Analyzing Hungary's Asylum Law Amendments of 2015/2016 A Human Rights Perspective

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Thesis

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A Human Rights Perspective

24th of May, 2024

Challenges to European Democracy and the Rule of Law in the European Union
Bachelor Project

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Supervisor:
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Word count: 7999 words

Public access

Introduction

The refugee crisis of 2015 has led to tensions concerning the respect for fundamental human rights in the implementation of refugee and asylum policies within the European Union (Wollard & General, 2018). Whilst considerable attention has been paid to the asylum law and response of sea front line countries such as Greece and Italy, and Western European countries like Germany and the United Kingdom, little focus has been directed towards Hungary's response to the refugee crisis. Precisely, the existing research dealt with Hungary's non-cooperation European-level policies and Orban's populist discourse on migration (Nagy, 2017). Yet, there has been a lack of research on the official asylum law and policy of Hungary. Hence, it is essential to evaluate Hungary's official asylum law of 2015/2016 through the lenses of relevant fundamental human rights leading to the research question: *What do the amendments passed in 2015/2016 to the Act LXXX of 2007 on Asylum show about Hungary's respect for fundamental human rights?*

A doctrinal analysis of the amendments passed in 2015/2016 to the Act LXXX of 2007 on Asylum will be conducted in the light of specific human rights enshrined in European human rights and asylum law that can be applied in asylum policies such as right to asylum, right to non-refoulement, right to legal remedies, right to freedom from torture and inhumane treatment amongts other rights (Fullerton, 2017). The analysis will organize its argument around the following thesis statement: *By implementing the 2015/2016 amendments to Act LXXX of 2007 on Asylum, Hungary demonstrates a clear disregard for the respect for fundamental human rights. This is evident in the lack of legal protections afforded to asylum seekers, perpetuating their vulnerability and denying them the basic rights and dignity they deserve under EU and international law and human rights norms.*

This thesis will not only fill the research gap but will contribute to human rights advocacy efforts by providing insights into the alignment of Hungarian asylum law with fundamental human rights.

Literature review

This literature review will focus on the European response to the refugee crisis, exploring how it tested the region's commitment to the respect of fundamental human rights, with a specific focus on Hungary. Primarily, Fullerton (2017) argues that the European human rights law and asylum law intersect outlining the fundamental human rights that should be applicable in refugee and asylum policies, namely the right to asylum, right to non-refoulement, right to legal remedies, right to freedom from torture and inhumane treatment amongst other human rights. Boswell (2001), who contends that European values—such as the respect of fundamental human rights—were developed within a liberal universalist framework, supports this. According to the liberal universalist perspective, belonging to a certain state or society has no bearing on one's moral standing and all people are created equal (Boswell, 2001, pp. 6-8). Woollard and General's (2018) article asserts that the refugee crisis has not only challenged the European Union's management of migration but has also profoundly eroded European values, particularly concerning human rights as evidenced by violations within Europe, at its borders, and in the political discourse surrounding asylum seekers.

In Hungary, Orban claims to be the defender of European values (Mos, 2020), so one might wonder how Hungary's response to the refugee crisis resonated with the bigger picture of undermining the respect for fundamental human rights, as it is one of the main European values outlined in Article 2 of Treaty of the European Union (Klamert & Kochenov, 2019). Yet, in their article, Gozdziak, Main, and Suter (2020) critically examine how the refugee crisis has been utilized by certain political leaders, such as Viktor Orbán of Hungary, to advance narratives that emphasize a clash of civilizations and threaten the fundamental values of Europe like the concluding in a claim that Hungary's response undermined the respect for the EU's fundamental human rights. Additionally, Hungary's resistance to EU initiatives is further demonstrated by Nagy's works (2016, 2017), which show that the country has adopted securitization policies that compromise European principles and cooperative commitments, as well as refused to take part in relocation and resettlement programs. Concerns over adherence to the EU's fundamental human rights are raised by these initiatives, which include changes to asylum rules and the establishment of exceptional regimes and border procedures. Lastly, Kovacs and Nagy specifically focus on the changes to the asylum law in 2015/2016 and

conclude that the government has used the concept of a 'state of crisis' to justify exceptional and inhumane practices, including the abolition of the asylum system and the criminalization of irregular migration. Their article highlights the concentration of power in the hands of the government, the manipulation of migration issues for political gain, and the erosion of democratic principles in Hungary's approach to migration and asylum. Summarizingly, the relevant literature has underlined how the refugee crisis led to a European value crisis focusing on the lack of respect for fundamental human rights, yet the research evidence to this claim mainly comes from analyzing sea frontline and Western European countries. The example of Hungary's response has been paid little attention to, with most of the research focusing on non-cooperation European-level policies and Orban's populist discourse on migration leaving the question of Hungary's official asylum policy out of sight. Therefore, this thesis will fill a research gap by providing a detailed analysis of whether Hungary's asylum law lives up to the European value of respecting fundamental human rights.

Methodology

This thesis will seek to undertake a qualitative research method of doctrinal analysis by exploring the amendments passed in 2015/2016 to the Act LXXX of 2007 on Asylum through the lenses of fundamental human rights. Doctrinal research is a type of legal research that consists of analyzing and examining primary legal materials which include statutes and cases (Hutchinson & Duncan, 2012). More concretely, doctrinal research is more than secondary material research: it includes the research and interpretation of primary legal sources to understand what the law requires and what are the norms and legal principles that both the courts and legislatures create (MD, 2019). The focus of doctrinal research is on clarifying what is the content of a certain law, distinguishing them from the facts of any situation, and it is considered a core legal research method (Hutchinson, 2013). The research for this thesis will be done from a legal positivist view, which focuses on the importance of legal rules as they are written and enacted by authorities, rather than focusing on the practical outcomes of these rules (Leiter, 2001). Legal positivism does not evaluate the laws based on justice or humanity, rather just compare whether one law is in alignment with the existing legal frameworks (Schauer & Wise, 1996). In the context of Hungarian asylum law, legal positivism involves examining the text of the laws passed in 2015/2016, as well as any accompanying regulations and official documents, to understand the legal framework

governing asylum procedures in Hungary, instead of the practical implementation of these policies. When evaluating these amendments, it is important to look at existing legal frameworks and analyze whether the Hungarian asylum law is in alignment with them.

Therefore, this thesis will be structured as follows. Firstly, it will conceptualize the relevant human rights that member states are legally bound to incorporate into asylum law by looking at the Common European Asylum System, the EU Charter of Fundamental Human Rights, and the European Convention on Human Rights, as well as the relevant jurisdiction of the European Court of Human Rights (ECHR) and the Court of Justice of the European Union (CJEU). Secondly, it will describe the changes in 2015/2016 to the Act LXXX of 2007 on Asylum that occurred as a response to the refugee crisis. It will focus on the formal aspects of the law, such as its structure, language, and legislative intent in accordance with the legal positivist view. Lastly, it will compare whether the fundamental human rights conceptualized are in alignment with the amendments made to the Act LXXX of 2007 on Asylum in 2015/2016. This will be done by analyzing the legal text of the amendments through the lenses of relevant human rights. Further, the thesis will look at legal interpretations, case law, and precedents established by ECHR and CJEU through individual cases against Hungary's asylum law.

International and EU legal framework and norms

To provide a detailed analysis of the Hungarian asylum law of 2015/2016's respect for fundamental human rights, it is crucial to understand the European legal framework protecting the rights of refugees. Specifically, refugees arriving in Europe are protected by the intersection of legal frameworks: those established by the Council of Europe and those enacted by the European Union (Fullerton, 2017). This entails the following EU and international law sources:

(1) the Common European Asylum System (CEAS): the main source of EU asylum law enabling that refugees are treated fairly and equally within the EU member states;

(2) and the European Charter of Fundamental Rights (CFR): main EU law source of human rights that is applicable to national authorities when implementing EU law;

(3) European Convention on Human Rights (ECHR): international human rights law source that all members of the Council of Europe, including all EU member states are signatory to granting these rights to everyone within the member states of the Council of Europe without discrimination, reaffirming the universal application of these rights regardless of legal status or nationality;

(4) *case law of European Court of Human Rights (ECtHR) and the Court of Justice of the European Union (CJEU):* interpreting the human rights laid out in the above-mentioned documents in regard to refugees arriving in Europe.

Through analyzing texts from primary and secondary sources, the following section will conceptualize the relevant human rights that European Union member states are legally bound by when creating asylum laws (Fullerton, 2017).

Relevant human rights norms under the existing legal framework

Right to asylum or subsidiary protection

Article 18 of the European Charter of Fundamental Rights provides the right to asylum within the EU in accordance with the 1951 Refugee Convention and 1967 Protocol. This article establishes asylum as a subjective and enforceable right for all individuals in the need of international protection, regardless whether their grounds for protection are explicitly outlined in the Refugee Convention (Gil-Bazo, 2008). This right is reinforced in the Qualification Directive of CEAS, which outlines criteria for granting refugee status described as a third-country national or stateless person outside their country of nationality or former habitual residence due to a well-founded fear of persecution based on race, religion, nationality, political opinion, or membership of a particular social group, and unable or unwilling to avail themselves of that country's protection (Directive 2011/95/EU).

Complementary, it grants the right to subsidiary protection to those fleeing serious harm, such as indiscriminate violence resulting from armed conflict (Directive 2011/95/EU).

Main CJEU jurisprudence include the case of Ayubi, where it was ruled that if refugee status is given, individuals must receive equal social assistance to nationals regardless of their residence status (Ayubi, 2018). Further, the CJEU ruled that homosexuals from countries where it is criminalized are considered a social group eligible for refugee status (Minister voor Immigratie en Asiel v X and Y and Z v Minister voor Immigratie en Asiel, 2013).

Right to freedom from torture and inhuman or degrading treatment and right to human dignity

Article 3 of the ECHR grants the right to freedom from torture and inhuman or degrading treatment. Additionally, Article 1 of the CFR provides the right to human dignity. These are further reinforced in the Reception Condition Directive of the CEAS, which states that "standards for the reception of applicants that will suffice to ensure them a dignified standard of living" have to be provided, as well that even those in detention "should be treated with full respect for human dignity and their reception should be specifically designed to meet their needs in that situation" (Directive 2013/33/EU, 2013).

Article 3 is the most often interpreted human right by the ECtHR when it comes to refugee protection (Lamber, 2005). Decisions such as the Hirsi Jamaa v. Italy's case marked a milestone by extending the geographical scope of the ECHR to interceptions conducted at sea and non-European land as Italy's return of asylum seekers to Libya without asylum access violated the prohibition on inhuman or degrading treatment. Further, the Sarici case by CJEU has shown that member states of the EU are obliged to provide asylum seekers with accommodation, food, clothing and an allowance for daily expenses to fulfill Article 1 of CFR.

Right to non-refoulement

The ECHR or the CFR does not directly guarantee the right to non-refoulement. However, Article 78 of the Treaty on the Functioning of the European Union (TFEU) links the

establishment of a common asylum policy with the adherence to the principle of non-refoulement (Rossi & Sandhu, 2018). Consequently, Directive 2013/32/EU of the CEAS mandates that extradition decisions must not lead to refoulement.

Complementary, there is an extensive ECtHR case law that lays out the right to non-refoulement with further interpreting Article 3 of the ECHR. Cases include Salah Sheekh v. Netherlands, Cruz Varas and others v. Sweden and Chahal v. United Kingdom, in which asylum-seekers were subjected to expulsion to their home countries by the national governments where they sought asylum, but these decisions were overturned by the ECtHR as they would have faced inhuman or degrading treatment if returned back. Further, regarding the Dublin Regulation's provision on returning asylum seekers to the first entry country, the ECtHR and the CJEU interpreted the right to non-refoulement to to prevent EU states from returning asylum seekers to countries, where their asylum systems are severely deficient (Joined cases of N.S. v United Kingdom and M.E. v Ireland, 2011).

Right to effective legal remedies and fair trial

Article 47 of CFR ensures that individuals whose Union law-guaranteed rights are violated have the right to an effective remedy before a tribunal, emphasizing fair and public hearings by impartial tribunals established by law and access to legal assistance, including legal aid for those in need, to ensure justice and equality for all. Further, Articles 6 and 13 of ECHR ensure the same rights. These are also reinforced by the Asylum Procedures Directive (Directive 2013/32/EU, 2013), which mandates Member States to provide procedural safeguards for asylum seekers, including personal interviews, notice in a language they understand, interpreters, consultation rights, written decisions with reasons, informing applicants of decisions in a comprehensible language, providing information on challenging negative decisions, establishing time-limits for remedies, ensuring the right to a fair hearing before an impartial tribunal, and granting free legal assistance upon request after a negative decision.

Moreover, ECtHR has interpreted the right to legal remedies and a fair trial in favor of asylum-seekers on multiple occasions. In cases such as Rodriguez Valin v. Spain (2001), Čonka v. Belgium (2002), and Osu v. Italy (2002), the Court ruled that the governments did

not provide effective legal remedies resulting in either financial compensation to the asylum-seekers or appealing the national court's decision regarding their case (Reneman, 2008).

Right to liberty and security of person

Article 5 of ECHR and Article 6 of CFR guarantee the right to liberty and security of person, which means that one cannot be imprisoned or detained without having been convicted of a crime (Bachmann & Sanden, 2017).

However, Article 5(1)(f) of the ECHR, also specifies that states can detain migrants to prevent unauthorized entry into the country. Since the Saadi v. United Kingdom case (2008) the ECtHR case law has upheld the concept of "detention for administrative convenience" for asylum-seekers irregularly entering a State. But, once an asylum application enters the asylum system, asylum-seekers must be regarded as authorized and not liable to detention under Article 5(1)(f) (Ruiz Ramos, 2020).

Further in regards to Article 5, the ECtHR found that using transit zones as an extraterritorial space where the jurisdiction of the host country does not apply to asylum seekers waiting is illegal. Even in so-called transit zones, they have to be considered to be under the jurisdiction of the host country and have to be able access to legal or social assistance otherwise it is constituted as deprivation of liberty (Amuur v. France, 1996).

Right to respect for family and private life

Article 8 of the ECHR guarantees the right to respect for private and family life. This right includes important implications for family reunification, safeguards against arbitrary separation of families and offers protection to minors (Thym, 2008). This right is also reflected in the Reception Conditions Directive and in the Dublin Regulation as these specify that in the case of unaccompanied minors efforts have to be made to look at family reunification possibilities and appropriate conditions for children have to be provided upon detention (Directive 2013/33/EU, 2013).

There is a developed case law by the ECtHR mostly regarding the protection of minors. For instance, in cases such as Muskhadzhiyeva and Others v. Belgium (2010), Kanagaratnam and Others v. Belgium (2011), it was established that even if detained together with family, if the conditions are not accurate the right for family and private life is violated.

Applicability of European and international human rights norms to Hungarian legal context

The sources used to conceptualize the relevant human rights are all international and EU law sources that are legally binding to Hungary. Further, European values including respect for human dignity, freedom, democracy, equality, respect for fundamental human rights, and the rule of law are highlighted in Article 2 of the TEU and are legally binding for all member states, including Hungary (Blanke & Mangiameli, 2013). Thus, respect for fundamental human rights should be one of the main objectives of Hungarian domestic law.

As a component of main EU law since 2009, the EU Charter of Fundamental Rights binds all EU members. Violating the Charter can result in legal challenges before national and EU courts as it establishes guidelines for the interpretation and implementation of EU law, particularly asylum law (Gil-Bazo, 2008). Its respective court, the CJEU provides mandatory guidance on the interpretation of asylum-related provisions in EU law since the Lisbon Treaty (Zalar, 2013). Consequently, the case law of the CJEU further emphasizes Hungary's obligation to comply with EU law (Sadowski, 2018). Additionally, the Common European Asylum System (CEAS) establishes legally binding rules and procedures for member states to ensure the rights of asylum seekers are respected (Guild, 2017).

Complementary, the Fundamental Law of Hungary mandates alignment with international law, including the ECHR, which holds supremacy over domestic laws (Bárd, 2016). Further, Hungary’s fundamental law dedicates importance to ECtHR's jurisprudence, particularly regarding asylum law highlighting that Hungarian domestic law should apply ECtHR’s case law (Bárd, 2016). Overall, Hungary is legally bound by all these international and EU law sources outlining the rights of refugees, which must be protected in the Hungarian asylum law as well.

Hungarian legal framework

After Hungary joined the European Union in 2004, it made efforts to reform its domestic legal system to align with EU and international law (Nagy, 2016). Consequently, it has created a new asylum law namely, the Act LXXX of 2007 on Asylum. This act outlined the reformed process for asylum seekers, including an admissibility and in-merit phase, judicial review of the asylum decision, and detention of asylum seekers. Amidst the refugee crisis in 2015/2016, Hungary has reformed its asylum system as a response to the high number of individuals trying to seek safety. Therefore, the focus of this section is to describe the changes made to the Act LXXX of 2007 on Asylum, so the following section can be compared to EU and international human rights norms. All the Acts used in the following section were amendments revising the Act LXXX of 2007 on Asylum.

Safe third country rules

In the Government Decree no. 191/2015 (VII. 21.) on safe countries of origin and safe third countries, the parliament was empowered with the right to adapt a list of safe third countries. Specifically, it identified countries such as Kosovo, Canada, Australia, New Zealand, Switzerland, United States of America (except states with the death penalty), all the member states and candidate member states of the EU, except Turkey and member states of the European Economic Area (cl.2). All asylum claims that were submitted from applicants who came through a safe third country were deemed to be inadmissible with the claim that the individuals could have applied for effective protection in those countries (Padravi et al, 2015 November). However, asylum-seekers have the chance to appeal this decision, if they can submit substantial proof that they did not have access to apply for asylum in the classified safe third country (cl. 3).

Transit zones:

As part of the Act CXL of 2015 on the amendment of certain Acts related to the management of mass migration, a physical fence and transit zones have been created on the Hungarian-Serbian and Hungarian-Croatian borders (cl.20). These zones are physically separated with barbed-wire fences in between the Hungarian and Serbian border and host temporary buildings for public authorities dealing with individuals arriving through the

transit zone. Individuals in the transit zones often have no access necessities such as food, water, and shelter. Yet, they have to wait there until their border is completed (Pardavi et al, 2017). The transit zones are described as not Hungarian territory but rather "no man's land" (cl. 15), thus many who try to enter through the transit zones are pushed back to Serbia (ECRE, 2016). Daily, very few asylum-seekers are admitted from the Serbian and Croatian territories as the transit zones are described to have the capacity to let in a maximum of 100 individuals a day (Padravi et al., 2015 November). This capacity often leaves individuals waiting outside of the fence for days with no access to shelter or any support (Padravi et al, 2017).

Procedural changes:

With the introduction of the transit zones and procedural changes, the process for applying for asylum has changed significantly. In Figure 1 and Figure 2, the differences between the procedures are outlined, and described below.

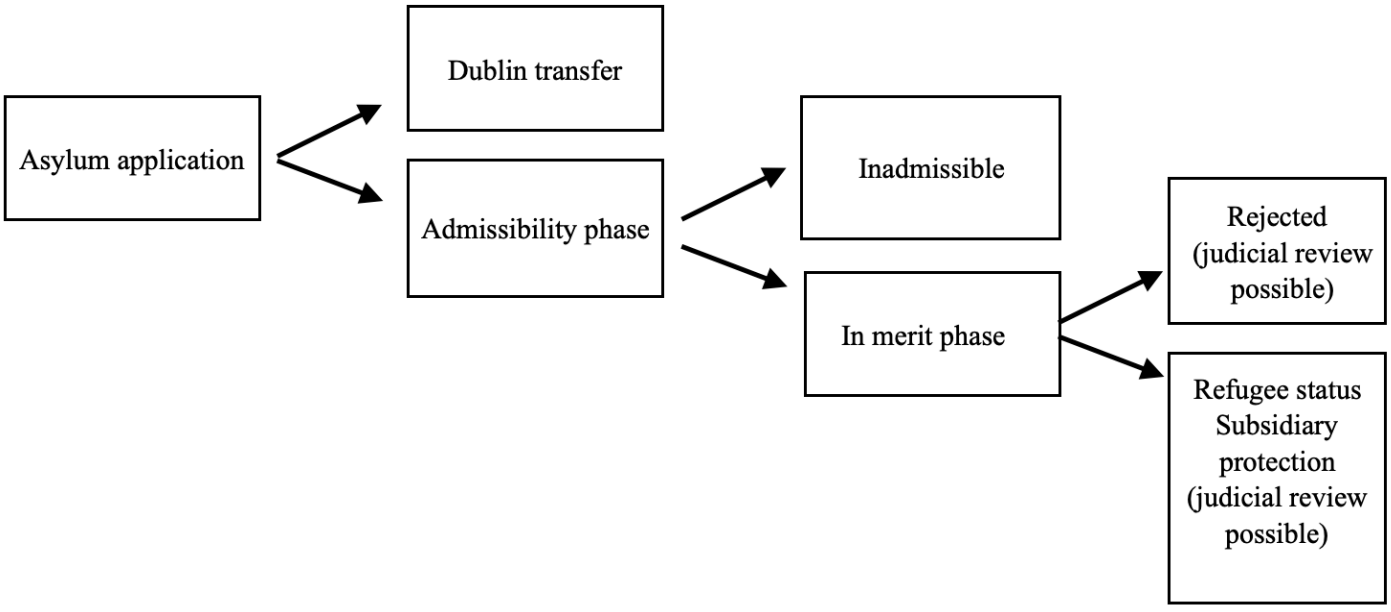

Figure 1: Simplified figure of asylum application before the procedural changes

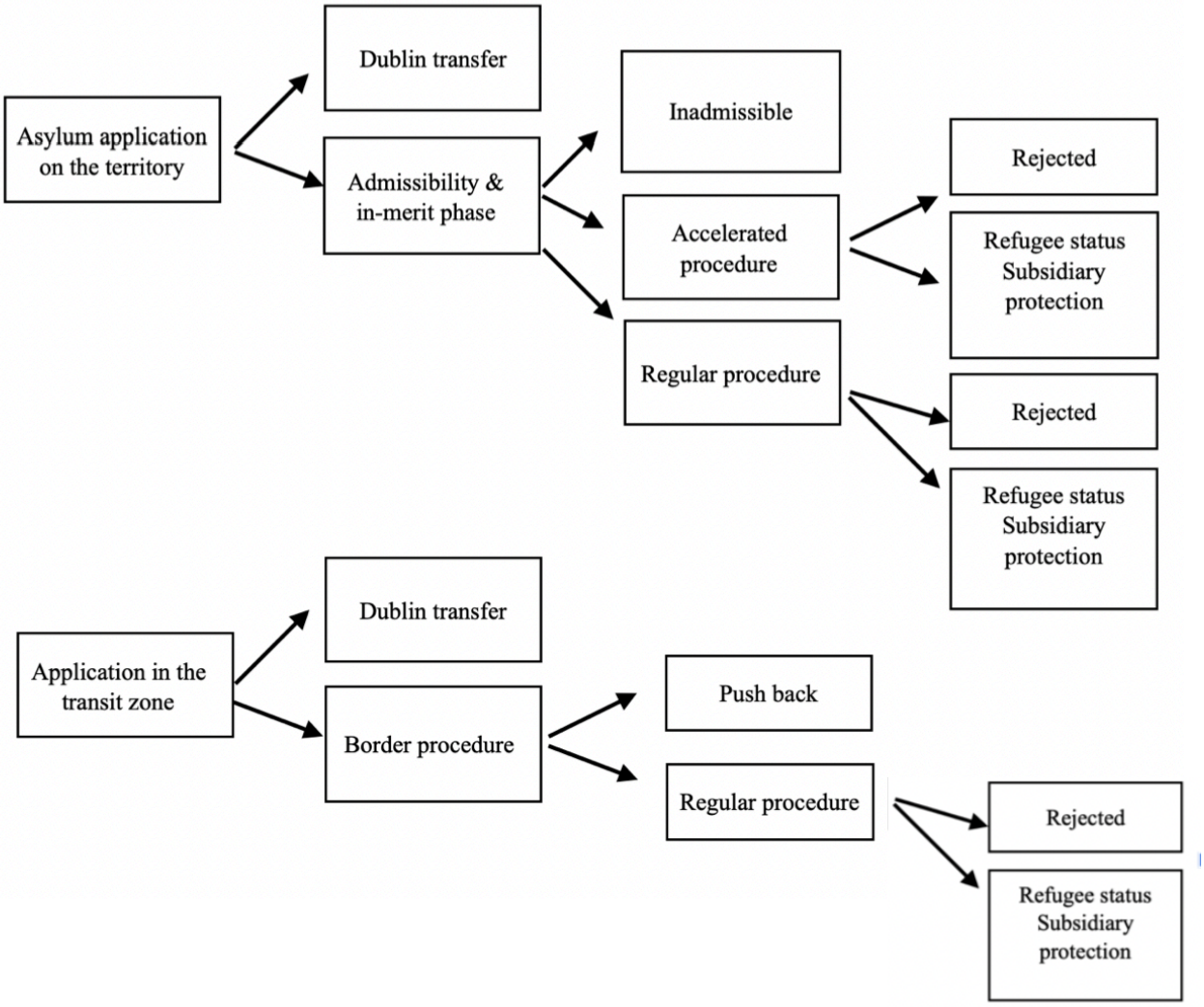

Figure 2: Simplified figure of asylum application after the procedural changes

Merging admissibility assessment procedure and in-merit procedure into a single procedure

In Act CXXVII of 2015 on the temporary closure of borders and amendment of migration-related acts, the two phases of the asylum process, namely the admissibility and in-merit phase have been merged. In practice, it means that asylum-seekers will only have one interview for their asylum application to express the reasons why they need international protection (cl. 26). The outcome of this process can lead to inadmissibility, accelerated procedure or further examination of the asylum application. The decision has to be made

within 15 days. If after the one interview, their asylum claim is rejected they only have a 3-day window to submit a request for a judicial review, in which asylum-seekers specifically have to ask for an extra hearing before the court (cl. 36). Further, most of the steps of the procedure are in Hungarian, except for the interview, where by law interpreters should be provided. The asylum-seeker only receives a document with the decision in their native language, once it has been deemed inadmissible (cl. 34). This law does not hold a suspensive effect, thus some asylum-seekers might be deported back to the country they came from whilst their appeal of the case goes on (Padravi et al., 2017).

Accelerated procedure

As part of the procedural changes in Act CXXVII of 2015 on the temporary closure of borders and amendment of migration-related acts, a new type of asylum processing has been introduced, known as the accelerated procedure. It aimed to simplify the asylum application filed on the territory by combining the newly created safe third-country rules and the procedure conducted at the transit zones. Further, it aimed to reduce asylum application processing time (cl. 30). Specifically, the accelerated procedure can be introduced on 10 grounds if the applicant discloses only irrelevant information for recognition as a refugee or subsidiary protection; originated from a country listed as safe by the European Union or national legislation; misled authorities through false identity or nationality information, including false documents or withholding information; destroyed or discarded identity/travel documents in bad faith; makes incoherent, contradictory, or false statements about their country of origin; submitted subsequent applications that are not inadmissible; submitted an application solely to delay or frustrate deportation orders; entered Hungary unlawfully or extended residence unlawfully without timely application submission; refuses fingerprinting compliance; poses a serious threat to Hungary's national security or public order, or previously expelled for harming public safety or order (cl. 34). After the decision has been made within 15 days, the individuals only have 3 days to appeal this decision, and the second hearing is only held when necessary (cl. 36). The criteria for necessity is not defined, leaving it up to the interpretation of the judges. Lastly, vulnerable applicants are not exempted from the accelerated procedure (Padravi et al., 2015 November).

Border procedure

In Act CXL of 2015 on the amendment of certain Acts related to the management of mass migration and Act XCIV of 2016 on the amendment of necessary modification to the broad application of the border procedure combined, a new procedure strictly used in the transit zones has been introduced. There is only an admissibility phase, which has to be decided upon 8 days (Act CXL of 2015, cl. 15). The need for international protection is not examined at the border procedure, only the fact of whether the individual entered from a safe third country or not. Until the claim is over, the individuals stay in the transit zones on the Hungarian-Serbian border for the period until their border procedure has been processed. After the decision on admissibility within the border procedure, the asylum-seeker has to appeal within 7 days, still from being physically present in the transit zone, which is a form of "detention without court control with an extremely fast procedure entailing no real access to legal assistance and dramatically reducing legal remedies" (Pardavi et. al., 2017). If the appeal is rejected, the individuals are denied entry to the territory of Hungary and pushed back to Serbia (Act XCIV of 2016, cl. 3). This procedure does not apply to vulnerable people, yet, the authorities only recognise special needs for those who exhibit obvious vulnerabilities; as a result, asylum seekers who have experienced trauma or mental health issues, or who have been the victims of human trafficking might be subject to the border procedure (Pardavi et. al., 2017).

Criminalization of illegal entry

Together in the Act XCIV of 2016 on the amendment of necessary modification to the broad application of the border procedure & and adding Articles 352 A, B, and C into the Criminal Code, the illegal crossing of the border has been made a criminal act, with a maximum three years imprisonment as punishment. If the fence has been damaged, based on the value of the damage, the imprisonment years increase (Criminal Code, Articles 352 A, B & C). Until their criminal case goes on they can be held in "house arrest" in detention or reception centers. The individuals are not entitled to make an asylum application whilst the criminal case goes on. Further individuals intercepted within eight kilometers of the border undergo scrutiny by the police (Act XCIV of 2016, cl. 4). If it's determined that they lack the right to remain, the police may opt not to initiate a formal expulsion process, which typically includes legal representation, a public hearing, and the right to appeal. Instead, law enforcement

officials may forcibly push these individuals across the border into Serbia or Croatia (Act XCIV of 2016, cl. 3). In this case, they are deprived of being able to submit asylum.

Changes in support

Introduced in the Government Decree no. 62/2016. (III.31.) on the amendments of certain government decrees relating to migration and asylum, all the integration assistance was taken away from recognized refugees and individuals with subsidiary protection. Consequently, they had no access to financial assistance for their first accommodation and social services including health care and education (cl. 2). The length to be able to stay in the reception center after having a recognized refugee or subsidiary protection status has been cut to 30 days (Padravi et al., 2017). In some cases, asylum seekers found to possess significant assets or funds may be obligated to reimburse the Immigration Appeals Office for reception costs (cl. 5).

Analysis

In the previous sections, the thesis described the international and EU legal framework and human rights norms, as well as the Hungarian legal framework on asylum in 2015/2016. Further, it was highlighted that the documents used to conceptualize the human rights norms are all applicable and legally binding for the Hungarian legal framework. In this section, an analysis will be conducted to show that despite the applicability of human rights norms, *the amendments passed in 2015/2016 to the Act LXXX of 2007 on Asylum show that Hungary does not respect fundamental human rights.* The analysis will explain how each of the changes to the Hungarian asylum system described in the Hungarian legal framework section undermined specific conceptualized human rights.

Safe third country rules

Serbia is not considered a safe third country by many European countries due to the lack of a functioning asylum system and the inhumane conditions asylum-seekers face traveling through the country (Krstić, 2018). Despite Serbia not being a safe third country, it was on Hungary's designated safe country list. This allowed all individuals who sought asylum in Hungary but transitioned through Serbia to be deemed inadmissible based on safe third country grounds and removed back to Serbia without the cooperation with Serbian police

(Government Decree no. 191/2015, cl. 2). This decision could be only overturned, if they could prove that they did not have the chance to apply for asylum in a safe third country (Government Decree no. 191/2015, cl. 3).

The right to asylum as described in CEAS and CFR is undermined as asylum applications are automatically deemed inadmissible if the individual enters through Serbia, failing for an opportunity for a fair and individualized assessment of their protection needs. Overturning this decision is hardly possible as most of the asylum seekers entering from Serbia are "smuggled through [the] country unknown to them and are extremely unlikely to have any verifiable, 'hard' evidence to prove" that they could not claim asylum there (ECRE, 2023). Further, Serbia's asylum system is inadequate due to restricted access to the asylum procedure, lack of specific deadlines for actions, insufficient staffing at the Asylum Office, lack of guarantees for the independence and competence of Asylum Commission members, and excessive caseload in the Administrative court (Krstić, 2018), thus even if the individuals would not be smuggled through the country, they would have restricted access to exercise with their right to asylum.

In addition, inadmissible decisions put the individuals at the risk of removal back to Serbia, which breaches the right to non-refoulement as outlined by TFEU and the right to freedom from torture or inhuman or degrading treatment as stated in ECHR. As the removal is informal, without cooperation with the Serbian authorities, they are left with no legal status or material/financial support from the Serb state. Due to the lack of legal status in Serbia, they are at risk of being returned further back to Macedonia or Greece leading to chain refoulement (Ćeranić Perišić, 2019). Eventually, the last stop of the chain of refoulement is usually their home country, where they would face persecution that they were trying to escape from (Mathew, 2019). Moreover, the removal to Serbia without having a legal status puts them at risk of inhumane treatment as they have no material or financial support leading to often not being able to fulfill their basic needs such as shelter or food, which is especially worrying for the winter months (CARE, 2015). Lastly, if they are discovered without legal status in Serbia, asylum seekers are often put into "classic prisons", where they often experience sexual harassment, physical violence, and theft of personal belongings (Passarlay, 2016).

For this reason, Hungary's designation of Serbia as a safe third country, resulting in the rejection of asylum claims and expulsion of individuals, was found to violate human rights principles by both the ECtHR and CJEU (Ilias and Ahmed v Hungary; European Commission v Hungary, 2020).

Transit zones

Transit zones are described to be outside of the jurisdiction of Hungary (Act CXL of 2015, cl. 20). The existence of this extraterritorial space with no access to Hungarian jurisdiction undermines the right freedom from torture or inhuman or degrading treatment; the right to respect for family and private life, the right to liberty and security of person; the right effective legal remedies and the right to asylum.

Firstly, the conditions in the transit zones are inhumane, violating the right to freedom from torture or inhuman or degrading treatment as stated in ECHR due to the lack of adequate living conditions. There is no shelter, medical support, or the distribution of basic necessities such as water and food by the state, often leading to food deprivation or worsening health conditions for individuals in the transit zones (In the R.R. and Others v Hungary, 2021). In addition, NGOs have limited access to the transit zones to provide the necessary services to eliminate inhumane living conditions (Padravi et al., 2017).

Secondly, the right to respect for family and private life as described in ECHR is violated due to the lack of legal safeguards for families and minors being detained in the transit zones. There are no specific guidelines against the arbitrary separation of families in the transit zones, thus they are frequently divided even if the family has some minor members (In the R.R. and Others v Hungary, 2021). In addition, there is no individual assessment of whether the conditions in the transit zones are specifically suitable for minors, further exacerbating the violation of their rights as they are subjected to conditions that may be detrimental to their physical and psychological well-being and development (M. H. and S. B. v. Hungary, 2024).

Thirdly, the right to liberty and security of persons as guaranteed in CFR and ECHR is undermined due to the lack of limitations on the length of detention, as well as unclear

grounds as to why they are detained in the transit zones (Act CXL of 2015, cl. 20). Often, individuals attempting to enter through the transit zones are unlawfully and arbitrarily detained, without having committed a crime and with insufficient consideration given to their specific circumstances when assessing the appropriateness of the conditions (Makszimov, 2020). This neglect places their security at risk, subjecting them to experiences that may mirror the very conditions they fled from, such as indefinite detention, lack of legal clarity, and potential exposure to inhumane treatment. For instance, this is reflected in the O.M. v. Hungary case, where the authorities failed to conduct a personalized assessment, disregarding the applicant's vulnerability due to sexual orientation, thus endangering them to the same risks they fled from initially (O.M. v. Hungary, 2016). Additionally, the maximum length of the detention is not clarified, resulting in some individuals being detained for more than 500 days, as well as individuals waiting are not given reasons as to why they are being held in the transit zones (Helsinki Committee, 2022).

Fourthly, the right to effective legal remedies outlined in CFR is violated due to the lack of legal aid and guidance present in transit zones (Padravi et al., 2017). Individuals awaiting the completion of the border procedure in the transit zone, lack access to legal representation and information on their rights, responsibilities, as well as the asylum application process. This leads to the violation of the right to legal remedies, as they have no help to complete a judicial review for the border procedure and often they do not have access to review the inadmissibility decision in their language (Act CXL of 2015, cl. 20).

Lastly, the right to asylum, as protected by CFR and CEAS, is undermined by the transit zones' capacity to admit only 100 individuals per day (Padravi et al., 2015 November). The limited capacity leads to prolonged waiting periods leaving many individuals outside of the transit zones without shelter and other necessities for extended periods. These extensive delays and insufficient processing capacity violate the asylum-seekers right to prompt and effective access to asylum procedures.

Merging admissibility assessment procedure and in-merit procedure into a single procedure

Even Though merging the admissibility and in-merit step of the asylum procedure was dedicated to fastening the asylum claims being processed, it led to asylum-seekers only having to complete one interview (Act CXXVII of 2015, cl. 26). This interview takes place

right as they submit their asylum claim, which is the moment they arrive after a long and stressful journey. Having this single interview at the outset of their asylum claim can be overwhelming and potentially retraumatizing for asylum-seekers, as it requires them to recount their experiences of persecution or violence immediately upon arrival, without sufficient time to process their journey or seek psychological or legal support. This undermines their successful exercise of the right to asylum outlined in CFR and CEAS. Inadequate preparation is one concern, as the asylum-seekers might not have enough time or capacity to gather the essential information to understand the asylum process and obtain legal guidance, which will weaken their claims. The psychological influence is another issue: having to re-count traumatic experiences about their persecution or journey immediately leads to distress, impairing the asylum-seekers ability to present a clear and detailed account of their experiences.

Further, the procedure undermines the right to legal remedies, as there is limited information in the mother tongue of the applicant, as well as there is a short window for judicial review (Act CXXVII of 2015, cl. 36). Specifically, most of the procedure and legal paperwork is conducted in Hungarian, and only the admissibility decision is sent out to the applicant in their language. This makes it hardly possible to prepare for challenging the negative decision. Complementary, even if the information was given in a language the applicant would understand, the combination of the three-day notice for judicial review and the applicant's responsibility to ask for extra hearing makes it impossible to appeal the inadmissibility decision. Also, the procedure has no suspensive effect, individuals might be subject to deportation back to their country or the first safe country they entered, where they would face inhumane treatment or persecution violating their right to non-refoulement as outlined in TFEU.

Accelerated procedure

Despite the accelerated procedure being introduced to fasten and make it more efficient for asylum seekers to submit their claims, it lacks essential legal safeguards undermining their right to effective legal remedies as outlined in CFR and CEAS. Firstly, vulnerable groups including unaccompanied minors and the elderly are not exempted from the procedure, they have to undergo the fast accelerated procedure right as they claim asylum (Padravi et al., 2015 November). Unaccompanied minors are often not aware of the asylum procedures and

have difficulties accessing legal aid due to language barriers, especially in a rapid and overwhelming process. They most likely were more vulnerable to trauma and abuse during their journey. Similarly, elderly asylum seekers face unique challenges due to age-related vulnerabilities, such as physical limitations, cognitive decline, or health issues. These factors can hinder their ability to participate effectively in a fast-tracked process, potentially leading to incomplete or inaccurate assessments of their protection needs. Without adequate time and support to present the case of the vulnerable population, they are at greater risk of being denied asylum or facing deportation to unsafe conditions. However, the inadequate time of the accelerated procedure and its judicial review not only affects the vulnerable population but also hinders the right to effective legal remedies of all asylum-seekers, as they just simply don't have enough time to prepare for their asylum claim.

Additionally, the ten grounds on which the accelerated procedure can be introduced are vague and are up to the interpretation of the court (Act CXXVII of 2015, cl. 34). This is especially problematic in the cases of providing irrelevant information, or dishonestly regarding identity documents. Firstly, as asylum-seekers often do not understand how the asylum interview works, therefore they might share as many details about their case as possible in the hope of helping them being granted asylum. Secondly, the identity documents of the applicants are often destroyed or lost due to the dangerous journey they take. By not providing specific guidelines on how to interpret these clauses of the law, asylum-seekers are subject to the goodwill of the evaluators, undermining their right to a fair trial and effective legal remedies.

Border procedure

The border procedure does not allow individuals arriving at the border to apply directly for asylum, it only assesses their admissibility for international protection (Act CXL of 2015, cl. 15), undermining their right to asylum as outlined in CFR and CEAS. As they arrive from Serbia, which is considered a safe third country, they are almost always deemed inadmissible for asylum and denied entry to the territory of Hungary. There is a possibility to appeal this decision, however, as they stay in the transit zone during the procedure, they have very limited legal assistance making it impossible to submit a judicial review within time. Therefore, the existence of the border procedure has completely abolished the right to asylum in Hungary, as almost all the individuals trying to seek safety arrive through the transit zones,

thus undergoing the border procedure, resulting in being inadmissible for asylum due to entering from a third country.

Further, as they are denied entry to the territory of Hungary from the transit zones, they are often violently pushed back to Serbia, resulting in the violation of the right to non-refoulement. As the conditions in Serbia are cruel for asylum seekers with the lack of support and inefficient asylum system, pushed-backed individuals may be subject to inhumane and degrading treatment.

Criminalization of illegal entry

Under the new legislative changes, individuals illegally entering the country can be detained and imprisoned with more years to their sentence if they destroy the fence on the border (Criminal Code, Articles 352 A, B & C). The criminalization of illegal entry has completely banned individuals from exercising their right to asylum outlined in CFR and CEAS, as it imposes punitive measures on those who cross borders irregularly, effectively deterring them from accessing legal channels to seek refuge and protection. The criminalization of illegal entry also allows law enforcement authorities to push back individuals within 8 km of the fence to Serbia (Act XCIV of 2016, cl. 4). This violates the right to non-refoulement highlighted in TFEU, as being deported back to Serbia can lead to chain refoulement (Ćeranić Perišić, 2019) and having to face inhumane conditions (CARE, 2015).

Changes in support

The withdrawal of financial support and integration assistance provided by the government undermines the right to freedom from torture or inhuman or degrading treatment as outlined in ECHR by stripping recognized refugees and individuals with subsidiary protection status from essential resources to rebuild their lives (Government Decree no. 62/2016, cl. 2). Without access to financial support and social services, these individuals are unable to move forward and integrate into their new communities. Also, as outlined under the jurisdiction CJEU individuals must receive equal social assistance to nationals regardless of their residence status (Ayubi, 2018), therefore individuals with recognized legal status are entitled to similar services as provided to citizens, yet this does not happen in Hungary. Complementary, decreasing the length of stay in reception centers and requiring asylum

seekers to reimburse authorities for costs both increase the risk of homelessness, social exclusion, and financial hardship, thereby violating the right to freedom from torture or inhuman or degrading treatment as described in ECHR.

Conclusion

In conclusion, this thesis set out to examine Hungary's official asylum law of 2015/2016 in light of fundamental human rights principles, answering the research question: *What do the amendments passed in 2015/2016 to the Act LXXX of 2007 on Asylum show about Hungary's respect for fundamental human rights?* Previous research has mostly focused on Hungary's rhetoric on migration and its non-cooperation in EU-level action on migration, yet the official asylum laws of Hungary have not been researched extensively. Hence, this thesis aims to fill the research gap, as well as to contribute to human rights advocacy efforts by providing insights into the alignment of Hungarian asylum law with fundamental human rights.

The analysis has revealed that based on the amendments passed in 2015/2016 to the Act LXXX of 2007 on Asylum, Hungary does not respect fundamental human rights. Every single change to the Act LXXX of 2007 on Asylum violated at least one of the human rights conceptualized. With the procedural changes and safe third-country rules, Hungary's asylum system was completely abolished making it almost impossible for asylum-seekers to be granted international protection, fully undermining their right to seek asylum. Yet, some symbolic safeguards remained in the amendments as asylum-seekers had the right to appeal their rejection or inadmissibility decision, however, this was made very hard with the short deadlines, lack of information in the language of the applicant, and the lack of provided legal assistance. Even with the symbolic safeguards, the right to legal remedies was undermined. Further, the introduction of transit zones appeared to be the most problematic as it is illegal in international law, and violated multiple human rights such as the right to liberty and security of person and the right to freedom from torture and inhuman or degrading treatment. Moreover, the rules including Serbia as a safe third country, the criminalization of illegal entry, and pushbacks have subjected individuals to non-refoulement. Lastly, even if individuals acquired legal status in Hungary, their integration and life were made impossible with the complete abolishment of support.

The analysis has answered the research question by comparing the changes in asylum law to the relevant international and EU human rights norms. Specifically, the conceptualization looked at most of the relevant international and EU legal frameworks that are legally binding for Hungary, providing a comprehensive ground for analysis.The legal positivist method, which primarily concentrates on the amendments' legal wording, has made the examination more concise and clear.

The thesis's weaknesses however, come from its narrow focus; while it primarily examines the legal nuances of Hungary's asylum law, it does not go into great detail about the larger social or political environments that may have an impact on how these laws are applied and how they affect asylum seekers. Since the amendments were proposed amidst the refugee crisis in 2015/2016, the legal developments during that time may not accurately reflect the general tendencies in Hungarian asylum law. Furthermore, the absence of a comparative examination of the asylum policies of other nations can limit a more comprehensive view of Hungary's refugee law.

Drawing on the limitations of the research, further research could focus on taking a legal realist approach and also analyzing the societal and political conditions in which the laws were made. This would be complete if later amendments would also be looked at to compare whether the respect of human rights in asylum policies was only a result of the 2015 refugee crisis or it is an overall trend in Hungary’s approach to asylum. Complementary, future research could compare Hungary’s asylum law to other similarly “front line” countries to see whether there are similarities and differences in how they approach migration. It would be especially interesting to see if there is a link between Hungary’s democratic backsliding and its inhumane policies.

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