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## **The impact of the 2015 refugee crisis on Hungarian criminal policy**

### **Abstract**

My study examines Hungary's migration management, in the framework of criminal policy and the theory of deterrence. Hungarian public service bodies have a two-fold task, since they must act in accordance with a given situation and be prepared for the expected future impact of migration. In addition, they must carry out all this by satisfying citizens' expectations and maintaining public safety. I present the change that took place in the Hungarian public service bodies, public administration, law enforcement services and the Hungarian Defence Forces as a result of the mass immigration of 2015. I placed the police and public administration at the centre of attention, while also focusing on complementary police forces.

**Keywords:** mass immigration, criminal policy, legislative environment, deterrence, Crimmigration

The impacts of the mass immigration in 2015 can primarily be observed in the change of criminal policy and, as a result, in the activities of public administration organisations and law enforcement agencies dedicated to migration. These organisations had not been established for a migratory pressure of such volume and intensity, either in terms of headcount or infrastructure. The Dublin III (URL1). Regulation, also signed by Hungary (effective as of January 2015), envisaged the acceptance of two or three hundred thousand refugees in the entire European Union. My study examines Hungary's migration management, in the framework of criminal policy and the theory of deterrence. Hungarian public service bodies have a two-fold task, since they must act in accordance with a given situation and be prepared for the expected future impact of migration. In addition, they must carry out all this by satisfying citizens' expectations and maintaining

public safety. I present the change that took place in the Hungarian public service bodies, public administration, law enforcement services and the Hungarian Defence Forces as a result of the mass immigration of 2015. I have placed the police and public administration in focus of my study. How did the establishment of a technical border barrier on the Hungarian-Serbian border, officially known as the temporary fence for border surveillance purposes, affect the headcount of law enforcement organisations? It is a fact that there are no migrants in the territory of Hungary, unlike in 2015; yet state bodies face continuous problems in terms of headcount resulting from border surveillance activities. I aim to present the impacts of migration on legislation and the legal environment, created by the establishment of the fence. Then, I will place it into context by presenting the theory of deterrence as well as the criminalisation of illegal immigration and immigration law, i.e. the phenomenon of crimmigration. International forecasts, including the forecast of the United Nations, project the continued growth of migration on a global scale. This cannot be regarded as traditional or regular migration, as the change of environment and demographic increase (meaning that resources decrease while the needs increase) direct people quite obviously where they can find a better life, healthy environment and safe living circumstances. Currently, our world is in a transitional period. First, I will review the concept of migration and the relationship between migration and the state.

## **The concept of migration**

Migration has multiple definitions or notions in the academic world. For me, the following definition covers the phenomenon the most. Migration is a process in which the persons change residence and society in a manner that such change either becomes temporary or permanent (Póczik, 2011). A typical case of population movement is the labour force migration that has been taking place for centuries. In addition to the intention to work, several other factors increase willingness to migrate. Religious, ethnic and political migration also dates back to hundreds or thousands of years. Recently, the combination of political and economic factors can be more and more observed in migratory motivation.

## **The state's role in the management of migration**

In terms of managing migration, a state can either be acceptance-oriented, i.e. open – a good example for this is Germany. It may be deterrence-oriented, i.e.

closed, such as North-Korea. Ultimately, it can also be a combination of the two, such as Hungary. States may either be countries of origin, like Syria; host countries or countries of destination, such as Germany; or countries of transit, such as Hungary. Migration has two sides, emigration and immigration. Today a third side has also appeared: transit migration, or cross-migration. In our case, this means that Hungary is a quasi-transit country between the countries of origin and host countries. This way, migrants (including both legal and non-legal categories) only want to cross our country and regard it as an obstacle to overcome. Therefore, the antecedents that must be learnt in order to clarify the purpose of deterrence are linked to the growth of migration, which went through the following changes in terms of illegal migration. Migration has been continuously growing on a global scale since the end of the first decade of the 21st century its impact could also be felt in Europe, and there was a drastic and sudden increase of migration in 2015. The dynamics of such a sudden increase is described in the report of Frontex in the following manner. The number of illegal border crossings on the West-Balkan route between 2009-2015 (URL2). In 2009: 3090 persons, in 2010: 2370 persons, in 2011: 4650 persons, in 2012: 6390 persons, in 2013: 19,950 persons, in 2014: 43,360 persons, in 2015: 764,038 persons. In terms of Hungary, the number of illegal entries changed in the following manner in 2015, as also shown by the figures displayed on the official website of the Hungarian Police (URL3). The increase of the numbers of illegal border crossings in 2015 broken down to months: 2735 persons on May 31; 7,226 persons on June 30; 10,677 persons on July 31; 19,069 persons on August 30; and 30,949 persons on September 30. After that the temporary border fence was constructed, this number decreased rapidly, to somewhere between 1-2 persons and 30 persons. Then it stagnated, with one or two higher volume entries, meaning two hundred and fifty persons on a daily basis. The question arises whether the established physical facilities, the temporary technical border barrier and the legal border barrier are suitable jointly for stopping migration. The truth is that they are not suitable, and this function should not even be expected from them – they are only suitable for slowing down the rate of migration. As it was put by György Ritecz and János Sallai: *'It would be unscientific from us if we didn't realise that the fence is, indeed, a solution – but not a solution for managing illegal migration, but for temporarily diverting it from a given section of the border and from a given region.'* (Ritecz-Sallai, 2016, 199.)

This statement is consistent with the phenomenon of transmission or transfer in the case of situational crime prevention, which means that as committing the crime is not worthwhile for the offender, they will try to commit it elsewhere. In my opinion, the task of the fence is to direct migrants to the transit zone by

diverting migration in the proper direction, where the officers of law enforcement agencies can initiate the necessary proceedings upon their request.

## **The concerned public service bodies**

*'Public service bodies are organisations with actual operational functions, organised along the principle of fitness-for-purpose that operate actively and implement processes that typically do not produce value. Public service organisations include public administration, state defence and law enforcement bodies.'* (Czuprák-Kovács, 2017, 79.) Hardly any organisations exist that are not affected by the impacts of migration to a greater or lesser extent. The areas impacted may include costs, expenses, headcount management and legislation. The Hungarian Defence Forces participate in the protection of the border substantially, and they also take part in joint international missions (such as the one in Macedonia). What is different between the Hungarian Defence Forces and the organisations under examination here? It is that they not form part of the creation of public safety at settlements; they do not carry out patrolling activities of that kind. This is the reason why armed security guard forces are also omitted from my analysis. The law enforcement organisations, whose statutory duties include protection, and whom citizens expect to maintain safety, are those that are most exposed to the migratory pressure towards Hungary. Security guards (84,094 (persons) Police officers (48,000 (persons) Municipal policemen (1563 (persons) Civilian patrols (50,000 (persons). In total 183,657 (persons). (Szabó, 2016, 42.) The most important participant is the Office of Immigration and Nationality, which operated under the name *'Office of Immigration and Refugee Affairs'* as of 01.01.2017. As of 01.07.2019, the organisation was transformed from a public administration body into a law enforcement organisation; the public officials became professional police officers, and the name of the organisation became the Directorate-General for Aliens Policing. The transformation corresponds with the change of criminal policy, the approach to the management of migration, as well as the appearance of the theory of deterrence in immigration management.

## **The concept of criminal policy**

The concept of criminal policy provides the framework in which we can interpret the phenomenon. The concept of criminal policy: *'The discipline examining the causes and impacts of criminal activities that sets out the boundaries of*

*the state's action against crime*'. (Gönczöl-Kerezsi-Lévay, 2007, 601.) Criminal policy is related both to criminal legal sciences, including criminal law, the law of criminal procedures and the law of criminal law enforcement, and the not legal sciences, such as criminology, criminal psychology and criminalistics – it connects them and provides a framework for them (Gönczöl-Kerezsi-Lévay, 2007, 35.) The subsystems of criminal policy are law enforcement policy, crime prevention policy, victim protection policy, penal policy, criminal law policy, criminal justice policy, and penal enforcement policy. (Borbíró-Gönczöl-Lévay, 2017, 36.) The phenomenon of deterrence appears in the framework of criminal policy.

## The theory of deterrence

In order to understand the theory of deterrence, we have to go back to the theorem in which it was born. This is how Andrea Borbíró puts it: *'The classic paradigm is based on the theorem of free will. It regards man a rational and freely acting individual whose behaviour and decisions are only influenced by its own best interest. According to the classic paradigm, criminality does not have a peculiar reason for that matter, in excess of the individuals' decision to commit crimes by following their interest, because this is good for them for some reason, and it is worth it (this is why the theories in criminology belonging to this category are called decision theories or intention theories)'*.

(Borbíró-Gönczöl-Lévay, 2017, 36.) The inevitability of punishment gives its deterring effect. These principles are laid out in Cesare Beccaria's work *'On crimes and punishments.'* (Beccaria, 2012) This was the formation of the so-called classic paradigm... This criminal policy had been neglected for a long time, and then from the 1970s on, it gradually came into view once again after the crisis and crash of welfare states. This is what we call the turning point of neoclassical criminal policy, and it dates back to 1984. The order-making or order-maintaining state appeared, and deterrence also came into focus once again at such time from a dogmatical point of view. It is typically referred to in pair with neutralisation, i.e. the neutralisation of the person or the act. The question arises as to what deterrence itself is based on. The sudden change of the extent of a phenomenon, such as criminality, with which the number of investigations cannot keep pace. In Hungary, the number of registered criminal acts quadrupled between 1985 and 1992, and the socio-economic changes also transformed the causal processes substantially. Criminologist András Szabó wrote his book *'Igazságosan vagy okosan?'* in 1992, the fifth chapter of which

is dedicated to a thorough analysis of deterrence. Szabó deduced the theory of deterrence as follows. It consists of the following parts: Threat - Carrying out the threat - Option and responsibility - Balance of advantages and disadvantages - Certainty and rigor. (inevitability). (Szabó, 1993, 99-100.) Every punishment has a general and special deterrent impact. Here, the recipients of the general punishment are the potential criminal offenders. The special punishment affects the person already punished. Szabó's interpretation shows clearly that the number of police officers and the number of investigations cannot keep pace with the increase of the number of registered offenses, however society's expectations put great pressure on law enforcement bodies. This means that the state's urge to act appears, which paves the way for a paradigm shift. This is the most important amongst the features of deterrence: offense-based punishment, which is also pro-rated to the offense at the same time. Crime and punishment. It does not take into consideration the psychological, sociological or cultural aspects of the criminal offense. It can certainly be applied quite well to the management of suddenly increasing phenomena, such as criminality or migration. It provides general prevention: it is applicable to everyone in the same way, it is fast, and it results in visible output. It is relatively inexpensive, as it does not require in-depth organisational development, only a one-time technical investment is needed. It has some dissuasive force from the perspective of criminal law, and it has a crime preventing impact, but not in the sense of the classic three-way split of crime prevention. The most popular form of deterrence is detention. *'Detentions reduce criminality, as they represent the direct and instant efficiency of investigations or social reaction.'* (Szabó, 1993, 98-125.) The question arises whether migration should be construed as a criminal act or migrants should be regarded as criminals.

## **The theory of deterrence and migration**

In the theory of deterrence, crime is punished; however, the (neo)classical paradigm not only punishes the crime, but also prevents or makes committing the crime more difficult with the development of technical and environmental means. This is called environmental criminology or situational crime prevention. The theory was elaborated by American criminologist Ronald W. Clarke (Clarke, 1983, 225-256.). It is not regarded as criminology or as a science by many in the academic world of criminology, including Clarke himself, as it does not examine and does not explain the causal links of criminality; it only considers it as a totality of technical solutions. The principle manifests itself

clearly in the operation of the temporary technical border barrier as a means of safety technology and the reinforced legal border barrier. In my opinion, citizens sense of safety has been greatly increased by the construction of the fence itself. It is important to state once again that a migrant is not a criminal, and so they should not be stigmatised as such. Being a migrant is closer to the status of a victim, as anyone leaving their home for the sake of finding a better place to live or in order to escape persecution is a victim, whichever way one looks at it. As I have already mentioned before, my notion of migrants includes both legal and non-legal categories. It is important to establish that the phenomenon of migration and the intention of migrants, i.e. immigration, is different from the behaviour of criminals (escaping the crime scene). The intention of migrants is to achieve refugee status. This, however, is not applicable to transit countries, such as Hungary. No nation-state can allow its sovereignty to become impaired by letting aliens reside on its territory or cross the same without the state's knowing. The state must react. This is the expansion of criminal law, the integration of new norms. Most typically, it manifests in the expansion or lengthening of the above-mentioned detention (arrest). I also classify the deportation of illegal migrants or escorting them to transit zones into this category, as I consider it equal to isolation from a dogmatical point of view. The individual will either be detained at a specific place or will be isolated from the territory of the country elsewhere. As Zoltán Hautzinger puts it: *'The application of law is not homogenous in the Hungarian judicial system either. The legal consequences of illegal immigration (entry, residence) may result from norms outside of criminal law, but they can also be found amongst the provisions of the same. The law of immigration policing can come into play primarily owing to its efficiency, and especially the primacy of the social interest in the earliest possible elimination of the circumstances resulting from illegal entry or residence.'* (Hautzinger, 2016, 16.) He also adds the following: *'The immigration policing proceeding with the ordering of expulsion, and, if necessary the application of deportation (not including the asylum proceeding), eliminates illegal residence regardless of the possibility of applying any further sanctions otherwise resulting from the penalty originating from the immigration policing sanction.'* (Hautzinger, 2016, 17.)

## **The concept of the crisis caused by mass immigration**

In Hungary, the basis of the change of criminal policy and deterrence was created by the announcement of the crisis caused by mass immigration. As Balázs

Orbán puts it: *'The uncontrolled flow of large masses of people into a specific geographical territory with high intensity, taking place with a so-called irregular migrating movement. As a result of the crisis caused by mass immigration, the political, economic, social and cultural tensions grow in the given territory and typically significant risks arise in terms of safety policy.'* (Orbán, 2019, 71.) About declaring the crisis caused by mass immigration in the entire territory of Hungary: Paragraph (2) of Section 80/A of Act LXXX of 2007 on Asylum (hereinafter: the Asylum Act) states that the Government may declare crisis caused by mass immigration in a decree upon the initiative of the national police commissioner and the leader of the authority responsible for refugee affairs, based on the proposal of the minister in charge of alien policing and refugee affairs. The crisis caused by mass immigration can be declared either in specific parts of the country or the entirety of Hungary. With Government Decree No. 41/2016. (III. 9.) on the rules related to the declaration of crisis caused by mass immigration on the entire territory of Hungary as well as the declaration, existence and termination of crisis (effective as of March 9, 2016), the Government declared a crisis caused by mass immigration in the entire territory of Hungary. An unavoidable effect of this is the increase of tasks and workload of the organisations ensuring the maintenance of public order and public safety, and, in particular, the police forces on the concerned area, i.e. the territory of Hungary.

## **Criminal offenses related to migration in Hungary**

What a state and the criminal policy thereof considers punishable always depends on the traditions, culture and economic level of the given society. Furthermore, the intensity of the actions of law enforcement bodies in criminal cases and the number of registered cases should also be examined, by also taking into account the population's willingness to report crimes and their trust in the judicial system. We can see a plethora of cases in the media, in which criminal proceedings are initiated against persons with migrant backgrounds in the West. These should not be fully trusted, as the number of actual acts could always be higher or lower than published. Moreover, they regularly forget about an important doctrine of criminology when analysing the percentages: one offender may commit several crimes. I consider it important to state that there is no direct link between migration and terrorism, only the increased number of immigrants and refugees may result in the potential increase of criminal offenses. Let us review Hungary after the mass immigration of 2015 and examine how the management of migration has changed since. Establishment of a technical

border barrier on the Hungarian-Serbian border (official name: temporary fence for the purpose of border surveillance) August 2015. The laws applicable to the illegal actions related to the border barrier are set out in Chapter XXXIV of the Criminal Code: Criminal Offenses Related to Administrative Procedures. Such offenses include: the Illegal Crossing of Border Barrier (Section 352/A of the Criminal Code), Damaging the Border Barrier (Section 352/B of the Criminal Code), Obstruction of Construction Work Related to the Border Barrier (Section 352/C of the Criminal Code), Human Smuggling (Section 353 of the Criminal Code), Facilitation and promotion of unlawful immigration (Section 353/A of the Criminal Code). These pieces of law were substantiated by the establishment of the border barrier. The border barrier itself is none other than a physical obstacle, the primary function of which is to make entering the territory of Hungary more difficult. It cannot prevent entry; it only gives time for the border police forces and law enforcement bodies to react. According to the criminality control mentioned in the section on criminal policy, this is none other than the isolation of individuals, which takes place from the territory of the country in this case: illegal crossers are redirected to Serbia typically, or escorted to the Transit Zone established on the Serbian part of the border.

## **The concept of crimmigration**

The criminalisation of illegal immigration and immigration law, also known as crimmigration. This topic focuses on the criminalisation of immigration and the rights of refugees. As Miklós Lévay sees it: *'So criminal law strives to prevent damage caused to the individual and the society through violence, in a fraudulent manner or with other malicious intent, and immigration law defines who can enter the country's borders, who can reside within the given country and who must leave it. The only similarity between two branches is that they both differ from other legal areas. While the majority of the branches of law put the regulation of the relationships and conflicts of individuals and business entities in focus, criminal law and immigration law primarily regulate the relationship between the state and individuals. The essence of both criminal law and immigration law includes the inclusive and exclusive systems. Both legal areas point out whether it is necessary to accept and keep individuals as members of the society, and if yes, how this should be done; or if they should be excluded from the society. Both legal areas create insiders and outsiders.'* (Lévay, 2017, 174.) This is further supported by the process of securitization, and, in our case, the transformation of public administration into law enforcement.

## Conclusion

As presented above, deterrence can work very well in managing suddenly changing circumstances. However, it does not resolve the problem in the long term. It does not explore the reasons and it is excessively general: the courts acting in specific matters are responsible for exploring the circumstances properly. Naturally, this is not true in the case of deportation and being escorted to a transit zone. Deterrence is useful in the short term but is not effective in the long term. It is important to note that the treaty between the European Union and Turkey has much improved the situation. Yet, we must not be optimistic about the issue. If Turkey opens its borders even on a temporary basis, Hungary will have to face severe and drastically increasing migration. This may also take place if the routes in the Mediterranean Sea are closed, or if passing through them is made more difficult for migrants. I would like to add that migration is considered to be a lengthy phenomenon by all studies. In my study, I have presented the development of criminal policy, and how criminality control and the protection of society went into the service of prevention. The figures of crime statistics show that there is no actual increase in criminal offenses that could be linked to migration. The future is unpredictable, yet there are some tendencies that are worth taking a look at. On the one hand, the majority of criminal offenses committed by foreign nationals in terms of migration are currently related to the construction of the temporary fence for border surveillance purposes. A consequence of this is the so-called deflection (Ritecz-Sallai, 2016, 199. DOI: 10.1086/449090), which means that illegal migration has not been eliminated; migrants are now looking for possibilities to enter the European Union from another direction (Ritecz-Sallai, 2016). On the other hand, we must also reckon with the increased numbers of violent criminal offenses committed by law enforcement bodies against foreign nationals. Tourists, students or foreign workers are mistaken for illegal migrants or terrorists. This phenomenon is the Fear of the alien (Hautzinger, 2016, 303.). It can be stated that migration will form part of our lives for a long time. Criminal law is not a means to resolving social or environmental causes. Only a comprehensive solution based on international consensus can bring a solution. Currently, the Visegrad Countries as a regional alliance can do the most to that effect within the framework of the European Union.

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Government Decree No. 41/2016. (III. 9.) on the rules related to the declaration of crisis caused by mass immigration on the entire territory of Hungary, as well as the declaration, existence and termination of crisis <https://net.jogtar.hu/jogszabaly?docid=a1600041.kor>

## Online Links in This Article

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URL1: *Tájékoztató a dublini eljárásról [Information on the Dublin procedure].* [http://www.bmbah.hu/index.php?option=com\\_k2&view=item&id=424&lang=en](http://www.bmbah.hu/index.php?option=com_k2&view=item&id=424&lang=en)

URL2: *Migratory Routes.* <https://frontex.europa.eu/along-eu-borders/migratory-routes/western-balkan-route/>

URL3: *Határrendészeti helyzetkép 2015. május-szeptember [Border Police Situation 2015. May-September].* <http://www.police.hu/a-rendorsegrol/statisztikak/hatarrendeszet?page=6>