

Being in a New Community

Possibilities for Refugees to Become Actors of the Political Community in Hungary and the United Kingdom

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Abstract. The paper compares the possibilities of refugees and beneficiaries of subsidiary protection toward their political integration in two countries, Hungary and the United Kingdom. The aim of this comparison is not judge which country is better in this sense but to present and explain a few relevant dimensions of the political integration of refugees and beneficiaries of subsidiary protection. The scrutinized dimensions are the fundamental right of being recognized as a refugee; the right to stay, including legal residency, social support, education, right for employment and right to vote; the right to the free movement furthermore direct political rights as the right to vote; the freedom of expression; the freedom of association and the freedom of assembly and finally possibilities for preferential naturalization.

Obviously, there is no possibility to analyse and evaluate the whole integration process but at least, its legal dimensions are presented in the paper. In the conclusion, the author will make a few suggestions what should be considered when thinking about these questions.

Keywords: refugees, asylum, integration, political community

1. INTRODUCTION

This paper investigates a field which is not deeply researched among the topics of political communities. It is very much on the agenda to ponder over the situation of refugees from this viewpoint. There is a huge humanitarian movement from the unstable regions of the world to the European Union (EU). Hungary and the United Kingdom take their shares of the international protection in different extents and ways. It has been debated many times from different viewpoints of human rights but this study would like to enlighten the situation of the people concerned from a lesser debated angle.

The general frame of the international protection and the integration connected must be overviewed in order to approach the contour of the political community. There were 206,565 first-time asylum applicants in 2015 and 2016 combined in Hungary.¹ In the United Kingdom 78,945 asylum applicants were registered in the same period combined.² These numbers indicate the seriousness of the political, legal and philosophical challenge. However the recognition rates of the asylum-seekers tinge the picture. 925 statuses were

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¹ Based on EUROSTAT data. EUROSTAT (2017) link 1.

² Based on EUROSTAT data. EUROSTAT (2017) link 2.

granted³ in the examined period in Hungary, 21,845 in the United Kingdom.⁴ Therefore, the proportion of protected persons in the host society (political community) is tiny. Nonetheless, the question of their political belonging is very relevant whereas all human beings' political rights must be guaranteed. There is no other legal avenue to approach the political communities.

Thinking about the national aspect of the cosmopolitan theory of justice⁵ is particularly important among the recent circumstances, however the here examined national approaches could result in non-cosmopolitan environments.

In order to understand the national approach the concept of political community must be defined. A useable definition must be achieved thus the political community will be interpreted as a malleable set in this study. There are more important factors in this set as well as less important ones. By and large, the content of the set will be considered based on the approach of the MIPEX political participation indicators. These were elaborated to indicate the political participation of immigrants but their logic can also be applied to refugees due to them being a special category within (forced) migrants. The core of the MIPEX indicators are:

Political participation is a slight area of weakness for integration policy across countries. Most immigrants, especially foreigners, have few opportunities to inform and improve the policies that affect them daily, since most authorities design policies 'for' them and are not informed by or accountable to them.⁶

There are several factors which affect the daily life of refugees and this study will emphasize a few dimensions which are closely adhered to their constitutional rights.

2. FIRST DIMENSION – FUNDAMENTAL RIGHT OF BEING RECOGNIZED AS A REFUGEE

Four dimensions of the political integration must be differentiated. The first dimension should be the fundamental right of being recognized as a refugee. The international legal background and EU law will not be thoroughly explored in this study. Nevertheless, the EU⁷ and international law⁸ must be mentioned in certain points as the explanation of national laws.

Article XIV of the Hungarian Fundamental Law states.

Hungary shall, upon request, grant asylum to non-Hungarian citizens being persecuted or having a well-founded fear of persecution in their native country or in the country

³ It must be noted that most of the asylum applications were finished with abolition not with refusal since many asylum-seekers left Hungary before a proper decision of the asylum authority during the examined period. The number contains both refugees and beneficiaries of subsidiary protection.

⁴ Based on EUROSTAT data. EUROSTAT (2017) link 3.

⁵ Seyla Benhabib's concept was processed in Osborn (2010).

⁶ Migrant Integration Policy Index (2015).

⁷ European Union Agency for Fundamental Rights (2014) or Wisard (2011).

⁸ 1951 Convention Relating to the Status of Refugees and the 1967 Protocol Relating to the Status of Refugees UNHCR (1951) link 4.

of their usual residence for reasons of race, nationality, membership of a particular social group, religious or political belief, if they do not receive protection from their country of origin or from any other country.

Therefore, the status of protected people appears at the top of the legal system. It can be evaluated as an affirmative step to involve granted persons in the political community. It must be noted that the last phrase of the article says that they shall be granted asylum if they do not receive protection from any other country. It means that Hungary wants to be only the last in the line, however if there is no other country, asylum-seekers might finally find asylum in Hungary⁹ and it has been written in the highest level document of the political community. There is similar restriction in the codified UK law it manifests in the concept of the safe third countries.¹⁰

Basically, it is difficult to compare the Hungarian and British law in this dimension as there is no codified constitution in the UK.¹¹ However, British case law can be used for a comparison.

In the UK, judicial decisions from the Immigration and Asylum Chamber of the Upper Tribunal (and its predecessors), the High Court, the Court of Appeal, the House of Lords and Supreme Court, the European Court of Human Rights and the Court of Justice of the European Union provide additional guidance on the interpretation of the Refugee Convention. Because the Convention is international in nature, it is also possible to look further afield, for example to the case law of the highest courts of Canada, America, New Zealand and Australia.¹²

Additionally, Yeo also considered the changes caused by the EU law.

There is a substantial body of this case law and while it has to a significant extent been replaced by the Qualification Directive it can still help illuminate the meaning and interpretation of the Refugee Convention.¹³

It means that the status of refugees is as embedded in the legal system of the UK is the same as the Hungarian one. Both countries care about the status of the target group on their highest legal level. Therefore refugees, beneficiaries of subsidiary protection or persons under humanitarian protection might have a possibility to find their ways to the political communities of these societies. It would be very difficult to decide which country ensures the easier way of integration in this dimension without detailed research of the case law. It is not possible to become immersed in concrete cases in this study therefore it must be diagnosed that the UK and Hungary seem very similar from the viewpoint of the constitutional dimension of this study.

⁹ See about the Hungarian historical, legal and moral context in Hungarian: Nagy (2012).

¹⁰ See: European Migration Network (2015).

¹¹ See: Blackburn (2015).

¹² Yeo (2014).

¹³ Yeo (2014).

3. SECOND DIMENSION – RIGHT TO LIVE AS A REFUGEE

The second dimension includes the direct rights as legal residency, social support, education, right for employment, right to vote and naturalization. In the viewpoint of the study two of these rights must be emphasized, right to residency and right to vote. Right to vote is a first-generation human right and right to residency can be connected to right to leave and return which is also a first-generation right therefore have been identified as having high priority in this study. Nevertheless, it must be mentioned that employment, education and social support can accelerate the process of the political integration of refugees therefore those might be considered as secondary factors of the political integration. The importance of these is showed by the fact that the Qualification Directive of EU regulates their minimum standards.¹⁴

The Hungarian legal situation is slightly complicated. Until 1 June 2016, a recognized refugee could reside in Hungary without time limitation.¹⁵ There were specific reasons for revoking this status¹⁶ but fundamentally in practice, a recognized refugee could stay in Hungary in this status for their life. It must be considered as a favourable factor in becoming a part of the political community of the host society. A person who has the right to reside is also interested in shaping their environment, political environment. Recognized refugees might have a new and stable frame concerning their future. Unfortunately, there were

¹⁴ Council Directive (EC) 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted, especially its articles 26–29.

¹⁵ Based on the previous regulation of Act on Asylum (Act LXXX of 2007) of Hungary, s 6.

¹⁶ Act on Asylum, s 11.

(2) Recognition as refugee shall be revoked if

- a) the refugee has voluntarily re-availed himself/herself of the protection of the country of their nationality;
- b) the refugee has voluntarily re-acquired their lost nationality;
- c) the refugee has acquired new nationality and enjoys the protection of the country of their new nationality;
- d) the refugee has voluntarily re-established him/herself in the country which s/he had left or outside which s/he had remained owing to fear of persecution;
- e) the circumstances in connection with which s/he has been recognised as a refugee have ceased to exist;
- f) the refugee waives the legal status of refugee in writing;
- g) the refugee was recognised in spite of the existence of the reasons for exclusion referred to in Section 8(1) or such a reason for exclusion prevails in respect of their person;
- h) the conditions for recognition did not exist at the time of the adoption of the decision on their recognition;
- i) the refugee concealed a material fact or facts in the course of the procedure or issued an untrue declaration in respect of such a fact or facts or used false or forged documents, provided that this was decisive for their recognition as a refugee.

serious problems about the secondary factors (education, social support, housing, etc.)¹⁷ in Hungary but those secondary factors are beyond the scope of this study.

In the meantime, there was an amendment to the Asylum Act of Hungary which has been accepted by Parliament.¹⁸ This amendment has changed the unlimited residency of refugees. After the new regulation entered into force, the refugee authority shall review the existence of the criteria of eligibility for the status at least every three years following recognition.¹⁹ It is a serious regression in the integration of refugees to the political community.²⁰ It must be considered as a regression since a recognized refugee will foresee only three years of their life. In this context, the psychological motivation for belonging to the political community will be much weaker. Who seriously cares about the political reality of a country in which they can probably only spend three years? Maybe in practice, most of the recognized refugees will obtain an extended refugee status after the obligatory review but what more important is that there is no guarantee for the prolonged residency. Probably a large majority of the target group will not even look for Hungarian lessons or a permanent job under this legal environment. Thus, the membership of the political community is getting further for them. Therefore, this amendment has decreased significantly the chances of refugees being a part of a new political community.²¹

The other relevant status which this study would like to scrutinize in Hungary is the beneficiaries of subsidiary protection. The previously applicable law stated that ‘the refugee authority shall review the existence of the criteria of eligibility for subsidiary protection at least every five years following recognition.’²²

The mentioned amendment has also decreased by the amendment to three years. This regression is not as significant as it is in the case of refugees however foreseeing life for three or five years can be relevantly different. It is not necessary to precisely indicate how much this amendment will exactly decrease the political integration of the beneficiaries of subsidiary protection²³ but the direction of the change can be recorded. Beneficiaries of subsidiary protection will also be ousted from taking root in the political community.

The regulation of the United Kingdom is rather similar to the Hungarian law to be applied since 1 June 2016 than to the previous one. Basically, there is no indefinite residence period for refugees or beneficiaries of subsidiary protection in the UK.²⁴ However, there is a possibility to achieve it in the course of time. In order to see the exact differences, the applicable British regulations have to be reviewed.

¹⁷ See for example: Szabó (2015) or European Migration Network (EMN) study on labour market integration of persons under humanitarian protection. See: EMN (2015).

¹⁸ It was accepted on 10 May 2016. Act XXXIX of 2016.

¹⁹ S 71 of the amendment.

²⁰ It is obviously intentional. The Hungarian government does not want to integrate migrants or refugees to the political community. See for example: Statement of the Hungarian Minister of Foreign Affairs and Trade in 2016, Kormany.hu (2016) link 5.

²¹ The amendment was accepted by the National Assembly on 10 May 2016 and has entered into force by 1 June 2016.

²² Previous Act on Asylum of Hungary, S 14. (Until 1 June 2016).

²³ First of all, it is not possible to precisely measure.

²⁴ The law of the United Kingdom apply a similar category, it called *humanitarian protection* (Based on S 339C Immigration Rules part 11: asylum). Later on the study will call it humanitarian protection.

Residence Permits.

339Q (i) The Secretary of State will issue to a person granted refugee status in the United Kingdom a United Kingdom Residence Permit (UKRP) as soon as possible after the grant of refugee status. The UKRP may be valid for five years and renewable, [...].

There is a conspicuous difference between the Hungarian and the British regulations. British law regulates the residence permit separately from the grant of status of refugee. It means that residence is not an inherent part of the refugee status but a consequence. This constellation might motivate recognized refugees to make advances to political communities or might demotivate them as on a symbolic level, the right to reside follows the protection itself. Thus, the right to reside is not self-evident by all means.

There is a logical difference between the two legislations. The Hungarian regulation formulates that 'the refugee authority shall review the existence of the criteria of eligibility for subsidiary protection at least every five years,' which means that the status might be revoked; British law states that it 'may be valid for five years and renewable', which means that the status might be renewed.

This is not a black and white issue but the fact that the British law concentrates on the renewal of the status while the Hungarian focuses on the review procedure indicates that the renewed status is important in the UK while the review procedure is so in Hungary.

It must be noted that there is a significant difference between the right to residency and the validity of the documents but due to the procedural regulations these different approaches might end in similar consequences.

Obviously, in practice, the recognized persons do not analyze the text of laws but the texts mirror the intention of the legislator. Therefore, the British law creates a possibility to motivate the recognized refugees to move closer to the political community, the current Hungarian law excludes this interpretation. Moreover, the initial periods of residence right are also different: Three years in Hungary and five years in the United Kingdom.

Similar logic might be observed in the comparison of persons under humanitarian protection in the UK and beneficiaries of subsidiary protection in Hungary.

339Q (ii) The Secretary of State will issue to a person granted humanitarian protection in the United Kingdom a UKRP as soon as possible after the grant of humanitarian protection. The UKRP may be valid for five years and renewable, [...]

Therefore persons under humanitarian protection have the same right for staying as refugees have in the UK. It means their political integration is as important as the refugees'. However, their situation is better compared to beneficiaries of subsidiary protection and even refugees recognized by Hungary in respect of duration.

There is a significant difference between refugees recognized by the UK and Hungary. The residence permit in the UK is renewable

unless compelling reasons of national security or public order otherwise require or where there are reasonable grounds for considering that the person granted humanitarian protection is a danger to the security of the UK or having been convicted by a final judgment of a serious crime, this person constitutes a danger to the

community of the UK or the person's character, conduct or associations otherwise require. [339Q (i)&(ii)]

Nevertheless, the British law also regulates the special revocation of refugee²⁵ and humanitarian protection²⁶ status. This kind of procedure is regulated in the Hungarian law as well but it is outside the scope of this study. The practice of revoking procedures could indicate how significant they are in the life of the scrutinized groups. Its observation would need a separate examination. Thus, this study will concentrate only on the procedure based on 339Q (i)&(ii) which paragraphs regulate the review of the residence past of the recognized person. It is a kind of motivation since it messages that without 'causing danger to the security of the UK or having been convicted by a final judgment of a serious crime, constitutes a danger to the community of the UK or the person's character conduct or associations otherwise require' the person concerned will be able to continue their life in the UK. It is a strong motivation factor to follow the rules of the political community and a hidden or not so hidden message that the political community appreciates law-abiding behaviour. The Hungarian review procedure only focuses on the reason of the persecution and thus there is no direct motivation to follow the rules of the political community. Obviously, a serious crime is able to be an adequate legal cause to revoke the status but it is only a secondary factor after the scrutinized situation of the country of origin based on the Hungarian regulation²⁷ which approach is also in line with the UNHCR recommendations.²⁸

The regulation of the UK might be more motivating for refugees and humanitarian protected persons to adapt to the rules of the political community than the Hungarian regulation for refugees and beneficiaries of subsidiary protection. The target group is interested to observe the regulation of the political community in the UK despite the fact that its boundaries are not strictly regulated there. This is the first important step toward political integration. They are less interested to do so in Hungary since the future political integration is less sure and the concept of the review procedure is less motivating.

Furthermore, there is a second grade in the British law which is the 'indefinite leave to remain'. In order to achieve it the granted persons shall comply with the following criteria:

[339R] (iii) the applicant has not:

- a. been convicted of an offence for which they have been sentenced to imprisonment for at least 4 years; or
- b. been convicted of an offence for which they have been sentenced to imprisonment for at least 12 months but less than 4 years, unless a period of 15 years has passed since the end of the sentence; or
- c. been convicted of an offence for which they have been sentenced to imprisonment for less than 12 months, unless a period of 7 years has passed since the end of the sentence; or
- d. within the 24 months prior to the date on which the application has been decided, been convicted of or admitted an offence for which they have received a non-custodial sentence or other out of court disposal that is recorded on their criminal record; or

²⁵ Humanitarian protection, S 339A.

²⁶ Humanitarian protection, S 339GB (i) to (vi).

²⁷ Previous Act on Asylum of Hungary, S 11 (3).

²⁸ UNHCR (2011) 118–19.

- e. in the view of the Secretary of State caused serious harm by their offending or persistently offended and shown a particular disregard for the law; or
- f. in the view of the Secretary of State, at the date on which the application has been decided, demonstrated the undesirability of granting settlement in the United Kingdom in light of his or her conduct [including convictions which do not fall within paragraphs 339R(iii)(a–e)], character or associations or the fact that he or she represents a threat to national security.

In the UK, the system can be more motivating through these conditions. Therefore the regulation of the UK leads the target group closer to the political community since they can be ‘members [who] have a real stake in political institutions and, for that reason, subject themselves to the decisions of those institutions’.²⁹ A clearer future induces clearer intentions. A more detailed residence regulation is able to motivate the target group to do everything in order to stay, especially if they can easily understand and follow the criteria system. It means there is a real stake for them to acquire the necessary knowledge of political institutions and participate in those. The target group can get closer to the political community if they can calculate with long-term staying and learn all the concrete risks about a refused or revoked residency.

There is a second part of the second dimension what is the right to vote. It is one of the most important manifestations of being in a political community in a democracy. Giving the right to vote to someone means that the political community considers him/her as its full-fledged member.

The Act LXXX of 2007 of Hungary regulates this dimension. It says that

a refugee shall have no suffrage except for elections of local municipality representatives, majors, and local referenda³⁰

The same law regulates the suffrage of beneficiaries of subsidiary protection as well.

(1) Except as set out in Subsections (2)–(4), unless a law or government decree expressly provides otherwise, a beneficiary of subsidiary protection shall have the rights and obligations of a refugee.

(3) A beneficiary of subsidiary protection shall have no suffrage.³¹

Neither refugees nor beneficiaries of subsidiary protection have the right to vote in national elections nor the elections of the European Parliament. Refugees can vote for local municipality representatives but persons under subsidiary protection cannot. It means that refugees are considered as members of the local political communities. It is slightly contradictory that the law considers them as full-fledged members of the local community but not of the national and the European political communities. The explanation could be the fact that only less important regulations can be legislated on the local political level.

²⁹ It might be a hypothetical working definition of political community at this point. See: Centre for Citizenship (2013).

³⁰ S 10 (2) a).

³¹ S 17.

Refugees have the right to influence these regulations but they do not have the right to influence the legislation of acts, ministerial and governmental decrees which are usually more important.

Refugees and beneficiaries of subsidiary protection are able to comprehend the local circumstances relatively quickly meanwhile the national level might be complicated and time-consuming.³² Furthermore, in certain cases it would not be desirable that a refugee could influence the national foreign policy.³³

Therefore refugees can be considered as limited members of the political community in this dimension. It is just a side note that they have the right to vote in municipal elections every five years as well after 1 June but they have a chance to lose their status every three years. Being in a local political community and being under international protection seems to be not harmonised in Hungary.

Beneficiaries of subsidiary protection are totally excluded from the political community indicated by the lack of their right to vote. It would be difficult to explain why they do not have the same possibility as refugees whilst they can also obtain the residency right for three years after 1 June. This discrimination shall not logically stem from different qualification of international protection.

All in all, refugees are partly involved in the local political communities from the dimension of the right to vote but beneficiaries of subsidiary protection are not.

The special situation of the United Kingdom must be considered.

As one would expect, given the historic position of non-citizens, the vast majority of States do not give aliens, including refugees, the right to vote. Enfranchisement is still considered to be a privilege of citizenship, reflecting the allegiance between an individual and his/her State of nationality. In this context, the United Kingdom and New Zealand stand out, as these countries do allow certain aliens the right to vote in all elections, including those at national level. For example in the United Kingdom for historical reasons, all resident Commonwealth and Irish citizens are able to vote. This would seem to cover a significant portion of the refugee community.³⁴

The Representation of People Act 1983³⁵ regulates the entitlement to vote in the parliamentary elections in the United Kingdom and local government elections in Great Britain.³⁶ The regulation is the following:

A person is entitled to vote as an elector at a parliamentary election in any constituency if on the date of the poll he

(a) is registered in the register of parliamentary electors for that constituency;

³² Göncz et al (2011).

³³ Obviously, concrete issues might be very debatable.

³⁴ Mandal (2003) 17–18.

³⁵ Electoral Administration Act 2006 regulates very similarly that who can be elected. See in its S 18.

³⁶ In order to keep the frames of the comparison of the United Kingdom and Hungary this study will not observe the special regulations related to elections to devolved parliaments and assemblies, mayoral elections and Police and Crime Commissioner elections and also elections to the European Parliament.

(b) is not subject to any legal incapacity to vote (age apart);³⁷

(c) is either a Commonwealth citizen³⁸ or a citizen of the Republic of Ireland;

A person is entitled to vote as an elector at a local government election in any electoral area if on the date of the poll he – [...] (c) is a Commonwealth citizen, a citizen of the Republic of Ireland or a relevant citizen of the Union.³⁹

It would basically mean that refugees and persons under humanitarian protection are excluded from suffrages. However, they could not be excluded if they are from a Commonwealth countries. The Act clarifies that

‘qualifying Commonwealth citizen’ means a Commonwealth citizen who either – is not a person who requires leave under the Immigration Act 1971 to enter or remain in the United Kingdom or is such a person but for the time being has (or is, by virtue of any enactment, to be treated as having) any description of such leave.⁴⁰

Based on the Act, it means that asylum-seekers are not able to vote despite the fact that they could be Commonwealth citizens.⁴¹

The United Kingdom, apart from the special circumstances of the British Commonwealth, provides less chance to refugees to become full-fledged members of the (local) political communities from this scrutinized dimension. The target group is fully excluded from one of the most important political rights.

Those refugees, beneficiaries of subsidiary protection and persons under humanitarian protection who are excluded from the right to vote in their host country are not entitled to vote at all as they must cut off their connections with their countries of origin. Thus, they are excluded from utilizing the most basic democratic tool. This fact might have the negative consequence that the people concerned might get out of the habit of doing a practice of this kind of political right. Obviously, there are several other factors which influence willingness to vote and not connected to the examined status e.g., socialization, income.

The third part of the second dimension is naturalization. It is beyond dispute that citizenship is the most important criteria of being in a certain political community. Citizens have the right to vote and have the right to be voted. They can also hold civil servant offices. Furthermore, Hungarian and (yet) British citizens count as EU citizens and therefore they

³⁷ Parliamentary electors, Part I, S 1 (1).

³⁸ Commonwealth countries are: Antigua and Barbuda, Kenya, Samoa, Australia, Kiribati, Seychelles, The Bahamas, Lesotho, Sierra Leone, Bangladesh, Malawi, Singapore, Barbados, Malaysia, Solomon Islands, Belize, Maldives, South Africa, Botswana, Malta, Sri Lanka, Brunei, Darussalam, Mauritius, Swaziland, Cameroon, Mozambique, United Republic of Tanzania, Canada, Namibia, Tonga, Cyprus, Nauru, Trinidad and Tobago, Dominica, New Zealand, Tuvalu, Fiji Islands, Nigeria, Uganda, The Gambia, Pakistan, United Kingdom, Ghana, Papua New Guinea, Vanuatu, Grenada, Rwanda, Zambia, Guyana, St. Kitts and Nevis, Zimbabwe, India, St Lucia, Jamaica, St Vincent & The Grenadines. It must be mentioned that few Commonwealth countries might be typical country of origin of refugees.

³⁹ Local government electors, S 2 (1).

⁴⁰ Entitlement to be registered as parliamentary or local government elector, S 4 (6).

⁴¹ It is also possible that a person has a legal residency in the UK and in parallel with this he/she seeks asylum. In this situation person concerned shall have the right to vote.

can be involved in European politics as well. It is also beyond dispute that citizenship is the guarantee of unconditional and indefinite stay in the country of nationality. Even the previous Hungarian life-long refugee status could be revoked in certain cases. Only citizens might be fully motivated and entitled to participate in the political communities of their countries.

Hungary ensures preferential naturalization for refugees.

[A] non-Hungarian citizen who resided in Hungary continuously over at least a period of three years prior to the submission of the application [...] may be naturalized on preferential terms provided that the person was recognized as a refugee by the competent Hungarian authority.⁴²

Those persons who are not eligible for preferential naturalization can apply for naturalization if they

resided in Hungary continuously over a period of eight years preceding the submission of the [naturalization] application.⁴³

The waiting time for the refugees is reduced from eight to three years. Obviously, there are other criteria of naturalization which might hardly be feasible by refugees but the reduced residency is a relevant relief for getting the citizenship and becoming a full-fledged member of the political community.

Beneficiaries of subsidiary protection do not enjoy the same exceptional treatment. The relevant regulation of the Hungarian Asylum Act says that the 'beneficiaries of subsidiary protection shall not be entitled to the preferential conditions applicable to refugees with regard to nationalisation'.⁴⁴

Therefore, beneficiaries of subsidiary protection are also excluded from this affirmative measure. They cannot vote in the local elections and cannot take the advantage of preferential naturalization. It seems that the legislator distinguishes refugees and beneficiaries of subsidiary protection from the viewpoint of political rights, which means that refugees are facilitated to aspire to the political participation but those who have been qualified differently in the preceding asylum procedure are not supported at all. This can be evaluated as a very sharp discrimination which can hardly be explained by the different reasons of fleeing.

Nevertheless, the situation in this dimension is better in Hungary than in the UK since the latter does not provide preferential naturalization even for refugees. The UK does not provide it in spite of the fact that Article 34 of the 1951 Geneva Convention says

[t]he Contracting States shall as far as possible facilitate the assimilation and naturalization of refugees. They shall in particular make every effort to expedite naturalization proceedings and to reduce as far as possible the charges and costs of such proceedings.

⁴² Act LV of 1993 on Hungarian Citizenship, S 4 (2).

⁴³ S 4 (1).

⁴⁴ Act on Asylum, S 17 (4).

The *travaux préparatoires* of the Geneva Convention must be reviewed in order to understand the reasons for the lack of preferential procedure. It contains a draft version of this article which says that

the High Contracting Parties shall facilitate the assimilation and naturalization of refugees (and stateless persons) to the fullest possible extent. They shall make every effort *inter alia* to reduce the charges and costs of naturalization proceedings for destitute refugees (and stateless persons).

The French representatives suggested the previous and finally accepted version. Paul Weis explains the situation as follows,

according to the terms of the French draft, the High Contracting Parties undertake not only to reduce the charges and costs of naturalization, but also to expedite the proceedings for the benefit of the refugees.⁴⁵

However the finally rejected version was supported by the United Kingdom. As Weis has narrated,

the UK representative did not consider either text to be completely satisfactory. He did not think, in fact, that his Government would be prepared to undertake either to reduce the period of length of residence expressly provided for by the law as a condition for naturalization, or to expedite the proceedings, a step which would entail giving priority to the applications of refugees over those of other foreigners. The procedure caused no undue delay.⁴⁶

Therefore the UK has not supported the expedited procedures. However the French representatives explained their standpoint as follows,

[...] the expression ‘to expedite (...) proceedings’ did not apply to the duration of the period of residence, but only to the administrative formalities taking place between the submission of the application and the decision.⁴⁷

That was the standpoint which has underpinned the currently applicable text of Article 34.

It means that the preferential naturalization ensured by Hungary is a generous support as it exceeds Article 34 of the Refugee Convention meanwhile the lack of preferential procedure in the UK is exactly what was wanted by this country during the preparation of the Convention.

Hungary provides a significant support to refugees in this dimension and the UK does not.⁴⁸ However none of these countries provides preferential naturalization to beneficiaries

⁴⁵ Weis (1990) 247.

⁴⁶ Weis (1990) 247.

⁴⁷ Weis (1990) 247.

⁴⁸ European Commission (2010) 11.

of subsidiary protection. Hungary, when compared to the examined countries, seems to have more of an incentive to involve a part of the target group in the political community as citizens. It must be mentioned that the comparison would be perfect if analysis could be conducted in practice as well, as actual processes might be less favourable than indicated by the basic legislations.⁴⁹

4. THIRD DIMENSION – FREEDOM OF MOVEMENT

The third dimension which should be scrutinized is the freedom of movement across borders. It is special as so far, the interests of refugees, beneficiaries of subsidiary protection and persons under humanitarian protection were concurred with their political integration. Their right to be recognized, their right to residency, their right to vote and their right to naturalization should also be supported by the target group. The freedom of movement, however, is something which can reduce the degree of their political integration meanwhile refugees and other persons concerned would like to achieve a freedom of movement certainly as broad as possible. If they can legally move to other countries they would be less committed to become part of the political community in the given host country. It means that the limitation in this dimension could intensify their political integration. It is especially true in Hungary as refugees and persons under humanitarian protection could find opportunities in a country which has a strong and prosperous economy but they can suffer from unemployment and absence of economic opportunities in a less prosperous country as Hungary. However, it must be mentioned that finding a blue-collar job for a refugee/beneficiary of subsidiary protection is relatively simple currently in Hungary due to labour-market processes.⁵⁰ It does not mean that all material life circumstances could compete with Western European EU member states.⁵¹ Thus, the limitation on free movement might keep recognized refugees and beneficiaries of subsidiary protection in Hungary in spite of their real intentions which means that they must find their ways to the political community. Obviously, if that way would be closed in terms of the previous dimensions they would be segregated in Hungary. By and large, it is a matrix in which the legislator can create and obstruct different channels.

At this point the study must touch upon the international and EU law since these regulate the movement between countries and member states.⁵² Chapter I of the Treaty on the Functioning of the European Union, EU secondary legislation and the case law of the Court of Justice have made the free movement possible within the European Economic Area. However, these regulations concern only the citizens of the European Union and refugees are not EU citizens.⁵³ The Council Regulation 539/2001/EC helps refugees to

⁴⁹ Gyulai (2016).

⁵⁰ See the First Release of the Central Statistical Office (CSO) of Hungary (2017) link 6.

⁵¹ See the EUROSTAT index on actual individual consumption (2017) link 7.

⁵² This study does not examine the free movement within the examined country. It is regulated by the Article 26 of the Geneva Convention and it does not seem problematic from the viewpoint of the political integration in the cases of Hungary and the UK.

⁵³ It must be noted that the long-term residents can be considered as exceptions in this sense. Based on the Council Directive (EC) 2003/109/EC (2003) OJ L 016.

travel within the Schengen Area but it does not enable them to stay for more than 90 days within 180 days.⁵⁴ Nevertheless, these measures are not applicable in the United Kingdom as it does not participate fully in the Schengen Area and cooperation as it is recorded in the preamble of the 'Council Regulation (EC) No 539/2001 of 15 March 2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement'.⁵⁵ There is also a relevant agreement which might facilitate the travels of refugees within the countries of the Council of Europe.⁵⁶ These measurements help the travels of refugees but not their movement linked to residency to another member states, and therefore the legal situation cannot be evaluated as allowing free movement within the EU.⁵⁷

Article 28 of the Geneva Convention obliges the contracting states to issue travel documents for refugees but it does not regulate their movement, their necessary visas and their residency in another state. All in all, refugees' right for free movement is very limited since they are not citizens of any EU countries. They shall be handled as third-country nationals or nationals of a foreign country which practically means that they are not able to move from the country of recognition to another country. This fact is independent from the legal system of Hungary or the UK. However it must be mentioned that Hungary is member state of the Schengen System while the UK is not. If refugees or beneficiaries of subsidiary protection wished to move, they would need to obtain the residence permit of the target country and usually its criteria are very strict. The Schengen regulation means that everyone who is in the area can move to another member states, however a resettlement cannot be based on illegal movement since the persons concerned are not able to undertake jobs legally, register their addresses, get treatment in the healthcare system, etc. The persons concerned must return to their countries of recognition sooner or later. As the UK does not

⁵⁴ Corrigendum to Council Regulation (EC) No 1932/2006 of 21 December 2006 amending Regulation (EC) No 539/2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement. Article 1 says:

Regulation (EC) No 539/2001 is hereby amended as follows: (1) Article 1 shall be amended as follows: (a) the following subparagraph shall be added to paragraph 1: 'Without prejudice to the requirements stemming from the European Agreement on the Abolition of Visas for Refugees signed at Strasbourg on 20 April 1959, recognised refugees and stateless persons shall be required to be in possession of a visa when crossing the external borders of the Member States if the third country in which they are resident and which has issued them with their travel document is a third country listed in Annex I to this Regulation.'; (b) the following subparagraph is added to paragraph 2: 'The following shall also be exempt from the visa requirement: the nationals of third countries listed in Annex I to this Regulation who are holders of a local border traffic card issued by the Member States pursuant to Regulation (EC) No 1931/2006 of the European Parliament and of the Council of 20 December 2006 laying down rules on local border traffic at the external land borders of the Member States and amending the provisions of the Schengen Convention (6) when these holders exercise their right within the context of the Local Border Traffic regime; [...] recognised refugees and stateless persons and other persons who do not hold the nationality of any country who reside in a Member State and are holders of a travel document issued by that Member State.

⁵⁵ Preamble para. (4).

⁵⁶ 1959 European Agreement on the Abolition of Visas for Refugees. The Chart of signatures and ratifications of Treaty (2017) link 8.

⁵⁷ See: Ziegler (2017).

participate in the Schengen system, refugees and persons under humanitarian protection from there cannot enjoy the mentioned reliefs on that ground.

It means that the relevant international and EU regulations tie the refugees, beneficiaries of subsidiary protection or persons under humanitarian protection to their countries of asylum. It results their facilitation to be members of the political communities of their first host societies at least as long as they obtain their citizenship.

5. FOURTH DIMENSION – POLITICAL FREEDOM

The fourth dimension includes the freedom of expression, association and assembly. Basically these rights are fundamental human rights thus every human beings have right to practice them. Aliens, refugees, beneficiaries of subsidiary protection, persons under humanitarian protection shall have the same rights in this dimension as citizens.⁵⁸ In practice, there are sensitive topics in the given countries grounding on diplomatic relations.⁵⁹ It would demand a comprehensive analysis to compare Hungary and the United Kingdom from the viewpoint of the prevailing practices which is not possible in the frame of this study but it should be mentioned that there is at least an example in Hungary for making a refugee protestation impossible. In 2011, Tibetan refugees were obliged to appear in the Office of Immigration and Nationality for the time of the Chinese diplomatic convoy passing Budapest.⁶⁰ Refugees wanted to protest against the Chinese government but it was hindered by administrative measures. Those measures might be constitutionally questionable.

This sort of practical question is out of the scope of this study but it was necessary to mention that the guaranteed right cannot be effective in certain cases.

It must be also noted that being a member and/or leading a political party is strongly connected to the right to vote in both countries examined. Thus, this part of this dimension has not been scrutinized separately due to the fact that active voting right has been presented above.

⁵⁸ E.g. the Fundamental law of Hungary uses the subject 'Everyone' when talking about these rights. The UK Human Rights Act 1998 (Chapter 42) refers to the European Convention on Human Rights. This document says that the High Contracting Parties shall secure to *everyone* within their jurisdiction the rights and freedoms defined in Section I of this Convention. Section I of the European Convention on Human Rights is about the rights and freedoms.

⁵⁹ As Weis (1990) expounded

[r]efugees, like other aliens, are entitled to the same freedom of expression, association and assembly as citizens. However, the granting of political rights is often seen as a threat to the national cohesion of the country of asylum or to its relations with the country of origin. This is despite the fact that international law makes provision for protecting the legitimate security concerns of the country of origin and respecting the sovereignty of other States. In doing so, it does not discriminate between refugees and any other person in the country of asylum. That being said, refugees should be made aware of their responsibilities to their country of asylum and the legitimate limits that may be placed on politically-motivated behaviour. Yet many of the risks associated with political activity of refugees should be acknowledged as primarily a problem caused by a small minority of persons, in many cases of dubious eligibility to refugee status. The behaviour of a few does not justify excessive restrictions placed on the innocent majority.

⁶⁰ The Hungarian press news is available: Index.hu (2011) link 9.

6. CONCLUSIONS

The study examined the constitutional bases of being a refugee, their right to stay, their direct political rights as the right to vote, the freedom of expression, the freedom of association and the freedom of assembly. Furthermore it observed their possibilities for preferential naturalization as a way to belong to the political community of the country of asylum. It was also mentioned that the limitation of free movement can be a compulsion for belonging to the host society.

These are the basic primary factors of political integration. It is possible to measure which country motivates refugees and beneficiaries of subsidiary protection better for being part of the political community. It was not the goal to assess whether Hungary or the United Kingdom is better but to point out that political integration includes several legal factors. However it must be noticed that Hungary has made a big step back from this viewpoint in 2016.

The study mentioned in the beginning that there are also other secondary factors like economic and social stimulations. Labour-market integration, community programs, individual counselling are very important but these factors can hardly be measured by the tools of legal analysis.

It would be purposeful to elaborate a more detailed and more precise model which is capable of comparing the contracting states of the Refugee Convention or at least the member states of the European Union from a legal angle.

First of all, it is necessary to decide whether the country concerned wants to consider refugees, beneficiaries of subsidiary protection or persons under humanitarian protection as members of its political community or limited members of it, perhaps as persons who are totally out of the political community. Based on the Refugee Convention, the response should be obviously inclusive and not exclusive.

It can be seen in the study that belonging to a certain political community is a very complex matter. The political community must decide how deep it wants to allow for refugees the participation in this complex system.

Finally, one more viewpoint must be mentioned. There are a lot of concerns in Europe regarding the social integration of refugees. It must be understood that there is no social integration without political integration. There are a lot of historic examples in which it is apparent that only politically integrated societies could be successful. If economically and socially successful societies are wanted then it must help the political integration of refugees by legal and other measures. There is no success without inclusive political institutions and there are no inclusive political institutions without a legal system which is able to encourage refugees to become members of the political community of the country of asylum.⁶¹

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⁶¹ See Acemoğlu and Robinson (2012)

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