

A NON-EUROPEAN IN CENTRAL EUROPE: HUNGARY

Presentation by
Boldizsár Nagy at the
„Symposium on Refugee Rights and Record”

Vera and Donald Blinken Open Society Archives at Central European University (CEU)
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Core values threatened

Hungary's discourse

Voice of the Global/European

Resolution of the Hungarian parliament entitled “**Message to the leaders of the European Union**” 36/2015. (IX. 22.) OGY

“**Waves of illegal immigration threaten Europe with explosion...The European Union is responsible for the emergence of this situation...Irresponsible are the European politicians, who with the illusion of a better life encourage the immigrants to leave everything behind and by risking their lives set out towards Europe... We have the right to defend our culture, language, values....**”

António Guterres (then) UN High Commissioner for refugees, on 20 November 2015, a week after the Paris attacks:

„But let me make it clear that **refugee flows are the result of war and terror**, not its source. Refugees are fleeing events very **much like those of Paris or Beirut**, happening in their home towns, every month, **every week**, for the past few years. And **fear and rejection of refugees** – especially Muslim refugees – are precisely the **wrong answer** to extremist threats. This is above all **a battle of values**. If **you lose your values you lose the battle**. A Western world that would reject Muslim refugees would provide extremists the best propaganda tool they could wish for in the recruitment of new supporters, including inside the very countries that might close their borders to refugees.”

What is „European“ in this context?

The imagined value community of the whole of Europe and within it of the EU

Statute of the Council of Europe

Preamble

Reaffirming their devotion to the spiritual and moral values which are the common heritage of their peoples and the true source of individual freedom, political liberty and the rule of law, principles which form the basis of all genuine democracy;

Believing that, for the maintenance and further realisation of these ideals ... there is a need of a closer unity between all like-minded countries of Europe;

Article 1

The aim of the Council of Europe is to achieve a greater unity between its members for the purpose of safeguarding and realising the ideals and principles which are their common heritage and facilitating their economic and social progress.

Treaty on the European Union

The rule of law provision, basis of the rule of law
procedure in Article 7

Article 2 TEU

The Union is founded on the
values of respect for

- human dignity,
- freedom,
- democracy,
- equality,
- the rule of law and
- respect for human rights,
including the rights of
persons belonging to
minorities.

These values are common to
the Member States **in a society**
in which

- pluralism,
- non-discrimination,
- tolerance,
- justice,
- solidarity and
- equality between women
and men

prevail.

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.....

THE MESSAGE OF THE TAMPERE EUROPEAN COUNCIL CONCLUSIONS (1999)

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.

Threats to human dignity

- Denial of refugeehood
- Treatment at the railway stations and later beyond the border closure fence in 2015
- Total control and defenselessness in the transit zone
- Denial of food to applicants who had applied earlier
- Forcing recognised refugees into homelessness by denying integration assistance



UN High Commissioner for Refugees , **F. Grandi** referring to the „worsening situation of asylum-seekers in Hungary” urged the **suspension of the return of asylum seekers to Hungary within the Dublin system** „until the Hungarian authorities bring their practices and policies in line with European and international law”.

April 2017

<http://www.unhcr.org/news/press/2017/4/58eb7e454/unhcr-urges-suspension-transfers-asylum-seekers-hungary-under-dublin.html?query=Hungary%20Dublin>

Threats to individual freedom

FREEDOM

Preventing access to safety -

forcing to remain
exposed to serious harm,
whether in the country of
origin or in transit.

Depriving asylum seekers and

recognised refugees **from**
representing themselves,
whether in the media or
otherwise

Detaining people under all
possible pretexts

Remember **Tampere**: „**This freedom should not**,
however, be regarded as the exclusive **preserve of**
the Union's own citizens”

Charter of Fundamental Rights § 6

„**Everyone has the right to liberty** and security of
person.”

§ 18 „ **The right to asylum** shall be guaranteed ...”

Procedures Directive, § 9 „1. Applicants shall be
allowed to remain in the Member State,...until the
determining authority has made a decision in ... at
first instance”

Reception Conditions directive, § 8

„Member States **shall not hold a person in detention for**
the sole reason that he or she is an applicant...”

Threats to democracy

Creating a grossly **unproportional electoral system**, with no second round in the individual districts

Giving **voting right** to those not affected by the elected parliament

Curtailling the competence of **the Constitutional Court**

Using **tax and other authorities** as **political weapons** against opponents

Aiming at creating an **illiberal state**, targeting liberal ngo-s, universities, intellectuals

Maintaining the „**crisis situation caused by mass migration**” giving **special powers** to the executive when **none of its preconditions** are met

Populating independent control bodies with party clientele

Tolerating or engendering **widespread corruption**

Resisting democratically adopted decisions of the EU if in minority (like the relocation decision)

DEMOCRACY

Council of Europe –
Compendium on
Democracy, 2016

- A) Functioning of **democratic institutions**
- B) Freedom of **expression**
- C) Freedom of **assembly** and freedom of **association**
- D) **Equality** and **non-discrimination**
- E) **Inclusive societies** and **democratic citizenship**

Threats to equality

In a **securitising** manner representing the foreigner (the asylum seeker) as a **threatening alien**, whose identity, human dignity, culture and religion **does not deserve equal respect**.

Dividing the society into „**Hungarians**” (Us) and **left-liberals (the Other)** excluding the latter from the concept of the nation

Not granting equal treatment in voting rights to different groups of Hungarians living abroad

EQUALITY

UDHR, 1948:

„All human beings are born free and equal in dignity and rights”

ICCPR § 26

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Threats to rule of law



Numerous breaches of national, EU and international law

Abuse of investigative power – inaction in cases of violence used by law enforcement agents

Unequal criminal procedural rights of those arriving across the fence

Constant threats against human rights defenders

Pressure on domestic courts

Contempt of the international courts – rejection of ECtHR judgments

Denial of effective remedy in detention in the transit zone

Venice Commission – Checklist of the rule of law, 2017

- 3.1. Legality (Respect of the law)
- 3.2 Legal Certainty
- 3.3. Prevention of abuse of office
- 3.4. Equality before the law and non-discrimination
- 3.5. Access to justice

Threats to the respect for human rights

Inhuman and degrading treatment of asylum seekers

Violating rights of the child in detention, during criminal law procedures

Harrassing human rights defenders

Threatening with refoulement or at least with denial of access to an asylum procedure

Coercive removal from Hungary without formal procedure

Denying integration from people recognised to be in need of protection



ECHR, ICCPR, 1951 Geneva Convention, Charter of Fundamental Rights, EU Acquis on asylum

WHAT DOES HUNGARY DO INSTEAD OF PROTECTING THE REFUGEES?

1.
IT IS IN DENIAL

2.
DETERS

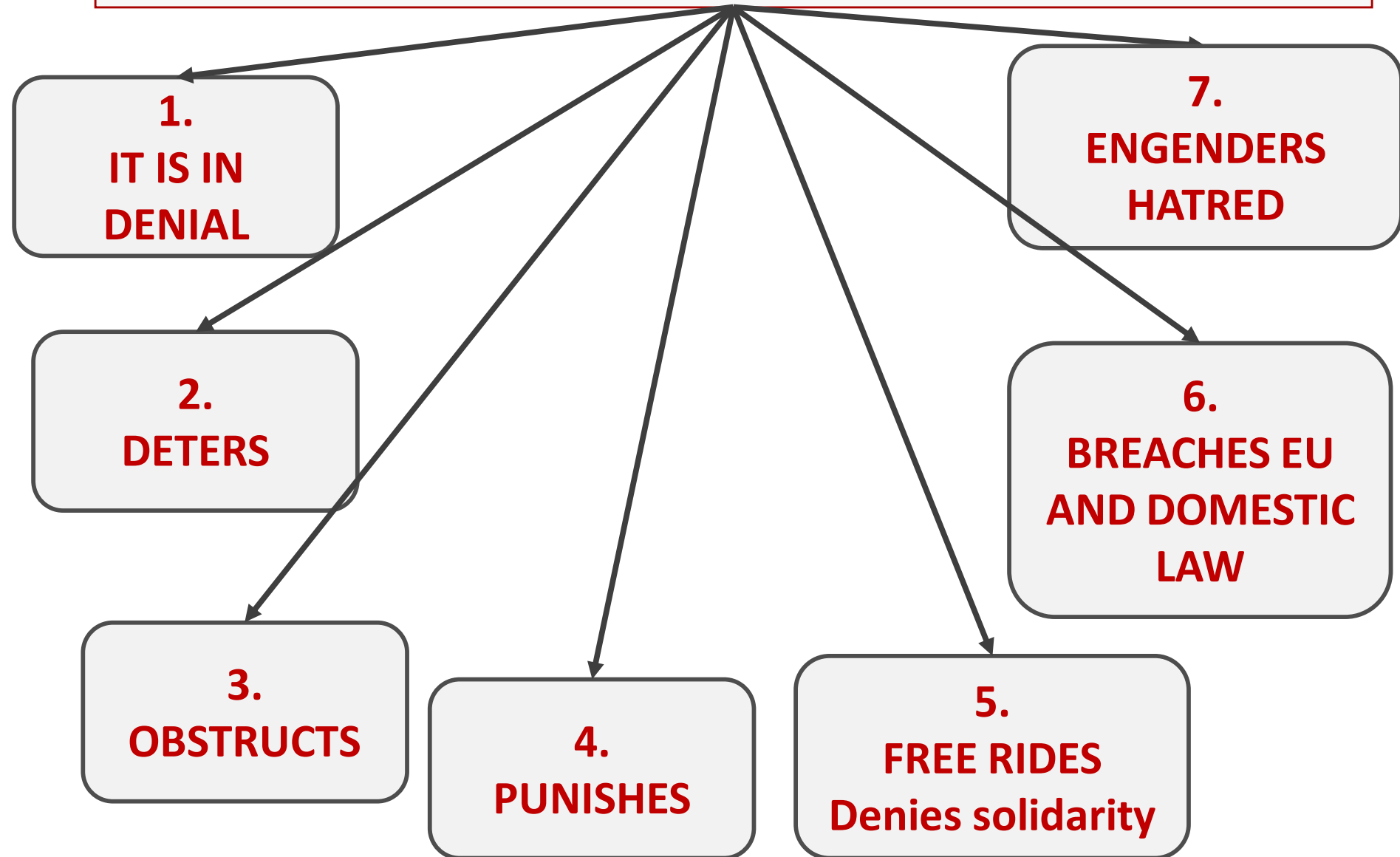
3.
OBSTRUCTS

4.
PUNISHES

5.
FREE RIDES
Denies solidarity

6.
BREACHES EU
AND DOMESTIC
LAW

7.
ENGENDERS
HATRED



A GLIMPSE INTO THE MICROSCOPE – DETAILS AFTER THE GRAND PICTURE

DATA, DOCUMENTS AND RECORDS

The problems with **statistics**

- How many asylum seekers came to **Hungary** and **Germany** in **1991** and **2015** respectively?

	UNHCR	National data
Hungary, 1991	1 300*	52 064**
Germany, 2015	441 900***	476 649 asylum applications Around 890 000 asylum seekers****

- What happened to those, once recognised? (Follow-up)

The lack of documents – why do they not have it?

Falling out of the system – departure (absconding) – **nobody searches for the disappeared**, who may have become victim of crime

*Source. UNHCR: The State of the World's Refugees. Fifty years of humanitarian action, OUP, 2000, Annex 3, p. 310

** Source: Hungarian Refugee Office data compiled by the author

*** Source: UNHCR Global Trends in Forced Displacement, 2015 Geneva, 2016, p. 38

**** Source: BAMF, Migrationsbericht 2015, <http://www.bamf.de/SharedDocs/Anlagen/DE/Publikationen/Migrationsberichte/migrationsbericht-2015.html;jsessionid=D2549F948>

A GLIMPSE INTO THE MICROSCOPE – DETAILS AFTER THE GRAND PICTURE DATA, DOCUMENTS AND RECORDS

The role of documents

In reception

- the **role of the (new) ID** document
= camp situation – entitlement

During the refugee status determination procedure

- **evidence** of threat of persecution
„proving” **protected characteristics** and **vulnerability**
- **age** assessment
- the issue of **classified information** (to be used in exclusion /e.g. terrorism/ cases)

After recognition

- **family unification**
- educational and professional **qualifications**
- **assets/income** needed to **move into immigrant** status

Boldizsár Nagy's pertinent publications

~ Hungary's hypocritical migration policy Heinrich Böll Foundation 29 May 2015

<https://www.boell.de/en/2015/05/29/hungarys-hypocritical-migration-policy>

~ Parallel realities: refugees seeking asylum in Europe and Hungary's reaction EU Immigration and Asylum Law and Policy 4 November 2015 <http://eumigrationlawblog.eu/parallel-realities-refugees-seeking-asylum-in-europe-and-hungarys-reaction/>

~ (With Kees Groenendijk) *Hungary's appeal against relocation to the CJEU: upfront attack or rear guard battle?* EU Immigration and Asylum Law and Policy 16 December 2015

<http://eumigrationlawblog.eu>

~ Hungarian Asylum Law and Policy in 2015-2016. Securitization Instead of Loyal Cooperation *German Law Journal* Vol. 17, (2016) No. 6, pp. 1032 – 1081;

~ The aftermath of an invalid referendum on relocation of asylum seekers: a constitutional amendment in Hungary Blog: EU Immigration and Asylum Law and Policy, published on 10 November 2016.

<http://eumigrationlawblog.eu/the-aftermath-of-an-invalid-referendum/>

~ *Sharing the Responsibility or Shifting the Focus? The Responses of the EU and the Visegrad Countries to the Post-2015 Arrival of Migrants and Refugees* Global Turkey in Europe Working Paper 17, May 2017 Italian Institute of International Affairs 20 p. http://www.iai.it/sites/default/files/gte_wp_17.pdf

~ *Restricting access to asylum and contempt of courts: Illiberals at work in Hungary* Blog: EU Immigration and Asylum Law and Policy, published on 18 September 2017 <http://eumigrationlawblog.eu/restricting-access-to-asylum-and-contempt-of-courts-illiberals-at-work-in-hungary/>

~ (with the contribution of Pál Sonnevend): Kein Asyl, keine Solidarität. Ungarns Asylrecht und Asylpolitik in 2015-2017. In: Fruzsina Molnár Gábor (ed.) *Freiheit und Verantwortung: Grund- und Menschenrechte im Wandel der Zeit in Ungarn und in Deutschland*, Heidelberg, Universitätsverlag Winter, 2018, forthcoming;

~ Renegade in the club. Hungary's resistance to EU efforts in the asylum field. *Osteuroparecht*, 2018 forthcoming

Thanks!

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