

# WITHOUT A COMMON DENOMINATOR

THE MUTUALLY EXCLUSIVE EXPECTATIONS OF THE EU, HUNGARY AND  
THE OTHER VISEGRAD COUNTRIES WITH REGARD TO ASYLUM

Presentation by  
Boldizsár Nagy at the  
Hohenheim Days on Migration Law  
German and European  
Migration Policy – Putting  
Human Rights to the Test  
Stuttgart-Hohenheim, 26 January 2019

## Motto:

*Viktor Orbán in the UN general Asembly, 2015*

„I urge you, Secretary-General, to initiate negotiations on sharing this burden at a global level.

All major stakeholders of international politics will have to take some of the migrants to their countries as part of a global quota system.”

*Statement by H.E. Mr. Viktor Orbán Prime Minister of Hungary at the High Level Side Event on “Strengthening cooperation on migration and refugee movements in the perspective of the new development agenda” 30 September 2015 United Nations New York at <http://www.un.org/en/development/desa/population/migration/events/ga/2015/docs/statements/HUNGARY.pdf> (Accessed: 20181108)*

The text was removed from the Permanent Representation of Hungary to the UN website

# 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



## Péter Szijjártó, reported on 7 November 2018

“ `The reason for the attack against Hungary is that the country’s position on migration is at odds with the European mainstream’, the Minister continued, confirming that Hungary will not be an`immigrant country` and does not support the changing of the make-up of the population of the European continent, and accordingly the Government rejects the system of mandatory quotas.”

*(MTI/Ministry of Foreign Affairs and Trade)*

<http://www.kormany.hu/en/ministry-of-foreign-affairs-and-trade/news/the-un-global-compact-for-migration-is-the-betrayal-of-europe> Accessed on 8 November 2018

# Issues and presumptions

**Presumption:** the position and the aspirations of the Commission of the EU in the asylum field are known to the audience

## Issues:

1. What is the **policy of the Hungarian** Government?
2. **Who drives** the policy?:
  - the **population** – and the government responds
  - the **government** – and the population subscribe to the doctrine of the government
- 3 Do the **Visegrad countries** (Czech Republic, Hungary, Poland, Slovakia) form a **genuine political bloc**?
4. If not, do they have a genuinely **shared approach** towards refugees and **the EU asylum policy**

Before the issues a few slides on orders of magnitude, theoretical frame

# THE ORDERS OF MAGNITUDE (STATISTICS)

*Difference in number of applicants in  
the V4 and their countries of origin*

# First time applications and recognitions, V4, 2015 -2018

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 1st -3d Q	Protection 1st -3d Q
<b>Czech Republic</b>	<b>1.525</b>	460	<b>1.475</b>	435	<b>1.445</b>	145	<b>1.200</b>	115
<b>Hungary</b>	<b>177.135</b>	505	<b>29.430</b>	395	<b>3.390</b>	<b>1.295</b>	<b>560</b>	350
<b>Poland</b>	<b>12.190</b>	640	<b>12.305</b>	305	<b>5.045</b>	510	<b>2.725</b>	335
<b>Slovakia</b>	<b>330</b>	80	<b>145</b>	225	<b>160</b>	65	<b>130</b>	10

Source: Author's calculations based on Eurostat data

Asylum and first time asylum applicants by citizenship, age and sex Annual aggregated data (rounded) [migr\_asyappctza] Last update: 24-10-2018

Asylum and first time asylum applicants by citizenship, age and sex Monthly data (rounded)[migr\_asyappctzm] Last update: 24-01-2019

First instance decisions on applications by citizenship, age and sex Quarterly data (rounded)[migr\_asydcfstq] Last update 15-01-2019

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

Source: Eurostat. Statistics explained, 2015 Later Eurostat revised the data – see next table



# Main countries of origin, July – September 2018

<b>CZECHIA</b>	<b>#</b>	<b>(%)</b>
Ukraine	70	20
Cuba	55	15
Georgia	35	10
Vietnam	25	7
Uzbekistan	25	7
Other	145	41

<b>HUNGARY</b>	<b>#</b>	<b>(%)</b>
Iraq	45	41
Afghanistan	40	36
Iran	5	5
Ethiopia	5	5
Pakistan	5	5
Other	10	9

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

Source: <https://ec.europa.eu/eurostat/statistics-explained/pdfscache/13562.pdf> (20190122)

<b>POLAND</b>	<b>#</b>	<b>(%)</b>
Russia	470	62
Ukraine	90	12
Tajikistan	40	5
Iraq	20	3
Egypt	15	2
Other	120	16

<b>SLOVAKIA</b>	<b>#</b>	<b>(%)</b>
Afghanistan	15	50
Iraq	5	17
Azerbaijan	5	17
Other	5	17

## Visegrad 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**'.

J. Huysmans, *The European Union and the Securitization of Migration*, 38 J. OF COMMON MKT STUDIES No. 5, p 758, (2000).

# 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. Khursheed 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.

César Cuauhtémoc García Hernández, Crimmigration Law

# 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**



## WHO DRIVES THE POLICY?

Neither **the number** of regular migrants, **nor** the number of decided **asylum cases** justify the level of rejection.

**The discourse was produced** by the **securitising, majority identitarian populist narrative of the governments**, which is pervasive in the in Hungary and the other Visegrad countries

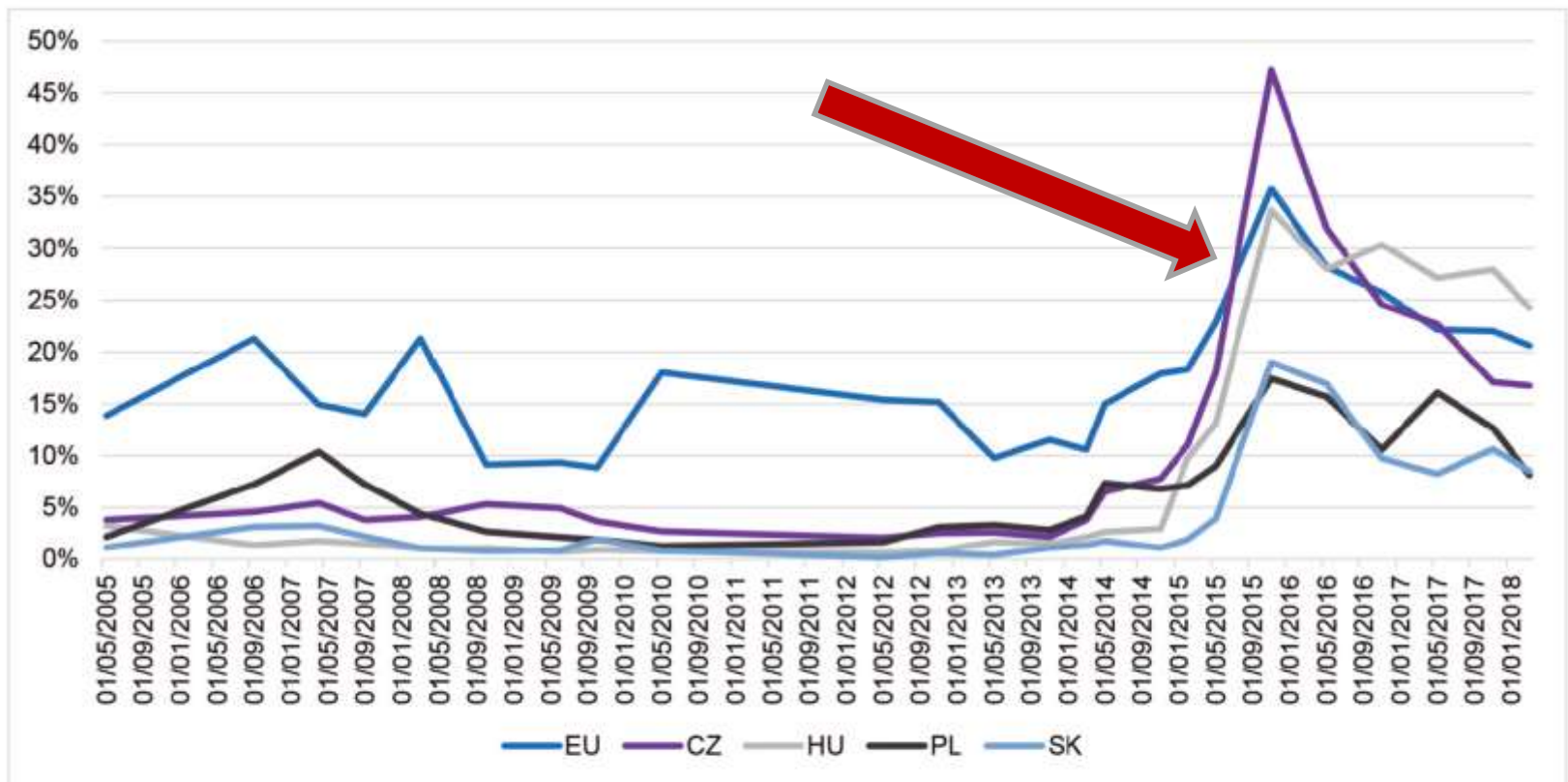
The public attitudes in Hungary have been thoroughly influenced (indoctrinated) by **four years of constant government-led propaganda** (Billboard campaigns, „national consultations”, referendum, government advertisement in media)

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Showing the same for the V4: G. Gigitashvili – K.W. Sidło „*Merchants of fear. Discursive securitization of the refugee crisis in the Visegrad group countries*” EuroMeSCo Policy Brief No. 89, 7 January 2019

# MIGRATION AS ONE OF THE TWO MOST PRESSING PROBLEMS

**Figure 1** What do you think are the two most important issues facing (OUR COUNTRY) at the moment (%)?



Source: Own compilation based on data from Eurobarometer 2005-2017.

## ORBÁN ON THE CZECH BARRANDOV TV, 30 NOVEMBER 2018

„But there is a **red line** that not even Mr. Soros, not even NGOs and not even paid civil rights activists are allowed to cross: that red line is **national security**. This has become an acute question in Hungary, because **migration is an issue of national security**. And I shall not **allow** anyone in Hungary **to endanger** the security of the Hungarian people. **Those who support migration also support terrorism**; they support a rise in crime; and they want something which poses a **threat to Hungarians.**”

<http://www.miniszterelnok.hu/interview-with-prime-minister-viktor-orban-on-duel-broadcast-by-the-czech-channel-tv-barrandov/> (Accessed 20190122)

New Criminal Code provision (Section 353/A)

*„Support, promotion of illegal immigration*

*(1) Anyone who conducts organisational activities*

*a) in order to allow the initiating of an asylum procedure in Hungary by a person who in their country of origin or in the country of their habitual residence or another country via which they had arrived, was not subjected to persecution for reasons of race, nationality, membership of a particular social group, religion or political opinion, or their fear of direct persecution is not well-founded,*

*...*

*(5) [organisational activity is, if]*

*a) the person organises border monitoring at the external borderlines of Hungary as specified in point 2 of article 2 of Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons in the territory of Hungary.*

*b) prepares or distributes information materials or commissions such activities,*

*c) builds or operates a network.”*

**THE ILLUSORY UNITY OF THE  
VISEGRAD COUNTRIES (CZECH  
REPUBLIC, HUNGARY, POLAND,  
SLOVAKIA)**

# Diversity within the V4

	Hungary	Poland	Czech R.	Slovakia
<b>Rule of Law procedure / Article 7 procedure</b>	<b>Started</b>	<b>Started</b>	<b>Not an issue</b>	<b>Not an issue</b>
<b>Rhetoric on EU</b>	<b>Anti EU</b>	<b>Anti EU</b>	<b>Mixed (Babiš, Zeman)</b>	<b>Pro EU</b>
<b>„Core EU” Euro</b>	<b>Hesitant, not in close future</b>	<b>Hesitant, not in close future</b>	<b>In favour willing to adopt the euro</b>	<b>In favour already in</b>
<b>Attitude towards Russia</b>	<b>Very pro- Russian government</b>	<b>Anti Russian government</b>	<b>Distanced (but: Zeman)</b>	<b>Distanced</b>
<b>Attitude towards Germany</b>	<b>Distanced, negative</b>	<b>Negative</b>	<b>Positive</b>	<b>Positive</b>
<b>Posted workers directive amendment – vote in Council</b>	<b>Against</b>	<b>Against</b>	<b>For</b>	<b>For</b>
<b>European Public Prosecutor’s Office</b>	<b>Not participating</b>	<b>Not participating</b>	<b>In</b>	<b>In</b>

# Diversity within the V4

	Hungary	Poland	Czech Republic	Slovakia
<b>Compulsory emergency relocation (2015)</b>				
<b>Decision</b>	Against	In favour	Against	Against
<b>CJEU procedure</b>	Suing Council for annulment	Intervening for annulment (after government change)	Refraining from intervention	Suing Council for annulment
<b>Persons relocated</b>	0	0	12	16
<b>Infringement proc. against the country started</b>	Yes	Yes	Yes	No

# Voting on the two UN documents dealing with regular and forced migration

Country	Global Compact for Safe, Orderly and Regular Migration UNGA vote, 19 December 2018 A/Res/73/195, 11 January 2019	Global Compact for Refugees UNGA vote 17 December 2018 A/Res/73/151, 10 January 2019
	In favour: 152      Against: 5 Abstentions: 12    Non-participation: 24	In favour: 181      Against: 2 Abstentions: 3    Non-participation 7
Czech Republic	Against	In favour
Hungary	Against	Against
Poland	Against	Did not participate
Slovakia	Did not participate	In favour

The other two against:  
Israel and  
the US



The other  
against: the  
US



# 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 mostly respects refugees' and migrants' rights guaranteed in international and EU law.

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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

Read: Hannes Grassegger: The Unbelievable Story  
Of The Plot Against George Soros  
<https://www.buzzfeednews.com/article/hnsgrassegger/george-soros-conspiracy-finkelstein-hirnbaum-orban-netanyahu>

# The lack of a common denominator with the EU on asylum matters

## EU policy as in the documents

- **Integrated** border management / Extended **EBCG** powers
- **Refugees** reaching the territory **must be recognised** as such and be given protection
- **An EU wide asylum policy is the goal** (common procedures, **uniform** status, harmonised reception conditions)
- **EU-wide solidarity** must govern asylum policy, including **relocation**
- Solidarity with third states entails **resettlement** into the EU

## Hungary ( and other V4 countries)

- **National** border protection
- **There are no refugees**, all, who come irregularly are „**illegal**” and must be **stopped before arrival**.
- Forced migration is just „**migration**” that is a national **security and cultural threat**.
- „**Fighting**” „**migration**” is national **task** absolutely **no** compulsory **relocation**, maximum flexible solidarity
- Resettlement is **taboo**

**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

# 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 workÖ

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**

## (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; Carrera and Lanno)

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](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 [Interclutural 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



# **THANKS!**

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

