

1996

Hungary, Refugees. and the Law of Return

Maryellen Fullerton

Brooklyn Law School, maryellen.fullerton@brooklaw.edu

Follow this and additional works at: <https://brooklynworks.brooklaw.edu/faculty>



Part of the [Immigration Law Commons](#), and the [International Law Commons](#)

Recommended Citation

8 Int'l J. Refugee L. 499 (1996)

This Article is brought to you for free and open access by BrooklynWorks. It has been accepted for inclusion in Faculty Scholarship by an authorized administrator of BrooklynWorks.

Hungary, Refugees, and the Law of Return

MARYELLEN FULLERTON*

Abstract

In the past decade Hungary has transformed itself from a refugee producing country into a refugee receiving country. Between 1948 and 1988 only a few thousand refugees came to Hungary. Suddenly, near the end of the 1980s, thousands more sought refuge in Hungary. By mid-1991 more than 50,000 refugees from Romania had entered Hungary. In the last six months of 1991 another 50,000 refugees entered Hungary, most of whom came from former Yugoslavia. More came in the subsequent years. From 1988 through 1995 Hungary registered more than 130,000 refugees, and many more may have entered Hungary without formally requesting asylum. Refugees who came to Hungary entered a country with an undeveloped refugee policy and a patchwork of legislation and government decrees concerning refugees and migrants. The government's attempt to establish a modern refugee system based on this rudimentary framework has been distorted by a powerful preference for protecting refugees of Hungarian ancestry. This preference permeates the laws and the administration of the refugee system. Although the law is written in neutral terms, the reality of refugee status in Hungary is that it is largely reserved for ethnic Hungarians. Other asylum seekers are rejected or shunted into temporary protection status. In effect, the refugee law functions as a Law of Return. This distortion of the refugee system to accomplish an immigration goal has multiple negative effects. It leads to the rejection of legitimate non-Hungarian refugees. It encourages the acceptance of ethnic Hungarians who are not refugees. It misleads international donors and misallocates the ever-dwindling resources devoted to refugees. It undermines the rule of law in a country struggling to establish it. Only by applying its refugee law impartially to all asylum seekers, no matter what their ethnic heritage, can Hungary live up to its international obligations and create confidence in the soundness of its refugee policy.

Introduction

In Hungary in 1995 everything and everyone is in transition. The economy is on a bumpy path heading away from central command toward market forces. The government, controlled by democratically

* Professor of Law, Brooklyn Law School. The author wishes to thank the German Marshall Fund of the United States for the fellowship that enabled this research to be undertaken and Brooklyn Law School for the grant that supported the transformation of the data collected into written form. The fieldwork was done during the 1994–95 academic year and this article depicts the evolving refugee situation in Hungary at that time.

elected former communists, is learning to speak the language of parliamentary democracy.¹ It is also confronting the growing fiscal crisis with tough austerity measures. The population is grappling with rising prices as state subsidies are cut: the new homeless crowd into railroad and subway stations as the new rich blast through the streets outside in their BMWs.

Refugee issues in Hungary are no exception: they are also in a state of flux, with dramatic pendulum swings during the last decade. Until the late 1980s Hungary was a refugee producing country. Since 1987 Hungary has become a refugee receiving country. Indeed, Hungary has become a refugee receiving country in a big way. From 1988 through 1995 Hungary registered more than 130,000 refugees. Many more may have entered Hungary, sought private assistance, and never informed the authorities of their presence.

This situation, too, is in transition. By late 1994 the refugee population registered in Hungary had dwindled to less than 8,000. The government refugee office suddenly had empty and half-filled refugee camps on its hands. It had staff to pay and buildings to heat, but few refugees. First, there were no refugees; then too many; later not enough!

The pendulum swung again in 1995. New ethnic cleansing and renewed combat in Bosnia² sent more refugees to Hungary in the spring and summer. The government opened a refugee camp that had been mothballed as excess capacity. Officials braced for a new flood of people needing refuge and protection, and close to 6,000 asylum seekers arrived.

Meanwhile, the legal framework for refugee protection is also in transition. There is a patchwork of legislation and government decrees, much of it dating back to the pre-1990 communist regime. Enormous gaps exist. There are rumours that new refugee legislation will be passed, and reports that drafts of legislation have circulated within the Ministry of Interior, but everything is vague and indefinite. New statutes on citizenship and on foreigners were enacted in 1993, but nothing on refugees.

The sense of transition and feeling of barely controlled chaos are not unique to Hungary. Other countries in Central Europe, and elsewhere in the world, are experiencing similar transformations. In at least one important respect, though, Hungary is unique. A very large proportion

¹ In early June 1994, the second post-communist free elections saw the Hungarian Socialist Party (MSZP), which is the resurrected Communist Party, win a majority (209 of 386) of seats in the Parliament. Laura Chappell-Brown, 'Why Do Communists Keep Winning Free Elections?' *Baltimore Sun*, 5 Jun. 1994, 5E. The Socialists chose to form a coalition with the alliance of Free Democrats, a liberal party led by former dissidents who espouse free-market economy. Craig R. Whitney, 'Leaders Back Free Hungary Plus Stability', *New York Times*, 25 Jun. 1994, A3.

² Stephen Kinzer, 'Conflict in the Balkans: The Refugees', *New York Times*, 14 Jul. 1995, A 1 (thousands of refugees fled Srebrenica); Raymond Bonner, 'Conflict in the Balkans: The Refugees', *New York Times*, 26 Jul. 1995 (2,000 forced out of Zepa).

of the asylum seekers who come to Hungary are ethnic Hungarians. No other country in the region experiences this 'return' phenomenon to such a degree.³ This phenomenon has influenced the development of refugee law and policy in Hungary.

This article examines the refugee laws in Hungary as written and as applied. It begins by providing a short historical overview of migration in Hungary since the First World War. It briefly describes refugee and other population movements in the early twentieth century, at mid-century, and at the century's end. The article then examines the Hungarian refugee laws in light of this specific historical context. After evaluating the laws, the article describes and analyses current practice. This description draws largely on a recent year of field work, which firmly roots the legal analysis in the current reality facing refugees in Hungary.

This article concludes that the current refugee system in Hungary largely functions as a Law of Return. Since 1989 Hungary has taken a series of steps to establish a basic legal framework for refugee protection. Provisions in the new Constitution and in recent legislation grant rights to refugees. Several decrees define refugee status and set forth a procedure for determining refugee status. Traces of a preference for ethnic Hungarians can be seen in the written refugee laws. The decree implementing the 1951 Convention on Refugees imposes a geographic reservation, stating that Hungary will only accept European refugees. This drastically reduces Hungary's potential refugee population: most of the refugees in the world and most of the countries that produce refugees are not in Europe. Simultaneously, this measure effectively protects ethnic Hungarian refugees, who tend to be in European countries, particularly in contiguous countries.

In addition, the guarantee of asylum in the Hungarian Constitution specifically offers protection to those persecuted on linguistic grounds. Harassment and worse on linguistic grounds is a source of great tension in ethnic Hungarian communities in Romania, Slovakia, and other neighbouring countries. Moreover, the new citizenship legislation in Hungary provides advantages for those granted refugee status. At the same time, it offers even greater advantages for those, refugee or not, of Hungarian descent.

The preference for ethnic Hungarians that can be detected in the laws is even more pronounced in the administration of the refugee system.

³ The *Aussiedler* phenomenon in Germany, with its separate and parallel track for ethnic Germans whose families have lived for generations outside Germany, is a response to another historical diaspora. In Germany, however, the *Aussiedler* have a separate processing system and gain a status different from that of 'foreign refugees'. They are not viewed as asylum seekers or refugees by the international community (cf. art. 1E, 1951 Convention), or the public at large, although there has been public criticism of the *Aussiedler* programme. See Alan Cowell, 'For Migrants to Germany, Welcome Turns Sour', *New York Times*, 24 Mar. 1996.

Ethnic Hungarians who enter Hungary seeking refuge are channelled into the refugee system, while others who need refuge are channelled into the temporary protection system. Access to the refugee system is not the only area in which ethnic Hungarian asylum seekers receive an advantage. The less favourable camp conditions and the restrictions on freedom of movement appear to fall more heavily on those asylum seekers who are not ethnic Hungarians. The reality of refugee status in Hungary is that it is largely reserved for ethnic Hungarians.

On its face, the law does not limit the applicants for refugee status, and not all ethnic Hungarians who apply for refugee status receive it. Nonetheless, almost all successful candidates for refugee status *are* ethnic Hungarians. In contrast, the large numbers of asylum seekers from other backgrounds are generally shunted into temporary protection status. There they receive food and shelter and other basic necessities, but they lack any substantial legal protection.

This two tier system has led to many who qualify under the Hungarian and the 1951 Convention never receiving refugee status and its attendant legal protection. Almost all of those who have not been recognized as refugees have lacked Hungarian ancestry. At the same time, a substantial number of those recognized in Hungary appear to be immigrants rather than refugees. Many describe leaving lives of hardship and diminished opportunities, to be sure. Personal interviews with many different individuals granted refugee status lead to the conclusion that the hardship frequently did not constitute persecution. Almost all in this category were ethnic Hungarians.

The result is that Hungary, which does not have a law allowing immigration based on ethnic heritage, has distorted its refugee system to accomplish an immigration goal. Moreover, in counting immigrants as refugees, Hungary has effectively inflated the size of its refugee population, thereby misleading donors and increasing the amount of contributions received from the international community for refugee assistance. Whether the international community would be equally generous in providing assistance to Hungary for the resettlement of ethnic Hungarian immigrants is doubtful.

Simultaneously, Hungary has created the functional equivalent of a Law of Return, allowing those who share the ethnic background of the citizens of Hungary to enter the society and become full members. Although there are relatively few nations with a Law of Return, notably Israel, Germany and Greece, there is nothing intrinsically wrong with Hungary's aims. What is objectionable is accomplishing this goal by misusing the refugee process, which has obvious negative consequences for the refugee programme itself. It also has negative consequences for international efforts to raise ever-dwindling funds to support ever-increasing refugees. In addition, it has negative consequences for the rule

of law in Hungary. A country newly freed from one party rule should develop the contours of an important social policy such as immigration in the legislative arena. Recent legislation concerning immigration does not provide a right to immigrate based on ancestry. This suggests that Parliament does not want to establish a Law of Return at this time, and the refugee system should not be manipulated to create one.

1. The historical legacy

1.1 From Sarajevo I to Sarajevo II

The assassination of Franz-Ferdinand, the Archduke of the Austro-Hungarian Empire, in Sarajevo in 1914 ignited the conflagration of the First World War, the flames from which consumed the Hungarian part of the empire, as well as the larger Austrian portion. The ensuing peace treaties punished Hungary, one of the losers, by radically redrawing its boundaries.⁴ Under the 1920 Treaty of Trianon, Hungary lost two-thirds of its territory and its population.⁵ Its territory shrank from 125,000 square miles to 36,000 square miles, while its population fell from 21 million to 7.5 million.⁶ In 1920 this meant that large populations of Hungarians fell within the newly enlarged boundaries of the bordering States, Czechoslovakia, Romania, and Yugoslavia, a situation that continues to the present day.⁷

In the first few years after the borders were redrawn in 1920, there was significant migration into and out of Hungary.⁸ Approximately

⁴ 'The peacemakers of 1919 fulfilled ... the bargains made with Italy and Rumania in order to bring them into the war ... The Rumanians insisted on the historical unity of Transylvania and added claims to Hungarian territory on ethnic grounds ...' A.J.P. Taylor, *The Habsburg Monarchy 1809-1918*, (1948), 272-3. It is difficult to comment on this issue without making a political statement about the legitimacy of political control in the region, and especially in Transylvania. The important point is that major changes in territory and population occurred.

⁵ Judit Juhász, *International Migration in Hungary* (1995) (unpublished manuscript, on file with author). Vicki Goldberg, 'All-Conquering Hungarians, Empire or No?', *New York Times*, 3 Dec. 1995, H47. Pál Péter Tóth, 'Refugees, Immigrants and New Citizens in Hungary, 1988-1992', in Maryellen Fullerton et al., eds., *Refugees and Migrants: Hungary at a Crossroads*, (1995), 69, 71 (hereafter Fullerton et al., *Refugees and Migrants*).

⁶ *Ibid.*

⁷ Hungarian citizens who fell outside the new smaller territory of Hungary could choose to maintain Hungarian citizenship by moving to the reconfigured Hungary or stay and take up the citizenship of the State now exercising authority over the land where they lived. Tóth, above note 5, at 70. Many of the areas formerly part of the Kingdom of Hungary included large populations of non-Hungarians. For example, the majority of the population of Transylvania was Romanian even when Transylvania was formally part of the Kingdom of Hungary; in 1910 Hungarians made up 34% of the population, while Romanians comprised 55% and Germans 9%. Taylor, above note 4, 289. Nonetheless, there were many communities of Hungarians and Germans whose families had lived in Transylvania for centuries, while political power had been in the hands of the Hungarian population.

⁸ Juhász, above note 5, at 5.

200,000 ethnic Hungarians moved to Hungary, while 25,000 emigrants left Hungary for the United States.⁹ After 1925, emigration, immigration, and refugee flows slowed to a trickle.¹⁰ This changed with the advent of the Second World War, and from 1938 to 1941 the Nazis rewarded Hungary through a series of re-annexations. Hungary expanded its territory by 78,680 square miles and its population by five million.¹¹ Many fled Hungary. For those who did not or could not flee, worse was to come. German troops occupied Hungary in March 1944, and in the next four months they deported 440,000 Hungarian Jews.¹² By the war's end, they had exterminated over 560,000 Hungarian Jews,¹³ with the once thriving Jewish community reduced to 150,000, many of whom were in Budapest.¹⁴

In the wake of the Second World War, Hungary's borders were restored generally to the 1920 configuration.¹⁵ The refugee flow became a torrent. Over 100,000 people fled Hungary,¹⁶ and major population exchanges and deportations occurred: Approximately 200,000 ethnic Germans left the country, mostly forcibly removed;¹⁷ roughly 70,000 Slovaks left, in exchange for 70,000 ethnic Hungarians who arrived from Czechoslovakia.¹⁸ Ethnic Hungarians also came from other countries: 125,000 from Transylvania, now in Romania; 45,000 from the Vojvodina province of Yugoslavia; 25,000 from the Soviet Union.¹⁹

The communist regime that took control in 1948 closed the borders. Illegal departure became a crime,²⁰ and for the next eight years very few Hungarians fled from Hungary, and even fewer people fled to Hungary.²¹

1.2 The 1956 Revolution and its aftermath

The 1956 Revolution brought a dramatic change. After Russian tanks crushed the revolt, 200,000 refugees fled Hungary in three months.²² This included more than 4 per cent of the population of Budapest.²³

⁹ Ibid.

¹⁰ Ibid., at 5–6.

¹¹ Tóth, above note 5, at 71; roughly half of the reacquired population was ethnic Hungarian.

¹² Tóth, above note 5, at 71; Randolph L. Braham, 'Hungary: Jews During the Holocaust', in *Encyclopedia of the Holocaust*, v.2, 698, 702 (Israel Gutman ed., 1990).

¹³ Ibid., 703.

¹⁴ Ibid., 698, 703.

¹⁵ Tóth, above note 5, at 72. There were also additional changes: The sub-Carpathian region, now part of Ukraine, was taken from Czechoslovakia and given to the Soviet Union, while another area of the former Kingdom of Hungary was given to Czechoslovakia.

¹⁶ Juhász, above note 5, at 7; Tóth, above note 5, at 72–3 (citing estimates as high as 800,000).

¹⁷ Juhász, above note 5, at 7.

¹⁸ Ibid.

¹⁹ Ibid.

²⁰ Ibid.

²¹ Boldizsár Nagy, 'Asylum Seekers and Refugees: Hungarian Dilemmas', 34 *Acta Juridica Hungarica* 28 (1992).

²² Juhász, above note 5, at 7.

²³ Ibid.

Towns near the western border with Austria lost more than 12 per cent of their population.²⁴ The brain drain that characterized this population movement was astounding. Ninety per cent of the refugees were under 40; 25 per cent were professionals; the majority of the manual workers were skilled employees.²⁵ In 1957 the borders were again sealed. Few Hungarians were allowed to leave legally, and those who left illegally faced criminal penalties and were stripped of their citizenship.²⁶

Official statistics on both legal and illegal departures were secret so the dimensions of the refugee flow in the following decades are unclear.²⁷ Recently revealed data suggest that over 50,000 people departed illegally in the 1960s and 1970s.²⁸ Many who fled to the West were automatically treated as political refugees, with only perfunctory investigation of their circumstances and claims.²⁹

This changed in the 1980s. Hungarians continued to leave at the rate of roughly 5,000 per year,³⁰ but their reception as refugees in Western Europe and North America was less automatic, however, as the goulash communism of Hungary and its liberalized passport regulations did not conform to the standard profile of a persecuting regime.³¹

Even as the numbers of Hungarians granted refugee status in other countries declined, there still were more refugees leaving Hungary than refugees entering Hungary. Between 1948 and 1988 very few people sought refuge in Hungary. The borders were closely guarded, and the admission of refugees was a political matter decided at the highest levels.³² Approximately 3,000 Greek communists fleeing the aftermath of civil war in Greece were granted refuge in the 1940s.³³ Roughly 1,000 Chilean communists were accepted in the 1970s.³⁴ In rare cases an individual revolutionary from Africa or Asia was also given asylum.³⁵ In addition,

²⁴ *Ibid.*, at 7–8.

²⁵ *Ibid.*

²⁶ Tóth, above note 5, at 73.

²⁷ Juhász, above note 5, at 8. Some say that as many as 8,000–10,000 emigrated per year: Tóth, above note 5, at 73.

²⁸ Juhász, above note 5, at 8, says that 20,000 left legally between 1963 and 1979 and 50,000 left illegally. Although she refers to recently published figures, she does not provide the source. This information was so politically sensitive for decades that it should be treated with caution.

²⁹ Boldizsár Nagy, 'Hungarian Refugee Law', in Howard Adelman et al., eds., *The Genesis of A Domestic Regime: The Case of Hungary*, 49 (1994).

³⁰ *The Economist*, 23 Dec. 1989, 27; Nagy, above note 29, at 62 n.3; Mária Rédei, 'Hungary's Migration Trends: The Past One Hundred Years and the Problem of Future Projects', Howard Adelman et al., eds., *The Genesis of A Domestic Regime: the Case of Hungary*, 22 (1994); Juhász, above note 5, at 8 (Ministry of Interior statistics show 4,000–6,000 annual émigrés during the 1980s; some experts suggest 10,000 is more accurate).

³¹ Juhász, above note 5, at 8; Nagy, above note 29, at 49.

³² Juhász, above note 5, at 8; Nagy, above note 29, at 50.

³³ Nagy, above note 29, at 62 n.2.

³⁴ *Ibid.*

³⁵ *Ibid.*, at 49–50.

the strictly protected borders and travel restrictions in neighbouring countries prevented travel through Hungary.³⁶

1.3 Exodus from Transylvania

Hungary became a refugee receiving country again in the 1980s. Surprisingly, this occurred before the fall of the communist regime in 1989. The transformation, which began in earnest at the end of 1987, was a delayed consequence of the post-First World War border changes, aggravated by the post-Second World War communist regimes in the region. By the mid 1980s, roughly ten million Hungarians lived in Hungary, while five million or so live outside the borders. Three and a half million lived in neighbouring countries, often in close-knit communities.³⁷

The Trianon Treaty left close to two million ethnic Hungarians in Romania.³⁸ In the 1980s they found life there more and more desperate, as did many people in Romania, but the minority status of the ethnic Hungarians compounded the difficulties.³⁹ They often faced great discrimination, increased pressure against the use of the Hungarian language in the schools, and quotas that limited their children's chances for higher education.⁴⁰

A large part of the ethnic Hungarian population in Romania lived in Transylvania, the region bordering Hungary.⁴¹ Able to speak the language, often having relatives in Hungary,⁴² many of them entered Hungary as visitors and simply stayed.⁴³ Although their status was illegal,⁴⁴ they refused to return to Romania. By the end of 1988 there were more than 13,000 asylum seekers in Hungary, 95 per cent of whom were ethnic Hungarians

³⁶ Juhász, above note 5, at 8; cf. Tóth, above note 5, at 75, (annual migration of 1,500 prior to 1984 may largely have been ethnic Hungarians from neighbouring socialist countries.)

³⁷ Michael J. Jordan, 'Slovakia, Hungary Ink Treaty', *Budapest Sun*, 23–29 Mar. 1995, at 1 (600,000 in Slovakia, 1.7 million in Romania, 200,000 in Ukraine, 450,000 in Croatia and Serbia).

³⁸ *Ibid.*

³⁹ Tóth, above note 5, at 74–5; Nagy, above note 21, at 28.

⁴⁰ Nagy, above note 21, at 43 n. 44.

⁴¹ Many ethnic Hungarian communities in Transylvania are located in the eastern part of Transylvania, with large communities of Romanians between them and the Hungarian border to the west: Taylor, above note 4, at 290.

⁴² Endre Sik, J. Tarjányi, Tibor Zavec, 'Sociological Characteristics of Refugees and their Flight from Transylvania', in Adelman et al., *Genesis of A Domestic Regime*, 25, 33 (hereafter Sik et al.) — 74% of the refugees between 1987 and 1989 had relatives in Hungary; 43% had friends in Hungary.

⁴³ Nagy, above note 21, at 28. As citizens of a Warsaw Pact country, they were able to cross the border without visas. Endre Sik & Judit Tóth, 'The Role of Governmental and Nongovernmental Organizations in Hungarian Refugee Policy', in Adelman et al., *Genesis of A Domestic Regime*, 65, 66 (hereafter Sik & Tóth). Nonetheless, many illegally crossed the 'green' (areas away from authorized border crossing stations) border. Boldizsár Nagy, 'The Refugee Situation in Hungary: Where Now?' 32 *AWR Bulletin* 125, 127 (1994).

⁴⁴ Sik et al., above note 42, at 28–9. Refugees could obtain a temporary residence card to legalize their stay in Hungary for a short term. Most received a permit for only one month, although gradually the authorities began issuing them for longer periods.

from Romania.⁴⁵ The Hungarian government called them 'aliens provisionally residing in Hungary' rather than refugees, but it refused to send them back.⁴⁶ The government even established a Settlement Fund to help accommodate the asylum seekers.⁴⁷ For the first time in Central Europe, a socialist country implicitly acknowledged persecution in sister socialist states and refused to force refugees to return.⁴⁸

The exodus from Romania continued and quickened in 1989. In that year alone more than 17,000 asylum seekers arrived in Hungary, most from Romania.⁴⁹ There were nearly 11,000 ethnic Hungarians, 5,500 ethnic Romanians, and almost 1,000 ethnic Germans.⁵⁰ The numbers increased again in 1990. This was a surprise. Many had predicted that the overthrow of Ceausescu in December 1989 would slow the exodus. Instead the reverse happened. There was fighting between ethnic Hungarians and Romanians in Tirgu Mures, Romania in the spring of 1990. Three people died and hundreds were injured.⁵¹ There was more violence in Bucharest in the summer.⁵² This heightened the fear in the ethnic Hungarian communities; over 18,000 asylum seekers came to Hungary in 1990, more than 17,000 of them from Romania. Nearly 15,000 were ethnic Hungarians; 2,400 were ethnic Romanians; and 100 were ethnic Germans.⁵³

Asylum seekers continued to arrive in 1991, but the rate of arrivals slowed considerably. During the first six months approximately 3,000 asylum seekers entered, mostly ethnic Hungarians from Romania.⁵⁴ Despite the decreasing numbers, the overall impact was substantial. In less than four years a country that had received a minuscule number of refugees during the preceding 40 years suddenly was sheltering 52,000. Of these 50,000 were from Romania, including 40,000 ethnic Hungarians.⁵⁵

⁴⁵ Nagy, above note 29, at 52. See also Table 1, at 51 (13,173 asylum seekers in Hungary in 1988, of whom, 13,098 came from Romania, of whom 11,745 were in turn ethnic Hungarians, 1,097 ethnic Romanians; 256 ethnic Germans).

⁴⁶ *Ibid.*, at 2.

⁴⁷ Government Decree of 28 June 1988; Nagy, above note 43, at 127.

⁴⁸ This presaged the more well-known Hungarian government decision in 1989 to allow thousands of citizens of the German Democratic Republic to seek asylum at the West German embassy in Budapest. See Peter Cipkowski, *Revolution in Eastern Europe*, 52–3, 72–6 (1991). The 1989 situation was different, though, in that it did not involve ethnic Hungarians seeking to remain in Hungary.

⁴⁹ Nagy, above note 29, at 51 (Table 1) (calculations based on data provided by the Hungarian Department of Refugee Affairs of the Ministry of the Interior).

⁵⁰ *Ibid.*

⁵¹ Michael J. Jordan, 'Slovakia, Hungary Ink Treaty', *Budapest Sun*, 23–29 Mar. 1995, 1–2; John Kifner, 'Upheaval in the East', *New York Times*, 27 Mar. 1990, at A 13.

⁵² Celestine Bohlen, 'Evolution in Europe: Romanians Ponder Burst of Violence', *New York Times*, 16 Jun. 1990, 4: hundreds injured when pro-government miners rampaged through city.

⁵³ Nagy, above note 29, at 51 (Table 1).

⁵⁴ *Ibid.*

⁵⁵ *Ibid.*

1.4 Sarajevo II

Then the dam burst. War broke out on Hungary's southern border between Croatia and Serbia in the summer of 1991 and the number of asylum seekers sky-rocketed.⁵⁶ Hungarian border guards faced desperate groups of civilians fleeing the fighting. Most were from the Baranyi triangle,⁵⁷ an area of Croatia near Vukovar. Shell-shocked and disoriented, many had left their homes on only several hours notice.⁵⁸ In the last half of 1991, more than 52,000 people — more than the entire existing refugee population — sought refuge in Hungary.⁵⁹ Thus, within six months the refugee population doubled. In addition, many more refugees may have entered and never registered with the authorities.⁶⁰ Most of the asylum seekers that arrived in 1991 were ethnic Croats.⁶¹

In 1992 the war zone in former Yugoslavia shifted. Serbian forces attacked Bosnia and Herzegovina in April.⁶² More refugees, this time mostly Bosnians,⁶³ streamed into Hungary. Again, many fled in the most desperate and disorienting circumstances with only a few hours notice. By the end of 1992 over 16,000 new asylum seekers have arrived, more than 15,000 of them from ex-Yugoslavia,⁶⁴ with the majority Bosnians, but one-third ethnic Hungarians.⁶⁵

The flow of the dispossessed slowed in 1993 and 1994. Approximately 5,000 asylum seekers arrived in 1993 and 3,000 in 1994.⁶⁶ As if a pendulum had swung, the refugee flows again altered. Although people still arrived from former Yugoslavia, the majority of asylum seekers now

⁵⁶ Blaine Harden, 'Army Offensive in Croatia Draws European Warnings', *Washington Post*, 27 Aug. 1991, A1.

⁵⁷ Interview, János Pavlic, Deputy Mayor, Siklos, Hungary, 2 Dec. 1994.

⁵⁸ Nagy, above note 43, at 128; Harden, above note 56.

⁵⁹ Nagy, above note 43, at 128; Zoltán Dövényi, 'Spatial Aspects of the Refugee Issue in Hungary', in Fullerton et al., eds., *Refugees and Migrants*, 17, 18.

⁶⁰ Nagy, above note 43, at 130.

⁶¹ *Ibid.*, at 128. In the first 5 months of 1991, 2,629 asylum seekers arrived in Hungary, of whom approximately 80% were ethnic Hungarians from Romania. In 1991 as a whole, 54,693 asylum seekers arrived in Hungary, of whom approximately 10% were Romanian citizens and 87% were Yugoslav citizens.

⁶² Chuck Sudetic, 'Ethnic Clashes Increase in Bosnia as Europe Recognition Vote Nears', *New York Times*, 6 Apr. 1992, 12; John F. Burns, 'Cease-Fire Holds in Yugoslav Republic', *New York Times*, 26 Apr. 1992, A 16: 370,000 refugees fled homes and sought UNHCR assistance in past 3 weeks.

⁶³ Croat, Serb, Albanian, and Russian asylum seekers also arrived, according to government records: Nagy, above note 43, at 128.

⁶⁴ *Ibid.*

⁶⁵ The statistics do not indicate which part of former Yugoslavia the refugees were fleeing. Many were likely from the Vojvodina region of Serbia, where most of the 450,000 ethnic Hungarians live: Nagy, above note 43, at 128. Many young men in Vojvodina faced conscription into the Serbian forces: Dövényi, above note 59, at 19–20.

⁶⁶ *Menekülők Magyarországon (1988–1995) = Refugees in Hungary (1988–1995)*, prepared by Menekültügyi és Migrációs Hivatal Informatikai Osztály = Office of Refugees and Migration Affairs, Information Department, Jan. 1996 (hereafter ORMA Statistics, 1988–1995).

were ethnic Hungarians, with significant numbers from the Vojvodina region of Serbia.⁶⁷

The lull of 1993 and 1994 continued through the first half of 1995, although everyone worried that major fighting in ex-Yugoslavia would begin again and trigger further flight. Nonetheless, the number of individuals who lived as refugees in Hungary dwindled to a startling degree. By the end of 1994 there were only 1,693 individuals in refugee camps; in addition, the government provided financial subsidies to 6,045 refugees living in private accommodation.⁶⁸ Although the Serb offensives in July 1995 that overran 'safe areas' in Srebrenica and Zepa created major new refugee movements,⁶⁹ few of those refugees reached Hungary.⁷⁰

In the seven years from 1988 to 1995, Hungary received 133,000 refugees. Of these, 76,000 were from ex-Yugoslavia and 54,000 from Romania.⁷¹ Only 7,700 of those from ex-Yugoslavia remained registered in 1995 as refugees receiving temporary protection in Hungary.⁷² Only 4,000 others, mostly ethnic Hungarians from Romania, received official refugee status.⁷³ Roughly 120,000 are no longer visible, but no one knows where they have gone. Many have probably left Hungary; many others have probably stayed but in a non-refugee status. Much appears to depend on the country of origin and the ethnic background of the refugees.

Of those who fled ex-Yugoslavia, approximately 68,000 are no longer visibly present. The consensus is that most Croats have returned, if not to their homes, then to other areas not occupied by the Serbs.⁷⁴ As the Croats comprised the overwhelming majority of refugees from ex-Yugoslavia,⁷⁵ this accounts for most of the decrease. Others granted temporary protection in Hungary have gone elsewhere, mainly to western

⁶⁷ Nagy, above note 43, at 128; in 1993, Hungary received 5,366 asylum seekers, of whom 4,321 were ethnic Hungarians.

⁶⁸ Menekültügyi Statisztika (1994.év)=Refugee Statistics (1994), prepared by ORMA (above, note 66), Jan. 1995, at 12.

⁶⁹ Kinzer, above note 2: Serb forces drove more than 40,000 Muslims from their homes in Srebrenica; Bonner, above note 2: more than 2,000 forced out of Zepa.

⁷⁰ ORMA Statistics, 1988–1995, above note 66: 5,912 asylum seekers registered in 1995, 1,879 by 30 Jun. 1995. Thus, although many thousands were forced to flee in July 1995 (Kinzer, above note 2), only 4,000 asylum seekers registered in Hungary between July–December 1995.

⁷¹ ORMA Statistics, 1988–1995, above note 66.

⁷² Frank Laczkó, 'Temporary Protection and Ex-Yugoslav Refugees in Hungary', in Fullerton, et al., *Refugees and Migrants*, 171, 172.

⁷³ ORMA Statistics, 1988–1995, above note 66; Laczkó, above note 72, at 173.

⁷⁴ Nagy, above note 43, at 43; Laczkó, above note 72, at 172; Lajos Horváth, 'Asylum Seekers at Nagyatád', in Fullerton, et al., *Refugees and Migrants*, 145 n. 2: in 1991 Croats comprised 85% of the population at the refugee camp at Nagyatád; by early 1994, they comprised less than 10% and Bosnians comprised nearly 80%.

⁷⁵ Nagy, above note 43, at 128: 35,000 asylum seekers fled from ex-Yugoslavia to Hungary from June–September 1991; 70% were Croats. Croatia shares a long border with Hungary, while Bosnians must cross Croatia or Serbia.

Europe.⁷⁶ This is said to be a small number, mostly Bosnians, but no reliable data are available. Of the 7,000 from ex-Yugoslavia who remain, approximately one-third are Bosnian Muslims, one-third are ethnic Hungarians from Vojvodina in Serbia, one-quarter are Croats, and one-tenth are Serbs and Albanians from Kosovo in Serbia.⁷⁷

Of the refugees from Romania, approximately 54,000 came to Hungary, and 4,000 have been granted official refugee status.⁷⁸ Again, reliable data about the other 50,000 are unavailable. Several hundred are reported to have returned to Romania and several thousand to have moved on to and settled in the West.⁷⁹ Several thousand may have acquired Hungarian citizenship through naturalization,⁸⁰ although that appears an overly optimistic projection since the Hungarian naturalization process works so slowly that it is likely that most applications filed in the late 1980s have not yet been decided.⁸¹ Others have, no doubt, acquired temporary and permanent resident status, but no one knows how many. It appears that most of the 'missing' 50,000 who came from Romania are still in Hungary, but have not been recognized as refugees.⁸²

2. The legal framework

One reason so little is known of the 133,000 refugees who arrived between 1988 and 1995 is the sketchy legal framework for refugee protection in Hungary. There is little coordination between the laws that exist, and a great many refugee issues are simply not addressed by any of the laws.

The foundation of Hungarian refugee law is the 1951 Geneva Convention Relating to the Status of Refugees.⁸³ Various government

⁷⁶ Nagy, above note 43, at 129. Some estimate that 10,000 went west, but there are no reliable statistics. Some went legally, some illegally on false documents, others illegally with no documents: Interview, Lajos Horváth, Director, Nagyatád Refugee Camp, 1 Dec. 1994.

⁷⁷ Laczkó, above note 72, at 172.

⁷⁸ ORMA Statistics, 1988–1995, above note 66. Approximately 30,000 asylum seekers from Romania had entered Hungary before October 1989, when Hungary officially became bound by the 1951 Geneva Convention. The procedural rules implementing the Convention provided that those already within Hungary had 30 days in which to file an application for refugee status: §21, 101/1989. (IX.28.): MT rendelet a menekülként való elismerésről = Cabinet Decree 101 of 28 Sept. 1989 on the Recognition Process for Refugees (hereafter Decree 101, discussed below in text accompanying notes 123–35). Very few of the 30,000 asylum seekers applied: Nagy, above note 29, at 50.

⁷⁹ Nagy, above note 43, at 129.

⁸⁰ *Ibid.* Nagy notes that there were 66,408 Romanian immigrants from 1988–1992 and that 13,569 Romanian citizens were naturalized during that time. He doubts that many of the 13,569 naturalized were part of the 66,408 because the naturalization process is notoriously slow.

⁸¹ Nagy, above note 43, at 129.

⁸² *Ibid.* Cf. Nagy, above note 21, at 31: close to 20,000 may have become citizens through naturalization; more than 10,000 have decided to become permanent resident aliens.

⁸³ 1951 Convention relating to the Status of Refugees: 189 *UNTS* 150; 19 U.S.T. 6260; T.I.A.S. No. 6577 (hereafter 1951 Convention).

decrees build on this international agreement, but most of the actual practice stems from unwritten administrative policies that have developed to fill yawning gaps in the legal structure.

2.1 International law

In early 1989, Hungary, still ruled by a communist government, became a party to the 1951 Convention relating to the Status of Refugees,⁸⁴ the first East bloc country to do so.⁸⁵ It also ratified the 1967 Protocol to the 1951 Convention.⁸⁶ Although its accession to the Refugee Convention signalled that Hungary was willing to accept the international definition of refugee, it also erected a major barrier. Hungary conditioned its ratification on an alternative narrow definition of those who qualify as refugees, recognizing only those who fear persecution in Europe.⁸⁷ Known as the geographic reservation, this provision allows Hungary to limit its obligations under the Convention to a small (and totally European) subset of all the refugees in the world. This geographic reservation is currently maintained by only four other countries — Malta, Monaco, Madagascar, and Turkey — out of the 132 States party to the Convention and/or the Protocol.⁸⁸

Hungary bases its insistence on the geographic reservation on its fear of being overwhelmed with refugees. Large numbers of potential refugees obviously pose legitimate and serious concerns for a country. Nevertheless,

⁸⁴ Hungary signed the Convention on 19 Mar. 1989.

⁸⁵ Cipkowski, above note 48, at 72.

⁸⁶ 1967 Protocol relating to the Status of Refugees: 606 *UNTS* 267; 19 U.S.T. 6223; T.I.A.S. No. 6577 (hereafter 1967 Protocol). Law-Decree No. 15 of 1989 [1989. évi 15. tvr.] Magyar Közlöny [Official Gazette] 1989, No. 60, p.1022 is the Hungarian law that implements both the 1951 Convention and the 1967 Protocol; it entered into force on 15 Oct. 1989. The 1951 Convention came into effect for Hungary on 12 Jun. 1990 and the 1967 Protocol on 14 Mar. 1990: Nagy, above note 21, at 33 n. 13. The peculiarity that resulted in the Protocol becoming effective before the Convention raises several interesting technical legal arguments about whether the former's broader scope supersedes the latter's narrower scope, which Hungary opted for. See below, notes 87–9 and accompanying text. As a practical matter, the narrower scope has been applied from the beginning; this has been accepted by other parties and by UNHCR. See Boldizsár Nagy, 'Before or After the Wave? Thoughts on the Adequacy of the Hungarian Refugee Law', 3 *IJRL* 529, 530 n.2 (1991).

⁸⁷ The 1951 Convention, after defining a refugee in art. 1A(2), among others, by reference to events occurring before 1 Jan. 1951, offers State parties the option of further limiting its application to refugees resulting from such events *in Europe*. art. 1B(1). By ratifying the Protocol, the Hungarian government agreed to remove the 1951 deadline.

⁸⁸ *Multilateral Treaties deposited with the Secretary-General: Status as at 31 December 1995*: UN doc. ST/LEG/SER.E/13 (1996). Up-to-date information on ratifications is available through UNHCR's website at www.unhcr.ch/refworld/

there are questions as to whether Hungary's fear on this score is well-founded.⁸⁹ No other Central European country which has ratified the Convention has adopted the geographic reservation, and none has been overrun with refugees, as experience in Poland and the Czech Republic can show.⁹⁰

Some have argued that Hungary is in a more vulnerable geographic position in terms of refugee flows. It is certainly nearer the Balkans than Poland or the Czech Republic, and it has indeed received many thousands more people fleeing the war in the Balkans. However, Hungary has not afforded refugee status to most of these people, viewing them instead as war victims. They are assisted by the government, but not given the legal protection or status received by those recognized as refugees under the Convention.⁹¹ Moreover, as the Balkans are part of Europe, those fleeing persecution there are not excluded from receiving protection in Hungary. Rather, the geographic reservation precludes those fleeing persecution in Africa and Asia from finding refuge in Hungary.

Others have asserted that Hungary needs to invoke the geographic reservation because it is likely to be a magnet for asylum seekers from other continents. As one of the Visegrád countries, Hungary has a more advanced economy than many Central European States. The debates are endless as to whether the economy is more robust in Hungary or the Czech Republic or Poland. The answer, if there is one, is irrelevant. What is relevant is the general perception that the economies in the Czech Republic, Poland, and Hungary are all becoming stronger. Moreover, they are all significantly ahead of the conditions in many of the countries that

⁸⁹ Pursuant to an agreement between the Government of Hungary and UNHCR, promulgated as 23/1990. (II.7.) MT rendelet [Cabinet Decree 23, 7 Feb. 1990], Magyar Közlöny [Official Gazette] 1990, No. 11, at 172, the UNHCR office interviews asylum seekers from countries outside Europe. Very few have been found to have a well-founded fear. The Hungarian authorities have granted short-term residency permits, but not work permits, to the few recognized by UNHCR and their situation is tenuous: Nagy, above note 21, at 37–8. Surprisingly, between 1990 and 1995, only 136 non-Europeans were recognized as in need of protection in Hungary; of these, only 70 remain. During that period, a total of 1,885 non-European asylum seekers applied in Hungary: Interview, Ágnes Ambrus, UNHCR Legal Protection Officer, Budapest, 1 Aug. 1995.

⁹⁰ Cf. the experience of the Czech Republic and Poland, neither of which maintains the geographic reservation. The Czech Refugee Department of the Ministry of the Interior reported 8,578 asylum applications between 1990 and early 1995; of these, 4,365 were rejected, 2,535 did not complete the proceedings, and refugee status was granted to 1,321 individuals: *Statistika Azyloveho Rizeni*, Ministry of Interior, Department for Refugees, 18 Jan. 1995. In late 1994 the Refugee Department stated that it was assisting 1,848 citizens of former Yugoslavia: *Refugees in the Czech Republic*, Dec. 1994. In Spring 1994 the Polish government reported 960 asylum seekers in Poland, 780 of whom were from former Yugoslavia: UNHCR Liaison Office, Warsaw, 'Country Operations Plan 1994/95/96'.

⁹¹ This bifurcation is also true in neighbouring countries. See, for example, Emma McClune, 'Returning Home Now Safe Option for Refugees', *Budapest Sun*, 14–20 Dec. 1995, A6: approximately 3,000 citizens of former Yugoslavia granted protection in Czech Republic; only 10 granted refugee status.

are triggering massive refugee flows. Yet neither the Czech Republic nor Poland has been flooded by asylum seekers and refugees.

Still others have said that the geographic reservation is necessary in Hungary because it is strategically located in terms of the transit routes from other continents. This rationale, too, is unconvincing. The map shows the central locations of Poland and the Czech Republic, while foreign airlines routinely land in Warsaw and Prague. Transit routes from East to West criss-cross not only Hungary, but all of Central Europe.

The absence of huge numbers of non-European asylum seekers in the Czech Republic and Poland, as well as the Hungarian response to European asylum seekers from ex-Yugoslavia, prompts a certain scepticism at Hungary's insistence on the geographic reservation. The facts suggest an alternative motivation. In light of the other laws and practices that favour ethnic Hungarians, it appears that the government, consciously or subconsciously, may have adopted the geographic reservation because adhering to the 1951 Convention in this fashion could provide an avenue for welcoming and protecting ethnic Hungarians from neighbouring countries. Certainly, Hungary defines refugees as those fleeing persecution anywhere in Europe, not just Hungarians. Nonetheless, what other large group of Europeans, other than those fleeing ethnic cleansing and warfare in former Yugoslavia, would likely seek refuge in Hungary? Viewed in this light, Hungary's ratification of the 1951 Convention essentially enabled the government to establish a 'law of return'⁹² via an international treaty rather than through domestic legislation.⁹³

2.2 National law

Hungary's national laws on refugees, like its international obligations, also date from the last communist government. The most salient provisions include a recent constitutional amendment concerning asylum and several

⁹² In Sept. 1993 Hungary enacted legislation regulating the entry of foreigners, 1993. évi LXXXVI. törvény a külföldiek beutazásáról, magyarországi tartózkodásáról és bevándorlásáról [Act LXXXVI of 1993 on the Entry and Residence of Aliens and on Immigration] (hereafter Aliens Act). Sections 4–7 of the Aliens Act set forth the requirements for entry; sections 14–16, the provisions for obtaining short-term and long-term residence permits, and sections 17–22 the circumstances in which foreigners who have lived in Hungary legally for three or more years can seek immigration permits. The Act does not provide ethnic Hungarians a right to immigrate to Hungary, but grants preferences to those with close family members (grandparents, parents, spouse, children) in Hungary: section 17. As a practical matter, the 1993 Aliens Act, as implemented by 64/1994. (IV.30.) Korm. rendelet [Government Decree 64 of April 30, 1994] and 9/1994. (IV.30.) BM rendelet [Ministry of Interior Decree 9 of April 30, 1994], has reduced immigration to Hungary to very low levels. See Justin Burke, 'Hungary Tries to Stem Burgeoning Tide of European Refugees', *Christian Science Monitor*, 27 May 1994, 3.

⁹³ Would supporters of the Bricker Amendment in the US Senate from 1948 to 1953 be surprised to find a communist government relying on a treaty to circumvent the need for domestic legislation? Senator Bricker and others strenuously opposed the internal application within the US of international treaties on human rights. See, for example, Covey T. Oliver et al., *The International Legal System: Cases and Materials*, 1059 (4th ed., 1995).

government decrees regulating different aspects of the asylum process. In addition, the new legislation concerning citizenship has a significant impact on those seeking permanent refuge in Hungary.

2.2.1 *The Constitution*

The 1949 Constitution of Hungary, enacted by the postwar communist government, contained an asylum provision:

Everyone who is persecuted for his democratic behaviour, or for his activity to enhance social progress, the liberation of peoples or the protection of peace, may be granted asylum.⁹⁴

This constitutional protection was exercised solely according to the whim of the government. There was no legally enforceable right and no judicial remedy.⁹⁵

In October 1989 the 1949 Constitution underwent a major revision.⁹⁶ The earlier asylum provision was repealed and replaced by a new guarantee:

(1) The Republic of Hungary — in accordance with the provisions of law — grants asylum for those foreign nationals, who in their country of nationality, or for those stateless persons who in their residence, were persecuted for racial, religious, national, linguistic or political reasons.

(2) A person granted asylum cannot be extradited to another State.

(3) The adoption of the law on asylum requires the votes of two-thirds of the members of Parliament who are present.⁹⁷

In the new Constitution, asylum is a right, rather than a matter of political discretion. Those entitled to asylum are described more specifically than in the earlier Constitution, and the description is generally in accord with the internationally accepted refugee definition. Further, the Constitution prevents easy amendment of laws concerning asylum. A super majority of Parliament must agree before legislation on asylum can be enacted.⁹⁸ Thus, politically popular restrictions on asylum cannot become law unless proponents of the changes convince two-thirds of the legislators. In

⁹⁴ Art. 67, Hungarian Constitution (1949) (enacted as Law No. XX of 1949); Nagy, above note 29, at 62 n. 6.

⁹⁵ Nagy, above note 29, at 50 ('decisions were purely political, based on the expressed will of the Central Committee of the Communist Party').

⁹⁶ Law No. XXXI of 1989, Magyar Közlöny, [Official Gazette], 23 Oct. 1989, No. 74, at 1244, amended the 1949 Constitution. Ironically, although approximately 90% of the original text has been replaced, as a technical matter, it is the 1949 Constitution that is still legally in force: Nagy, above note 29, at 62 nn. 6, 13. In 1995 Parliament established a commission to begin serious work drafting a new constitution.

⁹⁷ Art. 65, Hungarian Constitution (1989) (as enacted by Law No. XXXI of 1989), see note 96 above.

⁹⁸ Art. 65(3), Hungarian Constitution (1989). Contrary to first impression, this requirement does not explain the lack of asylum legislation. The coalition governing since the spring of 1994 controls more than two-thirds of the Parliament, yet there is still no asylum law.

addition, once an individual is granted asylum, he or she cannot be extradited. This bar to extradition allows no exceptions.⁹⁹

The definition of those constitutionally entitled to asylum in Hungary echoes the refugee definition of the 1951 Convention, but with several crucial differences.¹⁰⁰ The most noticeable is that the Hungarian Constitution contains no geographical limitation on those entitled to asylum. This contradiction exists openly, but has not been addressed by any of the institutions dealing with refugees in Hungary.¹⁰¹ A quite astounding anomaly results. The constitutional guarantee of asylum for refugees fleeing persecution anywhere in the world is ignored, while the geographical reservation to the 1951 Convention is followed.

In addition, the Hungarian Constitution protects those whose persecution is due to one of five factors: racial, religious, nationality, language, or political reasons. The 1951 Convention again is similar, but not coextensive in scope.¹⁰² Four of the five categories are practically identical, but the fifth is not. The Hungarian Constitution refers to persecution for linguistic reasons,¹⁰³ while the 1951 Convention identifies persecution based on membership in a particular social group.¹⁰⁴

The Hungarian Constitution's emphasis on persecution for linguistic reasons is noteworthy in light of the millions of ethnic Hungarians who, post-Trianon, live in neighbouring countries. The Hungarian communities in Romania, Slovakia, and former Yugoslavia have emphasized the importance of receiving schooling in the Hungarian language in order to keep their culture alive. In Slovakia and Romania, in particular, there have been serious and sustained disputes between ethnic Hungarians and

⁹⁹ Art. 65(2), Hungarian Constitution (1989).

¹⁰⁰ For example, the Hungarian Constitution mentions only those who have already experienced persecution: art. 65(1). The 1951 Convention is broader, protecting those who have a well-founded fear of persecution: art. 1A(2).

¹⁰¹ Indeed, the decree implementing the Convention is applied by the government, and the constitutional definition is ignored: Nagy, above note 29, at 53-4.

¹⁰² The political element is phrased differently. The 1951 Convention refers to persecution for reasons of political opinion, whereas the Hungarian Constitution refers to persecution for political reasons: art. 65(1). It is hard to predict whether these different formulations may have a substantial impact in practice. Hungarian officials and courts may conclude they are synonymous, or they might adopt the approach of the United States Supreme Court, which expressly refused to consider the political reasons or motives behind the persecutor's act, and instead focused exclusively on whether the persecution was triggered by the persecutor's view of the victim's political opinion; see *JMS v Elias-Zacarias*, 502 U.S. 478 (1992).

¹⁰³ Art. 65(1), Hungarian Constitution (1989).

¹⁰⁴ Art. 1A(2), 1951 Convention. In this respect, the 1951 Convention has a broader scope; social group membership would encompass linguistic groups, but would also go further. For example, persecution based on caste, tribe, family, social class, or sexual orientation might fall within the 1951 Convention, but not within the Hungarian Constitution.

the governments over restrictions on the use of the Hungarian language in schools and elsewhere.¹⁰⁵

In this context, it is not surprising that protection against persecution for linguistic reasons has attained constitutional status in Hungary. Although tensions over language and culture are not restricted to regions inhabited by ethnic Hungarians, Hungarian communities abroad have often been negatively affected. Consequently this constitutional provision means that ethnic Hungarians have a significantly greater chance of receiving asylum in Hungary. The Constitution does not limit asylum claims based on linguistic grounds to persecution against ethnic Hungarians. German speakers in Slovakia or Armenian speakers in Azerbaijan can also in theory seek protection under this provision of the Constitution.¹⁰⁶ As a matter of fact, however, it is Hungarian speakers who seek asylum in Hungary based on hostility triggered by the language they speak.

2.2.2 Legislation

In 1993 Parliament enacted new legislation regulating citizenship.¹⁰⁷ Strictly speaking, this law does not concern refugee protection, but it interacts with the refugee system in a significant way. In general, an applicant seeking naturalization must satisfy five requirements, namely, eight years of continuous residence in Hungary,¹⁰⁸ no criminal record,¹⁰⁹ the ability to support oneself,¹¹⁰ basic knowledge of the Hungarian Constitution¹¹¹ and a showing that naturalization would not be against the national interest.¹¹² In fact, there are six requirements, for the examination on the Hungarian Constitution is administered in Hungarian, thus adding a language requirement. As Hungarian is both unique and unusually

¹⁰⁵ Michael J. Jordan, 'Slovakia, Hungary Ink Treaty', *Budapest Sun*, 23–29 Mar. 1995, at 1. Indeed, current language disputes have triggered great tension. In late 1995 Slovakia enacted legislation requiring all official documents and discussion in government offices and in all institutions, including schools, churches, and private associations, to be written and conducted in Slovakian. Kornel Dura, 'Slovak Language Law Draws Rebuke From Hungary', *Budapest Sun*, 30 Nov.–6 Dec. 1995, at 1. This law was greeted with outrage by the large ethnic Hungarian minority in Slovakia (600,000 out of 5.3 million): 'Instability in Slovakia Prompts Western Concern', and resulted in the Hungarian government recalling its ambassador to Slovakia: *Budapest Sun*, 2–8 Nov. 1995, at 5.

¹⁰⁶ As explained above, note 101, the 1951 Convention definition rather than the Constitution definition is the one the refugee officers in Hungary follow. Nevertheless, the Hungarian Constitution's focus on persecution based on language is relevant in setting the context of the refugee process in Hungary.

¹⁰⁷ 1993. évi LV. törvény a magyar állampolgárságról = Act No. LV of 1993 concerning Hungarian Citizenship (hereafter Citizenship Act).

¹⁰⁸ The residence period must precede the application date: Citizenship Act, para. 4(1)(a).

¹⁰⁹ The applicant must have no criminal record and no pending criminal proceedings: Citizenship Act, para. 4(1)(b).

¹¹⁰ Subsistence and residence in Hungary must be ensured: Citizenship Act, para. 4(1)(c).

¹¹¹ Citizenship Act, para. 4(1)(e).

¹¹² Citizenship Act, para. 4(1)(d).

difficult, the language criterion will serve as a much more serious obstacle to obtaining citizenship than will the constitutional knowledge prerequisite.

The law relaxes the citizenship requirements for certain applicants. Specifically, the legislation reduces the continuous residence requirement from eight to three years for several categories of applicants for naturalization:¹¹³ those married to Hungarian citizens;¹¹⁴ those whose minor child is a Hungarian citizen;¹¹⁵ those adopted by a Hungarian citizen;¹¹⁶ or those recognized by Hungarian authorities as refugees.¹¹⁷ The law reduces the continuous residence requirement even further, to one year, for one category: ethnic Hungarians.¹¹⁸

The preferential treatment offered by the citizenship law mirrors some of the distinctions that can be perceived in the constitutional law on asylum. Both the asylum provision in the Constitution and the naturalization law are written in neutral language; they protect all those recognized as refugees, whether ethnic Hungarian or not. Indeed, the citizenship law clearly treats refugees better than most other non-citizens of Hungary. Refugees receive a substantial advantage because they need only satisfy a three-year residency requirement,¹¹⁹ a substantial advantage over the eight-year requirement imposed on most citizenship applicants.

Nevertheless, ethnic Hungarians are even better off than refugees, for they need only satisfy a one-year residency requirement, in addition they benefit from other advantages. For example, they are almost sure to be able to pass an examination in Hungarian, a language spoken by fewer than 15 million people which poses major barriers to the rest of the people in the world. They also are more likely to be acquainted with the structure of the Hungarian government and other basic constitutional knowledge.

Furthermore, under Hungarian law the decision to grant naturalization

¹¹³ Certain naturalization applicants need only satisfy a three-year continuous residence requirement plus fulfil the other four requirements listed above: Citizenship Act, para. 4(2).

¹¹⁴ This is restricted to those who have lived with a Hungarian citizen for three years or more in a valid marriage. The time can be shortened if the spouse died: Citizenship Act, para. 4(2)(a).

¹¹⁵ Citizenship Act, para. 4(2)(b).

¹¹⁶ Citizenship Act, para. 4(2)(c).

¹¹⁷ Citizenship Act, para. 4(2)(d).

¹¹⁸ A non-Hungarian citizen who asserts that he or she is an ethnic Hungarian and has an ancestor who was a Hungarian citizen may apply after one year in Hungary so long as the other standard citizenship requirements are satisfied: Citizenship Act, para. 4(3). This does not extend to all former citizens/subjects of Hungary, which included many ethnic Romanians, Serbs, Slovaks, Germans, among others. Indeed, ethnic Hungarians only comprised 50–55% of the population of Hungary in 1910: Taylor, above note 4, at 290.

¹¹⁹ Although other barriers might prevent refugees from obtaining Hungarian citizenship, such as the Hungarian language test on constitutional knowledge or the 'against the national interest' requirement, few citizenship laws are more generous for refugees than Hungary's. In the United States, refugees and other permanent resident aliens face a five-year residency requirement: 8 U.S.C. § 1427(a)(1). In Germany, the residency requirement is 10 years, shortened to 7 years for those granted official refugee status. See European Council on Refugees and Exiles, *Asylum in Europe*, vol. 2, 194 (4th ed., 1994).

is totally discretionary.¹²⁰ Negative decisions are not accompanied by explanations and cannot be appealed.¹²¹ Although there are no reliable statistics concerning naturalization decisions, it would not be surprising if the decision-makers,¹²² consciously or subconsciously, considered Hungarian heritage a positive factor. Anecdotal evidence suggests that most of those granted citizenship in the past few years have been ethnic Hungarians.

Thus, the citizenship law on its face favours ethnic Hungarians over refugees and any other applicants. Moreover, other provisions of the citizenship law that at first glance appear neutral, in fact favour ethnic Hungarians. Lastly, it appears that the discretionary naturalization decisions may in practice favour applicants of Hungarian origin.

2.2.3 Decree

Most of the laws that affect refugees in Hungary have not been enacted by Parliament. Rather they have been promulgated by decree. In October 1989, several months after Hungary's ratification of the 1951 Geneva Convention, the government issued Decree 101 in order to implement the Convention and Protocol.¹²³ The Decree regulates the refugee recognition procedure from beginning to end.¹²⁴ It contains several provisions that, as applied, have resulted in preferential treatment of ethnic Hungarians. It contains only twenty-two sections, and is less than comprehensive. There are gaps within topics; also entire topics are omitted. For example, there is no mention of people seeking temporary protection, rather than asylum, in Hungary. Nonetheless, Decree 101 provides the basic legal structure.

¹²⁰ Citizenship Act, para. 6(1); Judit Tóth, 'Who Are the Desirable Immigrants in Hungary Under the Newly Adopted Laws?' in Fullerton, et al., *Refugees and Migrants*, 57, 60.

¹²¹ *Ibid.*

¹²² The citizenship statute grants the President of the Republic of Hungary the authority to decide naturalization applications, based on the recommendation of the Minister of the Interior: Citizenship Act, para. 6(1). The Department of Citizenship [Allampolgársági Főosztálya] of the Ministry of the Interior processes the applications on behalf of the Minister.

¹²³ 101/1989. (IX. 28.) MT rendelet a menekülként való elismerésről = Cabinet Decree 101 of 28 Sept. 1989 on the Recognition Process for Refugees (hereafter Decree 101). As Hungary follows a dualist, rather than monist, legal tradition, its accession to the Convention and Protocol bound Hungary on the international plane only. Domestic implementation of the law needed further government action, which occurred with Decree 101: Nagy, above note 29, at 52.

¹²⁴ It begins with provisions addressed to asylum seekers crossing the Hungarian border: 'This decree shall apply to the non-Hungarian nationals who, having crossed the frontier of the Hungarian People's Republic, apply for recognition as refugees' (section 1), and ends with provisions allowing judicial review of the denial of refugee status (section 19). The concluding provisions address the three-month deadline on seeking extensions of time (section 20); non-Hungarian nationals present in Hungary at the time the decree came into force, as well as those who later might be lawfully present in Hungary on non-refugee grounds and subsequently seek to apply for refugee status (section 21); and the effective date of the decree, 15 Oct. 1989 (section 22).

Application deadlines. Decree 101 sets forth a short period of time (72 hours after crossing the border into Hungary) in which refugee applicants must notify the police or border guards that they are seeking refugee status.¹²⁵ Once this notice is given, there is a second period of 72 hours, within which applicants must submit formal applications for recognition as a refugee.¹²⁶ On their face these provisions are neutral, but in practice they provide a significant advantage to ethnic Hungarians. The 72-hour deadlines are short. Those who do not speak the language are likely to have a much harder time ascertaining that there is a deadline and complying with it. Furthermore, many ethnic Hungarians have relatives or friends in Hungary, who can learn how the refugee system works and can assist the newcomers in manoeuvring their way through.¹²⁷

Once a refugee application is filed, it triggers another set of deadlines.¹²⁸ Government officials schedule personal interviews with the applicants to decide who is eligible for refugee status.¹²⁹ The applicants bear the burden of proof in the procedure,¹³⁰ and again, those who can speak Hungarian and who may have relatives or others who can provide information and assistance have a great advantage. They can rely on more help in assembling documents and other information to support their claim. Moreover, to the extent their claim rests upon persecution of ethnic Hungarians in neighbouring states, there is a better chance that the Hungarian officials will be aware of the unrest and tension in those communities.

¹²⁵ Decree 101, section 3.

¹²⁶ Technically, this second 72-hour period begins to run from the time of arriving at a refugee camp or at one of the three mentioned police stations: the Central Police Station in Budapest, the County of Csongrád, or the County of Szabolcs-Szatmár. The application shall be filed on a government form, a copy of which is attached as an Appendix to the Decree: Decree 101, section 4(1).

¹²⁷ Candidates for refugee status spend the time between their arrival at the refugee camp and the hearing on their refugee application in a separate, closed section of the camp, Decree 101, section 7(1). During this quarantine period, which typically lasts one week (Interview, Béla Székely, Director, Békéscsaba Refugee Camp, 6 Jun. 1995), medical screening and tests are done on each candidate: section 8(2)(b). While in the refugee camp the applicants surrender their passports or identity documents to the camp authorities: section 8(2)(c). In return they receive identity documents that entitle them to remain in Hungary during the process, to stay in the camp and use its services free of charge, and to receive free medical care: section 9.

¹²⁸ The eligibility officers have 30 days from the date the application was submitted in which to make decisions on the applications, which may be extended once by 60 days: section 10(1),(2). Section 11(1) allows further gathering of evidence in special cases where the available information is insufficient and the current information indicates that it is possible the applicant should be recognized as a refugee. At present, the eligibility officers have been able to meet the deadlines in most cases: Interview, István Dobó, Chief, Division of State Administrative Procedure (Appeals Division), Office for Refugees and Migrant Affairs, Department of Interior, Budapest, 23 Mar. 1995.

¹²⁹ Decree 101, section 11. In some refugee camps, such as Békéscsaba, the eligibility officers are stationed right on the premises. Other eligibility offices are located in cities in the south and east of Hungary, and in Budapest: Interviews, Ágnes Ambrus, UNHCR Legal Protection Officer, Budapest, 28 Nov. 1994; 1 Aug. 1995.

¹³⁰ Decree 101, section 11(1).

The refugee definition. Decree 101 defines those who can be recognized as refugees.¹³¹ It explicitly incorporates the refugee definition set forth in the 1951 Convention.¹³² Thus, Decree 101 defines as refugees those who have a well-founded fear of persecution due to race, religion, national origin, political opinion, or membership in a particular social group.¹³³ As discussed earlier, Hungary adopted the 1951 Convention refugee definition subject to a major restriction: only those whose fear of persecution stems from events occurring in Europe are included.¹³⁴ Thus, as a matter of treaty law, and of national law implementing the treaty, Hungary will, in practice, only afford refugee status to Europeans.¹³⁵

Acknowledging that the geographic reservation allows Hungary to accept only European refugees does not automatically lead to the conclusion that Hungary accepts only ethnic Hungarian refugees. Indeed, the statistics indicate that this is not so. Many non-ethnic Hungarians have been granted protection in Hungary. Of the 133,000 asylum seekers accepted from 1988 through 1995, more than half were not of Hungarian background.¹³⁶

Yet, the same statistics indicate that the Hungarian refugee procedure

¹³¹ Those individuals whose applications are judged favourably are granted identity cards containing proof of residence in Hungary and a notation that they enjoy refugee status: section 16(2),(3). If they are living in a refugee camp they may continue to stay there, receiving room and board and other assistance provided by the government. Staff members in the camps attempt to identify employment opportunities. Skilled workers, such as electricians, often find work quickly. Others have much more difficulty. Interviews with Robert Rontó, Staff, Bicske Refugee Camp, 11 Feb., 4 Mar., 2 Apr. 1995. Those whose applications for refugee status are denied have five days in which to file an appeal: Decree 101, section 18(1); the first level of review is administrative: section 18(2), the second is to the courts: section 19(1).

¹³² 'A person who is qualified as a refugee according to article 1, item C, as well as item B, para. (1), sub-clause a. of the Convention . . .': Decree 101, section 2 (1). In addition, section 1 specifies that the decree applies only to non-Hungarian nationals who have crossed the borders into Hungary.

¹³³ Persons with a well-founded fear must be outside their country of nationality or, if they lack a nationality, the country where they formerly resided. Art. 1A(2), 1951 Convention.

¹³⁴ Decree 101, section 2 expressly incorporates art. 1B(1)(a) of the 1951 Convention, which provides for the geographic reservation; see above, note 87. As noted above, the 1967 Protocol removed the 1 Jan. 1951 deadline, a point acknowledged in Decree 101, section 2(1). Thus, Decree 101 has a geographic restriction, but not a time restriction.

¹³⁵ How treaty law and national decrees implementing treaty law can trump the constitution, which contains no such geographical restriction, is difficult to comprehend. Nonetheless, as to the geographical scope of persecution, the Hungarian government follows Decree 101, thereby restricting refugee status to those fleeing persecution in Europe, and eschews the unlimited geographical approach of the Constitution: Nagy, above note 29, at 53-4. Furthermore, Decree 101 places limitations even on those who fear the 'right kind' of persecution on the 'right' continent. Those whose stay in Hungary interferes with the security of the state, public order, or public health are not entitled to refugee status even if they face the type of persecution defined in the 1951 Convention: Decree 101, section 2(b). Needless to say, the 'security of the state', 'public order', and 'public health' are not defined. In addition, Decree 101 tracks the 1951 Convention and excludes from refugee status those who have committed a serious non-political crime outside Hungary prior to entering Hungary, or have committed war crimes, crimes against peace, or crimes against humanity: section 2(a).

¹³⁶ See ORMA Statistics 1988-1995, above note 66; of 133,120 asylum seekers from 1988-1995, 75,531 came from former Yugoslavia, most being Croats and Bosnians.

exercises a powerful bias in favour of ethnic Hungarians. The data reveal that very few of the asylum seekers actually file applications and seek recognition as refugees. Approximately 5,000 of the 133,000 have filed refugee claims and followed the recognition process through to the end. Roughly 4,000 have been recognized as refugees under Decree 101.¹³⁷ They are deemed 'Convention refugees' and receive the rights and benefits mandated by the 1951 Convention. This group also is eligible for any rights and benefits, such as a shorter residency requirement under the citizenship legislation law, that Hungarian law accords refugees.¹³⁸ Most of the Convention refugees, perhaps 3,500 out of 4,000, are ethnic Hungarians.

Most of these seeking refuge in Hungary, including the overwhelming majority of the non-Hungarians, never take part in the official refugee procedure. Instead, they are shunted into a separate category. They are deemed temporarily protected persons and their cases are not reviewed to determine whether they satisfy the refugee definition set forth in Decree 101.¹³⁹ Thus, they never have the opportunity to qualify for refugee status in Hungary.

The legal status of refugees. The legal status of those the Hungarian authorities recognize as refugees is set forth in a second decree, also dating from 1989.¹⁴⁰ The terms of Law-Decree 19 are quite generous.¹⁴¹ It provides that recognized refugees have all the rights of Hungarian citizens¹⁴² with three exceptions: refugees do not have the right to vote;¹⁴³ may not be

¹³⁷ Ibid. This constitutes 3.17% of the total number of registered asylum seekers.

¹³⁸ See text accompanying notes 140–6, below.

¹³⁹ There have been 73,888 temporarily protected persons in Hungary, 55.5% of the total of registered asylum seekers: ORMA Statistics, 1988–1995, above note 66, at 1.

¹⁴⁰ 1989. évi 19. törvényerejű rendelet a menekültként elismert személyek jogállásáról = Law-Decree No. 19 of 1989 on the legal status of persons recognized as refugees (hereafter Law-Decree 19). The Presidential Council of the Hungarian People's Republic designated certain pronouncements as a Law-Decree (törvényerejű rendelet) in order to indicate that they were more weighty than a decree (rendelet). The Law-Decree was issued by the government alone, however, and not enacted by a legislature.

¹⁴¹ The reality of refugee status in Hungary appears to be the same as the law. Those recognized as refugees experience no legal barriers to work. Anecdotal evidence indicates that they also experience little, if any, social discrimination in employment: Author's interviews with refugees in Hungary in winter and spring 1995. Because most recognized refugees in Hungary are ethnic Hungarians, they do not face the language barriers that are obstacles for refugees in many societies. Moreover, they are often perceived as fellow countrymen and women who have returned home after suffering persecution for loyally preserving Hungarian culture. Although the receptivity to ethnic Hungarian refugees may be diminishing somewhat (see György Csepeli and Endre Sik, 'Changing Content of Political Xenophobia in Hungary — Is the Growth of Xenophobia Inevitable?' in Fullerton et al. *Refugees and Migrants*, 121, 122–5), the past decade has been marked by an extraordinary sympathy to ethnic Hungarian communities in surrounding countries, making Hungary's refugee experience unique.

¹⁴² Law-Decree 19, section 1.

¹⁴³ Ibid., section 1(a). The legal barrier against voting can be overcome, of course, once the refugee becomes naturalized.

employed in jobs restricted to Hungarian citizens; and do not have to perform military service. In addition, refugees can receive Hungarian language classes free of charge.¹⁴⁴ Most important, receiving refugee status helps those who later seek to become naturalized citizens of Hungary. As described above, refugee status accelerates eligibility for Hungarian citizenship.¹⁴⁵ An eight-year residency requirement is reduced to three years. Moreover, Law-Decree 19 states that recognition as a refugee shall be considered an extraordinary circumstance in an application for naturalization.¹⁴⁶

Ethnic Hungarians, who constitute the vast majority of those recognized as refugees, can rely on an even greater acceleration: they are eligible for naturalization in one year. As their knowledge of Hungarian and their familiarity with Hungarian law is likely to be greater than that of others recognized as refugees, their success in obtaining citizenship is also likely to be vastly greater. Indeed, the preference written into the citizenship law and the preference that appears to exist in the refugee status procedure combine to enable a sizeable number of ethnic Hungarians to change their status from ethnic minority in a neighbouring country to a full member of Hungarian society.¹⁴⁷

In contrast, those categorized as temporarily protected are put into the second tier of a two tier system. If they pass a perfunctory screening that attempts to ascertain their country of origin and their membership in a group at risk, they are allowed to stay in Hungary.¹⁴⁸ The government attempts to assign them to refugee camps or to provide a rent subsidy that allows them to live in private housing. As temporarily protected persons, rather than refugees, they have no rights under Hungarian law. The law does not recognize their existence. This silence works against them; they are not allowed to work, and they are sometimes even denied permission to leave the refugee camp.¹⁴⁹

Refugee camps. A third decree grants the Minister of Interior the power to establish refugee camps or other refugee shelters.¹⁵⁰ Also issued in

¹⁴⁴ Law-Decree 19, section 1(b),(c),(f).

¹⁴⁵ See above, text accompanying notes 113–9.

¹⁴⁶ Law-Decree 19, section 1(e). In addition, the decree provides that the refugee has the right to receive travel documents, as defined in the Geneva Convention on Refugees: section 1(d).

¹⁴⁷ The process is quite short by Western European or US standards, and a positive decision on refugee status often comes in 2 or 3 months. Interview, István Dobó, above note 128. Twelve months after that an ethnic Hungarian refugee can apply for citizenship. See above, text accompanying note 118.

¹⁴⁸ Interview, Jozsef Katai, Chief Eligibility Officer, Békéscsaba Refugee Camp, 6 Jun. 1995.

¹⁴⁹ See text accompanying notes 173–8 below.

¹⁵⁰ 64/1989. (VI.30.) MT rendelet a menekülteket befogadó állomásokról = Cabinet Decree No. 64, 30 Jun. 1989, on the stations receiving refugees (hereafter Decree 64).

1989,¹⁵¹ Decree 64 provides broad guidelines for cooperation with other units of the national government, with local governments, and with non-governmental organizations.¹⁵² The refugee camps, in turn, are to provide food and shelter,¹⁵³ assistance with integration into the community,¹⁵⁴ and support for obtaining employment and other beneficial activity.¹⁵⁵

The reality is that there have been a variety of different refugee camps and shelters in Hungary.¹⁵⁶ Their conditions vary, as do their size.¹⁵⁷ Moreover, the majority of people seeking refuge and protection have not been housed in government-run camps and shelters.¹⁵⁸ Some have stayed at shelters run by non-government groups such as the Red Cross.¹⁵⁹ Many have been taken in by relatives. Many others have used their savings, money sent from relatives abroad, and earnings from work in the underground economy, to rent private accommodation.¹⁶⁰

Those who live in camps must contend with difficult circumstances. Institutional living always poses problems, and these appear to be exacerbated in Hungary by unequal treatment. Although there are exceptions, the shelters largely inhabited by ethnic Hungarian refugees in 1995 appeared significantly more desirable than those largely inhabited by Bosnians and other non-Hungarians. A prime example can be found in comparing the refugee camp at Bicske with that at Nagyatád.

The camp at Bicske historically has housed many ethnic Hungarian residents; Nagyatád houses mostly Bosnian residents.¹⁶¹ The first noticeable difference is sheer size. The full capacity at Bicske is approximately

¹⁵¹ Of the three decrees regulating refugees, this was the first to go into effect. It was a response to the large number of ethnic Hungarians from Transylvania who sought asylum in Hungary in the late 1980s. See above text accompanying notes 38–55.

¹⁵² Decree 64, section 5(1) (cooperation with local government); section 5(2) (with the Red Cross and church groups); section 5(3) (with the Ministry of Foreign Affairs).

¹⁵³ *Ibid.*, section 1(1)(a).

¹⁵⁴ *Ibid.*, section 1(1)(b).

¹⁵⁵ *Ibid.*, section 1(1)(c). It is striking that it explicitly authorizes support for refugees who intend to leave Hungary for a third country.

¹⁵⁶ ORMA has established permanent refugee centres at Bicske, Békéscsaba, and Hajduszoboszló and temporary shelters at Nagyatád, Vése, Mohács, Pécs, Siklós, Zánka, and Csongrád. In 1995 ORMA opened a new centre at Debrecen, but by that time the camps at Hajduszoboszló, Csongrád, Mohács, Pécs, Siklós, and Zánka had been closed: Interview, Ágnes Ambrus, above note 129.

¹⁵⁷ The camp population in Jan. 1996 was as follows: Békéscsaba, 200; Bicske, 204; Nagyatád, 1,590; Debrecen, 621; Vése, 150: Pál Nagy, ORMA Statistics, 19 Feb. 1996.

¹⁵⁸ In Jan. 1996 there were 7,158 registered asylum seekers; only 2,765 were housed in camps: *ibid.*

¹⁵⁹ The Red Cross and similar groups have received financial support from the government to cover some of the costs of providing shelter: Interview, Ágnes Jantsits, Chief, International Division, Hungarian Red Cross, 30 Mar. 1995. On the early role of the Hungarian Red Cross in assisting refugees, see generally Sik & Tóth, above note 43, at 65–72.

¹⁶⁰ The government provides subsidies to assist with rent and utilities charges to those registered refugees living in private dwellings in Hungary: Ella Veres, 'Camps Soak Up Funds', *Budapest Sun*, 10–16 Nov. 1994, at 3.

¹⁶¹ Laczkó, above note 72, at 174–5.

200,¹⁶² Nagyatád currently has nearly 1,600 residents and could house up to 3,500.¹⁶³ The impact of the size of the camp and its population is noticeable. The smaller one feels like a coherent community, the larger like a depersonalized institution.¹⁶⁴ A second major difference is the amount of privacy. To some extent this is related to the size of the camp, and to the type of structures that already existed. In Bicske families generally have separate accommodation, with a family often assigned to one room furnished with several beds, a small table with several chairs, and a dresser or a wardrobe.¹⁶⁵ Although meals are provided in a central dining hall, many families also have a small refrigerator and a hotplate in their room. The rooms are arranged on a single floor along a central hall, with perhaps eight rooms in a building.¹⁶⁶

In contrast, the buildings at Nagyatád betray their origins as a military post.¹⁶⁷ The buildings are large with multiple stories.¹⁶⁸ The rooms, formerly used as a barracks, are also large. Consequently, several families, separated by draped sheets, share one room.¹⁶⁹ Frequently, families decorate their portion of the space with rugs and blankets they have knit while in the camp, but the architecture impedes the attempts to personalize family space.¹⁷⁰ Furthermore, the sheets that separate family areas provide no soundproofing, so a family cannot gain privacy by retreating to its own corner of the room.¹⁷¹

A third major difference between the two camps is in the freedom to leave. The residents of the Bicske refugee camp face no restrictions on leaving and returning,¹⁷² but in Nagyatád the camp administration permits only a certain number of residents to leave each day.¹⁷³ The stated reason is that the large refugee population of 2,000 to 3,000 would cause 'serious problems' in a small town of 12,000 or so.¹⁷⁴ The policy of limiting the number of refugees who could go outside the camp each day continued,

¹⁶² Interview, Janos Einwachter, Director, Bicske Refugee Camp, Dec. 1994.

¹⁶³ Interview, Lajos Horváth, Director, Nagyatád Refugee Camp, 1 Dec. 1994. At times Nagyatád has exceeded capacity and sheltered up to 3,800 refugees: Interview, Peter Wijninga, Chief, UNHCR Sub-Office, Pécs, 1 Dec. 1994.

¹⁶⁴ Laczkó, above note 72, at 174–6.

¹⁶⁵ Interviews with Robert Rontó, Staff, Bicske Refugee Camp, 11 Feb., 4 Mar., and 2 Apr. 1995; author's visits to Bicske Refugee Camp, 22 Dec. 1994; 2 Apr. 1995.

¹⁶⁶ *Ibid.*

¹⁶⁷ Horváth, above note 74, at 145.

¹⁶⁸ For a short description of Nagyatád Refugee Camp, see Éva V. Huseby-Darvas, 'Puzzling Voices, Pleading Words: Refugee Issues, Refugee Camps and Refugee Women in Hungary', in Fullerton et al., eds., *Refugees and Migrants*, 153, 159.

¹⁶⁹ Author's visit to Nagyatád Refugee Camp, 1 Dec. 1994.

¹⁷⁰ *Ibid.*

¹⁷¹ *Ibid.*

¹⁷² Laczkó, above note 72, at 175.

¹⁷³ *Ibid.*

¹⁷⁴ Horváth, above note 74, at 148, n. 5.

however, even when the camp population fell to fewer than 600.¹⁷⁵ This policy, initiated by the camp director in response to a request of the local municipal authorities,¹⁷⁶ has many unfortunate consequences. The lack of freedom has created a certain prison-like atmosphere, even though that may not have been intended. It has given rise to a black market in passes,¹⁷⁷ and has resulted in palpable discrimination based on sex. Even though the passes are not officially restricted to men, in practice most are used by men. The women generally stay to take care of the children whose schooling finishes early in the day.¹⁷⁸ Since it is perceived that the women cannot make full use of the few passes that are available, they rarely receive them.¹⁷⁹

Although it is clearly more desirable to live in a refugee camp with no restrictions on leaving and entering, the point here is not to criticize the reasons articulated for the restrictive policy at the Nagyatád refugee shelter. Rather the point is that the camp that is much less hospitable, owing to its size, the concomitant lack of privacy, and the restricted freedom of movement, by and large does not house ethnic Hungarians. In contrast, the smaller, more congenial camp in Bicske has historically housed ethnic Hungarian refugees. In this respect, the preference for ethnic Hungarian refugees detected in the legal provisions is also reflected in the daily life of refugees.¹⁸⁰

Discriminatory treatment. An outside observer will note a marked difference in the treatment of refugees in Hungary, and ethnic Hungarian asylum seekers appear to benefit on every measure. This can doubtless be explained in part by non-discriminatory factors, such as the timing and sequence of the refugee movements. Perhaps the refugees who arrived in Hungary first, in the late 1980s, tended to be sheltered in small refugee camps. Those who arrived later, in 1991 and 1992, came in large numbers and tended to be accommodated in large camps opened in response to needs.¹⁸¹ As the first wave of refugees was primarily ethnic Hungarian, and the second was not, this might explain the difference in the character of the camps. However, this is no more than a partial explanation. The

¹⁷⁵ In mid-1995 human rights groups in Hungary organized a joint mission to evaluate and monitor conditions at the Nagyatád Refugee Camp. The camp director indicated that restrictions on leaving the camp would be removed.

¹⁷⁶ Horváth, above note 74, at 148, n.5.

¹⁷⁷ Wjninga interview, above note 163.

¹⁷⁸ Horváth interview, above note 163.

¹⁷⁹ Moreover, camp officials hold the distinct view that leaving the camp is more important for the men than for the women: Horváth, above note 74, at 148.

¹⁸⁰ See generally Laczkó, above note 72, at 174–6.

¹⁸¹ For example, the Bicske refugee camp was opened earlier than the Nagyatád camp, when the first flows of refugees were predominantly ethnic Hungarians from Romania. Nagyatád was opened in August 1991, when the refugees from the war in Yugoslavia began pouring into Hungary. Opened as a temporary shelter pending return of the refugees in a matter of months, it remained in active operation for more than five years.

camp populations have not been static and although there has been a substantial turnover,¹⁸² the difference in the characteristics of the camp population has remained.

One of the starkest differences in treatment involves the distinction between those accorded refugee status and those accorded temporary protection. More than 90 per cent of those deemed refugees, and thus entitled to virtually the same rights as citizens, are ethnic Hungarians.¹⁸³ More than 90 per cent of those deemed temporarily protected persons, who are assisted with food and shelter but denied many other rights, including the right to work legally, are not ethnic Hungarians.¹⁸⁴ On their face the statistics are damning, but the factors that have contributed to channelling asylum seekers into these categories must be examined to see if there are non-discriminatory explanations for the situation.

For example, the circumstances that compelled people to flee might account for the difference in treatment. Perhaps more of the asylum seekers who fled Romania left traditional political persecution: A totalitarian state that tolerated no dissidence and viewed with hostility any cohesive group that did not exist to further government aims.¹⁸⁵ In Ceausescu's Romania, the Hungarian minority, an ethnic group with pre-existing loyalties, with independent and long-standing cultural traditions, and with a language different from that of the government, was viewed with suspicion and worse.¹⁸⁶ Consequently, many of the ethnic Hungarian asylum seekers from Romania fell neatly into the traditional refugee definition: Those persecuted for their practices and beliefs.

In contrast, perhaps many of the asylum seekers who fled the former Yugoslavia left due to war. Although families fleeing artillery fire evoke sympathy in news stories, they often do not readily fall into the traditional refugee definition. This is because the harm that war refugees flee is generally viewed as danger due to their being unfortunate bystanders rather than danger due to their practices and beliefs. Accordingly, some might argue that asylum seekers fleeing Yugoslavia are fleeing generalized wartime conditions and thus are entitled to temporary protection rather than refugee status.

Again, as with the timing of the refugee arrivals, this can be a partial explanation at most. The war in former Yugoslavia has not been the

¹⁸² Many camp residents have left and been replaced by those who arrived later. For example, in 1991 the Nagyatád camp population was 85% Croat and 12% ethnic Hungarian: Horváth, above note 74, at 145 n.2. In 1994 the population was 77% Bosnian, 10% Croat, and 8% ethnic Hungarians: *ibid.*, 146. Nonetheless, in 1995 the Bicske camp still retains its flavour as an ethnic Hungarian camp, while the Nagyatád facility clearly is a camp of non-ethnic Hungarians.

¹⁸³ Nagy, above note 29, at 52. See Nagy, above note 43, at 130, 138 n. 27; Laczkó, above note 72, at 173.

¹⁸⁴ Nagy, above note 43, at 130.

¹⁸⁵ Cypkowski, above note 48, at 120–5.

¹⁸⁶ *Ibid.*, 127–8.

ordinary war. It has distinguished itself by publicly acknowledged ethnic cleansing,¹⁸⁷ a classic form of political and religious persecution. Although many asylum seekers from former Yugoslavia may have fled solely to avoid bombardment, many fled because they were members of a group expressly targeted to be forced to leave or be killed.¹⁸⁸ The media covering the situation in former Yugoslavia again and again published reports of persecution aimed at specific groups.¹⁸⁹ Indeed, the leaders of the Serb forces in Bosnia made it easy to recognize the persecution because they publicly vilified non-Serbs¹⁹⁰ as foreign occupying forces who should be evacuated or eradicated from Serb lands. Moreover, many asylum seekers who arrived in Hungary confirmed the reports of ethnic cleansing with consistent tales of being driven away from their lands and homes solely because they had been born into the targeted group.¹⁹¹ Accordingly, although it might be possible to say that many asylum seekers from former Yugoslavia were those traditionally viewed as war refugees and were properly channelled into the temporary protection category, rather than into the refugee process, many others satisfied the traditional refugee definition and should have been accorded access to the refugee process in Hungary.

Another factor that may have contributed to the channelling of ethnic Hungarian asylum seekers into the refugee category and non-ethnic Hungarian asylum seekers into the temporary protection category is the different expectations with which they left home. Most ethnic Hungarian asylum seekers came from Romania and describe their lives there as slow, steady oppression, occasionally punctuated by threats of violence.¹⁹² After

¹⁸⁷ Kinzer, above note 2: Bosnian Serbs say their self-proclaimed state cannot exist with pockets of Muslim inhabitants.

¹⁸⁸ See, for example, Horváth, above note 74, at 146 (forcible removal of Bosnians by Serbs). The details vary depending on the timing and sequence of the refugees arrival in Hungary. Many who fled to Hungary in the summer of 1991 were Croats who lived in the northeast corner of Croatia, in the vicinity of Vukovar. The long siege of Vukovar and the incessant artillery attacks may have triggered substantial flows of families desperate to escape the dangers of traditional warfare; see Harden, above note 56. Later, personal stories and news reports, particularly of Bosnian asylum seekers, described many more incidents of ethnic cleansing. No doubt, both reasons for flight coexisted simultaneously in many individuals.

¹⁸⁹ For example, Chris Hedges, 'Conflict in the Balkans: The Fighting', *New York Times*, 26 Jul. 1995, at A-9 (ethnic cleansing in Zepa); Kinzer, above note 2 (UN High Commissioner for Refugees says Srebrenica most blatant example yet of ethnic cleansing).

¹⁹⁰ Or 'Muslims' or 'Mujahadin' or 'Fascists' or 'Ustashi', depending on the target and the level of invective used. See Storer H. Rowley, 'More Croatian Towns Are Falling to Serbs', *Chicago Tribune*, 29 Aug. 1991 at 2 (Serbs say Croats are Fascists and Nazis); Storer H. Rowley, 'Terror Cuts Two Ways in Yugoslavia', *Chicago Tribune*, 1 Sept. 1991, at 3 (Serbs say Croats are Ustashi).

¹⁹¹ Interviews with recently arrived Bosnian asylum seekers, Békéscsaba Refugee Camp, 6 Jun. 1995. Interviews with ethnic Hungarian asylum seekers, Vése Refugee Camp, 1 Dec. 1994. Interview with Székely, above note 127; interview with Wijnnga, above note 163; interview with Philippe Labreveux, UNHCR Representative, Hungary, Budapest, May 1995.

¹⁹² Interviews with refugees, Bicske, 11 Feb., 4 Mar. 1995.

enduring this for years, they planned their departure for Hungary.¹⁹³ They left with the hope of starting a new life there.¹⁹⁴

In contrast, the non-ethnic Hungarian asylum seekers largely came from former Yugoslavia. They describe their lives before the war in positive terms. They left suddenly, when war or ethnic cleansing erupted near them.¹⁹⁵ They left with the hope that this was temporary madness. They expected to return home in a short time, and there are many stories of asylum seekers who arrived in mid-1991, having scheduled their summer vacation to cover their time in Hungary!¹⁹⁶

Furthermore, although there was no legal prohibition on seeking refugee status, most of the others streaming in from former Yugoslavia viewed themselves as people in need of temporary protection, and considered it appropriate to be placed in temporary protection status.¹⁹⁷ Thus, it would be natural for others fleeing to Hungary from the same conflagration to consider themselves, too, as candidates for temporary protection status rather than refugee status, especially since temporary protection comported with their original perspective on their situation.

In addition, the relative living standards in Hungary, Romania, and former Yugoslavia may have been another factor encouraging asylum seekers from one state to seek refugee status and those from another not to seek it. For many asylum seekers from Romania, the living standard in Hungary was a significant improvement.¹⁹⁸ This would contribute to their desire to seek refugee status and start a new life in Hungary. For many asylum seekers from former Yugoslavia, the living standard in Hungary was a step down.¹⁹⁹ This would make the asylum process and refugee status in Hungary less attractive, and the desire to return home stronger.

The difficulty is that the temporary crisis has not been a short-term one. Many who arrived thinking they could return to their homeland in a few months have now spent several years in Hungary.²⁰⁰ Second-class status and the inability to work legally are easy to ignore or tolerate for a few months. When the few months become years, these disadvantages begin to chafe. In particular, the lack of ability to work legally has ensured that temporarily protected persons remain wards of the state. Moreover, it has decreased families' abilities to function in a normal manner, depriving them of the opportunity to help themselves now and making

¹⁹³ Sik et al., above note 42, at 27.

¹⁹⁴ *Ibid.*, at 36-7.

¹⁹⁵ Laczkó, above note 72, at 174-5: 54% of Bosnians left home with less than 1 hour's notice; this was true of 34% of Croats, 28% of ethnic Hungarians.

¹⁹⁶ Horváth, above note 74, at 147.

¹⁹⁷ *Ibid.*

¹⁹⁸ Nagy, above note 21, at 30.

¹⁹⁹ *Ibid.*

²⁰⁰ Horváth, above note 74, at 145-7.

it increasingly unlikely they will be able to be self-sufficient in the future.²⁰¹

As the temporary stay became long-term, if not permanent, the importance of the legal rights that accompany refugee status became more obvious. This realization generally came too late, however. Refugee status was now out of reach of those in temporary protection status, no matter how clearly they may have been able to satisfy the refugee criteria in the beginning. By the time they acknowledged that their plight would not be short-term and that the legal conditions defining their stay in Hungary were important, they had long since missed the various 72-hour,²⁰² or even 3-month,²⁰³ deadlines for filing applications for refugee status. Hungarian law has no provisions allowing asylum seekers to switch from temporary protection status to refugee status in mid-stream.

Although there may have been nothing malevolent in 1991 and 1992 about channelling asylum seekers from former Yugoslavia into temporary protection status rather than refugee status, this channelling continued long after the difficulties of doing so were identified. Throughout 1995, as new asylum seekers from Bosnia made their ways from forced labour camps and ethnically cleansed villages to the southern border of Hungary, they continued to be viewed as temporarily protected persons.²⁰⁴ Like their predecessors in 1991 and 1992, these asylum seekers may have believed that they only needed short-term protection. Even so, on the basis of the experience of the preceding decade, Hungarian officials should have known that the refugee process was the appropriate path for many of the newcomers. Yet, notwithstanding the human rights reports and the earlier experience, the Bosnian asylum seekers continued to be considered as applicants for temporary protection status.

Other unsettling information concerning the disparate treatment of ethnic and non-ethnic Hungarian refugees arose from a series of interviews with refugees.²⁰⁵ Many ethnic Hungarians granted refugee status told stories of hard times and uncomfortable circumstances in their home countries. They recounted discrimination and their fears of the discrimination they and their children might face in the future. Whether this harsh treatment rose to the level of persecution was unclear, as is often the case. Nonetheless, it was striking that many ethnic Hungarians granted refugee status in the early 1990s recounted experiences that did not appear to constitute persecution. Their stories were more consonant with those of traditional immigrants, impelled to launch a new life in

²⁰¹ Laczkó, above note 72, at 176.

²⁰² Decree 101, section 3, above notes 125–6 and accompanying text.

²⁰³ Decree 101, section 20 (applications for extension of deadlines must be submitted within 3 months of the deadline).

²⁰⁴ Interviews with officials and asylum seekers in Békéscsaba Refugee Camp, 6 Jun. 1995.

²⁰⁵ Interviews, 1 Dec. 1994, 11 Feb., 4 Mar., 2 Apr., 6 Jun. 1995.

more promising surroundings, than they were with those of traditional refugees, forced to flee persecution.

In contrast, many of the Bosnians granted temporary protection recounted chilling tales of being taken at gunpoint to forced labour camps.²⁰⁶ Others spoke of being ordered to sell their homes and lands, and then commanded to pay the proceeds as they were forced to board buses that would remove them from their homeland.²⁰⁷ Their stories, corroborated by international government officials working with refugees,²⁰⁸ left little doubt that they had a well-founded fear of persecution based on their cultural background and religion.

Conclusion

Interviews with refugees, visits to refugee shelters, discussions with refugee workers, and meetings with government officials all lead to the conclusion that there is a two tier refugee system in Hungary. The top tier, by and large, is inhabited by ethnic Hungarians, the bottom tier by refugees of other ancestry. An examination of the refugee laws, in light of the historical and geographical context, also provides evidence that Hungary is particularly hospitable to asylum seekers from ethnic Hungarian communities. Traces of an unacknowledged preference for ethnic Hungarian asylum seekers can be detected in several legal provisions.

For example, knowing that many in Hungary feel a special kinship with ethnic Hungarians beyond the borders and may wish to support their decision to move to Hungary sheds light on the constitutional provision concerning asylum. An awareness of this sense of kinship explains facets of the new legislation regulating citizenship. Even Hungary's geographical reservation to the 1951 Convention assumes new meaning in light of the large ethnic Hungarian communities in neighbouring countries.

More persuasive evidence of a preference for ethnic Hungarians can be seen in the actual working of the refugee system. Neutral legal rules and principles are not applied neutrally. Those who gain access to the initial stages of the refugee procedure, those whose claims actually are adjudicated, those whose refugee claims are successful, those who benefit from the social programmes and the financial support programmes for refugees overwhelmingly are ethnic Hungarians.

The refugee law and system in Hungary provide substantial assistance to ethnic Hungarians who wish to emigrate to Hungary and less assistance than would be expected to non-Hungarians fleeing the threat of

²⁰⁶ Interviews with recently arrived Bosnian asylum seekers, Békéscsaba Refugee Camp, 6 Jun. 1995.

²⁰⁷ *Ibid.*

²⁰⁸ Labreuveux, above note 191; Wijninga, above note 163.

persecution. The discrimination in favour of ethnic Hungarians itself is not evil or morally reprehensible. Indeed, to many people it may seem natural. Nonetheless, this discrimination in the refugee system works on two levels and is troubling on both. First, it appears that ethnic Hungarians who are fleeing persecution are granted refugee status in much greater numbers than others who are fleeing persecution. Second, it appears that ethnic Hungarians who wish to leave lives of discrimination and hardship, but are not fleeing persecution, are often granted refugee status.

The first phenomenon is a problem of exclusion. Refugees who are not ethnic Hungarians stand less chance of being granted refugee status in Hungary than do their ethnic Hungarian counterparts. The second phenomenon is a problem of inclusion of non-refugees. Ethnic Hungarians who do not face a well-founded fear of persecution stand a greater chance of being granted refugee status in Hungary. This approach has perverted the refugee system into an immigration system.

An immigration system is not evil. Furthermore, there is nothing illegal about encouraging and supporting immigration to Hungary by ethnic Hungarians. There is no inconsistency in welcoming both immigrants and refugees to Hungary. Ethnic Hungarian immigrants, however, should not be characterized as refugees and should not be supported by funds set aside for refugees. This misleads the public in Hungary and in the international community about the extent of Hungary's refugee burden and the assistance needed for refugees. Moreover, it sends a cynical message to Hungarian society that the legal system can and should be manipulated. It subverts the rule of law. In a country that is working to establish a return to the rule of law after four decades of communist party control, this misuse of the refugee law is a serious problem.