The Visegrad Group and the EU agenda on migration: A coalition of the unwilling?

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Abstract

More than a million refugees applied for asylum in member states of the European Union in the course of 2015. Along with the challenges of the central Mediterranean migration route, new hotspots of migratory movements emerged, such as Hungary. The EU is faced as a result with a number of challenges connected to its asylum policy, mostly because its system was not designed with the prospects of a persistent mass influx of refugees in mind. Although the recast process of the Common European Asylum System (CEAS) established the possibility of financial compensation, supportive measures and early-warning mechanisms, no common system for a more equal distribution of refugees was accepted. Initiatives aiming to establish resettlement and relocation mechanisms based on distribution keys were not supported unanimously. Among the prominent persistent objectors to such plans are the Visegrad Four (V4) countries who express a strong interest in securitising irregular migration. This article aims to explain V4 countries' reactions, and examines whether a fundamental reassessment of the CEAS is really needed or possible in the near future.

Keywords: refugees, migration, CEAS, securitization, irregular migration, Visegrad

Introduction

More than a million refugees applied for asylum in member-states of the European Union until 22 December 2015. Along with the challenges of the central Mediterranean migration route, which represents the greatest challenge in the field of border management and asylum policy since 2012, new hotspots appeared on the map after 2014.

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Hungary registered a total of 199,165 asylum applications up to the end of October in the course of 2015 (Nagy, 2015: 1). This is the second largest number after Germany, the main destination country for refugees. The Common European Asylum System (hereinafter: CEAS) was thus challenged, because the system was not designed to smoothly manage the persistent mass influx of people. In fact, the original idea behind the CEAS, as it exists since 1999, was mostly not burden-sharing, or the equal distribution of refugees across Europe but to prevent secondary migration, to provide adequate reception conditions, and to create minimum standards for the asylum procedure. The recasting of the CEAS, completed last year, established financial compensation mechanisms through the European Fund for Refugees and the new Asylum, Migration and Integration Fund (AMIF). It also called for supportive measures for weaker member states through the European Asylum Support Office (EASO), and early-warning mechanisms in case a Member State does not meet its asylum obligations. However, no common system for a less disproportionate distribution of refugees was accepted (Bendel, 2015:2). Therefore this article will focus on European asylum policy reform and the pros and cons of whether a fundamental re-assessment of the CEAS is necessary. It also provides an overview of how the member states reacted to the recent asylum relocation plans of the EU Commission.

After the arrival of Kosovar applicants in 2014 and the mass influx of Syrian, Afghan and Eritrean nationals in 2015, the overburdened asylum system of Hungary almost collapsed. The Hungarian decision to temporarily suspend the application of the Dublin Regulation triggered a meaningful discourse on the issue – even as this decision was reversed a few days later.[2] Hungary rejected becoming a new refugee hotspot of the EU but asked for assistance from member states because of the high number of applications at its southern border. Furthermore, Hungary urged the enhancement of surveillance in the field of border control, and supported the idea of extraterritorial defense to be established in cooperation with a zone of "safe third countries" in the Western Balkans. Based on this argument, refugees should not be resettled or relocated across the European Union, but simply kept outside the EU's territory. Hungary bears the

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[2] A government spokesman announced the suspension of the Regulation. The latter establishes that the country where an asylum-seeker first sets foot in the EU must process his/her claim. The government's stated reason for the suspension was that it was "overburdened." A day later, the Ministry of Foreign Affairs said in a statement that it was not suspending any EU regulations, and that it had merely requested a grace period to deal with asylum seekers who were arriving at the time (ECRE, 2015).

support of the Visegrad Group in this issue and the V4's regional cooperation could have major signficance in influencing future EU legislation in this field.

The role of the V4 group is noteworthy as these countries implemented the CEAS from the very beginning of their EU accession talks. Yet for long they were largely unaffected by refugee flows and migratory movements. At the same time, they adopted the main security concerns of Western European strategic thinking[3] such as terrorism, organised crime and irregular migration – key aspects of European security policy documents (Schwell, 2015: 4).

The securitization of migration

According to Schwell, understanding irregular migration as a security risk may have begun with the Europeanization of CEE countries and their adoption of the European security agenda. This took a dynamic turn in recent years. Securitizing "speech acts" (political rhetoric, legislative acts, etc.) appeared in every single country of the V4 concerning irregular migration, suggesting that transboundary migratory movements derive from economic disparities and that "economic migrants" who are crossing the border illegally should be sent back.

The other influential argument behind securitisation is that migrants are presented as endangering these countries' cultural and religious values. This line of argumentation rests on ignorance of the numerous reasons why a person might need to leave his/her home country (such as coerced displacement, or displacement due to a natural disaster). It frames the recent crisis as a new "period of popular migration" (*népvándorlás* in Hungarian; *Völkerwanderung* in German).

That understanding may have its own relevance from a historical or a sociological point of view, but it does not address the problems related to the current European asylum legislation. Almost 900,000 of a total of one-million irregular migrants applied for asylum in the EU in 2015, and thus the current situation shall rather be termed a "refugee crisis" even as asylum policy issues were not on the top of the policy agenda in V4 countries at all (only a few experts raised their voice and urged the improvement of standards concerning asylum facilities, detention centers and asylum procedure as a whole). Instead,

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[3] The European Security Strategy of 2003 is a comprehensive document which analyses and defines the EU's security environment, identifying key security challenges and subsequent political implications for the EU. It singled out five key threats: terrorism, the proliferation of weapons of mass destruction, regional conflicts, state failure, and organised crime.

decision-makers focused on the enhancement of border protection, and quicker and more effective border procedures in order to return the "economic migrants" to their country of origin or a "safe third country."

The fear from a "mass influx" may be rational if one looks at the number of arrivals in 2015. For Visegrad countries both the scale and the implications of the phenomenon may be unprecedented although it must be noted that these countries were not entirely evenly exposed to the migratory movements themselves.

Slovakia

As *Table 1.1* shows, Slovakia did not grant refugee status to more than 80 persons in any year in 1993-2004. Although they received more than 10,000 applications in 2003 and 2004, most of the refugee status determination procedures were halted given that the applicants left the territory of the country (presumably towards Western Europe). The high number of discontinued procedures shows that the secondary movement of asylum-seekers was the core problem of asylum policy already before Slovakia's EU accession.

Year	Asylum Applications	Positive decisions	Rejections	Discontinuation
1993	96	41	20	25
1994	140	58	32	65
1995	359	80	57	190
1996	415	72	62	193
1997	645	69	84	539
1998	506	53	36	224
1999	1320	26	176	1034
2000	1556	11	123	1366
2001	8151	18	130	6154
2002	9743	20	309	8053
2003	10358	11	531	10656
2004	11395	15	1592	11782

Table 1.1: Asylum applications in Slovakia 1993-2004 (Hurná, 2012: 1400).

According to *Table 1.2*, the peak year upon EU accession was 2005, with 3,549 requests. Authorities had to deal with approximately 3,000 applications per year in the first years post-accession. This amount started to decrease after 2008, and the result was an average level of ca. 700 applications annually. Meanwhile Slovakia granted asylum to less than one-hundred persons in the whole of the period concerned.

We may therefore conclude that Slovakia had virtually no experience with any mass influx of asylum-seekers. This may go a long way in explaining the country's relative passivity on CEAS issues before 2014.

Year	Asylum Applications	Asylum granted	Rejected	Granted / Not granted subsidiary protection	Discontinued
2005	3549	25	827	n/a	2930
2006	2849	8	861	n/a	194
2007	2642	14	1177	82/646	1693
2008	909	22	416	66/273	457
2009	822	14	330	98/165	460
2010	541	15	180	57/104	361
2011	491	12	186	91/48	270

Table 1.2: Asylum applications in Slovakia 2005-2011 (Hurná, 2012: 1401).

However, this posture has changed since 2015. In Pavelková's words:

> "When […] in October [2015], a group of Syrians temporarily relocated to Gabčíkovo municipality objected to the conditions of the housing facilities they were placed in, the Minister of the Interior Robert Kaliňák dismissed their critique, reminding them that they were not in the hotel Sheraton Arabella" (Pavelková, 2016:1).

While the Slovak standards of reception conditions are far below the average in the EU, this statement may show that the minister objected to the high costs of improving asylum infrastructure.

Meanwhile, Slovak Prime Minister Robert Fico claimed that ninety-five percent of those arriving in Slovakia were economic migrants and not refugees, suggesting that

their return would be the best solution because they constitute a threat to the welfare of the population of Slovakia and the economy itself. Later, he went on to suggest that Slovakia should eventually build "barriers to navigate" refugees alongside its borders (Pavelková, 2016: 2). Viewing economic migrants as "parasites" is not the only frame of understanding pertaining to Slovak government policy and societal discourse. The image of the Islamic terrorist hiding in refugee camps also influences the public debate and the audience in general. Arguments in connection with religious differences also frequently recur in Slovakia. According to Ivan Netik (the spokesperson for the Slovak Ministry of Interior) "Slovakia will only accept Christian arrivals […] and he warned […] that Muslims should not move to Slovakia because they will not easily integrate with the country's majority Christian population" (quoted in O'Grady, 2015).

Following the Paris terrorist attacks of November 2015, PM Fico announced that Slovakia will impose tighter security measures in detention and asylum facilities and immediately deport every migrant who enters the country illegally. He also suggested that Slovak authorities are already monitoring all Muslims in their territory, since "Slovak citizens and their security is of a higher priority than the rights of migrants" (Pavelková, 2016: 7).

Poland

The first unexpected influx of asylum-seekers in the history of modern Poland was after the collapse of the Soviet Union (800 applicants), responding to which the country established the post of Plenipotentiary for Refugees and an Office for Refugees within the Ministry of Interior, on 27 September 1991 (Chlebny - Trojan, 2010: 213). Similarly to Slovakia and other countries, Poland is mostly a transit country. Large numbers of people (around 100,000) travelled through its territory already in the 1990s, even as asylum applications remained below a few hundred in the first half of the decade.

Year	Asylum Applications	Positive decisions and subsidiary protection granted	Rejections and discontinuation of procedure
1992	590	75	58
1993	819	61	135+235
1994	598	391	188+362

1995	843	105	193+394
1996	3211	120	375+1454
1997	3533	139	597+3161
1998	3373	51	1387+175
1999	2864	45	2404+762
2000	4589	52	4537
2001	4529	296	4233
2002	5170	279	4891
2003	6909	245 + 315	6349

Table 1.3: Asylum applications in Poland 1992-2003 (UNHCR, 2005).

The data from before the EU accession shows a similar pattern to the other countries in the region. Asylum application numbers were double that of Slovakia's in the 1990s but the population of Poland is ca. 40 million inhabitants.

Poland began accepting applications from 1992, after the accession to the Geneva Convention. A total of 2067 applicants received asylum since then. The instrument of "tolerated stay" was introduced into Polish law in 2004. This status was subsequently granted to 7578 people (Lodzinski, 2009: 82).

Although these data may suggest that refugees should not be the most important concern of Polish politics, quite the same trend of *securitization* started in 2015 that is observable elsewhere across the V4 group. Jarosław Kaczyński, leader of Poland's largest opposition Law and Justice Party at the time, warned that refugees from the Middle East could bring dangerous disease and parasites to Poland. "There are symptoms of the emergence of diseases that are highly dangerous and have not been seen in Europe for a long time: cholera on the Greek islands, dysentery in Vienna… There are various types of parasites and protozoa that … are not dangerous in the bodies of these people, [but] could be dangerous here," said Kaczyński (quoted in Ojewska, 2015:2). Speaking at a rally during the first week of October, Jarosław Kaczyński, also raised concern that Poland could be forced to resettle more than 100,000 Muslims, to which PM Ewa Kopacz, leader of the then-ruling Civic Platform party, quickly responded that there was no secret plan to accept 100,000 refugees (Cienski, 2015b: 1). Since then, the Law and Justice Party has won the elections and Beata Szydło is Prime Minister, while Kaczyński still influences politics from the background.

Another important aspect of government rhetoric was the need to differentiate between "genuine refugees" and "economic migrants" and the proposition of the creation of an "extraterritorial defense zone" (a belt of safe third countries) guaranteed by bilateral return agreements. Related to this, Polish MEP from the European People's Party Rafał Trzaskowski mentioned the [positive] example of Spain, which saw a steep fall in the number of people arriving in the Canary Islands after a deal with African countries that allowed Spain to deport economic migrants within eight hours of their arrival. "We have to make a list of safe countries to which people are going to be sent back, and then we can focus on refugees. I think that would lessen the pressure on our borders," he said (Cienski, 2015a: 1).

Czech Republic

As part of the political transition following 1989, it was necessary introduce new asylum legislation in the Czech Republic. During the 1990s, all the countries of the Visegrad region ratified the Geneva Convention, including the Czech Republic. Starting in 1995, the country also began to harmonise its legislation, including asylum law, with the EU *acquis* and their first Asylum Act (the Czech Asylum Act, 325/1999 Coll.) was issued in 1999 (Kopecká, 2015: 47).

Year	New Asylum applications	Positive decisions	Rejections and discontinuation of procedure
1996	2211	162	2049
1997	2109	96	2013
1998	4085	78	4007
1999	7220	80	7140
2000	8788	133	8655
2001	18094	83	18011
2002	8484	103	8381
2003	11396	208	11188
2004	5459	142	5317

Table 1.4: Asylum applications in the Czech Republic 1996-2004 (UNHCR, 2005).

According to *Table 1.4*, the Czech Republic had less than 1,000 positive decisions on asylum requests in the ten years after the separation of Czechoslovakia. The peak year was 2001 with 18,094 new applications, but the high number of discontinued procedures brought similar results as in the case of Slovakia and Poland. In the official statistics of the Czech Ministry of Interior, in the course of 1998 Afghan nationals applied for international protection in the highest numbers. In the second place, there were nationals from the former Yugoslavia, followed by nationals from Sri Lanka and Iraq (Kopecká, 2015: 47). The period between the years 2000 to 2005 might be considered as the period of Europeanization, from which point the harmonization with the EU rules and the acceptance of the Dublin II Regulation (Regulation of EU 2003/343/ES) significantly influenced asylum trends in the Czech Republic.

The asylum situation changed significantly in the year 2004 (Kopecká, 2015: 48). As *Table 1.4* shows, asylum applications decreased to below half the level of the previous year. Positive decisions on refugee status have never been above 200 persons per year. Czech decision-makers appear intent on keeping these numbers low in the future as well. While PM Bohuslav Sobotka is a moderate politician on asylum issues, he still strongly rejects any kind of mandatory quota system in the EU. "The Czech Republic is sticking to its position of rejecting any mandatory quota system for redistributing asylum-seekers among European Union member states", argued Sobotka ahead of the 22 September 2015 EU meetings on the migration crisis. "We will strictly reject any attempt to introduce some permanent mechanism of redistributing refugees", Sobotka said, adding that "we as well reject using a quota system in any temporary mechanism" (Reuters, 2015: 2).

The president of the Czech Republic takes an even stronger position in terms of migration and refugee issues. President Miloš Zeman warned against welcoming asylum seekers and described what he calls a European culture of hospitality as naïve. "I am profoundly convinced that we are facing an organised invasion and not a spontaneous movement of refugees," he said in a speech broadcast on 26 December 2015. He also drew contrast between Czech nationals who left their country during the Nazi occupation on the one hand and contemporary refugees on the other, saying that Czechs intended to "fight to liberate the country and not to receive social benefits in Great Britain" (DW, 2015: 1). Thus the discourse about "economic migrants" appears in the Czech Republic, too. Zeman also called for stronger border protection measures. In his view, "rather than letting them in, consistent protection of our border by combined patrols of the military and police along with the use of the system of active reserves is much better" (Prague

Monitor, 2016: 2). Zeman also responded to critics of his stance saying that "Some of them have accused me of spreading hatred, fear and panic. These politicians remind me of the bathing Czech tourists on the Thai beaches at the time when a small wave appeared on the horizon. In fact, it is called a tsunami" (PragueMonitor, 2016: 2).

Hungary

Hungary has had a refugee population of ca. 6,000 to 9,000 people in its territory with a total number of 10 million inhabitants before its accession to the EU (UNHCR, 2005). *Table 1.5* shows that the average number of new applications was about 5000 people per year, The year 1999 saw this peak with 11,499 applications.   The rejection/discontinuation rate is comparatively high, but it is still lower than in the other three countries which implies that Hungary has not always been merely a transit country but also a destination for asylum-seekers.

Year	New asylum applications	Positive decisions and subsidiary protection granted	Rejections and discontinuation of procedure
1996	n/a	172	n/a
1997	209	159	50
1998	7097	438	6659
1999	11499	313	11186
2000	7801	197+680	6924
2001	9554	174+290	9090
2002	6412	104+1304	5004
2003	2401	176+772	1453
2004	1600	156+177	1267

Table 1.5: Asylum applications in Hungary 1996-2004 (UNHCR Statistical Yearbook, 2005)

As a direct neighbour of Yugoslavia (and later on Serbia), a significant number of refugees fled to Budapest during and in the wake of the 1992 and 1999 wars. The increasing applications of Afghan and Iraqi nationals also influenced the general trends in Hungarian asylum policy, but did not cause significant growth of the refugee

population in the country. This changed significantly after the arrival of ten thousand Kosovar citizens in 2014-2015 and with the general refugee crisis of 2015. Since the beginning of the latter period mostly Syrian and Afghan nationals tried to access EU territory, approaching Hungary via the Western Balkans migration route.

At the same time as the number of irregular border-crossers reached 2000 per day along the southern borders of Hungary, by the first week of September 2015, a 175-km-long barbed-wire fence was completed on 15 September to keep them out. The second amendment of the Act on Asylum designated this a "temporary border closure," and illegal crossing was made a criminal act by introducing Articles 352 A, B, and C into the Criminal Code (Nagy, 2015:3). A maximum three-year imprisonment for crossing the fence illegally and five years of imprisonment for damaging the fence are applicable in the case of perpetrators.

This goes against Article 31 of the Geneva Convention whereby it is accepted that "the Contracting States shall not impose penalties, on account of [refugees'] illegal entry or presence." Even if the persons of concern are found not have a well-founded fear from persecution, and are thus not recognised as refugees, or if the level of general harm in their country of origin is not high enough for them to be the beneficiaries of subsidiary protection (and they thus remain irregular migrants who crossed the border illegally), the primary political goal should thus be to return them to their country of origin as soon as possible. Regardless of the existing legal imperatives of refugee protection, imprisonment for illegal border crossing in Hungary is not a practical idea, given that the prison system has its own serious problems, even without thousands of newly criminalised irregular migrants.

Alongside the criminalization of illegal border crossing, a governmental decree (269/2015 (IX. 15.) Korm.rend.) introduced the new notion of "crisis situation caused by mass migration." Transit zones were established and new border procedures were adopted, applicable only in these zones (Nagy, 2015:4). The result of the establishment of transit zones and related border procedures was a significant growth in the number of returnees sent back to Serbia which is a "safe third country" according to Hungary's position.

Requirements regarding this are outlined in Article 39 (1) of the EU Asylum Procedure Directive which states that:

"Member States may provide that no, or no full, examination of the application for international protection and of the safety of the applicant in his or her particular

circumstances as described in Chapter II shall take place in cases where a competent authority has established, on the basis of the facts, that the applicant is seeking to enter or has entered illegally into its territory from a safe third country."

According to Article 39 (2) a safe third country is a member of the Geneva Convention, a party to the European Convention on Human Rights and has an appropriate asylum procedure prescribed by its law. Although Belgrade fulfils these criteria, some recent reports claim that it could be a wrong presumption to think of Serbia as a safe third country (see: Bakonyi et al., 2011).

The Visegrad Group: A coalition of the unwilling?

The similar securitizing "speech acts" and the extraordinary measures implemented, adopted in name in order to "defend" these countries from "economic migrants" and "aliens" with a different cultural background, all suggest that these four countries are likely to stay on a common platform in future EU asylum policy talks.

The Visegrad Group has already harmonised its actions in the past. A Joint Statement of the Heads of Government of the Visegrad Group was adopted on 4 September 2015 in Prague, where the Prime Ministers present promised full-fledged support for Hungary's tackling of the migrant crisis and urged a constructive dialogue at the EU level. They agreed that the root causes of the crisis shall be resolved, and that significant EU financial assistance to Tukey and Jordan may be required to deal with the refugee issue. Meanwhile, they concluded that the effective implementation of the June EU Council conclusions on hotspots and further strengthening of the external borders is needed (VisegradGroup, 2015a).

Another Joint Statement of the Head of States of the Visegrad Group was issued directly after the terrorist attacks in Paris on 3 December 2015. It is interesting to see that only the first two paragraphs deal there with the EU's fight against terrorism (and the last paragraph is devoted to energy security), but more than seven paragraphs focused on migration and the refugee crisis, highlighting how important these issues are for the V4 leaders. The Heads of States resolved to support the further enhancement of border control measures, the use of biometric data collection with the help of EU agencies, and the implementation of the EU-Turkey agreement in order to reduce the migratory pressure from the South (VisegradGroup, 2015b). This concept of extraterritorial defense reappears in the Joint Article adopted by the V4 Ministers for Foreign Affairs on November 11 entitled "We offer you our helping hand on the EU path," which may be

seen as a political message to Western Balkans states that the V4 group will support their EU accession talks but in return they should not forget about the expectations towards them in the context of the recent migration crisis (VisegradGroup, 2015c). The Joint Declaration of Ministers of Interior adopted on 19 January 2016 was the last document accepted before the extraordinary JHA Council Meeting planned for February of 2016. The Ministers of Interior called for the urgent implementation of hotspots, without further delay, highlighting that any debate about the potential revision of the Dublin Regulation can start only after the EU regained control over its borders. V4 countries strongly support increasing the detention capacity available in these hotspots. Their main goal is to prevent the "misuse of international protection" and to revise the European asylum legislation in order to eliminate further pull factors for "illegal migrants". For the V4, the key priority is to achieve progress in the field of voluntary and forced returns of migrants and to start a pilot project of operational cooperation with Macedonia in border protection (VisegradGroup, 2016).

While most of the Western European countries also express the urgent need for a new asylum policy and seek a reform of the Dublin Regulation to mitigate the problems related to the disproportionate sharing of asylum requests, the agenda-setting activity of V4 countries is markedly different. V4 Declarations use the language of security, reiterating the need of enhancing border control, speeding up procedures mostly in the field of forced return, and increasing detention capacities in order to prevent the movement of asylum-seekers.

The governmental rhetoric securitising migration is proving quite successful in terms of domestic politics, across the region. Empirical evidence shows that most of the population in these countries rejects the idea of any kind of distribution scheme supported by the European Union. It is quite simple to understand why only 31% of the Slovakian population thinks that asylum-seekers should be better distributed: Slovakia is literally unaffected by the crisis and a beneficiary of the current Dublin legislation as a state without a Schengen border to the south. The Czech Republic, with ony 33% supporting relocation is quite similar. The two countries show the lowest support according to a TÁRKI survey 2015 (Bernát et al., 2015: 38). The same survey shows that 57% of Poles and 64% of Hungarians believe that asylum-seekers should be distributed more equally (Bernát et al., 2015: 39). A June 2015 opinion poll reported that 70% of Slovaks disagree with receiving refugees on the basis of the EU relocation quotas, and some 63% of the respondents saw refugees as a security threat (Pavelková, 2016: 2). Two thirds of the

respondents in the survey Ariadna says that Poland should not accept any refugees from the Middle East and North Africa. This poll shows a much worse attitude of Poles towards refugees than previous studies (Maliszewski, 2015).

Hungarians' comparatively higher level of support for relocation may not be entirely surprising considering the fact that Hungary registered the second highest number of asylum-seekers after Germany. Therefore, Hungarians would have numerous reasons to seek a re-distribution scheme should a situation arise where asylum seekers do not or cannot leave the territory of the country in the future.

In search of a new EU solution to the crisis

The recent refugee crises revealed severe flaws in the CEAS. The Dublin system, which functions on the basis of *Council Regulation No 604/2013 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* (recast) is at the center of numerous attacks from political figures as well as migration and refugee policy experts.

As researchers of the Centre for European Policy Studies recently argued, there is a need for the whole of the EU, and not just a few member-states, to acknowledge that the Dublin System simply does not work and a new approach is urgently required (Guild et al., 2015). However, "after a five-year-long negotiation marathon among the Member States, the Commission, and the Parliament on the recast of the CEAS, the Member States are today less than ever inclined to accept common regulations" (Bender, 2015). Although the recast and revision process in 2013 raised the question of the need for more equitable burden-sharing, the CEAS still expects far more from the border countries that are responsible to register the first asylum requests, even as the standards of asylum procedure in these over-burdened border countries are significantly lower than elsewhere. Landmark judgements of the European Court of Human Rights (EctHR) such as *M.S.S. v. Belgium and Greece, Application No. 30696/11* revealed that the asylum reception conditions in Greece are well below expected, so the Dublin-based transfer of M.S.S. (the applicant) to Greece should not have taken place by Belgian authorities because they "ought to have known" that Greece is not a possible destination in terms of safe-first-country conception.

Therefore, the main question is to what extent the EU needs to reform the CEAS and the Dublin Regulation, and not *if* it needs to do so. Another important challenge of

the crisis is to decide whether a country must insist on the current legislation in place and/or support a new European agenda on migration. It is a Catch-22 situation, characterised by perverse incentives, where all a border state needs to do is to "prove its incompetence" and ask for help and/or common European support, because if they cannot prove their inability to act, tens of thousands of asylum seekers (or more) shall remain in their responsibility. A problematic implication of this is that proving the inability to fulfil the Dublin criteria can lead to severe EU sanctions.

One way out from this vicious circle for EU states may be to disregard the former system and devise new solutions for the situation of a "mass influx." Another possible solution would be to insist on the current system and register the applicants at all cost, knowing the fact that most of them are going to leave the countries concerned before the end of their asylum procedure. However, based on the Dublin III Regulation, these asylum-seekers must be transferred back to the first country of application. It could be an option for an over-burdened first country to suspend Dublin transfers temporarily – as Hungary did it in summer 2015 – but it would not be a real solution in the long term.

In order to prevent such further unilateral actions and to strengthen solidarity within the European Union, many new proposals were adopted in Brussels since April 2015. Two of them are especially important in understanding the position of V4 countries. The first is the JHA Council Meeting conclusion adopted on 20 July 2015 about voluntary pledges concerning refugee resettlement plans. The main goal of the meeting was to agree on a scheme in order to achieve a more equal distribution of refugee resettlement across the EU. The second one is the result of the JHA Meeting in September which agreed to temporarily relocate 120,000 persons from Greece, Italy and Hungary and create so-called *hot-spots*, where EU agencies like FRONTEX and the European Asylum Support Office (EASO) could work and help to improve the quality of the procedure, serving the best interest of the asylum-seekers. It is worth, however, to look at the V4 pledges, and compare them to the EU total: the numbers may speak for themselves.

Member-state	Share under resettlement distribution key	Final pledge
Czech Republic	525	400
Hungary	307	0
Poland	962	900

Slovakia	319	100
V4 Total	2113	1400
EU Total	20.000	22.504

Table 1.6: Outcome of the 3405th Council Meeting – Justice and Home Affairs, Brussels, 20 July 2015.

Member-state	**Final decision**
Czech Republic	1591
Hungary	1294
Poland	5082
Slovakia	802
V4 Total	8769
EU Total	66.000

Table 1.7: Council Decision 2015/1601, Brussels, 22 September 2015. OJ L 248 80-94.

Most of the countries offered at least a limited pledge to resettle some of the refugees based on the JHA Council Conclusion of July 2015, but these numbers in the case of Visegrad Group countries were significantly lower than others' pledges (see *Table 1.6*). Slovakia offered a pledge of 100 persons with a population of 5 million, the Czech Republic offered 400 with a population of 10 million, Poland offered 900 with a population of almost 40million population, while Hungary insisted that it will accept no resettled refugees. Although the resettlement of no more than a few dozen refugees would be a symbolic gesture of solidarity, Hungary explicitly rejected the idea with reference to having registered already more than 200,000 applications. It was a clear political signal to Brussels that Central European countries are not open to this kind of solution. A key argument of the group is that in their view a temporary relocation scheme of this kind may be the creeping introduction of a mandatory quota system in the long term.

As far as the relocation scheme is concerned, we should not forget that the original plan aimed to relocate 120,000 persons, a group consisting of 66,000 persons from Italy and Greece, along with 54,000 from Hungary. Hungary rejected to be a beneficiary of this relocation scheme, and, in the end, with the Council decision of September 2015, became subject to a duty to relocate 1294 persons (see *Table 1.7*). The reasons behind the voluntary rejection of the original proposal, which offered a relocation of 54,000 *from*

Hungary, and the tacit acceptance of the relocation of 1294 *to* Hungary are not as difficult to comprehend as it may seem at the first sight. The 54,000 persons concerned have already left the country at the time when their relocation was offered, so literally no one remained to be relocated (Groenendijk - Nagy, 2015: 2). However, such a relocation plan would have *created a hot-spot* in Hungary, and this the Hungarian government did not accept. Hungary preferred the implementation of hotspots but only in Greece and Italy.

While the original proposal from the Commission aimed at the relocation of applicants from three countries, namely Greece, Italy and Hungary on 9 September 2015 (COM 450 Final) on the basis of Article 78(3) of the Treaty on the Functioning of the EU (TFEU), the Council Decision 2015/1601 is about the relocation of 66,000 persons only from Greece and Italy. The other 54,000 persons will be relocated from "certain countries", which have had severe difficulties with registering applicants.

Whereas the resettlement scheme, adopted on 20 July 2015, functions strictly on a voluntary basis, the temporary relocation plan (Council Decision 2015/1601) was adopted on the basis of 78(3) of the TFEU, with qualified majority, in consultation with the European Parliament. Only four member states voted against the decision (the Czech Republic, Hungary, Slovakia and Romania). Although the plan reflects on an emergency situation for the benefit of some members-states (Italy and Greece), the countries that voted against the proposal claimed that it constitutes a "mandatory quota system," and is thus unacceptable.

They highlighted the one-sided argument of Article 78(3) TFEU, which talks about the actions "for the benefit" of member-states indeed, but forgets to mention the disadvantages of these actions caused for the other member-states. Two from these four countries are up to submit a lawsuit at the Court of Justice of the EU (CJEU) against the decision, claiming that the procedure was against the EU principle of subsidiarity and the Council ought to decide on this issue on the basis of 78(2) of the TFEU in co-decision with the European Parliament (Groenendijk - Nagy, 2015: 4).

Conclusion

The historical overview of the V4 countries' asylum policies shows that the Visegrad Group had no previous experience with the mass influx of refugees. They established a system more or less harmonised with EU standards but a lot of work was still ahead before 2014. Human rights concerns and ECtHR judgements found that the reception facility conditions remained below expectations even before the increase in asylum applications.

The European refugee crisis also showed that border control capabilities, which shall be based on the implementation of the Schengen Information System (SiS II) and EURODAC (European Dactiloscopy), and the use of modern equipment, such as thermal cameras and biometric scanners, were far below the acceptable level. Only the deployment of physical barriers such as barbed-wires fences (the temporary closure of the Schengen border) remained a viable option for certain countries, including Hungary (and subsequently Croatia and Slovenia). The temporary suspension of the Dublin III Regulation and the Schengen Agreement revealed that a fundamental reassessment is needed in order to find a long-term solution.

Neither EU Commission proposals (COM 450) nor the few EU Council decisions adopted, such as Council Decision 2015/1601, were accepted unanimously and the Visegrad Group mounted strong opposition to Western European countries' initiatives. Hungary as well as Slovakia filed lawsuits against the latter decision at the CJEU. Regardless of their chances of succeeding, the process will take time, and keeps the issue on the top of the European political agenda.

In the meantime, over the course of 2015, irregular migration was framed increasingly as a security issue across the region. Not only the Orbán government and the Slovak PM Fico but also the newly elected PiS government in Poland and Czech President Zeman contributed to a securitisation of the issue. The metaphors used to describe refugees, as in the references to a "tsunami" and "parasites", and descriptions of them as persons of concern related to terrorism and public health, played on the worst fears of populations in Eastern Europe. As of the beginning of 2016, the Paris terrorist attacks of November 2015 and the events in Cologne during New Year's Eve seem to have ensured that this discourse cannot be plausibly expected to change in the near future.

References

Bakonyi, Anikó – Iván, Júlia - Grusa, Matevzic - Tudor, Rosu (2011): Serbia as a safe this country: A wrong presumption. *Hungarian Helsinki Committee*, 10 June 2011, at http://www.helsinki.hu/wp-content/uploads/Serbia_as_a_safe_third_country_A_wrong_presumption_HHC.pdf (accessed: 12 November 2015).

Bendel, Petra (2015): But it does move, doesn´t it? The debate on the allocation of refugees in Europe from a German point of view. *Border Crossing: Transnational Working Papers,* 1503 pp. 25-32.

Bernát, Anikó - Simonovits, Bori – Szeitl Blanka (2015): *Attitudes towards refugees, asylum seekers and migrants*, Budapest: TÁRKI Social Research Institute, at http://www.tarki.hu/hu/news/2015/kitekint/20151203_refugee.pdf (accessed: 15 January, 2016).

Chlebny, Jacek & Trojan, Wojciech (2000): The refugee status determination procedure in Poland, *International Journal of Refugee Law*, 12:2, pp. 212-234.

Cienski, Jan (2015): Migrants carry 'parasites and protozoa,' warns Polish opposition leader. *Politico,* 14 October 2015, at http://www.politico.eu/article/migrants-asylum-poland-kaczynski-election/ (accessed: 16 December 2015).

Cienski, Jan (2015): Poland to aid refugees not economic migrants. *Politico*, 4 September 2015, at http://www.politico.eu/article/poland-migrants-asylum-refugees-crisis-commission-kopacz-trzaskowski/ (accessed: 10 January 2016).

Deutsche Welle (2015): Czech president Zeman says refugee wave is 'organized invasion'. 26 December 2015, at http://www.dw.com/en/czech-president-zeman-says-refugee-wave-is-organized-invasion/a-18943660 (accessed: 12 January 2016).

ECRE (2015): Hungary reverses suspension of Dublin Regulation. *ECRE,* 26 June 2015, at http://ecre.org/component/content/article/70-weekly-bulletin-articles/1112-hungary-reverses-suspension-of-dublin-regulation.html (accessed: 10 December 2015).

Groenendijk, Kees - Nagy, Boldizsár (2015): Hungary's appeal against relocation to the CJEU: upfront attack or a rear guard battle. *EU Migration Law Blog,* 16 September 2015, at http://eumigrationlawblog.eu/hungarys-appeal-against-relocation-to-the-cjeu-upfront-attack-or-rear-guard-battle/ (accessed: 16 December 2015).

Guild, Elspeth - Costello, Cathryn - Garlick Madeline - Moreno-Lax, Violeta (2015): The 2015 Refugee Crisis in the European Union. *CEPS Policy Brief,* 332, pp. 1-4.

Honců, Šárka - Kohutičová, Pavlína - Vystavělová, Miroslava (2007): *Azylová politika České republiky pohledem analýzy policy*. Brno: International Institute of Political Science of Masaryk University.

Hurná, Lucia (2012): Asylum Legal Framework and Policy of the Slovak Republic',
        Jurisprudence, 19:4 (December 2007), pp. 1383-1504.

Kopecká, Helena (2015): General trends of asylum applications in the Czech Republic,
        BiztpolAffairs, 3:2 (July 2015) pp. 46-59.

Łodziński, Sławomir (2009): Refugees in Poland, Mechanisms of Ethnic Exclusion,
        International Journal of Sociology, 39:3, pp. 79-95.

Maliszewski, Norbert (2016): Sondaż: Polacy nie chcą przyjmować uchodźców, *Onet*, 11
        September 2015, at http://wiadomosci.onet.pl/kraj/sondaz-polacy-nie-chca-
        przyjmowac-uchodzcow/q8tht5 (accessed: 2 January 2016).

Nagy, Boldizsár (2015): Parallel realities: refugees seeking asylum in Europe and
        Hungary's reaction, *EU Migration Law Blog,* 4 November 2015, at
        http://eumigrationlawblog.eu/parallel-realities-refugees-seeking-asylum-in-
        europe-and-hungarys-reaction/ (accessed: 2 January 2016).

O'Grady, Siobhán (2015): Slovakia to EU: We'll take Migrants if they are Christians,
        Foreign   Policy,   19   August   2015,   at
        http://foreignpolicy.com/2015/08/19/slovakia-to-eu-well-take-migrants-if-
        theyre-christians/ (accessed: 10 September 2015).

Ojevska, Natalia (2015): Poland's modest refugee policy proves controversial, *Al-
        Jazeera,*   9   November   2015,   at
        http://www.aljazeera.com/indepth/features/2015/11/poland-modest-refugee-
        policy-proves-controversial-151101102513587 (accessed: 20 December 2015).

Pavelková, Zuzana (2016) Can the wizards and witches fix Slovak asylum and migration
        policy? *Visegrad Revue*, 8 January 2016, at http://visegradrevue.eu/can-the-
        wizards-and-witches-fix-slovak-asylum-and-migration-policy/   (accessed   2
        February 2016).

Prague Monitor (2016) Zeman: Only persecuted refugees can be granted asylum, *Prague
        Monitor,* 26 January 2016, at http://praguemonitor.com/2016/01/26/zeman-only-
        persecuted-refugees-can-be-granted-asylum (accessed: 2 February 2016).

Reuters (2015) Czech PM says will insist on rejecting migrant quotas, *Reuters,* 22
        September 2015, at http://www.reuters.com/article/us-europe-migrants-czech-
        idUSKCN0RM10420150922 (accessed: 27 January 2016).

Schwell, Alexandra (2015): When (in)security travels: Europeanization and migration in
        Poland *European Politics and Society*, 16:4 (December 2015) pp. 1-18.

Visegrad Group (2015a): Joint Statement of the Heads of Government of the Visegrad Group Countries, *Visegradgroup.eu*, 4 September 2015, at http://www.visegradgroup.eu/calendar/2015/joint-statement-of-the-150904 (accessed: 10 December 2015).

Visegrad Group (2015b): V4 Ministers in Joint Article: We offer helping hand on the EU path, *Visegradgroup.eu*, 11 November 2015, at http://www.visegradgroup.eu/calendar/2015/v4-ministers-in-joint (accessed: 4 January 2016).

Visegrad Group (2015c): Joint Statement of the V4 Prime Ministers, *Visegradgroup.eu*, 3 December 2015, at http://www.visegradgroup.eu/calendar/2015/joint-statement-of-the-151204 (accessed: 4 January 2016).

Visegrad Group (2015d): V4 Joint Declaration regarding European Council Issues, *Visegradgroup.eu,* 17 December 2015, at http://www.visegradgroup.eu/calendar/2015/joint-statement-of-the-151221-1

VisegradGroup (2016): Joint Declaration of Ministers of Interior, Visegradgroup.eu, 19 January 2016, at http://www.visegradgroup.eu/calendar/2016/joint-declaration-of (accessed: 25 January 2016).