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Hungary report

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Horizon 2020 RESPOND:
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About the project

RESPOND: Multilevel Governance of Mass Migration in Europe and Beyond is a comprehensive study of responses to the 2015 Refugee Crisis. One of the most visible impacts of the refugee crisis is the polarization of politics in EU Member States and intra-Member State policy incoherence in responding to the crisis. Incoherence stems from diverse constitutional structures, legal provisions, economic conditions, public policies and cultural norms, and more research is needed to determine how to mitigate conflicting needs and objectives. With the goal of enhancing the governance capacity and policy coherence of the European Union (EU), its Member States and neighbours, RESPOND brings together fourteen partners from eleven countries and several different disciplines. In particular, the project aims to:

- provide an in-depth understanding of the governance of recent mass migration at macro, meso and micro levels through cross-country comparative research;
- critically analyse governance practices with the aim of enhancing the migration governance capacity and policy coherence of the EU, its member states and third countries.

The countries selected for the study are Austria, Germany, Greece, Hungary, Iraq, Italy, Lebanon, Poland, Sweden, Turkey and the United Kingdom. By focusing on these countries, RESPOND studies migration governance along five thematic fields: (1) Border management and security, (2) Refugee protection regimes, (3) Reception policies, (4) Integration policies, and (5) Conflicting Europeanization. These fields literally represent refugees' journeys across borders, from their confrontations with protection policies, to their travels through reception centres, and in some cases, ending with their integration into new societies.

To explore all of these dimensions, RESPOND employs a truly interdisciplinary approach, using legal and political analysis, comparative historical analysis, political claims analysis, socio-economic and cultural analysis, longitudinal survey analysis, interview based analysis, and photo voice techniques (some of these methods are implemented later in the project). The research is innovatively designed as multi-level research on migration governance now operates beyond macro level actors, such as states or the EU. Migration management engages meso and micro level actors as well. Local governments, NGOs, associations and refugees are not merely the passive recipients of policies, but are shaping policies from the ground-up.

The project also focuses on learning from refugees. RESPOND defines a new subject position for refugees, as people who have been forced to find creative solutions to life threatening situations and as people who can generate new forms of knowledge and information as a result.

List of abbreviations

AFIS: Automatic Fingerprint Identification System
AMIF: Asylum, Migration and Integration Fund
APC: Armoured Personnel Carrier
CJEU: Court of Justice of the European Union
ECHR: European Convention on Human Rights
ECtHR: European Court of Human Rights
EES: Entry/Exit System
EURODAC: European Asylum Dactyloscopy Database
EUROSUR: European Border Surveillance System
FADO: False and Authentic Documents Online
FRA: The European Union Agency for Fundamental Rights
FRO: Fundamental Rights Officer
FRONTEX: European Border and Coast Guard Agency
HHC: Hungarian Helsinki Committee
HRW: Human Rights Watch
IAO: Immigration and Asylum Office (former OIN)
IBM: Integrated Border Management
ILO: Immigration Liaison Officer
ISEC: Prevention of and Fight against Crime
MSF: Medecins San Frontieres
NCC: National Coordination Centre
OCCRP: Organised Crime and Corruption Reporting Project
OIN: Office of Immigration and Nationality
PCC SEE: Police Cooperation Convention for Southeast Europe
PIU: Passenger Information Unit
PNR: Passenger Name Record
UNHCR: Office of the United Nations High Commissioner for Refugees
SIS: Schengen Information System
SVR: Foreign Intelligence Service of the Russian Federation
SZEBEK: Szervezett Bűnözés Elleni Koordinációs Központ
TIBEK: Terrorelhárítási Információs és Bűnügyi Elemző Központ
VIS: Visa Information System

Executive summary

This report gives an overview of the major developments of the Hungarian border and migration control policy, the subsequent practices and dominant political narratives focusing mainly, but not exclusively, on the past five-year period. It will discuss the role of actors involved in migration governance, the cooperation among them and with international stakeholders. In terms of sources, the report relies on the relevant academic literature, legislation, policy reports, research reports and reviews by NGOs and EU institutions, as well as qualitative interviews conducted with public and third sector stakeholders. The qualitative content analysis predominantly draws on the Prime Minister's speeches on themes related to borders, migration, security, and the future of Europe available at the Prime Minister's Office website.

Key findings include:

- The major emphasis of the Hungarian pre-entry policy has been on the facilitation of kin-state politics and the so-called "Eastern Opening" (Keleti Nyitás) Programme;
- The border control regime has been significantly reinforced since 2015 coupled with an extensive deployment of police and military personnel;
- The Hungarian border and migration management's sole aim has been to prevent irregular migrants from entering the country irrespective of their protection needs;
- The implemented policy and the applied measures are often at variance with, and depart from Hungary's human rights obligations;
- The Hungarian political discourse is overwhelmed by security-focused narratives with a total lack of solidarity towards asylum seekers;
- The cooperation between civil society organisations and the government is non-existent; NGOs involved in migration management face criminal liability.

1. Introduction

The geographical, linguistic and ethnic composition of Hungary has made it an inner outer for Europe in its history. Hungary's political and cultural elite have presented the nation domestically and internationally as "the last bastion of western Christianity" (Lendvai 2003). This also implied a self-assigned "frontier" position for Hungary, which its elite has traditionally exploited in order to accrue political gains at home (Korkut 2017). In this way, the current politics, policies and narratives around border in Hungary under the Fidesz government reflects on themes essential to Hungarian political history and thought on Europe, Christianity, and external borders.

More recently, however, "defending Europe despite the West" became the underlying factor in anti-immigrant policies and politics. The Hungarian Prime Minister Viktor Orbán since 2010 has stated numerous times that Hungary defends not only the Hungarian border, but also the southeastern border of Europe from *népvándorlás*, that is, "wandering of the people" alluding to the Great wandering of the Peoples in ancient times from East to West. To this extent, Orbán alleges that the "liberal elite" denies the danger that Europe faces, and foregrounds Hungary, once more, as a nation defending Europe.¹

For our purposes, this narrative is important to understand the evolution of border management practices in Hungary, particularly in the aftermath of the increase in irregular migrant arrivals in 2015. To reflect on Orbán's self-assigned role to make Hungary Europe's defender, we will particularly foreground how Hungary interpreted the EU border management regime but veered away from its legal obligations. In this context, it is important to note how Orbán presented the European "liberal elite" as a hindrance for his defense of EU's borders, in order to generate audiences for Hungary's security-oriented border management policies.

In order, this report evolves as follows. The first section of the report will present our methodology and the key political developments in Hungary since 2011. In the following section, we will cover the legal developments including pre-entry controls, border controls, internal controls, and return, detention for return and readmission. Afterwards, we will depict key discourses and narratives of migration control in the country. Following the legal developments and narratives, we will turn to implementation covering key actors, border and migration controls, co-operation among sub-national, national and supra-national actors. We will conclude the report as we reinstate our key findings.

2. Methodology

The report brings together a review of key political developments, policy instruments, and political narratives from Hungary after 2011, but more specifically from 2015 onward. In terms of sources, we use primary academic, policy, and political speech texts translated from Hungarian. The quotes and references to Hungarian language texts are our translations. The legal texts encompass the Hungarian Government's acts, decrees and decisions in relation to border management and migration controls. In order to understand and collect key narratives,

¹ Orbán Viktor sajtónyilatkozata az Európai Tanács rendkívüli ülését követően az M1 Híradónak, October 2016, [Online] Available at: <http://www.miniszterelnok.hu/orban-viktor-sajtonyilatkozata-az-europai-tanacs-rendkivuli-uleset-kovetoen-az-m1-hiradonak/>

we predominantly looked into Viktor Orbán's speeches on themes related to borders, migration, security, and the future of Europe. We sourced these speeches directly from Prime Minister's Office website.

To discuss implementation, we have turned to reports from European Union, independent authorities as well as the interviews that we held in Hungary in 2018. We carried out 10 interviews with migration stakeholders including non-governmental organisation representatives as well as a lawyer, social workers, and activists. We also interviewed a source, who preferred to remain anonymous, from the Border Force department within the Police. We also include an interview with a source at IOM Budapest office. For fieldwork, we visited Hungary on two occasions in summer and winter during 2018. We could then also follow the impact of a series of migration-control-related legislations on the mood and operation of the non-public migration stakeholders, such as NGOs and charities.

In order to gain more access to public sources, however, we have also e-mailed and called the Immigration and Asylum Office in order to arrange an interview, but they did not wish to participate in the project.

We have received positive responses and initial invitations from the Csongrád County local government as well as the UNHCR Office in Budapest. However, both partners have declined the formal interview request later. For us, this showed how the atmosphere of fear has been hitting the country affecting all private, public, and international actors involved in migration governance.

Following ethnographical research, we concentrated on the region closer to the Serbian border in Hungary. We visited Szeged in two occasions – a city that was at the heart of refugee protection and reception efforts in 2015. To establish local knowledge, we talked with local journalists, those who took part in the relief efforts during 2015, and visited sites around Szeged including a small municipality named Kübekháza. This was a place, where the mayor played a major role in delivery of assistance to arriving refugees in 2015. We have also contacted the mayors of Tiszasziget, Ásotthalom and Mórahalom. However, we have not received any follow up to our interview requests, and one mayor among these three did not wish to participate. Hence, our approach was to involve diverse and various stakeholders, active parties to migration management in Hungary.

Furthermore, we also visited a refugee camp on the Serbian border in Subotica in December 2018. Essentially, our goal for this visit was to understand how refugees gain access to the transit zones at the Hungarian-Serbian border. Below, we discuss our findings from this visit.

Finally, we brought together the findings from textual analysis with legal and policy developments and have embedded findings from interviews and ethnographic research tools where it suits in order to have a comprehensive analysis of border management practices in Hungary between 2011 and 2017. One last thing to note to this effect is the variety of terms that refer to “migrant” in the Hungarian language. The terms *migráns* (migrant), *bevándorló* (immigrant), *menekült* (refugee) and *menedékkérő* (asylum seeker) generally appear as synonyms in these texts. However, “*migráns* was most often used as an umbrella term” (Kiss 2016 in Bocskor 2018: 558). The government endorsed the latter as it is a foreign-sounding word and, as our textual analysis will show, vigorously associated it with derogatory connotations (Kiss 2016 in Bocskor 2018: 558).

3. Key developments since 2011

Since having joined the EU in 2004, we have seen, in parallel, Hungary's search for cross-border cooperation in Central-Eastern Europe, as well as a "recent policy of border securitization, which essentially entailed a re-nationalisation of its border regime and its framing of the political border as a protective barrier against threats to national and European identity" (Scott 2018, 19; Lamour and Varga 2017). To achieve a borderless zone between Hungary and its neighbouring states with Hungarian minorities has been a political objective for Fidesz governments over years (Scott 2018, 25). The Schengen-zone accession of Hungary in 2007, alongside Slovakia and Slovenia has partially fulfilled this objective. Furthermore, the EU accession of Romania in 2007 and Croatia in 2013 and the removal of Schengen visa obligations from the citizens of Serbia and Ukraine respectively in 2009 and 2017 led Hungary to achieve a free-travel zone in its neighbourhood for its kin. Yet, as the current State Secretary for Parliamentary and Strategic Affairs Bálaazs Orbán has indicated, "[Hungarians] do not like borders because it has separated them from one and other, but not because others from us" (Orbán foreword in Baudet 2015: 17). Previously, Bálaazs Orbán served as the Head of the Migration Research Institute (Migrációkutató Intézet) – a research institute organically related to Fidesz. In view of B. Orbán's reflections, one can approach the key developments in Hungary since 2011, but particularly after the end of 2014. As Scott (2018: 26) notes, the period shows how Viktor Orbán's Fidesz government has exploited borders both "physically and symbolically in ways that resonate with fear of migrants and conservative scepticism of multiculturalism and open borders". As the coming sections will also reflect, in this very period the Hungarian government appended its politics, policy and narratives of border management to the emergent scepticism with European federalism and multiculturalism apparent amongst the conservative circles in Europe. As Baudet notes this position places much responsibility with nation states – read member states of the EU – in order to stave off Europe from problems emerging beyond its borders. That "only a nation-state is able to accept foreigners [...] and exclusively only when responsible and accountable national representatives bring up legitimate outcomes at the level of nation-states can an efficient international partnership be realised" (2015: 24) prevail within the conservative right-wing circles of which Fidesz is a member.

Having noted how border has been conceptualised within these circles, in the following sections we will foreground five key developments namely border surveillance mechanisms, the inadmissibility criterion, criminalisation of any activity that facilitates protection and reception of migrants, the "8 km" rule, which was later expanded to encompass the whole territory of Hungary, and finally the establishment of the "transit-zone" at the Hungarian-Serbian border. Amongst others, these were the most crucial legal and policy developments that the Hungarian government has introduced. Yet, what gave Orbán initial ammunition regarding legal and policy changes have been the Charlie Hebdo attacks in Paris in January 2015 as well as the transit refugee movements, particularly from Kosovo but also from the rest of South-eastern Europe, increasing by early 2015 (Szalai and Göbl 2015).

Szalai and Göbl (2015: 15) present a chronology of events from the summer 2014 to the end of 2015 that became the harbinger of further developments in Hungary from the summer of 2015 onwards. What started discursively with the securitization of migration in Hungary soon led to more fundamental legal and policy changes beginning with the government's announcement of a 175km long fence along the Serbian border and Hungary suspending

Dublin III regulation. In order, the government has called for *nemzeti konzultáció* (national consultation) on migration, which operates through letters sent to citizens' homes asking them to express opinion on issues that the government deems important. These consultations operate almost as referenda without a counter-argument. According to Sámuel Ágoston Mráz, the director of Nézőpont think-tank, the national consultation is "like a referendum without alternatives. It is a communication tool to show that you have broad-based support and you can use it against Brussels".² The language used in this consultation was symptomatic of the securitization frame by Fidesz. Furthermore, the government placed billboards all across with slogans such as "If you come to Hungary, you need to abide our laws/respect our culture" and "you cannot take away the jobs of Hungarians". As Szalai and Góbl note, "the billboards were clearly not targeting migrants, but the general population: they were all in Hungarian and used the informal speech register, which in this context suggests condescension" (Szalai and Góbl 2015: 24-25). Boldizsár Nagy (2016), an expert in international law, considered the developments in this period in Hungary as "denial", "deterrence", "obstruction", "punishment", lack of solidarity and breaching domestic, European and international law.

Even if the government could not raise much returns neither through postal nor online channels to its national consultation on migration, it involved itself into more visible expressions of an anti-migrant stance. Kallius, Monterescu, and Rajaram (2016: 27) note the construction of a border fence and the transit zones at the border with neighbouring Serbia as well as Croatia to this extent as an attempt to "fabricate the political through processes of marginalisation and exclusion wherein a number of groups have at best a tangential relation to the political norm. Particularly, the creation of transit zones allowed the Hungarian government to culminate securitization of mobility and "fix [...] asylum-seekers in time and space and make them invisible to mainstream society" (Scott 2018: 27). As we will discuss below, since 2016 applications for asylum can only be processed at the transit zones and anyone apprehended crossing the Hungary's borders at other points are sent back to the Serbian side of the border fence. An expert in political geography, Scott continues, "Hungary's border securitization practices are not only (geo)political but also cultural in nature. Borders are used to position Hungary as a major player in its quest to promote traditional values and as a defender of national sovereignty and identity" (2018: 27).

Furthermore, the border management policies of the government also gained a European dimension as Orbán created an enemy for the Hungarian public in the shape of the liberal politicians of the EU and as its extension the federalist bureaucrats of the European Commission. As we will discuss looking at emerging narratives below, Orbán made it very clear that Hungary was protecting the European borders and that its actions cannot be considered as anti-European. Hungary's defiance of the refugee relocation quota, put forward after the meeting of the Justice and Home Affairs Council in September 2015, has become the most emblematic of its migration governance and border management in this period.

By the end of 2015, the interior ministers at the Council of the European Union agreed to the Commission's proposal to relocate 120,000 asylum applicants from Italy and Greece with a majority overriding objections from several Eastern member states. As majority voting did not ensure effective compliance, the Commission President Juncker suggested that further infringement proceedings would be instituted by the Commission. After the defiance of Poland, Hungary, and the Czech Republic, in June 2017 the Commission instituted infringement

² Orban stokes immigration controversy in wake of EU rebuke. October 2018, [Online] Available at: <https://www.ft.com/content/cef27054-cdfd-11e8-9fe5-24ad351828ab>

procedures against them for their failure to take “the necessary action” under the 2015 plan (European Commission 2017 in Murray and Longo 2018: 414). The Hungarian response to this was once again to turn to the public in order to create audiences for the anti-migration narrative for Viktor Orbán. A referendum took place in Hungary in 2016 on the EU’s proposed distribution of refugees among EU states. Challenging the Commission, the government asked Hungarian voters if they wanted the Hungarian government to abide by “the mandatory relocation of non-Hungarian citizens to Hungary without the approval of the Hungarian parliament. Although it did not pass, the governments intension remained and was furthered with key policy changes”. Below, we will continue this debate starting with the legal framework.

4. Legal framework

4.1 Pre-entry controls

4.1.1 Visas

The provisions governing visa requirements are set forth in Act II. of 2007 on the Admission and Residence of Third-Country Nationals, and the corresponding Government Decree No. 114/2007 (V. 24.) on implementation.

Ságvári (2011) argues that one of the organising principles of the Hungarian visa policy has been to counterbalance the negative effects of the EU accession (e.g. stricter border control) and becoming a Schengen border country in terms of kin-state politics: the objective has been to support Hungarian ethnic minorities that wish to enter Hungary but locked out in the neighbouring non-EU countries. This feature of the Hungarian immigration policy, especially the rules of naturalisation, has already been discussed in Chapter 2 of WP1 report on the legal framework.³ Moreover, while the practice is at variance with the overall asylum policy, the Hungarian Government has resettled a large number of people from Venezuela with trackable Hungarian ancestry given the political and economic turmoil in the country.⁴

Act II. of 2007 provides that national visa (and residence permit) may be issued to a third-country national that wish to enter Hungary for the purpose of, *inter alia*, preserving and maintaining the Hungarian language, or cultural and national self-identity.⁵ Applications may had been submitted, thereby, under international agreements, by Ukrainian and Serbian citizens.⁶ As of December 2009, Serbian, and as of January 2019, Ukrainian citizens enjoy visa exemption in Hungary.

³ Gyollai D (2018) Hungary - Country Report: Legal and Policy Framework of Migration Governance, RESPOND Working Papers, Global Migration: Consequences and Responses, Paper 2018/05, May 2018, [Online] Available at: <https://zenodo.org/record/1418573#.W6OgaJP0nVo>.

⁴ ‘Több száz venezuelait fogadott be titokban a kormány, de nem fizet bevándorlási különadót’ Index.hu, [Online] Available at: https://index.hu/belfold/2019/02/21/venezuela_magyar_menekultek_befogadas_bevandorlas_bevandorlasi_kulonado_maduro_chavez_polgarhaboru/.

⁵ Art 27(1) of Act II. of 2007.

⁶ See IAO website: http://www.bmbah.hu/index.php?option=com_k2&view=item&layout=item&id=67&Itemid=821&lang=en, Accessed on 16 November 2018.

As member of the Schengen area, Hungary has limited discretion to implement national visa policies that derogate from the provisions of the Schengen acquis. Sagvari (2011) notes that Hungary, using the last unilateral competence of Member States, has lifted the visa requirements for holders of diplomatic and service passports from various countries that are on the negative list, such as Turkmenistan, Tajikistan, Armenia, Azerbaijan, Kyrgyzstan, Kazakhstan, and Mongolia.⁷

In relation to the EU Migration and Asylum Fund for the period of 2014-2020, the Government outlined its migration strategy in 2013. Among other initiatives, and in line with the above, the Government outlined the following:

II/1. Most beneficial treatment for ethnic Hungarian, and Hungarian-speaking but not Hungarian citizen individuals during visa issuance procedure;

II/2. Visa exemption for Ukrainian citizens;

II/6. Effective and applicant-centered approach in visa administration with special attention to citizens of countries targeted by the “Eastern Opening”⁸ policy.⁹

As of 2017, Hungary has issued a total number of 249,393 Schengen visas, the rejection rate was 5.34%.¹⁰

The Visa Information System (VIS) was implemented in Hungary in 2010. The administration of VIS is assigned to the Immigration and Asylum Office.¹¹ VIS data is accessible by the Police and the Constitution Protection Office,¹² the Information Office (intelligence agency) and the Military National Security Service.

4.1.2 Carrier sanction legislation

Council Directive 2001/51/EC has been transposed into Hungarian law by an amendment to Act II. of 2007. Chapter VI. of the Act introduces the substantive rules of carrier sanctions. The rules of implementation are set forth in Government Decree No. 114/2007 (V. 24.).

The carrier’s liability regarding both the return of the third-country national and the payment of the financial penalty is to be enforced by the Police.¹³ The amount of the applicable penalty, within the range prescribed by the Directive is determined by the Police with respect to the circumstances of the case. The decision is appealable to the National Police Headquarter.¹⁴ Should the carrier fail to comply with its obligation to return the third-country

⁷ The full list of visa exempt countries is available online at: <http://konzuliszolgalat.kormany.hu/vizummentesseg-magyarorszagra-torteno-beutazas-eseten>.

⁸ The policy was introduced by the Orban Government to strengthen economic relations and accelerate commerce with countries of the East as opposed to those of the West, fellow EU members in particular. For further info see: <https://theorangefiles.hu/eastern-opening/>.

⁹ See Gov. Decision no. 1698/2013 (X. 4.) Available online at: http://belugyalapok.hu/alapok/sites/default/files/MMIA_.pdf.

¹⁰ See Schengen visa info, available online at: <https://www.schengenvisainfo.com/hungary-visa/>.

¹¹ Art 181/A of Gov. Decree 114/2007 (V. 24.).

¹² On implementation see Lipics L (2010) Az információs rendszerek szerepe az integrált határbiztonsági rendszerben, *Hadmérnök*, V(4):201-211.

¹³ Art 148(1) of 114/2007. (V. 24.) Gov. Decree.

¹⁴ Art 149 and 152 of 114/2007. (V. 24.) Gov. Decree.

national by the deadline provided, the Police shall advance the expenses of the return to another carrier.¹⁵ If the carrier responsible fails to repay the expenses of the return, the Police shall have recourse under civil law.¹⁶

According to our source from the Border Police, due to the strict regulations, airlines are already vigilant, and third-country nationals without the required valid travel documents have arrived at Budapest Airport only on a very few occasions.

4.1.3 Advance passenger information¹⁷

The Council Directive 2004/82/EC has been transposed into national law in Act II. of 2007, the corresponding Gov. Decree, and Act XCVII. of 1995 on Air Traffic. Directive (EU) 2016/681 has been transposed in Interior Minister Decree 28/2016 (VII.15.) on the Communication between the Counter-terrorism Information and Criminal Analysis Centre (TIBEK) and the PNR Data Provider, and on the PNR Data Transfer.

In 2012, as part of the Prevention of and Fight against Crime Programme (ISEC) the Commission sent out a call for proposals with the aim to support the development of Passenger Information Units (PIU) in the Member States.¹⁸ Hungary was awarded a grant of 5.024.673 EUR¹⁹ and set up the national Passenger Name Record (PNR) system, active from October 1, 2016. The beneficiary of the grant agreement was the Coordination Centre against Organised Crime (SZEBEK), the legal predecessor of TIBEK.²⁰ The responsibilities and activities related to the operation of the PIU are assigned to TIBEK,²¹ which operates under the supervision of the Minister of Interior.²² The tasks and responsibilities of TIBEK regarding PNR data management are set forth in Art 52/A-52/M of Act CXXV of 1995 on National Security Services, and the rules governing the access to PNR data for the Police are set forth in Art 91/K-O of Act XXXIV of 1994 on the Police.

For reasons of passenger safety and of air traffic, national security, and in support of the prevention and detection of crimes related to terrorism and organized crime, and the prevention and interception of illegal migration, carriers may store various personal data of passengers flying to/from Hungary from/to a non-Schengen country.²³

¹⁵ Art 148(2) of 114/2007. (V. 24.) Gov. Decree.

¹⁶ Art 148(3) of 114/2007. (V. 24.) Gov. Decree.

¹⁷ For detailed information see 'PNR Data requirements guide for airlines' available online at: http://tibe.gov.hu/download/7/a8/02000/PNR_guideline_2018.pdf.

¹⁸ Available online at: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/financing/fundings/security-and-safeguarding-liberties/prevention-of-and-fight-against-crime/calls/call-2012/pnr-targeted-call/docs/pnr_call_for_proposals_2012_final_en.pdf.

¹⁹ List of awarded applications is available online at: [http://www.europarl.europa.eu/RegData/docs_autres_institutions/commission_europeenne/comitologie/info/2013/D028518-01/COM-AC_DI\(2013\)D028518-01\(ANN1\)_EN.pdf](http://www.europarl.europa.eu/RegData/docs_autres_institutions/commission_europeenne/comitologie/info/2013/D028518-01/COM-AC_DI(2013)D028518-01(ANN1)_EN.pdf).

²⁰ See 'A magyar Utas-adat Információs Egység (HU PIU) létrehozásának és a nemzeti PNR rendszer kialakításának előzményei' Available at: http://tibe.gov.hu/download/9/a8/02000/E_PIU_web_2018-01-15.pdf.

²¹ Art 8/A(4) of Act CXXV of 1995 on National Security Services.

²² Art 10(2) of Act CXXV of 1995.

²³ Art 27/C(1) of XCVII of 1995: name, gender, name of travel agency, flight number, departure/arrival time, country of departure/transit/destination, record locator, time of ticket purchase, seat number and special requests regarding seating, number of checked-in/cabin baggage and related information, number and name of co-

It is the responsibility of the passenger to disclose the above data for carriers.²⁴ The rules concerning the period of data storage by the carrier, depending on the passenger's consent, are set forth in Art 27C(3) of Act XCVII. of 1995 on Air Traffic.

Carriers shall communicate the above data, if available, to TIBEK with no delay, "12 hours prior to the scheduled departure time, following check-in, [and] right after take-off".²⁵ In parallel to the communication of passenger data, passengers shall be informed about data sharing as well as its purpose, the period of data storage, the data controller and potential data processors.²⁶ The data is to be kept by the TIBEK for five years.²⁷

Failure of the carrier to comply with its responsibility of PNR data transfer may result in a penalty of up to 1.000.000 HUF.²⁸ (Art 70 of Act II. of 2007 provides for imposing a penalty on the same basis, however, the applying rules are different and set forth in Art 150 of Gov. Decree 114/2007 (V.24.).)

4.1.4 Immigration liaison officer

The coordination and supervision of Immigration Liaison Officers (ILO) deployed by Hungary and further related tasks are the responsibility of the Immigration and Asylum Office (IAO).²⁹

Between 2007 and 2013, the Hungarian ILO network was funded by the External Borders Fund with the aim to reinforce the network and to support the cooperation between the networks of the Member States.³⁰ From 2014 onward, the programme is funded by the Internal Security Fund.³¹ Along with Austria, Slovenia, Romania, the Czech Republic and Slovakia, Hungary sought for European Border Fund support to set up a joint ILO mission in Thailand.³² As of 2015, Hungary had seven ILO deployed in third-countries. Five of them delegated by the IAO were primarily assigned to support tasks related to visa and "illegal migration" issues in Cairo, Ankara, Hanoi, Nairobi and Algiers. Another two officers, delegated by the Police, were deployed in Chongqing and Kosovo as forensic document examiners (Hócza, 2015:43).

passengers, contact details (address, phone and email of passengers/co-passengers), credit card and bank account details, payment and billing information, ticket information (issuing airline, ticket number), travel circumstances, passport details, changes of data specified in 1-16.

²⁴ Art 27C(2) XCVII of 1995.

²⁵ Art (5) of Act XCVII of 1995.

²⁶ Art (6) of Act XCVII of 1995

²⁷ Art 52/H(8) of Act CXXV of 1995.

²⁸ Art 66/A(1) of Act XCVII of 1995.

²⁹ See IAO's website: http://www.bmbah.hu/index.php?option=com_k2&view=item&id=746:projektkoordinacios-es-nemzetkozi-elemzo-osztaly&Itemid=892&lang=hu, and Annex no. 3 of Ministry of Interior's Order No. 39/2016. (XII. 29.) on the Institutional and Operational Structure of the IAO, available online at: https://net.jogtar.hu/getpdf?docid=A16U0039.BM&targetdate=20170102&printTitle=39/2016.+%28XII.+29.%29+BM+utas%C3%ADt%C3%A1s&referer=http%3A/net.jogtar.hu/jr/gen/hjegy_doc.cgi%3Fdocid%3D00000001.TXT

³⁰ Government Decision No. 1102/2007 (XII. 23.) on the National Programme of External Border Fund of the Republic of Hungary.

³¹ See http://belugyialapok.hu/alapok/sites/default/files/ISF_National%20Programme_HU.pdf.

³² Evaluation of Council Regulation (EC) No 377/2004 on the creation of an immigration liaison officers network Final Report p36, available online at: <https://publications.europa.eu/en/publication-detail/-/publication/3a02447f-47c0-11e8-be1d-01aa75ed71a1/language-en>.

Prior to that, ILOs had been deployed in Istanbul and Abuja.³³ Citing IAO sources, Hócza notes that when selecting countries of deployment, countries that “emit illegal migration” are considered (Hócza, 2015:44). To qualify for ILO post, candidates must have two years of experience at the IAO, and must be referred by the respective head of department. The period of deployment is three years that can be extended to four years, if special circumstances apply (Hócza, 2015).

4.2 At the border controls

After EU accession, between 2005-2007, the Hungarian border management has undergone a large-scale infrastructural, technological and personnel development covered by the Schengen Fund. Part of the improvement, the national False and Authentic Documents Online (FADO)³⁴ has been established. Hungary has become full-right member of the Schengen Area since 2007 when the Schengen Information System I (SIS I) became activated. As of January 2008, the predecessor of the Border Police, the Border Guard force, losing its earlier militarist identity, has been integrated into the Police.³⁵ The Police has taken over the operation of the Schengen Information System³⁶ (SIS II has been active since 2013), Visa Information System (VIS) in cooperation with Immigration and Asylum Office (IAO), Automated Fingerprint Identification System (AFIS), European Dactyloscopy (EURODAC)³⁷ and the Entry/Exit System (EES)³⁸. Both the Police and the IAO records data in EURODAC, the data handler is the National Forensic Research Centre (NSZKK), former Forensic Research Institute (BSZKI). The National Coordination Centre (NCC) at the National Police Headquarter as part of the European Border Surveillance System (EUROSUR) is responsible for international cooperation (Ritecz, 2017; Boda, 2017).³⁹ The NCC coordinates border surveillance activities and the Frontex joint operations at the external border in cooperation with other NCCs of Member States of the EU and countries of the Schengen Area. The NCC shares and has access to data of the situational pictures⁴⁰ (Tóth and Kilic, 2017; Varga, 2017).

The second wave of development took place between 2007 and 2013. Using External Borders Fund sources as part of SIS II implementation plan, document checking systems,

³³ Evaluation of Council Regulation (EC) No 377/2004 on the creation of an immigration liaison officers network Final Report p37.

³⁴ On FADO see: https://ec.europa.eu/home-affairs/content/false-and-authentic-documents-online-fado_en.

³⁵ Act LXXXVIII of 2007.

³⁶ Regulation (EC) No 1987/2226 has been transposed in Act CLXXXI. of 2012 on the information exchange in the framework of the second generation Schengen Information System.

³⁷ Regulation (EU) 603/2013 has been transposed in Ministry of Interior Decree Nr. 47/2015. (VIII. 6.) on the implementation of tasks related to EURODAC II. Regulation.

³⁸ On implementation see Lipics L (2010:208-209).

³⁹ For detailed description of the institutional structure of the Hungarian Border Police and its functioning, see Ritecz Gy (2017) *Határőrizet a rendszerváltástól napjainkig, 1990-2017*, In: In: L. Pószán, L. Veszprémy, J. Boda and J. Isaszegi (eds.) *Őrzők, vigyázatok a határra! Határvédelem, határőrizet, határ vadászok a középkortól napjainkig*, Budapest: Zrínyi Kiadó and Boda J (2017) *A határőrség felderítő tevékenysége*, In: L. Pószán, L. Veszprémy, J. Boda and J. Isaszegi (eds.) *Őrzők, vigyázatok a határra! Határvédelem, határőrizet, határ vadászok a középkortól napjainkig*, Budapest: Zrínyi Kiadó.

⁴⁰ On situational pictures see: https://ec.europa.eu/home-affairs/content/situational-picture_en. [Accessed 29 December 2018].

biometric identification systems, and thermographic cameras have been installed (Ritecz, 2017). Both the Border Guard and later the Border Police have been actively participating in international cooperation relating to fight against transnational (organized) crime. Balla notes that, with the Police taking over, the Intelligence Service of the Border Guard has been shut down resulting in a significant loss of a well-developed agent network and other information channels (Boda, 2017:725). As of September 2015, however, in relation to governance of mass migration, “terrorism”, and “acts threatening the order of the state border”, the Police is authorised to carry out intelligence activities abroad in cooperation with the national security services.⁴¹ Moreover, as Boda notes, under Art 63-64 and 66-74, the Border Police may as well carry out secret information gathering – a covert activity that may restrict the right to privacy, the right to inviolability of the home, the right to protection of personal data and the right to respect for correspondence (Boda, 2017:725).

Hungary is a member of the Police Cooperation Convention for Southeast Europe (PCC SEE). The PCC SEE was established to respond to “the Southeast European countries’ intention to address organized and serious cross-border crime issues affecting their region in a more comprehensive and effective manner as well as with their desire to align their policing standards with those in the European Union and the Schengen area”. The treaty entered into force in October 2007, signed by Albania, Bosnia and Herzegovina, Macedonia, Moldova, Montenegro, Romania and Serbia. It has since been ratified by Bulgaria, Slovenia, Austria, and Hungary joining in July 2012. The contracting parties agreed on cooperation in cross-border and law-enforcement to enhance practices of, *inter alia*, joint threat analysis, liaison officers, hot pursuit, cross-border surveillance, undercover investigations to prevent and investigate crime, joint investigation teams, data and information exchange including DNA profiles, technical measure to facilitate cross-border cooperation, border search operations, and mixed patrols along the state borders.⁴² During its Hungarian chairmanship in June 2015, the joint project ‘SIROCCO’ was initiated to support activities of the EUROPOL’s ‘Blue Amber’ operation⁴³ relating to the combat against irregular migration (Tóth and Kilic, 2017). Hungary is also member of the Salzburg Forum, a Central European security partnership established with the aim of strengthening the cooperation in the field of internal security.⁴⁴

4.2.1 Border surveillance

4.2.1.1 Border closure and related offences

In the summer of 2015, Hungary constructed a 174,6 km long barbed wire fence, also known as *border closure*, at its southern border with Serbia to keep irregular migrants out of the territory.⁴⁵ The fence has later been extended to 116,1 km at the Croatian border section

⁴¹ Art 2(5) of the Police Act.

⁴² See PCC SEE website at: <https://www.pccseesecretariat.si/index.php?item=9&page=static>. [Accessed 29 December 2018].

⁴³ ‘Operation Blue Amber against organised crime results in nearly 900 arrests in 2015’, Europol Press Release, 15 December 2015, Available online at: <https://www.europol.europa.eu/newsroom/news/operation-blue-amber-against-organised-crime-results-in-nearly-900-arrests-in-2015>. [Accessed 29 December 2018].

⁴⁴ See further at http://www.salzburgforum.org/Who_are_we/Our_history.html.

⁴⁵ Act CXXVII of 2015 on the temporary closure of the borders and amendment of migration related acts and Gov. Decision No. 1401/2015 (VI. 17.) on the measures necessary to handle the extraordinary migratory pressure.

(Kovács, 2017b). Although there were initiatives for further construction works at the Romanian and Slovenian border sections, a fence has never been erected (Directorate-General for Internal Policies, 2016). The fence is patrolled by police-military mixed patrol teams. There are gates on the fence in every two kilometres to enable officers to enter the Serbian side if assistance is needed (Szép, 2017b). The fence is equipped with an intelligent motion detection system, maintained and operated by a private company, (the ownership of which is closely linked to the Government).⁴⁶ Following completion, the Parliament amended the Criminal Code and established three new criminal offences in relation to the “border closure”: unlawful entry through the “border closure”,⁴⁷ damaging the “border closure”,⁴⁸ and obstruction of work on the “border closure”.⁴⁹ Expulsion of the convicted is mandatory.⁵⁰ Notable that irregular entry constitutes a criminal offence only if it is done through the “border closure” (Hautzinger, 2015). In other words, irregular entry per se has not been criminalised, it was only tailored to those arriving via the Western Balkan route *en masse*. The Act on Criminal Proceedings has accordingly been amended,⁵¹ allowing a procedure in the above cases during “crisis situation caused by mass migration” that significantly departs from standard procedural norms.⁵² The UNHCR gives a detailed account of the show trials over the above charges, that made a mockery of regular criminal procedure (UNHCR, 2016). While the new criminal law related amendments raise serious human rights concerns (Gyollai and Amatrudo, 2018), the criminalised behaviours could be more effectively dealt with under immigration law rather than criminal law (Hautzinger, 2017). These policy developments received fierce national and international criticism (HHC, 2015; UNHCR, 2016).

4.2.1.2 “Border-hunters”

The government decided to recruit 3.000 so-called “border-hunters” in August 2016. The large-scale expansion of police personnel was necessary due to capacity shortage of the Police. As for the institutional structure of the Police, the “border-hunter” units are integrated into the regional Riot Police Border Hunter Intervention Departments. The umbrella organisation, the Riot Police Border Policing Directorate, was established in September 2015. It operates as a separate institutional unit, but in cooperation with the pre-existing regional Border Policing Offices of the County Police Departments (Kovács, 2017a). Dsupin and Kónya note that the name *Határvasdász* (“Border-hunter”) has been chosen for the military connotation of the term and its historical legacy, and not to suggest the unit would have an actual hunting role, that is, “it is meant to carry the memory of those soldiers and military organisations who heroically defended the historical borders of Hungary against the advancing Soviet troops during World

⁴⁶ ‘A fideszes kötődésű Metalcom Zrt. öt éven át 6,5 milliárd forintért üzemeltetheti a határkerítést’ Átlátszó Blog’, Available online at: <https://blog.atlatszo.hu/2018/11/a-fideszes-kotodesu-metalcom-zrt-ot-even-at-65-milliard-forintert-uzemeltetheti-a-hatarkeritest/>. [Accessed 31 December 2018].

⁴⁷ Art 352/A of Act C of 2012 on the Criminal Code.

⁴⁸ Art 352/B of Act C of 2012 on the Criminal Code.

⁴⁹ Art 352/C of Act C of 2012 on the Criminal Code.

⁵⁰ Art 60(2a) of Act C of 2012.

⁵¹ Chap. XXVI/A of the former Act XIX of 1998 on Criminal Proceedings, and Chap. CVII of the new Act XC on Criminal Proceedings in force since July 2018. For critical analysis see Gyollai and Amatrudo (2018).

⁵² See WP1 Report on the Legal Framework p.26.

War II” (Dsupin and Kónya, 2017:769-770).⁵³ The recruitment started in September, predominantly targeting those not accepted to policing training courses in the previous years due to oversubscription, unemployed or having difficulties on the labour market (Dsupin and Kónya, 2017). The recruitment has since been ongoing. However, the practice shows some applicants quit as the programme does not meet their expectations.⁵⁴

The course length is relatively short. It is six months. In the first five months of the training the candidates are equipped with the basic general policing knowledge and skills. There is only one month assigned to familiarise themselves with specific border policing material. Upon graduation, border-hunters are expected to perform duties such as to prevent and intercept crimes of unlawful border crossing, damaging the border closure, patrolling and surveillance in border areas, to assist in “assembling” asylum seekers, their transportation, providing them with care, and to guard facilities where migrants are held. The border-hunter graduates operate as *patrol partners* under the direct supervision of an experienced patrol officer (Dsupin and Kónya, 2017).⁵⁵ According to our anonymous source from the Border Police, the programme is successful and meets all expectation of those designed the course.

4.2.1.3 Deployment of Armed Forces

During “crisis situation caused by mass migration”, along with the police, the military may also participate in the registration of asylum seekers, and related activities, as per request of the Minister of Interior and the decision of the Minister of Defence.⁵⁶ Under the new state of crisis, the military may as well cooperate with the police in the guarding of the border, handling mass migration, and in carrying out measures to prevent and stop violent activities / situations of conflict that threaten the order and integrity of the state border.⁵⁷

4.3 Internal Controls

In the WP1 report on the legal framework we extensively discussed the situation of asylum seekers, the beneficiaries of international protection and irregular migrants, their rights and obligations, and the rules governing the asylum procedure (Gyollai, 2018). The most significant development introduced since then is the new inadmissibility criterion, that is, the asylum application is inadmissible if the applicant travelled through the territory of a country where they were not exposed to persecution or risk of serious harm, such as death penalty or execution, inhuman or degrading treatment or punishment, or if the adequate level of protection in the country in question is available.⁵⁸ Not only has the Asylum Act been amended,

⁵³ See further: Védelem, nem vadászat, 24.01.2017, *Zsarú Magazin*, Available online at: <http://www.police.hu/hirek-es-informaciok/legfrissebb-hireink/zsarú-magazin/vedelem-nem-vadaszat>.

⁵⁴ Anonymous interviewee source from Border Police.

⁵⁵ For English language info on border-hunter units see Border Hunter Application is Continuous, Interview with Károly Konrád, Deputy Minister, Parliamentary State Secretary, Available online at: http://www.diplomatamagazin.hu/ftp/gd6ojwr_d6-8.pdf. [Accessed on 01.12.2018.]

⁵⁶ Art 85/G(b) of Asylum Act.

⁵⁷ Art 36(1)(h) of Act CXIII of 2011 on National Defence and Hungarian Defence Forces, and Measures Adoptable during State of Emergency as amended by Act CXLII of 2015.

⁵⁸ Art 51(f) of the Asylum Act as amended by Act VI. of 2018.

but the new criterion is now embedded in the Fundamental Law of Hungary.⁵⁹ Following its coming into force on 1 July 2018, all asylum applications have been rejected. As of March 2017, asylum applications can only be submitted in the transit zones at the Hungarian-Serbian border. Notwithstanding, Hungarian law considers Serbia a safe third country.⁶⁰ Following the appeal of an applicant against the inadmissibility decision, however, a judge found the new criterion may be at variance with the Asylum Procedures Directive, and referred the case to the Court of Justice of the European Union (CJEU). Tímea Kovács, a lawyer of the Hungarian Helsinki Committee who provides legal assistance to asylum applicants in the transit zones, expressed serious concerns about the inadmissibility criterion. Given the pending CJEU case, she emphasised that there is a real risk of the transit zones becoming overcrowded as the IAO had rejected all applications with reference to the new inadmissibility criterion.⁶¹ At the time of writing, the CJEU has not yet delivered its decision in the case.

The Seventh Amendment of the Fundamental Law further provides that “no alien population shall be settled in Hungary”. The provision can be interpreted as the Government clear and continuous objection of any relocation programme by the EU, such as the Council Decision on the relocation quota system (Amnesty International, 2018).

Regarding secondary movements, our source from the Border Police noted that third-country nationals granted subsidiary protection in Austria or Germany, or individuals whose asylum decision is still pending are often transiting through Hungary to visit their country of origin. In such cases, upon apprehension, the third-country nationals are readmitted to Germany and Austria respectively. Furthermore, if an individual in possession of Convention travel document (Geneva passport) travels through Hungary to the country of origin, the Hungarian Border Police forward the entry/exit data (to and from the country of origin) to the authorities of the country that issued the travel document. According to the Border Police, in such cases the grounds for recognition as a refugee are subject to revision, and the cessation of the status should be considered. Since asylum applications may only be submitted in transit zones, there has been no secondary movement from Hungary regarding asylum claimants. 90% of the individuals who have been granted protection, however, left the country upon recognition.⁶²

A recent development of the border control regime, quasi-corresponding with the new inadmissibility criterion, is the criminalisation of activities aiming to facilitate the initiation of asylum procedure on behalf of individuals who are not exposed to persecution in their country of origin or in the transit countries they travelled through before arriving to Hungary.⁶³ As of July 2018, it is also a crime to support the legalisation of stay of individuals who irregularly entered the country.⁶⁴ The new provision of the Criminal Code is distinct from human

⁵⁹ Art XIV(4) of the Fundamental Law.

⁶⁰ On the problematics of considering Serbia safe third country, see Szép Á, 2017.

⁶¹ ‘Tovább nehezíti a menedékkérők és segítők életét a kormány: Konténerek és paragrafusok’, *Magyar Narancs*, 06 September 2018, Available online at: <https://magyarnarancs.hu/belpol/kontenerek-es-paragrafusok-113413/?orderdir=novekvo>. [Accessed 30 December 2018].

⁶² Index.hu - https://index.hu/belfold/2018/01/15/soros_kormany_hany_fo_menekult_fogadott_be_magyarorszag_altusz/ [Accessed 28 April 2019].

⁶³ Art 353/A a) of Act C of 2012 on the Criminal Code.

⁶⁴ Art 353/A b) of Act C of 2012 on the Criminal Code.

smuggling. With a broader scope, it essentially threatens NGOs providing humanitarian assistance to asylum seekers (Gyollai and Korkut, 2018). Following the application of Amnesty International Hungary, the Constitutional Court found that the new criminal offence does not constitute a breach of the Fundamental Law.⁶⁵ The new criminal offence, “facilitating/supporting unlawful migration”, is, arguably, inherently controversial nonetheless. It is the very purpose of the asylum procedure to establish whether the applicant is in fact exposed to persecution or not. Thus, the conviction of an individual on such charges prior to the asylum procedure concluded would indicate a preliminary assumption of its negative outcome. Second, in the strict sense, to attach criminal liability to the above acts would, in hindsight, put the employees of the Immigration and Asylum Office at risk in case of each and every rejection decision delivered on the basis of ineligibility.

Another controversial deterrence measure has been introduced, and came into force 25 August 2018: the imposition of 25% special tax on civil society organisations whose activity involves migration support.⁶⁶ The Government argued, the tax was necessary as the fight against illegal migration puts extra burden on the budget; the purpose of the new tax was to restrict activities that facilitate irregular migration.⁶⁷

The Seventh Amendment of the Fundamental Law and the joint legislative package that, *inter alia*, essentially criminalised civil society organisations that support asylum seekers raised fierce international and domestic criticism.⁶⁸

4.3.1 Internal control and apprehension measures

4.3.1.1 “8km-rule”

As mentioned in the WP1 Report on the legal framework, Hungary introduced the so-called 8km-rule, in force since July 2016 (Gyollai, 2018:8). The rule provides for the escort of migrants illegally present in the territory of Hungary back to the fence at the Serbian border, i.e. essentially their forced removal or “push-back”, if apprehended within 8km of the border.⁶⁹ As of 28 March 2017, the 8km rule has been extended to the entire territory of Hungary during *crisis situation caused by mass migration*.⁷⁰ A new state of crisis was introduced and first declared 15 September 2015⁷¹ and thereon has been repeatedly extended (Kovacs, 2017b; Gyollai, 2018:25). The latest extension until September 2019 was recently announced, though the declaration criteria were hardly fulfilled.⁷² According to the official statistics of the

⁶⁵ Constitutional Court decision no 3/2019 (III. 7.), Available at: <http://kozlon yok.hu/kozlon yok/Kozlon yok/1/PDF/2019/7.pdf>.

⁶⁶ Act XLI of 2018 Amending Certain Tax Laws and Other Related Acts and on the Special Immigration Tax; The draft proposal went through several changes, see WP1 Report on Legal Framework, p28-29.

⁶⁷ ‘Hatályba lépett a bevándorlási különadó’, 24.hu, Available online at: <https://24.hu/belfold/2018/08/25/bevandorlas-kulonado-migracio-menekult/>. [Accessed 30 December 2018].

⁶⁸ See Gyollai and Korkut, 2018; Venice Commission and Office for Democratic Institutions and Human Rights, 2018.

⁶⁹ Art 5(1a) of Act LXXXIX of 2007 on the State Border.

⁷⁰ Art 5(1b) of Act LXXXIX of 2007 on the State Border.

⁷¹ Gov. Decree No 269/2015 (IX. 15.)

⁷² Orbán Viktor márciusig meghosszabbította a tömeges bevándorlás okozta válsághelyzetet, !!444!!!, 3 September 2018, Available online at: <https://444.hu/2018/09/03/orban-viktor-marciusig-meghosszabbította-a-tomeges-bevandorlas-okozta-valsaghelyzetet/>.

Hungarian Police, 19,490 people were refused entry and/or escorted back to the border fence under the new legislation in 2017. As of October 2018, this number was 4,698.⁷³ The purpose of the law maker in creating the new measure was to deter, prevent and detect irregular border crossing. The rule in itself is controversial since the law provides for the escort only if it is beyond doubt that the apprehended individual has not committed a crime. However, there is arguably a reasonable ground to believe in each and every case when an undocumented person found within 8km of the Serbian and Croatian border section that she or he was involved in unlawful crossing of the border closure.

Hungary still remains a predominantly transit country. While the number of irregular border crossers was unprecedentedly high in the 2014-2016 period, most migrants only transited through the country on their way to Western Europe (Klenner, 2017). Though there is no official statistics available on the average number of irregular migrants residing in Hungary, the vast majority of the very few with the purpose of long-term stay have arguably legalised their stay. We have no information about operations in Hungary similar to for instance the Immigration Enforcement raids carried out in the UK to detect long-term resident irregular migrants and/or undocumented employees. Prior to 2015, as of October 2012, ad hoc police checks were carried out to identify irregular migrants along major traffic routes and at public places (European Migration Network, 2012:36). Most irregular border crossers are now apprehended by the border police in the border region, though irregular migrants are frequently reported to the police by locals. Arguably due to the persistent anti-immigrant campaign and hostile narrative of the Government, the level of xenophobia has reached historic high level in Hungary (Simonovits and Bernáth, 2017). As a result of the Government-generated *moral panic*, citizens now voluntarily report individuals to the authorities whom they assume to be illegally present simply because of the colour of their skin or unusual outfit, though many of whom turn out to be Hungarian nationals (Walker and Gyori, 2018). One of the cases is of a young woman in Csongrád (town in South-East Hungary) who was only wearing headscarf to protect her hair after a visit in the hair salon.⁷⁴ The overwhelming public fear of migrants in Tápiógyörgye (village in the central region) prompted the council to call on locals that the Saudi officers hosted by the village were not “migrants”, stressing that the police had been informed about their visit. Given the circumstances, the council urged people to tolerate the stay of the Saud police officers.⁷⁵

⁷³ ORFK Határrendészeti Helyzetkép, Available online at: http://www.police.hu/sites/default/files/HatarrendeszetHK%202018_10_jav.pdf. [Accessed on 30 November 2018].

⁷⁴ ‘Migránsnak néztek egy fodrásztól hazafelé sétáló nőt Csongrádon, rendőrt hívtak rá.’ *HVG*, 28 March 2018, Available online at: https://hvg.hu/itthon/20180329_Migransnak_neztek_egy_fodrasztol_hazafele_setalo_not_Csongradon_rendort_hivtak_ra. [Accessed 29 December 2018].

⁷⁵ ‘Tápiógyörgye önkormányzata Facebook oldalán tájékoztatja a lakosságot, hogy bár a községbe arab emberek érkeznek, de nem migránsokról van szó, tud róla a rendőrség is, nem kell megijedni’, *444*, 6 September 2018, Available online at: <https://444.hu/2018/09/06/tapiogyorgye-onkormanyzata-facebook-oldalan-tajekoztatja-a-lakossagot-hogy-bar-a-kozsegbe-arab-emberek-erkeznek-de-nem-migransokrol-van-szo-tud-rola-a-rendorseg-is-nem-kell-megijedni>. [Accessed 29 December 2018].

4.4 Return, detention for return and readmission

Third country nationals may be detained in Hungary during immigration and asylum procedure on the order of the Police or the Immigration and Asylum Office.⁷⁶ The grounds of immigration detention are set forth in Act II. of 2007, where the purpose of detention is to secure the expulsion or the readmission of third country nationals.⁷⁷ The concept of asylum detention was introduced into Hungarian law in 2013.⁷⁸ As the HHC notes, the Hungarian Government was the first in Europe to introduce the measure.⁷⁹ This is not to say detention of asylum seekers was unheard of prior to the amendment of the Asylum Act, the European Court of Human Rights (ECtHR), however, found that the practice was unlawful in several cases and in breach of Art 5 of the ECHR (HHC, 2014).⁸⁰

Asylum detention order may be issued against third country nationals, whose legal stay in Hungary is solely based on their asylum application in order to secure the carrying out of Dublin transfers or to secure the presence of asylum applicants during the asylum procedure:

- to clarify the applicant's identity or nationality if it is unknown,⁸¹
- if an expulsion order has been issued against the applicant and there is a reasonable ground to believe that he or she only submitted an asylum application to delay or jeopardize the carrying out of the expulsion,⁸²
- to clarify the facts in support of the asylum application, if the clarification was not possible without detention and especially if there is a real risk of absconding,⁸³
- if it is necessary due to the protection of national security or public order,⁸⁴
- if the asylum application has been submitted in airport procedure,⁸⁵
- to secure the Dublin transfer and there is a serious risk of absconding,⁸⁶

or to secure the transfer of a third country national who has not submitted an asylum application but subject to Dublin transfer.⁸⁷

If the asylum detention was terminated because the maximum detention period had elapsed, the detainee is an unaccompanied minor, in-hospital treatment is necessary or the Dublin transfer cannot be carried out, the asylum seeker shall be transferred to a designated place of stay.⁸⁸

⁷⁶ Art 126(1)-(2) of Gov. Decree No. 114/2007 (V. 24.)

⁷⁷ Art 54-55 of Act II. of 2007.

⁷⁸ Ast 31/A of Asylum Act.

⁷⁹ 'A Kormány megtéveszti a közvéleményt a menekültek őrizetéről', HHC, 13 January 2017, Available online at: <https://www.helsinki.hu/a-kormany-megteveszti-a-kozvelemeny-t-a-menekulok-orizeterol/>. [Accessed 30 December 2018].

⁸⁰ The Commission launched infringement procedures against Hungary concerning the issue – see WP1 Report on the legal framework,

⁸¹ Art 31/A(1)(a) of Asylum Act.

⁸² Art 31/A(1)(b) of Asylum Act.

⁸³ Art 31/A(1)(c) of Asylum Act.

⁸⁴ Art 31/A(1)(d) of Asylum Act.

⁸⁵ Art 31/A(1)(e) of Asylum Act.

⁸⁶ Art 31/A(1)(f) of Asylum Act.

⁸⁷ Art 31/A(1a) of Asylum Act.

⁸⁸ Art 31/A(9) of Asylum Act.

Immigration detention may be ordered for 72 hours, which can be extended to 60 days on court decision.⁸⁹ After the first six months, the duration of detention may be extended to another six-month period if the detainee does not cooperate with the authorities or the obtaining of documents necessary for the expulsion is prolonged due to the procedure of the country responsible for issuance.⁹⁰ The criteria for termination of are set out in Art 54(6).⁹¹

If the immigration detention was terminated because the expulsion cannot be carried out or the maximum detention period had elapsed, the third country national shall be transferred to a designated place of stay.⁹²

The designated place of stay, *inter alia*, may be a reception centre,⁹³ or, as of March 2017, the transit zone.⁹⁴

The immigration detention facilities are run by the Police whereas IAO runs the asylum detention facilities with security provided by the Police. The immigration detention facilities are located in Győr, Nyírbátor, Kiskunhalas and Budapest Airport and the asylum detention facilities are located in Nyírbátor, Kiskunhalas and Békéscsaba (Debrecen now closed), though as of February 2017 only Nyírbátor was operating (ECRE, 2018; Council of Europe, 2016; Global Detention Project, 2016; European Migration Network, 2014). Where detention order was not warranted during the asylum procedure, prior to March 2017, asylum applicants were placed both in reception centres and the transit zones. The IAO unilaterally terminated a cooperation agreement with HHC on 2 June 2017. The agreement provided access for HHC to detention and reception centres to monitor the circumstances and provide legal support for asylum seekers/detainees (AIDA, 2018: 78).

During the peak period, between 2014-2015, according to our source at the Border Police, the immigration and asylum detention centres were running with full capacity, even expansion had become necessary. The source noted that the authorities “could hardly wait” for the 6/6+6-month-period to elapse so that detainees could be transferred to designated place of stay. Those submitting asylum application in immigration detention have been transferred to reception centres.

The legislative changes in July 2016 and March 2017, however, resulted in massive drop in occupancy of both the reception and detention centres (Kováts, 2018). After the “8 km”- rule coming into force in July 2016, undocumented asylum seekers apprehended within 8 km of the border fence have been escorted back to the other side of the fence without registration.⁹⁵ The Government’s argument is that each and every one escorted to the other side of the fence has the opportunity to file an asylum request in the transit zones is disputable. The numbers

⁸⁹ Art 54(4) of Act II. of 2007.

⁹⁰ Art 54(5) of Act II. of 2007.

⁹¹ Art 54(6) of Act II. of 2007: the preconditions of expulsion are secured; it is evident that the expulsion cannot be carried out; the maximum period for detention prescribed by the Act (6/12-month) has elapsed; the detainee is granted international protection; the immigration detention is transferred to asylum detention (the ground of detention changes).

⁹² Art 54(8) of Act II. of 2007.

⁹³ Art 62(3) of Act II. of 2007.

⁹⁴ Art 62(3a) of Act II. of 2007.

⁹⁵ Art 80/J(3) of Asylum Act.

give evidence to our point: as of January 2018 only one person gains access daily to each transit zone⁹⁶ while the overall number of people escorted back as of October 2018 was 4698. According to our source from the transit zone, the order of admission into the transit zones is unclear and based on an informal negotiation at the Serbian side of the border fence between the Hungarian authorities and asylum seekers. During our field visit to Subotica Reception Centre in Serbia in December 2018, we attempted to clarify with the manager of the centre whether there is a form of communication between the Serbian and Hungarian authorities to this extent, however we did not receive any satisfying answers (Korkut and Gyollai, 2018b). Our previous attempts to contact the Immigration and Asylum Office in Hungary have all failed as we noted in the methodology section of this report.

As of March 2017, unless the applicant has been legally resident in the country, asylum application can only be submitted in the transit zone.⁹⁷ Applicants are not transferred to reception centres. According to our source from the zone, upon rejection, even if they would then fall under the rules of immigration procedure,⁹⁸ asylum seekers remain in the transit zone pending expulsion.⁹⁹ Applicants cannot leave the transit zone except voluntarily towards Serbia.¹⁰⁰ The Government does not consider transit zones as place of detention, arguing that asylum seekers can leave the zone any time they wish. In March 2017, the ECtHR ruled that holding asylum seekers in these facilities constituted arbitrary deprivation of liberty in the meaning of Art 5 of the ECHR. The Government filed an appeal against the decision and the case has now been referred to the Grand Chamber of the Court. At the time of writing, the proceeding before the Grand Chamber has not been concluded.

According to our source who works as a social worker in the transit zones, as of September 2018, approximately 60-70 asylum seekers were held in each transit zone (Tomba and Rösztke) of which 30-35 were children. Asylum seekers have no access to a diverse and balanced diet, e.g. vegetables are not available in transit zones. There is no time limit for the duration of detention in transit zone (ECRE, 2018). Families with children, pregnant women may be detained for months and kept in total uncertainty about the outcome of their case. As of March 2017, unaccompanied asylum seeking children between the ages of 14 and 18 are not considered children under the above mentioned “crisis situation caused by mass migration”,¹⁰¹ and are held in the transit zones instead of a child protection home indefinitely during their asylum procedure. Potentially, there are also some under the age of 14 amongst them, given the significant margin of error in age assessment (HHC, 2018, Gyollai, 2018). The house rules of the transit zones are set forth in Ministry of Justice Decree No. 52/2007 (XII. 11) on the Institutional Structure of the Asylum System. The conditions in transit zones serve the purpose of deterrence rather than designed to meet the needs of asylum seekers. The asylum seekers are accommodated in shipping containers surrounded by barbed wire fence and are under constant surveillance.¹⁰² Most civil society organizations that are meant to

⁹⁶ See Kováts, 2018:33.

⁹⁷ Art 80/J(1) of Asylum Act.

⁹⁸ Art 45 of Asylum Act.

⁹⁹ On the practice of expulsion following rejection see Szép Á, 2017.

¹⁰⁰ Art 80/J(5) of Asylum Act, read together with Art 62(3a) of Act II. of 2007.

¹⁰¹ Art 4(1)(c) of Act XXXI of 1997 on the Protection of Children and the Administration of Guardianship

¹⁰² See Annexes.

monitor the treatment of asylum seekers, or provide them support, are banned from entering the transit zones (FRA, 2018:9). Between 9-23 August 2018, those asylum seekers whose application was found inadmissible were denied food altogether. The authorities only stop this practice following the intervention by the HHC requesting interim measures from the ECtHR. Since then the HHC sought the intervention of the ECtHR on the same issue on 10 more occasions.¹⁰³ The Court granted the requests and ordered the Hungarian Government to put an end to the unprecedented practice.¹⁰⁴ According to a lawyer providing legal assistance in the transit zone, the idea of not providing food for asylum seekers came with a shock to several asylum officers whose reaction was not to follow the decision and denounce it in the transit zones.

5. Key discourses and narratives of migration control

Paasi states that “understanding borders is inherently an issue of understanding how borders can be exploited to both mobilize and fix territory, security, identities, emotions and memories, and various forms of national socialization” (Paasi 2012: 2307). To this extent, how to situate Hungary and the Hungarian southern borders to demarcate the ‘European’ external border has been central to the Hungarian border politics. This demarcation also implied defending the latter from all threats. This stance very much originates from the historical position of the Catholic Church against the Ottoman occupiers of the country, who were not only not European, but also Muslim (Pap and Glied 2017). Hence, a security and law-enforcement-focused narrative (Brown and Dadu 2018; Szalai, Csornai and Garai 2017) has been at play since 2014. According to this narrative, the country’s location and proximity to external borders of the EU, and hence its exposure to irregular migration should require a security-oriented response to migration (Szalai, Csornai and Garai 2017, 22). In this context, the Hungarian Prime Minister foregrounded himself almost as a sage to tell the hard truth directly not only to the Hungarian but also to the wider European public using such tropes as ‘migration brings dangers’ and that ‘Hungary will not become a nation of migrants’. Therefore, the security and law enforcement narrative can explain to a certain extent how Orbán politicized migration, and demanded that Europe should construct a hard border against irregular arrivals.

However, beyond the neo-realist approach of the narrative above, following an identity-oriented narrative with constructivist undertones (Szalai, Csornai and Garai 2017; Szalai 2017), Orbán also set a demarcation line internally between the internationalist socialist/liberal elite versus people with national consciousness. He designated a “pro-migration lobby” both at home and in Europe in the shape of NGOs and socialist/liberal politicians, and their alleged external supporter George Soros. Therefore, he sought to undermine humanitarianism and human-rights-oriented narrative (Brown and Dadu 2018) that would primarily safeguard migrants’ rights by associating naivete and foreignness to the practitioners’ actions. Therefore, his overarching narrative has become not only the ‘external other’, but also the ‘internal other’ involved in international networks with the ultimate aim of enfeebling the European culture pose a multifarious danger to the future of European peoples. Below, we will depict three

¹⁰³ Comment of the external reviewer in April 2019.

¹⁰⁴ ‘All asylum seekers finally get food in the transit zones at the border’, HHC, 23 August 2018, Available online at: <https://www.helsinki.hu/en/all-asylum-seekers-finally-get-food-in-the-transit-zones-at-the-border/>. [Accessed 02 January 2019].

tropes that Orbán circulated extensively in politics and in the public sphere in order to generate audiences for these narratives.

a) Hungary defends the European borders:

At any venue possible, Orbán has presented migration as the biggest threat to Europe. In order, for instance, he advised the police at their inauguration ceremony: “You are the protectors of our culture, life style and our sovereignty. Our thousand years of statehood without any doubt give [us] the right for defending our borders, our citizens and our culture.”¹⁰⁵ According to Orbán, the new *népvándorlás* or wandering of people would question all that was taken for granted in Europe. He stated:

When we defend our borders, we do not only do something for Hungary, not only protect Hungary’s interests, but the whole, everyone who is behind us, that is, the whole Europe. Those EU member states, which fail to defend the European borders, are the ones that fail to maintain solidarity with the other European Union member states. We expect that they should not allege us with failing the European solidarity and talk about lack of solidarity [when they mention] Hungary.¹⁰⁶

In this respect, solidarity for Orbán implied taking on the responsibility to protect European external border as against the solidarity assumption that the quota regime would have foreseen to relocate refugees across the EU member states in an equitable manner. In this way, the solidarity that Orbán pursued was not with those in need either. It was with the European publics, who were allegedly threatened with irregular migrants. Therefore, a security-oriented solidarity narrative came to fore as against the solidarity-oriented scope that a humanitarian narrative would have foreseen. As we discussed above, Orbán assumed that the quota referendum in Hungary would have been major breakthrough for the anti-migration voice in Europe. He gave the interview below at the beginning of the referendum campaign in 2016 to state their opposition to the introduction of compulsory quota regime.

We, Hungarians, have experienced the threat in earlier times as well and we had the courage to stand against changes. When we stand together, we never fail success. The recognition of a threat as it began gave [us] astounding foreign policy cues. We oppose the politically correct migration policy and have decided to stand by the defense of [our] borders. [...] With all those that reject the introduction of the compulsory quota regime, I raise one question: Has the European Commission pulled back its quota package: No! In contrast, last week, it has strengthened it. The situation with the bureaucrats in Brussels is the same as those who lost their eye sight: you have to pay attention to their hands not their mouths. We, Hungarians, are one of the committed countries with the European Union. Our commitment to European common future is stronger than ever. This is the very reason why we want to change [the quota system]

¹⁰⁵ Orbán Viktor beszéde a rendőr tiszthelyettesek eskütételén, September 2015, [Online] Available at: <http://www.miniszterelnok.hu/orban-viktor-beszede-a-rendor-tiszthelyettesek-eskutetelen-2/>

¹⁰⁶ Orbán Viktor sajtónyilatkozata az Európai Tanács rendkívüli ülését követően az M1 Híradónak, October 2016, [Online] Available at: <http://www.miniszterelnok.hu/orban-viktor-sajtonyilatkozata-az-europai-tanacs-rendkivuli-uleset-kovetoen-az-m1-hiradonak/>

to defend Europe, which we all love, feel ourselves at home, for which we gave sacrifices.¹⁰⁷

However, this expressively pro-European stance that the security narrative avails should not mean that Orbán has been exclusivist in terms of locating Hungary solely within the West. A pragmatic approach to world politics has been common to Hungary's foreign policy to exploit the liminality in Hungarian national character and composition to the utmost. The *keleti nyitás* (eastern opening) policy (Korkut and Akcali 2015), a functional element of Hungarian foreign policy, for example, has not contradicted the security narrative that Orbán utilizes against non-Europeans coming as migrants. At the Cooperation Council of Turkic Speaking States 4th Meeting in Cholpon-Ata, Kazakhstan, in September 2018, Orbán said that "it was a special experience to be an European Union member as an eastern nation".¹⁰⁸ This liminality supports how material-gains-oriented realist foreign policy (Korkut 2017) encompassing extending visa-free access for holders of diplomatic and service passports from Central Asian Republics can operate along the security narrative that Orbán resorts to when it comes to migration. Beyond the tone, most particularly, the timing of Cholpon-Ata speech was very crucial: Orbán's visit to the Cooperation Council of Turkic Speaking States Summit coincided with the Sargentini Report¹⁰⁹ debate at the European Parliament.

b) We do not want to become a nation of migrants:

As we have argued above, the conservative and radical right questions (?) the multiculturalism and internationalism that they associate with the European socialist/liberal circles. Orbán endorsed this position long ago when he depicted the humanitarian stance as a threat to European security. At his presentation for the Future of Europe at the Visegrad 4 conference in January 2018, Orbán stated:

Although in Central Europe, we can talk about migration as a phenomenon emerging after 2015, its positive depiction, support, its evolution into a European item have started long before 2015. This has started not with *willkommenskultur*, but when the United Nations General Secretary gave a presentation at the European Parliament to recommend Europe that migrants will need Europe and Europe will need migrants. Europe should leave its prejudices behind about migration, it needs to open up channels for migrants, and that migration is a solution not a problem. Yet, we do not want to become a nation of migrants. We do not want to see what the migrant communities of Western Europe bring: terror, public insecurities, the feeling of safety and comfort of being at home that the native nations would feel at the face of migration.¹¹⁰

¹⁰⁷ Magyarország az otthonunk, meg kell védenünk!, September 2016, [Online] Available at: <http://www.miniszterelnok.hu/magyarorszag-az-otthonunk-meg-kell-vedenunk/>

¹⁰⁸ Orbán Viktor beszéde a Türk Nyelvű Államok Együttműködési Tanácsának VI. Csúcstalálkozóján, September 2018, [Online] Available at: <http://www.miniszterelnok.hu/orban-viktor-beszede-a-turk-nyelvu-allamok-egyuttmukodesi-tanacsanak-vi-csucstalalkozojan/>

¹⁰⁹ On the breaches by Hungary of the EU values, See: http://www.europarl.europa.eu/doceo/document/A-8-2018-0250_EN.html?redirect.

¹¹⁰ Orbán Viktor előadása az „Európa jövője” című V4-konferencián, January 2018 [Online] Available at: <http://www.miniszterelnok.hu/orban-viktor-eloadasa-az-europa-jovoje-cimu-v4-konferencian/>

It was, in other words, Hungary's anti-migrant position that allowed its political leaders the chance to establish the most direct link with domestic and European publics. In this context, Orbán argued that an international lobby, composed not only of the European Commission but also of the United Nations, was at odds with how the 'natives' would prefer to run their affairs. He reflected on their humanitarian narrative as being prone to bring insecurities. That is why, Hungary voted against the United Nations Global Compact on Migration in December 2018.¹¹¹ Furthermore, Orbán became critical of NGOs that he considered as the alleged domestic accomplices of the international lobby.

c) *International migration lobby and its domestic partners are against our people:*

As we argued above, the European Parliament triggered infringement procedures against Hungary for its breach of democratic values with the launch of the so-called Article 7 sanction mechanism in September 2018. In its aftermath, the Hungarian government instigated a new campaign with a "necessary and effective way to get the government's message across to the Hungarian people", said Zoltán Kovács, the Prime Minister's spokesman.¹¹² The Sargentini report voted at the European Parliament in September 2018, concluded that the Hungarian government's clampdowns on judicial independence, freedom of expression, minority rights and NGO activities constituted a "systemic risk" to the bloc's fundamental values. However, Orbán has depicted the Article 7 process as an act of revenge by the European elite intent on punishing Hungary for its vehement opposition to migration and refusal to accept an EU scheme to share refugees.¹¹³

It is this very European elite, who could not protect Europe from migration. The European elite declared bankruptcy, and the symbol of this bankruptcy is the European Commission. [...] The good news is that the days of the European Commission is numbered. [...] We are glad that their days are numbered. We ask ourselves the question why the European elite, which is an exclusively liberal elite, declared bankruptcy. [...] Because they have rejected their roots, and instead of Christian Europe they looked for building a Europe of open society. [...] In Europe of open society, there are no borders. The European people can be exchanged with migrants. [...] The nation, the national identity and national feeling are negative and considered as dying, and the state does not guarantee security in Europe.¹¹⁴

The emphasis here on "open society" is inevitably targeting the Open Society Foundation of George Soros that was founded in 1993 with the aim to support the transition to democracy, rule of law, and market economy of the ex-communist countries. According to Elizabeth

¹¹¹ Hungary votes against United Nations Global Migration Compact, December 2018 [Online] Available at, <https://hungarytoday.hu/hungary-votes-against-un-migration-compact/>

¹¹² It is appalling to listen to Sargentini's absurdities, September 2018 [Online] Available at, <http://www.kormany.hu/en/government-spokesperson/news/sargentini-report-zoltan-kovacs-tells-bbc-it-is-appalling-to-listen-to-sargentini-s-absurdities>

¹¹³ EU Parliament votes to trigger Article 7 sanctions procedure against Hungary – DW, September 2018, Available online at: <https://www.unian.info/world/10257936-eu-parliament-votes-to-trigger-article-7-sanctions-procedure-against-hungary-dw.html>

¹¹⁴ Orbán Viktor beszéde a XXIX. Bálványosi Nyári Szabadegyetem és Diáktáborban, July 2018, Available online at: <http://www.kormany.hu/hu/a-miniszterelnok/beszedekek-publikaciok-interjuk/orban-viktor-beszede-a-xxix-balvanyosi-nyari-szabadegyetem-es-diaktaborban>

Zerofsky, a reporter for the New Yorker, “Soros has become synonymous in Hungary with the perceived threat of migration”.¹¹⁵ This has started in the fall of 2015 when a Sky News referred to ‘a unique travel guide’ that its reporter found among abandoned life jackets and rubber dinghies washed up on the beaches of Lesbos. The booklet in Arabic contained phone numbers for the Red Cross and the UN refugee agency. Later, Magyar Idök, a newspaper connected to Fidesz, ran a piece with the headline *George Soros is luring people with the wealth of the white world*.¹¹⁶

The WP1 Hungary report has discussed what the Hungarian government has qualified as the Soros Plan. In Orbán’s world, European Parliament is controlled by George Soros and hence committed itself to deliver ‘the Soros Plan’ “with the open intention of bringing as many migrants as possible into Europe. His program was “how to reshape Europe through immigration” [involving] the point that NGOs must be involved in this task, they must be given much more money and immigration into Europe must be supported through these NGOs”.¹¹⁷

The next section will present how these security-focused narratives emphasizing a battle between ‘us’ versus ‘them’ gained a foothold and affected implementation of border management in Hungary.

6. Implementation

6.1 Key actors

6.1.1 Constitution Protection Office

The Office carries out the national security screening of visa and asylum applicants.¹¹⁸

6.1.2 Counter Terrorism Centre (TEK)

The Centre, in cooperation with the Constitution Protection Office, carries out national security screening of visa and asylum applicants.¹¹⁹

6.1.3. Hungarian Defence Forces¹²⁰

Shortly after the law amendments that provide for the Armed Forces deployment in border control, exercise code name “Resolute Manner 2015” (“Határozott fellépés 2015”) was launched 9 September 2015 to prepare soldiers for the new border control related tasks. The

¹¹⁵ Zerofsky E (2019) The Illiberal State Viktor Orbán’s vision for Europe, January 2019, Available online at: <https://www.newyorker.com/magazine/2019/01/14/viktor-orbans-far-right-vision-for-europe>

¹¹⁶ Ibid.

¹¹⁷ Interview with Prime Minister Viktor Orbán on the Kossuth Radio programme “Good Morning, Hungary”, January 2019, Available online at: <http://www.kormany.hu/en/the-prime-minister/the-prime-minister-s-speeches/interview-with-prime-minister-viktor-orban-on-the-kossuth-radio-programme-good-morning-hungary-20190125>.

¹¹⁸ Art 5(g) of Act CXXV of 1995. Alkotmányvédelmi Hivatal: <http://ah.gov.hu/>.

¹¹⁹ Art 15(2) of 114/2007 Gov. Decree.

¹²⁰ Magyar Honvédség: <https://www.honvedelem.hu/>.

participating soldiers have been trained at Szolnok military base (Szép, 2017a). Following the exercise, a significant number of soldiers have been deployed at the Serbian border region. As of 27 March 2016, this number was over 2.000.¹²¹ Soldiers have been participating in the construction, maintenance and guarding of the border. Their activities have included: patrolling; surveillance and interception of irregular migrants; their identification and arrest; activities combating human smuggling; guarding the transit zones; and assisting individuals that have legally entered the country to reach the transit zones. As of February 2016, armored personnel carriers (APC) have been deployed in patrolling, and helicopters in the air surveillance in the area of Mórahalom, Ásotthalom, Domaszék, Kelebia és Rösze (Farkas et al, 2017; Varga, 2016).

Following the 2015 Paris terror attacks, military police have been patrolling in Budapest and several county towns nationwide where major garrisons are located (Szép, 2017a).¹²²

6.1.4 Immigration and Asylum Office (IAO)¹²³

The former Office of Immigration and Nationality, now Immigration and Asylum Office, is a centralized organization responsible for all immigration, nationality and asylum cases in Hungary. The IAO operates under the Ministry of Interior Affairs, with a head office (together with Pest county directorate) in Budapest, and regional directorates in Pécs, Szeged, Debrecen, Miskolc, Székesfehérvár and Győr.¹²⁴

6.1.5 The Police¹²⁵

In line with the anti-immigrant political preferences of the Government, the legislation relating to policing has changed since the Border Guard has been integrated into the Police. This has meant attaching increasing weight to the Police in general to enforce border and migration controls. As of the latest amendment to the Fundamental Law of Hungary, it has become constitutionally prescribed core duty of the Police to protect the “order of state borders” and to prevent “illegal migration”. The Constitution requires all public administrative authorities, including the Police, to protect the “Christian culture” of Hungary.¹²⁶ The Asylum Act and the Police Act provide distinctive and extraordinary power for the Police in the management of mass migration in the case of “crisis situation caused by mass migration”.¹²⁷

¹²¹ ‘A határon szolgáló katonáknál tesz látogatást a Honvéd Vezérkar főnöke’, Honvedelm.hu, Available online at: https://www.honvedelem.hu/cikk/56347_a_hataron_szolgalo_katonaknal_tesz_latogatast_a_honved_vezerkar_fo_noke. [Accessed on 9 December 2018].

¹²² Also see ‘Vidéken is járőröznek a katonai rendészek’, *Magyar Idők*, 30 November 2015, Available online at: <https://magyaridok.hu/befold/honvedjarorok-uton-utfelen-188983/>. [Accessed on 23 December 2018].

¹²³ See Ministry of Justice Decree No. 52/2007 (XII. 11) on the Institutional Structure of the Asylum System.

¹²⁴ Bevándorlási és Menekültügyi Hivatal: http://www.bmbah.hu/index.php?option=com_k2&view=item&layout=item&id=175&Itemid=462&lang=hu.

¹²⁵ Rendőrség: <http://www.police.hu/>.

¹²⁶ Art ‘R’(4) of the Fundamental Law of Hungary.

¹²⁷ Art 35/B of Act XXXIV of 1994 on the Police, and Art 80/B,G of Act LXXX of 2007 on Asylum.

According to a draft proposal submitted in November 2018, replacing the Immigration and Asylum Office, the Police would be the responsible authority concerning all immigration and asylum issues.¹²⁸

6.2 Key issues with implementing border and migration controls

6.2.1 Pre-entry

We have already mentioned the now abolished residency bond scheme in the WP1 report on migration legal framework. This was also called the controversial golden visa program of Hungary between 2013-2017.¹²⁹ Not only did the programme raise concerns about corruption, according to the Organised Crime and Corruption Reporting Project (OCCRP),¹³⁰ but it also posed serious security threats as bonds were sold to individuals without appropriate security screening procedures.¹³¹ The joint investigation of 444, Direkt36 and Novaya Gazeta have revealed that, among others, family members of the head of SVR (Foreign Intelligence Service of the Russian Federation) and a Russian businessman allegedly affiliated to an organized crime group have been granted residency status through this programme.¹³²

The members of the Russian elite with helpful connections with the Hungarian diplomatic circles have had an easier route available to fast-track visa services. Szilard Kiss, former agricultural attaché at the Hungarian Embassy in Moscow, facilitated the issuing of thousands of Schengen visas for his friends and business partners, even including prostitutes, without vetting and condoned by the Hungarian Foreign Ministry between 2012-2013.¹³³ The Ministry withheld their report on their own internal investigation into the “visa shopping”. This report was only released under the pressure of a court order in 2017. Some members of the opposition then attempted to have this matter criminally investigated. This attempted investigation was then terminated without hearing the testimony of Szilard Kiss and in the investigation concluded that there was no evidence to suggest a crime has been committed.¹³⁴

¹²⁸ <https://www.parlament.hu/irom41/03622/03622.pdf> [Accessed 28 April 2019].

¹²⁹ Gyollai D (2018) *Hungary - Country Report: Legal and Policy Framework of Migration Governance*, RESPOND Working Papers, Global Migration: Consequences and Responses, Paper 2018/05, May 2018, p45.

¹³⁰ ‘Hungary’s Stance: Send Us Your Rich, You Can Keep the Tired and Poor’, OCCRP, 16 March 2018, Available online at: <https://www.occrp.org/en/goldforvisas/hungarys-stance-send-us-your-rich-you-can-keep-the-tired-and-poor>. [accessed on 28 December 2018]; Also see ‘Golden Visa Programmes in Europe Pose Major Corruption Risk’, Transparency International, 05 March 2018, Available online at: https://www.transparency.org/news/pressrelease/golden_visa_programmes_in_europe_pose_major_corruption_risk. [Accessed 28 December 2018].

¹³¹ ‘Democratic Coalition: Residency Bond System Put Hungary and the EU at Risk’, *Hungary Today*, 09 August 2018, Available online at: <https://hungarytoday.hu/democratic-coalition-residency-bond-system-puts-hungary-and-the-eu-at-risk/>. [Accessed 28 December 2018].

¹³² ‘Members of Russia’s Elite got Hungarian residence permits through controversial golden visa program’, 444, Available online at: <https://444.hu/2018/09/10/members-of-russias-elite-got-hungarian-residence-permitsthrough-controversial-golden-visa-program>. [Accessed 28 December 2018].

¹³³ ‘Súlyos visszaélések voltak a moszkvai magyar konzulátuson’, Index.hu, 08 February 2017, Available online at: https://index.hu/belfold/2017/02/08/brutalis_visszaelesek_voltak_a_moszkvai_magyar_konzulatuson/. [accessed on 28 December 2018]; ‘Visa Shopping” in Moscow: the case of Szilard Kiss, *Hungarian Spectrum*, Blog post, 08 February 2017, Available online at: <http://hungarianspectrum.org/2017/02/08/visa-shopping-in-moscow-the-case-of-szilard-kiss/>. [Accessed 28 December 2018].

¹³⁴ ‘Ki sem hallgatták Kiss Szilárdot mielőtt lezárták az ellene indult nyomozást’, HVG, 09 November 2018, Available online at:

Another controversial pre-entry measure is the simplified naturalisation scheme,¹³⁵ which does not require residence in Hungary. The scheme has been proved to be prone to abuse, falsified applications are not unheard of. Several investigations have been launched against public officials for receiving bribe from applicants (Tóth, 2017).

6.2.2 'At the border'

The implementation of border control is structured in a multi-layered system, where various divisions of the police, other than the Border Police, may be deployed. The number of personnel and tools deployed proportionally decreases with the distance from the border. The system heavily relies on the personnel of local police departments, if necessary, nationwide. This feature of the border control system is predominantly applicable to in-country (or "deep") border control and surveillance techniques, and in times of urgency (Balla, 2017; Varga, 2016). According to Balla, as far as border control is concerned, preferences of different organisational units such as county police headquarters, local police headquarters are irrelevant. Everyone contributes to the common goal at his or her own level of knowledge and capacity" (Balla, 2017:89).¹³⁶

From 2009 onwards, and increasingly from 2014, intervention units from several counties and the capital had been deployed at the Serbian border region (Kovács, 2017b). During the 2014-2015 period, when irregular migration was on the rise, the system of managing people moving into the country was proved to be inadequate, and the available sources were insufficient to handle the *crisis*. The Police was unable to adequately control the unprecedented number of irregular migrants on their way from Keleti station to the Austrian border (Kovacs, 2017: 142). Officers showed signs of overburden, burnout, mental exhaustion, and the situation had worsened due to staff fluctuations (Varga, 2016). Due to short of staff, 827 policing students were temporarily put on duty to assist in border control (Christián, 2017).

With the construction of the fence in mid-2015, the allocation of resources by the police has been reconfigured. This led to the establishment of the Border Policing Directorate at the Riot Police in September 2015, and the new "border hunter"- units from August 2016 onward. Temporary coordination centres have been established. The first was the Border Policing Operative Centre on 15 May 2015 (Varga, 2017). The Operative Centre, besides coordinating border control activities, was responsible for cooperating with other partner organisations, such as the IAO. After 14 September 2015, the Operative Centre was substituted by the Central Operative Centre¹³⁷ based at the Ministry of Interior National Emergency Handling Centre (Kovacs, 2017b). With the completion of the fence on 15 September 2015, border control has been focused on the border region (Balla and Kui, 2017). Border patrols have been reinforced with dog handlers, mounted police patrol, mixed police and military patrol pairs. Additional technological support has included the deployment of drones, helicopters, motion sensors and fixed thermographic cameras along the fence (Varga, 2016). The fence put a

https://hvg.hu/itthon/20181109_Egyetlen_gyanusítottat_sem_hallgattak_ki_Kiss_Szilard_ugyeben_mielott_lezartak_a_nyomozast. [Accessed 28 December 2018].

¹³⁵ See WP1 Report p12.

¹³⁶ József Balla, Head of Department, Border Policing, National University of Public Service.

¹³⁷ 3/2015. (IX. 11.) BM utasítás a migrációs helyzet kezelésével kapcsolatos feladatokat koordináló központi operatív törzs felállításáról.

hold on irregular border crossing to Hungary from Serbia and essentially transferred the Western Balkans migration route towards Croatia (Kovacs, 2017b). Temporary “collection” points, hearing centres, registration centres and health-check points have been established, even prior to the construction of the fence (Varga, 2016).

As of 5 July 2016, for purposes of public safety, public order, and the order of the state border, the National Commissioner of the Police introduced the so-called “SAFE BORDER” (“BIZTONSÁGOS HATÁR”) operation in Bács-Kiskun and Csongrád counties (Serbian-Hungarian border section). The aim of the operation was to detect unlawful border crossers within 8 km of the “border closure”. If caught *in flagrante*, or proven to have crossed subsequently, individuals faced criminal charges or were otherwise escorted to the other side of the “border closure”. Varga concludes that the operation was successful, as the number of “illegal” border crossings significantly decreased, demonstrating the adaptability of the Hungarian border control system (Varga, 2016:105).

Irrespective of these new developments the police, as a whole, were unprepared to handle the unprecedented number of people arriving to Hungary, both in terms of personnel capacity and expertise. Krémer has argued that the Hungarian Police is a traditional *law-and-order* organisation, primarily led by crime control purposes, and was functionally inadequate to maintain reception conditions that met the needs of tens of thousands asylum seekers.¹³⁸ The lack of appropriate knowledge and experience in policing diversity, the poor cultural awareness/sensitivity training, communication skills, no interpretation provided, the contrast between the conflicting expectations by the superiors, the government and the officers’ instinctive solidarity with asylum seekers resulted in serious emotional and psychological distress among rank-and-file officers.¹³⁹ The unusual nature of the task, the prolonged duty hours, insufficient food supply, accommodation, and the uncertainty about the length of the deployment, coupled with the lack of psychological support, seriously affected the (mental) health of officers summoned from remote counties. Symptoms of depersonalisation, aggression, frustration and depression were common among both police and military personnel deployed at the border region (Borbély et al, 2017, 2018; Andó, 2018).¹⁴⁰

6.2.3 Internal controls

Human Rights Watch reported serious violence against asylum seekers who irregularly crossed the Hungarian-Serbian border and were apprehended in Hungarian territory by the Hungarian police in 2015-2016 (HRW, 2016). Medecins Sans Frontieres (MSF) documented 62 occasions on which migrants were treated by the MSF between January and June 2017, victims of “intentional violence” while having been forcibly returned from the Hungarian-Serbian border (MSF, 2017). The report mentions that MSF has been treating such injuries since 2016. As of October 2017, the recurrent pattern was constant, and the injuries were

¹³⁸ Krémer cited in ‘Besokallnak a rendőrök, ha nem kapnak segítséget’, *Index.hu*, 09 September 2015, Available online at: https://index.hu/belfold/2015/09/09/besokallnak_a_rendorok_ha_nem_kapnak_segitseget/, [Accessed on 23 December 2018].

¹³⁹ ‘Besokallnak a rendőrök, ha nem kapnak segítséget’, *Index.hu*, 09 September 2015.

¹⁴⁰ Also see ‘Stressz és kiszámíthatatlanság: megsínylette a rendőrök magánélete a határszolgálatot’, *Zoom.hu*, 26 November 2018, Available online at: <https://zoom.hu/hir/2018/11/26/stressz-es-kiszamithatatlansag-megsinylette-a-rendorok-maganelete-a-hatarszolgalatot/>, [Accessed on 23 December 2018]; ‘Besokallnak a rendőrök, ha nem kapnak segítséget’, *Index.hu*, 09 September 2015.

mainly caused by beating, dog bites and use of irritant spray (MSF, 2017:8). We interviewed a social worker working in the transit zone who heard from soldiers patrolling by the fence that, while escorting migrants to the other side of the fence, they occasionally use physical violence “if necessary”. The source has personally met an asylum seeker in the transit zone who said the Hungarian police set muzzled dogs on him.

Toroczkai László, mayor of Ásotthalom, a small town in the Hungarian-Serbian border region, organised a civil militia to capture irregular migrants in the vicinity of the town. Migrants were being photographed on their knees or lying on the ground, face down, with hands tied behind their back, and posted on the mayor’s Facebook page.¹⁴¹

Our anonymous source from the Hungarian Border Police refused allegations of police violence and denied the existence of civil militias. He mentioned the farmers around Subotica, a town in Serbia located 15 km from the border fence, and implied that dog-bites may have been caused by the guard dogs they purchased to protect the apple tree farms in the area.

Between September 2015 and March 2017, 44 reports were filed against police officers for use of excessive force against migrants, two of which were found admissible. In one case the officer was sentenced and fined for landing a knee to the face of a migrant, whilst the other sprayed tear gas at another migrant right through the fence.¹⁴² In October 2017, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) carried out a field visit at the Hungarian-Serbian border region including the transit zones and detention facilities at Röszke and Tompa. Following the visit and interviews conducted with third country nationals who had been “pushed back” by Hungarian police to the Serbian side of the fence, the CPT delegation concluded that the Hungarian system to prevent ill-treatment of migrants by the authorities in the Serbian border area is ineffective.¹⁴³ The Government in its response argued that the report is false and politically biased rather than professionally informed.¹⁴⁴ In November 2018, a team of UN experts were denied access to the transit zones by the Hungarian authorities.¹⁴⁵

The *Gruevski-case* bears significant relevance regarding the newly created criminal offence, “facilitating/supporting unlawful migration”. The former Macedonian prime minister had been convicted and sentenced to two years of imprisonment for corruption by an independent court in his home country. Mr Gruevski failed to show up at prison on the designated date. With his passport confiscated, he escaped to Hungary with direct assistance of Hungarian diplomats. The escape route went through Albania, Montenegro and Serbia, all

¹⁴¹ ‘A Hungarian mayor makes a show of “migrant-hunting”’, *The Observers*, 08 February 2016, Available online at: <https://observers.france24.com/en/20160802-hungary-mayor-migrant-hunting-asotthalom>. [Accessed on 23 December 2018].

¹⁴² ‘Arcba térdeplő rendőr és könnygáz a déli határon’ *Magyar Nemzet*, 16 March 2017, Available online at: <https://mno.hu/belfold/arcba-terdeplo-rendor-es-konnygaz-a-deli-hataron-2390285>. [Accessed 23 December 2018].

¹⁴³ Report to the Hungarian Government on the visit to Hungary carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), Available at: <http://www.refworld.org/docid/5ba213d17.html>.

¹⁴⁴ ‘Reagált a Belügyminisztérium az Európa Tanács jelentésére: hazug vádaskodás és nyomásgyakorlás Magyarországra’, 444, 18 September 2018, Available online at: <https://444.hu/2018/09/18/reagalt-a-belugyminiszterium-az-europa-tanacs-jelentesere-hazug-vadaskodas-es-nyomasgyakorlas-magyarorszagra>. [Accessed 28 December 2018].

¹⁴⁵ See ECRE <https://www.ecre.org/unprecedented-suspension-of-un-hungary-visit-as-detention-experts-are-denied-access/>.

of which are on Hungary's safe third country list. The overall circumstances of the case may potentially trigger the criminal liability of those involved. Ákos Hadházy MP, reported the crime at Budapest Police Headquarters.¹⁴⁶ At the time of writing, the formal decision on the initiation of the criminal investigation is still pending. The case shows the double-standards the Government holds regarding its own legal norms depending on whatever suits its *ad hoc* political purposes best (Korkut and Gyollai, 2018).

6.2.4 Return and deportation

Prior to the 'crisis' Serbia adhered to a bilateral readmission agreement with Hungary (Varga, 2016). With the increasing number of illegal border crossings, the number of returns swiftly raised, resulting in Serbia refusing to comply with its obligation under the readmission agreement since 15 September 2015. Serbia only readmits individuals with travel documents issued by countries that are exempt from Serbian visa requirements (ECRE, 2017). This information was corroborated by our anonymous source from the Border Police. Our source noted that Hungary held a border policing conference on 21 June 2016, where representatives of most of the neighbouring and Western Balkan countries were present. Hungary called on states to return to the previous practice in line with the readmission agreements. The call was, however, unsuccessful. States have remained reluctant to readmit certain irregular migrants, due to concerns that these individuals might get stuck in limbo in their territory.

Besides readmission agreements, our source described the current practice of Dublin returns as dysfunctional regarding the outgoing requests, as the responsible countries did not accept the "take charge" requests. Concerning returns to Hungary, due to the serious shortcomings of the Hungarian asylum system, the UNHCR called on states to refrain from sending asylum seekers back to Hungary under Dublin in April 2017.¹⁴⁷ In 2018, the authorities received 2662 Dublin requests in total, but no asylum seeker was transferred to Hungary.¹⁴⁸

Concerning the *push backs* to Serbia based on the 8 km rule, we argued elsewhere, the practice may be at variance with the ECHR prohibition of collective expulsion (Gyollai and Amatrudo, 2018).

6.3 Cooperation among sub-national, national and supranational actors

6.3.1 Police-Military

Since the Police and the Armed Forces are independent organisations, the rules of the cooperation in border control have been set forth in the Ministry of Interior and Ministry of

¹⁴⁶ Hadházy embercsempészés és bűnpártolás miatt feljelentést tett Gruevski-ügyben, 20 November 2018, Magyar Ügyvéd Blog, Available at: https://magyarugyved.blog.hu/2018/11/20/hadhazy_embercsempeszes_es_bunpartolas_miatt_tett_feljelentest_a_gruevski-ugyben. [Accessed on 30 November 2018].

¹⁴⁷ 'UNHCR urges suspension of transfers of asylum-seekers to Hungary under Dublin', UNHCR, 1- April 2017, Available online at: <https://www.unhcr.org/news/press/2017/4/58eb7e454/unhcr-urges-suspension-transfers-asylum-seekers-hungary-under-dublin.html>. [Accessed 02 January 2019].

¹⁴⁸ See <http://www.asylumineurope.org/reports/country/hungary/asylum-procedure/procedures/dublin>.

Defence Joint Order No. 25/2015. (IX. 14.). As a general rule, the patrol leader is always the police, and the joint patrol operates in line with the rules governing the Police (Farkas et al, 2017). Following the Joint Order, the military exercise, code name “Resolute Manner 2015” to prepare soldiers for the new border control related tasks, was substituted by a joint exercise, code name “Common Will” (Szép, 2017a). Christián, an expert in policing, renders “historical importance” to the deployment of mixed police-military patrols. He argues, the fruitful cooperation, the “synergy” between the two organisations resulted in enormous achievements in the handling of the refugee crisis (Christián, 2017).

6.3.2 Visegrád Group

The Visegrád Group, also known as Visegrád Four (V4), issued a joint statement on 4 September 2015, in which the Prime Ministers of the Group declared they would “continue to fulfil their obligations under the EU acquis, including the responsibility to protect the EU and Schengen Area external borders”.¹⁴⁹ Following a joint-exercise, code name “Balaton 2015” launched 15 October 2015, 50 Slovakian, 50 Czech and 43 Polish border guards have been deployed¹⁵⁰ at the Hungarian-Serbian border region, under the supervision of the Riot Police (Szép, 2017a:795; Kovacs, 2017b:146).

Due to the bilateral agreement between Hungary and Slovakia, border police officers carried out joint patrols and document checks e.g. in the Győr-Vámoszabadi-Dunaszzerdahely-Bős border region in 2015 (Tóth and Kilic, 2017). Furthermore, a Hungarian-Slovakian joint police-military exercise was launched 25 October 2015 to practise the defence of border crossing points.¹⁵¹

6.3.3 Austria

30 June 2015, the interior ministers of Hungary, Serbia and Austria signed a joint agreement on mutual cooperation in border control.¹⁵² Having signed the agreement, the Interior Minister of Austria announced the transfer of another 40 police officers (40 had already been deployed), thermographic cameras and coaches to the Hungarian-Serbian border (Varga, 2015). As of 15 November 2016, an Austrian military contingent has been participating in the construction of border control military bases in Hercegszántó, Bácsalmás, Kelebia and Madaras (Szép, 2017a).

¹⁴⁹ Joint Statement of the Heads of Government of the Visegrad Group Countries, Prague, September 4, 2015, Available online at: <http://www.visegradgroup.eu/calendar/2015/joint-statement-of-the-150904>. [Accessed on 09 December 2018].

¹⁵⁰ Gov. Decision No. 1723/2015 (X. 7.) on the authorisation of the deployment of foreign armed forces in support of border control.

¹⁵¹ ‘Hadgyakorlat a szlovák-magyar határon, Ujszo.com, 25 October 2015, Available online at: <https://uj szo.com/kozelet/hadgyakorlat-a-szlovak-magyar-hataron>. [Accessed 29 December 2018].

¹⁵² ‘Serbian, Austrian and Hungarian interior ministers agreed on cooperation.’ Available online at: <http://www.kormany.hu/en/ministry-of-interior/news/serbian-austrian-and-hungarian-interior-ministers-agreed-on-cooperation>. [Accessed on 10 December 2018].

6.3.4 Germany

Following a meeting of Commissioners of the Police of Hungary, Serbia, Austria and Germany in Belgrade 9 February 2015, Germany provided personnel assistance in the Hungarian-Serbian border region to support border control (Varga, 2017).¹⁵³ As per a joint agreement in Potsdam on 13 February 2015, German-Austrian-Hungarian mixed patrols were launched at major railway station of Hungary to detect irregular migrants on the board of trains transiting through Austria to Germany (Varga, 2017; Kovács, 2015).

6.3.5 Slovenia

Between 9 November 2015 and 31 January 2016, the Riot Police transferred 50 police officers to support border control in Slovenia.¹⁵⁴

6.3.6 Serbia

There had been a long-standing and effective cooperation between Serbia and Hungary in the field of border control. In 2012, the Republic of Serbia and the Government of Hungary signed an agreement on border control in road, rail and water transport. Following the agreement, joint patrols have been carried out within 20km of the border and cooperation offices established. By sharing thermographic camera footages, Serbian authorities have been able to arrest irregular border crossers still in Serbian territory. As of 2015, the cooperation has been reinforced both in terms of the frequency of consultations and type of joint activities. Hungarian and Serbian police officers had been patrolling together at the Macedonian-Serbian border with vehicles, on which thermographic camera systems had been installed (Varga, 2015). Kovacs notes, however, with the intensification of the *refugee crisis*, and the completion of the fence on the border, the Serbian authorities showed less and less enthusiasm in cooperation in the field of border control (Kovacs, 2017b:145).

6.3.7 Frontex

As per the Integrated Border Management (IBM) scheme, Hungary has established focal point offices in Hegyeshalom, Rajka, Balassagyarmat, Sátoraljaújhely, Rédics, Záhony, Ártánd, Kiszombor, Rösztke and Mohács to reinforce international cooperation. Boda notes that Hungary has been actively participating in the Rapid Border Intervention Teams programme from the outset (Boda, 2017).

In 2015, there were 376 guest officers deployed in Hungary altogether, 30-45 officers at a time (Ritecz, 2017:671). Operations at the Rösztke and Kelebia focal point offices at the Hungarian-Serbian border were constant. Flexible operational activities had been carried out as of 4 March 2015, during which 305 guest officers and 21 supervisors were deployed

¹⁵³ Also see 'Austria, Germany, Hungary and Serbia Cooperate in Battling Illegal Immigration' Available online at: <https://hungarytoday.hu/austria-germany-hungary-serbia-cooperate-battling-illegal-immigration-99728/>. [Accessed 10 December 2018].

¹⁵⁴ 'Újabb magyar rendőrök őrködnek Szlovéniában' Available online at: https://index.hu/belfold/2015/12/28/ujabb_magyar_rendorok_orkodnek_szloveniaban/. [Accessed on 10 December 2018].

(Kovacs, 2017b:145). During the operations there was a continuous information sharing between the Hungarian and Frontex coordinators. Consultations and follow-ups took place twice a week in Szeged and Kiskunhalas. Frontex operational officers closely scrutinised the execution of the operations, providing professional guidance during field visits. Guest officers deployed in the operations, following joint activities, patrols, etc., prepared and forwarded their report to Frontex Operational Office together with the Hungarian officers. Frontex operations at the Hungarian side of the Hungarian-Serbian border region were supported by Serbian unarmed officers. Observing officers arrived from Macedonia and Montenegro in 2014 for a period of a month (Varga, 2015).¹⁵⁵

Besides joint operations and the supervisory/advisory role, under a cooperation agreement, Frontex actively participate in the training and education of Hungarian border police officers.¹⁵⁶

The Consultative Forum on Fundamental Rights recommended the Executive Director and Management Board of the Frontex “to immediately take action pursuant to Article 25(4) of Regulation (EU) 2016/1624 and suspend operational activities at the Hungarian-Serbian border” on 10th November 2016. The recommendation was based on, *inter alia*, the concerns raised by the Fundamental Rights Officer (FRO) according to which the operating conditions at the Hungarian-Serbian border “may put the Agency in a situation where it would be supporting activities that *de facto* violate the Charter of Fundamental Rights of the European Union”. One of the problematized issues was the 8km rule. In practice, as per the FRO report, the new measure had allegedly been applied without assessing the migrants’ international protection needs or even registering them.¹⁵⁷ The Executive Director of Frontex decided not to take action pursuant to Article 25(4) of Regulation (EU) 2016/1624 as the allegations in this regard were not found to be credible.¹⁵⁸

Following a field visit to Hungary between 13 and 15 March 2017, the FRO confirmed the view regarding the concerns raised in the Observations issued on 14 October 2016. According to the new findings, “the risk for shared responsibility of the Agency in violation of fundamental rights...remains very high”.¹⁵⁹

7. Conclusion and recommendations

The reinforcement of border control has received a high political priority in Hungary. The promotion of border and migration control has proved politically valuable and served for electoral purposes, rather than being professionally warranted (Pap and Reményi, 2017). As of January 2018, only one person is admitted into each transit zone at the Serbian-Hungarian border daily, and the number of irregular border crossing has dropped significantly since the

¹⁵⁵ For further info on joint operations see Varga, 2015.

¹⁵⁶ ‘Partnerségi Megállapodás lépett érvénybe 2017. február 6-án a Frontex és a Szegedi Rendészeti Szakgimnázium között’, Szegedi Rendészeti Szakgimnázium website: <http://szrszg.hu/frontex/>. [Accessed: 31 December 2018]

¹⁵⁷ Situation at the Hungarian-Serbian border, 2016, FRO Observations, Warsaw, 14.10.2016, Available online at: https://www.asktheeu.org/en/request/operations_in_hungary.

¹⁵⁸ Ref: OPD/KLRO/2307/2017 (Warsaw, 1 February 2017), Available online at: https://www.asktheeu.org/en/request/operations_in_hungary.

¹⁵⁹ FRO field visit to Hungary 13-15 March 2017: FRO Observations, Warsaw, 28.03.2017., Available online at: https://www.asktheeu.org/en/request/operations_in_hungary.

completion of the fence. Yet the Government still upholds the “crisis situation narrative caused by mass migration”, while it has condoned, if not been complicit in issues that constitute a real threat to national security, such as the *visa shopping* case of Szilard Kiss, and the residency bond scheme, Hungary’s golden visa programme. Under the current *threat level* posed by irregular migration, the extensive deployment of police officers and soldiers in border control is arguably not justified. They exploit both the Police and Armed Forces.

However, the Fidesz government has certainly reaped the benefits of the insecure environment that it has generated by exploiting migration. The government has topped in the election once again in 2018 and received another two-thirds majority in the Parliament. It has generated a hostile environment for NGOs and practitioners in general assisting integration of migrants to Hungary. During our December 2018 meeting with migration stake-holders and refugees in Hungary, which brought together a group of 15 people, we came across a general feeling of resignation that NGOs were feeling at the face of politics and refugees recounting their everyday experiences facing distrust and exclusion by the society. In this environment, including the freezing of AMIF Funds by the government, many NGOs have cut their staff and moved to smaller premises or else changed focus.

As we gave an account above, some of these political developments have received criticism from the European Parliament reflecting on how Hungary fails in rule of law – a condition for European Union membership. It is too early to see whether the Sargentini report will definitely trigger infringement procedures or not. Yet, the Hungarian government’s position in its aftermath is more ruthless and exploitative as it continues to portray internal and external enemies attempting to stifle the voice of people refusing migrants. However, amidst public debate taking place in a media environment fully controlled by the government, it is not certain how the public can gain an informed opinion on why people migrate.

In this highly controlled environment and compromised democratic standards, the report above presents political developments in Hungary particularly since the end of 2014, legislation, narratives, and implementation of migration controls. Its findings show how politicians can usurp people moving across borders in order to maximise their control in politics and public sphere. This report raises the issue that guaranteeing human rights cannot be left to conservative-right wing politicians with the sole aim to retain political control.

Several sources including Hungarian NGOs and EU institutions have criticised the Hungarian practices of immigration and border control and urged the government to revise its current policy in line with the subsequent recommendations. To avoid repetition, we do not address here the discrepancies already identified by the below sources.¹⁶⁰ Instead of the

¹⁶⁰ UNHCR, UNHCR comments and recommendations on the draft modification of certain migration, asylum related and other legal acts for the purpose of legal harmonisation, January 2015, available at: <http://bit.ly/1HZH0tt>; ECRI, Conclusions on the implementation of the recommendations in respect of Hungary subject to interim follow-up, CRI(2018)24, 15 May 2018, available at: <https://bit.ly/2lp1bsp>; Report to the Hungarian Government on the visit to Hungary carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), Available at: <http://www.refworld.org/docid/5ba213d17.html>; HHC (2015) The Hungarian Helsinki Committee’s opinion on the Governments amendments to criminal law related to the sealed border, September 2015, Available at: <http://www.refworld.org/docid/55ffb36a4.html>; Amnesty International (2018) Hungary: New laws that violate human rights, threaten civil society and undermine the rule of law should be shelved, Report, Available online at: https://www.amnesty.at/media/3203/hungary-briefing_20-june-2018_final.pdf. [Accessed 30 December 2018].

shortfalls of the substantive policy developments, we would rather point out some issues concerning the distribution of tasks and assigned role of actors in migration governance:

- The excessive involvement of police and military in migration control, especially in refugee reception, is arguably counterproductive concerning protection objectives. Moreover, it puts an unwarranted extra burden on the Police in terms of capacity, allocation of sources and, arguably, the carrying out of traditional policing tasks. We, therefore, recommend the cessation of the so called “crisis situation caused by mass migration”, and, for the same reasons, we do not recommend the proposed future assignment of the tasks of Immigration and Asylum Office to the Police.
- The government’s anti-immigrant narrative has a tangential, but notable impact regarding the capacity issue of the Police. The anti-immigrant campaign triggered harmful social processes in the Hungarian public, the analysis of which is out of scope of the current report. The *demonisation* of migrants has, nevertheless, resulted in situations when the police are called by citizens to fellow citizens who are assumed to be unlawfully present in the country. This could be avoided by putting an end to the incitement against migrants.
- As has been argued, the police have not been provided the necessary training and support to effectively take on the challenge of handling the reception of asylum seekers arriving since 2015. It is imperative to provide appropriate intercultural sensitivity training for the rank and file, as well as psychological support if needed.
- Furthermore, in parallel with the relaxation of police deployment we recommend more reliance on, and cooperation with NGOs. Civil organisation, such as the HHC, Menedék and Artemisszió have both the necessary expertise and experience to adequately meet the needs of migrants arriving to Hungary. Cutting their sources (AMIF), denying their access to reception/detention centres and the transit zones, and, above all else, their criminalisation hardly serve the purpose of an effective migration governance policy. Therefore we recommend the abolishment of the criminal offence of “facilitating unlawful migration” and the withdrawal of the ban on AMIF sources.

APPENDIX I: OVERVIEW OF THE LEGAL FRAMEWORK ON BORDER MANAGEMENT AND MIGRATION CONTROL

Legislation title (original / English) and number	Type of law	Link
2007. évi II. törvény a harmadik országbeli állampolgárok beutazásáról és tartózkodásáról / Act II. of 2007 on the Admission and Residence of Third-Country Nationals	Act	https://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=A0700002.TV (HU) http://www.refworld.org/pdfid/4979cae12.pdf (EN) (as of 29/05/2012)
114/2007. (V. 24.) Korm. rendelet a harmadik országbeli állampolgárok beutazásáról és tartózkodásáról szóló 2007. évi II. Törvény végrehajtásáról / Government Decree 114/2007 (V. 24.) on the Implementation of Act II. of 2007 on the Admission and Right of Residence of Third-Country Nationals	Decree	https://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=a0700114.kor (HU) http://www.refworld.org/docid/4979cae12.html (EN) (as of 29/05/2012)
1995. évi XCVII. törvény a légit közlekedésről / Act XCVII. of 1995 on Air Traffic	Act	https://net.jogtar.hu/jogszabaly?docid=99500097.TV&timeshift=20160717 .
1995. évi CXXV. törvény a nemzetbiztonsági szolgálatokról / Act CXXV. of 1995 on National Security Services	Act	https://net.jogtar.hu/jogszabaly?docid=99500125.TV .
28/2016. (VII. 15.) BM rendelet a Terrorrelhárítási Információs és Bűnügyi Elemző Központ és az utasadat szolgáltatója közötti kapcsolattartás, valamint az adatátadás módjának szabályozásáról / Interior Minister Decree 28/2016 (VII.15.) on the communication between the Counter-terrorism Information and Criminal Analysis Centre (TIBEK) and the PNR data provider, and on the PNR data transfer.	Decree	https://net.jogtar.hu/jogszabaly?docid=A1600028.BM&searchUrl=/jogszabaly-kereso%3Fkif%3D%26x%3D46%26y%3D7%26pagenum%3D24 .
39/2016. (XII. 29.) BM utasítás a Bevándorlási és Menekültügyi Hivatal szervezeti és működési rendjének meghatározásáról / Ministry of Interior's Order No. 39/2016. (XII. 29.) on the Institutional and Operational Structure of the IAO	Order	https://net.jogtar.hu/getpdf?docid=A16U0039.BM&targetdate=20170102&printTitle=39/2016.+%28XII.+29.%29+BM+utas%C3%ADt%C3%A1s&referer=http%3A//net.jogtar.hu/jr/gen/hjegy_doc.cgi%3Fdocid%3D0000001.TXT .
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2012. évi C törvény a Büntető Törvénykönyvről / Act C of 2012 on the Criminal Code	Act	https://net.jogtar.hu/jogszabaly?docid=A1200100.TV .
2017. évi XC törvény a Büntetőeljárásról / Act of 2017 XC on the Criminal Proceedings	Act	https://net.jogtar.hu/jogszabaly?docid=A1700090.TV&celpara=ptk%20%20328&goto=-1 .
2007. évi LXXX. törvény a menedéjogról / Act LXXX of 2007 on Asylum	Act	https://net.jogtar.hu/jogszabaly?docid=A0700080.TV .
301/2007. (XI. 9.) Korm. rendelet a menedéjogról szóló 2007. évi LXXX. törvény végrehajtásáról / Government Decree 301/2007 (XI. 9.) on the implementation of Act LXXX of 2007 on Asylum	Decree	https://net.jogtar.hu/jogszabaly?docid=A0700301.KOR .
Magyarország Alaptörvénye / Fundamental Law of Hungary	Basic Law/ Constitution	https://net.jogtar.hu/jogszabaly?docid=A1100425.ATV .
2007. évi LXXXIX. törvény az államhatárról / Act LXXXIX. of 2007 on the State Border	Act	https://net.jogtar.hu/jogszabaly?docid=A0700089.TV .
1994 évi XXXIV. törvény a Rendőrségről / Act XXXIV. of 1994 on the Police	Act	https://net.jogtar.hu/jogszabaly?docid=99400034.TV .
2015. évi CXXVII. törvény az ideiglenes biztonsági határzár létesítésével, valamint a migrációval összefüggő törvények módosításáról / Act CXXVII of 2015 on the temporary closure of the borders and amendment of migration related acts	Act	https://mkogy.jogtar.hu/jogszabaly?docid=a1500127.TV .
2015. évi CXLII. törvény az egyes törvények Magyarország államhatárának hatékonyabb védelmével és a tömeges bevándorlás kezelésével összefüggő módosításáról / Act CXLII of 2015 on the Amendments of Certain Acts Related to the More Efficient Protection of Hungary's Border and the Management of Mass Migration	Act	https://mkogy.jogtar.hu/jogszabaly?docid=a1500142.TV .

2011. évi CXIII. törvény a honvédelemről és a Magyar Honvédségről, valamint a különleges jogrendben bevezethető intézkedésekről / Act CXIII of 2011 on National Defence and Hungarian Defence Forces, and Measures Adoptable during State of Emergency as amended by Act CXLII of 2015	Act	https://net.jogtar.hu/jogszabaly?docid=A1100113.TV .
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1401/2015 (VI. 17.) Korm. határozat a rendkívüli bevándorlási nyomás kezelése érdekében szükséges egyes intézkedésekről Gov. Decision No. 1401/2015 (VI. 17.) on the measures necessary to handle the extraordinary migratory pressure	Decision	https://net.jogtar.hu/jogszabaly?docid=A15H1401.KOR&getdoc=1 .
1723/2015 (X. 7.) Korm. határozat külföldi fegyveres erőknek a határrendészeti feladatok támogatásában való részvételének engedélyezéséről / Gov. Decision No. 1723/2015 (X. 7.) on the authorisation of the deployment of foreign armed forces in support of border control.	Decision	https://net.jogtar.hu/getpdf?docid=A15H1723.KOR&targetdate=ffffff4&printTitle=1723/2015.+%28X.+7.%29+Korm.+hat%C3%A1rozat&referer=http%3A//net.jogtar.hu/jr/gen/hjegy_doc.cgi%3Fdocid%3D00000001.TXT
2018 évi XLI. törvény az egyes adótörvények és más kapcsolódó törvények módosításáról, valamint a bevándorlási különadóról / Act XLI. of 2018 Amending Certain Tax Laws and Other Related Acts and on the Special Immigration Tax	Act	https://net.jogtar.hu/jogszabaly?docid=A1800041.TV&timeshift=ffffff4&txreferer=00000001.TXT . https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF(2018)059-e (EN)
2012. évi CLXXXI. törvény a Schengeni Információs Rendszer második generációja keretében történő információcseréről / Act CLXXXI. of 2012 on the information exchange in the framework of the second generation Schengen Information System	Act	https://mkogy.jogtar.hu/jogszabaly?docid=A1200181.TV .
47/2015. (VIII. 6.) BM rendelet az Eurodac II. rendelet szerinti eljárásokhoz kapcsolódó feladatok végrehajtásáról / Ministry of Interior Decree Nr. 47/2015. (VIII. 6.) on the implementation of tasks related to EURODAC II. Regulation	Decree	https://net.jogtar.hu/jogszabaly?docid=A1500047.BM&searchUrl=/gyorskereso%3Fpagenum%3D24 ,
52/2007 (XII. 11.) IRM rendelet a menekültügy szervezeti rendszeréről / Ministry of Justice Decree No. 52/2007 (XII. 11) on the Institutional Structure of the Asylum System	Decree	https://net.jogtar.hu/jogszabaly?docid=A0700052.IRM .

APPENDIX 2: The Transit Zone



Source: HVG
[https://hvg.hu/itthon/20150928 Letenyen szerdara lesz kesz a konteneres](https://hvg.hu/itthon/20150928_Letenyen_szerdara_lesz_kesz_a_konteneres)



Source: Council of Europe https://www.coe.int/en/web/portal/full-news/-/asset_publisher/Dgh51iCGvfbg/content/hungary-visit-to-transit-zones-to-evaluate-sexual-abuse-risks-faced-by-migrant-children



Source: Atlatzo <https://english.atlatzo.hu/2017/08/30/life-in-the-hungarian-transit-zones-no-proper-food-medical-care-or-education/>



Source: Irish Times <https://www.irishtimes.com/news/world/europe/un-condemns-hungary-s-treatment-of-asylum-seekers-1.2647115>

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