

# The Europeanization of Asylum Policies in Hungary

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## Abstract:

Since 2010 the number of applications for asylum to the European Union (EU) has been increasing constantly, having reached 1.3 million asylum applications until the end of 2015. In parallel with the growing number of asylum seekers, the entry point to the European Union has also undergone considerable change: whereas in 2010 less than 1% of asylum seekers applied for refugee status in Hungary, by the end of 2015 this has increased to 13.4% (Eurostat 2016). This rapid and unprecedented increase has provided a major challenge for Hungarian authorities when implementing the EU directives on Asylum Procedures, Reception Conditions and Qualifications. The article investigates, to what extent did the EU directives become a part of the national asylum legislation and national rule implementation process in Hungary. The article argues, based on Schimmelfennig – Sedelmeier (2005), that even though formal adoption of the EU directives did take place, in terms of behavioural change the implementation of these policies are not always followed through on a daily basis. The article contributes to our understanding of the implementation of the asylum policy of the EU, particularly in the Hungarian context, and provides information on the reasons for reluctant and less than adequate implementation.

Keywords: Europeanization, Hungary, asylum seekers, asylum policies.

## 1) Introduction

Asylum applications in the countries of the European Union (EU) in 2015 have surpassed all previous numbers: the member states (MS) of the EU have registered 1,321,600 applications (Eurostat 2016). While in the early 2000s asylum seeker flows were relatively constant (see Figure 1), after 2010 a sizeable increase could be observed: the number of registered asylum seekers increase by 5.09 between 2010 and 2015. An aspect of this increase is, that it is not only the traditional Western European destination countries which are affected by the increase in asylum application, but Eastern European countries (notably Hungary where 82.7% of Eastern European MS applications were lodged in 2015) as well (Eurostat 2016).

The accession states of 2004 and 2007 are relative newcomers in refugee protection as many had no tradition of it before 1989. As with many policy areas (such as the creation of international development policy) the creation of asylum policy was also a precondition towards the EU accession of 2004 and 2007. According to Miciukiewicz (2011) during and after accession the repressive aspects of the EU *acquis* have been implemented, whereas the regulations providing basic human standards were disregarded or not implemented. What was

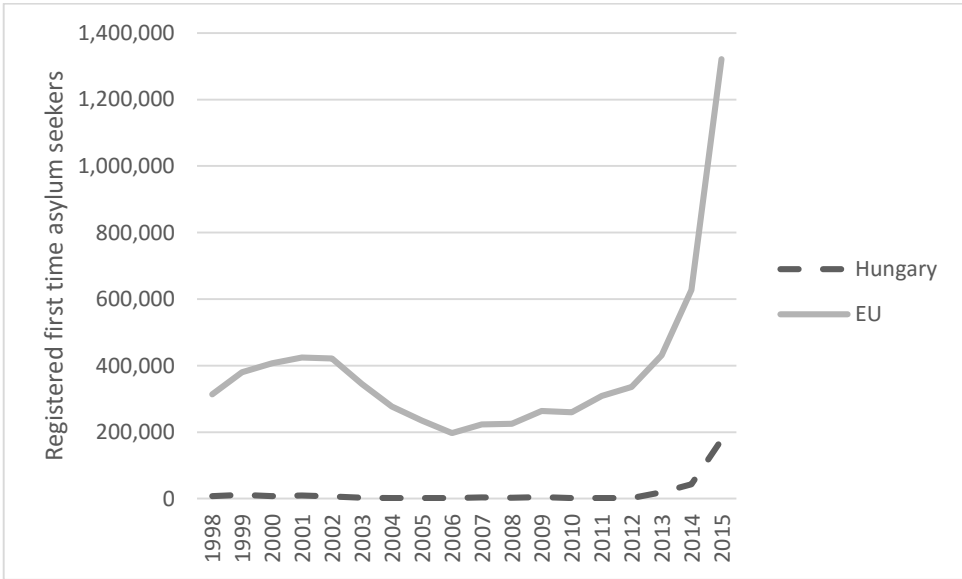
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lacking was the creation and empowerment of human rights organizations with the ability to assist asylum seekers and refugees on their road towards integration into their new countries.

The details on the establishment of the current Common European Asylum System (CEAS) has been discussed at length elsewhere (for instance Guild 2006, Lavenex 2001a, 2001b, Toshkov 2013) therefore this article will only reflect on the major milestones of the process. The Single European Act of 1986 sought to abolish the controls on the movement of goods, services, people and capital by 1992, however the movement of refugees and asylum seekers was not mentioned in the document, it was left to the member states. Guild (2006) speculates had refugees been included in the Single European Act, then Justice and Interior Ministries would not have been able to maintain territorial borders with the aim to determine to whom asylum seekers and refugees belong. Interestingly enough the concept of the determination of refugee status by the member state where the asylum applicant was first lodged can be traced back to an internal market logic, similar to that of goods arriving to the EU. The Schengen Implementing Convention of 1990 and the Dublin Convention of 1990 provided the right to the Member States to on the one hand to pool their responsibility towards asylum seekers as regards to rejection, and on the other hand to determine where the asylum application will be decided. The Maastricht Treaty of 1992 introduced the concept of unfounded application: for instance, when the applicant has passed through a safe third country on their way to lodge an asylum application in the Member State (Guild 2006). This logic has been increasingly used in 2015 and 2016 by Hungarian authorities to reject asylum applications on the grounds that the asylum applicant has passed through Serbia (which Hungary considers a safe third country).

Figure 1: Registered first time asylum seekers in the European Union and Hungary (1998 - 2015)



Source: Eurostat (2016)

The Amsterdam Treaty of 1997 inserted asylum into EU law and specified in Article 73(k) that asylum should be ‘in accordance with the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and other relevant treaties’ (European Commission 1997). Two years later (1999) the Tampere Conclusions centered around the principles of agreeing on common minimum standards (which this article will be investigating later on in relation to Hungary) and the principle of mutual recognition. Thus in 2003 the Dublin II Regulation introduced the rules for evaluating where an asylum application should be assessed. The Reception Conditions Directive (2003) introduced minimum standards in terms

of housing, healthcare and general terms of living in the member state, while the Qualification Directive (2004) collected those cases where an asylum applicant is in need of protection. Lastly, the Asylum Procedures Directive (2005) regulates what minimum standards in terms of procedure should MS pursue (Toshkov and de Haan 2013).

This article is a part of a major research project which will endeavor to analyse how accession to the European Union for Hungary has impacted on refugee flows and policies for dealing with asylum seekers. The objective of this article is to investigate to what extent are the EU directives on Asylum Procedures (2013/32/EU), Qualifications (2011/95/EU) and Reception Conditions (2013/33/EU) observed in practice in Hungary. In order to augment the relatively scant scientific literature, three leading NGO representatives dealing with asylum seekers were interviewed to share their opinion about the Europeanization of asylum policies in Hungary. Since this paper is a work in progress, the author wishes to extend these semi-structured interviews to the governmental sector as well and conduct more interviews to be able to provide a more balanced perspective. The article adds to our understanding on Europeanization in the policy area of asylum seekers.

The article is constructed as follows: the second section will expand our understanding of the literature related to Europeanization and detail the most important points of the current Common European Asylum System. The third section will reflect on the Hungarian policy practice of asylum policy, reflecting mainly on the events which have unfolded in 2015 and early 2016 while the last section will conclude the paper.

## **2) Europeanization of asylum policies**

In this section, the article will investigate the methods and models how international institutions influence domestic policy choices: in this case the asylum policies in Hungary. By the end of the section, we will be identifying a set of methods, which will serve as a framework for analysing the aforementioned policies.

### *Europeanization from a theoretical perspective*

Socialization can be identified as a ‘process of inducting actors into the norms and rules of a given community’ Checkel (2005: 804). Compliance, according to constructivist thinking, should be sustained for the newly adopted norms and should be independent from material incentives and sanctions, and thus be based on a logic of appropriateness, rather than a logic of consequences. Whereas Europeanization (which can be seen as a channel of socialization) is defined by Sedelmeier (2011: 5) as ‘influence of the EU or domestic impact of the EU’ or by Schimmelfennig and Sedelmeier (2005: 5) as ‘the impact of policy outcomes and institutions at the European level on domestic polities, politics and policies’. Another definition used by Schimmelfennig and Sedelmeier (2005: 7) on Europeanization is to call it a ‘process in which states adopt EU rules’. In the case of asylum policies, as has been noted earlier, the creation of the legislation in accession countries was mainly due to the influence of the European Union, whereas the transfer of norms both had an international perspective (mainly from the Geneva Convention) as well as a regional perspective, through the European Commission.

There has been much discussion in the international literature on the question why do countries and their agents change their behaviour. Is it because of social rewards (status, shaming) or material rewards (financial assistance, trade opportunities) (Checkel 2005: 808)? Schimmelfennig (2005) postulates that socialization is conceived as a process of reinforcement

which has three aspects: high material and political rewards (such as EU membership), which can trigger sustained change; second, outcomes depend on cost-benefit calculations of the governments; and third, international socialization will be influenced and made sustainable by the governmental and opposition parties and their wish to adapt to foreign norms. Schimmelfennig and Sedelmeier (2005) argue that Europeanization can be either driven by the EU and/or by domestic actors. In addition, when it is being driven by a logic of consequences, it is driven by strategic logic to maximize profit and power, on the other hand when it is driven by a logic of appropriateness it is being driven by identities, values and norms. According to Hartlapp (2007) there are three schools which investigate why states comply with international rules. The first school analyses the enforcement of international obligations and looks at the penalties and payoffs of compliance arguing that international organizations are well situated to impose harsh penalties on their member states for non-compliance. The second school of thought, the management approach, lists the reasons for non-compliance due to technical, financial or administrative problems, which can be jointly solved once capacity building has been provided. The third school of thought based on Checkel (2001) requires in order to achieve compliance the changing of norms and values in the country.

Checkel (2005) differentiates between two types of socialization: in the case of Type 1, the agents, such as diplomats, ministry officials have learned to act appropriately in accordance with expectations, regardless whether they identify with that role or not. This might occur when agents are in settings which has a long duration, for example, when contact is deep and occurs on a daily level, or when the agent has significant previous experience in an international organization. In the case of Type 2 socialization, the agents accept the community or organizational roles imposed on them, as the mutually accepted goals-to-follow. This might occur when the agent is new to its environment and therefore more motivated to analyse new information and has fewer ingrained beliefs which are alien to the new norms. In both cases of socialization conscious instrumental calculation of costs vs. benefits have been replaced, but whereas in the case of Type 1 the actors play the role of the agent who identify with the new norms, in the case of Type 2 socialization they actually believe in them as well, thus their values and interest change. Thus Type 2 socialization is believed to be more sustainable as the actors internalize the new values. Of course a challenge may be that the agents move on to other occupations and the knowledge and know-how they have gained disappears from the institution.

Jacoby (2004) understands the long term successfulness of EU supported reforms to be dependent on how detailed the *acquis* and the domestic legislation were in relationship to each other. The lingering question remained during and around the time of accession whether firm structures would develop with time or not. Kelley (2004) expands on the arguments mentioned by previous authors by pointing out that the ownership of the new policies can significantly enhance the sustainability and embeddedness of the newly adopted norms. Kelley (2004) also points out that socialization methods if used solo, rarely change state behaviour and if they do, it is usually in cases where domestic opposition is low to the new norms. Thus membership conditionality can be quite essential to provide, as this way the domestic opposition can be convinced by the reward of the membership that it is in their long term interest to at least act in a way as expected by the international organization.

#### *Europeanization in the policy area of asylum*

According to Lavenex (2001a) all member states of the EU codified the right for asylum into their national law, while ratifying the 1951 Geneva Convention for accession countries of 2004

was made a precondition of EU membership (Miciukiewicz 2011). Lavenex (2001a) draws attention to the fact that while the UNHCR or the Council of Europe possess a mandate of protecting the rights (among others) of refugees, the European Community was set up as a primarily economic entity thus refugee protection was not one of the priority areas. The driving principles for European officials at the turn of the millennia were to have a working single market, where refugee protection was more of a “side issue” with cooperation mainly occurring in order to protect internal security (Lavenex 2001a).

Toshkov and de Haan (2013) notes that even though all Member States might be aspiring to achieve high standards of refugee protection individually they might shirk some of the responsibility and adopt a free rider attitude. If some Member States are well known to have a relatively favourable treatment, asylum seekers may target these countries for lodging their asylum claims, thus states who do not wish to accept asylum seekers will be tightening up their admission conditions or using the safe third country principle not to end up as a major target country for asylum seekers. This can be exemplified by the case of Afghan asylum seekers in 2009: out of all Afghan applicants 33% received refugee status in France, but only 6% of applicants received refugee status in the United Kingdom (Toshkov 2014).

In the remainder of the section the article will list the most important minimal aspects of the CEAS system. In the case of the Asylum Procedures Directive (2013/32/EU, European Parliament and Council 2013a):

- Registration should take place 3-10 days after application.
- Information and counselling should be provided at detention facilities.
- Right to remain in the MS until the application has been processed and dealt with.
- Interpreters should be provided for application and applicants may be required to provide certain documents to back up their claims.
- Each dependant adult has the right for a personal interview.
- Free legal assistance and representation.
- Examination procedure within 6 (9) months of application.

For the Reception Conditions Directive (2013/33/EU, European Parliament and Council 2013b) the most important aspect are:

- Applicants move freely in the MS or the area assigned to them.
- Applicants may be detained (very short period of time) and not in prison. Although should there be no special detention facility a prison may be used, but the applicant should be separated from others.
- Access to education for minors (max 3 months after application).
- Access to labour market no later than 9 months if no decision.
- Member States shall ensure that material reception conditions provide an adequate standard of living for applicants, which guarantees their subsistence and protects their physical and mental health. A.k.a.: safe housing or accommodation, in terms of health care: at least emergency care and essential treatment of illnesses.

For the Qualification Directive (2011/95/EU, European Parliament and Council 2011):

- Assessment of an application taking in all relevant factors such as: race, gender, religion, sexual identity, belonging to a particular social group, political activism, laws and regulations of the country of origin and whether the applicant has been subjected to harm.
- An applicant is not in need of protection if: he/she has no well-founded fear of being persecuted or is not at real risk of suffering serious harm; or has access to protection against persecution or serious harm.

- Violence against the individual can be: acts of physical or mental violence, including acts of sexual violence; legal, administrative, police, and/or judicial measures which are in themselves discriminatory or which are implemented in a discriminatory manner; prosecution or punishment which is disproportionate or discriminatory; denial of judicial redress resulting in a disproportionate or discriminatory punishment.

Dublin Regulation (2013/604, European Parliament and Council 2013c):

- The application for asylum shall be examined by a single MS (mainly those in which the application was lodged).
- Any Member State shall retain the right to send an applicant to a safe third country, subject to the rules and safeguards laid down in Directive 2013/32/EU.

### **3) Europeanization in the case of Hungary**

As has been noted earlier the asylum policies in the accession states of 2004, have been mainly created due to the looming spectre of EU enlargement. The Hungarian Constitution (Alaptörvény) of 2011 in article 14 (1-3) declares that

- a non-Hungarian staying on the territory of Hungary can only be expelled from the country if there is a legal decision on his/her status;
- no one can be expelled to a state, where he/she may be subjected to the death penalty, may be tortured or subjected to treatment not benefiting to human dignity;
- Hungary will provide asylum to those people who are subject to be pursued due to race, nationality, religious beliefs, belonging to a certain population group or are pursued due to political beliefs.

Asylum applications in Hungary have been growing relatively constantly in Hungary since 2010 (see Figure 1), however it was not until the end of 2014 when to some extent it became apparent that Hungary was turning into an entry point to the EU with 42,775 registered asylum applications. In 2015 the Hungarian – Serbian border became one of the main points of entry to the EU with 103,000 applications registered until August 2015. The Hungarian government responded to this new wave of asylum applications by changing the legislation on asylum policies. These changes included (HHC 2015b):

- Adopting a list of safe third countries which includes all EU countries and among others Bosnia-Herzegovina, Kosovo and the EU candidate countries of Albania, Montenegro, Serbia and Macedonia.
- The amendment requires the Office of Immigration and Nationality (OIN) to reject applications by asylum applicants who have travelled through a safe third country. The law requires the claimant to be able to prove that he/she could not present an asylum claim in Serbia and prove within three days why for him/her Serbia could not be considered to be safe.
- Adopting the list of safe countries and safe third countries is problematic for two reasons: on the one hand Hungary received altogether almost 25,000 (Table 1) applications in 2015 from safe countries, predominantly from Kosovo. In addition Serbia is not considered a safe third country by the UNHCR (UN High Commissioner for Refugees), Amnesty International, Hungarian Helsinki Committee or the Hungarian Supreme Court (Kúria) guidelines (HHC 2015b).

Table 1: Selected nationalities of asylum applicants to Hungary (2000-2015)

Hungary	Syria	Afghanistan	Iraq	Albania	Pakistan	Nigeria	Bangladesh	Somalia	Russia	Iran	Ukraine	S&M 2000-06 Serbia 2008 +	Kosovo	Algeria	Turkey	Palestine
2000	40	2185	890	0	220	95	1655	150	50	55	40	690		95	115	30
2001	15	4310	1015	0	155	110	1515	300	40	145	30	215		75	115	105
2002	20	2348	2008		40	125	359	213	43	160	14	97		34	105	29
2003	10	470	350	0	55	75	30	115	105	170	15	110		80	125	35
2004	10	40	35	0	55	75	30	20	40	45	45	180		55	125	65
2005	20	20	20	0	40	90	90	5	35	25	25	245		20	65	25
2006	30	15	70	5	20	110	15	40	65	20	40	385		20	45	40
2007	50	35	135	15	15	85	10	10	50	15	20			50	55	55
2008	20	110	130	10	245	55	45	205	20	10	0	1640		15	75	45
2009	20	1195	55	20	40	65	25	75	25	85	10	535	1785	10	115	25
2010	25	700	50	0	40	35	5	50	25	60	10	65	380	35	60	225
2011	90	650	55	0	120	20	5	60	10	36	5	25	210	55	25	35
2012	145	880	30	5	325	25	15	70	5	45	0	20	225	60	30	20
2013	975	2330	65	40	3080	455	500	190	10	60	5	90	6210	1115	85	225
2014	6855	8795	495	60	400	255	250	195	20	270	35	145	21455	100	115	875
2015	6458 5	46230	9280	255	15155	1005	4060	350	15	179 0	30	90	24455	600	290	1035
<b>Total</b>	<b>72910</b>	<b>70313</b>	<b>14683</b>	<b>410</b>	<b>20005</b>	<b>2680</b>	<b>8609</b>	<b>2048</b>	<b>558</b>	<b>2991</b>	<b>324</b>	<b>4532</b>	<b>54720</b>	<b>2419</b>	<b>1545</b>	<b>2869</b>

Source: Eurostat 2016

- The amendment introduced an accelerated procedure under which the OIN was expected to pass a decision in 15 days. Grounds for an accelerated procedure could be presenting false documents, illegal entry (which is in contrast to the 31<sup>st</sup> Article of the Geneva Convention, Goodwin-Gill 2001), or providing inconsistent and contradictory statements. 15 days may not be enough according to the HHC (2015b) to prepare the case of the asylum seeker, find an interpreter and obtain enough information on the country of origin. There is a 3-day time limit to submit a judicial review and there is an 8-day limit for the judge to decide on the case. A personal hearing was also not mandatory in court proceedings, making the judge rely on information provided by the first time authority.
- OIN can also oblige asylum seekers to contact authorities in the origin country to provide proof of documents, essentially exposing the family of asylum seekers who remained in the country of origin to prosecution. It is also somewhat unrealistic to expect that documents or proof of documents will be made available in a few days' time from the country of origin.

In order to assess whether the asylum policy practice in Hungary is in accordance with the European Directives three semi-structured interviews were conducted with leading Hungarian NGOs (Hungarian Helsinki Committee, Amnesty International Hungary and Menedék) in the field of asylum policy. The conclusions were the following:

- Asylum procedures:
  - The registration of asylum seekers usually does take place in the allotted timeframe of 3-10 days, however it is the application for asylum status which has proven to be problematic. The Hungarian authorities have constructed four transit zones on the Serbian and Croatian borders, where on a daily average 10-15 asylum seeker applications can be processed. According to one of the respondents the situation in the transit zone is dire, with the authorities not providing sufficient shelter or medical services.
  - Once the asylum applicant has been granted access to Hungary and passed through the transit zone, information and counselling is provided in open camps and detention centres, however the quality is questionable. The Hungarian state does provide legal public counsel, however according to one respondent these are not necessarily well versed in asylum law. A translator is provided to assist in processing asylum claims also in the transit zones.
  - A personal interview is almost always provided for the asylum seeker, however the quality and depth of it is questionable. It is also difficult to verify claims made by the applicant for instance when they provide identification, whether it is true or false.
- Reception conditions:
  - Asylum applicants may move freely in Hungary, if they are not in a detention center.
  - Out of over 13,000 asylum applicants in 2016 only 8% ended up being in some detention center according to the HHC.
  - Access to education is provided for minors. After some preparatory course in Hungarian, minors end up in mixed Hungarian classes. It is usually assessed in advance which class the minor should be attending.
  - Access to the Hungarian labour market after 9 months is provided, but this article of the Asylum Procedures Directive is usually not relevant since decisions about the asylum status are made usually far more quickly.



- Material conditions in open camps (housing both asylum seekers and refugees) is sufficient in the sense that food and medical attention is provided, although two respondents mentioned that open camps are overcrowded and that conditions are worsening.
- In terms of qualification:
  - Due to the accelerated procedure of asylum applications it is difficult to prove for the asylum seeker that he/she is in need of protection. The first decision made by OIN can be appealed, however asylum seekers are usually not aware of this.
  - The round of appeal overseen by a judge will not only make their decision on whether the applicant has passed through a safe third country (according to the interviews the OIN typically does base its decision on this), but will look at the larger picture. According to HHC in the last five years if a judge has overseen one of their cases asylum was granted in 70-85% of the cases. It is true however that most applicants do not have access to legal counsel by the HHC, therefore rejection rates among them is thought to be higher.

The main problem seems to center around the issues of the classification of safe country of origin and safe third country. If an asylum applicant passes through a safe third country such as Serbia the EU directives do provide the right to consider the case unfounded. Another issue is when the asylum applicant crossed the Hungarian border in an illegal way: the new asylum legislation does provide the opportunity to the Hungarian authorities to expel the claimant, even though as has been mentioned before, the 31<sup>st</sup> Article of the Geneva Convention takes a different view on it. It should be mentioned at this point that the Hungarian authorities have closed the largest open camp of Debrecen in late 2015 and there are plans to close the Bicske and Vámoszabadi open camp by the end of 2016 as well (index.hu 2016). This will question on the long run to what extent will Hungary be able to provide adequate reception conditions for asylum seekers and refugees, since the camps which are being closed have been overpopulated.

#### **4) Conclusion**

The Hungarian asylum policy underwent significant changes since 1989 or since joining the European Union in 2004. The Hungarian state did adopt EU rules (Schimmelfennig and Sedelmeier 2005), even though compliance seem to be centered more around incentives and sanctions than around appropriateness to use Checkel's terminology (2005). Miciukiewicz (2011) also mentions that while the repressive elements of the EU *acquis* were swiftly implemented into the national legislations of the accession states, the humanitarian elements and institutional were often disregarded. In a way the Type 1 socialization of Checkel (2005) did occur as the Hungarian legislation adopted the EU directives, however it should be noted that the Hungarian government did conduct a campaign against "livelihood immigrants" (for more details read HHC 2015a) as it labelled asylum seekers fleeing from Syria, Iraq and Afghanistan. Although it cannot be discounted that some asylum seekers are bogus refugees, this should be investigated with due process. What seems to be a major problem that xenophobia is increasing in Hungary (53% of Hungarians were opposed to foreigners in general as opposed to 39% in 2014) according to TÁRKI (2016) a Hungarian social research institute. This makes the adoption of the repressive elements of the Hungarian legislation (even though these may not necessarily be in violation of the EU directives), which makes the lives of the asylum seekers and refugees harder, socially more acceptable and questions the long run sustainability of EU norms.

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