

ESSAY

THE CHALLENGES FOR COMMON EUROPEAN ASYLUM POLICY—THE PRACTICE OF DETENTION IN HUNGARY

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ABSTRACT

Immigration will be one of the key security concerns in the 21st century. The estimated number of international migrants worldwide is 232 million persons and the number of refugees in 2013 is 15.4 million people worldwide. Migration was connected to the phenomena of terrorism, economic and social challenges and identity. Instead of ensuring access to territory compatible with the principle of free movement, law enforcement is increasingly becoming the subject of legal harmonization concerning immigration control. The convergence of legal practices ensures to strengthen state-control and European cooperation can be an appropriate tool and platform for it. Thus, after third country nationals arrive at the frontiers of the European Union, it is quite hard to track their movements and EU has only three options to decrease this security deficit: to implement common border control, common visa policy and common asylum-policy. Common European Asylum Policy has been established in the '90s and some of its goals have changed during the last two decades. This paper will evaluate the added value of recently adopted institutions like detention of asylum-seekers in certain member-states. While decision-makers presume that detention is an appropriate tool to handle the security deficit, NGO's are constantly arguing that detention can cause serious harm with only little benefit. The case study of this article explains how detention of asylum-seekers arising in the official agenda of a member-state, namely Hungary in particular and how this discourse could influence the nature of the newly established institution.

KEYWORDS:

Migration, securitization, detention of refugees, Common European Asylum System

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INTRODUCTION

Immigration will be one of the key security concerns in the 21st century. The estimated number of international migrants worldwide is 232 million persons, according to International Migration Organization.¹ This number means 3.1% of the world's population. The number of refugees in 2013 was 15.4 million, which shows a decline of 500,000 persons in comparison to the millennium. On the other hand, there are 27.5 million internally displaced persons around the world, but in 2010, this number was only 21 million.² The academic literature identifies many forms of migration such as irregular, illegal, involuntary migration. These labels have serious effects on the functioning of this policy field. Certain issue areas seem to be considered as security problems both in the 'real world of politics' and in the academic literature. The notion of migration often occurs in connection with phenomena of terrorism, economic and social challenges, or identity. Migration to Europe is only a part of the global large-scale flow of population, but this paper presumes that the regional trends and symptoms of this global challenge are quite similar. In 2012, 335.380 persons sought asylum in the EU.³ These numbers show a small increase in comparison to 2011, but a significant growth as far as the subsequent applications are concerned. The large number of subsequent applications indicates that several applications were refused. The trends of non-acceptance of refugee claims made it more difficult to move across Europe freely. Although, the free movement of people is a fundamental principle of the EU, it has obvious impacts on security deficit also.

Once a third country national arrives the frontiers of the European Union, it is quite hard to track its movement, which could be a security threat for all European countries. The European Union has three options to decrease this security deficit: to implement common border control¹, common visa policy and common asylum policy. The implementation and further harmonization of the Common European Asylum System is definitely an essential challenge for the European Union.

The aim of this article is to examine these challenges in general and in focus with a special issue, the detention of asylum-seekers, as well. On the one hand, decision-makers presumed that detention is an appropriate tool to handle the security deficit in the field of asylum-policy. On the other hand

¹ As Dóczy states in this volume that common border control can achieve considerable results after the introduction of SIS II and large-scale IT system in Europe.

NGO's are constantly keeping the question on agenda, that detention of persons can cause serious harm with only little benefit. The case study of this article explains how detention of asylum-seekers arising in the official agenda of a member-state, namely Hungary in particular. The challenges stemming from harmonization obligations are quite similar in all 28 member-states, as far as CEAS is concerned. Hence, the results of the case study will shed light on the costs and benefits of the newly occurring institutions in the field of detention (closed or open reception centers and community shelters).

The first section overviews the general discourse of security policy about migration and asylum. At first I will introduce the general definitions, the applied theory and methodology. The second section is a case study about recently adopted Hungarian rules and procedures about detention of asylum-seekers, in accordance with the formulating CEAS. After the description of the history of the development of asylum policy on the European level, I will explain the functioning of the Hungarian institutions in this regard and compare to other European examples.

GENERAL OVERVIEW OF MIGRATION AND SECURITY—DEFINITIONS, THEORY AND METHODOLOGY

This section argues how asylum policy is becoming an issue of security. Policy-making in this field is embedded in sectors of security, namely military, political, economic and societal or even environmental security.² The approaches towards the nature and significance of economic, societal or environmental challenges are very diverse in the member-states. While e.g. Sweden prefers to accept every immigrant who is meant to be a potential workforce in the unpopulated regions of the country, other states construct the image of immigrants as a threat for domestic jobs. The image of "*plombier polonais*" was constructed through certain misperceptions about the relevance of Polish emigration to UK. Discourses about the immigrants formulate the approach towards them horizontally and vertically, as well. While decision-makers of Sweden consider migrants and asylum-seekers rather as an opportunity than a challenge in the economic

² As Szálkai argued in this volume environmental concerns, such as water scarcity could be also intertwined with the phenomenon of migration and asylum-policy.

sense, UK and its workers feel threatened by them. At this point, migration as an issue of economic security is horizontally equal in these states, but the level of security risk perception is different vertically. On the other hand Italy and other littoral states in the Mediterranean consider migration and even asylum issues as a military challenge, establishing a discourse about the need of efficient border patrol by military equipment.

Definitions

A regular migrant or documented migrant is a person, who entered a country lawfully and remains in the country in accordance with his or her admission criteria.⁴ It can be stated that the regulation of the conditions of regular migration (tourism, scholarship programs, or foreign enterprises) is not meant to be security policy issues. On the other hand, irregular migration is considered definitely as a hardcore security challenge. An irregular migrant is “a person who—owing to unauthorized entry, breach of a condition of entry, or the expiry of his or her visa—lacks legal status in a transit or host country. The definition covers inter alia those persons who have entered a transit or host country lawfully but have stayed for a longer period than authorized or subsequently taken up unauthorized employment.”⁵ The term irregular is preferable to illegal because the latter carries a criminal connotation. Irregular migrants—often travelling by smugglers—could be economic migrants or asylum-seekers, but even members of a terrorist group. Hence, these persons are often considered as potential threats to the country’s security. The last category used in this paper is asylum-seeker, who enters the host country mostly unauthorized and during the period of refugee status determination, they lack the legal status, *per se*.⁶ On the other hand, it is misleading to treat them irregular migrants, because they are hope-to-be refugees, with far more rights based on the Convention relating to the Status of Refugees signed in Geneva 1951 hereinafter: Refugee Convention)⁷ and regional human rights treaties such as the European Convention on Human Rights⁸ or the Fundamental Charter of the European Union.⁹

Theory—Critical Security Studies

State-centered realist approaches deny the decreasing relevance of borders or the increasing role of transnational (migrant) communities. They maintain their key ideas of sovereignty (territoriality), self-help and

survival. Therefore, according to them, the access to territory is limited by the state, state-led (or joint) authorities defend it and foreign newcomers meant to be essential threats. On the other hand, we shall see that asylum-seekers and refugees are not an essential threat for the European society, *per se*. If it is taken into consideration that even in 2001, which was the most extreme year as far as the number of refugees is concerned, only 425,000¹⁰ people arrived to Europe, it is a very small number in comparison to the 700 million population of the old continent. This number reduced to 200,000¹¹ after 2006 and now it is about 330,000¹². Although it can be thought that 300,000 refugees per year cannot threaten the very existence of the European states, this issue appears repeatedly on the agenda of security. Instead of the realist approach, this paper presumes that migrants and asylum-seekers are not security threats in themselves. Rather, the security character to this issue stems from the authorities' perceptions towards them.

At first I examine the general framework of security in academic literature, namely the innovation of Copenhagen School about securitization. After Waever introduced his new term 'securitization' to the academic literature at 1995, Buzan, Waever and de Wilde published their well-known book 'Security: A New Framework for Analysis' at 1998 and introduced a new perspective known as the Copenhagen School. *Securitization* means, that "security has become a pervasive discourse of governments to frame and give priority to public policy targeting existential threats".¹³ Secondly, I will examine the innovations of critical migration studies and critical border security studies to give a flavor of range and diversity of thought under consideration. Thus, many scholars applied Waever's concept¹⁴, on their own research field and established their own research programs.¹⁵

How to turn migration a security issue?

The framework of Buzan, Waever and de Wilde articulates three necessary elements of the securitization process, which can explain the main theoretical question of this article. The 'speech acts' and 'accepting audience' were correlating after 2001 and 2012 and 'extraordinary measures' were implemented in both cases after that. However, asylum-policy is an issue of law and politics, traditionally. In the 1950s, there was a clear consensus among a large number of states (the 144 signatory of the Refugee Convention)¹⁶ about the necessity to protect refugees. Moreover in

extreme cases, academic literature refers to them as a public good, strengthening the discourse about the need for international protection.¹⁷ After 9/11, many new premises have appeared in the literature and the academic discourse. One of them is that destruction of twin-towers has an enormous impact on the *securitization of migration* globally and regionally, definitely in the U.S. and Australia¹⁸ or in Europe after 2004 terror attacks in Madrid and London³ as well. After 2012, the issue of extraterritorial immigration control appears daily in the media throughout Europe. The image of people hanging on the tuna nets floating in the Mediterranean is well-known among Europeans in the period of 2012–2014. This extraterritorial approach of defense fulfills the criteria of an extraordinary measure. On the other hand, it is a clear symptom of the phenomenon of the porous borders: it does not matter anymore, how high the fences are and how advanced the surveillance system is, “undocumented migrants somehow manage to get through.”¹⁹

This second observation supports the applicability of the concept of critical border security studies, which focuses on the transforming nature of borders. Critical border studies examines the traditional assumption stemming from academic literature that globalization is a process nullifying the relevance of borders. Maarten den Heijer opines that “relocating border controls and shifting responsibilities for border controls have drastically changed the nature of the border.”²⁰ The essence of the new borders is articulated through the notion of institutions, which separates *us* from *them*. Various forms of institutions of detention like closed reception centers fulfill this criterion, as we will see in the case study.

Methodology

A long period of time passed since the first assumptions of the theory of securitization have been articulated, such as the role of perceptions in the securitization process, or the criticism towards the realist approaches of geopolitics. Critical scholars are rethinking the application of former theoretical assumptions and a constant debate is forming about the nature

³ As Vékony argued in this volume “The terrorist attacks on Madrid and London in 2004 and 2005 led to a turning point for Western European societies and countries in regards to Muslim minority affairs. It became clear that the events of 9/11 were not isolated to the United States alone, and Western Europe also became a target to Islamic terrorism as well.”

of borders' existence and contribution of discourse analysis in security studies.

Expressions carrying negative connotations can be one of the most important factors of securitization process, which necessarily leads to restrictive measures. While several media fora and strategic documents use the term "illegal migration" instead of "irregular" the article can observe how many times did these expressions occur and what is the significance of them? The first wave of critical security theorists preferred to use such discourse analysis in the field of security politics. However, it is the very nature of critical approaches to rethink former arguments about theories and methodology. Thus, certain scholars argue that the possible contribution of discourse analysis in security issues, e.g. speech acts on migration policies (the usage xenophobic terms) are not as much essential as we thought earlier.⁴ Instead of speech acts, the examination of practice is more important as far as the reasons of securitization are concerned. Some scholars presume that certain tools of border control such as the FRONTEX are not the result of the securitization, but the main facilitator of it.²¹ As Léonard argues, the *speech-acts* have done by representatives of member-states do not indicate any security measures in itself, but the practices and activities of these institutions do so.²² Although the original goal of the creation of FRONTEX was only the cooperation and harmonization of activities in the fields of maritime safety, refugee protection, and border control, nowadays a significant loss of this humanitarian perspective can be observed: surveillance control maintained by military equipment, thermal cameras, patrol vessels or the search and rescue operations led by semi-military border patrol troops shows the clear security character of this institution.

Summarizing the three concept mentioned in the previous section we can state that the tragic events of 9/11 and the terrorist attacks in Madrid and London established a constant discourse about aliens, who must be under control and be deterred from our territory. The critical approach traditionally uses a post-modern method of analysis, such as discourse analysis to explain this issue, if we accept that speech acts about migrants really matters. On the other hand, the functioning of certain institutions

⁴ One of the most famous "speech acts" was Enoch Powell's "Rivers of Blood" speech, given to the General Meeting of the West Midlands Area Conservative Political Centre on 20 April 1968, was a speech criticizing Commonwealth immigration, and anti-discrimination legislation that had been proposed in the United Kingdom.

such as FRONTEX can deepen and widen the securitization process not because of discourses but through the empirical investigation into its practical activity. The image of porous border in the globalized world has transformed the concept of geopolitics to *biopolitics*, which is blurring the differences between the notions of refugees, asylum-seekers, irregular, illegal or economic migrants, simplifying the discourse to two types of persons, the one who is very welcomed in Europe and the one who must be deterred.

As some scholars²³ emphasized, not just illegal migration was *securitized*, but asylum-seekers and the refugee protection system as well. We can state, that the CEAS—created by several directives and regulations²⁴—should rule the fair and just conditions of refugee status determination, if the legislation is based on the logic of protecting refugees. On the other hand, the legislation is often based on the Fortress Europe concept, which prefers the aim of the deterrence of newcomers. This paper presumes that the legislative acts in Europe and in the member-states enable the deterrence-based approach for the countries, the main goal of which is to control and reduce the number of migrants and refugees. It is a clear marker of securitization, when authorities start to use certain tools, as the detention of asylum-seekers to discourage people from leaving their country of origin even if they have well-founded fear from persecution. If we want examine this phenomena of *securitization* of asylum-policy in Europe we shall have a closer look to common asylum policy, which is a relatively new common policy within the Union.

CASE STUDY: THE RECENT DEVELOPMENT OF CEAS AND DETENTION OF ASYLUM-SEEKERS IN HUNGARY

The history of CEAS

The principle of free movement is fundamental to the establishment of the single market of the European Union and the EU citizenship. Thus, it is enshrined in Articles 21 and 45 of the Treaty on the Functioning of the European Union²⁵ and also in EU directives and regulations. Still, it seems that Europeans accept foreign capital, goods and services in their economics, but accepting foreign workers has been a politically volatile proposition. In the early 2000s, many European member-states had to face

anti-immigrant voters opposing the transfer of immigration control and asylum-policy to the European level. After 1985, when the member-states signed the Schengen Agreement that established common rules regarding visas, the right to asylum and checks at external borders, a larger number of governments were negotiating a Convention naming a single country as responsible for the handling of an asylum application. The goal of this Convention, which was signed in 1990 entered into force in 1997 was to prevent the phenomenon of ‘asylum shopping’, whereby asylum seekers made multiple application claims in different Member States following their rejection in another state. It was the precursor of the current ‘Dublin II’ Regulation.”²⁶ The link between immigration control and security was clearly articulated in the five-year long Hague Program²⁷ for EU Justice and Home Affairs agreed by the European Council in 2004.⁵

The first phase of the CEAS was completed in 2006 under the Hague Program (2004–2009) and included three directives and one regulation. These instruments were under review and the European Commission has proposed improvements and modifications in four “recast proposals” that have been agreed by 2012.²⁸ The Commission Action Plan on the implementation of the Stockholm Program envisaged the tabling of legislative proposals setting up an Entry Exit System and a Registered Traveler Program in 2011. The Stockholm Program has been completed by 2014. This phase have seen the scope of the CEAS broaden and incorporated issues such as access to the territory of the EU, the resettlement and integration of refugees, external processing of asylum claims, regional protection programs and responsibility sharing mechanisms between EU Member States. A new EU agency called the European Asylum Support Office based in Malta has also been established.²⁹

Asylum protection by constitutions and international law

It should be noted that the European legal hierarchy places EU directives above national laws. Thus, the development of new asylum directives at the EU level is of utmost importance to actors seeking to influence national law and policies, because the “*acquis communautaire*” definitely influences the

⁵ The management of migration flows, including the fight against illegal immigration should be strengthened by establishing a continuum of security measures that effectively links visa application procedures and entry and exit procedures at external border crossings. Such measures are also of importance for the prevention and control of crime, in particular terrorism. In order to achieve this, a coherent approach and harmonized solutions in the EU on biometric identifiers and data are necessary.

constitutional guarantee systems of the member-states. Certain constitutions traditionally ensure human rights and legal guarantees for asylum-seekers in a broader sense, sometimes more extensively than international legal norms do that. Most countries provide asylum through domestic legislation, e.g. by creating a statute which incorporates the Refugee Convention. France, Italy, and Germany stand out as three of the very few European countries which specifically grant a right of asylum in their national Constitutions.³⁰ The constitutional guarantee system ensures access to legal assistance, effective remedy while the lawfulness of institutional actions are supervised by domestic and European courts, the Court of Justice of the European Union (CJEU) and the European Court of Human Rights (hereinafter: ECtHR), also. National guarantee systems define and supervise obligations for their authorities directly and also bear the effective support of the international and regional courts. On the other hand, the legislative acts created on EU level are supervised only by the CJEU or in rare cases by the ECtHR, but nothing else. The following case study will examine the impact of the upcoming EU Directives (e.g. the recast Reception Conditions Directive) in connection with the detention of asylum-seekers in Hungary.

The purpose of detention: the flaws of the deterrence-based approach

It is widely believed that detention serves the interest of all EU member-states, because it reduces the chance of secondary migration and stops asylum-shopping, which is the original goal of the Dublin Convention itself. On the other hand, there is no evidence that detention would have a deterrent effect on irregular migration and as emphasized by UNHCR, “regardless of any such effect, detention policies aimed at deterrence are generally unlawful under international human rights law as they are not based on an individual assessment as to the necessity to detain”.³¹

If the authorities have a well-founded suspicion that the applicant will escape or travel abroad during the status-determination process, they have the right to hold the asylum-seeker in detention. However, detention has an *ultima ratio* character, because of the negative effects on applicants whose protection is the obligation of the state. There are several negative aspects of detention, because it creates hardship for those involved and undermines the operation of fair asylum procedure. The detainees often

lack legal assistance and suffer psychological impacts, which undermine trust in the asylum system.³²

Although detention has several negative effects on the asylum system from the humanitarian point of view, states prefer to use it regardless of individual circumstances. Constitutional guarantees could maintain the lawfulness of its application. However, vague international legal regulations which enable national legislators and authorities interpreting its expressions arbitrarily can cause serious problems. In the following section, this paper examines the recent development of EU legislation in the field of CEAS, which is in connection with detention practice from several aspects.

The recent development of CEAS

At first, I will focus on the reforms of Asylum Procedure Directive. The official text about the goals of the Directive states:

„The revised [...] Directive aims at fairer, quicker and better quality asylum decisions. Asylum seekers with special needs will receive the necessary support to explain their claim and in particular there will be greater protection of unaccompanied minors and victims of torture.”³³

Article 46 of the Asylum Procedures Directive ensures the access to an effective remedy, which is a fundamental safeguard to ensure protection from *refoulement*.³⁴ Thus, it is an inherent part of a fair and efficient asylum procedure. “The recast Directive explicitly requires the possibility of a remedy that provides for a full and *ex nunc* examination of both facts and points of law at least in appeals procedures before a Court or tribunal of first instance”.³⁵ Still, the practical application of the directive is burdened by several problems. One of these problems is that Article 46 leaves too much room for interpretation. States and authorities—who *constructed* irregular migration and asylum as a security threat—constantly, tend to incorporate the directive in a restrictive manner, as we will see in the case study.

The Reception Conditions Directive is another result of the second phase of CEAS. The following quotation shows the original goal of the new legislative act.

„The revised Reception Conditions Directive ensures that there are humane material reception conditions (such as housing) for asylum seekers across the EU and that the fundamental rights of the concerned persons are fully respected. It also ensures that detention is only applied as a measure of last resort.”³⁶

Although the aim of the directive was to ensure better reception conditions and warns the member-states to use it as a last resort, no clear obligations were created, which determines the detailed ruling of the *ultima ratio* character or the quality of housing.

The Dublin Regulation which states the requirements of refugee status determination has been revised, too.

„The revised Dublin Regulation enhances the protection of asylum seekers during the process of establishing the State responsible for examining the application, and clarifies the rules governing the relations between states. It creates a system to detect early problems in national asylum or reception systems, and address their root causes before they develop into fully fledged crises.”³⁷

Basically, the member-states are fully responsible for examining whether the asylum application is compatible with the principle of individual refugee status determination (hereinafter: RSD). Refugees may be recognized either on a group basis (*prima facie*) or individually. Although the vast majority of the world's refugees are recognized by way of a *prima facie* group determination, individual RSD is used primarily in situations of mixed flows, when it is necessary to distinguish refugees from other migrants. The inflow of asylum-seekers and migrants to Europe mostly belongs to the second case. Hence, the member-states of the EU have to fulfill the requirements of fair RSD process in this regard. However, we can see in the case study that automatic mechanisms can be established by state-authorities which do not respect the principle of individual status determination.

The discourse about migration in Hungary

Hungary adopted two national security strategies after the collapse of the Soviet Union. The 2002 National Security Strategy mentioned the term migration 19 times and not only with negative connotation or as a threat.

The Strategy highlighted that carefully designed migration policy could be an opportunity:

*'This negative process [economic crisis] may be reversed through an increasing role of self-care and through a carefully designed demographic and immigration policy.'*³⁸

The next two phrases refers to migration as a phenomenon derived from other security threats like terrorism and failed states, which should be avoided:

'Acts of terrorism may contribute also to the emergence of other global—political, economic, commercial, migration- and health-related—crises.' [and]

*'failed states may easily turn into hotbeds of cross-border organized crime and offer safe havens for terrorist organizations, and may increase the challenges of migration and the dangers of arms and drug trafficking.'*³⁹

The paragraph about 'illegal migration' speaks the most about the possible challenges, which Hungary can predict in the field of migration after the 2004 EU accession. The document highlighted that tackling these security risks is not just European, but national interest, as well.⁴⁰ Both documents strengthened Hungary's commitment to international cooperation in this field:

*[we] handle security issues related to migration—including illegal migration—in the framework of international co-operation'*⁴¹

*'Security issues in this context are therefore dealt with by Hungary in the framework of international cooperation.'*⁴²

and recognized migration as a complex phenomenon bringing advantages and risks:

*'We consider migration as a natural but complex phenomenon, presenting possible economic and demographic advantages as well as carrying security risks.'*⁴³

*'Migration is treated as a natural and at the same time complex phenomenon, bringing economic and demographic advantages and, at the same time, carrying public and national security risks.'*⁴⁴

The 2012 National Security Strategy predicts increasing burdens as far as illegal migration is concerned, uses stronger expressions like combat against security threats instead of tackling risks.

‘Without ensuring the necessary national and international support, authorities concerned cannot be expected to be able to combat the different forms of illegal migration effectively.’

On the one hand, the quotation above shows that the perception of illegal migration is definitely a hardcore security threat, which should be dealt with. On the other hand the conditions of an efficient battle depend on the international—mostly European—support. None of the two high-level strategic documents contain any reference to asylum-seekers and refugees, indirectly we can believe that the forced migration mentioned as a consequence of act of terrorism reflect to this problem. We can conclude that Hungary or probably any European country is more interested in the tools of European cooperation if it helps to solve one of its securitized problems concerned to national security.

European migration policy is not a common policy yet, but the formulating CEAS gives respectable financial support for the member-states. The EU supports everything which helps the common and harmonized asylum policy, especially in the border countries. Obviously, the littoral states like Italy and Spain need the most financial support for border patrol vehicles and devices and Eastern European countries like Hungary are often resourceless, as far as institutional costs are concerned. The recent development in Hungary shows that new detention facilities and reception centers can be opened by EU financial support in the last two years. The following section will describe the claims and conditions of detention and the functioning of the various forms of facilities.

Detention in Hungary—Institutions and legal background

Six claims of detention for asylum-seekers can be identified on the basis of the Hungarian Asylum Act such as the unclear identity of the asylum-seeker, evasion from authorities, real and present danger of escape, threat to national security, the applying for refugee status at the airport and denying of the orders of authorities or blocking the Dublin RSD process.⁴⁵

Three kind of reception centers are functioning in Hungary:

1. Closed Reception Centers in Békéscsaba, Nyírbátor, Debrecen
2. Reception Centers in Bicske, Debrecen, Vámosszabadi
3. Community Shelter in Balassagyarmat

The Closed Reception Center has the most rigorous circumstances for detainees. Detainees are not accepted to leave without permission because reception center has to 'ensure the availability of third country applicants through implementing asylum detention during the asylum procedure.' The obligations derived from basic rights as health screening, leisure activities, free practice of religion is ensured. The center 'cooperates with the national and international government, local government and civil agencies, organizations' first and foremost with the law enforcement agencies and the national security services in order to perform. The Closed Reception Center 'promotes voluntary repatriation or departure to third countries.'⁴⁶

Reception Center provides accommodation and services for applicants for refugee, subsidiary or temporary protected status. Reception Center ensures the rights of people being accommodated at the center, ensures the appropriate circumstances, cooperate with the councils of the community, society organizations and churches participating in the refugee provision, and in addition to the above mentioned organizations, with the law enforcement agencies and the national security services in order to perform its tasks specified in the legislation. It organizes health screening and provides primary health care, organize programs for the inhabitants in order to spend the leisure time efficiently and promote voluntary repatriation or departure to third countries.⁴⁷

The Community Shelter in Balassagyarmat consists of an organizational unit with customer service tasks and an organizational unit to accommodating foreigners who are under aliens policing procedure, both of them operated by the Office of Immigration and Nationality. In 2013 more than 700 foreign nationals were accommodated into this institution. The authority could order people under alien police procedure in the following cases: the expulsion of third-country national could not be ordered or implemented due to Hungary's obligation in international agreement; minor and custody shall be ordered against him/her; custody shall be ordered against him/her and in case of ordering custody his/her minor child, staying in the territory of Hungary with him/her, would be without supervision; the deadline of custody has expired, but the reason of ordering

custody is still exists; the third-country national has humanitarian residence permit; the third-country national is under the force of expulsion and he/she does not meet the necessary financial and accommodation requirements for living; it shall be ordered aliens policing custody against him/her and the custody would mean disproportionately disadvantage for him/her, having regard especially his/her health status, age.⁴⁸

In these cases persons in concern have residence in the Community Shelter for 2 months at most, after that, if the conditions still exist, they have to be transferred to another designated place. On the other hand they can leave the Shelter between 6 and 22 o'clock during the 2 month, have 3 meals a day and family doctor service and psycho-sociologic help, if they need it.

UNHCR and NGOs like the Hungarian Helsinki Committee (*hhc*) constantly criticized the Hungarian detention practice after the Hungarian Asylum Act incorporated the recast Reception Conditions Directive. One of the serious concerns voiced by the HHC was that a series of unlawful actions may occur, because there is too much room for interpretation and a chance that Hungarian authorities like the Office for Immigration and Nationality (hereinafter: OIN) will apply a quasi-automatic detention practice. Although the applications have to be evaluated individually in each case, the decisions of the authorities eventually lack the subjective character of the evaluation. As the report states: "It happens often that the documentation contains false data about citizenship, the legal assistance of the asylum-seekers is passive, and a contradiction can be observed between the statement of facts and legal conclusions."⁴⁹ Summarizing the above mentioned observations of the HHC, we can conclude that the circumstances do not fulfill the requirements of the UNHCR Guideline about Detention (hereinafter: Guideline).⁵⁰ The Guideline contains the following points:

- 1. The right to seek asylum must be respected.*
- 2. The rights to liberty and security of person and to freedom of movement apply to asylum-seekers.*
- 3. Detention must be in accordance with and authorized by law.*
- 4. Detention must not be arbitrary and any decision to detain must be based on an assessment of the individual's particular circumstances.*
- 5. Detention must not be discriminatory.*
- 6. Indefinite detention is arbitrary and maximum limits on detention should be established in law.*
- 7. Decisions to detain or to extend detention must be subject to minimum procedural safeguards.*
- 8. Conditions of detention must be humane and dignified.*
- 9. The special circumstances*

and needs of particular asylum-seekers must be taken into account.

10. Detention should be subject to independent monitoring and inspection.

It shall be mentioned that these guidelines do not have a legal binding force for the states, but the European Convention on Human Rights (hereinafter: ECHR) does so. The Article 5 of the ECHR provides that “everyone has the right to liberty and security of person.”⁵¹ If the restriction of this right is arbitrary or the detention is not reasonable any more, the detainee must be released immediately. It is respectable fact from human law perspective, that Hungarian limit of detention for first time asylum-seekers is maximized in 6 month and in 12 month if the application is subsequent, although detention e.g. in the UK is applicable for unlimited period of time. Still, serious fears were tangible in Strasbourg as far as the quasi-automatic practice of extension of the time of detention was concerned.

The courts have to revise the lawfulness of the decisions of OIN after a certain period this is 60 day at now and district courts used to fail to examine the individual circumstances of the case. However, Article 6 of ECHR provides, that “everyone is entitled to a fair and public hearing within a *reasonable time* by an independent and impartial tribunal established by law.”⁵² The right to effective remedy and fair trial derived from Article 6 is questionable in certain cases. Asylum-seekers can be detained for 6 months due to decision of OIN and they can apply for judicial review only in 2 months.

Hungary has some bad experiences with the ECtHR so far. In the case of Lokpo and Touré vs. Hungary⁵³, the ECtHR decided that the detention of Ivorian nationals was arbitrary and they should have been released after they applied for asylum. Hungary breached the obligations of Article 5 of ECHR and a more than 10,000 Euros compensation fee had to be paid for the applicants in respect of their non-pecuniary damage.

CONCLUSION

After examining the case study about the detention of asylum-seekers in Hungary, we can answer the theoretical questions raised in the first section. This paper presumes that the notion of securitization introduced by Buzan, Waever and de Wilde shapes the decision-making process in the field of asylum policy as well. The content of legal documents establishing

CEAS and the two National Security Strategies of Hungary can be considered as a certain kind of speech acts. After the examination of these documents, we can conclude that they are in accordance with international law, containing words assuring the protection-based logic of asylum-policy. However, the discourse reflected in the examined documents expresses fear about several possible security threats, such as terrorism or transnational crime connected to the phenomenon of migration. The use of terms like 'combat' against migration indicates the security character of the issue.

The further examination of institutions beyond speech acts and the existence of detention practices show a different image from the practical side. The original aim of Reception Centers is to provide sufficient food and shelter for refugees temporarily. From another perspective, the other forms of reception centers like the Closed Reception Center and Community Shelter fulfill the criterion of the last bastions of the Fortress Europe, if the aliens passed through the outer ring of defense, which is established by extraterritorial immigration control measures.

Constitutional protection systems ensure the protection of refugees generally, but even if they fail, the ECtHR or the CJEU ensure the right to effective remedy and give a pressure to the certain state to function in accordance with the international and regional legal obligations. On the other hand, if the European Council has the consensus to adopt Janus-faced directives which are *prima facie* promising and extensive, but leaves too much room for interpretation, the institution will encourage the adoption of restrictive and security measures indirectly.

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