

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

delivered in English as

ENLARGEMENT OF THE EUROPEAN UNION AND TITLE IV ACTS (VISA, ASYLUM, IMMIGRATION)

Vortrag an der Tagung internationales, europäisches und österreichisches Asyl- und Flüchtlingsrecht
Rechtsakademie,
Universität Salzburg,
18 Oktober 2003.

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Photo of Javier Balauz

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Photo of Javier Balauz

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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

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The accession process

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- 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

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- Article 6 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".
- 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

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THE ASSOCIATED COUNTRIES AND THE EUROPEAN UNION

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

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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, Sl)
- 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

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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			

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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)

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

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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

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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.....

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- 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.

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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

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A closer look at Hungarian and Central European data and processes

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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)

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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

- 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
- 2004 ? Further amendments planned

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Overview of the numbers 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 Jan-August	1621	12	0,74	297	18,32	78	4,81	n.a.	n.a.
Subtotal		44005	279		1332		9515		30896	
Grand total		180493	55018		3944		85944		32307	

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The country of origins of the applicants in Hungary, 2003 January - August
Countries with more than 30 applicants

- Armenia 31
- Afghanistan 357
- China 59
- Georgia 169
- India 35
- Islamic Rep. of Iran 20
- Iraq 250
- Nigeria 43
- Russian Federation 76
- Somalia 78
- Turkey 50
- Viet Nam 46
- Yugoslavia, FR 78
- Total 1392

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

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

		Countries with less than 30 applicants	
• Algeria	24	• Lebanon	1
• Angola	4	• FYR Macedonia	2
• Egypt	16	• Rep. of Moldova	9
• Azerbaijan	4	• Occupied Palestinian T.	16
• Bangladesh	18	• Pakistan	24
• Belarus	1	• Poland	3
• Bosnia and Herzegovina	2	• Romania	12
• Cameroon	4	• Senegal	9
• Congo Dem. Rep.	2	• Sierra Leone	3
• Cuba	1	• Sudan	11
• Eritrea	1	• Slovakia	1
• Ethiopia	2	• Stateless	3
• France	1	• Stateless – Palestine	8
• Gambia	1	• Syrian Arab Rep.	2
• Ghana	2	• Tunisia	2
• Guinea	1	• Unknown (Egypt?)	15
• Côte d'Ivoire	1	• Ukraine	8
• Kenya	1	• Zimbabwe	1
• Liberia	13		

Slide 23 Procedures started Convention or other status recognized 1989 - 2002

Year	New arrivals	Refugee Determination Procedure		Authorized to stay	Rejected	Procedure terminated
		Convention Status	Started recognized			
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
Total	95169	48453	5461	4289	15672	22470

Source: OIN corrected by Boldizsár Nagy

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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	
Total	35	2561	434	472	361	239	116	66	27	362	313	197	174	104	5357	

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

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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	-	*	*	-	*	*	*	7,877
Ukraine	9	1,658	15	87	*	47	13	7,045

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Comparative table of asylum applications submitted, Convention status recognized, other protection provided, protection denied and procedure terminated without decision on the merits in the Czech republic, Hungary Poland and Slovakia for the

	Asylum applications submitted					Convention status recognized					Other form of protection provided					Protection denied					Procedure terminated without decision on merits				
	1998	1999	2000	2001	2002	1998	1999	2000	2001	2002	1998	1999	2000	2001	2002	1998	1999	2000	2001	2002	1998	1999	2000	2001	2002
Cz	4.080	8.549	8.787	18.037	10.769	160	100	133	83	103	-	-	-	-	-	580	1.870	2.520	7.033	6.529	2.150	7.040	4.287	11.016	8.598
H	7.370	11.499	7.801	9.554	6.412	440	310	197	174	104	230	1.780	680	290	1.304	2.950	3.450	2.978	2.995	1.274	1.170	5.800	4.956	4.565	5.073
P	3.370	2.864	4.589	4.533	5.153	60	50	78	291	280	-	-	-	-	-	1.390	2.200	2.626	2.862	4.706	1.760	865	1.206	1.820	491
Sk	510	1.313	1.556	8.151	9.700	50	30	10	18	20	-	-	-	-	-	40	180	123	130	303	220	1.030	1.366	5.247	8.030

years 1998-2002.

@ 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 2003
- ASYLUM APPLICATIONS LODGED IN:
- UNHCR: TRENDS IN ASYLUM DECISIONS IN 38 COUNTRIES, 1999-2000, Geneva, 22 JUNE 2001 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 visited 13 Oct 2003

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THE DOUBLE ROLE OF THE CENTRAL AND EASTERN EUROPEAN CANDIDATE STATES ASYLUM SEEKERS ARRIVING IN AND COMING FROM* THE CEES 2001 and 2002

Country	Arrival in the country	Citizens of the country in the EU	Arrival in the country (in comparison with previous year)	Citizens of the country applying in EU member states
	2001		2002	
Bulgaria	2428	1242	2888 +18,9 %	?
Czech Rep.	18087	1820	8481 - 53,1 %	2418 + 32,8
Estonia	12	155	9 - 25 %	?
Hungary	9554	577	6412 -32,9 %	?
Latvia	14	178	30 + 114,3 %	?
Lithuania	256	652	294 +14,8 %	?
Poland	4506	1254	5153 +14,4 %	?
Romania	2431	4908	1108 -54,4 %	5531 +13,7 %
Slovakia	8151	2145	9739 +19,5 %	2838 + 31,1 %
Slovenia	1511	20	702 -53,5 %	?

Source: Compiled by Boldizsár Nagy on the basis of UNHCR Population Data Unit electronic sources

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General (theoretical) considerations

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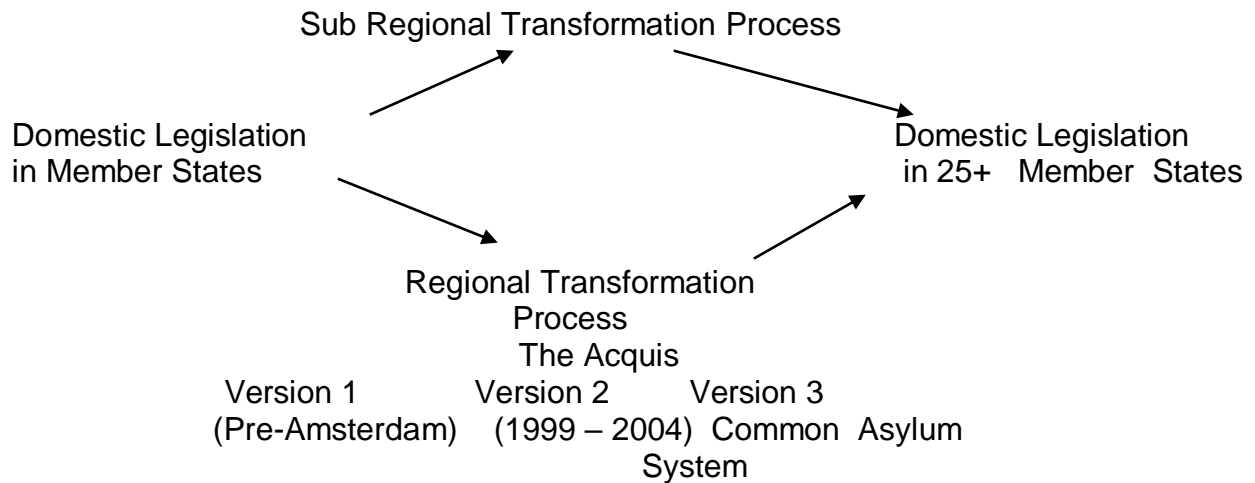
The Transformation of Asylum In Europe The Construction of a Common European Asylum Regime and its effects on the accession states

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

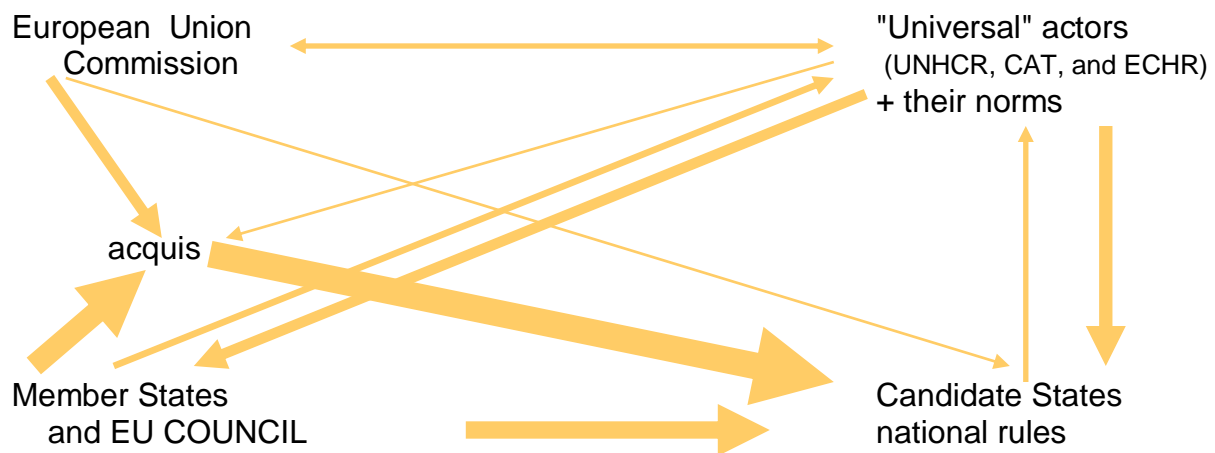
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Processes of Transformation



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Universalism – regionalism – bilateralism A scheme on influences in the asylum field



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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 Alignment recently: R Additions needed: A	Equipment needs Consular: C Border Guards: B Police: P Judiciary: J	Administrative capacity Increased recently: R To be added more: A	Asylum and migration related legislation Recently amended: Ra or Rm To be amended: Aa or Am	Reinforce fight against illegal migr (traffickers, smugglers)	Border management improvement 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

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Critical elements in the acquis and in its reception

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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)

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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)						

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See lecture notes!

Taking (critical) steps in 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)

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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

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

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

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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.

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What lies ahead?

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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

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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

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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

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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.

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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

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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?

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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)
- * 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

- * 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
- * More people seeing them as destination, not only transit country
- * If Dublin II functions: more asylum seekers than via safe third country and readmission

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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

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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 strife of countries as safe) stop and a firm division line between asylum countries and unsafe / persecuting countries freeze?

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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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