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### **Closing Gates to Refugees: The Causes and Effects of the 2015 “Migration Crisis” on Border Management in Hungary and Poland**

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Witold Klaus

## Closing Gates to Refugees: The Causes and Effects of the 2015 “Migration Crisis” on Border Management in Hungary and Poland\*

**Abstract:** In this paper, I demonstrate the process of treating asylum seekers and refugees as a dangerous enemy. Those two groups of immigrants find themselves at the receiving end of measures that infringe basic humanitarian laws and human rights, and are so inhumane that no one would ever dare to introduce them on their own citizens. Equating refugees with terrorists and prioritizing security constitute two pillars of the ruling parties' policy in Poland and Hungary. Apart from technical security measures (like fences), both governments adopt additional instruments to discourage migrants from coming or encourage them to leave (like creating obstacles to let them onto the territory of the country, refusing to grant them international protection, making their integration difficult or almost impossible). Such activity fulfils the definition of “Fortress Europe”, which is not only about building stone walls or fences but about increasing control of every aspect of migrants' lives as well.

**Keywords:** asylum seekers, refugees, borders, human rights, migration crisis

### Introduction

A border is more than a place that separates two areas or territories. It is also, if not primarily, a political idea behind the place. Borders are often established artificially. The inhabitants of Central and Eastern Europe know it too well—the current borders between the countries were established arbitrarily by world leaders during World War II, resulting in mass migrations. So do African countries, where colonial

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powers, often with the help of a ruler and without consideration for borders of traditional kingdoms, plunged the area into civil wars and destabilization for years to come. As a political concept, though, the border is reflected at its clearest in the image of the place. Whether it is a wall or a barbed wire fence, or just a line on the map, depends on the political project behind the decisions. A good case in point would be the European Union (EU), which brought to life the Schengen Area and indeed abolished boundaries between member countries as part of the same scheme. However, the area was enabled by a political idea exactly, one that stemmed from a desire to prevent the rebirth of the nationalism and racism that led to World War II.<sup>1</sup>

On the other end of the spectrum, we can identify borders the likes of the Great Wall of China or the Berlin Wall. The former was to separate a highly developed Chinese empire from primitive and hostile nomadic tribes of the North. Yet the construction was to act not only as a physical protection of the country and its inhabitants but also a cultural barrier separating lifestyles (sedentary farmers versus nomadic tribes). What is more, the wall was supposed to prevent farmers from fleeing and joining nomadic tribes.<sup>2</sup> In this respect, it is not at all dissimilar to the Berlin Wall, whose main function was to prevent the Germans from the eastern, communist lands from escaping to the free West Berlin.

The erection of fortifications on borders has an additional, symbolic value. It was the case with the Great Wall of China, which aimed to demonstrate that the Chinese people had finally been united by the first emperor (Qin Shi Huang) in one country where one external border had replaced numerous internal ones and brought about peace.<sup>3</sup> In fact, a similar symbolism underpins the unification of Europe. Here, too, increased internal unification and the accompanying freedom of movement as part of the EU as well as the consequent abolishment of internal borders coexisted with the strengthening of the external

- 1 J. Huysmans, 'The European Union Securitization of Migration', *Journal of Common Market Studies*, vol. 38, no. 5, 2000, pp. 759-767.
- 2 W. Rodziński, *Historia Chin* [The History of China], Wrocław-Warszawa-Kraków: Ossolineum, 1992, p. 74.
- 3 M. Granet, *Cywilizacja chińska* [Chinese civilisation], Warsaw: Państwowy Instytut Wydawniczy, 1995, pp. 108-109.

borders of the union, both on the legal level and by means of technical security measures.<sup>4</sup>

In the following paper, I undertake to demonstrate how the policy of securitization of borders and migration policy has been shaped in the EU. In this context, I will present case studies of two European countries of Central Europe (Hungary and Poland), which went from Western European countries to labelling refugees as "dangerous others" in record time of several months. Each country experienced the migration movements of 2015-2016 differently, but both are ruled by populist right-wing (in the case of Poland far-right) governments with authoritarian ambitions. Further still, both, though to a different extent, favor the policy of closure towards refugees and have walls to protect from their influx.

## 1. Border Securitization in the EU

1. The term "migration" is used in the EU mainly in relation to the migration of third-country nationals. EU nationals travelling within its borders take advantage of the freedom of movement. Also, migrants are divided by societies and law into desired and undesired since "there is not only one migrant, but many. Just as there are different types of societies, so there are different types of migrants, different degrees of mobility, and different forces of expulsion. But at the end, every society produces its migrants. The political theory of the migrant examines each situation according to its types, degrees, and forces".<sup>5</sup> Katja Aas divides migrants into "bona fide travelers" from "better" parts of the world and "socially privileged populations"—rich countries whose citizens frequently travel for work or pleasure and "crimmigrants"—and citizens of "deviant states" from poorer regions of the world (even if they themselves are better-off), perceived as a danger or "global underclass." The former encounter a warm welcome, the latter are confronted with closed doors and increased surveillance.<sup>6</sup> According to Kmak, migration law differentiates three groups of migrants:

4 J. Huysmans, *op.cit.*, pp. 758-762.

5 T. Nail, *The Figure of the Migrant*, Stanford: Stanford University Press, 2015, p. 15.

6 K. Aas, "Crimmigrant" bodies and bona fide travelers: Surveillance, citizenship and global governance, *Theoretical Criminology*, vol. 15, no. 3, 2011.

- “the Good”—EU citizens and highly qualified third-country nationals desired by the Global North;
- “the Bad”—other migrants working in member states, with EU legislation focused not on securing their rights, but on preventing their entry and effectiveness of their removal;
- “the Ugly”—encompassing asylum seekers or undocumented migrants, i.e., a thoroughly unwelcome group of visitors, lumped together under one label, shunned by EU countries, which try to deter them by, among others, building physical obstacles at borders and introducing controls on their territory.<sup>7</sup>

Since 1980s, immigration, especially asylum issues, has been increasingly politicized in EU countries. Migrants were identified as criminals posing a threat to security and the consistency of society. Migration started to be “identified as being one of the main factors weakening national tradition and societal homogeneity. It is reified as an internal and external danger for the survival of the national community or western civilization. This discourse excludes migrants from the normal fabric of society, not just as aliens but as aliens who are dangerous to the reproduction of the social fabric. (...) The discourse reproduces the political myth that a homogenous national community or western civilization existed in the past and can be re-established today through the exclusion of those migrants who are identified as cultural aliens”<sup>8</sup>

This rhetoric feeds off nationalism and xenophobia. It is also used to justify the need to protect the community from the external enemy and build “Fortress Europe”<sup>9</sup>, a project that anticipates keeping migrants—refugees specifically—at bay, and implementing legal and physical barriers to obstruct entry to Europe and facilitate deportation from its territory. The increase of security and control measures goes hand in hand with the dismissal of the humanitarian aspect of

7 M. Kmak, “‘The Ugly’ of EU Migration Policy: The role of the Recast Reception Directive in Fragmentation of the Refugee Subject”, in: D.A. Gozdecka and M. Kmak (eds), *Europe at the Edge of Pluralism*, Cambridge, Antwerp and Portland: Intersentia Publishing, 2015, pp. 87-91.

8 J. Huysmans, op.cit., p. 758.

9 H.J. Albrecht, ‘Fortress Europe?—Controlling Illegal Immigration’, *European Journal of Crime, Criminal Law and Criminal Justice*, vol. 10, no. 1, 2002.

exile. In other words, refugees have become a security issue rather than a human-rights issue. Tellingly, official Frontex documents have changed the meaning of certain words—the word “vulnerability” previously used to denote individuals in need of special protection but has started to be used with regard to borders under threat from migrant influx and as such, requiring extra security measures. This narrative presents migrants mainly as a threat.<sup>10</sup> It laid the foundation for the harmonization of EU asylum policy, followed by an attempt to create the Common European Asylum System (CEAS).<sup>11</sup> It became even more pivotal after the mass-migration crisis of 2015, when border management became one of the most important issues of the EU and resulted in a thorough reform of Frontex.

The priority of protecting borders from the influx of unwanted migrants by means of various technical measures was the prerogative of the new EU Border Control Programme. It contributed to the development of surveillance of coastal waters and the erection of fences and barbed-wire entanglements along land borders, notably around two Spanish territories in northern Africa—Ceuta and Melilla. Fences were also raised along the land border between Turkey and Greece. The measures were directed at preventing the inflow of foreigners to EU territory. The areas in question were granted increased military protection, often with the support of other member states (especially in Greece), while the migrants were dying trying to reach “Fortress Europe”.<sup>12</sup>

Those activities were supplemented by a cooperation scheme with the neighboring countries migrants used to enter Europe (mainly Morocco, Libya and Mauretania). Thanks to this cooperation, it was possible to turn away arriving migrant boats and send them back to the coastal waters of those countries and to deport there those individuals who had already arrived in Italy or Spain. EU countries also

10 K. Aas and H.O.I. Gundhus, 'Policing Humanitarian Borderlands: Frontex, Human Rights and the Precariousness of Life', *British Journal of Criminology*, vol. 55, no. 1, 2015, pp. 9-10.

11 J. Huysmans, op.cit., pp. 757, 766; E. Herlin-Karnell, 'The domination of security and the promise of justice: on justification and proportionality in Europe's "Area of Freedom, Security and Justice"', *Transnational Legal Theory*, vol. 8, no. 1, 2017.

12 J.Á. Brandariz García and C. Fernández Bessa, 'The Construction of Migrants as a Risk Category in the Spanish Penal System', in: S. Palidda (ed), *Racial Criminalization of Migrants in the 21<sup>st</sup> Century*, Farnham-Burlington: Ashgate, 2011, p. 205.

funded the building and maintenance of several detention camps for migrants in Libya and Mauretania with control handed over to the countries on whose territories they had been built.<sup>13</sup> It was the realization of the idea of the “externalization of asylum” pushed since the late 1990s, whereby the countries of the Global North, while not negating the idea of asylum, prefer to keep the individuals entitled to it as far from their territories as possible, placing the responsibility of supporting the refugees on other, usually poor countries. The practice is accompanied by a full, albeit silent, consent to an abandonment of human-rights ideals together with the abandonment of any control over the places in which migrants are kept outside the Global North’s territories, even if it means long-lasting deprivation of liberty of the forced migrants.<sup>14</sup>

## 2. The 2015 Migration Crisis and Its Impact on Hungary and Poland

Despite developing migration laws, the EU was completely unprepared for the migrant crisis. EU politicians remained largely indifferent to the consequences of the so-called Arab Spring, including the humanitarian crisis resulting from the war in Syria, which affected Lebanon, Jordan and Turkey—countries that took in several million refugees and were left to handle the situation without any real support on the part of the international community. The number of refugees coming to EU countries began to rise in 2011, gathered pace in 2013, only to reach a peak of 1.35 million submitted asylum applications in 2015, a number not seen in decades. An overwhelming majority of the migrants reached the EU by sea, from Turkey to Greece, where most of them applied for asylum. The absence of a reception system in the country,<sup>15</sup> its lack of preparation to take in so many migrants in

13 L. Fekete, *A Suitable Enemy. Racism, Migration and Islamophobia in Europe*, London-New York: Pluto Press, 2009, pp. 151-154.

14 J. Valluy, ‘The Metamorphosis of Asylum in Europe: From the Origins of “Fake Refugees” to their Internment’, in: S. Palidda (ed), *Racial Criminalization of Migrants in the 21<sup>st</sup> Century*, Farnham-Burlington: Ashgate, 2011, pp. 115-117; L. Heemsbergen and A. Daly, ‘Leaking Boats and Borders: The Virtue of surveilling Australia’s refugee population’, *Surveillance & Society*, vol. 15, no. 3/4, 2017.

15 See several rulings of the European Court of Human Rights (ECtHR): *M.S.S. v. Belgium and Greece*, *Hirsi Jamaa and others v. Italy*, *Sharifi and others v. Italy and Greece*.

a short time span and the slow reaction of other EU countries to offer assistance resulted in migrants attempting a desperate march north of the continent, through the Balkans, to reach Germany or Sweden.<sup>16</sup>

The Balkan route has been used before for migration, although on a smaller scale, admittedly. Hungary, located on the route, offers insightful statistics. Between 2003 and 2012, the number of applications for asylum ranged between 1,600 and 4,600 annually, though usually not exceeding 3,000. The shift began in 2013, which saw 18,900 applications, with 42,700 applications the following year and a record 177,100 applications in 2015 (the actual number of migrants passing through Hungary was most likely at least twice as high since only some of them submitted the applications for asylum officially).<sup>17</sup> With the gradual increase of the number of asylum seekers, Hungarian authorities began to modify migration laws, introducing a list of safe countries of origin and safe third countries of transit, with Serbia and Macedonia on the said list. It was motivated by the fact that between 2013 and 2014, Kosovars constituted the most numerous group of applicants (accounting for 32% and 50%, respectively, of all applicants), the number of whom reached 24,700 in 2015. Additionally, owing to the lists, it was possible to turn away to Serbia all the remaining asylum seekers who came to Hungary via Serbia.<sup>18</sup>

The climax of the refugee crisis in Hungary came with the detention of thousands of migrants at Budapest's Keleti railway station at the turn of August and September in 2015. Since June that year, the station had served as a stopover for migrants on the way to Western Europe. However, at the end of August, Hungarian authorities decid-

16 M. Pachocka, 'The European Union in Times of Migrant and Refugee Crises', in: V. Beniuc and L. Rosca (eds), *Peculiarities of development in a globalized world economy*, Chisinau: Institute of International Relations of Moldova, 2016.

17 W. Klaus et al., 'Refugees and asylum seekers in Central-European Countries—reality, politics and the creation of fear in societies', in: H. Kury and S. Redo (eds), *Refugee Law and Policy. Challenges and Opportunities for Global Civic Education*, Springer International Publishing, forthcoming; B. Nagy, *Sharing the Responsibility or Shifting the Focus? The Responses of the EU and the Visegrad Countries to the Post-2015 Arrival of Migrants and Refugees*, Budapest: Central European University, 2017, pp. 11-12; B. Nagy, 'Hungarian Asylum Law and Policy in 2015-2016: Securitization Instead of Loyal Cooperation', *German Law Journal*, vol. 17, no. 6, 2016, pp. 1035-1039.

18 Ibid., pp. 1035-1039, 1045; A.M. Winslow, 'Shifting Immigration Policies in Response to the Syrian Refugee Crisis Across the European Union: A Case Analysis of Germany, Hungary, and Lithuania', *Claremont-UC Undergraduate Research Conference on the European Union*, vol. 2016, Article 9, 2016, pp. 103-104.

ed to stop the trains carrying migrants to Austria, which resulted in mass protests of migrants. At the same time, they refused to be moved to Hungarian refugee centers. To end the gridlock, on 3 September, several thousand refugees from Keleti embarked on a march to Austria along the M1 motorway. In response, the government provided coaches that took both the marching people and those who stayed behind at Keleti to the Austrian border. Immediately, the remaining asylum seekers, who so far resided in the refugee centers, set off on their journey as well.<sup>19</sup> “The unpredictable behavior of the authorities continued. When the fence between Serbia and Hungary state was ready, migrants and refugees from Serbia crossed into Croatia and from there into Hungary. Then, the Hungarian state offered train services to more than 200,000 of the migrants, without registering them and politely delivering them to the Austrian-Hungarian border, enhancing their walking through it, without a hint of intention to prevent their departure”<sup>20</sup>

Furthermore, in the middle of 2015, Hungarian authorities went about erecting a fence on the border with Serbia (completed in September), and then on the border with Croatia (completed in October). The fence on the Hungarian-Slovenian border remained unfinished, for fear of violating the Schengen Agreement. The border, on the other hand, was closed and full border controls were resumed.<sup>21</sup>

The above practices were accompanied by relentless populist fear-mongering, with Victor Orban’s government portraying refugees as a threat to Hungarian society, to the country’s security and homogeneity. Refugees were equated with “illegal” migrants and criminals, while the authorities of the EU and other countries were accused of too lenient and concessionary an approach, opening borders and violating the Schengen Agreement (even though it was the Hungarian government itself that openly disregarded it when helping the refugees to get to Austria).<sup>22</sup>

19 B. Simonovits and A. Bernát (eds), *The Social Aspects of the 2015 Migration Crisis in Hungary*, Budapest: TÁRKI Social Research Institute, 2016, pp. 8-9; A. Kallius, D. Monterescu and P. Kumar Rajaram, ‘Immobilizing mobility: Border ethnography, illiberal democracy, and the politics of the “refugee crisis” in Hungary’, *American Ethnologist*, vol. 43, no. 1, 2016.

20 B. Nagy, ‘Hungarian Asylum Law’, *op.cit.*, p. 1060.

21 A.M. Winslow, *op.cit.*, pp. 103-104; A. Kallius, D. Monterescu and P. Kumar Rajaram, *op.cit.*, p. 3.

22 B. Nagy, *Sharing the Responsibility*, *op.cit.*, pp. 14-15; B. Simonovits and A. Bernát, *op.cit.*

At the same time, the situation of Poland was the polar opposite. In no way was the country affected by the influx of refugees from the south of Europe. Admittedly, the number of asylum seekers grew consistently, but only once, in 2013, did it exceed 15,000. In 2015-2016, it remained stable at slightly over 12,000 individuals, most of whom were Chechens, Ukrainians, Georgians and Tajiks. Despite the ongoing conflict in the area of Donbas, only 4,300 Ukrainians applied for international protection in Poland, whereas Russia took a whopping 427,200 refugees<sup>23</sup> in about the same time. The influx of asylum seekers from Ukraine to Poland was insignificant also because there existed many legal channels of migration. As of 2014, the number of Ukrainians in Poland had increased several fold, reaching around a million in 2016.<sup>24</sup> Still, the claims that Poland has taken in a million refugees from Ukraine (as Prime Minister Beata Szydło declared) must be categorically dismissed. Most of the Ukrainians who arrived did not come from the regions affected by the conflict, nor did the Polish government offer them any integration support. Having arrived, the individuals were left to their own devices and subject to laws applied to economic migrants.

Although Poland was not affected by the influx of migrants during the migrant crisis, the events coincided with the parliamentary elections, and the issue of migrants became one of the main points of the electoral agenda of 2015. Most politicians displayed a negative attitude towards refugees and to migration as such, while Law and Justice (PiS, Prawo i Sprawiedliwość), the party that won the elections and formed the government, was at the forefront of the negative campaign, intimidating the public with images of "Islamic terrorists" and diseases spread by refugees. The new government established anti-immigrant rhetoric as the main instrument of communication, followed by changes

23 W. Klaus et al., op.cit.; M. Pachocka, 'The Eastern Partnership in Times of the Migrant and Refugee Crisis in the European Union', in: C.E. Pacheco Amaral, V. Cucerescu, G. Gabrichidze, I. Horga, A. Kruglavshov, E. Latoszek and M. Pachocka, *EU Association Agreements with Georgia, Moldova and Ukraine: Through Cooperation Towards Integration*, Chişinău-Tbilisi-Chernivtsi: Tipografia "Print-Caro", 2017, p. 25.

24 It is difficult to quote the exact number since Poland lacks credible instruments to count migrants living in our country. See: P. Kaczmarczyk, 'Polska jako kraj emigracji i imigracji' [Poland as an emigration and immigration country], in: P. Kaczmarczyk (ed), *Mobilność i migracje w dobie transformacji. Wyzwania metodologiczne* [Mobility and migration in the time of transformation. Methodological challenges], Warsaw: Wydawnictwo Naukowe Scholar, 2011.

in law that increased the control of services over foreigners, notably in a new anti-terrorist bill, on the basis of which any person without Polish citizenship is deemed suspicious and subject to unlimited surveillance, e.g., in the form of phone tapping.<sup>25</sup>

What Poland and Hungary have in common is definite opposition to the EU's reaction to the migration crisis. Both countries, with the partial support of other members of the Visegrad Group—the Czech Republic and Slovakia—went out of their way to sabotage relocation and resettlement.<sup>26</sup> Poland and Hungary are currently the only EU countries that have not taken a single person as part of these programs.<sup>27</sup> The anti-immigrant narrative employed in the countries has brought about plummeting social acceptance for migrants, especially those coming from specific countries (Arabic) and following a specific religion (Islam). Both countries currently exhibit among the highest levels of hostility towards refugees in the whole EU.<sup>28</sup>

### 3. Hungary—Fences and Detention

The erection of fences initiated by the Hungarian government on the border with Serbia and Croatia and described above was just one step on the way to toughening the country's migration policy. What followed was a series of technical preventive measures and accompanying changes in law.<sup>29</sup> Police officers were authorized to use rubber bullets, tear gas, pyrotechnical devices, and net guns, among other weapons, to impose control at the borders and protect them from immigrant inflow. The army was given additional powers to control the borders and migrants. Since the mass influx of migrants

25 W. Klaus et al., *op.cit.*; W. Klaus, 'Security First—New Right-Wing Government in Poland and its Policy Towards Immigrants and Refugees', *Surveillance and Society*, vol. 15, no. 3/4, 2017, pp. 524-526.

26 Hungary and Slovakia brought the EU decision on relocation (no. 2015/1601) to the EU Court of Justice as illegal and sought its annulment. This application was dismissed as unfounded on 5.09.2017 (joined cases C-643/15 and C-647/15).

27 B. Nagy, *Sharing the Responsibility*, *op.cit.*, pp. 9-15.

28 W. Klaus et al., *op.cit.*

29 For evolution of law in this respect between 2015 and 2016 see: J. Nagy, 'Hungarian Asylum Law', *op.cit.*, pp. 1045-1051; *Under Destruction: Dismantling Refugee Protection in Hungary in 2016*, Hungarian Helsinki Committee, March 2017, [http://www.helsinki.hu/wp-content/uploads/Under-destruction\\_2016.pdf](http://www.helsinki.hu/wp-content/uploads/Under-destruction_2016.pdf) [2017-08-11].

resulted in the introduction of a state of emergency,<sup>30</sup> police officers can intervene not only at the border but also on the territory of the whole country if they suspect a violation of migration laws; they can enter houses and search them.<sup>31</sup>

In accordance with the new regulations of July 2016, migrants stopped in the frontier zone (up to 8 kilometers from the border) are returned by police forces to the territory of the country near where they are stopped. This happens without any requirements to follow return procedures, and the foreigners are denied the right to apply for asylum. However, due to the state of emergency, the so called "8-kilometer rule" is in fact applied across the whole country. It has led to a dramatic drop in applications for asylum—while in the first half of 2016 there were 22,491 applications submitted, the second half saw only 6,763 applications. In 2016, between July and December, 19,057 people were pushed back. In 2017 (till the end of July), 11,504 individuals were stopped on the territory of Hungary and sent back, while only 2,217 asylum applications had been submitted.<sup>32</sup> During the interventions, there have been many cases of violence used by police officers against migrants, who reported kicking, beatings and the deployment of tear gas.<sup>33</sup>

To add to these measures, the catalogue of offences was expanded by new ones. The following were then subject to punishment: illegal crossing of a fenced border (up to three years of imprisonment), destroying the fence (five years' imprisonment), and even obstructing the construction of the fence. Additionally, foreigners accused of committing these offences were denied the right to fair trial, e.g. they were unable to use an interpreter during criminal proceedings, and the procedure itself was accelerated, which rendered proper defense diffi-

30 The state of emergency was announced by the government and has been in effect continuously since 9 March 2016—A. Bakonyi, A. Léderer and Z. Szerekes, *Best Interest Out of Sight—The Treatment of Asylum Seeking Children in Hungary*, Budapest: Hungarian Helsinki Committee, 2017, pp. 5-6.

31 W. Zeldin, *Hungary: New Law Permits Army's Use of Non-Lethal Weapons Against Illegal Migrants*, 6 November 2015, <https://www.loc.gov/law/foreign-news/article/hungary-new-law-permits-armys-use-of-non-lethal-weapons-against-illegal-migrants/> [2017-08-18].

32 *Hungary: Key Asylum Figures as of 1 January 2017*, Hungarian Helsinki Committee, <http://www.helsinki.hu/wp-content/uploads/HHC-Hungary-asylum-figures-1-January-2017.pdf> [2017-08-11].

33 J. Nagy, 'Hungarian Asylum Law', op.cit., p. 1050-1051; P. Bard, 'What is behind the low number of hate crimes in Hungary?', *Criminology in Europe*, vol. 16, no. 1, 2017, p. 11.

cult.<sup>34</sup> Between 15 September 2015 and 30 November 2016, there were 2,843 people sentenced for violating those regulations. In most cases, the sentence came in the form of expulsion and a two-year prohibition on entry. Since December 2016 the regulations have not been used.<sup>35</sup>

In 2015, so called “transit zones” were created as an integral part of the fences, which are treated as extraterritorial areas—the Hungarian government maintains that migrants detained there have not yet crossed the Hungarian border. There are four “transit zones,” two on the Serbian border, in Tompa and Roszke. These are the only places where migrants can legally cross the border and apply for asylum. The zones have been equipped with shipping containers, where those who have managed to cross the border are detained for the duration of the accelerated border procedure, which aims to determine whether the application is admissible, i.e., whether they will be allowed to enter Hungarian territory. “So far, practically all applications submitted by persons who came through Serbia were declared inadmissible on safe third-country grounds. Those who do not request judicial review are legally expelled and physically ‘accompanied’ by a police officer to the Serbian border, a few meters from the door of the “transit zone” container, expecting the refused persons to illegally cross the green border in the reverse direction and to re-enter Serbia.”<sup>36</sup>

These laws were further tightened in March 2017. Owing to the state of emergency, at the moment all asylum applications must be submitted solely in the “transit zones”—even if the foreigner crossed the border elsewhere (say, at the airport) and wishes to apply for asylum, they will be transferred to the zone by border police. Additionally, a limit on applications was introduced—not more than 10 a day for both “transit zones” together. What is more, the applicant must remain in the zone for the duration of the asylum procedure and can be detained there interminably (relevant restrictions were abolished)

34 W. Klaus et al., *op.cit.*; J. Nagy, ‘Hungarian Asylum Law’, *op.cit.*, p. 1047. The process of lowering migrant protection levels within criminal law in various countries: C. Dauvergne, ‘The Troublesome Intersections of Refugee Law and Criminal Law’, in: K. Aas and M. Bosworth (eds), *The Borders of Punishment. Migration, Citizenship, and Social Exclusion*, Oxford: Oxford University Press, 2013.

35 A. Bakonyi, A. Léederer and Z Szerekes, *op.cit.*, pp. 12-13.

36 J. Nagy, ‘Hungarian Asylum Law’, *op.cit.*, p. 1049, also pp. 1048-1049, 1065.

and without judicial review, unless they are an unaccompanied minor under 14 years old.

Following the introduction of the laws, asylum seekers previously housed in open centers were transferred to the “transit zones”. Although life until then had been difficult enough, since spring 2017, it has deteriorated still—the government does not provide food, it is impossible to purchase any in that area either, the children are deprived of access to education, and healthcare is limited to emergencies, when the handcuffed refugee is taken to a local hospital. The harsh conditions seem intended to force the refugees to withdraw their asylum application and return to Serbia.

These new laws (or even the previous version from before the amendments of March 2017) are a blatant violation of human rights, as confirmed by the European Court of Human Rights (ECtHR) in the judgement concerning *Ilias and Ahmed* of 14 March 2017.<sup>37</sup> The court deemed confinement in the “transit zone” to be unlawful detention. Further complaints against Hungary are pending.<sup>38</sup>

The obstructions on entering Hungary have resulted in the creation of “pre-transit areas”, where people wait to be admitted into one of the “transit zones”. These are makeshift shelters made of blankets, plastic sheets and tents, offering no protection from rain or cold, with no food or sanitary facilities. Physically, they are on Hungarian territory but the government of the country has chosen not to acknowledge this fact. The migrants are assisted by authorities from Serbia, where there are around 8,000 refugees in the border region. So far, the wait time for people in the transit camps in Serbia to enter Hungary is 6-8 months. The list of people waiting to apply for asylum in any of the “transit zones” is closed and will not open again until the end of 2019.<sup>39</sup> In response to this situation, as well as other changes in

37 European Court of Human Rights, *Ilias and Ahmed v. Hungary* (Application no. 47287/15), [http://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-172091%22\]}](http://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-172091%22]}) [2017-08-21]. The sentence is not legally binding; it was challenged by Hungary in the Grand Chamber of the ECtHR.

38 A. Bakonyi, A. Léderer and Z. Szerekes, op.cit., pp. 5-6; *Hungary: Government’s New Asylum Bill on Collective Push-backs and Automatic Detention*, Hungarian Helsinki Committee, 15 February 2017, <http://www.helsinki.hu/wp-content/uploads/HHC-Info-Update-New-Asylum-Bill-15.02.2017.pdf> [2017-08-11]; *Hungary: Turbulent 50 days—an update on the Hungarian asylum situation*, Hungarian Helsinki Committee, 22 May 2017, <http://www.helsinki.hu/wp-content/uploads/HHC-Info-Update-50-days-after.pdf> [2017-08-11].

39 A. Bakonyi, A. Léderer and Z. Szerekes, op.cit., pp. 20-22; *Under Destruction*, op.cit.

Hungary's asylum law, in May 2017 the European Commission started legal action against Hungary for contravening a number of EU laws.<sup>40</sup>

## 4. Polish "Recipe" for Border Closure

Poland has not yet decided to put up physical barriers on its borders—as outlined above, the number of people applying for international protection is relatively low, and those who do cross the border do it legally.<sup>41</sup> There was no shortage of appeals in right-wing media in 2015 and 2016 to erect such barriers, however the Ministry of the Interior and Administration (MSWiA) officially denied reports that it was planning to build any.<sup>42</sup> It is worth emphasizing that the Polish eastern border, which is an EU external border as well, is constantly monitored by means of advanced technology, and any attempt to cross it illegally is immediately detected.<sup>43</sup> Additionally, along the Belarusian stretch there is a system of physical security provisions dating to Soviet times—a fence with barbed-wire entanglements, motion detectors and ploughed control strips—which goes by the name *sistema* and is monitored by the services of the Republic of Belarus.<sup>44</sup>

The vast majority of applications for international protection are submitted at the rail border crossing in Terespol, on the Polish-Belarusian border (in 2015-2016, they accounted for 70% of all such applications). This state of affairs has persisted since the late 1990s and stems from the fact that most people applying for asylum in Poland are Rus-

40 European Commission, [http://europa.eu/rapid/press-release\\_IP-17-1285\\_en.htm](http://europa.eu/rapid/press-release_IP-17-1285_en.htm) [2017-08-21].

41 The number of illegal border crossings is low and stands roughly at 3,5 thousand persons annually, Straż Graniczna [Border Guard], <http://strazgraniczna.pl/pl/granica/statystyki-sg/2206,Statystyki-SG.html> [2017-08-22].

42 The reply to parliamentary question on the protection of Polish Eastern border from inflow of illegal immigrants (interpellation nr 82): <http://www.sejm.gov.pl/Sejm8.nsf/InterpelacjaTresc.xsp?key=069165C9> [2017-08-22].

43 M. Pietraszczyk, 'Funkcjonowanie Straży Granicznej w warunkach strefy Schengen' [The work of the Polish Border Guards under the Schengen Area regulations], in: *Polska w strefie Schengen. Refleksje po pierwszym roku członkostwa* [Poland in the Schengen Area. Reflections after first year of membership], Warsaw: MSWiA, 2008, pp. 67-68.

44 T. Komornicki, *Granice Polski. Analiza zmian przenikalności w latach 1990-1996* [Polish borders. Analysis of changes in permeability between 1990 and 1996], Warsaw: Instytut Geografii i Przestrzennego Zagospodarowania PAN, 1997, pp. 127, 186.

sian citizens of Chechen nationality and other citizens of the former Soviet republics, and Terespol lies on the Moscow-Berlin train route.<sup>45</sup>

The year 2015 marked the beginning of increased difficulties with the reception of asylum applications by the Polish Border Guard at this very border crossing. The border guards seemed to turn a deaf ear to requests for asylum, which, together with a visa, is a prerequisite for a legal border crossing, and hence, the large numbers of people who were refused entry to Poland on the grounds of incomplete documents: in 2015, on the Belarusian border, 3,399 refusals were issued to Russian citizens, in 2016, the number increased to 74,391, the prime reason being the lack of a document granting entry. Many refugees made multiple attempts to submit the application—with one reported record holder covering the distance from Brest to Terespol over 60 times. A lot of them finally succeeded in entering Poland after their application was eventually received, which only confirms that they should have been admitted in the first place.<sup>46</sup> Conversations with foreigners camping in the Belarusian Brest (a lot of them, lacking any livelihood, *live* at the railway station) waiting to be admitted to enter Poland, revealed that they were entitled to apply for international protection—their stories of persecution in the country of origin were probable enough to justify the reception of an asylum application for further review by a relevant body (in the case of Poland, the Office for Foreigners).<sup>47</sup>

The first half of 2017 saw even more restrictions in receiving asylum applications in Terespol. Their number dropped by 81% in comparison with the respective period in 2016. Only 382 applications were received, covering 1,214 individuals (in 2016, there were 1,979 applications for 5,566 people), which means that only 2-3 families were allowed to enter Poland daily. Altogether, in the whole country, there

45 W. Klaus et al., op.cit.

46 A. Chrzanowska et al., *At the border. Report on monitoring of access to the procedure for granting international protection at border crossings in Terespol, Medyka, and Warszawa-Okęcie Airport*, Warsaw: Association for Legal Intervention, 2016, pp. 35-45, <http://interwencjaprawna.pl/en/files/at-the-border.pdf> [2017-08-11].

47 M. Górczyńska and M. Szczepanik, *A road to nowhere. The account of a monitoring visit at the Brześć-Terespol border crossing between Poland and Belarus*, Warsaw: Helsinki Foundation for Human Rights, 2016, pp. 10-13, <http://www.hfhr.pl/wp-content/uploads/2016/11/A-road-to-nowhere.-The-account-of-a-monitoring-visit-at-the-Brze%C5%99B%C4%87-Terespol-border-crossing-point-FINAL.pdf> [2017-08-11].

was a 60% drop in the number of received asylum applications.<sup>48</sup> The situation resembles that which is happening in Hungary—although no official restrictions were issued with regard to the number of accepted applications, they are clearly administered.

The refusal to receive asylum applications and the daily expulsions of big groups of foreigners prompted Polish and Belarusian human-rights activists to take the matter to the ECtHR. In June 2017, the court applied Rule 39 of the Rules of Court with regard to six Chechen families who had been unsuccessfully trying to reach Poland or even submit the asylum application, and ordered they not be sent back to Belarus. All subsequent cases followed a similar pattern: on the day ECtHR issued Rule 39, the applicants were sent back to Belarus despite the decision of the court being delivered quickly (within four hours of the application being submitted) and before the departure of the return train to Brest, which usually carries the expelled refugees.

In the end, the Polish authorities concurred in only two cases with the court's decision to permit entry to Poland. In four cases, the government decided to ignore the court's decision and, at the moment of writing this paper, the refugees still had not been allowed to enter Poland. To counteract these practices, the ECtHR in subsequent decisions under Rule 39 (or when prolonging the ones issued earlier) amended the wording of the requirement directed at the Polish authorities. In the first notes, it ordered "that the applicants should not be removed"<sup>49</sup> before the date appointed by the Court. In the later ones, it added an additional recommendation: "When present at the Polish border checkpoint—the applicants' motion for asylum should be received and registered by the Border Guard and forwarded for examination by the competent authorities (the Head of the Office for Foreigners). Pending examination of the asylum application, the applicants should not be sent back to Belarus." The Polish authorities have yet to change their practices.

48 *Biuletyn statystyczny Straży Granicznej za I półrocze 2017 r.* [Border Guards Statistical Bulletin for the 1<sup>st</sup> half of 2017], p. 8, <http://strazgraniczna.pl/download/1/14456/biuletynIpolrocze2017.pdf> [2017-08-22].

49 All quotations taken from original documents disclosed to the author by organisations working for refugees' protection. To prevent disclosing personal data, the quotations have no references to specific persons or cases.

The response of the Polish government to the ECtHR request followed two patterns. On the one hand, efforts were made to prove that the foreigner was not on Polish territory (although they clearly were at the Polish railway station in Terespol, which is well over a kilometer away from the physical border on the river Bug): "the obligation of not expulsion or removal of a person from the state to another can be realized only if a person entered and is present on the territory of the obliged state". What is more, the Polish government claimed that the applicants did not at all declare at the border any desire to apply for asylum (despite some of them holding a completed asylum application) and quoted only economic reasons for their arrival. In such circumstances, the government warned the court not to be fooled by migrants, since "the interim measure procedure is being abused in order to extort from the Polish Border Guard officers a decision permitting entry to Poland, despite lack of justification for such entry".

The situation related above is the first case in the history of the country when the Polish authorities ignored an interim measure. Even the Hungarian government complied with the ECtHR recommendations in similar cases.<sup>50</sup> The court proceeds on Polish cases exceptionally fast. In August alone, three complaints relating to Rule 39 were communicated to the Polish government.<sup>51</sup>

The authorities are also working on changes to Polish law modelled on the Hungarian regulations. The justification for the changes comes from the allegedly increasing migration traffic and the need for security and internal order. The planned amendment of the Asylum Act (an act on granting international protection to foreigners on the territory of the Republic of Poland) establishes the implementation of accelerated border procedures for people applying for international protection. This would mean conducting the whole asylum procedure, appeal included, within the time frame of 1.5 months, which is unfeasible for a thorough review of the case. The conditions necessitating the introduction of the procedure are so broad that in

<sup>50</sup> *Hungary: Turbulent 50 days*, op.cit.

<sup>51</sup> European Court of Human Rights, *M.K. v. Poland* (40503/17), <http://hudoc.echr.coe.int/eng?i=001-176229>; European Court of Human Rights, *M.K. and Others v. Poland* (43643/17), <http://hudoc.echr.coe.int/eng?i=001-176472>; European Court of Human Rights, *M.A. and Others v. Poland* (nr 42902/17), <http://hudoc.echr.coe.int/eng?i=001-176484> [2017-08-24].

practice they may apply to anyone wishing to obtain asylum in Poland. For the whole duration of the procedure, asylum seekers must be detained, therefore the government provides for the possibility of installing housing containers to accommodate all the applicants.<sup>52</sup>

The EC's proceedings against Hungary of May 2017 prompted a certain modification of the original version of the Polish law. The newest version of the draft, from June 2017, retains the main direction of changes but it does not openly contravene basic regulations of the EU. Also, the MSWiA clarified that the shipping containers for asylum seekers will not be placed at the border in new, temporary centers but added to the existing guarded centers in the interior (which, on the other hand, contradicts the idea of the so-called procedural directive<sup>53</sup> if the foreigner is to be transported sometimes several hundred kilometers from the place where they crossed the border).<sup>54</sup> The government is still working on the draft amendment, thus its final shape remains unknown.

## Conclusion

In this paper, I have attempted to demonstrate the process of treating asylum seekers as a dangerous enemy. Eventually, asylum seekers find themselves at the receiving end of measures that infringe basic humanitarian laws and human rights that are so inhumane no one would ever dare introduce them on their own citizens.<sup>55</sup> Equating refugees with terrorists and prioritizing security constitute two pillars of the ruling party's policy in Poland and Hungary.

Apart from the technical security measures I have detailed above, both governments adopt additional instruments to discourage migrants from coming or to encourage them to leave. In Hungary, integration programs for refugees have been completely done away with, leaving the people without any support, and the structure of open cen-

52 W. Klaus, *op.cit.*, pp. 525-526; W. Klaus et al., *op.cit.*

53 Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection.

54 Letter from the Department for Analysis and Migration Policy of MSWiA of 9 August 2017, reference no. DAiPM-WSNPA-0231-2/2016.

55 See: J. Young, *The Vertigo of Late Modernity*, Los Angeles-London-New Delhi-Singapore: Sage 2007, pp. 35-36.

ers has been changed—the ones that existed previously were closed and the residents moved to tents, only to be eventually sent to “transition zones” devoid of any facilities to meet basic life needs. Moreover, the authorities routinely refuse to grant refugee status—the country’s recognition rate is the lowest in the EU—and a staggering 91% of applications from Syrians are rejected, 87% from Iraqis and 94% from Afghans.<sup>56</sup> A similar strategy is applied with reference to Chechens. In 2016, the recognition rate (refugee status and subsidiary protection) stood at a meager 8%, dropping further to 5.6% in the first half of 2017.<sup>57</sup> Although integration programs are theoretically still in place, they rarely address the most pressing needs of refugees.<sup>58</sup>

Such activity fulfils the definition of “Fortress Europe”, which “is not the traditional fortress we usually think of when talking about fortresses—with tall walls and powerful towers—but it is a fortress that is made out of internal and soft controls on the one hand and a certain amount of hardware to detect and identify intruders at the borders on the other hand. Finally, the fortress consists also of a mixture of normative concepts made out of laws and political programs as well as factual concepts set up to prevent unwanted immigration.”<sup>59</sup>

All these measures bear an uncanny resemblance to those employed by the countries neighboring the Third Reich, which went the extra mile to make it more difficult for Jews (or individuals considered Jews by the Nazi authorities) fleeing from Nazi Germany to take refuge in their country. They introduced visas, refused them entry (including refusal to accept asylum applications) at the borders (“a Semitic facial expression” was often enough of a reason to justify a refusal), guarded borders with specially deployed soldiers or additional police forces, sent back to Nazi Germany those who managed to slip across the border undetected, knowing full well they would end up in concentration camps. By doing so, they cooperated closely with the Nazis. Refugees were perceived as a threat to the safety of the society,

56 *Under destruction*, op.cit.; Nagy, ‘Hungarian Asylum Law’, op.cit., p. 1064.

57 Statistics by Office for Foreigners, <https://udsc.gov.pl/statystyki/raporty-okresowe/zestawienia-roczne/> [2017-08-24].

58 K. Łukasiewicz, „Integracja” po polsku. Strategie adaptacyjne uchodźców czeczeńskich w Polsce’ [Polish style of ‘integration’: Strategies of adaptation of Chechen refugees in Poland], *Studia Migracyjne—Przegląd Polonijny* [Migration Studies—Review of Polish Diaspora], no. 2, 2011.

59 H.J. Albrecht, op.cit., p. 21.

refused refugee status and branded as economic migrants. Those who were not pushed back were detained in guarded centers and expected to leave for overseas as soon as possible. Each country blamed their neighbors for not ensuring the borders were tight enough and allowing refugees to enter.<sup>60</sup>

One may say that the experience of the Holocaust is irrelevant to the current situation and crosses the line of what is acceptable in the public debate. I beg to differ, not only because of the similarity of how the European countries reacted to the inflow of refugees. After all, it was the experience of the Holocaust that resulted in the post-war asylum policy in the 20<sup>th</sup> century. The dawn of the 21<sup>st</sup> century marked a move away from these ideals—through a gradual closure of borders to the needy and an increase in nationalist sentiments in the countries of the Global North. We are dangerously close to repeating the mistakes of the late 1930s.

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60 F. Caestecker and B. Moore, ‘A Comparative Analysis of Immigration Policies of Liberal States in Western Europe and the Flight from Nazi Germany’, in: F. Caestecker and B. Moore (eds), *Refugees from Nazi Germany and the Liberal European States*, New York-Oxford: Berghahn, 2010.

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