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**The Establishment and Development of  
Asylum Policies in East Central Europe**

*Master's Thesis*

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## **Abstract**

In the light of the current refugee crisis in the European Union, and the remarkably critical stance the East Central European states are taking in Brussels, this research contributes to a broader understanding of the Czech Republic, Slovakia, Hungary and Poland's policies towards refugees. By scrutinizing the process of developing refugee policies during the 1990s and 2000s, the research will demonstrate that the countries united in the V4 platform in their first years of transition generously contributed to international refugee protection. Steep increase of asylum applicants and negotiation talks with the EU in the late 1990s brought various changes to the refugee policies in the region, marked by more closely defining and the enhancing of asylum seekers' and recognized refugees' rights, but also by lower refugee recognition rates. Accession to the European Union ultimately resulted in more complete and comprehensive asylum policies in line with the Common European Asylum System (CEAS). However, the V4 states maintained rather restrictive interpretations of the European policy, explained by the pressure the CEAS places on the states at the EU's external border and lower economic capacity to accommodate large numbers of refugees. Recent developments are mostly the result of political exploitation of the issue against the backdrop of Euro-skepticism in the region.

## **Keywords**

**Refugees, Immigration, Asylum, Asylum policy, Refugee crisis, Central Europe, V4, CEAS**

**Range of thesis: 86 pages**

## **Abstrakt**

Tato práce přispívá k širšímu porozumění slovenské, české, maďarské a polské politiky vůči uprchlíkům a jejich kritického postoje, který tyto středovýchodní evropské státy v rámci uprchlické krize zaujímají v Bruselu. Na základě zkoumání vývoje uprchlické politiky od 90. let 20. století až do prvního desetiletí 21. století tato práce ukáže, že státy aliance V4 v prvních letech transformace velkoryse přispěly k mezinárodní ochraně uprchlíků. Vyjednávací rozhovory těchto zemí s EU v pozdních 90. letech a prudký nárůst žadatelů o azyl v uprchlické politice vyvolaly četné změny, především přesnější definování práv žadatelů o azyl a uprchlíků, ale i snížení míry přiznání ochrany. Vstup do Evropské unie měl za následek přijetí úplnější a obsáhlejší azylové politiky v souladu se společným evropským azylovým systémem (SEAS). Státy V4 zastávaly spíše restriktivní výklad SEAS, což lze vysvětlit tlakem společného evropského azylového systému na státy na vnějších hranicích EU a nižší ekonomickou schopností ubytovat velké množství uprchlíků. Poslední vývoj je výsledkem politického zneužívání problému uprchlické krize v rámci euroskepticismu, jenž v regionu panuje.

## **Klíčová slova**

**Uprchlíci, Azyl, Azylová Politika, Uprchlická Krize, Střední Evropa, V4**

## **Declaration of Authorship**

1. The author hereby declares that he compiled this thesis independently, using only the listed resources and literature.
2. The author hereby declares that all the sources and literature used have been properly cited.
3. The author hereby declares that the thesis has not been used to obtain a different or the same degree.

Prague 19.05.2016

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## 1 Introduction

Recently, the countries belonging to the Visegrád Group have received a large share of media attention, especially in Western Europe. The cause of the attention stems from the asylum policies these countries have been propagating in the light of the current so-called “refugee crisis” that the European Union is coping with. It has been considered curious that the four states, once producing large numbers of refugees themselves, are strongly opposing the idea of hosting more refugees in their own states. United in the V4 platform, Slovakia, Hungary, Poland and the Czech Republic have expressed their unwillingness to conform to mandatory refugee quota as discussed in Brussels, leading to criticism from both the EU and international media. A large variety of explanations exists for the East Central European attitude towards asylum seekers, ranging from political to economic and historic reasons. One might ask himself however: Have these countries always been so strongly opposed to refugee protection on their territories, or is it strictly a recent phenomenon? This is one of the questions lying at the foundation of this research. In order to get a better understanding of the V4 countries’ approach to refugee protection it might prove useful to scrutinize the establishment and development of asylum policies in these states since the fall of communism more than a quarter of a century ago. The phenomenon of asylum seekers coming to the East Central European countries was a very new one, and the states concerned had to adapt to this new situation of receiving refugees in a generally turbulent and dynamic time of economic and political transition. It is not surprising that the establishment of asylum policies was not a top priority in early transition politics seeing the many other, more pressing matters the young democracies had to attend to. The first part of this research will be devoted to sketching an overview of how the four states established their first policies on asylum, and what the characteristics of these policies were. The second phase of the research will be concentrated on the years preceding the accession of the V4 countries to the European Union in 2004. The emphasis will be placed on the influence the negotiations with the EU had on the development of asylum policies, and the results of adaption of domestic policies to the Common European Asylum System (CEAS) that was being developed during the same time period. Finally will follow an analysis of how the EU



accession and the conformation to the common asylum system affected the policies concerning refugees.

The characteristics of the policies will be measured in the following three dimensions: the legislative dimension, the procedural dimension and the processual dimension. The legislative dimension will be scrutinized by analyzing the domestic laws and regulations concerning asylum. The early establishment of the legislative framework and the following amendments and in some cases introduction of new laws regarding refugees will provide insight on the position of the V4 states on the topic of refugees. Closely related to the legislative dimension is the procedural dimension, meaning the practical functioning of the asylum application process. It is important to study this dimension as well, because looking at the laws only might bring forward a malformed image of the character of the asylum policy. Matters such as the *de facto* accessibility of the procedures, facilities, procedures after denial of asylum, and general respect and enforcement of the laws on asylum during the procedures play an equally significant role in determining the character of the complete asylum policy. The third dimension in defining the East Central European states' attitude towards refugees consists of the actual recognition rate of asylum seekers applying in the four countries. This analysis will be based on yearly data from the United Nations High Commissioner for Refugees (UNHCR) from 1990 until 2010. The data include the number of applicants for asylum per year, the numbers of rejection and recognition of refugee status according to the Geneva Convention, as well as cases of other decisions, such as the granting of temporary protection and/or humanitarian protection status, though the data on these statuses are only consistently available from approximately the year 2000. Completing the picture, numbers of discontinued application processes, caused by asylum applicants disappearing before the procedure was completed and a decision was made, are also included. All these data are subdivided by the country of origin of the asylum seekers as well. Especially a comparison of the recognition rates and amount of asylum seekers that were granted a form of international protection in East Central Europe to the same figures in the older EU Member States, gives an impression of how much the V4 states contributed to international refugee protection.

By analyzing these three dimensions of Central European asylum policies throughout the years, an image will come forward of the development of the approach

towards refugees from the early 1990s until recent years. At the hand of these analyses I will argue that the V4 countries all followed a similar path of developing their refugee policies, marked by some regional differences. In the early years of transition from communism, all four states established rather liberal but incomplete asylum policies. However, when numbers of asylum applicants started rising from the middle of the 1990s, the willingness to accept refugees started declining. Negotiation talks with the EU and conformation to the Common European Asylum System forced the four states to adjust their policies on refugees, resulting in restrictive changes on some fronts while at the same time also liberalizing other aspects of asylum policies. From the moment of conforming their asylum regimes to the EU standards, the four states maintained more liberal asylum regimes when compared to the late 1990s, though were still not taking in as many refugees as the West of Europe. Following the same pattern as in the middle of the 1990s however, with the increase of asylum seekers coming to Europe the last years, Hungary, Slovakia, Poland and the Czech Republic appear less willing to maintain this approach and are uniting via the V4 platform, forming resistance against EU plans to accommodate more refugees in East Central Europe.

During the analysis I will touch upon bigger discussions such as policy transfer from the EU to Central and East European states, the effects of the CEAS on East European member states, and the influence international organizations, NGO's and individual other EU Member States had on the transition process and development of refugee policies of post-communist states.

## 2 Terminology

Issues like refugees, asylum and migration in general often carry with them the risk of the mixing up of the large variety of terms connected to the issues. For the sake of clarity, I will briefly define some of the most commonly used terms in this research. For most of these terms the definitions as stated by the UNHCR Master Glossary of Terms will be used.<sup>1</sup>

First and foremost, the Geneva Convention, as amended by the 1967 protocol, defines a refugee as follows:

"A person who owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it."<sup>2</sup>

A refugee is thus not to be confused with a migrant, with the fundamental difference being that refugees (are forced to) move when their lives or freedom are under threat, whereas migrants rather choose to move in order to improve the future prospects of themselves and their families, but their lives or freedom are not under threat in the country they came from and they are able to return, whereas a refugee can't. Once a refugee gets granted refugee status according to the Geneva Convention he or she may also be called a "Convention refugee." Having been granted Convention refugee status, an individual obtains most rights of nationals living in the country except for, for instance, the right to vote in national elections.

Another term, closely related to the term 'refugee', is 'asylum-seeker.' An asylum seeker is an individual who is seeking international protection. As soon as an

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<sup>1</sup> UN High Commissioner for Refugees (UNHCR). *UNHCR Master Glossary of Terms*, June 2006, Rev.1. Available at: <http://www.refworld.org/docid/42ce7d444.html> [accessed 12 April 2016]

<sup>2</sup> UNHCR. Convention and Protocol relating to the status of refugees

individual applies for asylum, he or she falls under this category. UNHCR clarifies it by saying “not every asylum seeker will ultimately be recognized as a refugee, but every refugee is initially an asylum-seeker.”<sup>3</sup> Asylum, then, can be defined as “the grant, by a state, of protection on its territory to persons from another State who are fleeing persecution or serious danger.”<sup>4</sup>

Temporary Protection is another principle playing an important role in this research. This principle can be defined as “an arrangement developed by states to offer protection of a temporary nature to persons arriving *en masse* from situations of conflict or generalized violence, without prior individual status determination.”<sup>5</sup> Thus, when, for example in the case of the wars in former Yugoslavia in the 1990s, refugees arrive in large quantities, receiving states may grant them temporary protection. This means the refugees do not get granted Convention refugee status and all the rights this includes, but just enjoy the protection of the state they were granted temporary protection in. When a state repeals the temporary protection status for a certain group of people, because it deems the situation in their home-countries safe enough, these individuals have to return or alternatively have the possibility of applying for Convention refugee status. Another possible response of states on *en masse* arrivals of refugees may be recognition of refugee status on a *prima facie* basis to refugees belonging to a certain group.

Another key principle is the one of *non-refoulement* as defined in the Geneva Convention, prohibiting states “... from returning refugees in any manner whatsoever to countries or territories in which their lives or freedom may be threatened.”<sup>6</sup>

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<sup>3</sup> UNHCR. *UNHCR Master Glossary of Terms*, p. 4.

<sup>4</sup> *Ibid.* p. 4.

<sup>5</sup> *Ibid.* p. 21.

<sup>6</sup> *Ibid.* p. 15.

### 3 State of Art and Theoretical Framework

First of all, some notes concerning the primary sources used for the research will be necessary. The analyses of the laws and regulations concerning refugees and asylum will be based on English translations of the relevant documents when available. In the cases where English translations are unavailable or not accessible, the analyses will be based on secondary literature on the laws, in most cases publications by the UNHCR or the European Commission. The same goes for the analysis of the asylum procedures in the four Central European states: UNHCR reports summarizing the status of asylum policies in East European states contain observations about the process asylum seekers undergo when applying for asylum in these countries. In the years preceding EU accession of the V4 states, as well as after 2004 the European Council also published several reports and working papers concerning the situation of asylum procedures. The purpose of these reports is mainly to measure whether the new EU members' policies correspond to the EU approach to migration and refugees. These reports may in some cases contain criticism and in other cases praise for the way the asylum system is working in the concerning countries based on first-hand observations, thus giving insight on the actual functioning of the asylum procedures. Various other organizations, such as the United States Committee for Refugees and Immigrants (USCRI) and the European Council on Refugees and Exiles (ECRE) also published reports about the asylum policies in the countries subject to this research. These reports will be supplemented by various academic publications concerned with the subject.

The most important primary source will consist of data on asylum, i.e. the number of applicants, recognition rates, etc. Ideally, the main source would be the four countries' own national statistics databases, but since these are not in all cases directly accessible, a different source for these statistics will be used for this research. The European Commission has data available on asylum in East Central European countries, however data on the 1990s are incomplete and for some years missing altogether. However, the UNHCR's collection of data on asylum for the ECE states is nearly complete, and overall more detailed than the numbers that the European Commission has available, especially for the years before the V4 states' EU accession.<sup>7</sup>

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<sup>7</sup> Only data on Poland for the years 1990 and 1992 are missing in the UNHCR data.

For information regarding asylum seekers from 2000 until today, the UNHCR has a detailed, online available database, providing all the data required for this research.<sup>8</sup> Since data from before the year 2000 are not included in this online database, these are extracted from one UNHCR report published in 2000.<sup>9</sup> Combining data from these two UNHCR sources provides for the full set of data needed to conduct an analysis on asylum seekers coming to the East Central European states and decisions taken on asylum requests. Additionally, these data present the possibility of making comparisons with general trends in Europe.

A few notes on the data, as stated by the UNHCR, are important to mention. First of all, the data for the years 1990-1999 have been rounded up to the nearest tens place, whereas the data for the year 2000 and onwards are rounded up to whole numbers. Therefore the presence of some minor inaccuracies in the figures for the first decade needs to be kept in mind. For the figures after 1999 the exact numbers will be used, in order to keep the data as accurate as possible. A second important consideration is the means of data collection by the UNHCR. In the 2000 report, the agency states to collect data directly from the governments or are, in the case of developing countries, based on reports from UNHCR offices.<sup>10</sup> The report doesn't specify the means of data collection for every country, but it is reasonable to assume that the figures for the V4 states are in most cases based on government reports. Another note is the one on the possible discrepancies between the number of asylum seekers and the number of applications. The figures for the 1990s generally include only first applications, thereby excluding reopened or appeal applications. However, there is a possibility that asylum seekers are counted more than once, for various reasons, or are on the other hand not counted at all because asylum seekers that are already rejected during a pre-screening procedure are not included in the figures on the formal asylum applications.<sup>11</sup> For data from 2000, appeals are included in the number of filed applications and the decisions taken. Furthermore, when observing the recognition rates, it is necessary to take into account the asylum applications that were closed on non-substantive grounds. These are the cases of discontinued asylum

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<sup>8</sup> Available at: [http://popstats.unhcr.org/en/asylum\\_seekers](http://popstats.unhcr.org/en/asylum_seekers)

<sup>9</sup> UNHCR, *Refugees and Others of Concern to UNHCR. 1999 Statistical Overview*.

<sup>10</sup> UNHCR, *Refugees and Others of Concern to UNHCR. 1999 Statistical Overview*. p. 6.

<sup>11</sup> UNHCR, *Refugees and Others of Concern to UNHCR. 1999 Statistical Overview*. p. 102.

procedures usually caused by asylum seekers disappearing from the country they applied for asylum in before a decision has been taken. This is a phenomenon of frequent occurrence in East Central Europe because a large number of asylum seekers apply for asylum only in order to travel further westward, leaving their asylum application in one of the V4 countries to be closed on non-substantive grounds. By excluding these figures when calculating the recognition/rejection rates, and only take into account the substantive decisions taken, a clearer image appears of the character of the states' asylum policies. Finally, it is important to keep in mind a certain annual "carry-over" of undecided or pending applications. This means that applications submitted in for instance December 1995 are included in the 1995 data for asylum applications, whereas the decision taken for that particular case will most likely be part of the data collected for the next year.<sup>12</sup> One last note concerns the numbers for the year 1999: the figures in the report should be considered provisional and subject to change.<sup>13</sup> All in all, whilst keeping in mind the aforementioned notes on the figures extracted from the UNHCR reports and databases, the numbers will suffice for contributing to the analysis of the basic characteristics of East Central European states' asylum policies.

As for secondary sources, migration streams in Eastern Europe have been frequently and extensively researched, while studies more specifically focused on asylum policies are not as common. One of the most complete studies written more specifically about the development of refugee policies in post-Communist Europe is a book by Oxana Shevel, published in 2011.<sup>14</sup> In this work, the author distinguishes between migration and refugee policies as well as state building between so called contested and uncontested post-communist states. The difference between the two categories lies in the presence of national questions such as "who are we, and what are the boundaries of our community?"<sup>15</sup> In uncontested post-communist nation-states the national question is already resolved. This differentiation is of importance because the presence of politics of national identity to a great extent affects refugee

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<sup>12</sup> Ibid.

<sup>13</sup> Ibid.

<sup>14</sup> Shevel, Oxana. *Migration, refugee policy, and state building in postcommunist Europe*. Cambridge University Press, 2011.

<sup>15</sup> Ibid. p. 12.

policies. The absence of such politics however, leaves the question of refugee policies up to refugee policy elites. Shevel explains the power of the refugee policy elites by the absence of both legislative, institutional and historical legacies as well as the absence of national identity politics.<sup>16</sup> The East Central European states that form the scope of this research belong to the category of uncontested nation states. Another aspect of the development of refugee policies in East (Central) Europe Oxana Shevel distinguishes, is the important roles the UNHCR and, in later stages, the European Union plays. Shevel created a model based on the aforementioned factors (character of transition, refugee policy elites, and international organizations. Shevel's theories and model on the development of refugee policies in this type of state will lie at the foundation of the analysis of the establishment and development of the policies in the V4 countries, especially in the 1990s. The study contains case studies of the Czech Republic and Poland, which will be used and complemented by studies of Hungary and Slovakia, as well as analysis of detailed data on asylum applications and refugee status recognition rates. Whereas Oxana Shevel studies regional differences in post-communist Europe, this research will distinguish a common path of development of refugee policies for the East Central European region.

Another influential work related to the topic is the book *Patterns of Migration in Central Europe* (2000) edited by Claire Wallace and Dariusz Stola, focusing on the main issues of Central Europe as a new migration space since 1989. This work covers forms of migration covering the entire the spectrum of the phenomenon, however the parts related to asylum seekers provide some insight on the complexity of the matter and the position of refugees in the broader framework of migration. In the introduction for instance, Wallace and Stola warn against the incomplete image the number official asylum applications creates: illegal transit migrants trying to head to the west of the continent are included whereas not all actual refugees are included in the data since a number of refugees never filed an official request for asylum and settled in the Central European countries in another way.<sup>17</sup> Thus, the data do not give an entirely reliable view on the actual migration streams; they will however still suffice to analyze the character of asylum policies. The chapter on the harmonization of EU

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<sup>16</sup> Shevel, Oxana. *Migration, Refugee Policy, And State Building in Postcommunist Europe*. p. 13.

<sup>17</sup> Wallace and Stola. *Patterns of Migration in Central Europe*. pp. 28-29.



migration policies in the same book provides some insight into the difficulties the East Central European states were noticed facing in the late 1990s during the process of harmonizing their asylum policies with the common EU policy.<sup>18</sup>

While the scope of the research will be the common path of development of asylum policies the four countries united in the Visegrád group followed, it will also be necessary to be aware of certain differences between the individual states in order to understand various phenomena. These differences concern both the characteristics and composition of refugee flows in the different countries, as well as the differences in politics, economics and historic backgrounds. The first category of differences becomes apparent in the UNHCR data on asylum applications and decisions taken. For instance, the refugees coming to Hungary in the 1990s are mostly from the Balkans, whereas refugees coming to Poland are mostly from the former Soviet Bloc. The diversities in political, economic and historic legacies also influence asylum policy building. Several case-studies focusing on the transition process and development of immigration and asylum policies in individual V4 countries have been conducted in addition to Oxana Shevel's case studies on the Czech Republic and Poland. Maryellen Fullerton for instance, wrote about the early development of Hungarian refugee policies. In her article "Hungary, refugees and the law of return," Fullerton describes the preference of the early Hungarian asylum system for ethnic Hungarian refugees, granting large numbers of ethnic Hungarians refugee status who did not always conform to the Geneva Convention standards for being a refugee, and on the other hand denying genuine refugees from other ancestries asylum.<sup>19</sup> The roots of these phenomena and policies date back to the Treaty of Trianon, thus exemplifying the importance of historic legacies of the individual countries.

Peter Vermeersch published an article in the framework of EU enlargement, using Slovakia and Poland as case studies to demonstrate how EU asylum and immigration policies were implemented in these two countries, providing a brief overview of the development of asylum policies in the two countries, as well as contributing to the discussion about the character of EU policy transfers. Vermeersch,

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<sup>18</sup> Nygård, Ann-Charlotte, and Irene Stacher. "Towards a Harmonised Migration and Asylum Regime in Europe." *Patterns of Migration in Central Europe*. Palgrave Macmillan UK, 2001. 129-150.

<sup>19</sup> Fullerton, Maryellen. "Hungary, Refugees, and the Law of Return." *International Journal of Refugee Law* 8.4 (1996): 499-531.

siding with Lavenex, claims how the main purpose of the CEAS and its extension to the new member states in East Central Europe lies in the protection of the older member states' interests and protecting internal security, rather than protecting refugees or neighborly relations in the east of the continent.<sup>20</sup>

As for the theoretical framework, a useful starting point is an article by Richard Black, scrutinizing the establishment of the field of refugee studies. According to Black, journals such as *International Migration Review* and the *Journal of Refugee Studies* are two important contributors to the sparking refugee studies as we know it today.<sup>21</sup> Black's main argument is that the field of refugee studies should be researched in relation to policy, and should aim to have a positive influence on policy-making.<sup>22</sup> Referring back to the *Journal of Refugee Studies*, in the first issue, published in 1988, several articles appeared concerning the theoretical framework. Roger Zetter, in the introduction of this issue, discussed the label 'refugee', referring to Wood's argument that the term refugee is both an apolitical stereotype and a highly politicized legal status.<sup>23 24</sup> In the same issue of the *Journal of Refugee Studies*, Howard Adelman contributes to a philosophical debate about the concepts of asylum and refuge. These concepts were previously used as respectively temporary and permanent options, but Adelman sees them as individually initiated solutions versus solutions sanctioned and controlled by the state, thereby steering the discussion to the question of absolute or qualified state sovereignty.<sup>25</sup> The point Adelman makes, is based on the premise that absolute state sovereign control of a state is in a state's self-interest. He then argues that this premise of absolute sovereign control inherently pushes a state to qualify this sovereign control. His arguments include that qualifying state sovereignty by welcoming individual refugees exemplifies that the state exists to serve individual self-interested claims, which should be the case in a liberal democracy (as opposed to

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<sup>20</sup> Vermeersch, Peter. "EU enlargement and immigration policy in Poland and Slovakia." *Communist and post-communist studies* 38.1 (2005): 71-88.

<sup>21</sup> Black, Richard. "Fifty years of refugee studies: From theory to policy." *International Migration Review* 35.1 (2001): 57-78.

<sup>22</sup> Ibid.

<sup>23</sup> Zetter, Roger. "Refugees and Refugee Studies-A label and an Agenda." *Journal of Refugee Studies*. 1 (1988): 1. p. 1.

<sup>24</sup> Wood, Geof. "The politics of development policy labelling." *Development and change* 16.3 (1985): 347-373.

<sup>25</sup> Adelman, Howard. "Refuge or asylum-a philosophical perspective." *Journal of Refugee Studies*. 1 (1988): 7." p. 10.

communist states). Another argument that it is in the self-interest of every state and its members, that international order be preserved.<sup>26</sup> In short, Adelman claims that in order to serve the self-interest of a state, liberal democracies should be qualifying their absolute control by accepting refugees.

This topic was already extensively discussed by Hannah Arendt, who argued that liberal theorists face the fundamental problem of endorsing both human rights and sovereign states, two principles that fundamentally contradict each other because sovereign states can, and do, practice border controls.<sup>27</sup> Arendt's arguments stem from the refugee crisis caused by World War II; however the theme is still relevant in the light of recent events. Andy Lamey reacts to Arendt's criticism in a 2011 article.<sup>28</sup> Lamey demonstrates the necessity of a certain extent of border control and the problems that may arise when border controls are entirely absent. Instead of abolishing the control of borders by sovereign states, he suggests a portable procedural approach, strengthening the enforcement of the *non-refoulement* principle by giving asylum seekers the following three rights: the right to an oral hearing, representation by legal counsel and judicial review of detention decisions, thus constitutionalizing the procedural rights of asylum seekers, and thereby bringing closer a combination of endorsement of human rights and state sovereignty.<sup>29</sup>

The discussion related to question of asylum and refugees in liberal democracies is particularly interesting for the East Central European states subject of this research, seeing as during the 1990s these states transformed from illiberal undemocratic states into democracies, and at the same time had to start establishing legislation and policies concerning refugees.

The topic of EU accession by post-communist countries and more specifically the adoption of and harmonization with European policies on refugees and asylum, form another important theme in this research. One of the scholars that have occupied themselves with researching this topic most extensively is Sandra Lavenex. In 1999, she published a book concerning the extension of EU asylum and immigration policies to

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<sup>26</sup> Ibid. pp. 12-14.

<sup>27</sup> Arendt, Hannah. *The origins of totalitarianism*. Vol. 244. Houghton Mifflin Harcourt, 1973.

<sup>28</sup> Lamey, Andy. "A liberal theory of asylum." *Politics, Philosophy & Economics*. 11.3 (2012): 235-257.

<sup>29</sup> Ibid. pp. 242-243.

Central and Eastern Europe, followed by multiple articles in the years after.<sup>30</sup> In the aforementioned book Lavenex does not only outline the development of the international refugee regime and the EU refugee policies, but she devotes the second part of it to the extension of the EU common asylum regime to East and Central Europe. She notices the restrictive character of the EU refugee regime and the discrepancies with the international norms and policies on refugees. She also argues that the EU's policies on immigration are used for establishing internal security, whereby the focus on humanitarian protection of refugees moves to the background. The V4 countries are, among others, part of this EU internal security strategy, and found themselves in the situation of having to adopt the EU *acquis*, seeing as it was one of the requirements for EU accession.

In an article published in 2002, Lavenex expands on the challenge of refugee policy transfer to East Central Europe.<sup>31</sup> Here, she argues that the changes in asylum reforms in the years preceding EU accession are the product of inter-governmental processes of policy transfer by individual EU member states towards their neighboring countries, rather than the domestic implementation of supranational legislation.<sup>32</sup> According to Lavenex, in the cases of the Czech Republic and Poland, Germany has been most influential in promoting policy reforms, while in Slovakia and Hungary, Austria acted as the main influencer of asylum policies.

Catherine Phuong, among others, also notices the direct interest of mainly Germany to improve the asylum system in the East Central European states: when the ECE asylum systems were in line with international standards, other Member States would be more easily able to return asylum seekers to these states. The implementation of the CEAS and the EU's involvement in ensuring this implementation had a dual objective according to Phuong. First of all, in the interest of the old EU Member States, it aimed to move the burden of asylum eastwards, as already noted by Byrne et al.<sup>33</sup> Secondly, in a more common European interest, the East European states

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<sup>30</sup> Lavenex, S. *Safe third countries: extending the EU asylum and immigration policies to Central and Eastern Europe*. Central European University Press, 1999.

<sup>31</sup> Lavenex, Sandra. "EU enlargement and the challenge of policy transfer: the case of refugee policy." *Journal of Ethnic and Migration Studies* 28.4 (2002): 701-721.

<sup>32</sup> *Ibid.* p. 702

<sup>33</sup> Byrne, Rosemary, Gregor Noll, and Jens Vedsted-Hansen. "New asylum countries? Migration control and refugee protection in an enlarged European Union." *Refugee Survey Quarterly* 21.3 (2002).

were not supposed to become too attractive for asylum seekers.<sup>34</sup>

Lavenex, following Anagnost's line of arguing, ascribes a very limited role to the UNHCR when it comes to the defining of refugee policies in the East Central European states.<sup>35</sup> This perspective opposes the conclusions of Oxana Shevel, whom is defining the UNHCR as a very influential actor in the process of establishing and reforming asylum policies in East Central Europe. The discussion on the process of the countries in the region aligning their policies on various matters, including asylum and immigration, to the common EU legal framework provides useful insight in the standpoints and course of action of the EU candidate member states in the late 1990s and early 2000s. However, since 2004 the consequences of the alignment to common EU asylum policies have not been researched as much - something I hope to contribute to in the latter part of this research.

Another discussion relevant for this research is the one about the role of policy-making elites in post-communist countries and the level of elite autonomy. Oxana Shevel outlines the debate on this topic, defending a high degree of autonomy for refugee policy-making elites in uncontested post-communist states.<sup>36</sup> She distinguishes two camps, the first one of which is represented by Bunce and Csanadi, who argue that the absence of roles, rules and structure cause an increase of individual impact on policies.<sup>37</sup> The other camp stresses institutional legacies from the communist era constraining the actions of political actors. Shevel doesn't side with either camp, but rather sees elite autonomy as an issue-specific attribute, refugee policies being one of the issues where a high level of elite autonomy can be found.<sup>38</sup> Shevel also addresses the following question that arises from this discussion: in what way does elite autonomy influence the character of (refugee) policies? The answer lies in the personal backgrounds of the individuals in autonomous executive positions, which in turn often depends on whether the transition from communism was a revolutionary or a

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<sup>34</sup> Phuong, Catherine. *Controlling asylum migration to the enlarged EU: the impact of EU accession on asylum and immigration policies in Central and Eastern Europe*. Palgrave Macmillan UK, 2005.

<sup>35</sup> Anagnost, Stephan. "Challenges Facing Asylum System and Asylum Policy Development in Europe: Preliminary Lessons Learned from the Central European and Baltic States (CEBS)." *International Journal of Refugee Law* 12.3 (2000): 380-400. pp. 386-387.

<sup>36</sup> Shevel, O. *Migration, Refugee Policy, And State Building in Postcommunist Europe*. pp. 61-66.

<sup>37</sup> Bunce, Valerie, and Maria Csanadi. "Uncertainty in the transition: post-communism in Hungary." *East European Politics & Societies* 7.2 (1993): 240-275.

<sup>38</sup> Shevel, O. *Migration, Refugee Policy, And State Building in Postcommunist Europe*. p. 62.

negotiated one: in the case of revolutionary transition, liberal-minded policy elites are likely to be occupying the positions relevant for making and executing refugee policies, whereas in the case of a negotiated transition the influence of the old Communist elites is likely to have been larger, possibly resulting in more restrictive policies. This issue is mostly relevant for first part of this research covering the early 1990s, when the matter of asylum wasn't much politicized yet and the region was not yet part of a narrowly defined international asylum system. In the late 1990s, when EU accession negotiations began, the degree of autonomy of refugee policy-making elites diminished.<sup>39</sup>

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<sup>39</sup> Ibid. pp. 64-65.

## **4 The early establishment and development of refugee policies (1990-1997)**

This chapter for good reason contains the word establishment. During the decades of communist rule the East Central European states experienced, they had no significant influx of refugees and therefore no institutions to deal with such issues. As a result of conflicts in former Yugoslavia and other regions, the countries later to be united in the V4 group transformed from refugee producing states into refugee receiving states, and the matter of incoming refugees became a pressing one rapidly, requiring the establishment of policies towards people seeking asylum on their territories.

Czechoslovakia, Hungary and Poland all started their transformation from communist states to democracies in 1989. Only in Hungary some limited economic and political reforms were achieved during the 1980s, however the real transition only took place in 1989. The breakdown of the iron curtain brought a wide array of changes to the east of Europe, most of which this research will not scrutinize in depth. However, when analyzing the establishment of refugee policies in transition countries, various characteristics of the political and economic transition will play a crucial role in the course of this process. Additionally, the differences in transition the individual East Central European states experienced influenced the way refugee policies were shaped, as exemplified by the paragraph in the previous chapter discussing the role and influence of refugee policy-making elites. Transition as a result of negotiations between the Communist Party and the opposition may result in a different transition process in general, including refugee policy establishment and developments, than transition by revolution and an outright overthrow of the Communist regime.

### **4.1 Czechoslovakia**

Czechoslovakia knew one of the most oppressive regimes behind the iron curtain, and maintained an unreformed political and economic communist system until the Velvet Revolution took place in 1989. Negotiations with the opposition were absent and the regime change in November 1989 was thus an abrupt and revolutionary one. As a result the replacement of the political elites was more rigorous than in Poland and

Hungary.<sup>40</sup> Refugee policy bureaucracy was placed under the thoroughly cleansed Ministry of Interior in 1990. As in most post-communist countries, refugee policy was practically non-existent in Czechoslovakia. The 1960 constitution of the Czechoslovak Socialist Republic contained one article concerning asylum, saying that the country grants asylum to "... foreign nationals persecuted for defending the interests of working people, for participation in the national liberation struggle, for scientific and artistic work or activity in the defense of peace."<sup>41</sup> However, this article in practice did not express the principles and norms of the international refugee regime, and was rather an instrument of the Communist regime.<sup>42</sup> Similar provisions can be found in most post-Communist states old constitutions.

The two Refugee Commissioners of Czechoslovakia between 1990 and 1992 were both prominent Czech dissidents.<sup>43</sup> Refugees started coming to the country already in early 1990 and the Czech Republic reacted by adopting a first refugee law in the same year, entering force on the first of January of the next year. Act No. 498 of 1990 concerning refugees had the purpose of governing the procedures that were to be followed by state authorities in proceedings to determine the status of refugees and to define the rights and duties of aliens who have applied or already been granted the status of refugee on the territory of the Czech Republic.<sup>44</sup> This law was rather liberal and generous, something that Shevel reasonably explains with the euphoria of democratic change and the liberal orientation of the refugee policy-making elites. She also notes how the law is in some respects imprecise and lacks specifications of certain parts of the procedure.<sup>45</sup>

The application and way of enforcement of Act No. 498 by the procedure officials may have had even more impact on the character of the asylum policy than the Act itself. In her chapter on refugee policy building in the Czech Republic Oxana

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<sup>40</sup> Hollis, Wendy. *Democratic consolidation in Eastern Europe: The influence of the communist legacy in Hungary, the Czech Republic, and Romania*. No. 529. East European Monographs, 1999. p. 176.

<sup>41</sup> Article 33 of the 1960 Czechoslovak Socialist Republic. Available at: [https://web.archive.org/web/20071010101042/http://www.psp.cz/docs/texts/constitution\\_1960.html](https://web.archive.org/web/20071010101042/http://www.psp.cz/docs/texts/constitution_1960.html)

<sup>42</sup> Lavenex, Sandra. *Safe Third Countries: Extending the EU asylum and immigration policies to central and eastern Europe*. p. 133.

<sup>43</sup> Shevel, Oxana. *Migration, Refugee Policy, And State Building in Postcommunist Europe*. pp. 196-197.

<sup>44</sup> The Czech Republic: *Act No. 498 of 1990 concerning Refugees (repealed)*, 1 January 1991, available at: <http://www.refworld.org/docid/3ae6b4da2b.html> [accessed 6 April 2016] Important note: This online document includes (restrictive) amendments from 1993, indicated in brackets and the footnotes.

<sup>45</sup> Shevel, Oxana. *Migration, Refugee Policy, And State Building in Postcommunist Europe*. p. 199.



Shevel brings forward several examples of very generous interpretations of the refugee law by the authorities.<sup>46</sup> In order not to repeat the research that has already been done by Shevel, it will suffice to summarize this part of her study by saying that the 1990 law as well as the application and interpretation of it by implementing authorities were very liberal. One aspect indicating the generous stance of Czechoslovakia towards refugees was a series of Acts specifically concerning refugees from Former Yugoslavia. For instance, Decree No. 769, published at the very end of 1992, extended temporary protection as stipulated earlier that year, organized transport for 610 citizens of Former Yugoslavia, and provided financial aid to the states evolving from Yugoslavia.<sup>47</sup>

In the final part of her analysis of the first years of refugee policy in democratic Czechoslovakia Shevel states that the average recognition rates of asylum applicants lies at around 20% for the years 1991-1992. This number is the result of looking at the total number of applicants for international protection and the number of applicants that were granted refugee status. This results in the relatively low percentage of twenty, which might not be representative for the character of the liberal refugee policy that was in place at the time. After all, many of the East and Central European states functioned as transit countries for migrants, especially before the incorporation into the common European asylum system. Thus, a significant amount of people that applied for asylum is very likely to have left the country shortly after applying, not resulting in a direct rejection or recognition of refugee status, but in the closing of the procedure. These cases do not contribute to the characterization of the asylum policy, and therefore are better left out of this analysis. For the Czech Republic there are no reports of so called “otherwise closed” applications until 1997, whereas numbers for directly recognized and rejected applications are available, therefore it is reasonable to assume that most of the remaining asylum applicants left the country before the procedure handling their asylum request was completed. Based on the total substantive decisions taken (positive and negative), the recognition rate of asylum

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<sup>46</sup> Ibid. pp. 198-201.

<sup>47</sup> National Legislative Bodies / National Authorities, *Czech Republic: Decree No. 769 of 1992 concerning Governmental Measures for 1993 to assist Victims of the Conflict within the Territory of the Former Yugoslavia*, 30 December 1992, available at: <http://www.refworld.org/docid/3ae6b4de34.html> [accessed 7 April 2016]

applicants even comes totals at 100% for 1990 and 1991, and 96.15% for 1992, though considering the novelty of the issue, and the lack of detailed administration of the refugee issue, these numbers might not draw a fully representative picture either (See Table 1).

Year	Applied	Recognized	Rejected	Otherwise closed	Total substantive decisions	% recognized (of total substantive decisions)	% rejected (of total substantive decisions)	% recognized (of total number of applicants)
1990	1790	30	0	n/a	30	100%	0%	1.68%
1991	1980	780	0	n/a	780	100%	0%	39.39%
1992	820	250	10	n/a	260	96.15%	3.85%	30.49%

Table 1: Asylum applications, decisions and recognition rates of Czechoslovakia 1990-1992.<sup>48</sup>

From the extremely high recognition rate the main conclusion that should be drawn is the one that a certain hesitance existed to reject asylum applications. Aside from the asylum applicants disappearing before the procedure was completed, procedures appear to have stayed open when there didn't seem to be a ground for granting refugee status. Finally, one remark needs to be made in order to explain the high number of granted refugee statuses in 1991 and 1992: until an amendment to the refugee act in 1993, refugee status was also granted for humanitarian reasons.<sup>49</sup> Even though it's hard to ascertain exactly how many of the granted refugee statuses were based on humanitarian grounds, it is safe to assume it concerns a significant percentage of the over one thousand accepted applications for refugee status.

#### 4.1.1 The Czech Republic

In 1992 the federal state of Czechoslovakia came to an end and the Czech and Slovak Republics developed their own asylum policies. Oxana Shevel points out that the year 1993 was a turning point in the asylum legislation of the Czech Republic. In this year the 1990 Act was amended by Law 317, removing the possibility for applicants of being granted humanitarian protection status, as well as adding other limitations to asylum

<sup>48</sup> Based on data extracted from: UNHCR, *Refugees and Others of Concern to UNHCR. 1999 Statistical Overview*.

<sup>49</sup> European Parliament, *Migration and Asylum in Central and Eastern Europe 1999*, p. 19.

applicants. The most important of these was a provision making applications possible to be considered manifestly unfounded, resulting in an expedited procedure, likely to result in the request for asylum being denied.<sup>50</sup> The question of why, just 2.5 years after the introduction of the first, very liberal law, the Czech government introduced restrictive amendments, Shevel answers by seeing it as a part of a more common trend in Europe of making asylum policies more restrictive. The Yugoslav wars produced large numbers of refugees entering Europe. Many West European states reacted to this by tightening their asylum policies. These changes in asylum policies in the West European states directly impacted the East Central European states. In the case of the Czech Republic it was mostly Germany that influenced the policies concerning refugees by negotiating readmission agreements between the two countries. The issue thus became a political one, in foreign relations and thereby in domestic politics.<sup>51</sup> The negotiations between Germany and the Czech Republic took a considerable amount of time. Seeing the Czech Republic's geographic location, it was in the country's interest to first conclude readmission agreements with its other neighbors. Without agreements with especially its southern and eastern neighbors, the Czechs would risk getting flooded by expelled migrants from Germany, without means to redirect them. Only after concluding readmission agreements with Slovakia, Austria, Poland and Romania, a readmission agreement with Germany came into force in 1995.<sup>52</sup>

When looking at the implementation of these amendments in practice however, Shevel shows that the executive refugee policy agencies did not strictly apply the restrictive amendments in practice. The Czech Republic was even praised by the UNHCR for its liberal and generous stance towards refugees during the 1990s. The extension of the temporary protection status for refugees from Former Yugoslavia in a 1996 Act was one of examples of the measures that received praise. Between 1992 and 1997 over 5000 former Yugoslavs were granted this temporary protection status in the Czech Republic.<sup>53</sup> These numbers are not included in the UNHCR data recognition rates as listed in Table 2. One further example of the Czech Republic's generous stance

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<sup>50</sup> Shevel, Oxana. *Migration, Refugee Policy, And State Building in Postcommunist Europe*. p. 201.

<sup>51</sup> Ibid. pp. 202-205.

<sup>52</sup> Lavenex, S. *Safe Third Countries: Extending the EU asylum and immigration policies to central and eastern Europe*, p. 136.

<sup>53</sup> Shevel, O. *Migration, Refugee Policy, And State Building in Postcommunist Europe*. pp. 206-207.

towards refugees is a refugee integration program introduced in 1994, helping to integrate people that obtained refugee status in the Czech Republic to be integrated in Czech communities.<sup>54</sup> In 1996 and 1997 the asylum policy of the country was further liberalized, something that Shevel accredits to the legislative lobbying of the UNHCR at the asylum policy authorities, thereby practicing liberal influence on the legislation before the bills entered parliament.<sup>55</sup> The most significant change is probably the one removing the five year limit of being able to hold refugee status. A point of criticism can be found in a European Parliament working paper, stating that language can form a barrier for access to the asylum procedure. On the positive side, in the same paper it is stated that appeal procedures were available and accessible for all rejected asylum applicants.<sup>56</sup>

A point where the Czech and other East Central European asylum procedures differed from countries with a longer tradition of refugee policies, lies in the appeal possibilities: asylum applicants that saw their applications rejected could only appeal at the same institution that made the first instance decision, rather than at an independent body.

Year	Applied	Recognized	Rejected	Otherwise closed	Total substantive decisions	% recognized (of total substantive decisions)	% rejected (of total substantive decisions)	% recognized (of total number of applicants)
1993	2 190	240	10	n/a	250	96.00%	4.00%	10.96%
1994	1 190	120	170	n/a	290	41.38%	58.62%	10.08%
1995	1 410	60	20	n/a	80	75.00%	25.00%	4.26%
1996	2 160	160	20	n/a	180	88.89%	11.11%	7.41%
1997	2 100	100	1 430	920	1 530	6.54%	93.46%	4.76%
<b>1993-97</b>	<b>9 050</b>	<b>680</b>	<b>1 650</b>	<b>n/a</b>	<b>2 330</b>	<b>29.18%</b>	<b>70.82%</b>	<b>7.51%</b>

Table 2: Asylum applications, decisions and recognition rates of the Czech Republic 1993-1997.<sup>57</sup>

From the data in table 2, several conclusions can be drawn. First of all, the amount of rejected asylum applications remains very low until 1997, when this amount sharply

<sup>54</sup> European Parliament, *Migration and Asylum in Central and Eastern Europe* 1999. p. 22.

<sup>55</sup> Shevel, Oxana. *Migration, Refugee Policy, And State Building in Postcommunist Europe*. pp. 208-212.

<sup>56</sup> European Parliament. *Migration and Asylum in Central and Eastern Europe* 1999, pp. 20-21.

<sup>57</sup> Based on data extracted from: UNHCR. *Refugees and Others of Concern to UNHCR. 1999 Statistical Overview*.

increases. This sharp increase is mostly due an amendment in the Refugee Act from 1997, meant to speed up the application process.<sup>58</sup> As a result of this amendment many of the applications filed in the years preceding 1997 were concluded in this year. The vast majority of these decisions turned out to be negative, which can be explained by the hesitance of rejecting requests for refugee status that could not be approved according to the Geneva Convention criteria. A number of these might also be asylum seekers whose requests were rejected in for example Germany, and were also rejected in the Czech Republic after submitting a new request there. Another observation that can be made from these data is the one that the amount of asylum applications remains fairly constant and doesn't show any extreme increases in this period, not exceeding the number of 2000 annual applications by a lot. From 1997 onwards, we also get an impression of the role immigrants leaving the country before their asylum procedure was completed, play in the data: in 1997 alone, 920 cases were closed because the asylum seeker disappeared. To give a representative characterization of the years 1993-1997, the total data of the concerned years provide the most accurate image: nearly 30% of the substantive decisions taken were positive, resulting in 7.51% of all applications for refugee status lodged in the Czech Republic being accepted.

#### 4.1.2 Slovakia

The Slovak Republic's path of developing asylum and refugee policy systems since its independence of 1993 differs from that of the Czech Republic mostly in the sense that this country experienced a significantly lower amount of individuals applying for asylum than its Czech neighbor. Most of all, Slovakia is a typical transit country, and many migrants passing through don't even get to the point of applying for asylum at all. Until 1996, the Slovak Republic maintained the legal framework covering asylum that was created in Czechoslovakia. When judging by the legislative situation, Slovakia thus had an equally liberal stance towards refugees, but in practice the situation differed from the one in the Czech Republic. The European Parliament identified the inaccessibility of the asylum procedures in practice as an important issue. As criticized by the UNHCR as well, the Slovak Aliens and Border Police were accused of being

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<sup>58</sup> OECD. *Trends in International Migration Continuous Reporting System on Migration* (1999) p. 124.

arbitrary and inconsistent in determining who may be allowed access to the procedure. Denial of access to the asylum procedure gave no possibility of appeal. Asylum seekers arriving via readmission agreements that Slovakia concluded with countries in the region during the 1990s were in most cases denied access to the procedure as well.<sup>59</sup> Additionally, allegedly an important consideration for granting refugee status in Slovakia was the ability to speak or learn the Slovak language.<sup>60</sup> The 1995 Act No. 283, entering in force on January 1st, 1996, was meant to line up the Slovak refugee policies with international standards. This act implemented the humanitarian protection principle, as well as temporary protection and *non-refoulement*. Also, the five year limit of refugee status was removed.<sup>61</sup> The humanitarian and temporary protection statuses were mostly applied to victims from the Yugoslav wars. Just like in the Czech Republic, one shortcoming of the asylum procedure was the absence of an independent second-instance appeal unit: appeals against first-instance decisions had to be appealed against at the Ministry of Interior.<sup>62</sup> Even though the legal framework of the Czech and Slovak Republics underwent rather similar developments, the appliance of the rules as defined in the respective refugee acts, differed. Both acts included a 24-hour rule to apply for asylum, meaning that asylum seekers had exactly that amount of hours after entering the territory to file an official application for asylum. However, Czech officials rarely denied access to the procedure based on this rule, whereas in Slovakia this happened very frequently.<sup>63</sup>

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<sup>59</sup> European Parliament, *Migration and Asylum in Central and Eastern Europe* 1999, pp. 60-61.

<sup>60</sup> *Ibid.* p. 59.

<sup>61</sup> Lucia Hurná. "Asylum Legal Framework and Policy of the Slovak Republic." pp. 1386-7.

<sup>62</sup> *Ibid.* pp. 1387.

<sup>63</sup> Shevel, Oxana . *Migration, Refugee Policy, And State Building in Postcommunist Europe*. p. 200, & Hurná, Lucia. "Asylum Legal Framework and Policy of the Slovak Republic." p. 1387.

Year	Applied	Recognized	Rejected	Otherwise closed	Total substantive decisions	% recognized (of total substantive decisions)	% rejected (of total substantive decisions)	% recognized (of total number of applicants)
1993	100	40	20	30	60	66.67%	33.33%	40.00%
1994	140	50	30	70	80	62.50%	37.50%	35.71%
1995	360	70	60	190	130	53.85%	46.15%	19.44%
1996	420	130	60	190	190	68.42%	31.58%	30.95%
1997	650	70	80	540	150	46.67%	53.33%	10.77%
<b>1993-97</b>	<b>1 670</b>	<b>360</b>	<b>250</b>	<b>1 020</b>	<b>610</b>	<b>59.02%</b>	<b>40.98%</b>	<b>21.56%</b>

Table 3: Asylum applications, decisions and recognition rates of the Slovak Republic 1993-1997.<sup>64</sup>

The findings stated before are reflected in the data as summarized in Table 3 above. The numbers of asylum applications filed in the Slovak Republic are very low compared to those of the Czech Republic due to the lower interest of asylum seekers to apply in Slovakia, as well as the inaccessibility of the procedures in the country. Of the people that managed to enter the asylum procedure, a large number left the country before the procedure was completed, usually heading further west. Of the applications that reached the point of a decision being taken, more were granted refugee status and asylum than were rejected. Looking at percentages, this makes Slovakia look like a very refugee-welcoming country, but looking at absolute numbers puts this claim in perspective: Slovakia granted refugee status to less than a quarter of the amount of people that received asylum in the Czech Republic.

One might ask why the Czech and Slovak Republics headed different ways after the divorce in 1993. The answer could be found in the difference in the political atmosphere in the two countries. Whereas the Czech Republic followed a liberal path, Slovakia went through an era of “Mečiarism”, a period where democracy was not faring as well as in the Czech Republic. Whereas the Czechs had appointed very liberal refugee authorities, in Slovakia the individuals responsible for accessibility of the asylum system were less generous and liberal than in its western neighbor. The lack of desire to have people from different nations coming to, and staying in Slovakia fits with Mečiar’s populist ideology, which was also hostile towards the Roma and Magyar minorities in the country. The level of the UNHCR’s influence on the asylum policies in

<sup>64</sup> Based on data extracted from: UNHCR, *Refugees and Others of Concern to UNHCR. 1999 Statistical Overview*.

the two states might also contribute to the explanation: in the Czech Republic the organization had significant influence on the asylum procedures and legislation, while in Slovakia the UNHCR seems to have been less successful in influencing the asylum policies and improving the accessibility of the procedures.

## 4.2 Hungary

Hungary and Poland differ from Czechoslovakia in their way of transition, which was to a larger extent the result of negotiations rather than revolution. In Hungary the communist regime already made some compromises with the opposition in the 1980s, and the transition was thus less rigorous as in Czechoslovakia. Hungary in the early 1990s can also be considered a special case because the country already had an enormous influx of refugees in 1989, mainly ethnic Magyars coming from Romania, escaping Ceausescu's oppressive policy against minorities during the last years of his regime. Additionally Hungary was the first country on the path of many refugees fleeing the Balkans when wars broke out in former Yugoslavia.

Already in March 1989, Hungary was the first of the East Central European countries to adopt the Geneva Convention, but it with one specific geographic reservation: the Convention was only applied to people of European origin, so non-Europeans could not apply for asylum in the framework of the Geneva Convention in Hungary during the bigger part of the 1990s. Hungary was the only Central European country adopting the Geneva Convention with such a geographic reservation. Migration and asylum didn't form an important topic on the political agenda of the young democracy, and as a result the country didn't have a solid and comprehensive refugee policy until late in the 1990s, when external factors such as readmission agreements and EU accession negotiations pressured the creation of a more complete legal framework.

Maryellen Fullerton critically investigated the early years of refugee policy of Hungary, with a focus on its preference for ethnic Magyars.<sup>65</sup> A 1989 amendment to the asylum provision of the Hungarian constitution stated that Hungary "... grants asylum for those foreign nationals who in their country of nationality, or for those

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<sup>65</sup> Fullerton, Maryellen. "Hungary, refugees, and the law of return."



stateless persons who in their residence, were persecuted for racial, religious, national, linguistic or political reasons,” to a good extent adhering to the international refugee standards.<sup>66</sup> The particular element in this provision is the grant of asylum to people persecuted for *linguistic* reasons. Fullerton shows how this element alone could demonstrate the character of Hungarian refugee policies during the first years of democratic Hungary. Ethnic Magyars living in Romania, Slovakia and Serbia have frequently found themselves in conflict with the states they live in over education and administrative communication in their mother tongue. Even though the provision is not directly aimed at Magyars, the vast majority applying for asylum in Hungary by the linguistic criterion are logically ethnic Hungarians.<sup>67</sup>

The implementation of the Geneva Convention was defined in a 1989 government decree, providing the basic legal structure. Fullerton’s critical assessment of the clauses in Decree 101, points out in detail the advantages ethnic Hungarians were having during certain parts of the procedures. For example, the 72-hour deadlines for notifying the police or border guards and submitting a formal application for asylum give ethnic Hungarians an advantage over people of other nationalities, because they know the language and might even have relatives to provide assistance and support to make the deadlines.<sup>68</sup>

Following Fullerton’s analysis, the legal framework could be considered to be benefitting ethnic Magyars over refugees of other ancestries, and in practice this also appears to be the case. Because of the, as Fullerton calls it, “sketchy legal framework for refugee protection in Hungary” many of the refugee issues were dealt with outside the international legal framework of the Geneva Convention. Of the ten thousands of refugees coming to Hungary in the late 1980s and early 1990s, only a small percentage went through the official asylum procedure.<sup>69</sup> Refugees fleeing the wars in former Yugoslavia were more commonly granted temporary protection status, meaning they had fewer rights under Hungarian law, and are not allowed to work. Additionally, Fullerton’s research shows that refugees from former Yugoslavia that were granted temporary protection status usually got housed in camps with worse living conditions

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<sup>66</sup> Ibid. p. 514.

<sup>67</sup> Ibid. p. 509.

<sup>68</sup> Ibid. p. 519.

<sup>69</sup> Ibid. pp. 515-516.

than camps ethnic Hungarian refugees were to, if they were not already privately accommodated by relatives or friends.<sup>70</sup>

The majority of the ten thousands of ethnic Magyars coming from Romania, as well as Vojvodina ‘disappeared’ from the statistics. Fullerton’s assessment is that some of them may have travelled further west, and others may have moved back to Transylvania, but that most of them stayed in Hungary by undefined other means than the official asylum procedures.<sup>71</sup> Boldizsár Nagy in his research concludes that as many as 20.000 ethnic Magyars received Hungarian citizenship by 1992, while 10.000 others applied for immigrant status.<sup>72</sup> While Nagy, in the conclusion of his article, praises Hungary’s aid to over a hundred thousand refugees in various ways, Fullerton is highly critical of the advantages ethnic Magyars enjoy as asylum seekers in Hungary.

Year	Applied	Recognized	Rejected	Otherwise closed	Total substantive decisions	% recognized (of total substantive decisions)	% rejected (of total substantive decisions)	% recognized (of total number of applicants)
1990	3 970	2 570	320	n/a	2 890	88.93%	11.07%	64.74%
1991	1 300	450	150	390	600	75.00%	25.00%	34.62%
1992	860	490	220	340	710	69.01%	30.99%	56.98%
1993	730	400	160	300	560	71.43%	28.57%	54.79%
1994	440	250	150	520	400	62.50%	37.50%	56.82%
1995	590	180	380	n/a	560	32.14%	67.86%	30.51%
1996	670	170	440	130	610	27.87%	72.13%	25.37%
1997	1 110	160	860	340	1 020	15.69%	84.31%	14.41%
<b>1990-97</b>	<b>9 670</b>	<b>4 670</b>	<b>2 680</b>	<b>2 020</b>	<b>7 350</b>	<b>63.54%</b>	<b>36.46%</b>	<b>48.29%</b>

Table 4: Asylum applications, decisions and recognition rates of Hungary, 1990-1997.<sup>73</sup>

When observing the UNHCR data on asylum in Hungary in the 1990s as seen in Table 4, first of all it can be observed that Hungary, as the other East Central European countries, plays the role of a transit country for many refugees as can be seen in the significantly high number of “otherwise closed” applications. Additionally a number of non-ethnic Hungarian refugees whose applications for refugee status were accepted,

<sup>70</sup> Ibid. pp. 522-524.

<sup>71</sup> Ibid. p. 510.

<sup>72</sup> Nagy, Boldizsár. “Asylum Seekers and Refugees: Hungarian Dilemmas”, *Acta Juridica Hungarica* 34 (1992) p. 31.

<sup>73</sup> Based on data extracted from: UNHCR, *Refugees and Others of Concern to UNHCR. 1999 Statistical Overview*.

left the country illegally because the process of integration into Hungarian society proved to be very difficult.<sup>74</sup> The recognition rates of applications suggest that the country maintained a very generous asylum policy. However, the regional restriction limiting access to Convention refugee status to European refugees is a first indicator of the policy not being as generous and liberal as the data suggest. The total number of applicants for asylum via the Geneva Convention is therefore significantly lower than it would have been if non-European refugees also had the option to apply for asylum in Hungary. On accord of the UNHCR, a total number of 45 non-European Convention refugees were living in Hungary by the end of 1993, after following the procedure via UNHCR rather than the Hungarian state.<sup>75</sup> UNHCR in the following years continued determining refugee status for non-European refugees in Hungary. Moreover, the majority of the refugees that were granted Convention refugee status via the national Hungarian asylum procedure were ethnic Hungarians from Romania, Vojvodina and Croatia. Fullerton even estimates that approximately 3.500 out of 4.000 individuals that were granted refugee status by 1995 were ethnic Hungarians.<sup>76</sup> If this is true, it appears that Hungary was using the Geneva Convention and the refugee regime as a tool serving a broader national policy to give Hungarians that were left outside the Hungarian state since the Treaty of Trianon an opportunity to move to the Hungarian state.

The last years of Ceausescu's regime were marked by a hostile attitude towards the Hungarian minority, and shortly after his fall some ethnic clashes between Magyars and Romanians took place in the Transylvanian town of Târgu Mureş, in March 1990. Thus, in the 1980s and very early 1990s tensions between the Magyar minority in Romania and the Romanian state were at an increased level, and caused many of the Magyars living in the Romanian state to move to Hungary. However, the situation stabilized and tensions decreased soon after the incident in Târgu Mureş, and within a few years after the regime change in Romania, the influx of Magyars from that country to Hungary decreased. Most of the Magyars that intended to leave Romania for

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<sup>74</sup> UNHCR: UNHCR Activities Financed by Voluntary Funds: Report for 1993-1994 and Proposed Programmes and Budget for 1995. Part III - Europe. Section 10 - Hungary. p. 3. Available at: <http://www.unhcr.org/4ddbb9d564.pdf>

<sup>75</sup> Ibid. p. 3.

<sup>76</sup> Fullerton, Maryellen. "Hungary, refugees, and the law of return." p. 521.

Hungary already did so in the late 1980s and in the first years of the 1990s. When keeping in mind Hungary's Magyar-oriented refugee policy, it is not surprising to see that the amount of recognized applications for refugee status kept decreasing since 1992.

Something that is not visible in this table, are the large amounts of refugees that were granted temporary protection by Hungary, mostly refugees from Former Yugoslavia since Hungary is the first of the East Central European countries on the route to (Western) Europe for refugees leaving the territory of Former Yugoslavia. At the end of 1993, an estimate of 8000 refugees from Former Yugoslavia was receiving temporary protection by the Hungarian state.<sup>77</sup> There was no legal framework for the granting of temporary protection, but in practice any refugees fleeing the wars in Former Yugoslavia that applied for international protection were granted this temporary protection status by the Hungarian state. Additionally to the refugees that were granted temporary protection or refugee status, Hungarian authorities assessed that approximately 20.000 other refugees from the Former Yugoslavia were present on Hungarian territory, receiving no form of government assistance.<sup>78</sup> Even though in terms of granting refugee status, Hungary wasn't very generous towards non-Magyars, the Temporary Protection provided to large numbers of refugees from the Balkans should be taken into account as a positive element of the complete policy the country was maintaining in the early 1990s.

### 4.3 Poland

Finally, Poland gets used in Oxana Shevel's study as an example of transition and system of refugee policy building that is in certain aspects opposed to the one of Czechoslovakia and later the Czech Republic. The main difference according to Shevel is the one that, because of the more negotiated transition in Poland, the refugee policy making elites were less liberal minded than in the Czech Republic. As a result, opposed to the Czech refugee policy elites, the Polish authorities were less easily influenced by

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<sup>77</sup> UNHCR Activities Financed by Voluntary Funds: Report for 1993-1994 and Proposed Programmes and Budget for 1995. Part III - Europe. Section 10 - Hungary. p. 3.

<sup>78</sup> Humanitarian Issues Working Group, *Survey on the Implementation of Temporary Protection*, 8 March 1995, available at: <http://www.refworld.org/docid/3ae6b3300.html> [accessed 13 April 2016]

the UNHCR and had a more critical stance towards the organization in the early 1990s, and thus the UNHCR's efforts to liberalize refugee policies were less successful in Poland.<sup>79</sup> In the negotiation process between the Communist Party and the Solidarity movement in 1989, the communists were granted control over the Ministry of Interior, and as a result the personnel in the ministry responsible for refugee issues consisted mostly of former communists. When Solidarity won the free presidential elections in 1990, on the top level of the ministry changes took place, but on the middle and lower levels, former communists remained politically influential.<sup>80</sup> For analyzing Poland's stance towards refugees in the first half of the 1990s, any legal framework is missing: the country did not adopt any refugee law until 1997, something that can be explained by the severe domestic political instability during these years. The analysis of this period of time in Poland will thus be mainly based on a characterization of the available data and the asylum application procedures.

Poland was confronted with the issue of refugee already in the first half of 1990. In five months around 800 asylum seekers were registered in Poland, most of which were planning to travel to Sweden through Poland. Following bilateral discussions with Sweden, the route was closed and hundreds of asylum seekers remained in Poland, while Swedish authorities expelled an additional 260 back to Poland. At this time Poland had not yet adopted the Geneva Convention and Protocol and there was no legal framework or infrastructure to deal with these stranded asylum seekers. NGO's such as the UNHCR and the Polish Red Cross were the main actors in dealing with the situation. The UNHCR started the process of refugee determination, whereas the Polish Red Cross provided basic material resources for the asylum seekers.<sup>81</sup> In 1990-1991, due to the lack of an institutional framework concerning refugees, the UNHCR was the party responsible for refugee status determination and recognized around 800 people as mandate refugees. By the end of 1991 Poland had signed the Geneva Convention and 1967 Protocol and amended the Aliens Act as to include the possibility of a foreigner being granted refugee status, and was thus ready

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<sup>79</sup> Shevel, Oxana. *Migration, Refugee Policy, And State Building in Postcommunist Europe*. pp. 227-267.

<sup>80</sup> Ibid. p. 229.

<sup>81</sup> R. A. Stainsby, "Asylum-Seekers in Poland: Catalyst for a New Refugee and Asylum Policy in Europe," *International Journal of Refugee Law* V. 2, No. 4 (1990), pp. 636-41. pp. 636-7.

to take matters into its own hand.<sup>82</sup> This soon brought an end to the rather liberal approach towards refugees during the first years of transition. By 1993 the refugee issue stopped being a matter of high politics because there was no directly pressing situation like the hundreds of refugees sent back to Poland by Swedish authorities in 1990, and neither did a readmission agreement signed with Germany in 1993 cause a significant increase in asylum claims, contrary to what one might have expected. Thus refugee policy elites could act rather autonomously, and the head of the Office for Migration and Refugee Affairs had conservative views, resulting in more conservative policies.<sup>83</sup> The UNHCR expressed criticism on the refugee regime with regard to, among other issues, the accessibility of the procedure, social assistance during the procedure and the length of status determination. It has been suggested that the Polish Refugee Department took an excessively long time to issue first instance decisions on asylum applications with the aim of forcing withdrawals of asylum claims. Allegedly, with the same goal, government assistance to asylum applicants was basically absent.<sup>84</sup> According to the UNHCR the Polish Government even actively discourages some refugees from applying to asylum.<sup>85</sup> In spite of the criticism expressed by the UNHCR and Oxana Shevel's characterization of the asylum policy becoming more conservative, recognition rates were still high in 1994 (See Table 5).

Poland, like Hungary, knew the phenomenon of having native Poles living beyond the Polish state's borders for various reasons, such as by result of deportations, due to frontier changes or emigration to the USA and Canada. In the 1990s, many of these Poles tried returning to Poland, but not usually through the procedure of applying for refugee status, but rather by successfully applying for permanent resident permits. One event demonstrating Poland's policy of promoting emigration of ethnic Poles is a 1996 resolution on repatriation of ethnic Poles in Kazakhstan, providing them permanent residence permits and Polish citizenship upon invitation from a legal council.<sup>86</sup>

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<sup>82</sup> Shevel, Oxana. *Migration, Refugee Policy, And State Building in Postcommunist Europe*. p. 235.

<sup>83</sup> Ibid. p. 240.

<sup>84</sup> Ibid. pp. 236-9.

<sup>85</sup> U.S. Department of State. *Poland Human Rights Practices, 1993*. Available at: [http://dosfan.lib.uic.edu/ERC/democracy/1993\\_hrp\\_report/93hrp\\_report\\_eur/Poland.html](http://dosfan.lib.uic.edu/ERC/democracy/1993_hrp_report/93hrp_report_eur/Poland.html)

<sup>86</sup> Sword, Keith, and Krystyna Iglicka, eds. *The Challenge of East-West Migration for Poland*. Springer, 1998. p. 62.

Year	Applied	Recognized	Rejected	Otherwise closed	Total substantive decisions	% recognized (of total substantive decisions)	% rejected (of total substantive decisions)	% recognized (of total number of applicants)
1991	2 440	600	1 710	n/a	2 310	25.97%	74.03%	24.59%
1993	820	60	140	240	200	30.00%	70.00%	7.32%
1994	600	400	190	360	590	67.80%	32.20%	66.67%
1995	840	110	210	420	320	34.38%	65.63%	13.06%
1996	3 210	130	400	1 460	530	24.53%	75.47%	4.05%
1997	3 530	150	600	3 160	750	20.00%	80.00%	4.25%
<b>1991-97</b>	<b>11 440</b>	<b>1 450</b>	<b>3 250</b>	<b>5 640</b>	<b>4 700</b>	<b>30.85%</b>	<b>69.15%</b>	<b>12.67%</b>

Table 5: Asylum applications, decisions and recognition rates of Poland 1991, 1993-1997.<sup>87</sup>

Poland also functioned as a transit country for many asylum seekers, resulting in many discontinued asylum applications. Poland, in contrast with Hungary, did not receive as many asylum seekers from the territory of Former Yugoslavia as the former country, but experienced more arrivals from the former Soviet bloc countries. Armenians and Bosnians were the main groups of refugees that applied for asylum with the intention of staying in Poland until they could return home, rather than travelling further west.<sup>88</sup>

From Table 5, several conclusions can be drawn. First of all, a note for the data for the years 1990-1992 is required. The data for 1990 and 1992 are unavailable, and therefore excluded from the table. For 1991, the UNHCR was not able to make a distinction between rejected applications for refugee status and applications that were closed on other grounds. It is safe to assume that a large majority of the negative decisions taken in 1991 were actually the result of discontinued procedures due to the applicant leaving Poland before the procedure could be completed. Especially when including 80% of the 1710 negative decisions taken in 1991 to the applications that were closed on other grounds, the main conclusion from the data is the one that the majority of all applications for asylum was not completed. The reason for the high amount of applications and the large percentage of those being discontinued is that

<sup>87</sup> Based on data extracted from: UNHCR, *Refugees and Others of Concern to UNHCR. 1999 Statistical Overview*. Note: Data for 1990 and 1992 are not available and therefore excluded from this table.

<sup>88</sup> Iglicka, Krystyna. "Migration Movements from and into Poland in the Light of East-West European Migration." *International Migration* 39.1 (2001): 3-32. p. 10.

many refugees get apprehended by the Polish police when illegally trying to cross the border, and then file an official application for asylum, after which they try to move on to Germany. Additionally a number of refugees coming to Poland as a result of the readmission agreement with Germany filed applications for asylum in Poland without really intending to await the result.<sup>89</sup>

Furthermore, perhaps due to the inaccessibility of the application procedure, or the general lack of interest of refugees to apply for refugee status in Poland, the amount of applications filed in the country remained quite low until 1996. The recognition percentage of refugees that entered the procedure and awaited a final decision was fairly high during the first half of the 1990s, however.

#### 4.4 Conclusion

So how can the East Central European countries' asylum policies be best characterized for the early 1990s, up to the point where EU accession negotiation talks started? First of all, refugee policy wasn't a top priority on the agenda of the governments of the young democracies, something not very surprising seeing the tremendous amount of changes taking place in the first years of transition. All four countries didn't take long to adopt the Geneva Convention and 1967 Protocol, but only Czechoslovakia created a comprehensive legislative foundation for asylum policy in this period. The other states didn't adopt extensive laws dealing with the matter of refugees until later, when EU accession negotiations required a juridical solid framework to cover the issue. Even in Poland, where there was a direct need for a concrete policy to deal with a significant number of refugees in the country in 1990, no refugee law was adopted until 1997. Hungary also didn't adopt a solid asylum law until the same year and even the country's adoption of the Geneva Convention was subject to a geographic restriction for the bigger part of the 1990s.

Another conclusion is the one that the V4 countries functioned as transit countries for many refugees, something that can be observed by looking at the large percentage of non-concluded asylum applications due to applicants 'disappearing' before awaiting a decision on their application for refugee status. A significant amount

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<sup>89</sup> Wallace and Stola. *Patterns of Migration in Central Europe*. p. 185.



of the applications was thus never filed with the intention of awaiting a decision, but were instead lodged by immigrants after being caught by border guards or police, after which they tried to leave the concerning Central European country and move further west. This phenomenon was enabled by the opening of the borders and the lower degree of border controls compared to during communism on the one hand and to the era following integration into the CEAS that was to come.

One might expect that, in the process of an aspired transition to a liberal democracy, the states would establish very liberal refugee policies, since this would adhere to the principles of liberal democracies. In Czechoslovakia, and later the Czech Republic this was definitely the case, something that can be mostly attributed to the very liberal refugee policy elites and their willingness to embrace suggestions and advices of the UNHCR aiming to liberalize the refugee policy as much as possible. Poland is at the other side of the spectrum with less liberal minded refugee policy elites and procedure officials. When looking at recognition rates of the four countries however, the asylum policies in all four states seem to have been relatively generous, and definitely are more generous than in the years that were to follow. However, some side notes need to be made when observing these data. The fair accessibility of the procedures for all asylum seekers is disputed, and in the case of Hungary, the majority of asylum seekers that were granted refugee status, were ethnic Magyars coming from Romania and Former Yugoslavia. With regard to the refugees from the latter region, all four states have without hesitance provided temporary protection for them. This status of temporary protection is less of a commitment than granting someone Convention refugee status, but is nevertheless an element of international refugee protection, and meant quite something for the economically struggling states in transition, and should thus be positively taken into account when determining the character of refugee policies. All in all, the early asylum policies as developed during the first years of transition were relatively liberal in character, but incomplete. Apart from the signing of readmission agreements with various states in the region, the asylum policies didn't form a topic of great significance in domestic or international politics. As will be discussed in the next chapter, with the increase of asylum seekers in the years following, the readmission agreements started forming one of the incentives to get stricter control of immigration, resulting in restricting measures.

## 5 The development of refugee policies during EU accession negotiations (1997-2003)

Already in the first years of transition Poland, Hungary and Czechoslovakia expressed their aim to access the European Union, and vice versa the European Union expressed its wish to incorporate the Central European countries into the EU. In 1989 the 'Poland and Hungary: Assistance for Restructuring their Economies' programme (PHARE) was introduced, meant to assist the two mentioned countries in their preparation for future EU accession. This programme was later extended to other Central and East European countries, including the Czech and Slovak Republics. Between 1994 and 1996 all four countries officially applied for EU membership and by April 1998, the European Council decided to start accession talks with, among others, the Czech Republic, Poland and Hungary. Accession talks with Slovakia started only in 2000, due to the delay in economic and political transition during the period of 'Meciarism.' In this chapter the influence of EU accession talks on Central European refugee policies will be scrutinized, marked by adaption to the CEAS during a time of increasing numbers of asylum seekers in the region and Europe in general. The preparation for EU accession went together with various PHARE programmes, including Phare Horizontal Programmes (PHP) on Asylum. The UNHCR and EU member-states, most importantly Germany, were involved in the implementation of these programmes, aiming at setting up fair and efficient asylum systems that are in line with the EU policies in the applicant countries.<sup>90</sup> A brief summary of the common European asylum system (CEAS) in these years is necessary in order to understand the changes in refugee policies in East Central Europe. Crucial is that a common EU asylum policy only became part of the supranational pillar of the EU with the 1999 Treaty of Amsterdam, and was still being completed during the years preceding EU accession of the ECE states. As a result the applicants for EU membership had to adopt a system that was still under construction and not adopted by the member states, making it a moving target.<sup>91</sup> The CEAS consists of five main directives, the first one being the Temporary Protection

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<sup>90</sup> UNHCR. *The EU Enlargement Process and The External Dimension of The EU JHA Policy*. p. 145. Available at: <http://www.unhcr.org/41b6cb3a4.pdf>

<sup>91</sup> Shevel, Oxana. *Migration, Refugee Policy, And State Building in Postcommunist Europe*. p. 215.

Directive. This Directive was formally implemented as part of the CEAS to deal with situations such as the various wars in former Yugoslavia, though has not been implemented in practice since 1999. The Reception Conditions Directive, Procedures Directive and Qualification Directive established common grounds and minimum standards for granting or withdrawing asylum for all EU member states and defined the rights of asylum seekers and recognized refugees in the European Union.<sup>92</sup> The last directive, the Dublin Convention, since 2003 changed to the Dublin II Regulation is the final part of the CEAS, determining which member state is responsible for examining an individual asylum application. Altogether, the general goal is the achievement of efficient asylum systems in all member states, with legislation, procedures and institutions in line with international and European standards and principles.<sup>93</sup> The CEAS was being constructed during the years preceding the V4's EU accession and is up to today marked by many differences between asylum systems in the individual EU member states. The shortcomings of the functioning of the aspired common and harmonized system became very apparent during the last years. Thus, even though the Visegrád 4 countries all adapted their asylum policies enough to access the EU in 2004, there is still space for differences between different states' policies on refugees. Shevel describes it as following: "The presence or absence of safeguards - provisions specifying exactly how general rules and principles contained in the *acquis* should apply in practice - determined the quality of the asylum regime."<sup>94</sup>

## 5.1 The Czech Republic

The Czech refugee law underwent many changes in the years preceding EU accession. In 1999 new Asylum and Aliens Laws were passed and entered into force in 2000. Many of the elements of the EU *acquis* were to be found in these laws and the amendments introduced in the following year, such as the 'safe third country' and 'safe country of origin' provisions. Temporary and Humanitarian Protection concepts were also formally introduced in the new law. Family unity principles, regional courts

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<sup>92</sup> Considering the closeness of the points defined in these Directives, these three directives will be referred to together as the Qualification Directive.

<sup>93</sup> UNHCR. *The EU Enlargement Process and The External Dimension of EU JHA Policy*. pp. 151-154.

<sup>94</sup> Shevel, Oxana. *Migration, Refugee Policy, And State Building in Postcommunist Europe*. p. 220.

handling appeals as independent bodies, social assistance for rejected asylum seekers are a few of the other introduced provisions, all in line with the harmonized EU policy.<sup>95</sup> Many of the restrictive changes in the legislation were meant to improve the control over the borders and the inflow of asylum seekers into the Czech Republic, something serving the European goal of controlling the borders of the European Union as a whole. Other changes of a more liberal nature served to adhere to the EU's minimum standards of asylum.

As can be seen in Table 6, the Czech Republic experienced an extreme increase in asylum applications lodged in the country since 1999, reaching a climax in 2001. Shevel explains the severe increase by the 1999 Foreigners Law making it more difficult to obtain temporary work permits, resulting in economic migrants applying for refugee status. The Czech Republic responded by introducing restrictive amendments to the refugee law in 2002, the most important amendment prohibiting asylum seekers to work during the first year after admitting their application for asylum.<sup>96</sup> These restrictive measures are not entirely surprising considering the fact that the Czech Republic at the time was facing economic hardship.

As for the asylum procedures in the late 1990s and early 2000s, UNHCR reports from the early 2000s and European Commission progress reports from the pre-accession period provide some insight in the state of the procedural circumstances in the Czech Republic. For instance, the institutional and administrative capacity wasn't sufficient at the time to deal with the increasing amount of applicants for asylum. Another issue raised by the UNHCR was the prison-like detention facilities where aliens were placed for the purpose of expulsion or clarification of their identity. Additionally, integration of recognized refugees into Czech society remained problematic in spite of the various implemented integration programmes.<sup>97</sup> The EC also pressed the implementation of an independent second instance appeal body for rejected asylum

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<sup>95</sup> Ibid. p. 217.

<sup>96</sup> Drbohlav, D., Lachmanová, L., Čermák, Z., Janská, E., Čermáková, D. and Dzúrová, D. (2009): The Czech Republic: on its way from emigration to immigration country. IDEA working paper, No. 11. p. 49. Available at: [http://www.idea6fp.uw.edu.pl/pliki/WP11\\_Czech\\_Republic.pdf](http://www.idea6fp.uw.edu.pl/pliki/WP11_Czech_Republic.pdf)

<sup>97</sup> UNHCR. *Background Note on the Protection of Asylum Seekers and Refugees in the Czech Republic*, August 2004, available at: <http://www.refworld.org/docid/419a20294.html> [accessed 19 April 2016]

applications.<sup>98</sup>

Year	Applied	Recognized	Rejected	Otherwise closed	Total substantive decisions	% recognized (of total substantive decisions)	% rejected (of total substantive decisions)	% recognized (of total number of applicants)
1998	4 080	80	580	2 150	660	12.12%	87.88%	1.96%
1999	7 290	80	1 870	7 040	1 950	4.10%	95.90%	1.10%
2000	10 197	133	2 520	4 287	2 653	5.01%	94.99%	1.30%
2001	21 092	83	7 033	7 417	7 116	1.17%	98.83%	0.39%
2002	10 769	103	6 529	8 070	6 632	1.55%	98.45%	0.96%
2003	11 410	208	9 139	5 973	9 347	2.23%	97.77%	1.82%
<b>1998-2003</b>	<b>64 838</b>	<b>687</b>	<b>27 671</b>	<b>34 937</b>	<b>28 358</b>	<b>2.42%</b>	<b>97.58%</b>	<b>1.06%</b>

Table 6: Asylum applications, decisions and recognition rates of the Czech Republic 1998-2003.<sup>99</sup>

In Table 6, the steep increase of the amount of applicants for asylum in the late 1990s and early 2000s can be observed, peaking at over 20.000 in 2001. As mentioned before, a large amounts of the applications lodged between 1999 and 2001 were the result of legislative changes restricting the possibilities to obtain temporary work permits, causing many economic migrants to apply for asylum in order to get work permits, usually ultimately ending in the application being rejected or being otherwise closed. Notably, the recognition rates, in absolute numbers and especially in percentages have dropped significantly since the first half of the 1990s. The phenomenon of asylum seekers disappearing before a final decision was made was still substantial, but the number of applicants that saw their applications being rejected increased dramatically. From the year 2000 on, UNHCR has more detailed data available about the origin of asylum seekers, which helps to get a clearer image of numbers of economic migrants and moreover to distinguish what decisions have been made for applications lodged by refugees from countries of origin that are actually producing genuine refugees.

In the year 2000 for example, the largest groups of asylum seekers came from Ukraine and the Slovak Republic. Together with asylum seekers from Moldova and

<sup>98</sup> European Commission. Regular report from the Commission on the Czech Republic's progress towards accession, 2000, p. 88.

<sup>99</sup> Based on data extracted from: UNHCR, *Refugees and Others of Concern to UNHCR. 1999 Statistical Overview.*; [http://popstats.unhcr.org/en/asylum\\_seekers](http://popstats.unhcr.org/en/asylum_seekers)

Romania, they made up for 3881 of the applications for asylum, but apart from 7 Ukrainian citizens, all applications lodged by these groups were rejected or resulted in closed procedures due to the applicant leaving the Czech Republic before the procedure was completed. Afghans were responsible for 1200 of the asylum requests in the year 2000, but the vast majority of their procedures were discontinued, while a 100 were rejected and 22 were recognized. Belarusian (24), Armenian (16) and Russian, most likely of Chechen origin, (8) citizens were the other largest groups of citizens that were granted refugee status in that year. The Belarusian nationals that were recognized as refugees may have been ethnic Czechs, or have been granted asylum on political grounds.

For applications filed in the peak year 2001, many of the decisions were made in the following years. Most of the applicants for asylum were Ukrainians (5666). Other nationalities filing over a thousand applications were Moldovans (2776), Romanians (2012), Vietnamese (1873), Georgians (1321), Indians (1317) and Armenians (1080). Undoubtedly many of these were entering the asylum procedure merely to obtain work permits, or hoping to transfer further West, as is reflected in the high amount of rejected or otherwise closed applications submitted by people of these nationalities. The most successful group in obtaining refugee status was once again Belarus, claiming 25 of the 83 granted refugee statuses of that year. Irani's (10), Afghans (9) and Kosovars (9) made up for another third of the people obtaining refugee status while 2770 Ukrainian nationals saw their asylum requests get rejected.

The trends for the following years are rather similar, and are mostly marked by nationals listed as Russians, most of whom are presumably Chechens, obtaining a substantial part of the refugee recognitions, while applications filed by Ukrainians, Slovaks, Moldovans etc. were being systematically rejected.

Additionally, in 1999 the Czech Republic provided temporary protection and humanitarian assistance to 823 Kosovars, most of whom voluntarily repatriated by the end of the year.

From the above it can be concluded that many economic migrants, usually from the east of Europe used the asylum procedure to stay in the Czech Republic, resulting in rejected applications. Moreover, large proportions of the refugee statuses assigned by the Czech Republic were given to Russian (of which presumably many Chechen) and

Belarusian nationals, while many asylum seekers from other refugee producing countries saw very few of their applications for refugee status be accepted. This suggests that the Czech refugee elites had a strong preference for refugees of these two nationalities, and were very restrictive and hesitant towards refugees of various other, usually non-European nationalities, rejecting many of their applications for asylum whereas other European countries were more systematically granting refugee status to nationals of these countries. This is something that is noted by the UNHCR in a report on the protection of asylum seekers and refugees in the Czech Republic: “ ... in some EU Member States ... the recognition of applicants from certain countries of origin or nationalities seems to be much lower than in other EU countries.”<sup>100</sup>

## 5.2 Slovakia

Slovakia also started preparing for EU accession by harmonizing their laws with the EU *acquis*, resulting in changes on the front of refugee policies as well. The starting point Slovakia had to with, based on a progress report by the European Commission, was to make asylum legislation “... more detailed, particularly with regard to access to the procedure.”<sup>101</sup> The EC progress report from 1999 saw no progress in the asylum legislation and contained more concrete criticism: the 24 hour rule for lodging an asylum request needed to be removed, and the country should introduce an independent body as the second instance in the asylum procedure.<sup>102</sup> As a response to this criticism, Slovakia amended the asylum law in 2000, abolishing the 24-hour rule for applying, with the goal of increasing accessibility of the procedure, and adding family reunification as a ground for granting refugee status.<sup>103</sup> After continued criticism from the European Commission in the 2000 and 2001 progress reports, for example the continuing absence of an independent second instance appeal body, Slovakia introduced an altogether new Asylum Act in 2002. The EC’s progress report following

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<sup>100</sup> UN High Commissioner for Refugees (UNHCR), *Background Note on the Protection of Asylum Seekers and Refugees in the Czech Republic*, August 2004, available at: <http://www.refworld.org/docid/419a20294.html> [accessed 19 April 2016]

<sup>101</sup> European Commission. *Regular report from the Commission on Slovakia’s progress towards accession, 1998*. p. 35.

<sup>102</sup> European Commission. *Regular report from the Commission on Slovakia’s progress towards accession, 1999*. p. 50.

<sup>103</sup> 309/2000 Z.z. zmena zákona o utečencoch. Available at: <http://www.noveaspi.sk/products/lawText/1/49946/1/2>

the introduction of the act, praises the law and only states that Slovakia needs to ensure effective implementation of all the provisions of the new law.<sup>104</sup> The changes resulted in increased accessibility of the asylum procedures, but also implemented more restrictive elements, meant to control the influx of immigrants to the EU.

Nevertheless, in practice the refugee authorities maintained a very restrictive policy. The UNHCR expressed its concerns in a 2003 report: “Concerning the management of the asylum system, the main concern is the huge number of prematurely closed cases and the low number of recognition of refugee status.”<sup>105</sup> In the same report it is suggested that Slovakia’s choice of having the reception centers being situated only several kilometers away from the Austrian and Czech borders, may have been intended to encourage asylum seekers to leave Slovakia before a decision could be made on the asylum application.

Temporary Protection status for Former Yugoslavs, in practice mainly Bosnians, ended in 1997. In 1999, Slovakia granted temporary protection to 205 Kosovo Albanians, most of whom already repatriated by the end of the year.<sup>106</sup> During the remainder of the period discussed in this chapter temporary protection was not granted to any other group of refugees.

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<sup>104</sup> European Commission. *Regular report from the Commission on Slovakia’s progress towards accession, 2002*. p. 110.

<sup>105</sup> UN High Commissioner for Refugees (UNHCR), *Background Note on the Protection of Asylum Seekers and Refugees in Slovakia*, June 2003, p. 2. Available at: <http://www.refworld.org/docid/3f8a92bb2.html> [accessed 20 April 2016]

<sup>106</sup> United States Committee for Refugees and Immigrants, *U.S. Committee for Refugees World Refugee Survey 2000 - Slovak Republic*, 1 June 2000, available at: <http://www.refworld.org/docid/3ae6a8ce54.html> [accessed 22 April 2016]



Year	Applied	Recognized	Rejected	Otherwise closed	Total substantive decisions	% recognized (of total substantive decisions)	% rejected (of total substantive decisions)	% recognized (of total number of applicants)
1998	510	50	40	220	90	55.56%	44.44%	9.80%
1999	1 310	30	180	1 030	210	14.29%	85.71%	2.29%
2000	1 556	10	123	1 366	133	7.52%	92.48%	0.64%
2001	8 151	18	130	5 247	148	12.16%	87.84%	0.22%
2002	9 700	20	303	8 030	323	6.19%	93.81%	0.21%
2003	10 358	11	421	9 788	432	2.55%	97.45%	0.11%
<b>1998-2003</b>	<b>31 585</b>	<b>139</b>	<b>1 197</b>	<b>25 681</b>	<b>1 336</b>	<b>10.40%</b>	<b>89.60%</b>	<b>0.44%</b>

Table 7: Asylum applications, decisions and recognition rates of the Slovak Republic 1998-2003.<sup>107</sup>

The figures in Table 7 demonstrate the continuance of Slovakia's main function as a transit country for asylum seekers. Between 1998 and 2003, over 80% of all applications filed in the country resulted in discontinued procedures. Of the remaining applications nearly 90% got rejected and 10% accepted with the recognition rates decreasing while the amount of application increased. Most of the applicants that actually stayed in Slovakia until a decision on the application had been made are nationals from Asian countries, mainly Afghanistan, Pakistan, India and Bangladesh; however the vast majority of decisions taken was negative for all these countries of origin. Slovakia also received asylum requests from Kosovars and Russian nationals, of which very few requests resulted in granting of refugee status.

The extreme increase in asylum claims in the early 2000s is explained by the legislative changes in the Asylum Act increasing accessibility of the asylum procedure. The most important change causing this steep increase was the introduction of the possibility to seek asylum after being detained by the police, causing many illegal migrants to utilize the procedure, without really intending to obtain asylum and stay in Slovakia.<sup>108</sup>

The trend in Slovakia is similar to the one in the Czech Republic: the amount of people applying for asylum increases steeply during the late 1990s and early 2000s, but the recognition rates are very low. In Slovakia the vast majority of applicants disappeared before the procedure is finished, while in the Czech Republic more of the

<sup>107</sup> Based on data extracted from: UNHCR, *Refugees and Others of Concern to UNHCR. 1999 Statistical Overview.*; [http://popstats.unhcr.org/en/asylum\\_seekers](http://popstats.unhcr.org/en/asylum_seekers)

<sup>108</sup> Hurná, Lucia. "Asylum Legal Framework and Policy of the Slovak Republic." pp. 1399-1400.

asylum seekers remained in the country long enough to see the authorities reach a decision on their application, most frequently resulting in denial of refugee status. The explanations for this main difference are two: first of all it appears to have been easier for asylum seekers to leave Slovakia and enter the Czech Republic or Austria, than it might have been for asylum seekers in the Czech Republic to enter their probably preferred destination of Germany. Secondly, the data might indicate that the asylum procedure was more efficient in the Czech Republic, more quickly filtering out and rejecting economic migrants' applications for asylum.

### 5.3 Hungary

Hungary introduced a new Asylum Act in 1997, entering force in March of the next year. Unsurprisingly, Hungary removed the geographic restriction on the Geneva Convention and Protocol, thereby giving non-European asylum seekers access to the procedures. Furthermore, the new Act was more comprehensive and elaborate, and generally brought Hungary's asylum legislation in line with European standards. Typically for all East Central European countries in this period, the new legislation, as brought in line with the common EU asylum policy, resulted in both restrictive and liberal changes. For instance, the 72-hour deadline for filing an application was abolished, an independent appeal body was introduced and integration programmes for recognized refugees were created. On the restrictive side the concept of 'safe third country' was implemented, and manifestly unfounded claims were directed to a fast-track procedure. Aside from complete adoption of the Geneva Convention and temporary protection principle, Hungary also introduced the concept of "authorized to stay" for asylum seekers that were not granted refugee status, but could not safely return to their home countries. In practice this was a temporary humanitarian protection principle.

A 1998 EC report on Hungary's progress for EU accession acknowledges the comprehensibility of the new Asylum Act, and only foresaw problems in the implementation of the act, due to a lack of resources and staff.<sup>109</sup> As a result of the lifting of the geographic restriction, and giving non-Europeans access to the asylum

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<sup>109</sup> European Commission. Regular report from the Commission on Hungary's progress towards accession, 1998, p. 10.

procedure, Hungary experienced a huge increase in applications for asylum with yearly applications increasing tenfold between 1997 and 1999 (see Table 8). This explains the need for more staff and resources as noticed by the European Commission. In the commission's status report from 1999, the same issue is raised again, explicitly mentioning the need for more judges "...to hear appeals in a reasonable time."<sup>110</sup> Reception facilities however, were said to be corresponding to international standards. In the 2000 status report some progress has been noted, but the commission required further improvement of the asylum system. For example, a legal framework facilitating integration of recognized asylum seekers was lacking, and an increase of staff and judges dealing with the procedures and appeals helped to process the applications more quickly, though further improvement was still considered necessary.<sup>111</sup> In the European Commission's final report of this category, dating from 2002, the commission once more expressed its satisfaction with the asylum legislation being in line with the EU *acquis*, but nevertheless also expressed some concerns about the extremely low refugee recognition rates in Hungary.<sup>112</sup>

The EC's assessment of Hungary's asylum policy was fairly positive throughout the pre-accession years, but reports by the UNHCR and the United States Committee for Refugees and Immigrants suggest that the procedures in practice didn't function according to international standards. For instance, instead of using an official list of safe countries of origin or safe third countries, asylum officers judge individually whether these principles should apply. The UNHCR was concerned that asylum seekers sometimes got denied asylum or authorization to stay when they were unable to establish their identity or provide documentary evidence supporting their claims.<sup>113</sup>

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<sup>110</sup> European Commission. Regular report from the Commission on Hungary's progress towards accession, 1999, p. 13, 51.

<sup>111</sup> European Commission. Regular report from the Commission on Hungary's progress towards accession, 2000, p. 17, 72.

<sup>112</sup> *Ibid.* pp. 28-29.

<sup>113</sup> United States Committee for Refugees and Immigrants, *U.S. Committee for Refugees World Refugee Survey 2000 - Hungary*, 1 June 2000, available at: <http://www.refworld.org/docid/3ae6a8d028.html> [accessed 22 April 2016]

Year	Applied	Recognized	Autho- rized to stay	Rejected	Otherwise closed	Total substantive decisions	% recognized (of total substantive decisions)	% rejected (of total substantive decisions)	% recognized (of total number of applicants)
1998	7 370	440	230	2 950	1 170	3 620	12.15%	81.49%	5.97%
1999	11 500	310	1 780	3 540	5 800	5 630	5.51%	62.88%	2.70%
2000	7 801	197	680	2 978	4 956	3 855	5.11%	77.25%	2.53%
2001	9 554	174	290	2 995	5 132	3 459	5.03%	86.59%	1.82%
2002	6 412	104	1 304	1 274	5 073	2 682	3.88%	47.50%	1.62%
2003	2 401	178	772	773	1 436	1 723	10.33%	44.86%	7.41%
<b>1998-2003</b>	<b>45 038</b>	<b>1 403</b>	<b>5 056</b>	<b>14 510</b>	<b>23 567</b>	<b>20 969</b>	<b>6.69%</b>	<b>69.20%</b>	<b>3.12%</b>

Table 8: Asylum applications, decisions and recognition rates of Hungary 1998-2003.<sup>114</sup>

The data in table 8 show the huge increase in asylum claims from 1998, up from 1110 in 1997, due to the lifting of the geographic restriction to the Geneva Convention. Additionally the results of the understaffed asylum administration become apparent in the data for the late 1990s. At the end of 1998, 2580 cases were still pending, and at the end of 1999, 2640 cases were still awaiting a decision. By 2003, this was reduced to an amount of 775 pending cases at the end of the year.<sup>115</sup> Most importantly, the EC's criticism of the low recognition rates becomes visible. In 1999, 4783 Yugoslav citizens applied for asylum in Hungary, probably many of whom were Kosovo Albanians. A few dozens of them were granted refugee status, and another 1408 were granted authorization to stay.<sup>116</sup> The fact that Kosovars were not eligible for temporary protection, and that many of the asylum seekers from Kosovo were denied asylum, indicates a more restrictive policy, especially compared to the Czech and Slovak republics, where Kosovars were granted temporary protection in 1999. After opening up the asylum system to non-Europeans, the majority of asylum claims were filed by people from Asia and the Middle East. Out of the 26168 claims filed between 2000 and 2003, 9313 were filed by Afghans. Bangladeshis and Iraqis were the other two biggest groups of asylum applicants in this period, responsible for respectively over three and four thousand of the applications for asylum. These are also the nationalities that make for a significant percentage of the asylum seekers that are granted refugee

<sup>114</sup> Based on data extracted from: UNHCR, *Refugees and Others of Concern to UNHCR. 1999 Statistical Overview.*; [http://popstats.unhcr.org/en/asylum\\_seekers](http://popstats.unhcr.org/en/asylum_seekers)

<sup>115</sup> Data available at: UNHCR, *Refugees and Others of Concern to UNHCR. 1999 Statistical Overview.*; [http://popstats.unhcr.org/en/asylum\\_seekers](http://popstats.unhcr.org/en/asylum_seekers)

<sup>116</sup> United States Committee for Refugees and Immigrants, *U.S. Committee for Refugees World Refugee Survey 2000 - Hungary*, 1 June 2000.

status, though the bigger part of the applications got systematically rejected. In 2000 and 2001 Hungary also received hundreds of asylum seekers listed as coming from ‘Serbia and Kosovo,’ many of which were authorized to stay for a limited period of time. This status was altogether granted to over five thousand asylum seekers, of which many were Afghans and Iraqis as well. The thousands of Bangladeshi asylum seekers didn’t see a single of their requests for asylum be approved, or even get granted the ‘authorized to stay’ status.

In short, Hungary followed the same trend as the Czech and Slovak Republics: it adopted new legislation, in line with the EU requirements, but during a time of a strong increase in immigrants applying for asylum, the status determination process more frequently resulted in denial of refugee status.

#### 5.4 Poland

Poland didn’t have a comprehensive legislative framework dealing with refugee matters until the end of 1997 when a new Aliens Law was introduced and implemented after years of negotiation. This law introduced restricting measures, such as the safe country of origin and safe third country concepts, as well as a procedure for manifestly unfounded claims. The law introduced a Council for Refugees, an independent agency to decide appeals, and assigned the task of deciding appeals on negative second-instance decisions to the Supreme Administrative Court. The 1997 Aliens Law was introduced before Poland started bringing its asylum policy in line with the EU *acquis*, and therefore contained various issues that were to be changed in the early 2000s in the framework of the PHARE horizontal programme. For instance, clauses on humanitarian status and the right of family reunification were still lacking.<sup>117</sup> These concepts were added later in 2000-2001 amendments. The same applies to the safe country of origin and safe third country concepts: even though they were formally introduced in 1997, no official list of such countries was drawn up for another couple of years.

The European Commission in its 1998 report on Poland’s EU accession progress

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<sup>117</sup> United States Committee for Refugees and Immigrants, *U.S. Committee for Refugees World Refugee Survey 2001 - Poland*, 20 June 2001, available at: <http://www.refworld.org/docid/3b31e1680.html> [accessed 25 April 2016]

pointed out the necessity of allocation of adequate administrative and human resources in order to adequately handle the increase in asylum requests filed in Poland.<sup>118</sup> The report from the next year stresses the need to improve practical application of the 1997 provisions. Even though Poland had significantly fewer applications to process than the other East Central European states in the late 1990s, the procedures on average took half a year longer than the maximum of three months as defined by law.<sup>119</sup> By 2002, insufficient legal assistance during the procedures, and the lack of integration possibilities for recognized refugees remained a problem according to the EC.<sup>120</sup>

Oxana Shevel's case study on Poland concludes that during the years preceding EU accessions, as in the other ECE states, Poland's refugee policy underwent a mixed bag of changes. Certain principles like the safe third country and the safe country of origin concepts were making the policy more restrictive, but on the other hand many of the new provisions improved the asylum regime: first and second instance appeal opportunities at independent bodies were introduced, a right for a personal interview before denial of access to the asylum procedure, and the possible granting of the status of temporary protection all made the refugee regime in the country more progressive. Shevel ascribes many of these liberalizing changes to the UNHCR's influence on the refugee policy-making process.<sup>121</sup>

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<sup>118</sup> European Commission. Regular report from the Commission on Poland's progress towards accession, 1998, p. 35.

<sup>119</sup> European Commission. Regular report from the Commission on Poland's progress towards accession, 1999, p. 52.

<sup>120</sup> European Commission. Regular report from the Commission on Poland's progress towards accession, 2002, pp. 29-30.

<sup>121</sup> Shevel, Oxana. "Migration, Refugee Policy, and State Building in Postcommunist Europe." pp. 247-265.

Year	Applied	Recognized	Rejected	Otherwise closed	Total substantive decisions	% recognized (of total substantive decisions)	% rejected (of total substantive decisions)	% recognized (of total number of applicants)
1998	3 370	60	1 390	1 760	1 450	4.14%	95.86%	1.78%
1999	2 960	50	2 200	870	2 250	2.22%	97.78%	1.69%
2000	4 589	78	2 626	1 206	2 704	2.88%	97.12%	1.70%
2001	6 806	283	4 725	1 867	5 008	5.65%	94.35%	4.16%
2002	7 421	276	6 512	567	6 788	4.07%	95.93%	3.72%
2003	8 017	247	3 950	4 653	4 197	5.89%	93.58%	3.08%
<b>1998-2003</b>	<b>33 163</b>	<b>994</b>	<b>21 403</b>	<b>10 923</b>	<b>22 397</b>	<b>4.44%</b>	<b>95.56%</b>	<b>2.30%</b>

Table 9: Asylum applications, decisions and recognition rates of Poland 1998-2003.<sup>122</sup>

As in the cases of the other East Central European states during the pre-accession period, the European Commission expressed criticism on the low recognition rates in Poland.<sup>123</sup> This criticism is reflected in Table 9, where it can be observed that below five percent of the substantial decisions taken were positive ones. Something that discerns Poland from the previously studied states, is the relatively low amount of cases that are closed before the procedure is finished. In Poland, Hungary and Slovakia the amount of cases listed as 'otherwise closed' in this period lie around 50% of the applications filed, while in Poland less than one third of the cases was closed in this manner, either indicating that Poland became less of a transit country and more a final destination for refugees, or that asylum seekers were less easily able to travel out of Poland, e.g. to Germany, before the procedure was completed. The second explanation more likely applies in most of the cases.

Poland experienced quite a shift in the nationality among asylum seekers. In the second half of the 1990s, the majority of asylum seekers came from Asiatic countries, mostly from the Indian subcontinent and Afghanistan and Armenia. From 2000 on the majority of applicants came from the former Soviet Bloc and its satellite states, mainly Russia, Romania, Bulgaria and Mongolia. As is the case in the Czech Republic, the applicants listed as Russian nationals are mainly of Chechen origin. A small percentage of the thousands of Russians, presumably mostly Chechen nationals, applying for

<sup>122</sup> Based on data extracted from: UNHCR, *Refugees and Others of Concern to UNHCR. 1999 Statistical Overview*; [http://popstats.unhcr.org/en/asylum\\_seekers](http://popstats.unhcr.org/en/asylum_seekers)

<sup>123</sup> European Commission. Regular report from the Commission on Poland's progress towards accession, 2002, p. 115-6.

asylum see their claims for refugee status recognized, while in many instances the procedure doesn't confirm the claim of Chechen origin or the claim of persecution.<sup>124</sup> On the other hand, out of the 884 times refugee status was granted between 2000 and 2003, three quarters were granted to Chechens, making them by far the most successful group to obtain refugee status in Poland. Belarusians, even though yearly applying in small numbers, are good for another 50 of the given refugee statuses in these four years. As in the Czech Republic, these Belarusian nationals may have been of ethnic Polish origin or been granted refugee status on political grounds. Refugees from Afghanistan accounted for nearly 2000 of the claims for asylum between 2000 and 2003, but only 19 of them were granted refugee status.

All in all Poland, while adapting asylum legislation to the EU *acquis*, recognized very few of the applicants for asylum as refugees. The vast majority of nationals that was granted refugee status were Chechen nationals. The high recognition rates of Chechens in Poland compared to asylum seekers of other nationalities can be explained by political reasons: granting refugee status to Chechens is a certain way of manifesting a critical attitude towards Russian policy in Chechnya. Refugees from other parts of the world faced very slim chances of being granted asylum in Poland.

## 5.5 Conclusion

A similar trend can be observed in all four states subject to this study during the pre EU accession period. The two most important events were the increase of asylum seekers applying for asylum in the countries and the EU accession negotiations resulting in legislative changes and the creation of more complete and comprehensive asylum systems. These two factors might very well be related seeing as prospective EU accession made the V4 countries more attractive as destination countries for refugees, attributing them an increased function of destination countries in addition to the transit function. Also, the Common European Asylum System required stricter border controls. The implementation of these stricter border controls by the ECE states caused more asylum seekers to be apprehended at the borders after which they would file an asylum claim, rather than transiting through East Central Europe without filing

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<sup>124</sup> Okólski, Marek, and Ewa Kępińska. *Recent Trends in International Migration Poland 2001*. Ośrodek Badań nad Migracjami, Inst. Studiów Społecznych UW, 2001.



an application in any of the states in the region, whereas stricter border controls by their Western neighbor states resulted in asylum seekers ending up in one of the Central European states, ultimately filing an application for asylum when they couldn't enter a EU Member State. Nonetheless, in all four countries a large proportion of the people filing a claim for asylum still 'disappeared' before the asylum procedure was completed. This phenomenon in turn could be related to the low recognition rates: when it becomes apparent that chances are very low to obtain refugee status in one of the East Central European countries, asylum seekers may have chosen to apply for asylum again in one of the West European countries where the recognition rates were higher. The interconnection of these factors, in a time of a general increase of asylum seekers in Europe, explains the increase that can be observed in the numbers of asylum applicants in the region.

When making an assessment of the asylum policies of the V4 countries, it is useful to compare the recognition rates of this region to the recognition rates in the European Union. UNHCR data show that during the years 2000, 2001 and 2002 the total recognition rates of the fifteen EU member states were respectively 12, 16 and 11 percent. When including asylum seekers that were allowed to stay for humanitarian reasons, the rates are even at 26, 27 and 20 percent for these three years.<sup>125</sup> With the exception of Hungary, asylum seekers were usually not granted allowance to stay for humanitarian grounds in the four candidate countries, and generally recognition rates suggest refugees from certain nationalities such as Afghanistan and Iraq had better chances in many West European countries to gain any form of protection than in the East Central European countries. The same applied to Chechen asylum seekers: after applying for international protection in Poland, many Chechens went to the Czech Republic and finally attempted to get into Austria, because recognition rates of Chechen asylum seekers were higher than in the previous two countries.<sup>126</sup> This indicates that the aspired common, harmonized EU policy on asylum did not function as one: countries could adhere to the minimal standards as defined in the EU *acquis*,

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<sup>125</sup> UNHCR, *Asylum Decisions in Europe 2000-2002*. Available at: <http://www.unhcr.org/4039dccd4.html> [accessed 25 April 2016]

<sup>126</sup> United States Committee for Refugees and Immigrants, *U.S. Committee for Refugees World Refugee Survey 2004 - Czech Republic*, 25 May 2004, available at: <http://www.refworld.org/docid/40b459384.html> [accessed 26 April 2016]

but have more liberal or restrictive interpretations of the *acquis*, resulting in different outcomes of asylum procedures.

Even though the legislation was largely brought in line with that of the EU member states, this did not result in comparable recognition rates of refugees, both in percentages of total substantive decisions taken, nor in absolute numbers. The recognition rates rather decreased compared to the earlier 1990s. The UNHCR and the European Commission both expressed concerns about the low recognition rates in the four countries, but because the legal framework corresponded to the EU *acquis*, all four countries joined the European Union in 2004.

Concluding, after a period of liberalism in the early 1990s, the legislative and procedural changes implemented in the late 1990s and early 2000s resulted in generally more complete and comprehensible refugee policies. Some of these changes were of a liberal character, whereas others were more restrictive. The restrictive changes occurred mostly in the accessibility of the asylum procedures on a legislative level, while changes of a more liberal character rather took place on a procedural level, and concerned the rights and standards for individuals that were granted a form of international protection. All these developments should be seen in a European context as well. The CEAS aimed to combat illegal migration and manage strict controls of the external borders of the European Union. When observing the recognition rates in the years before EU accession however, it becomes apparent that the asylum policies overall turned more restrictive, with a very low amount of the substantial decisions taken resulting in the granting of protection. Referring back to Lavenex, Byrne et al. and Phuong, the two objectives of the incorporation of East and Central Europe to the CEAS, are visible: the creation of complete and comprehensive asylum systems in East Central Europe enabled older Member States to regard the states as safe third countries, moving the 'asylum burden' further east, and secondly, even though adhering to international and European standards, the asylum systems turned more restrictive and looking at the recognition rates one could hardly say that the V4 states became too attractive for asylum seekers.

## 6 The development of asylum policies after EU accession (2004-2010)

With EU accession in 2004, the V4 countries were officially part of the Common European Asylum System, and should ideally have identical asylum policies to those of the older EU member states. In this chapter we will see how asylum policies developed in the second half of the 2000s within the framework of the CEAS. As mentioned before, the EU *acquis* on asylum laid out the basic framework for asylum legislation and procedures, but there was still plenty of room for interpretation of the rules defined by the European Union, and the fact that the EU member states harmonized their legislation on asylum, didn't eliminate differences in the procedures and final decisions taken on asylum applications. UNHCR's and the European Council on Refugees and Exiles' studies as published in 2009, "... clearly demonstrated that the possibility of finding protection varies dramatically from one Member State to another."<sup>127</sup>

Another factor that will play an important role in the analysis of this period is the application of the Dublin system. The Dublin Regulation was meant to establish a hierarchy of criteria for identifying the Member State responsible for the examination of an asylum claim. After a criterion based on family links, the responsibility is assigned on basis of the state through which the asylum seeker first entered, or the state responsible for their entry into the EU's territory. The aim of the regulation was to ensure that one Member State was responsible for the examination of an asylum application, serving efficiency and deter the phenomenon of asylum seekers filing claims in multiple countries, but the system has been widely criticized for endangering the non-refoulement principle, as well as placing a bigger burden on the member states on the outer borders of the EU. A UNHCR discussion paper sums up many points of criticism of the Dublin Regulations including the unbalanced sharing of responsibilities for the different Member States.<sup>128</sup> Based on the Dublin Regulations, the states on the external borders of the EU, including three out of the four V4 states, could get refugees sent back to them by their Western neighbors.

<sup>127</sup> UNHCR and ECRE. "The Qualifications Directive Fact Sheet." (2009)

<sup>128</sup> UNHCR. *The Dublin II Regulation. A UNHCR discussion paper.* April 2006.

## 6.1 The Czech Republic

The appearance of the immigration topic in political and public debate in the Czech Republic occurred relatively late in the Czech Republic. Oxana Shevel argues that the issue started being more relevant in the early 2000s: in the 2002 parliamentary elections, immigration became a topic in Czech elections, with the center right ODS party campaigning against immigration. In the next elections in 2006, the issue of refugees didn't form a main issue of debate, but political parties were paying more attention to the issue by this time. Oxana Shevel also concluded that a correlation between partisanship and preferences over refugee policies became discernable in this period.<sup>129</sup> Based on surveys, Salim Murad points out that Czechs at the beginning of this decade didn't consider immigration to be a key issue for the Czech Republic, but that the Czechs held some of the most negative views towards immigrants seen in the EU.<sup>130</sup> Murad discerns the potential of the issue becoming topic of political and public debate in the case of growing labor immigration. Last year, we have seen that the refugee crisis had exactly this effect on the issue of immigration and asylum in Czech public and political debate.

The ODS won the 2006 elections and under governance of this party, several amendments were made to the 1999 Asylum Act. Since EU accession, the Czech Republic kept its legislation on asylum in line with the Common European Asylum System and in particular the Schengen *acquis*, resulting in Schengen accession in 2007. Legislative changes were mostly introduced in this context. In 2006 and 2007 amendments to the Asylum Act were introduced and implemented. The first one, as a part of the EU Qualification Directive, introduced a category of Subsidiary Protection. This form of protection is defined as protection for those individuals who did not qualify for refugee status, but who still should not be sent back to their country of origin. This form of protection included fewer rights than refugees that were granted Convention refugee status. The 2007 series of amendments were very restrictive of character. Applications that are filed repeatedly for the same reason would be

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<sup>129</sup> Shevel, Oxana. *Migration, Refugee Policy, And State Building in Postcommunist Europe*. pp.224-5.

<sup>130</sup> Murad, Salim. "Questioning Migration in the Czech Republic Before the 2009 Economic Crisis." *Territoriality and Migration in the EU Neighbourhood*. Springer Netherlands, 2014. 209-223.

considered inadmissible and the procedure would thus be discontinued. Another provision made it possible to deprive asylum seekers from their freedom of movement on the basis of legal reasons by forcing them to stay in a reception center for a maximum period of four months. Additionally, people who declare their wish to apply for asylum in the transit zone of an international airport in the Czech Republic could be rejected and regarded as never having entered Czech Territory.<sup>131</sup> Even though these changes all took place within the legal framework of the CEAS and in preparation of accession to the Schengen zone, they can be considered the result of restrictive interpretations of the EU *acquis*. On the other hand, in 2008, the rights for persons granted Subsidiary Protection were expanded, such as better access to social benefits and the labor market.

The accessibility and quality of asylum procedures were generally considered to be good, however various organizations noted some points of concern. The European Commission against Racism and Intolerance (ECRI) for instance, expressed concerns about expedited airport procedures in the Czech Republic as introduced in 2007. The ECRI urged the Czech authorities to ensure that these procedures do not weaken asylum seekers' rights and that asylum seekers are able to fully express their claim for asylum by having legal counsel and qualified interpreters available during the procedure.<sup>132</sup> The UNHCR also was critical of the 2007 amendment and in particular of the conditions in aliens' detention centers, which it describes as "comparable to those in prisons."<sup>133</sup> A 2006 critical assessment of the Czech Republic's asylum procedures by Prague based attorney Pavel Uhl contains a wide range of criticism of the procedures. He for instance alleges the Czech state of abusing the concept of procedural eligibility, a process determining whether asylum seekers are eligible to access the asylum procedure, in order to limit the access to asylum as such.<sup>134</sup> Additionally, he defines the system as inadequate. According to Uhl, the authorities responsible for making

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<sup>131</sup> Szczepanikova, Alice. "From the Right of Asylum to Migration Management: The Legal–Political Construction of 'a Refugee' in the Post-Communist Czech Republic." *Europe-Asia Studies* 63.5 (2011): 789-806.

<sup>132</sup> ECRI. "Report on the Czech Republic (fourth monitoring cycle) 2009.

<sup>133</sup> UNHCR. *Submission by the United Nations High Commissioner for Refugees for the Office of the High Commissioner for Human Rights' Compilation Report (Excerpts of Treaty Body Concluding Observations and Special Procedure Reports) - Universal Periodic Review: Czech Republic*, 19 November 2007, available at: <http://www.refworld.org/docid/49b62735d.html> [accessed 27 April 2016]

<sup>134</sup> Pavel Uhl. "Shortcomings of the Czech Republic's Asylum Policy" June 2006, p. 3, available at: <http://migrationonline.cz/en/shortcomings-of-the-czech-republic> [accessed 27 April 2016]

decisions on individual asylum requests lack knowledge of the Czech Republic's laws, familiarity with the situation of various countries of origin and knowledge of principles of international law, resulting into decisions on requests for international protection that are of poor professional quality. This then raises the question of whether the inadequacies of the decision making process may have been intentional, as a means of reducing the number of asylum seekers that get granted international protection in the Czech Republic.<sup>135</sup>

Year	Applied	Recognized	Other form of protection	Rejected	Otherwise closed	Total substantive decisions	% recognized (of total substantive decisions)	% recognized + other forms of protection	% rejected (of total substantial decisions)
2004	5 476	142	N/A	4 696	3 265	4 838	2.59%	N/A	94.34%
2005	4 160	251	N/A	2 636	1 468	2 887	8.00%	N/A	84.00%
2006	5 132	378	N/A	3 713	1 384	4 091	9.24%	N/A	90.76%
2007	3 347	275	191	2 395	857	2 861	9.61%	16.29%	83.71%
2008	2 719	220	138	1 885	1 072	2 243	9.81%	15.96%	84.04%
2009	1 832	193	28	841	765	1 062	18.17%	20.81%	79.19%
2010	1 398	264	104	640	557	1 008	26.19%	36.51%	63.49%
<b>2004-2010</b>	<b>24 064</b>	<b>1 723</b>	<b>461</b>	<b>16 806</b>	<b>9 368</b>	<b>18 990</b>	<b>9.07%</b>	<b>11.50%</b>	<b>88.50%</b>

Table 10: Asylum applications, decisions and recognition rates of the Czech Republic 2004-2010.<sup>136</sup>

In Table 10 can be observed how the above is reflected in the recognition rates of asylum applications in the Czech Republic. The other form of protection occurring from 2007 is the subsidiary protection as introduced in the 2006 amendment. Data on previous other forms of protection are not available at the UNHCR, and are for the years 2004-2007 included in the numbers in the 'recognized' column. The most notable change is the halving of the number of applicants for international protection in 2004: 5476 down from 11410. This decrease can be explained by the practical implementation of the 'safe country of origin' and 'safe third country' principles as well as the Dublin Regulation. The safe country of origin principle made the Czech asylum procedure inadmissible for asylum seekers from Slovakia, and the Dublin Regulation caused a strong decrease in applicants for asylum in all East and Central European countries. The reason is the rule defined in the Dublin Regulation that states that asylum seekers can seek asylum in only one country, and that that one country is the

<sup>135</sup> Ibid. pp. 4-5.

<sup>136</sup> Based on data extracted from: [http://popstats.unhcr.org/en/asylum\\_seekers](http://popstats.unhcr.org/en/asylum_seekers)

one responsible for the review of the asylum application. For most asylum seekers the Czech Republic wasn't the desired final destination, and they thus prefer to apply for asylum in a (usually West European) country where they would prefer to settle down.

Like the years before accession to the European Union, Belarusians and Chechens were overall quite successful in obtaining international protection in the Czech Republic, while asylum seekers from various Asian countries have very slim chances to be granted refugee status or even subsidiary protection during the first years after EU accession. In 2004, 1600 Ukrainian nationals applied for asylum, of which 5 were granted refugee status. In 2005 and 2006 the number of Ukrainian asylum seekers decreased rapidly to respectively 1020 and 571 new yearly applicants. Very few of them were granted international protection and the number kept decreasing during the next years. Not many Iraqis sought asylum in the Czech Republic, but the majority of the applicants was granted either subsidiary protection or were recognized as Convention refugees. As a part of a resettlement programme refugees from Myanmar were granted refugee status, totaling up to nearly 100 individuals.<sup>137</sup> The Czech Republic also resettled refugees from Cuba and Uzbekistan.

The steady decrease in asylum applicants is the result of the Czech Republic being part of the Common European Asylum System, including the Dublin Regulation, making the Czech procedures inadmissible for many asylum seekers, and causing many others to 'save' their asylum request for another country. Critical assessment of the asylum procedures in the country suggest that the Czech refugee authorities intentionally tried to keep access to the asylum procedure limited, also resulting in the country becoming less attractive for refugees seeking international protection. While staying in line with the EU rules on asylum, the Czech Republic managed to reduce the number of asylum seekers applying for protection in the country, while still actively participating in international refugee protection, for instance by partaking in resettlement programmes (something that by far not every EU member state did), and granting Convention status to several hundred refugees yearly. After the very restrictive +/- 5 years preceding EU accession, joined with unprecedented numbers of applicants for asylum, the Czech Republic reduced accessibility of the asylum procedures, but was more liberal in making its decisions on the applications, granting

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<sup>137</sup> <http://www.unhcr.org/490b05c64.html>

more refugee protection statuses in absolute numbers and percentages than in the years before EU accession. A critical assessment concerning the Czech participation in resettlement programmes however, points out that the resettling of refugees recognized by the UNHCR elsewhere in the Czech Republic isn't as liberal as it seems. Alice Szczepanikova sees it as preference of the Czech state for refugees that are fittest for integration, and accuses the Czech Republic that its selection of certain groups of refugees is more of an indication of migration management than adherence to the humanitarian principles of asylum.<sup>138</sup>

## 6.2 Slovakia

As in the Czech Republic, immigration and refugees didn't play a big role in Slovakia's domestic politics until recent years. Various amendments to the Asylum Act have been introduced in the years after EU accession, mostly transposition of EU legislation. In May 2004, an act on Temporary Protection was introduced, though since 1999 Slovakia didn't grant temporary protection to any group of refugees. The following year the EU Reception Directive was transposed, defining rules on reception conditions for asylum seekers, mostly making them more clear and detailed. This changed the procedure in both liberalizing and restricting ways. For instance, first time asylum applicants had access to the Slovak labour market since 2005, but freedom of movement became more restricted.<sup>139</sup> A 2007 amendment transposed the EU Qualification Directive, introducing Subsidiary Protection. Additionally to the Subsidiary Protection and Convention refugee recognition, Slovakia also handled a somewhat loosely defined 'tolerated stay' principle, applied independently from the framework of international refugee protection, mostly applied for the reason that "departure is not possible and detention is not purposeful."<sup>140</sup> As for the procedures, the EU Directives have ensured that the asylum procedures in Slovakia correspond to the minimal standards. The ECRI, in a 2009 report, discerns a few issues, most importantly the one that asylum seekers

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<sup>138</sup> Szczepanikova, Alice. "From the Right of Asylum to Migration Management: The Legal–Political Construction of 'a Refugee' in the Post-Communist Czech Republic." *Europe-Asia Studies* 63.5 (2011): 789-806.

<sup>139</sup> Hurná, Lucia. "Asylum Legal Framework and Policy of the Slovak Republic." p. 1390.

<sup>140</sup> Šnírrová, M., and M. Volanská. "The Different National Practices Concerning Granting of Non-EU Harmonised Protection Statuses in the Slovak Republic." (2009).



do not receive legal aid during the appellate stage of the proceedings. Additionally the ECRI is concerned about the integration possibilities, and sees need for improvement.<sup>141</sup>

Year	Applied	Recognized	Other form of protection	Rejected	Otherwise closed	Total substantive decisions	% recognized (of total substantive decisions)	% recognized + other forms of protection	% rejected (of total substantial decisions)
2004	11 391	15	N/A	1 532	11 581	1 547	0.97%	0.97%	99.03%
2005	3 549	25	N/A	812	2 921	837	2.99%	2.99%	97.01%
2006	2 871	8	N/A	878	1 948	886	0.90%	0.90%	99.10%
2007	2 643	14	82	1 177	1 693	1 273	1.10%	7.54%	92.46%
2008	910	22	65	414	452	501	4.40%	17.37%	82.63%
2009	822	14	97	329	460	440	3.18%	25.23%	74.77%
2010	541	15	55	161	386	231	6.49%	30.30%	69.70%
<b>2004-2010</b>	<b>22 727</b>	<b>113</b>	<b>299</b>	<b>5 303</b>	<b>19 441</b>	<b>5 715</b>	<b>1.98%</b>	<b>7.21%</b>	<b>92.79%</b>

Table 11: Asylum applications, decisions and recognition rates of Slovakia 2004-2010.<sup>142</sup>

Table 11 shows how, just like in the Czech Republic the amount of yearly filed asylum applications declined steeply after 2004, and in Slovakia kept steadily decreasing, culminating in only 541 applications lodged in 2010, explained by the implementation of The Dublin Regulation and the general trend of a decrease of individuals applying for asylum within the European Union. Very notable in the Slovak Republic is the extremely low amount of asylum seekers that got granted Convention refugee status, the yearly maximum being 25 in 2005 and a minimum of 8 in the following year. These values are extremely low for European averages. This phenomenon has been criticized by NGOs, international institutions and migrants.<sup>143</sup> Since the introduction of Subsidiary Protection in 2007, yearly several dozens of asylum seekers have been granted this form of protection, resulting in more positive percentages when including this form of protection, mostly due to the low amount of applications filed yearly. In absolutes however, numbers remained very low. Finally, most of the procedures were still not completed due to the applicant not remaining in Slovakia long enough to have a decision made on the application. The low recognition rates might contribute to

<sup>141</sup> European Commission Against Racism and Intolerance (ECRI). *ECRI Report on Slovakia (Fourth Monitoring Cycle)*, Adopted on 19 December 2008, 26 May 2009, CRI(2009)20, available at: <http://www.refworld.org/docid/4a1ba5f00.html> [accessed 28 April 2016]

<sup>142</sup> Based on data extracted from: [http://popstats.unhcr.org/en/asylum\\_seekers](http://popstats.unhcr.org/en/asylum_seekers)

<sup>143</sup> Hurná, Lucia. "Asylum Legal Framework and Policy of the Slovak Republic." p. 1400.

asylum applicants leaving rather than awaiting a decision that is most likely to be negative.

The most prominent countries of origin of asylum seekers in Slovakia are various Asian countries, mainly India and China, Pakistan and Bangladesh, as well as the Russian Federation, once again mainly Chechens. Forming the majority of applicants, these nationalities were very rarely granted any form of protection. Afghans, Iraqis and later Somalis were the main receivers of Subsidiary Protection.

Lucia Hurná stated that Slovakia chose a very restrictive interpretation of the European asylum policy, enacting only the minimum standards required by the relevant directives.<sup>144</sup> The UNHCR data as seen in Table 11 reflect this statement, showing very low recognition rates. So even if on the legislative and procedural level, the Slovak Republic maintains a fairly liberal asylum policy, in practice the country appears to not have been too eager to grant protection to asylum seekers, and *when* doing so, Subsidiary Protection, being of a more temporary character and involving less commitment of the Slovak state, appears to have been preferred.

### 6.3 Hungary

Hungary as well transposed EU regulations into national legislation in 2007. With this goal, an entirely new Act on Asylum was implemented in 2007, coming into force on the 1 January of the year after. Adhering to the EU Directive, Hungary also added the Subsidiary Protection status, in addition to Convention refugee and temporary protection status. Furthermore, the implementation of the 2007 Act made procedures in Hungary more progressive. As a reaction to the Dublin Regulation, the Act divided the procedure in two parts: the preliminary assessment procedure and the in-merit procedure. During the former part, the Office of Immigration determines whether the asylum seeker is eligible to enter the in-merit procedure or whether another state is responsible for the asylum request, based on the Dublin Regulation. The 2007 Act also reduced the maximum period of detention of third country nationals from twelve to six months. Whereas previously asylum seekers were for long periods of time placed in detention centers, this division reduced the time in detention centers in practice as

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<sup>144</sup> Ibid. p. 1402.

well, and asylum seekers were moved to refugee reception centers as soon as they were allowed to submit an oral or written asylum application according to the Dublin Regulation.<sup>145</sup>

From 2010, series of restrictive amendments have been introduced to the 2007 law, for example once again increasing the maximum detention period from six to twelve months, reversing the change made a few years before. Another example is the introduction of the concept of manifestly unfounded applications into the Act. The restrictive changes occurring since 2010, culminating in threats of suspending the Dublin Regulation and the building of fences at the southern and western borders last year, were at first the result of immigration taking a more prominent role in public and political debates combined with Viktor Orbán's right wing government taking office and the rise of extreme-right opposition in the form of the Jobbik party.

The UNHCR expressed some concerns about some inconsistencies of Hungarian asylum law with the Geneva Convention. Articles 31, 34 and 35 of the Convention concerning refugees unlawfully in the country of refuge (the issue being the harsh detention conditions such persons have to face), naturalization (no clause on children born by refugee parents) and co-operation with the UN (Hungary doesn't provide all the statistics the UN asks for).<sup>146</sup>

As for the procedures in practice in the 2000s, they mostly adhered to the international and European standards, though at some occasions the UNHCR discerned various issues such as a risk of the violation of the *non-refoulement* principle.<sup>147</sup> Also, full access to the asylum procedure, especially for people placed in a detention facility, was not always realized. People returned under the Dublin II Regulation were sometimes also refused access to the procedure on grounds of the application being a subsequent one. Thus asylum seekers returned to Hungary on Dublin II grounds, may risk expulsion without ever having their asylum request be examined, neither by the

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<sup>145</sup> Hungarian Helsinki Committee. *Asylum Seekers' Access to Territory and to the Asylum Procedure in the Republic of Hungary*, December 2008, pp. 13-14. Available at: <http://www.refworld.org/docid/4ecfd5d52.html> [accessed 29 April 2016]

<sup>146</sup> UNHCR. *Hungary as a country of asylum. Observations on the situation of asylum-seekers and refugees in Hungary*, 24 April 2012, p. 5. Available at: <http://www.refworld.org/docid/4f9167db2.html> [accessed 29 April 2016]

<sup>147</sup> *Ibid.* pp. 6-7.

country sending the asylum seeker to Hungary, nor by Hungary.<sup>148</sup> Insufficient integration opportunities and the use of detention are two more issues discussed in the UNHCR report. Not acknowledging the UNHCR's points of criticism, a 2012 European Commission report however, claims that EU accession and transposition of EU legislation has been unproblematic.<sup>149</sup>

Year	Applied	Recognized	Other form of protection	Rejected	Otherwise closed	Total substantive decisions	% recognized (of total substantive decisions)	% recognized + other forms of protection	% rejected (of total substantial decisions)
2004	1 983	158	177	1 053	536	1 388	11.38%	24.14%	75.86%
2005	2 211	101	101	1 119	730	1 321	7.65%	15.29%	84.71%
2006	2 117	99	99	1 118	603	1 316	7.52%	15.05%	84.95%
2007	3 425	169	69	1 183	489	1 421	11.89%	16.75%	83.25%
2008	3 118	160	130	395	1 483	685	23.36%	42.34%	57.66%
2009	4 672	166	217	1 330	4 833	1 713	9.69%	22.36%	77.64%
2010	2 067	73	173	639	1 462	885	8.25%	27.80%	72.20%
<b>2004-2010</b>	<b>19 593</b>	<b>926</b>	<b>966</b>	<b>6 837</b>	<b>10 136</b>	<b>8 729</b>	<b>10.61%</b>	<b>21.67%</b>	<b>78.33%</b>

Table 12: Asylum applications, decisions and recognition rates of Hungary 2004-2010.<sup>150</sup>

From Table 12 several observations can be made. First of all, the number of people applying for asylum in Hungary shows a different trend than the one in the Czech and Slovak Republics. In the latter two, the number of applicants has been decreasing after a peak in the very early 2000s, but in Hungary numbers of applicants get higher once again after EU accession. UNHCR data on country of origin of asylum seekers show that the increase is mostly due to many individuals from Kosovo and Serbia filing applications for asylum: 723, 1593 and 2320 respectively in 2007, 2008 and 2009. This can be considered a result of the Dublin Regulation, making Hungary the first EU country on the path of these migrants, therefore having to receive their claims for asylum. The majority of these people left Hungary before a decision on their asylum claim had been made, however. Only three of them were granted refugee status, and just over thirty were granted Subsidiary Protection between 2007 and 2009. Asian individuals, mostly Vietnamese and Chinese, having come to Hungary in a legal way, also used the asylum system to temporarily legalize their stay in Hungary. These two

<sup>148</sup> Ibid. p. 8.

<sup>149</sup> EC, EMN. "The Organisation of Asylum and Migration Policies Factsheet: Hungary" Available at: [http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european\\_migration\\_network/reports/docs/emn-studies/asylum-migration/12a.hungary\\_factsheet\\_institutional\\_chart\\_october2012\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/docs/emn-studies/asylum-migration/12a.hungary_factsheet_institutional_chart_october2012_en.pdf)

<sup>150</sup> Based on data extracted from: [http://popstats.unhcr.org/en/asylum\\_seekers](http://popstats.unhcr.org/en/asylum_seekers)

nationalities were good for well over one third of the applications filed in 2007, most of them in the last two months of the year. This is the result of the 2007 Asylum Act that was to be implemented on 1 January 2008, causing many Chinese and Vietnamese to withdraw their running asylum application and file a new one before the new legislation would filter out their applications as subsequent, making them ineligible to file the asylum claim.<sup>151</sup> Virtually none of these applications resulted in any form of protection.

When looking at recognition rates of refugees from countries like Iraq, Somalia and Afghanistan, a very progressive picture appears: though they were not many in numbers, people coming from these three countries rarely saw their applications for asylum be rejected and, if they didn't leave Hungary before the procedure was completed, were usually granted Convention refugee status or at least gained Subsidiary Protection. The biggest receivers of Subsidiary Protection since 2008 were Afghans.

Hungary, being located at the southern external border of the European Union received many applications for asylum from migrants travelling the Balkan route, of whom many were genuine refugees. Hungary's adherence to the international refugee protection regime becomes apparent when observing the recognition rates of refugees coming from war torn countries. Also contributing to the high number of applications Hungary had to process during this period is the factor of economic migrants using the asylum procedure to legalize their stay in Hungary, at least for a while. Virtually without exceptions, these applications resulted in rejection or the application being closed because the applicant disappeared. In spite of NGOs criticism on Hungary's asylum regime, the country was certainly playing its part in international refugee protection.

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<sup>151</sup> EMN Hungary. "Annual Report on Migration and International Protection Statistics for Hungary Reference Year: 2008" p. 10. Available at: [http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european\\_migration\\_network/reports/docs/migration-statistics/asylum-migration/2008/16a.hungary\\_national\\_report\\_protection\\_statistics\\_2008\\_final\\_version31dec2010\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/docs/migration-statistics/asylum-migration/2008/16a.hungary_national_report_protection_statistics_2008_final_version31dec2010_en.pdf) [accessed 29 April 2016]

## 6.4 Poland

Having to adopt the Qualification Directive, Poland underwent the same process as the other new EU member states, resulting mostly in liberalization of the refugee regime. Amendments introduced in 2005 gave simplified access to the labor market for asylum applicants whose procedure has not been completed within one year and granted access to welfare allowances to temporary status holders. In 2008 Subsidiary Protection was introduced, replacing the tolerated stay principle, and extended integration programs for persons granted this new status was introduced.<sup>152</sup> Before 2008, the lack of integration possibilities for Chechen refugees with tolerated stay status was a major point of criticism from various NGO's. A form of tolerated stay was still maintained since 2008, but it was a purely domestic principle, not based on international standards including the Geneva Convention. The only thing the status of 'tolerated stay' came to mean, was protection against deportation, while granting no further rights or assistance.

Transposition of the sets of EU rules, brought Polish asylum procedures in line with EU procedures, and there were no serious points of critique on the way the procedures functioned in practice. A 2011 report assessed that there is still room for improvement in the status determination process however: "... refugee status is not always accorded where it should be, because of a very strict interpretation or sometimes misinterpretation of the constitutive elements of the refugee definition which leads to clear protection gaps."<sup>153</sup>

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<sup>152</sup> Shevel, Oxana. *Migration, Refugee Policy, And State Building in Postcommunist Europe*. p. 265.

<sup>153</sup> Belgium: Comité Belge d'Aide aux Réfugiés / Belgisch Comité voor Hulp aan Vluchtelingen / (CBAR-BCHV), *Polish asylum procedure and refugee status determination: report following the mission to Poland from 12 to 15 September 2010*, December 2011, p. 36, available at: <http://www.refworld.org/docid/4ece2b872.html> [accessed 2 May 2016]

Year	Applied	Recognized	Other form of protection	Rejected	Otherwise closed	Total substantive decisions	% recognized (of total substantial decisions)	% recognized + other forms of protection	% rejected (of total substantial decisions)
<b>2004</b>	8 766	315	832	2 647	2 843	3 794	8.30%	30.23%	69.77%
<b>2005</b>	8 282	335	1 856	2 659	4 593	4 850	6.91%	45.18%	54.82%
<b>2006</b>	11 315	485	2 110	1 229	3 931	3 824	12.68%	67.86%	32.14%
<b>2007</b>	13 248	212	2 919	2 348	1 463	5 479	3.87%	57.15%	42.85%
<b>2008</b>	7 745	193	2 590	1 608	5 791	4 391	4.40%	63.38%	36.62%
<b>2009</b>	10 586	134	2 457	4 056	9 254	6 647	2.02%	38.98%	61.02%
<b>2010</b>	6 534	84	229	1 678	3 224	1 991	4.22%	15.72%	84.28%
<b>2004-2010</b>	<b>66 476</b>	<b>1 758</b>	<b>12 993</b>	<b>16 225</b>	<b>31 099</b>	<b>30 976</b>	<b>5.68%</b>	<b>47.62%</b>	<b>52.38%</b>

Table 13: Asylum applications, decisions and recognition rates of Poland 2004-2010.<sup>154</sup>

The data for Poland differ from those of the previous countries in several ways. First of all, the number of individuals applying for asylum didn't follow the European trend of decrease after 2004, and remained significantly higher than in the other ECE states. Second of all, the amount of different forms of protection granted to asylum seekers is significantly higher in Poland, both in absolute numbers and in percentages, than in any of the other three states, a trend continuing until 2010, from which point on it will decrease. When observing the numbers of other forms of protection granted, it is important to keep in mind that until 2008, the 'other form of protection' meant not much more than protection from deportation, with very few other rights included, whereas since 2008 this form of protection is the Subsidiary Protection, including more rights and thus involving a higher degree of commitment from the Polish state to protect and assist these individuals.

Looking at the data on the countries of origin of asylum seekers in Poland during this period helps explain the difference between Poland and the other ECE states. The vast majority of applicants, listed as citizens from the Russian Federation, were Chechens. Illustratively, in both 2006 and 2007, Chechens were responsible for well over a ten thousand of the applications filed (first instance and administrative review applications combined) in these years, claiming well over 90% of the Convention refugee and Subsidiary Protection statuses granted in those years. Aside from the large numbers of Chechens applying for asylum, these years were marked by low numbers of applicants from other countries of origin. Whereas the other ECE states received many applications for asylum from individuals from various Asian

<sup>154</sup> Based on data extracted from: [http://popstats.unhcr.org/en/asylum\\_seekers](http://popstats.unhcr.org/en/asylum_seekers)

countries and the Middle East, Poland received very few, usually not more than several dozen per year. Even though many of the applicants from Afghanistan, Iraq and later Syria left Poland shortly after applying for asylum, Poland did grant protection to most of those that stuck around long enough to see a decision made on their asylum request, with very few of the requests for international protection being rejected. Yearly, still one to three dozens of Belarusians were granted refugee status.

Poland's generous protection of Chechen nationals since 2004 indicates the country's efforts to contribute to international refugee protection, though anti-Russian sentiments were likely still playing a role in this as well. However, the Common European Asylum System, including the Dublin II Regulation placed a large burden on the country at the European Union's eastern external border. A 2005 report summarizes the issues connected to the thousands of Chechens seeking refuge in Poland yearly. The main issue was that Poland lacked the resources to provide social and medical care to all the asylum seekers. The Director of the Polish asylum authority in 2005 expressed his wish for a European resettlement scheme for Chechens that were granted either form of protection in Poland in order to equalize the burden placed on Poland by the CEAS and more specifically the Dublin II regulation.<sup>155</sup>

## 6.5 Conclusion

The analysis of the years following EU accession shows that the new member states, by adopting the legislation connected to the Common European Asylum System mostly positively influenced the asylum policies of the V4 countries. Accessibility of the procedures has improved, independent bodies are handling appeals for rejected asylum applicants, and social, legal and medical assistance for asylum seekers and integration programmes for recognized refugees are available. All having adopted more complete and comprehensive asylum systems and functioning within the CEAS, genuine refugees appear to have decent chances to be granted protection by the Central European refugee authorities. However, the data show that there are still significant differences in the status determination processes in the various European member states, including among the ECE states. A UNHCR report published in 2010,

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<sup>155</sup> Esser, B., B. Gladysch, and B. Suwelack. "The situation of Chechen asylum seekers and refugees in Poland and effects of the EU Dublin II Regulation." (2005), p. 32.



called the *Asylum Systems Quality Assurance and Evaluation Mechanism*, underlines this conclusion:

“There is an enormous variance in the acceptance rate around the Region, while at the same time, the EU is aiming at a Common European Asylum System. However ... different countries are interpreting the same refugee definition in very different ways.”<sup>156</sup>

A concrete example of the differences in acceptance rates as stated in the report is the following: in the timeframe of the study at the basis of the report, Hungary received 136 Iraqi applicants, granting Convention status to 84% of them and Subsidiary Protection to 7%, resulting in 91% being granted a form of protection. In Slovakia, 131 Iraqis applied, none of whom were granted Convention status, and 69% were granted Subsidiary Protection.<sup>157</sup>

A fact remains that the V4 states continue to function as transit countries for many asylum seekers, because of pull factors in Western Europe, but also because the issue of integrating into the East Central European societies proves to remain problematic. A UNHCR report about refugees in Central Europe points out the difficulties refugees face in the states subject to this research. Lengthy and unclear asylum procedures, difficulties finding employment, insufficient language training (Czech Republic), unnecessary detention and ill treatment in detention (Hungary), poor quality of medical care (Poland), and a lack of quality interpreters (Slovakia) are some of the concerns brought forward in the report. Moreover, refugees face struggles integrating in all four countries.<sup>158</sup> All in all, the minimum standards that are defined in the Common European Asylum System are being adhered to, and the rights of asylum seekers as internationally defined are being respected during the procedures, but the V4 states chose a relatively restrictive interpretation of the CEAS. The minimal

<sup>156</sup> UNHCR. *Asylum System Quality Assurance and Evaluation Mechanism (ASQAEM) - Summary Report*, February 2010, p. 14, available at: <http://www.refworld.org/docid/56a08dd49.html> [accessed 2 May 2016]

<sup>157</sup> *Ibid.* p. 14.

<sup>158</sup> UNHCR. *Being a refugee: How refugees and asylum-seekers experience life in Central Europe*, 3 January 2012, available at: <http://www.refworld.org/docid/4f02fa252.html> [accessed 2 May 2016]

interpretation of the European asylum policy should not only be seen as an intrinsic unwillingness to contribute more to refugee protection, but is also partly related to the CEAS transferring the 'asylum burden' to the east: by means of responding to the eastward shift of the 'asylum burden', it isn't surprising states closer to the external EU borders maintain relatively strict policies on asylum.

## 7 Post-2010 developments and a brief outlook

As a follow-up of the previous analysis, this chapter will briefly describe the developments since 2010 and reflect upon these in the light of the development since the V4 countries started their transition, over a quarter of a century ago. The main development is the one that immigration, and in recent years more specifically refugees have become a topic of political and public debate, both on a European and on a domestic level. The rise of anti-immigration rhetoric by (far) right-wing parties introduced a topic of debate of which the anti-immigration arguments appear to be appealing to the Central European societies. Connections associating asylum seekers evermore with crime, pressure on unemployment and terrorism have become widely spread, and anti-immigration political parties are faring well in these debates, causing their pro-immigration counterparts to take a more restrictive stance towards the issue as well. Combined with increasing EU-skepticism and an increase of asylum seekers coming to the European Union, this resulted in politicians of the four states taking a critical stance towards immigration and the EU's aspired policy of refugee quotas fairly distributing refugees among the Member States. A case study on recent developments in Hungary's asylum policy suggests that the economic crisis lies at the foundation of the political change at a national level, rippling through society and challenging the founding values of the EU.<sup>159</sup>

The trend seen in the Central European states isn't unique and the critical stance towards welcoming asylum seekers in Europe is visible in many other EU member states, however a combined governmental protest of the four states against the current EU policies concerning the increase of incoming asylum seekers, distinguishes the V4 group somewhat from the rest of the EU.

The main difference between the increase in asylum seekers now and in the 2.5 decades before is the one that the issue hasn't been a very important one in public and political life in Central Europe. In the early 1990s, the young democratic governments were facing a wide variety of issues coming with the transition process and did generally not concern themselves too much with the issue and saw accepting refugees as part of the democratization package. During the 2000s, the transposition of

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<sup>159</sup> Jacobs, Lena, et al. "Open Borders, Closed Minds: EU Asylum Policy in Crisis." p. 13.

the Common European Asylum System was just one of the many legislative conditions for the V4 states to become EU members. The last few years however, immigration has for the first time become one of the main topics of debate, and this appears to be making a crucial difference. Another difference, especially compared with the 1990s, is the ethnic composition of asylum seekers coming to Europe in recent years, seemingly sparking more feelings of xenophobia than refugees from the Balkans or Asia did before.

The entrance of immigration as an important issue into European and domestic politics in an era of increasing migration to Europe, brings about bad prospects for the asylum policies of the East Central European states. Political parties taking a hard stance against immigration and the EU's (perceived as) open door policy, gain in popularity. In practice the refugee crisis is being used by political parties in Central Europe by making refugees scapegoats, as a means for political mobilization. Seeing the successes political parties in the region are booking with this strategy, it is very probable that in the near future the V4 states will not easily cooperate with any liberal policy concerning asylum seekers the EU might want to implement, and continued resistance against hosting refugees in East Central Europe seems to be very likely.

## 8 Conclusion

Hungary, Poland, Czechoslovakia and later the separate Czech and Slovak Republics all followed a rather similar path of developing their policies on asylum. All four countries saw many individuals file claims for international protection on their territories during the first years of transition. In 1989 and the early 1990s the issue of asylum was perceived as being a part of the transition to liberal democracies. The East Central European states signed the Geneva Convention and established their first policies and institutions to deal with asylum. The acute need for an asylum system in a politically, socially and economically turbulent time of transition resulted in generally fairly liberal but incomplete asylum policies. Neighboring countries, mostly Germany and Austria, influenced the policies by concluding readmission agreements, mostly forcing the ECE states to control their borders and stem the rapid inflow of asylum seekers into the West European states. The UNHCR was very active in helping the countries shape their policies, in some cases with more success than in others. Recognition rates from the first half of the 1990s reflect the progressive stance towards refugee protection in this period.

By the end of the 1990s, negotiations about EU accession started. These negotiations influenced the legislation on asylum by having the V4 states adopt the legislation from the EU *acquis* on asylum. These changes in asylum policies took place against the backdrop of an increase of asylum applicants, many of which were economic migrants, using the asylum procedure to temporarily legalize their stay in the respective country. The biggest change was the transformation from incomplete and sometimes incomprehensible asylum systems to more complete and comprehensible asylum systems. To place the changes in the discussion of whether the transposition of EU legislation into ECE states' laws made the policies more restrictive or more liberal, the case studies show that the results were mixed. On many fronts, the policies on asylum became more restrictive compared to the earlier 1990s, mostly on the legislative front, concerning access to the procedures and admissibility of asylum claims, however on other, mainly procedural fronts they were liberalizing the policies as well: rights of asylum seekers and individuals that were granted protection such as the rights of independent appeal possibilities, access to social benefits and

education became more defined. The restrictive changes reducing the accessibility of the procedures successfully reduced the exploitation of the asylum system by economic migrants. Oxana Shevel made these observations for the Czech Republic and Poland, and this research has shown that the same applies to the Slovak Republic and Hungary.

Since the adoption of the EU *acquis* on asylum and the transposition of later changes in the CEAS, i.e. the 2007 Qualification Directive, asylum policies have stabilized. The implementation of the Dublin II Regulation caused a reduction in applicants for asylum: many refugees aim to get asylum in a West European state, and thus they avoid filing an application in one of the V4 states. The analysis has shown that East Central Europe generally chose a somewhat more restrictive interpretation of the CEAS, but was still granting refugee status to asylum seekers from genuine refugee producing countries: while the number of asylum applicants in ECE with countries of origin that are suffering from war is rather low, the majority of them get granted Convention refugee status or Subsidiary Protection. Even in Poland, where Chechen asylum seekers caused serious pressure on the asylum system and resources, recognition rates for this group of refugees remained high for most of the decade. The institutions and resources needed to process asylum seekers' applications are overall functioning well in all four countries, especially considering the fact that they are so young. The main issue of concern in the first years of EU membership was the integration possibilities of recognized refugees.

Only in recent years, when the issue became an international and domestic hot political topic, the V4 countries adopted a very critical and restrictive stance towards immigrants. Euro-skepticism fueled by the economic crisis, a certain degree of xenophobia towards immigrants with an Islamic background in combination with terrorism and fear of increasing unemployment, all brought into connection with asylum seekers by politicians and media, turned the ECE societies to take a more critical position towards asylum seekers, enabling the governments to take a hard stance against any EU policy that would involve hosting refugees in the V4 states.

Concluding, this study provides insight in the history of the East Central European region with regard to refugees. It would be false to assume that the four post-communist states have always been strongly opposed to refugee protection on

their territories. On the contrary, in the early 1990s international protection was granted relatively generously. The increase of asylum applicants in the late 1990s combined with the, to a large extent accurate, perception that the asylum systems were being abused by economic migrants resulted in more restrictive developments in the asylum policies. Accession negotiations with the EU contributed to the reduced accessibility of the asylum systems, while more completely defining rights of asylum seekers entering the procedures and recognized refugees. Within the Common European Asylum System, which actually allows for different interpretations of refugee protection, the V4 countries yearly provided international protection to the majority of asylum applicants from genuine refugee producing countries, even those with Islamic backgrounds. Thus, the strong stance the four states are taking against the EU's recent policy proposals is rather a result of (populist) political mobilization based on the scapegoating of asylum seekers against the backdrop of Euro-skepticism originating from the Euro-crisis, than it is an intrinsic or historic unwillingness to protect refugees. For a region with a different historic legacy than the west Europe, having no previous constant experience and tradition with arriving refugees and immigrants, it has significantly contributed to international refugee protection during the first decades of transition. Nevertheless, keeping in mind the different historic developments, experiences with refugees, and economic situation of the region compared to the West of the continent, as well as the character of the CEAS moving the 'asylum burden' to the east, one should not be surprised that the East Central European societies are less receptive to taking in large numbers of refugees.

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