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Do Human Rights Actually Matter in Times of Cris(e)s? Assessing EU Asylum Policy in Crisis



Global Migration Processes and Hungary

Challenges and Responses
16 – 17 November 2015
Budapest, Hungary

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Context



KORMÁNY  INFORMÁCIÓ

**HA MAGYARORSZÁGRA JÖSSZ,
NEM VEHETED EL
A MAGYAROK MUNKÁJÁT!**

NEMZETI KONZULTÁCIÓ
a bevándorlásról és a terrorizmusról



SORRY ABOUT OUR PRIME MINISTER

MKKP & VASTAGBŐRBLOG INFORMÁCIÓ

COME TO HUNGARY BY ALL MEANS,
WE'RE ALREADY WORKING IN LONDON!

PLEASE EXCUSE OUR EMPTY COUNTRY,
WE'VE GONE TO ENGLAND!

KORMÁNY  INFORMÁCIÓ

HA NYUGATRA MÉSZ,
VÁRJ MEG!
MI IS MEGYÜNK UTÁNAD.

NEMZETI KONZULTÁCIÓ
a bevándorlásról és a terrorizmusról

I HAVE SURVIVED THE HUNGARIAN
ANTI-IMMIGRATION CAMPAIGN!

*"Egyetlen szabály: Egy a szabály: nem kell törni.
"Szegény embernek nyitni a káprát."*

KORMÁNY  INFORMÁCIÓ

HA MAGYARORSZÁGRA JÖSSZ, NE LOPJ!
A KORMÁNY NEM TŰRI A KONKURRENCIÁT!

NEMZETI KONZULTÁCIÓ
a bevándorlásról és a terrorizmusról

KORMÁNY  INFORMÁCIÓ

KI ITT BELÉPSZ,
~~HAGYJ FEL MINDEN REMÉNNYEL.~~
NE VEDD EL A MAGYAROK MUNKÁJÁT!

NEMZETI KONZULTÁCIÓ
a bevándorlásról és a terrorizmusról

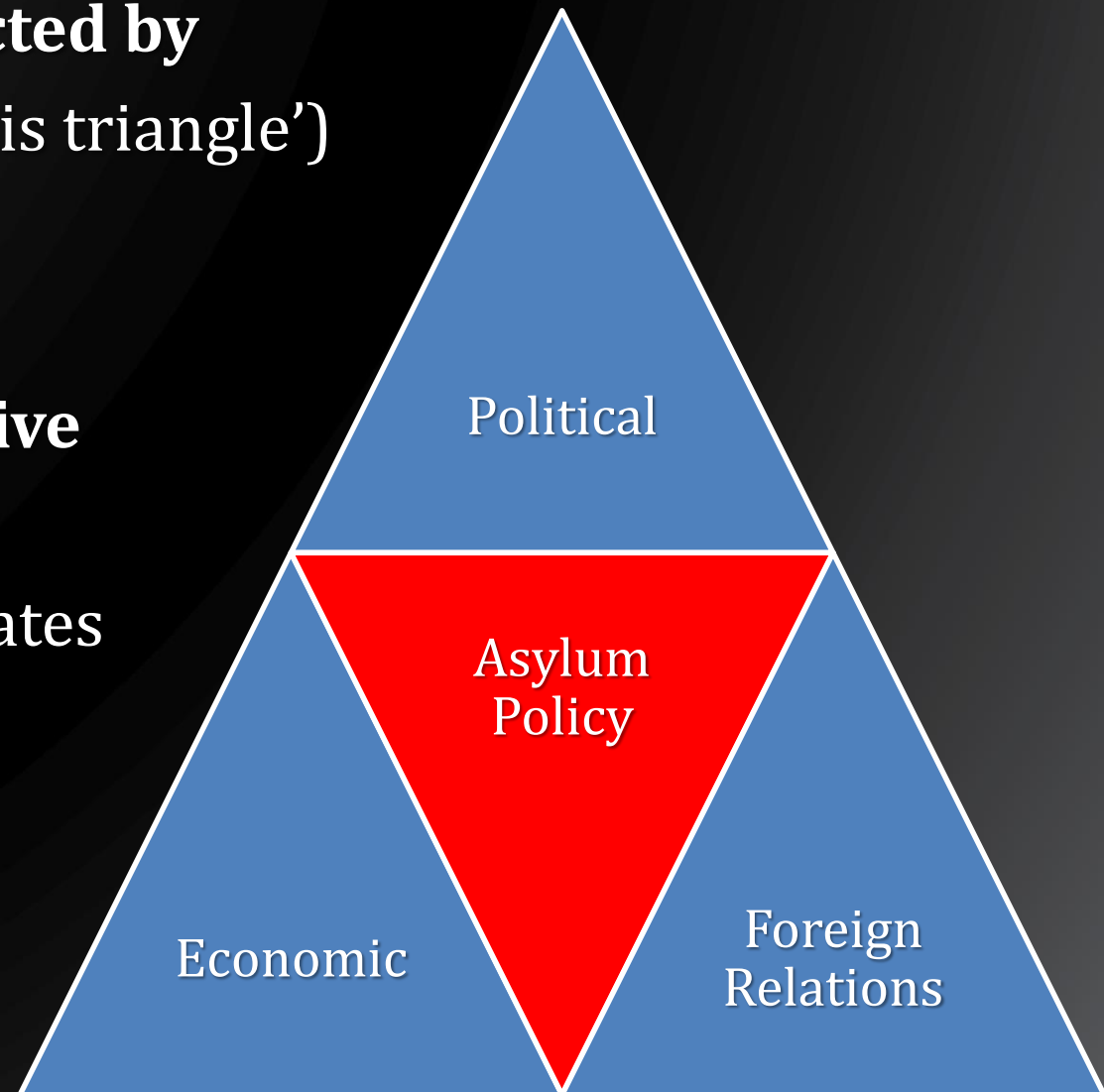
OUTLINE

- **Introduction: EU Asylum Policy and Crises in the EU**
- **Do EU Values Matter in Asylum Policy?**
- **EU Asylum Policy Tools: Non-compliance at the Outset?**
- **Hungarian Asylum Policy During Times of Crises**
- **The EU's Response and the Quota System**
- **Conclusion: Asylum Policy and EU Values**
- **Recommendations**

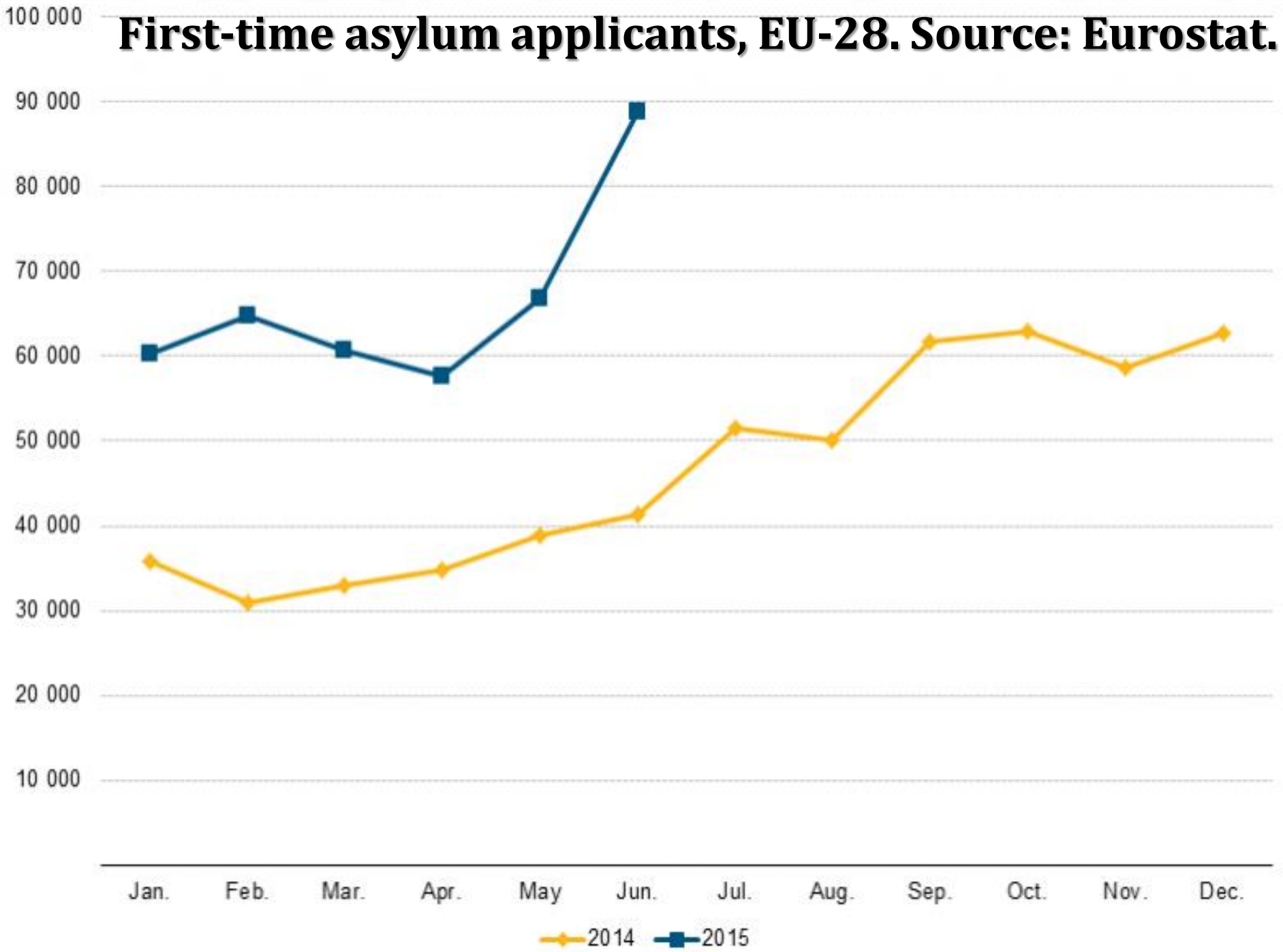
Introduction

EU Asylum Policy and Crises in the EU

- **EU Asylum Policy Affected by**
 - Crises in the EU ('crisis triangle')
 - Global situation
- **An EU Values Perspective**
 - at EU level
 - at level of member states
- **In-depth Case Study**
 - Hungary

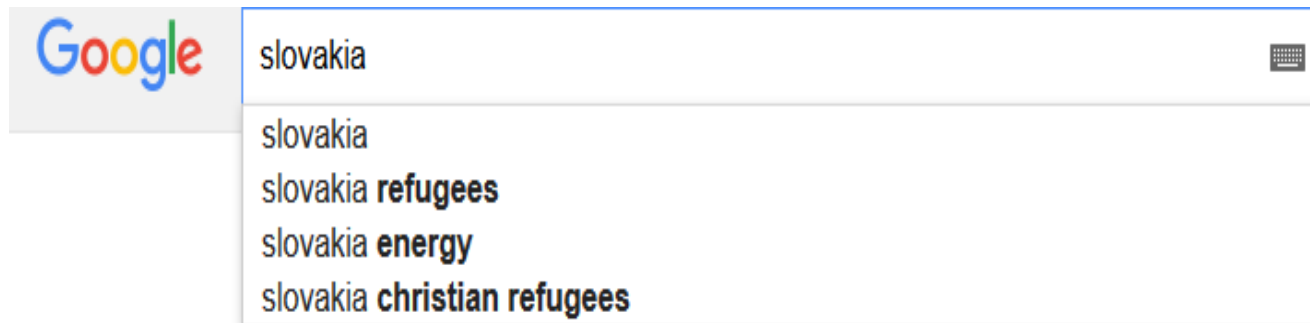
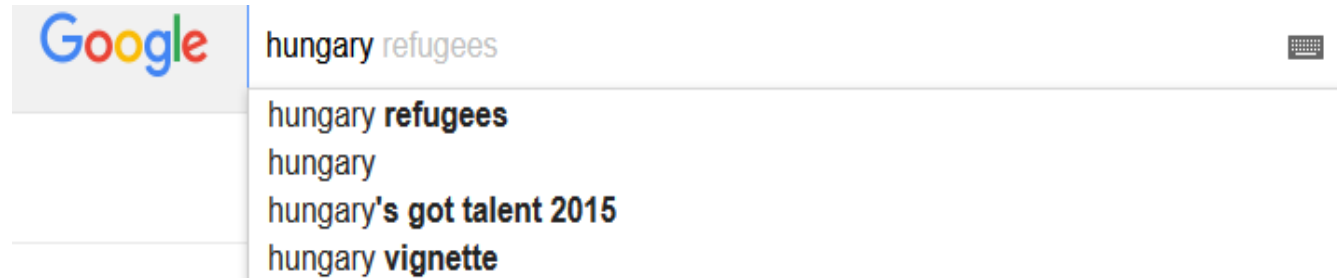


First-time asylum applicants, EU-28. Source: Eurostat.



Introduction II.

EU Asylum Policy and Crises in the EU



Do EU Values Matter in Asylum Policy?

I.: Legal Basis of EU Values



EU policies blamed as 'disgrace' or 'failure' (Schlamp 2013, Lopez 2015)
→ is the EU to be blamed?



An EU Values Perspective → Values of human dignity, liberty, democracy, equality, the rule of law, respect for human rights including minority rights (Art. 2 – 3 TEU)



A 'three-pronged' approach to fundamental rights protection in the EU → do we have it in practice?



The Charter → right to asylum (Art. 18)



The ECHR 'Strasbourg' → relationship



EU Law Link to Human Rights → binding for member states

Do EU Values Matter in Asylum Policy?

II.: ECJ and Asylum Policy

Criticisms

- Mutual trust principle
- Little attention paid to international law (Bank 2015)
- Other goals squared with non-refoulement rhetoric (Goodwin-Gill 2011)



Limits

- 'Human Rights Mindset' may not be sufficient (Douglas-Scott 2011)
- Court more active and successful recently (Garlick 2015)

EU Asylum Policy Tools

I.: Four Directives, One Regulation

- **Directives**

- **Temporary Protection** = Council Directive 2001/55/EC on minimum standards for giving temporary protection in the event of a mass influx of displaced persons
- **Reception Conditions [recast]** = Directive of the European Parliament and of the Council 2013/33/EU laying down standards for the reception of applicants for international protection
- **Procedures [recast]** = Directive of the European Parliament and of the Council 2013/32/EU on common procedures for granting and withdrawing international protection
- **Qualification** = Directive of the European Parliament and of the Council 2011/95/EU on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection

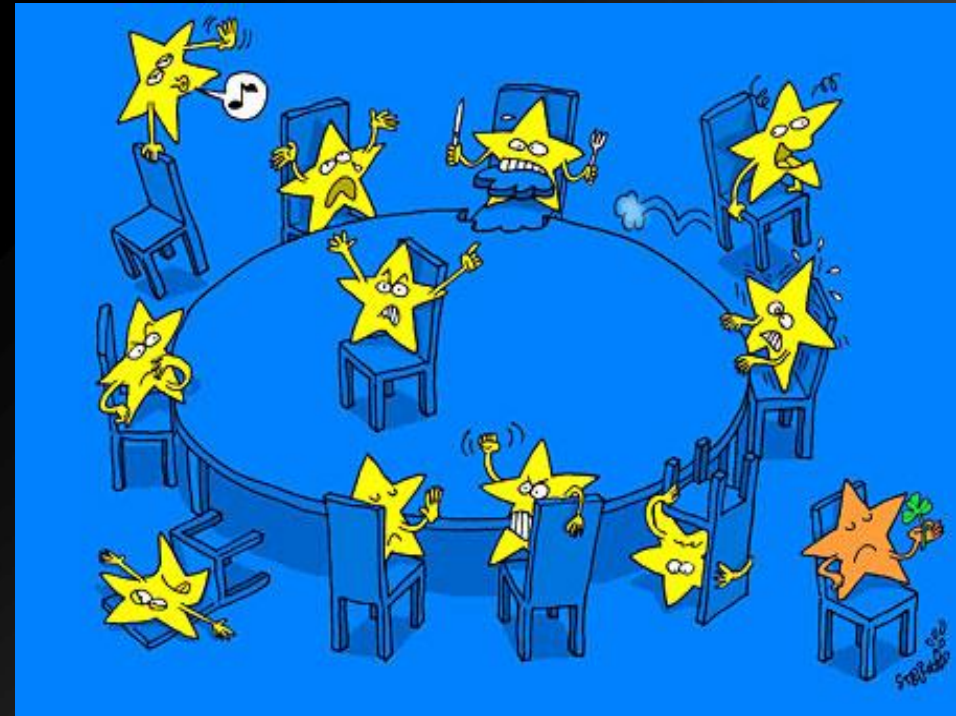
- **Regulation**

- **Dublin III** = Regulation of the European Parliament and of the Council 604/2013/EU establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person

EU Asylum Policy Tools

II.: Non-Compliance with EU Values?

- **Asylum Policy as a Test Case for the EU**
 - ‘Inward-looking’ approach contradicts EU values (Askola 2015)
 - ‘Inconsistencies’ with respect to international refugee law provisions (Goodwin-Gill 2011)
- **Back to the Future: The ‘Political Animal’ of the EU**
 - EU asylum policy one thing, its implementation another
 - Exemplary case of Hungary



Hungarian Asylum Policy

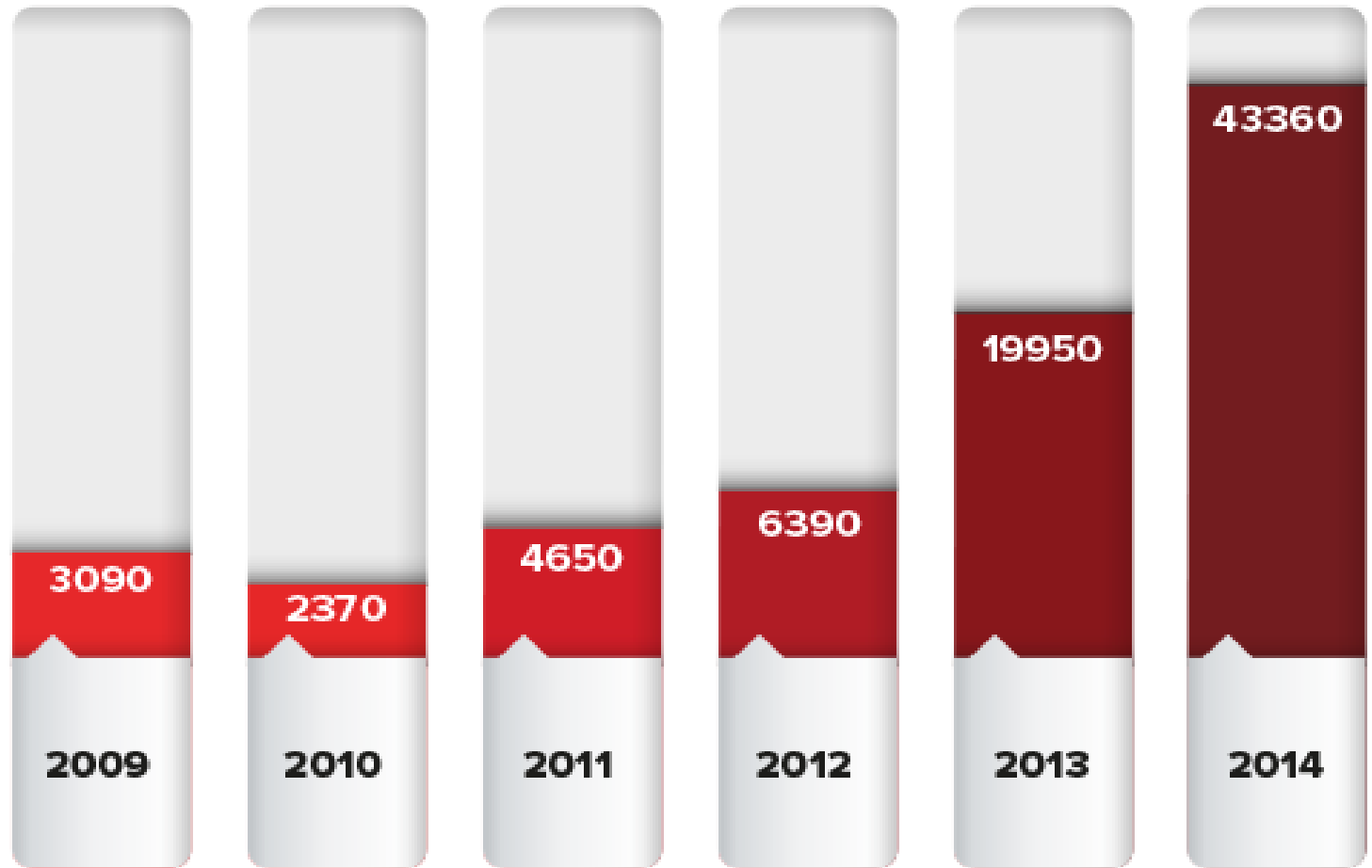
During Times of Crises I.



Source: Frontex operational reporting, PULSAR data as of 1 March 2014

Hungarian Asylum Policy

During Times of Crises II.



→ Air route

Greece

Turkey

Source: Frontex operational reporting, PULSAR data as of 1 March 2014

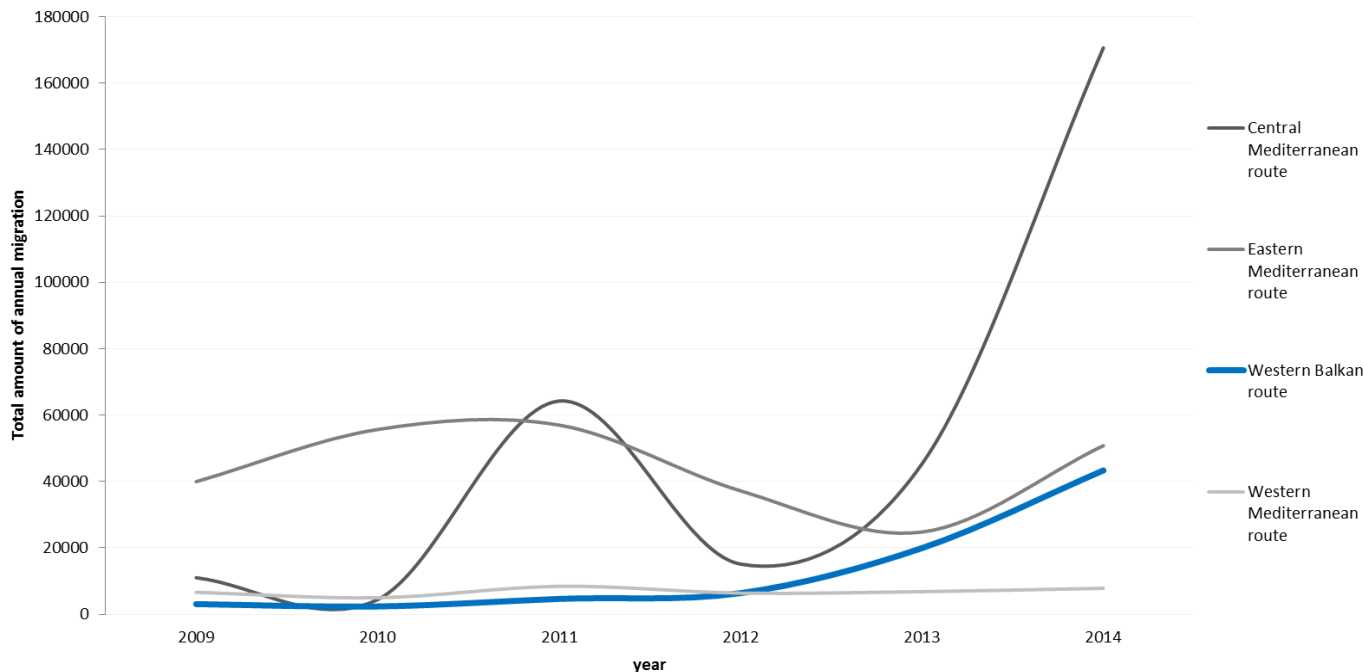
Hungarian Asylum Policy

During Times of Crises III.

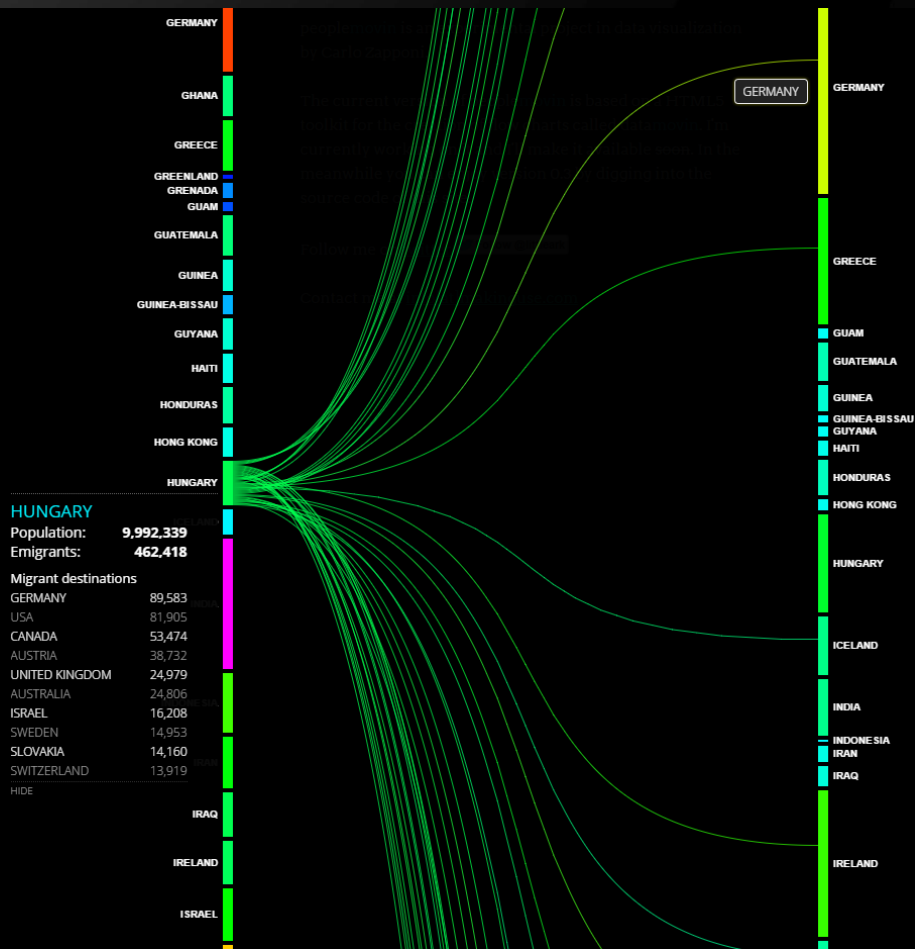
Hungary

- **Key migratory route to the EU (Western Balkan Route)**
- **More than 42 000 asylum seekers in 2014, less than .001 percent of applications accepted**

Fluctuation in migration routes towards the EU



A country of emigration



Hungarian Asylum Policy

During Times of Crises IV.



Rights of Asylum Seekers

- **Unaccompanied minors and vulnerable asylum seekers not identified**
 - If identify themselves, get basic services (reception centers)
- **Extensive detention** as the most serious violation of rights
 - More than 4 800 asylum applicants detained for up to 6 months (2014)
 - 40% of male asylum seekers detained
- **Overcrowded reception centers (750 in 216 spaces, 800 for 250)**

Hungarian Asylum Policy

During Times of Crises V.

Hungary and EU Asylum Instruments

- **Transposed most but not all directives**
 - Problems with reception conditions (detention facilities)
 - Procedures directive not transposed (similarly to many other countries)

BUT

- **Lengthy asylum proceedings** persist
- Limited possibilities to **appeal against the decision at court**

The EU's Response and the Quota System

Further Contradictions with EU Values? (I)

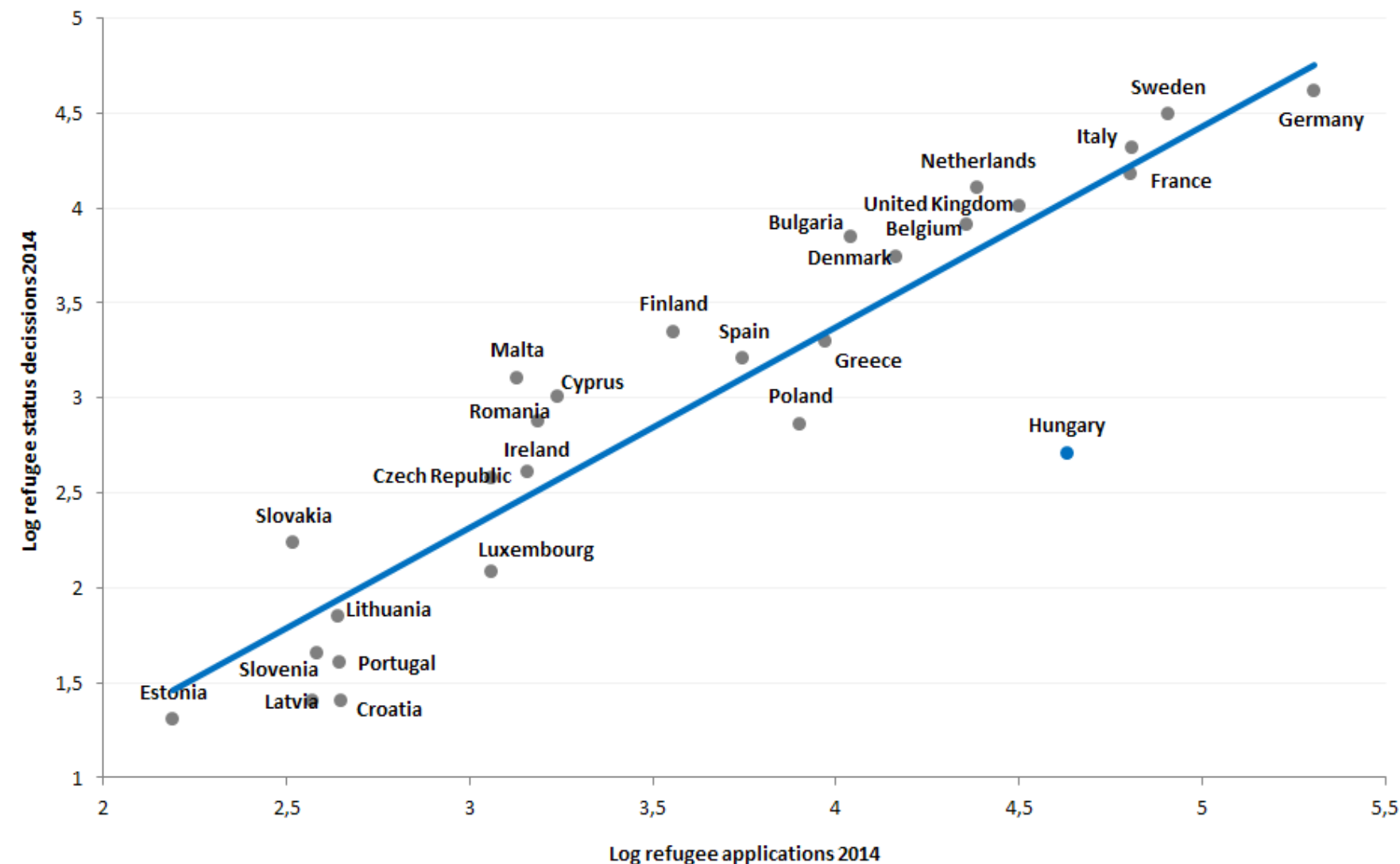


- **Major anti-immigration campaign by the government**
- **Orbán against the quotas (not alone)**
 - Temporary v. permanent reallocation mechanism
 - **Blaming the EU** instead of proposing solutions
 - **Suspending the Dublin Regulation (for a time)**
 - **Emphasis on return policy, instead of integration**
 - **Changes to safe countries of origin**
 - **Fences on the Serbian and Croatian border**
 - **Criminalizing asylum seekers**
- **EU's Response Hard to Hear**

The EU's Response and the Quota System

Further Contradictions with EU Values? (II)

Refugee applications 2014 versus Positive first instance refugee decisions 2014 (log10)



CONCLUSION

Asylum Policy and EU Values

- **Asylum Policy**
 - **Two levels of contradictions with EU values**
 - EU policies themselves
 - Implementation in the member states (Hungarian case)
 - **Pessimistic outlooks in Hungary**
- **The EU's Image**
 - Weak against diverging member states
 - Because of crises or other reasons?
 - Orbánization of the EU?

Recommendations

Three Groups of Actors

- **EU Institutions**
 - Activate Temporary Protection;
 - Accede to the ECHR;
 - Be More Strict on Post-Accession Conditionality;
 - Redraft the Dublin Regulation;
 - Proceed Towards More Harmonization in Migration Policies.
- **Hungarian Government**
 - Stop the Anti-Immigration Rhetoric;
 - Transpose Directives.
- **Hungarian and International Civil Society**
 - Promote the Benefits of Migration;
 - Counter the Government's Anti-Immigration Rhetoric;
 - Create Initiatives in Education;
 - Act as a Watchdog.

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Thank You for Your Attention!

Questions?

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