - More people seeing them as destination, not only transit country
  - If Dublin II functions: more asylum seekers than via safe third country and readmission

# Conclusion in an indeterminate mood – competing narratives of the past

## The positive

- Effective protection was given to those fleeing from Romania, (former) Yugoslavia, *non-refoulement* is generally observed
- A comprehensive, human rights respecting and functioning legal and institutional system has emerged
- Universal standards and expectations are not rejected

## The negative

- Most of those qualifying as Convention refugees had other (ill-described) forms of protection with less rights
- Fear from becoming a target country led to questionable restrictive techniques
- Incongruity in self-perception and hypocrisy prevail – no intention to meet global responsibilities
- The existing asylum system does not function well

# A few intriguing questions

1. Can exclusion of unwanted foreigners maintain the integrity of Europe? Can restrictive techniques and refined technologies contain the migration pressure?
2. Is Western Europe faithful to its European tradition of asylum?
3. Are (were?) plans to move asylum seekers to outside of EU processing centers compatible with the international law? And with good morals?
4. Where will the move to the East (declaring another stripe of countries as safe) stop and a firm division line between asylum countries and unsafe / persecuting countries freeze?

5. Should the trade-off between restrictions on asylum and illegal migration be cured by the introduction of orderly migration?
6. Central and Eastern European countries still pretend to be only waiting rooms, not desired destinations. But are they?
7. Today's Roma and non-Roma (rejected and returned) asylum seekers will be tomorrow's EU citizens exercising their right to freedom of movement. What will have changed?
8. Is it fair that the UK, Ireland and Denmark can retain certain rights (they could/can opt out), whereas the CEECs must accept the Schengen acquis in its entirety?
9. What is the impact of the unanimity rule: race to the bottom, to the lowest common denominator, or quite to the contrary is it a means for the most liberal to enforce its views?

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