

United or Divided We Stand? Perspectives on the EU's Challenges

Brussels, 9-10 May 2016

Conference papers are works-in-progress - they should not be cited without the author's permission. The views and opinions expressed in this paper are those of the author(s).

www.uaces.org

**National interests in the European asylum policy -
Hungary in the European migrant crisis: Persistent
Objector or Agenda-setter?**

Written by **Gábor VETŐ**

Hungarian Academy of Sciences - Centre for Social Sciences Lendület-HPOPs Research Group,
University of Debrecen – Géza Marton Doctoral School of Legal Studies

Budapest, April 2016

Table of Contents

- Introduction..... 3
- Hungary’s asylum policy on the national level..... 4
 - Reaction to the migrant crisis 5
 - Securitarian stance on an ideological foundation..... 8
- Hungary’s asylum policy on the EU level..... 11
 - The Persistent Objector..... 13
 - ...turns into Agenda Setter?..... 15
- Conclusion 17
- Bibliography..... 19

Introduction

The European migrant crisis¹ of 2015 resulted unexpected scenes in Europe: thousands of foreign people crossed interstate borders (including non-Schengen borders) on a daily basis for months with limited state interference, resulting enormous media attention and significant public and also political debate on asylum and migration. The crisis found the European Union rather unprepared: although the previous years presented the obvious signs of a worsening refugee-situation, the EU institutions could not prevent or reduce the effects of the evolving crisis. Nonetheless, the European integration cannot be blamed for that: the Common European Asylum System, created after the introduction of the Treaty of Amsterdam and evolved within the Area of Freedom, Security and Justice still depends on the practice of the concerned member states. Although the member states have to apply the binding EU-legislation regarding asylum, they are still left with substantial leeways. During the crisis, every member state intended to pursue their own interests and promoted their own approach on the European level, which obviously made the cooperation more difficult.

In this paper, I examine Hungary's role in the European migrant crisis. Despite being a small-state member of the EU, the country's position during the crisis was much more significant. The government of Hungary, formed by the since 2010 ruling FIDESZ-KDNP coalition and led by Prime Minister Viktor Orbán viewed the migrant crisis from the beginning differently than the European mainstream. They developed a securitarian stance on migration and asylum, overriding most of the humanitarian concerns, thus, as a persistent objector, openly challenging the Germany-led management of the crisis and calling for the re-evaluation of the European asylum policy.

The paper intends to prove that Hungary attempts to become the agenda-setter of the asylum policy of the EU, thus justifying its own position and gaining political importance on the European level. Agenda-setting is understood according to Kingdon's Agenda-Setting Theory as the way of (re)defining and framing an issue.² By examining the country's actions during the crisis on both levels, we assume to meet these expectations.

¹ I use the European migrant term when referring to the situation, disregarding the fact that many of the irregular migrants are genuine refugees.

² Kingdon, J. W. (2003 [1984]) *Agendas, Alternatives, and Public Policies*, 2nd ed., New York: Harper Collins College Publishers

Hungary's asylum policy on the national level

Like most of the European countries, Hungary was both the source and the recipient of significant refugee populations throughout history, and especially in the 20th century. Probably the case of Hungarian refugees fleeing from the consequences of the failed 1956 Revolution is the most well-known.³ However, Hungary also provided protection for different groups under different political leaderships: the country hosted Polish refugees during World War II and took part in the resettlement of Greek political refugees in the early Cold War era. These actions were only loosely connected to the forming international refugee law and Hungary as a by-then Socialist country did not ratify the 1951 Refugee Convention.⁴

The country's accession to the 1951 Convention and 1967 Protocol⁵ in 1989 was an important step in the transition process leading to the democratic Hungary.⁶ As Hungary oriented towards the European integration the all-time governments strived to meet the basic requirements set out in the Geneva Convention⁷ which was further bolstered by Hungary's accession to the ECtHR in 1993.

As a result of the Yugoslav wars Hungary gave international protection to thousands of refugees. Although most of the displaced persons only stayed in the country temporarily and caused minimal financial and social burden for the country, Hungary had to create a functioning asylum system which included institutions, staff and legislation. To fulfil the criteria of accession to the European Union, this developing asylum system had to be fully harmonized with the European aquis, which with the introduction of the Treaty of Amsterdam included the legislation of the structuring Common European Asylum System.⁸

Hungary joined the EU in 2004 without the possibility of opt-out from taking part in the European asylum policy, unlike the UK, Ireland or Denmark. But of course, one of Hungary's primary objectives was to become the member of the Schengen Area as soon as possible, thus

³ The approximately 220 000 people were distributed among the Western countries to demonstrate their support to the Hungarian struggle against the Soviet Union.

⁴ Notwithstanding, the Article 58 of the 1949 Constitution of the People's Republic of Hungary provided asylum for persons fighting for „democracy and the liberation of their peoples.”

⁵ From now on the Geneva Convention or the Convention.

⁶ The main reason why the country became Party to the treaty was to prevent refoolment of the growing number of ethnic Hungarian refugees from Romania. Győri Szabó [2011] p. 338.

⁷ It have to be mentioned that Hungary extended the application of the Convention to non-Europeans only in 1998.

⁸ 2000 Regural Report from the Commission on Hungary's progress towards Accession. 8 November 2000, p. 17.

the introduction of other policies under the domain of AFSJ were not regarded as a considerable loss of sovereignty. Asylum did not play a pivotal role in the country's public life, with the stabilization of the Western Balkans, the number of asylum-seekers significantly shrank. While the migration from the developing countries and distant conflict zones emerged, Hungary remained a transit country for asylum-seekers, without a significant permanent refugee population.⁹ Although the country's society was rather not open to accept a large number of migrants and asylum-seekers from different cultures, the insignificance of the asylum situation did not result any serious tension. Hungary's asylum burdens remained moderate until the beginning of the European migrant crisis.

Reaction to the migrant crisis

From the last months of 2014, Hungary faced an extraordinary asylum situation. Tens of thousands of Kosovar people decided to leave their homeland and crossed the Hungarian-Serbian border illegally hoping to reach Western Europe (primarily Germany), where they wanted to settle as asylum-seekers for economic reasons.¹⁰ As the vast majority of the applications were unfounded, the unprepared Hungarian asylum system could cope with the situation and though asylum-seekers from more distant countries still arrived in larger numbers, the Kosovar migration wave soon ended. However, migration and asylum became a more debated question in the Hungarian public life.

The Hungarian government recognised that dealing with problem of migration can serve both as a tool for improving public opinion and as an agenda which can dominate the country's public life for a prolonged time. Being aware of the anti-migration sentiment among the populace, the government in the spring of 2015 launched a nation-wide consultation on immigration. They openly suggested harsher measures against irregular migrants, usually referring to them with the newly created "migrants for a living"¹¹ term. The consultation was accompanied by the Government's controversial billboard campaign which also emphasised the protection of the Hungarian interests.

⁹ Boldizsár Nagy [2012] A magyar menekültjog és menekültügy a rendszerváltozástól az Európai Unióba lépésig.

¹⁰ INDEP [2015] An overview of migrations of Kosovars into the EU: Migration as a Multifaceted Phenomenon, p. 18.

¹¹ In Hungarian „megélhetési bevándorló”.

The consultation's results highly favoured the governmental views. Although it had no binding nature, more than 1 in 10 Hungarians took part in it, serving as the major source of legitimacy for the government's future actions.¹²

In the summer the European migrant crisis fully escalated as the number of asylum-seekers arriving on the Western Balkan route steadily rose, surpassing one thousand per day from late June.¹³ Hungary as the first country in the Schengen Area after Greece had the responsibility under the Dublin Regulation¹⁴ to register every arriving asylum seeker and examine their cases. Although most of the asylum-seekers at the borders were successfully registered and sent to refugee camps, the national asylum system certainly became overwhelmed by the vast numbers. The humanitarian situation remained challenging, nevertheless, most of the asylum-seekers – not being restricted - left the country within days for Germany using public transport or human traffickers.

To cope with the crisis, on 17 June Prime Minister Viktor Orbán announced the construction of a fence on the Hungarian-Serbian border which plan was widely criticised by the various European leaders, international organisations and the media. The preparations soon commenced, however the border fence was only finished in late August.

Throughout the summer, Hungary complied with most of their basic humanitarian obligations.¹⁵ The main problem arose from the application of the Dublin Regulation. While the disallowed departure of the tens of thousands of asylum-seekers clearly served Hungary's interests, the country officially insisted to the regulation, because its application would discourage the asylum-seekers planning to settle in Germany.

Germany's welcoming reaction to the Syrian asylum-seekers at the Budapest Keleti Railway Station resulted their march for Austria on 4 September, forcing the Hungarian government to not further hinder any asylum-seeker from leaving the country.¹⁶ From then, almost every

¹² <http://nemzetikonzultacio.kormany.hu/>, (2016-04-14)

¹³ <http://police.hu/hirek-es-informaciok/hatarinfo/elfogott-migransok-szama-lekerdezes>, (2016-04-14)

¹⁴ Article 3(2) of the revised Dublin Regulation (2013/604/EU Regulation) introduced the rule that a member state has to examine the cases of those asylum-seekers when „systemic flaws” exist in the asylum system of the primarily designated member state. While the Regulation does not state Greece is such a country, the rule was introduced to comply with the ECtHR's M.S.S. decision which declared that refouling a particular asylum-seeker violates the prohibition of torture.

¹⁵ It is certain that the conditions in the reception facilities were bad and the Hungarian authorities were not as helpful to the asylum-seekers as in other EU-states. Nevertheless, the asylum-seekers' fundamental rights (right to life, dignity, prohibition of torture) were provided as much as in other EU-member states, which served basically only as transit countries (Croatia, Slovenia, Austria).

¹⁶ <http://www.theguardian.com/world/2015/sep/06/keleti-station-budapest-refugees>, (2016-04-18)

entering asylum-seeker was transported after registration to the Austrian border by the Hungarian authorities, minimizing the country's burdens.

After the construction of the border fence was ready, the Hungarian government announced the green borders impending closure which took place on 15 September. In parallel with the physical fence, the Hungarian parliament modified some acts of the legislation (most notably the Act on Asylum) to restrict the irregular migrants in entering Hungary and claiming asylum to particular transit zones and to sentence those who cross or damage the border fence to deportation.¹⁷

Nevertheless, the new state legislation is still in compliance with the Geneva Convention and most of the rules of the Common European Asylum System. Theoretically, every entering asylum-seeker has access to the common procedure for granting international protection and most of the guarantees are also provided. That is so because Hungary could significantly reduce the chances of positive decisions within the framework of the European legal standards.

The government's greatest tool was determining Serbia as a safe European country where asylum-seekers can be refouled.¹⁸ According to the effective revised Asylum Procedures Directive, every member state can determine the list of these countries individually, taking the considerations of the EASO and UNHCR into consideration.¹⁹ Although asylum applications from persons entering from these countries are not taken manifestly unfounded, the member states have considerable freedom to reject them without undoubtedly breaching any humanitarian obligations.²⁰

Throughout the crisis, Hungary's major intention with her physical and legal border fence was to discourage irregular migrants from entering and prompt them to choose other routes into the EU. That aim was basically achieved: after a standoff²¹ at Röszke-Horgoš border crossing, the asylum-seekers were diverted to Croatia. Albeit the border closure resulted international

¹⁷ 2015. évi CXL. törvény

¹⁸ A Kormány 191/2015. (VII. 21.) Korm. rendelete

¹⁹ 2013/32/EU Directive, Articles 37-39.

²⁰ Helen O'Nions [2014] Asylum – The Right Denied. p. 102.

²¹ After the almost complete closure of the crossing, large numbers of asylum-seekers demanded its reopening and their free passage to Western Europe. Some of them threw stones, blastic bottles, etc. at the Hungarian riot police forces in the attempt of entering to the Hungarian side of the border.. The Hungarian units used tear gas, water cannons and eventually rolled back the crowd. Some asylum-seekers were arrested for their actions, most of the trials are still in progress.

http://index.hu/belfold/2016/04/28/roszkei_osszecsapas_rendor_tanuk_a_szegedi_migrans_perben/, (2016-04-28)

criticism and temporary confrontation with the neighbours and furthermore, it did not stop Croatia from sending the asylum-seeker to the still open Croatian-Hungarian border, Hungary still insisted to her policy. The government reacted with the extension of the border fence to those parts where the Drava and Mura rivers do not serve as a natural barrier between Croatia and Hungary. Whilst the entering asylum-seekers were not sent back to Croatia, they were immediately transported to Austria usually without registration. When the fence's extension was finished, Croatia - in cooperation with every concerned state in the Western Balkan migrant route – directed every asylum-seeker heading for Germany and other countries to Slovenia. From 16 October, Hungary was basically excluded from most of the direct effects of the European migrant crisis.

According to the Hungarian police, approximately 392 000 asylum-seekers entered Hungary in 2015, usually spending only days before passing by.²² Throughout the year, 146 people were given refugee-status and 356 received subsidiary protection in Hungary, while more than 152 000 procedures were terminated because of the applicants “disappearance”. 37 000 cases were still in progress as of 31 December 2015 (most of them terminated later as well).²³

Hungary's reaction to the migrant crisis is still open to interpretation. One can argue that the country's exposure to the crisis did not require such dramatic measures and they mainly served the purposes of internal politics. On the other hand, the Hungarian government was willing to confront with every critic of their asylum policy, let them be the most important allies and partners of the country, such as Germany, Austria or Serbia and Croatia, not to mention the European Commission and the Parliament. The consistent resistance to the Germany-led humanitarian approach to the crisis required a solid asylum policy and an elaborated plan for the appropriate management of Europe's asylum problem. Viktor Orbán and his government clearly pushed for the application of the Hungarian approach on the European level, which is more than a mere political tool for gaining political support at home.

Securitarian stance on an ideological foundation

Hungary's new asylum policy has indeed a grounded argumentation for limiting the possibilities of the asylum-seekers and deterring them from entering Europe. Although the

²² <http://www.police.hu/hirek-es-informaciok/hatarinfo/elfogott-migransok-szama-lekerdezes?honap%5Bvalue%5D%5Byear%5D=2015&honap%5Bvalue%5D%5Bmonth%5D=10>, (2016-04-25)

²³ A BÁH statisztikai kiadványfüzete, 2014-2015. 2016.01.19.
http://www.bmbah.hu/index.php?option=com_k2&view=item&layout=item&id=177&Itemid=1232&lang=hu, (2016-04-24)

obligations of the Geneva based international refugee law are quite concrete, their implementation provides wide possibilities for the states to limit or on the contrary, broaden the chances of asylum-seekers to obtain international protection.

The main question still remains the same regarding asylum: when the interests of the state (and its citizens) and the ones asking for international protection or simply looking for better lives collide, who and to what extent should be prioritised?

The liberal concept of open borders, supported by among others Harris²⁴ and Carens²⁵ answers the problem by levelling the rights of citizens and migrants. It is based on the fact that all of them are human beings, thus, they all should have the same rights to move and settle freely in any county. This free movement of people would advance global economic development, reduce disparities and provide greater stability. Of course, the idea is rather utopic and unlikely to happen world-wide in the foreseeable future, yet its arguments are often invoked regarding the problems of global migration, especially the indistinctness of refugees and economic migrants.

The critics of open borders like the communitarian Walzer²⁶ argue that beside individuals, communities like states and cultures also have their own value which has to enjoy protection as well. A state cannot give up its sovereignty to provide open borders for everyone, because it would threaten its own stability and security, supposedly without providing a global solution.

To face the dilemma, every developed nation applies a slightly different approach, which, naturally, depends on many factors, most notably the geopolitical environment, the society's attitude towards migration and the level of human rights protection.²⁷ However, every state in essence sticks to the Walzerian approach, though with a rather carefully adjusted emphasis. When arguing against asylum with security, Western governments have to be careful, not to fully neglect the humanitarian concerns.

²⁴ Harris, N [2001] *Thinking the Unthinkable: The Immigration Myth Exposed* (I.B. Tauris 2001)

²⁵ Carens, J [1987] 'Aliens and Citizens: The Case for Open Borders' (1987) 49 *The Rev of Politics* 2, 251–273

²⁶ Walzer, M. [1983] *Spheres of Justice: A Defence of Pluralism and Equality*.

²⁷ Due to the papers restricted length, we can only allude to the different attitudes of developed, democratic countries: Japan provides international protection to mere thousands of refugees, while Canada hosted approximately 150 000 in 2014. Source:

http://data.worldbank.org/indicator/SM.POP.REFG?order=wbapi_data_value_2014+wbapi_data_value+wbapi_data_value-last&sort=asc, (2016-04-20)

In the case of Hungary, the government's restrictive policy towards irregular migrants is fully based on the communitarian argumentation. Orbán stated multiple times, that Hungary – although being an open and welcoming country – will not accept unlimited numbers of asylum-seekers from different cultures, because that would threaten the survival of her own values: the Hungarian nationality, Christianity and freedom.²⁸

Apart from the protection of values, the matters of national security also play a vital role in the government's reasoning. After the attack against Charlie Hebdo in January of 2015, the Hungarian PM already expressed his concerns about the dangers of the Muslim immigration to Europe.²⁹ Throughout the migrant crisis, the threat that the radical Islamist group ISIS would send its members in the EU disguised as refugees was Hungary's important response to international criticism. In fact, some of the perpetrators of the November 2015 Paris attacks entered Europe via the Western Balkan migrant route,³⁰ however, the attack and also the 2016 Brussels bombings were essentially organised by the Brussels ISIL terror cell formed by European citizens.³¹

The Hungarian argumentation, notwithstanding, also gave place to the humanitarian concerns. The achievements of the Geneva Convention were not disdained and the Hungarian government called for the international solution of the genuine Syrian refugees's plight, but they preferred to support their regional protection and to achieve the appropriate circumstances for their future safe return. The obligations of the international refugee law and the CEAS do not require the European states to accept asylum-seekers who are already residing in a safe country and Hungary regards Turkey as such.³²

The elaborateness of the “ideology” behind the Hungarian asylum policy clearly requires a more thorough analysis, but the limits of this paper do not allow more than this summary. It is certain that the issues of populism, rhetorical justification and legalism arise regarding its complexity. Nevertheless, the new Hungarian asylum policy supported by both state's practice and argumentation challenged the humanitarian approach to the management of the migrant crisis.

²⁸Viktor Orbán's speech at a meeting of the heads of Hungary's diplomatic missions abroad, Budapest, 7 September 2015

²⁹<https://euobserver.com/justice/127172>, (2016-04-21)

³⁰<http://www.theguardian.com/world/2015/nov/20/paris-attacks-france-launches-un-push-for-unified-declaration-of-war-on-isis>, (2016-04-21)

³¹<http://www.reuters.com/article/us-belgium-blast-paris-idUSKCN0X7099>, (2016-04-21)

³²<http://www.kormany.hu/en/the-prime-minister/news/prime-minister-viktor-orban-s-interview-with-swiss-weekly-weltwoche>, (2016-04-21)

Hungary's asylum policy on the EU level

The European migrant crisis from the start required some sort of a common European answer. The Commission led by Jean-Claude Juncker was already aware of the growing pressure on the external borders before the crisis outbreak and unveiled its Migration Agenda in May 2015. The Agenda intended to address the EU's challenges related to migration and asylum, including saving the lives of irregular migrants at sea, combating people-smuggling and cooperating with the countries of the migrants' origin. The plan also introduced a relocation scheme of asylum-seekers to balance the over-burdened member states and as well the resettlement of 20 000 refugees into the EU.³³ The Agenda's aims at that time seemed executable and realistic, however, due to the unexpected scale of the crisis the Commission soon lost the initiative to the member states.

The competencies of the EU on the field of asylum, despite the existence of the Common European Asylum System, still remain marginal. The CEAS serves mainly as a legal framework containing binding rules on member states with the aim to create a single European area of international protection applying the same standards.³⁴ However, the member states implement the common rules and they have to maintain their own national asylum systems, because the EU lacks both the funds and the institutions.³⁵ The lack of supranationalism should be counterbalanced by the principle of solidarity and fair sharing of responsibility (including its financial implications) between member states.³⁶ Yet, the extent of that is the choice of the member states will, without specific obligations.³⁷

In the time of crisis, it soon turned out that every member state has large freedom to make their own position, especially the seriously affected ones. Although European leaders like Juncker or European Parliament president Martin Schultz consistently called out for a coordinated crisis management according to the Agenda's vision, the member states represented their individual positions regarding the concrete actions. Every country promised

³³ A EUROPEAN AGENDA ON MIGRATION, Brussels, 13.5.2015 COM(2015) 240 final

³⁴ Jones et al. [2012] *The Oxford Handbook of the European Union*. p. 618-619.

³⁵ The most important European institutions of the CEAS, the Asylum, Migration and Integration Fund (AMIF) and the European Asylum Support Office has a notable, notwithstanding auxiliary role in the formation of Europe's asylum policy. Tsourdi- De Bruycker [2015] *EU asylum policy: in search of solidarity and access to protection*.

³⁶ Article 80. TFEU

³⁷ Trybus, Martin – Rubini, Luca. [2012] *The Treaty of Lisbon and the Future of European Law and Policy*. p. 355-367.

to comply with obligations of the CEAS, including the Dublin Regulation, but remained reluctant to unconditionally support new actions and procedures on the European level.

The Treaty on the Functioning of the European Union does not regulate the asylum policy watchfully leaving it to the secondary legislation, however, Article 78(3) has the specific purpose of guiding the EU during a migrant crisis: *“In the event of one or more Member States being confronted with an emergency situation characterised by a sudden inflow of nationals of third countries, the Council, on a proposal from the Commission, may adopt provisional measures for the benefit of the member State(s) concerned. It shall act after consulting the European Parliament.”* This special legislative procedure thus allows the Council after only consulting the Parliament to adopt provisional measures with qualified majority.³⁸ These prompt measures should be able to handle the situation until a lasting solution is found.

Other options are also available. To create new rules and obligation within the scope of Lisbon, the effective directives and regulation can be modified or new ones can be adopted. This takes a reasonable amount of time, thus, it definitely does not bring an immediate solution. There remains the simplest option, of course, the political solution, which can bear its fruits quickly, but requires full approval.

The management of the migrant crisis on the European level so far used provisional measures and political agreements, while the modification of the legislation is still only considered.³⁹ The adopted measures achieved little of the Commission’s objectives. This highlights the recurring main criticism of the European Union, in its current state the integration is unable to combat critical situations with a prompt, comforting and durable solution. Because the EU does not function as a nation state, especially in matters related to immigration, its constraints are natural.⁴⁰ These limits have a two-sided result in the case of Hungary: the country can form relatively freely the European level of decision-making and at the same time, distance herself from it.

³⁸ As set in the Article 330. TFEU

³⁹ The Commission latest communication proposed to reform the Common European Asylum System. The most notable change would be the amendment of the Dublin Regulation, introducing a permanent corrective fairness mechanism or a relocation system. Communication from the Commission to the European Parliament and the Council – Towards a reform of the Common European Asylum System and enhancing legal avenues in to Europe. Brussels, 6.4.2016 COM(2016) 197 final

⁴⁰ Trybus et al. [2012] p. 377-378.

The Persistent Objector...

Hungary's management of the migrant crisis obviously never separated itself from the European reality. The country was many times confronted with the outcomes of other states' decisions to which only a reactive answer could have been given due to Hungary's limited possibilities. Being aware of that fact, however, Hungary from the beginning of the crisis wanted to influence the European decision-making and the public opinion as well. This was mainly the accomplishment of Prime Minister Orbán, who ordained himself to become a definitive European politician⁴¹ embracing the Fortress Europe vision against the humanitarian priorities supported by the European establishment.⁴²

Hungary's attitude to the migrant crisis differed significantly from most of the European countries. It can be said that the European political and the intellectual sphere, alongside with the media regarded the crisis as a huge humanitarian situation. The arriving asylum-seekers were mostly viewed as people in certain need of support, and the communication of the European governments – even in those countries, which were not directly affected by the crisis like the UK – promised to handle their plight and improve their situation.⁴³ In Germany the answer given to the crisis was described with the phrase *Willkommenskultur*.⁴⁴ By contrast, Hungary's government rather saw the crisis as a mass migration of peoples and acted accordingly. This interpretational rift established the base of the Hungarian position's importance.

Throughout the crucial stages of the European crisis management, Hungary can be described as a persistent objector. Certain that this was demonstrated mostly on the field of rhetoric, but it was also manifested first and foremost in the refusal of taking part in the compulsory common European asylum-seeker resettlement and relocation scheme proposed by the Commission and endorsed by Germany. The Hungarian government supported only a voluntary system, without any binding obligations. That is why Hungary accepted the Council

⁴¹ Interview with Gábor Török in Magyar Narancs, 16 September 2015.

⁴² Politico 28: Viktor Orbán, the conservative subversive.

⁴³ After internal criticism British PM David Cameron promised to take in thousands of Syrian refugees from war zones. <http://www.theguardian.com/world/2015/sep/03/cameron-bows-to-pressure-to-allow-more-syrian-refugees-into-britain>, (2016-04-23)

⁴⁴ Doris Akrap [2015] Germany's response to the refugee crisis is admirable. But I fear it cannot last. <http://www.theguardian.com/commentisfree/2015/sep/06/germany-refugee-crisis-syrian>, (2016-04-21)

decision 2015/1523⁴⁵ of 14 September 2015 on the relocation scheme of 40 000 asylum-seekers from Greece and Italy after being reassured that her participation is optional.⁴⁶

However, the case was different with the next decision, which obligated Hungary to accept at least 1294 asylum-seekers from over-burdened member states.⁴⁷ The temporary, but binding relocation scheme was accepted by a qualified majority despite Hungary's objection along with Romania, Slovakia and the Czech Republic.⁴⁸ In spite of the minimal burden inflicted on the country, the Hungarian government vehemently declined to comply with the decision, arguing that it was illegal. Although the other opposing states expressed their disapproval as well, they accepted the decision for the time being.⁴⁹

The move met international criticism, condemning Hungary for showing no solidarity with other member states and being uninterested in the fate of the asylum-seekers. Orbán reacted with his own proposal for the crisis's solution, which among others called for the joint European control of the Greek border, the separation of genuine refugees and economic migrants already outside Europe, partnership with the concerned third countries, especially Turkey and a new, global voluntary resettlement scheme.⁵⁰

The pressure of the migrant crisis seemed to ease with the end of the autumn, but the enacted refugee quota system was hardly functional with only dozens relocated.⁵¹ Although the scheme's implementation was designed to take two years, the member states support rapidly eroded with many of them expressing doubt about the system's use and applicability. In this atmosphere, the Hungarian Parliament accepted an act which called the government to file a lawsuit in the European Court of Justice for the annulment of Hungary's obligations in the relocation scheme.⁵² The ECJ received Hungary's action for annulment on 3 December

⁴⁵ Based on Article 78(3) TFEU

⁴⁶ Prime Minister Viktor Orbán on Kossuth Rádió's "180 minutes, July 3 2015.

⁴⁷ Council decision 2015/1601 of 22 September.

⁴⁸ <http://www.bbc.com/news/world-europe-34329825>, (2016-04-24)

⁴⁹ The „new” member states of the EU, especially the V4 countries from the beginning represented similar attitudes as Hungary regarding the migrant crisis. However, their lack of direct involvement did not allow them to totally refuse an European burden-sharing initiative with minimal responsibilities. Poland reluctantly supported the decision which was necessary for its adoption with a qualified majority. Romania and the Czech Republic promised to meet their obligations.

⁵⁰ http://index.hu/belfold/2015/09/23/orban_szerint_az_egesz_vilagban_kellene_szetosztani_a_menekulteket/, (2016-04-24)

⁵¹ <http://uk.reuters.com/article/uk-europe-migrants-greece-minister-idUKKCN0S509920151011>, (2016-04-24)

⁵² 2015. évi CLXXV. törvény a Magyarország és Európa védelmében a kötelező betelepítési kvóta elleni fellépésről

alongside Slovakia.⁵³ Currently Hungary also plans to hold a referendum on the matter in the second half of 2016.⁵⁴

Hungary's resistance to the only collective European action of solidarity in the field of asylum showed that the country's government can only support intergovernmental solutions with consensus and with the utmost respect of the states' sovereignty. The current state of the European Union gives place to this view, however, not without raising the questions of common values, solidarity and loyalty. Nonetheless, as the migrant crisis was not reassuringly solved by the EU's limited actions, and more and more member states followed Hungary's example.

...turns into Agenda Setter?

By the end of 2015, more than 1,2 million people claimed asylum in the European Union.⁵⁵ Although many of the applications were manifestly unfounded,⁵⁶ the incredible burdens made even the most welcoming countries change their priorities. Sweden, which accepted 156 000 asylum-seekers introduced border controls in November to stop further arrivals. Austria fortified her borders with Slovenia and gradually restricted the asylum-seekers entry. In Germany which received the majority of the applicants, the sexual assaults on women on New Year's Eve perpetrated mostly by North-African migrants caused national outrage. Anti-migration sentiment grow larger as the radical AFD party gained strength in state elections, while the support for the ruling coalition led by Chancellor Merkel eroded.⁵⁷ In addition, Islamist terror attacks struck Paris in November 2015 and Brussels in next March.

It was certain that the existing humanitarian attitude towards the migrant crisis cannot be maintained much further. As the European societies no longer supported the unconditional admission of asylum-seekers, the only solution remained their containment at the European, specifically the Greek borders. However, this required a political deal with Turkey and raised the possibility of violating the asylum-seekers human rights. The European countries had to face the fact that they need to adopt core concepts from the Hungarian approach.

⁵³ Hungary v Council Case C-647/15, Slovakia v Council Case C-643/15

⁵⁴ The referendum's concrete question is the following: Should the EU determine even without the consent of the Hungarian National Assembly the compulsory settlement of non-nationals to Hungary? The Fundamental Law of Hungary (Constitution) does not allow national referendums on obligations arising from international treaties, thus it cannot be applied to Council decisions.

⁵⁵ Eurostat release 44/2016 - 4 March 2016. Asylum in the EU Member States.

⁵⁶ 67 000 applicants came from Kosovo and 66 000 from Albania. Both of them are regarded as safe European countries.

⁵⁷ <http://www.theguardian.com/world/2016/mar/13/anti-refugee-party-makes-big-gains-in-german-state-elections>, (2016-04-28)

The closure of the Western Balkan migration route shortly commenced as serious negotiations between EU member states and Turkey materialized in March 2016. On 17 March, in spite of Turkey's huge demands (visa liberalisation, acceleration of the accession process, additional financial funding), the humanitarian concerns and Turkey's controversial internal affairs, a political agreement on the effective cessation of irregular migration to Greece was struck.⁵⁸ Although the implementation of the deal on the long run is still far from certain, presently⁵⁹ the number of entering asylum-seekers minimalized at the daily basis of few hundreds.

The Hungarian government saw the deal as the recognition of their position's validity. Orbán stated in an interview that "regarding the necessary measures, the priority of the external borders' protection, Europe does not admit it, but says the same that we have said and done"⁶⁰ The agreement with Turkey, however, is only seen as the necessary first step in the protection Europe's external borders from uncontrolled migration. Hungary's plan is to improve the regional stability of the Euro-Mediterranean area with the means of the Common Foreign and Security Policy of the European Union giving a particular priority to geopolitically key countries.⁶¹

It is certain that Hungary alone cannot significantly assist the success of the European external politics, but that was never the country's aim. The elemental re-evaluation of the migrant crisis's common management was everything that the country on the European level hoped for.

⁵⁸ <http://www.consilium.europa.eu/en/press/press-releases/2016/03/18-eu-turkey-statement/>, (2016-04-24)

⁵⁹ Late April of 2016.

⁶⁰ „...szükséges lépéseket tekintve, a külső határvédelem elsőségét tekintve nem vallja be Európa, de ugyanazt mondja, mint amit mi mondunk, és amit mi csináltunk” Prime Minister Viktor Orbán on Kossuth Rádió's "180 minutes, April 22 2016.

⁶¹ The highest priorities are Libya, and the countries involved in the Syrian Civil War.

Conclusion

The paper found that the reformed common management of the European migrant crisis became remarkably similar to the previously criticised Hungarian government's vision. The humanitarian principles of the "refugees first policy", which dominated the mainstream European approach in the summer of 2015, gradually lost ground, giving place to the securitarian standpoint of Fortress Europe. But how significant was Hungary's contribution to this change?

The Hungarian government's recent asylum-related measures certainly restricted the asylum-seekers possibilities. The increased physical and legal protection of the Hungarian national borders effectively forced them to use legal channel only, where the state had significant leeways to narrow their access to protection while fulfilling the legal requirements of the Common European Asylum System. However, this attitude is not exceptional, every state attempts to manipulate the numbers of the entering asylum-seekers by various no-entry policies. Hungary's widespread criticism stemmed from the fact that these measures were introduced in the middle of an enormous migrant crisis which the Hungarian government from the beginning refused to view as a humanitarian situation.

The majority of the EU member states, on the contrary, gave priority to the humanitarian concerns over security for a prolonged period of the crisis. Nevertheless, this approach was not sustainable as the pressure on the welcoming states asylum systems heavily increased and the societies' initial enthusiasm shifted to growing dissatisfaction, while the common humanitarian management of the crisis according to the principle of solidarity could not achieve reasonable success. The concerned states had to follow the Hungarian example on the European scale, eventually keeping out asylum-seekers in cooperation with Turkey.

Hungary clearly played a catalysing role in the transformation of the European attitude. As a member of the European Union, the state could influence the agenda and represent its own solution for the crisis, reaching both European citizens and decision-makers. However, this role was not vital and the change sooner or later would have happened in any case because the member states individually decided to revise their approach.

Withal the Hungarian government can regard the re-evaluation of the European asylum policy as a feather on its cap, as the country has won an important political battle over the suitable reaction to the migrant crisis. Hungary and her political leadership lost the black sheep status

on the matter of asylum, thus the international criticism of their own actions will greatly lessen. This also justifies the governmental views' validity in the eyes of the Hungarian electorate. However, the Hungarian position's success does not mean that Hungary's weight and importance could significantly boost in the European Union as the country possibilities remain bound to the size of the population and the performance of the economy.

The main scientific problem this paper had to face is that the European migrant crisis is still needed to be understood. The discernment, however, seems extremely hard as the available information related to decision-making on every level is limited. In addition, the huge media coverage of the crisis, principally unintentionally, had a huge distorting effect.

The core problem is still the role of morality in the management of the migrant crisis. If we accept the moralist standpoint, Europe first accepted everyone who asked for protection in the continent but soon after, extremely limited their access, the situation of the asylum-seekers in the countries of residence did not changed significantly for the better though. This would mean that Europe gave up the moral values for the sake of her own interests. However, from the realist point of view of Morgenthau, the self-interest of nations and moral laws have to be separated. What if pure self-interest dominated the complete crisis-management of every European country, not just Hungary's? The better understanding of the European migrant crisis will be learnt in time.

Bibliography

”2000 Regular Report from the Commission on Hungary’s progress towards Accession.” 8 November 2000.

”2015. évi CXL. törvény egyes törvényeknek a tömeges bevándorlás kezelésével összefüggő módosításáról.” Magyarország hivatalos lapja, 2015. szeptember 4., péntek.

”2015. évi CLXXV. törvény a Magyarország és Európa védelmében a kötelező betelepítési kvóta elleni fellépésről.” Magyarország hivatalos lapja, 2015. november 26., csütörtök.

”An overview of migrations of Kosovars into the EU: Migration as a Multifaceted Phenomenon.” Institute for Development Policy. 2015/06 .

Carens, J. ”Aliens and Citizens: The Case for Open Borders” (1987) 49 *The Rev of Politics* 2, p. 251–273.

”Communication from the Commission to the European Parliament and the Council – Managing the refugee crisis: immediate operational, budgetary and legal measures under the European Agenda on Migration.” COM/2015/0490 final.

”Communication from the Commission to the European Parliament and the Council – Towards a reform of the Common European Asylum System and enhancing legal avenues in to Europe.” Brussels, 6.4.2016 COM(2016) 197 final

”Consolidated Versions of the Treaty on European Union and the Treaty on the Functioning of the European Union.” Official Journal of the European Union, March 30, 2010.

”Constitution of the People’s Republic of Hungary” 1949. évi XX. törvény. <http://www.rev.hu/sulinet45/szerviz/dokument/1949.evi3.htm>, (2016-04-19)

”Council Decision (EU) 2015/1523 of 14 September 2015 establishing provisional measures in the area of international protection for the benefit of Italy and of Greece.” OJ L 239, 15.9.2015, p. 146–156

”Council Decision (EU) 2015/1601 of 22 September 2015 establishing provisional measures in the area of international protection for the benefit of Italy and Greece.” OJ L 248, 24.9.2015, p. 80–94

”Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection.” OJ L 180, 29.6.2013, p. 60–95.

Doris Akrap. „Germany’s response to the refugee crisis is admirable. But I fear it cannot last.” <http://www.theguardian.com/commentisfree/2015/sep/06/germany-refugee-crisis-syrian>, (2016-04-21)

Győri Szabó Róbert. ”A magyar külpolitika története 1848-tól napjainkig.” Helikon, Budapest. (2011)

Harris, N. ”Thinking the Unthinkable: The Immigration Myth Exposed.” I.B. Tauris. (2001)

Jones, Erik–Menon, Anand – Weatherill, Stephen. “The Oxford Handbook of the European Union.” Oxford University Press. (2012)

Kingdon, J. W. “Agendas, Alternatives, and Public Policies.” 2nd ed., New York: HarperCollins College Publishers (2003)

Morgenthau, Hans J. “Politics Among Nations: The Struggle for Power and Peace.” Fifth Edition, New York: Knopf, (1978)

Nagy Boldizsár. ”A magyar menekültjog és menekültügy a rendszerváltozástól azEurópai Unióba lépésig - Erkölcsi, politikai-filozófiai és jogi vizsgálódások.” Gondolat, Budapest. (2012)

O’Nions, Helen. ”Asylum - a Right Denied A Critical Analysis of European Asylum Policy.” Ashgate. (2014)

“Prime Minister Viktor Orbán on Kossuth Rádió’s “180 minutes” July 3 2015. <http://www.kormany.hu/hu/a-miniszterelnok/beszedekek-publikaciok-interjuk>, (2016-04-27)

“Prime Minister Viktor Orbán’s interview with Swiss weekly Weltwoche.” November 13, 2015. <http://www.kormany.hu/hu/a-miniszterelnok/beszedekek-publikaciok-interjuk>, (2016-04-26)

“Prime Minister Viktor Orbán on Kossuth Rádió’s “180 minutes”, April 22 2016. <http://www.kormany.hu/hu/a-miniszterelnok/beszedekek-publikaciok-interjuk>, (2016-04-27)

”Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person.” OJ L 180, 29.6.2013, p. 31–59

Tsourdi, Evangelia (Lilian) - De Bruycker, Philippe. “EU asylum policy: in search of solidarity and access to protection.” *Migration Policy Centre*; Policy Brief; 2015/6

Trybus, Martin – Rubini, Luca. ”The Treaty of Lisbon and the Future of European Law and Policy.” Cheltenham, UK: Edward Elgar. (2012)

”Viktor Orbán, the conservative subversive.” Politico 28. The 28 people from 28 countries who are shaping, shaking and stirring Europe. <http://www.politico.eu/list/politico-28/viktor-orban/>, (2016-04-25)

”Viktor Orbán’s speech at a meeting of the heads of Hungary’s diplomatic missions abroad, Budapest.” 7 September 2015. <http://www.kormany.hu/hu/a-miniszterelnok/beszedekek-ublikaciok-interjuk>, (2016-04-27)

Walzer, M. “Spheres of Justice: A Defence of Pluralism and Equality.” Martin Robertson. (1983).