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Democratic Efficacy and the Varieties of Populism in Europe

Appendix to Working Paper: "The Populist Challenge of Common EU Policies: The Case of (Im)migration"

Country Reports

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Author(s)

Lukasz Gruszczynski (Centre for Social Sciences, CSS, and Kozminski University) and Réka Friedery (Centre for Social Sciences, CSS)

Andrea Crescenzi (Sapienza University of Rome) Angeliki Dimitriadi (Hellenic Foundation for European & Foreign Policy, ELIAMEP), Katarzyna du Vall (Jagiellonian University), Rosita Forastiero (National Research Council of Italy), Zsolt Körtvélyesi (CSS), Andrej Školkay (School of Communication and Media, Bratislava, SKAMBA), Viktor Szép (CSS)

Contact Information

Gruszczynski.LukaszAdam@tk.hu
contact@demos.tk.hu

Abstract

This document – an appendix to the DEMOS H2020 working paper "The Populist Challenge of Common EU Policies: The Case of (Im)migration" – includes seven country reports (i.e. France, Germany, Greece, Hungary, Italy, Poland and Slovakia) that analyse immigration policy as one of the major conflict area between populist and non-populist forces (movements, parties, governments) as well as EU institutions. In this context, the reports examine the policy discourse and responses in the selected EU Member States and look at the challenges in implementing common EU policies. The reports cover the period from 2015 to 2018. They all follow a similar structure, starting with the background information on the size and character of migration in the covered country, following with the analysis of political discourse at the national level and political actions taken by decision-makers (including legal changes). Each report concludes with a synthesis, describing the main findings, and a bibliography.

Contents

1. Introduction

One of the major conflicts between populist and non-populist forces (movements, parties, governments) as well as the European Union (EU) institutions is manifested in the area of the EU immigration policy. The national reports presented here assess how the influx of migrants (mostly from the Middle East and North Africa region) into the EU has been used as a policy conflict ground within the EU (both between the populist and non-populist governments as well as among different political forces within EU Member States). In this context, the reports examine the policy responses in the selected EU Member States and look at the challenges in implementation of the common EU policies (e.g. the temporary and exceptional relocation mechanism from Italy and Greece to other Member States for persons in clear need of international protection as well as proposal for mandatory and automatic relocation system for such persons).

The reports cover the period from 2015 to 2018, this is a period conventionally labelled as the European migration crisis and its aftermath. The territorial scope of the reports is limited to the EU Member States and includes the following countries: France, Germany, Greece, Hungary, Italy, Poland and Slovakia. This diversity is not accidental as the project aimed to cover both old and new Members, as well as the frontline and final destination countries. All the reports were prepared as a part of the H2020 project entitled "Democratic Efficacy and the Varieties of Populism in Europe" (DEMOS) (grant agreement no. 822590).

The authors of the national reports used a combination of different methods, ranging from content analysis to traditional legal approached (i.e. dogmatic analysis). Their enquires were based on the examination of political (party) programmes, press releases of the governments and EU institutions, statements of party/movement leaders, legal and quasi-legal documents, and national and EU case law. All the experts also extensively relied on the secondary sources, such as official reports and academic analyses.

The national reports tend to follow the similar structure: they all start with the background information on the size and character of migration in the covered EU country. This is followed by the section which looks how the problem of migration was framed in the political discourse of the domestic parties during the covered period. In this context, a special attention is given to the populist parties. The subsequent section examines how the political postulates were translated into specific actions, including legal changes. Each report concludes with the brief synthesis (summarizing the main findings) and extensive bibliography.

2. France

Country Report Prepared for the DEMOS Project

Author: **Viktor Szép**, CSS Institute for Legal Studies, Budapest, Hungary

1. Introduction

According to Eurostat, 2.4 million immigrants entered the EU27 in 2018. In total, 21.8 million people were non EU27 citizens on 1 January 2019 which represent almost 5% of EU27 population. In addition to non-EU citizens, 13.3 million EU citizens were living in one of the EU27 Member States with citizenship of another EU Member State. Baltic states, especially Latvia and Estonia host the highest number of recognised non-citizens (mainly from the former Soviet Union). In relative terms, the highest share of non-nationals resided in Luxembourg accounting for 47% of its total population (Eurostat, 2020b). In absolute terms, however, France was the third biggest receiving country with regard to non-nationals (with 4.9 million) after Italy (5.3 million) and Germany (10.1 million) on 1 January 2019 (Eurostat, 2019b). These people in France, representing approximately 7% of the total population (Ministère de l'Intérieur, 2019a), were born foreigners abroad, may have French nationality and live in France. Most of them has come from Algeria, Morocco and Tunisia which is explained by the historical, cultural and economic ties between France and Maghreb countries (European Commission, 2020).

French statistics also reaffirm that 7% of the total population is foreigner while 9% is immigrant in France. Half of the immigrant population of working ages (15-64 years) arrived in France before 1998. Those who arrived at the age of 15 or over in France, half of them said to be emigrated for family reasons. The immigration population is, in general, now more educated than ever, partly due to the fact that they are now taking part in French higher education system. While immigration is not new to France, the countries of origin are quite different now than in the 1970s: whereas 66% of the immigrants came from the European continent in 1975, especially from Spain and Italy, European immigrants fell to 35% in 2015. Nowadays, approximately half of the immigrants have African origins which is equivalent to around 2.7 million people. More than half of the immigrants with African origins have come from the Maghreb countries while immigration from the sub-Saharan Africa is a more recent phenomenon. Finally, around 20% of immigrants come from Asia and America, 15% and 5% respectively (Insée, 2019).

The Office of Protection of Refugees and Stateless Persons (*Office francais de protection des réfugiés et apatrides*, OFPRA) registered the following number of asylum requests between 2015 and 2018: 79,914 (in 2015, mostly from Syria, Sudan, Iraq, Afghanistan, Kosovo and Haiti) (OFPRA, 2016), 85,244 (in 2016, mostly from the same states as in 2015) (OFPRA, 2017), 100,412 (in 2017, mostly from the same states as in 2015 and 2016) (OFPRA, 2018a) and 122 743 (in 2018 mostly from Afghanistan, Albania, Georgia, Guinea and Côte d'Ivoire). The number of asylum requests in 2018 is approximately the double of two other peaks in French history in 1990 (61,422) and 2004 (64,614). The median age of asylum seekers is 31 years composed mostly of men (65%) (Fine, 2019). The number of decisions to grant protection status (refugee and subsidiary protection, excluding accompanying minors) taken by OFPRA and CNDA stood at 19,506 in 2015, 26,499 in 2016, 31,964 in 2017 and 33,330 in 2018 (Ministère de l'Intérieur, 2020a). In 2019, the number of asylum requests increased to almost 178,000 which was explained by the inclusion of requests governed by the Dublin procedure (which is not responsibility of the French authorities, such as OFPRA). Afghanistan (10,258),

Bangladesh (6,198) and Georgia (5 760) occupied the top positions in asylum requests in 2019 (Vie Publique, 2020).

The following number of visas, most of which are short stay or transit visa, were granted between 2015 and 2018: 3,197,505 (2015), 3,074,601 (2016), 3,420,396 (2017) and 3,571,388 (2018) (Ministère de l'Intérieur, 2019b). Chinese citizens remain the first country of origin of visa holders (757,500), followed by Russians (486,706) and Morocco (346,032) (Vie Publique, 2020). Approximately 1,5 million EU citizens have been working in France since 2015 (1.49 million in 2015, 1.52 million in 2016 and 2018 while 1.55 million in 2017), mostly coming from Portugal (approx. 550 million), Italy (apprx. 190 million) and the UK (approx. 150 million) (Insée, 2020). The following number of first residence permits were issued by France for employment (economic, professional) reasons between 2015 and 2018: 20,969 (2015) (European Commission, 2016b), 23 076 (2016) (European Commission, 2017a), 27,556 (2017) (Eurostat, 2018) and 33,808 (2018) (Eurostat, 2019a). The rest of the residence permits, however, were mostly granted for family or study reasons. In addition, the Ministry of Interior estimates that the talent passport, intended to attract highly qualified people in force in November 2016, was issued to 12 465 people in 2017, 15,859 in 2018 (Ministère de l'Intérieur, 2019b) and 35,200 in 2019 (Vie Publique, 2020). Furthermore, France granted 113,600 citizenships in 2015, 119,200 in 2016, 114,300 in 2017 and 110,000 in 2018 (Eurostat, 2020a).

Although France has long time established its own migration and integration policies, the new wave of migration in 2015 was an example of an almost unprecedented level of pressure for the country as well as for other EU Member States. France, led previously by François Hollande and now Emmanuel Macron, principally supported the Commission's proposal to relocate people in clear need of international protection and shared the idea that Europe needs to take its global responsibility seriously in this crisis. At the same time, mainly due to domestic political factors, the French government emphasized that it cannot take unlimited number of refugees but was willing to comply with its EU law obligations in the field of EU Migration and Home Affairs.

2. Immigration as a political issue

2.1. Political context

2.1.1. The positions of major domestic parties (2015-2018)

Few topics have generated as much heated political debates as the question of migration in Europe. It is not only a characteristic of French politics but was also present during the Brexit debate or before the election of Donald Trump. Since the late 1970s, the question of migration has been a controversial political issue in France and remains a key policy challenge nowadays (Wolff, 2017). In 2012, for example, before and during the presidential debate, the situation of immigrants in France was a central theme. Back then, Nicolas Sarkozy sought to divide by two the number of annual admissions, a political objective deemed impossible according to his socialist rival, François Hollande (Le Point, 2012). The question of migration, especially after 2015, continued to be a highly debated political issue and was considered as one of the major policy challenges of France. In particular, Marine le Pen put the question of migration in the heart of her political campaign with proposals tightening immigration rules (Le Point, 2017). Nothing better proves that migration remained a key political issue is that during the 2017 presidential election debate – which lasted for 3 hours – only 15 minutes was devoted to French foreign policy whereas questions related to immigration and security dominated the debate and were discussed in lengthy (Robert, 2017).

Not surpassingly, the crisis of 2015 yet again brought the question of migration at the top of French political agenda. In view of the dramatic scenes unfolding in the Mediterranean Sea in early 2015, the EU leaders recognized that new policy tools needed to be adopted at both European and national levels. Asked by the French government (Hollande, 2015a), a special meeting of the European Council was convened in April 2015 in order to tackle the tragedy in the Mediterranean. EU leaders unanimously agreed to strengthen EU presence at sea, to fight traffickers, to prevent illegal migration flows and to reinforce internal solidarity and responsibility, including the set up a voluntary pilot project on resettlement across the EU (European Council, 2015). In his declaration, former French President François Hollande said that the humanitarian situation was unacceptable and that Europe could not remain indifferent regarding the events in Libya (Hollande, 2015a). The former French President also emphasized that "Europe cannot be responsible for everything" but added that the EU was stepping up its efforts in the Mediterranean while France itself also took its part because "this is her honour and duty" to save human lives (Hollande, 2015b).

In May 2015, the European Commission, based on Article 78(3) Treaty on the Functioning of the European Union, proposed to the Council to relocate over a period of 24 months 24,000 applicants from Italy and 16 000 applicants (in total: 40,000 applicants) in clear need of international protection.[1] Former interior minister Bernard Cazeneuve, in a common position written with its German counterpart, welcomed the proposal of the Commission to create this temporary redistribution mechanism (Ministere de l'Intérieur, 2015). In June 2015, each Member State leader agreed that this temporary and exceptional relocation should be adopted in a timely manner (European Council, 2015a).

The French government intention to welcome people in need for international protection was, however, constrained by the National Rally (*Rassemblement National* (RN) – formerly known as *Front National* (FN)) – given that Manuel Valls needed to calculate how government actions might influence the political support of the extreme right-wing party. This political reality was later exacerbated by the terrorist attacks of 13 November 2015 in Paris after which former Prime Minister Manuel Valls announced that France simply could not take unlimited number of refugees. This policy line contradicted with Germany's vision of non-ceiling the number of refugees that the country was willing to take in. Manuel Valls insisted, sticking to earlier pledges, that France could not take in more than 30 000 refugees and, if pushed to welcome more, the chances would have been higher that the reputation of National Really grew. This special political situation was understood by Germany which refrained itself to criticize French policy actions of maximizing the number of refugees (Webber, 2018: 164-166).

The National Rally rejected the proposals to distribute migrants arrived in France (Front, 2015). Le Pen contrasted the policies pursued by France with Denmark and praised the actions taken by the latter's government for its announcement of breakdown of its rail links with Germany to fight against the migrant flow. She called on the French Socialist Party and the UMP (*Union pour un mouvement populaire*) to propose and enact similar legislation in France (Le Pen, 2015b). Le Pen also emphasized that she wanted to see a downward trend (possibly to zero) in the number of legal entries into France. She also stressed the importance of strengthening the national borders, the systematic return of illegal immigrants to their home countries and the end of all social incentives for illegal immigration. The National Rally also accused the centre-right UMP that it had allowed the entry of 2 million foreigners of which around 10% were given French citizenship (Domard, 2015).

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[1] Proposal for a Council Decision establishing provisional measures in the area of international protection for the benefit of Italy and Greece, COM/2015/0286 final - 2015/125 (NLE).

In general, National Rally MPs rejected the permanent relocation mechanism proposed by Commission President Jean-Claude Juncker. According to the National Rally, the European Union was determined to impose an immigration policy contrary to the will and sovereignty of people. The extreme-right wing party claimed that only States have the right to decide whether foreigners are allowed to stay in another country and that the system of immigration should have to be reformed so that people are welcomed only on exceptional basis (Bay, 2015). Others emphasized that it was not racist or xenophobe to fear of massive migration. Instead of welcoming foreigners, as the EU and Germany suggest, support should be brought where people under threat live (Lebreton, 2015b). The EU was not seen as the solution to the problem but it was part of the problem (Lebreton, 2015a). French socialists and centre right parties were accused of hypocrisy for supporting an EP resolution on making the submission of complaints against European border guards easier (Lebreton & Goddyn, 2015). The extreme right party refused to accept the mechanism of relocation as proposed by the Commission and, instead, sought to restore the national borders, put an end to all forms of laxity in the face of illegal immigration, drastically reduce legal immigration and reaffirm French identity (Bay, 2016). The National Really saw the centre right and left in the European Parliament to pursue the same policies despite having sometimes anti-migration rhetoric (Aliot, 2016).

Former President Nicolas Sarkozy, who was also president of the right-wing party Les Républicains (LR), also disagreed with the proposal of the Commission to distribute the migrants between EU states and declared that: "there is no more money, no more jobs, no more housing […] but they considered that the solution to the problem of migration was not to reduce but to relocate". He compared this proposal with an exploding pipe in a family house where water "spills into the kitchen. The repairman arrives and says, I have a solution: we will keep half for the kitchen, put a quarter in the living room, a quarter in the parents' room and if that is not enough there remains the children's room" (Liberation, 2015). Sarkozy even contemplated to suspend the Schengen I. zone and to create a Schengen II. in which states can only join after they undertook several reforms and adopted a common migration policy (Réaux, 2015). Sarkozy's stance was criticized by the Government and was called on to use words which respected the human dignity of people in clear need of international protection.

Jean-Luc Mélenchon, founder of the Left Party (*Parti de gauche* (PG)), was also highly critical of the proposal of the Commission to relocate the migrants amongst EU Member States. His main argument against the relocation mechanism was that it failed to tackle the root causes of migration which had been manifold: wars, economic distress and climate change. Although Germany accepted to welcome 800,000 refugees, it will not be able, according to Mélenchon, to welcome the same amount of people in the coming years. Moreover, he believed that Chancellor Merkel was not a philanthropic politician but someone who worked for the fundamental interests of Germany by inviting skilled people in the German labour market. Mélenchon further argued that it was nearly impossible to distinguish between economic migrants and people in real need for international protection showing that the policy proposed by the Commission was poorly designed (Mélenchon, 2015).

Due to the intensifying pressure on EU borders, the French government decided to take further steps. In particular, former President François Hollande, together with his German counterpart, took the leadership in September 2015 and, in a joint letter, called on the Commission to propose a permanent and mandatory mechanism of relocation regarding persons in need for international protection (Hollande & Merkel, 2015). In a press conference, François Hollande further clarified that the relocation must cover persons coming from Syria referring to the moral obligation of saving lives. Former Prime Minister Manuel Valls, in his speech in the National Assembly (*Assemblée Nationale*), echoed Hollande's views by declaring that the EU had a historical responsibility in the management of the migrant crisis and firmly stated that the right

of asylum was a fundamental right. According to the former Prime Minister, France was under moral obligation to welcome those who had been persecuted for their ideas. Among others, he agreed with the Commission on the need to welcoming and relocating persons in need for international protection. France agreed to take 24,000 persons in two years (Valls, 2015). Later, Manuel Valls clarified that France was willing to accept 30,000 but "no more than that" while also emphasized the need to differentiate between persons asking for asylum and economic migrants avoiding a situation in which "everybody comes [in Europe]" (EurActiv, 2015).

It is hardly surprising that migration continued to be a central political topic in the 2017 presidential election. With presidential elections of 2017 coming closer, the debate on immigration intensified in France. In a closing ceremony of a summer school organized by the FN, Marine Le Pen declared that France had a puppet government and that France was not anymore a State; instead it became a vassal State of other great powers. She argued that this is an economic migration and thus creates burdens for the country. Le Pen sought to repeal the law of the soil, state medical aid for irregular foreigners and the free movement provided by the Schengen Agreement. She saw direct links between migration and the increased terrorist attacks in Europe (Faye, 2015). Horrified by the migrants around Calais, she proposed the suspension of Schengen Agreements, drastic reform of the right of asylum and immediate expulsion of all illegal immigrants (Le Pen, 2015a).

The program of the FN included the "divide by 20" promise meaning that the party sought to reduce, within five years, the number of legal migrants from 200,000 to 10,000. The President of the party declared that only those could qualify as a legal migrant who are well educated and whose competences are greatly needed in certain French economic sectors while also foresaw the prohibition of family reunification (Mathiot, 2015). In the run up of 2017 presidential election, the question of identity and migration dominated Le Pen's campaign (Faye, 2017). In her programme, Le Pen devoted five points related to the question of migration: (1) restoring national borders and leave the Schengen area; (2) making impossible the naturalization of illegal foreigners; (3) reduce legal immigration to an annual of 10,000 people and putting to end the automatic family reunification as well as the automatic acquisition of French nationality by marriage; (4) repealing the law of the soil; (5) and returning to the "original spirit" of the right of asylum which can only be granted following a request by French embassies and consulates in the country of origin (Le Pen, 2017).

François Fillon sought to limit and reduce migration to France. He called for changing the Constitution by fixing a quota on how many residence permits could be issued. He also sought to renegotiate, at EU level, directives on migration to regain 'migratory sovereignty'. The right-wing politician would have limited family and accommodation allowances to those residing in France for 2 years or more (Wolff, 2017). François Fillon, in his presidential programme, had five key points with regard to migration: (1) reducing legal migration to the absolute minimum by, for example, establishing in the Constitution that the number of migrants is maximized every year, (2) making migration no longer a burden by, for example, paying family allowance or housing benefits only to those who reside in France for more than two years, (3) putting an end to illegal migration and the misuse of the right of asylum, (4) refounding the Schengen Treaty, and (5) giving French nationality only to those who clearly assimilated (Fillon, 2017).

Macron openly supported Angela Merkel's open-door policy and considered the welcoming of refugees as a moral duty. He considered as a duty to offer asylum to those who are persecuted and ask for international protection while the EU's role was to help treat the causes of migration. In this context, France must take its fair share in welcoming refugees. Macron added, however, that those who do not qualify the essential criteria, must be returned to the border. Macron set out 4 objectives: (1) integration should be in the centre of policy by mastering the language and knowing the values of the Republic, (2) promoting an immigration of knowledge implying, for

example, giving so-called "talent passports" to highly qualified people and invite them to work in France; (3) assuming fair share in welcoming refugees while taking back those are not acted to the border and (4) protecting European borders (En Marche, 2017).

Benoît Hamon, supported by the Socialists and Greens, took also a more liberal stance on immigration. He sought to give the right to vote to foreigners in local elections and would have, if elected, increased the pace of integration of asylum seekers. Hamon was in favour of giving opportunities, especially jobs, to foreigners and allow them to learn French. He also foresaw the elimination of the Dublin system given its failure to distribute asylum seekers in a fairer way. Instead, he was in favour of a system of redistribution which reflects the capabilities of EU Member States to welcome asylum seekers (Wolff, 2017).

In the second round of the Presidential election, Emmanuel Macron won the presidency who received 66.1% of the votes whereas his counterpart, Marine Le Pen received 33.9% of the votes in 2017 (Ministère de l'Intérieur, 2017). This win by Macron has had significant impact on how France has handled EU migration crisis since 2017, as demonstrated by the next subsection (2.2). In general, Macron was in favour of welcoming people in need of international protection and was honouring its EU law obligations. However, France – contrary to Germany – was more vocal in expressing its limit on how many asylum seekers it can welcome, partly due to political reasons.

2.1.2. Relevance of different arguments used for or against immigration in the political and public debate

At political level, moral and economic reasons were both considered. François Hollande, for instance, put the emphasis on the moral obligations of France to take in refugees. The former president argued, for instance, that "it is the vocation of France to welcome those who are persecuted for their ideas or exposed to risks for their integrity. The French government […] will not question [...] the right […] for all those who […] undergo violence or oppression" (Valls, 2015). In other speeches Hollande emphasized that the "humanitarian situation is not acceptable" (Hollande, 2015a) and "[Europe] must be able to offer answers to everything [and] France must itself take her share and even more than her share, because that is her honour and her duty". Hollande further emphasized that the main objective is "a humanitarian objective: […] saving human lives" (Hollande, 2015b). Socialists, in general, emphasized the collective gain of immigration and a chance for France while recognized that the number of economic migrants should, in some ways, limited and the fight against illegal migration (Commin, 2016). His successor, Emmanuel Macron, shared this idea and declared that France needs to approach the question of migration in a human but effective way: "we must as quickly as possible give asylum to those who need our protection with the desire to integrate those who have the right to asylum much more effectively, with French courses and a more effective employment policy" (NouvelObs, 2019). While Macron also emphasized that France has a moral obligation to welcome persons in needs he strongly declared that "France cannot welcome everyone if it wants to welcome well [persons in needs]" (LePoint, 2019).

Marine Le Pen's main argument against immigration – which is widely shared by the French population and is reflected in different public surveys – was that immigration creates downward pressure on wages and leads to increased unemployment while the immigrants take the jobs of French people (Mathiot, 2011). The leader of the populist right wing party argued that 1% increase in immigration leads to a 1.2% drop in wages (Mathiot, 2011). Another argument made by Le Pen, which is also widely shared by the public, was that migration brought the new terrorist attacks in Europe: brining thousands of men from countries in conflict, in which ISIS and other terrorist organizations exist, without serious checks on arrival, was a matter of concern. Le Pen also argued that the rights and equality of women would also be question due

to migration (Le Pen, 2016). Identity related questions were also raised by the leader of National Rally: "the ghettos, inter-ethnic conflicts, community claims and politico-religious provocations are the direct consequences of massive immigration that undermines our national identity and brings with it an increasingly visible Islamization" (Commin, 2016).

Sarkozy, former president and one of the leading figures of the right-wing political party, seemed to be in between the two camps. Sarkozy argued that the question was not about closing the borders (as Le Pen suggested) or opening them (as suggested by Hollande/Macron) but to take the question seriously and make distinction between political and economic migrants (Sarkozy, 2015). The ambivalent position may be summarized by the following statement made by Sarkozy: "immigration is an asset but can also be a problem". Sarkozy basically agreed with the Front National's proposals to lower the number of legal migrants. Sarkozy also sought to make family reunification conditional on knowledge of the French language and restrict social benefits for foreigners (Commin, 2016), both proposals echoed by public opinion polls. On the one hand, Sarkozy firmly rejected the Le Pen's inhuman approach and emphasized the Christian roots of the French society. By saying that "each life has its value", Sarkozy wanted to emphasize that France needs to take a humanitarian approach. On the other hand, he also emphasized the importance of French identity (Sarkozy, 2015).

A public survey conducted in 2017 by Ipsos on the attitude in relation to immigration and the migration crisis found that 85% of French people believed that the number of immigrants increased while only 14% agreed with the statement that the impact of immigration has a positive impact on France. 53% believed that there were too many immigrants in France and 55% also believed that they were putting pressure on the public services. 46% agreed that borders must be closed and only 12% believed that France was effective in its management of the crisis, and 11% that the EU was effective. The ratio of French people who believed that terrorists mix with migrants is high (75%) (Ipsos, 2017).

Another public survey conducted in 2017 by IFOP (*Institut français d'opinion publique*) found that 85% of the French population perceived that immigration increased of which 62% believed that that immigration highly increased. In addition, a large part of the population (56%) negatively experienced the impact of immigration on the country and only 16% believed that it had positive effect on French society. The argument that immigration benefits the country's cultural life is overwhelmingly rejected (51% of the population rejects this statement of which nearly a third firmly rejects). 85% agrees with the statement that a refugee who wants to live in France should also learn the French language. Beside culture and identity related arguments, the majority (55%) also rejects the economic argument that immigration brings new talents and opportunities. There is only 20% that believes in the positive impact of immigration on the cultural and economic life of the country while about a quarter of the population neither agrees nor disagrees with these statements (Ifop, 2017).

It is also remarkable how certain arguments made by the National Rally in the last 30-40 years are echoed in the public opinion. For example, the idea that immigrants receive public aids and use public services even if they have made no contribution in back is supported by 65% of the population. 51% also believes that immigrants are considered as priority compared to established residents in terms of public aids. Another argument of the FN based in which French people face difficulties in finding jobs due to immigrants is also supported by 40% of the population while 56% agrees that immigrants are often ready to work for lower salaries than French workers (Ifop, 2017).

2.2. Policy in action

2.2.1. Challenges in implementation of the common EU migration policies in the relevant country

Based on the two decisions providing for the relocation of 160,000 asylum applicants were due to be relocated from Italy and Greece over a two-year period (by September 2017). Article 12 of the two legally binding Decisions foreseeing the relocation of 160,000 applicants provided that the Commission would publish a report every 6 months on the implementation of these Decisions. Based on the decisions, 39600 asylum applicants from Italy and 66400 from Greece (in total: 106,000) were due to be relocated from these countries by September 2017 while further 54,000 were assigned to be relocated from Italy and Greece before September 2016. In line with their opt-outs, the UK and Ireland were not bound by the Council Decisions but the latter decided to opt-in and took applications from both Italy and Greece. In addition, Dublin Associated States, such as Liechtenstein, Norway or Switzerland expressed their willingness to take part in the relocation scheme (European Commission, 2016a).

The overall performance of France in terms of implementation of EU policies was relatively high compared to other Member States. The relocation process and implementation of EU policies started very slowly and showed a continued unwillingness by the majority of the Member States to fully comply with their EU law obligations. By early 2016, only 937 people were relocated from Italy and Greece (European Commission, 2016a). By early 2017, between 15% and 18% of the planned relocations were implemented by EU Member States. Some of them complained that the low implementation rate was partly due to the fact that certain applicants were non-eligible for relocation. As can be seen from **Figure 1**, France relocated the most asylum seekers (2,696 relocations) until early 2017 followed by Germany (1,349), the Netherlands (1,274), Portugal (922), Finland (919), Spain (745), Romania (558), Ireland (241), Lithuania (229), and Luxemburg (226). Three Member States (Austria, Hungary and Poland) decided not to resettle any asylum-seekers (Guild et al., 2017). By mid-2017, this number did not grow considerably but France took, in accordance with its EU law obligations, a few hundred more asylum-seekers (European Commission, 2017b).

Figure 1. EU Member States and two associated countries that relocated the most refugees until early 2017
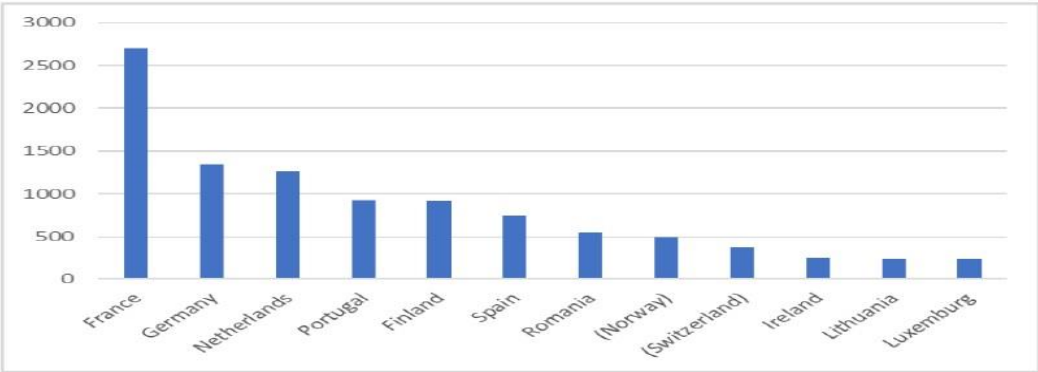

Source: (Guild et al., 2017)

The nominal numbers may not be well suited to measure whether EU Member and Associated States have complied with their obligations to relocate asylum seekers. **Table 1** shows the 10 best performing states in terms of relative relocation. Apart from non-EU Member States, the top 3 best performing EU countries were Malta, Finland and Latvia (Guild et al., 2017).

Table 1. The 10 best performing (Member) States in terms of relative relocation until early 2017

Member State	Relocated	Responsibility	Percentage
(Lichtenstein)	10	10	100%
Malta	80	131	61,1%
(Norway)	493	995	49,5%
Finland	919	2078	44,2%
Latvia	197	481	41%
Luxemburg	226	557	40,6%
Ireland	241	600	40,2%
Lithuania	229	671	34,1%
(Switzerland)	368	1080	34,1%
Portugal	922	2951	31,2%
Estonia	78	329	23,7%
Slovenia	124	567	21,9%
Netherlands	1274	5947	21,4%

Source: (Guild et al., 2017)

By 31 May 2018, more than 34,000 asylum seekers were relocated although the rate of implementation remained uneven between EU Member States. In nominal sense, France remained in the forefront (with 5029 relocations representing 25.5% of its full commitment) but was preceded by Germany (with 10825 relocations representing 39.3% of its full commitment). As shown by **Figure 2**, they were followed by Sweden (with 3,048 relocations), the Netherlands (with 2775 relocations) and Finland (with 1980 relocations) (EML, 2018).
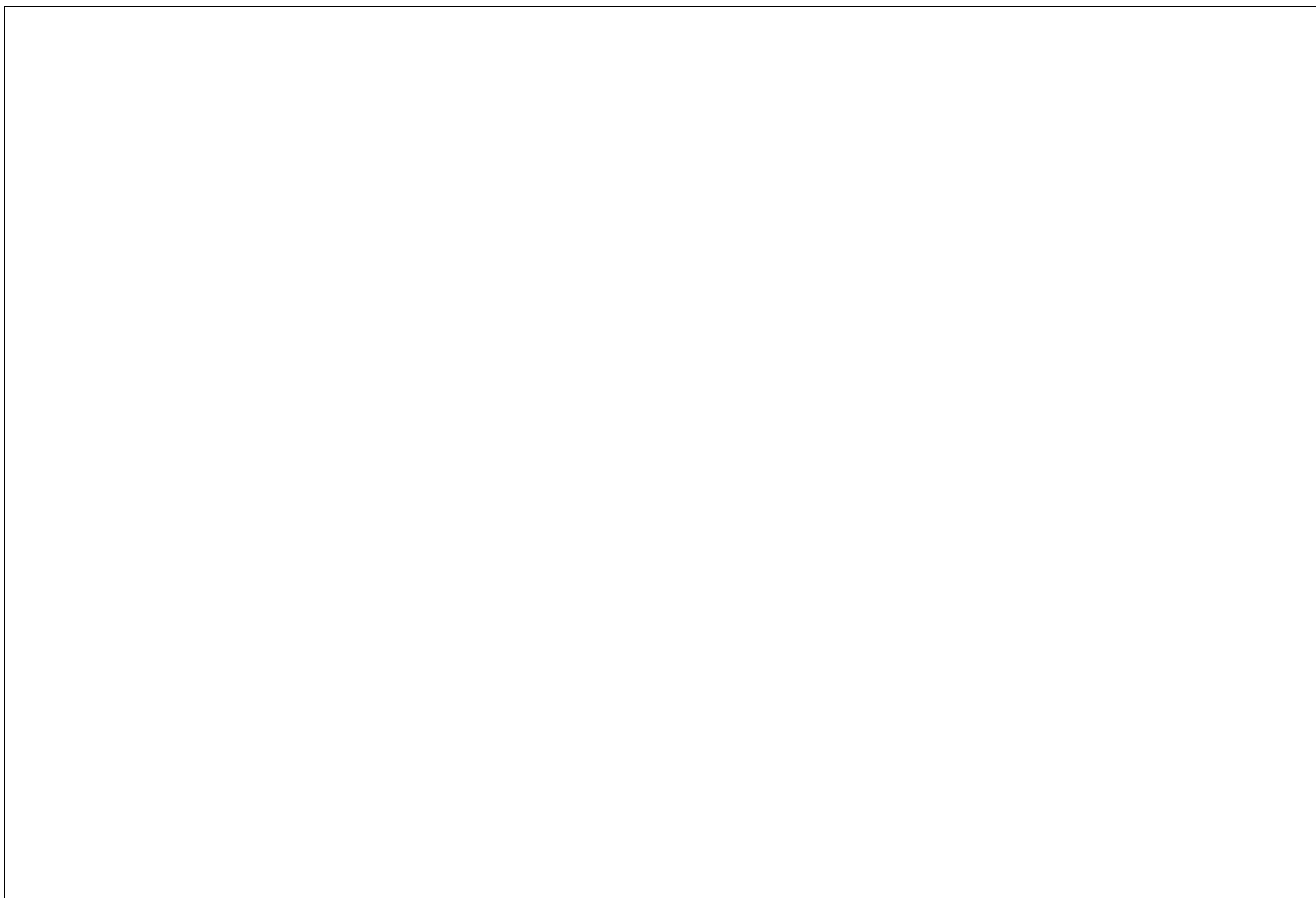
Since then, no major steps have been taken in relocation and the Commission emphasizes the voluntary nature of that mechanism. It, however, proposed financial support for those Member States willing to take part in the relocation activities. In the meantime, the asylum requests remain high (around 500,000 applications were lodged in the EU in 2019) whereby France, Germany, Spain, Greece and (before Brexit) the UK received the more representing more than 72% of the total. France and Germany the remain the main destination countries for asylum seekers (European Commission, 2019a).

2.2.2. Existing and potential conflicts between national policies and common EU policy position

The Asylum Procedures Directive provides that EU Member States are under legal obligation to register applications of people for international protection between 3 or 6 working days after the application has been made.[2] This timeframe was not respected in some cases, in particular by France where identification and registration procedures took more time than prescribed. In certain cases, asylum seekers were required to wait more than two months before given an appointment at the Prefecture and thus remained undocumented not entitled to receive any allowances (FRA, 2018).

The Asylum Procedures Directive also provides that the examination procedure of asylum requests must be concluded within 6 months after the application has been lodged.[3] There were signs that EU Member States, in particular France, sought to accelerate these procedures and tried to comply with EU law obligations. However, the acceleration of procedures led to poor quality interviews and decision-making capability of French authorities (FRA, 2018).

The Reception Conditions Directive provides that asylum seekers and returnees must be placed in specialised detention facilities.[4] However, some EU Member States, including France, provided only inadequate conditions in certain detention and/or pre-removal facilities (FRA, 2018). The Return Directive regulates, among other things, the detention of migrants in an irregular situation, including the limited possibility to detain children. It emphasizes that children should be detained only as a last resort and if no other, less coercive measure exists. In some EU Member States, a high number of children were detained (e.g. in Bulgaria or Greece), whereas in others (e.g. in France) children were detained under poor conditions and were placed in pre-removal detention without individual assessments.

The Charter of Fundamental Rights of the European Union, which came into direct effect in 2009 in the EU, provides that unaccompanied children are supposed to make full use of their right of asylum, including the access to information or legal representation. In certain parts of France, children were refused to tell their age but other Member State authorities (e.g. in Hungary or Italy) also refused to give children the benefit of the doubt concerning their age (FRA, 2018).

The Commission, within the framework of infringement proceedings, sent a formal letter of notice to France (as well as for 17 other Member States) for failing to communicate national measures taken to fully transpose two Directives, in particular the above mentioned Asylum Procedure Directive and the Reception Conditions Directive in September 2015 (European Commission, 2015). Based on the annual reports of the European Asylum Support Office, no

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[2] Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection.
[3] Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection.
[4] Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection.

infringements proceedings were launched against France which means that it is currently or has successfully transposed the Directives into national legislations (EASO, 2018, 2019).

3.   Immigration as a legal issue

The legal and policy framework on migration has evolved considerably in the last couple of decades. While French policy-makers have always sought to limit migration, the country received on average 100,000 applicants per year, including students or persons asking for family reunification. In the 1990s, the Pasqua Laws – named after the former interior minister Charles Pasqua – sought to limit this number and achieve a downward trend (possibly to zero) in the number of legal entries into France. It thus prohibited foreign graduates to accept employment offers, augmented the time for family reunification and refused to issue residence permits to foreign spouses who had resided in France illegally. While attempts were made in the late 1990s to increase the legal pathways to migration, the early 2000s saw an opposite trend whereby increased border controls and expulsions characterized the asylum system (Fine, 2019).

The High Integration Council defined, for the first time in 1991, integration as both a process and policies. It is a process because all the people living in France are called to *participate in the construction of a society* based on the respect of shared values. It is also a set of policies which aim to commit migrants to respect the principles on which the French republic is founded and to learn the French language. In 2014, the government further clarified the definition of integration and decided to distinguish between newcomers whose reception and integration are the responsibility of the Ministry of the Interior while foreigners permanently settled in France fall under common law policies (European Commission, 2020). This means that they will be treated as any other French citizen and thus specific measures for refugee populations are regarded as unnecessary tools (Fine, 2019).

The current institutional and legal architecture of migration policy is a complex system, including old and newly created entities with sometimes overlapping responsibilities and recent laws adapted to the new migratory situation. The Ministry of Interior (*Ministère de l'Intérieur*) is responsible for migration and asylum policies in France while it also oversees, together with the Minister of Foreign and European Affairs, the issue of visas, the entry of foreign nationals and stay. It also steps up against illegal migration and fights against illegal employment (Ministère de l'Intérieur, 2020b). Two new officials were appointed by the Minister of Interior and the Minister of Foreign Affairs: an ambassador for migration in mid-2017 responsible to better control migration flows and an interministerial delegate in early 2018 to evaluate the reception of refugees and integration policy (European Commission, 2019b).

The law of 29 July 2015, which was adopted as part of the reform process of the right of asylum, implemented several EU practices (such as acceleration of asylum seeker process, improved distribution of the asylum seekers on the territory, improved housing conditions and provided better financial assistance to families). It also established the first-contact orientation platforms (*Structure du Premier Accueil des Demandeurs d'Asile*, the SPADAs, run by NGOs, whereby applicants must pre-register themselves after which they are sent to OFPRA to proceed with the asylum application (European Commission, 2019b). OFPRA, working under the authority of the Ministry of Interior, is in charge of the application of the Geneva Convention of 28 July 1951 relating to the status of refugees and decides on the asylum and statelessness requests (OFPRA, 2018b).

With regard to the implementation of the Common European Asylum System (CEAS), the government announced in 2017 that it aims to reduce the timescale for processing asylum

applications and to improve the conditions for receiving asylum seekers. Activity levels in accordance with the Dublin Regulation rose considerably due to increased secondary movements in 2017 (European Commission, 2018). In 2018, French policy-makers decided to continue with the reforms of the asylum system. Despite criticism by UNHCR and civil society organizations, France adopted the Law of 10 September 2018 on migration and asylum[5] which allegedly decreases radically migrants' rights and access to asylum, e.g. in the field of judicial protection (Fine, 2019). French policy-makers set out three main objectives by adopting this new piece of national legislation: (a) revising integration policy, (b) accelerate the process of asylum applications and better distribute applicants across the country while reducing the possibility to register applications at the one-stop shop as well as (c) improve the effectiveness of the removal policy (European Commission, 2018). From an EU law perspective, the Law of 10 September 2018 implemented the EU's Students and Research Directive which aims to attract talented foreign nationals with simplified immigration rules.[6]

In 2018, French policy-makers decided to introduce new reforms in view of the new situation on Europe's borders. Created by the law of 7 March 2016, the main instrument used by France to integrate foreigners is the so-called Republican Integration Contract (*Contrat d'Intégration Républicaine* (CIR)).[7] Codified by L. 311-9 of the Code Governing the Entry and Residence of Aliens and the Right of Asylum, it is concluded between the French state and non-European foreigners who seek to settle permanently in France. After signature, the applicant is under legal obligation to participate in training with a view to integrate him/herself in the French society and is called upon to respect the values of French society (Service Public, 2019c). Trainings include civic and language courses, including to learn about French institutions, fundamental freedoms, citizenship, history of France and European integration as well as French language (OFII, 2020). If someone seeks to receive a resident card, he/she will be asked to achieve level A2 in CEFRL language exam and adhere to the principles of the French Republic (OFII, 2020).

In general, the laws of 7 March 2016 and 10 September 2018 introduced new policy tools in the reception and integration of third country nationals (TCNs). In general, TCNs are required to possess a valid travel document and a valid visa in order to be able to enter into French territories. They are also obliged to evidence whether they have accommodation, documents verifying their conditions of stay and sufficient financial means. Short stay visas, if received, are limited to 90 days while long stay visa or residence permit allow its holder to reside in France more than three months. Temporary residence permits, on the other hand, can only be used for a stay no longer than one year and can only be issued to persons with sufficient own resources, internships, employment, private of family reasons (European Commission, 2019b).

Asylum seekers, in principle, cannot ask for citizenship whereas refugees have access to it once they receive their protection status (Fine, 2019). The conditions to acquire French citizenship are manifold. One has to be adult and lived in France for at least 5 years. This minimum length of residence is not required, however, if someone has a refugee status, has lived in a francophone country, done a military service in France or done exceptional services to France (Service Public, 2019a). In 2017, 114,300 people received French citizenship which represents a 4.1% decrease compared to 2016. The main cause behind this decrease was that less people asked French nationality due to reason of marriage (Insée, 2019).

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[5] Loi n° 2018-778 du 10 septembre 2018 pour une immigration maîtrisée, un droit d'asile effectif et une intégration réussie.
[6] Directive (EU) 2016/801 of the European Parliament and of the Council of 11 May 2016 on the conditions of entry and residence of third-country nationals for the purposes of research, studies, training, voluntary service, pupil exchange schemes or educational projects and au pairing.
[7] Loi n° 2016-274 du 7 mars 2016 relative au droit des étrangers en France.

French policy-makers also decided to increase the reception capacities within the framework of the national reception programme (*Dispositif national d'accueil*): the latter's capacity was double compared to 2012 to reach almost 85,000 places available for asylum seekers, mostly located in Ile-de France, Auvergne-Rhone-Alpes and Grand Est. In addition, it was also decided to create 200 places in reception and assessment centres (*centres d'accueil et d'évaluation des situations*) per region and establish appropriate accommodation for people covered by the Dublin Regulation. Despite increased reception capacity, however, is insufficient to accommodate all asylum seekers.

The law on asylum in France, in principle, excludes the possibility to work as an asylum seeker until applications are validated. The Office of Protection of Refugees and Stateless Persons (*Office francais de protection des réfugiés et apatrides*, OFPRA) must, in accordance with the law on asylum, rule on the asylum application within nine months before asylum seekers could apply for any job. Even if a positive decision has been made, however, this group of people face many administrative and legal obstacles to get an employment in France.

On the other hand, refugees are allowed to apply for different positions once they receive their protection status. After this official status has been given, the person is entitled the right to a 10-year residence permit (except in cases of threat to public order or situation of polygamy). Refugees aged between 16 and 25 are asked to register with the so-called Local Missions (*Mission Locale*). Refugees over 25 years old are also allowed to benefit from the Active Solidary Income (*Revenu de Solidarité Active*) which provides people without resources a minimum level of income. Those who are beneficiaries of the Active Solidary Income must register themselves at *Pôle Emploi* which is an organization responsible for the support of unemployed people (Service Public, 2020b). However, the refugee status can be removed if someone is willing to be placed under the protection of the country of origin, if a refugee receives the nationality of the country or the circumstances justifying the refugee status have ceased to exist. The French legal system also allows individuals to be rejoined by family members (especially spouse, children under 19 years old, adopted children and children who are under parental authority) (France terre d'asile, 2020).

Nonetheless, refugees face difficulties on the labour market due to the length of administrative procedures, inadequate language skills, lack of professional experience in France and the recognition of foreign diplomas as well as the lack of social networks. In addition, some employment opportunities are limited to French people, especially in the field of civil service or lawyers or are conditional upon a diploma (Fine, 2019). Furthermore, national statistics show that the unemployment rate of foreigners from outside the EU was 2,8 times higher than that of French people. Approximately 6% of the French workforce are foreigners who are overrepresented among workers (11% are foreigners) and underrepresented among the intermediate professions (3%) and managers (5%).

In the field of economic migration, the Law of 7 March 2016 transposed an EU directive on the conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer.[8] It introduced important changes in welcoming third-country nationals and strengthened the reception of talented and skilful people (European Commission, 2019b). The same legal instrument was used to transpose another EU directive on the harmonisation of the laws of the Member States relating to the making available on the market of non-automatic

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[8] Directive 2014/66/EU of the European Parliament and of the Council of 15 May 2014 on the conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer.

weighing instruments.[9] In general, third country nationals are required to have a valid travel document and a valid visa in order to legally enter the territory of France. Long stay visas are only required if an applicant seeks to reside more than three months. French authorities further require proof of accommodation, documents on the conditions of stay and proof of financial means. Temporary residence permits are issued for a maximum duration of one year and can be asked by applicants with their own financial resources. It can be extended for four additional years if the conditions of issuance of temporary permit are still met (European Commission, 2019b). Furthermore, French authorities may give a "talent passport" to any non-European individual who is highly qualified and is willing to create a company or is ready to invest in France (*Passeport talent*, 2020).

Third-country nationals, in order to be able to work in France, are required to obtain a permit in the form of a visa, a residence permit or a dedicated authorization. The work permit, issued by the Regional Directorates for Companies, Competition, Consumption, Work and Employment, however, is not necessary if the afore mentioned talent passport is received. The latter allows any individual to exercise a salaried professional activity without work permit. The requirement to obtain a work permit is also needless if a third country national seeks to carry out a professional activity for three months in a sector needed for the French economy (European Commission, 2019b).

While France remains the most welcoming EU Member State, it takes its fight against irregular migration rather seriously. Foreigners willing to come to France must be authorized to do so as previous sections have shown. Without a valid residence permit, a foreigner may be identified as an irregular migrant and will be required to return to his/her country of origin. If he/she denies returning voluntarily, French authorities will force him/her and will place him/her under an administrative detention centre. The latter was established by the law of 29 October 1981 and now 25 of them exist across the country. They are not considered as prisons because the deprivation of liberty is not based on judicial but rather on an administrative decision and is not coercive. According to Article L. 551-1 of the Code for Entry and Residence of Foreigners and the Right of Asylum (*Code de l'entrée et du séjour des étrangers et du droit d'asile* (CESEDA)), a person can only be placed or kept in detention for a strictly limited time period and, in principle, valid for five days which can amount, in certain cases, to 20 or 45 days. In France, the average length of detention is around 11 days (Ministère de l'Intérieur, 2014).

In 2018, 24 496 people were kept in detention which represents a drop from previous year (26 003). There were political attempts, especially after the Marseille attack committed by an illegal migrant who should have been placed in detention, to increase the numbers in detention centres. However, according to critiques, the challenge for the French government does only lie in the places but also related to time: some of the detainees are released before the end of the maximum period enabled by the law either because the judge considers that the procedures were poor or because they consider that the constraint of confinement is simply disproportionate. Overall, however, the measures taken by the French authorities have resulted in an increase in evictions but not in a dramatic proportions. In 2018, 15,677 people were forcibly removed representing a 10% increase in evictions compared to 2017 (Birchem, 2019).

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[9] Directive 2014/31/EU of the European Parliament and of the Council of 26 February 2014 on the harmonisation of the laws of the Member States relating to the making available on the market of non-automatic weighing instruments Text with EEA relevance.

Figure 3. Non-EU nationals having received, in 2018, an obligation to leave the territory
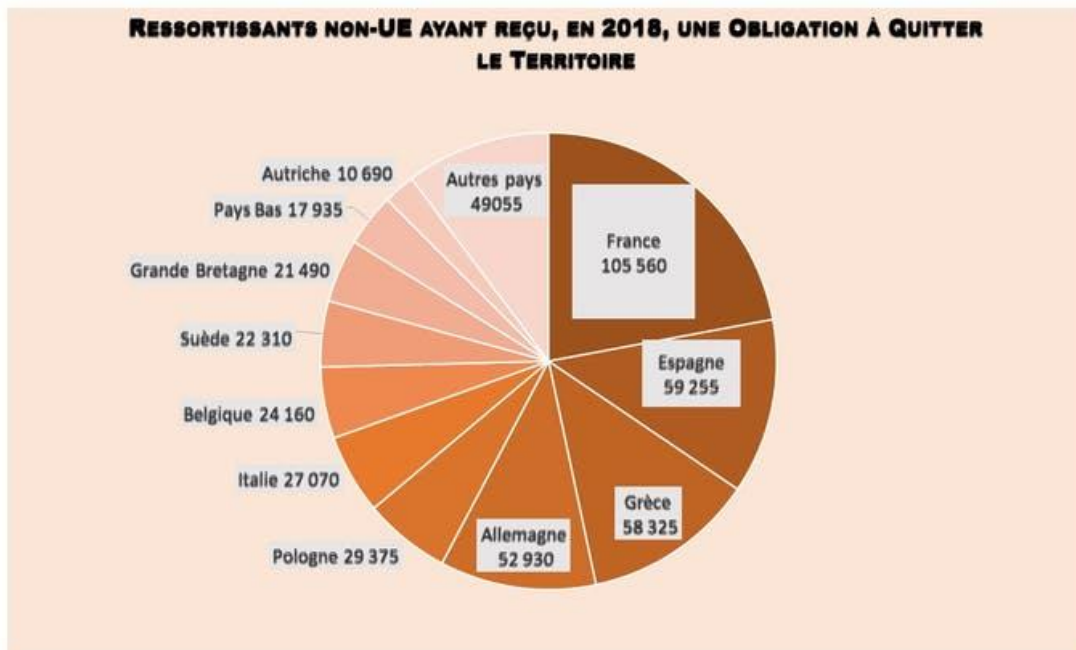
Source: Dumitru, 2019

The term "irregular migrants" may not only be applied to people living in France without authorisation but also to individuals who live in France for years and then become "*sans-papiers*" (people without official papers). For instance, foreign students are simply not allowed to work more than 60% of the legal working time. If they exceed this threshold, they risk the refusal to renew or even withdraw of their residence permit and become "*sans-papiers*". **Figure 3** shows that France expelled the greatest number of people from its own territory. Its main expulsion instrument is the so-called the obligation to leave French territory (*L'obligation de quitter le territoire français* (OQTF)) which is decided by the prefect and requires an individual to leave France within 30 days or without delay in more limited situations (Service Public, 2019b). An individual may also be banned to return to French territory (*L'interdiction de retour sur le territoire français* (IRTF)) which is also decided by the prefect. In both decisions, appeals are possible and can be cancelled by a judge or repealed by the administration. Individuals disrespecting these decisions may face criminal sanctions (Service Public, 2020a).

4. Synthesis

France, often considered as a land of welcome (*terre d'acceuil*), has always been exposed to the question whether to accept requests of stay on its own territory. However, from a historical perspective, France was clearly amongst first countries to recognize the importance of the right of asylum leaving the impression that it has always been willing to welcome people under persecution. Of course, this principle has not always been applied coherently and, as this report has showed, France was willing to limit the rights of foreigners multiple times, including their rights to apply to and take vacant positions. It was nevertheless willing to welcome refugees and sought to integrate them in its society by requiring them to accept the values of the Republic and to learn about French culture, including history or language.

The EU, including France, however, faced a dramatic situation in 2015 and was forced to enact measures of cooperation in the field of migration and home affairs. The French government did not only support the proposals of the Commission to relocate people in need for international protection but, in fact, it played a major role, together with Germany, in promoting policy tools that enhance Europe's capabilities in the field of migration policy and distributes refugees across the EU on the basis of (economic) performance of the Member States. Emmanuel Marcon as well as his predecessor, François Hollande, emphasized the responsibility of France in welcoming people in clear need of international protection but made clear that the country has its own limits determined mainly by domestic political factors.

Within this context, it is hardly surprising that France was willing to play a key role in the migration crisis when it faced an almost unprecedented level of pressure on its migration policy. In fact, France was amongst the best performing EU Member States by relocating high numbers of people in clear need of international protection from Greece and Italy. The French government saw the two Council Decisions as part of the solidarity measures that were taken at EU level with the primary aim to alleviate the (unforeseen) burdens on two Mediterranean (and other) Member States. At the same time, the French government was constrained by domestic political factors: it feared that the extreme right would have considerably grew if it had declared an open and unlimited access to its welfare system to every single asylum seeker. In fact, it emphasized multiple times that the country was on the edge of its capabilities and that it simply could not take in everybody.

The legal system was also affected by and adjusted to the new situation. In particular, French policy-makers decided to reform the process of the right of asylum by speeding up the timescale for asylum requests, balanced the distribution of the asylum seekers in the country, improved the housing conditions and created new financial opportunities for families in clear need of international protection. The legislative process, however, was not without criticisms: NGOs, in particular, raised their voices for the lack of judicial tools available for asylum seekers whose rights were allegedly undermined by the new national measures. At the same time, the French government took care of foreigners whose skills are necessary in different French (business) sectors and created the "talent passport" for all those individuals who could contribute to the French economy in a meaningful way (in the interest of France).

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3. Germany

Country Report Prepared for the DEMOS Project

Author: **Réka Friedery**, CSS Institute for Legal Studies, Budapest, Hungary

1.   Background information

Germany has a population of 80,159,662 (July 2020 est.). The country is the most populous country in Europe, and particularly the far western part of the industrial state of North Rhine-Westphalia attracts larger and denser populations. Roman Catholic make up 27.7%, Protestant 25.5%, Muslim 5.1%, Orthodox 1.9% other Christian 1.1% (other 9% and none 37.8%) the country's religion. Regarding the population, it is composed by the following ethnic groups: German is far the biggest with 87.2%, followed by Turkish with 1.8%, Polish with 1%, Syrian 1% and other 9% (2017 est.). The net migration rate[10] is 1.5 migrant(s)/1000 population (2020 est.) that puts Germany on the 54th place on the world list (Central Intelligence Agency, 2020).

In 2015, Germany and the Russian Federation hosted the second and third largest numbers of international migrants[11] worldwide (12 million each) (United Nations, 2015). Germany, the second top destination for migrants, has also observed an increase over the years, from 8.9 million in 2000 to 13.1 million in 2019 (IOM, 2020). Germany remained the main OECD destination country in 2016, with over 1.7 million new international migrants (more than double the levels registered in 2000, but with a decrease compared with more than 2 million in 2015) arriving that year (IOM, 2020). The fifth-highest remittance-sending country in both 2016 and 2017 was Germany (with total outflows of USD 20.29 billion and 22.09 billion, respectively) (IOM, 2020). Remittances are financial or in-kind transfers made by migrants directly to families or communities in their countries of origin.

The country has been the most popular destination and host countries for asylum seekers in Europe in recent years, admitting approx. 1.5 million asylum seekers between 2014 and June 2017, with the vast majority of asylum seekers arriving between July 2015 and February 2016. And as over 1.2 million first-time asylum applications were lodged in the EU member states in 2015, Germany counted being the first destination country. The arrival numbers of asylum seekers in Germany, culminating in a maximum of 890,000 registered entries and 441,899 asylum applications in 2015. As the Federal Office for Migration and Refugees fell behind in the registration and application procedures, the number of asylum applications continued to increase in 2016 (around 722,000 first time applications), even though the number of arriving asylum seekers dropped since the closure of the Balkan route in March 2016 (Glorius, 2018). By the end of 2017, 970,364 people were recognized as refugees under the 1951 Geneva Convention (compared with 121,837 in Britain and 337,143 in France). An additional 222,683 claims for formal asylum were filed in 2017, and 185,853 more in 2018 (Tridafilos, 2019).

In 2015, the main countries of origin were regions in Europe, Asia and the Middle East.

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[10] The net migration rate indicates the contribution of migration to the overall level of population change. The net migration rate does not distinguish between economic migrants, refugees, and other types of migrants nor does it distinguish between lawful migrants and undocumented migrants.

[11] Foreign-born people.

Table 1. Top ten country of origin of asylum seekers 2015-2018

	2015	2016	2017	2018
Syria	158 657	266 250	48 974	44 167
Other	78 265	120 022	60 531	41 502
Albania	53 805	14 853		
Kosovo	33 427			
Afghanistan	31 382	127 012	16 423	9942
Iraq	29 784	96 116	21 930	16 333
Serbia	16 700			
Not known	11 721	14 659	4067	4220
Eritrea	10 876	18 854	10 226	5571
Mazedonia	9 083			
Pakistan	8 199	14 484		
Iran		26 426	8608	10 857
Nigeria		12 709	7811	10 168
Russian Federation		10 985	4884	3938
Turkey			8027	10 160
Somalia			6836	5073

Source: https://www.bpb.de/gesellschaft/migration/flucht/zahlen-zu-asyl/265710/demografie

Germany listed Albania, Kosovo and Montenegro as safe countries of origin in October 2015, and with the introduction of border controls along the Balkan route and the cooperation agreement with Turkey the arrival of asylum seekers significantly dropped.

Table 2. Asylum seekers by age groups 2015-2018

Age group	2015	2016	2017	2018
0-15	26%	30%	39%	44%
18-24	25%	24%	19%	15%
25-29	15%	14%	11%	10%
30-34	11%	10%	9%	9%
35-39	7%	6%	6%	6%
Other	16%	16%	16%	15%

Source: https://www.bpb.de/gesellschaft/migration/flucht/zahlen-zu-asyl/265710/demografie

Table 3. Gender/age breakdown of the total number of applicants 2015-2018

Gender	2015	2016	2017	2018

Men	69%	66%	60%	57%
Women	31%	34%	40%	43%

Source: https://www.bpb.de/gesellschaft/migration/flucht/zahlen-zu-asyl/265710/demografie

The largest number of refugees in Germany came from the Syrian Arab Republic (532,065), Iraq (136,463) and Afghanistan (126,018). These were followed by Eritrea (55,334), Iran (41,150), Turkey (24,036), Somalia (23,581), Serbia and Kosovo (9,155), 8,119 (Russia), 7,454 (Pakistan), 6,453 (Nigeria) in 2005 (BMI, 2016). Still, in 2018, Germany was the only European country among the top 10 refugee-hosting countries. In 2018, Germany continued to host the largest population of refugees and asylum seekers in Europe and the fifth largest in the world.

According to the results of the micro-census in 2016, more than 18.6 million people living in Germany (22.5% of Germany's population) had a migration background. That includes nine million foreign nationals (10.9% of the population) as well as 9.6 million Germans (11.7% of the population). In absolute terms, Germany has by far the largest foreign-born population (10.1 million). With over 13 million migrants in 2019, Germany had the largest foreign-born population of any country in Europe; the number of immigrants in the country increased by nearly 3 million between 2015 and 2019.

The largest groups came from Poland, Turkey, the Russian Federation, Kazakhstan and the Syrian Arab Republic;(IOM, 2020) followed by Turkish or Polish descent (15.1% and 10.1% respectively) and the Russian Federation (6.6%).

Table 4. Germany Refugee Statistics 2015-2018

Date	Refugees Granted Asylum	Annual % Change
2015-12-31	316115	45.69
2016-12-31	669482	111.78
2017-12-31	970302	44.93
2018-12-31	1063837	9.64

Source: https://www.macrotrends.net/countries/DEU/germany/refugee-statistics

The regional distribution of the population with migration background varies. The old West German states, especially the city states of Bremen, Hamburg and Berlin, as well as the federal states of Hesse, Baden-Wurttemberg and North Rhine Westphalia have a high percentage of persons with a migration background: immigrants and their descendants represent more than 26% of the population of these states. In contrast, the share of persons with migration background is less than 7% in all the "New Länder" (BPB, 2018).

In 2016, there were a total of some 10 million foreign passport holders living in Germany. 18.6 million persons had a migrant background, including immigrants, foreigners born in Germany, and persons who had a parent who was either an immigrant or a foreigner. The group thus accounts for over 22% of the total population. 9.6 million persons with a migrant background[12]

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[12] According to the definition applied by the Federal Statistics Office, a person is considered someone with a migration background "if they themselves or at least one parent did not obtain German citizenship through birth" (loose translation).

were German passport holders; of them, 42% have been German citizens since birth. A further 33% themselves immigrated to Germany as (late) repatriates; the remaining 25% have taken German citizenship. In 2016 alone almost 110,400 foreigners acquired German citizenship (Deutschland.de, 2018). Regarding citizenship, the major reasons not to naturalise are restrictions on dual nationality in Germany.[13]

2. Immigration as a political issue

2.1. Political context

2.1.1. The positions of major domestic parties (including the parties in the government) on the problem of immigration and their evolution, relevance of the immigration issue in the national elections (2015-2018)

In 2015, Chancellor Angela Merkel decided to leave German borders open to war refugees, mainly coming from Muslim countries, as a humanitarian necessity. It not only changed the ethnic, cultural and religious fabric of places and spaces of arrival, but also triggered an increasingly polemic discussion on security, identity and belonging within German society, which was also reflected by the election results of the parliamentary elections of 24 September 2017 (Glorius, 2018). The surge in asylum applications in 2015–16 played a key role in spurring the success of the far-right Alternative for Germany (AfD)[14] party in regional elections in 2016 and the 2017 federal election. The AfD benefited from this emerging discontent, performing well in several regional elections in the spring of 2016. An anti-immigrant social movement called PEGIDA,[15] which had been holding regular rallies in Dresden since 2015, also drew increasing support for its positions. The success of the AfD in the 2017 Bundestag election, in which it won 12.6% of the popular vote and 13% of the chamber's seats,[16] signaled to many that Germany had entered a new, troubling stage in its handling of immigration and diversity. The success of the AfD and far-right populist movements such as PEGIDA is undeniable, they were riding on the populism-wave, and the comfortable consensus that marked the years between 2005 and 2015 is over. Differences over matters of migration and integration between Merkel's Christian Democratic Union and Seehofer's Bavaria-based Christian Social Union, the so-called 'sister parties', have weakened Merkel's latest governing coalition since it was formed in March 2018 (Triadafilopoulos, 2019). Seehofer has made irregular migration a policy priority. In June 2018, he gave Merkel an ultimatum to find a bloc-wide solution to the question of migrants and refugees or face the possible collapse of her government (Deutsche Welle, 2018).

Once the refugee crisis broke out in the summer of 2015, the AfD further stressed its strong antimmigration position and criticized the welcoming asylum policy enacted by Chancellor Merkel. Moreover, the party gained a strong erelectoral support in East Germany, for instance, claiming 27% of the vote in the state of Saxony. Following the elections, the Union parties, the FDP and Alliance 90/The Greens started negotiations about a so-called 'Jamaica coalition'. However, the negotiations failed by the end of the year, and no new government was formed in 2017. Subsequently, CDU/CSU and SPD started coalition talks, which led to another 'grand

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[13] At least one parent must be a German citizen or a resident alien who has lived in Germany at least 8 years.

[14] The AfD was founded in February 2013 as a single-issue party, criticizing the Euro, and more generally the European Union. In the federal election of 2013, the party gained 4.7% of the vote, reaching a near-success in such a short time since its founding, but missing the threshold of 5% to enter the parliament. After the election, the AfD began shifting its focus from the Euro crisis to the pressingissue of immigration.

[15] Patriotic Europeans against the Islamization of the West.

[16] The AfD won 91 seats in the Bundestag, marking the first time an extreme right-wing party secured such representation in the Federal Republic, and giving it the most seats of any opposition party.

coalition' in March 2018. All parties represented in the Bundestag took a stance on migration, integration and asylum in their electoral programmes, and their views on specific measures and steering concepts differed markedly. These were following:

a) Family reunification for beneficiaries of subsidiary protection

It was one of the issues on which the debate focused. On 16 March 2016, the right to family reunification had been suspended for benefciaries of subsidiary protection. Originally, this suspension was to remain in place until 16 March 2018. The key question was now whether the suspension was to be prolonged beyond March 2018 or replaced by an alternative solution. The SPD was against a prolongation, the CDU/CSU supported a prolongation of the suspension, the AfD called for a permanent stop to family reunification for beneficiaries of subsidiary protection), while The Left demanded a resumption of family reunification for beneficiaries of subsidiary protection. The Alliance 90/The Greens also supported "unbureaucratic family reunification" for beneficiaries of subsidiary protection.

A potential cap on the number of refugees which would be accepted in any given year was another key issue during the election campaign. The CSU repeatedly called for a limit of 200,000 persons within the humanitarian admission per year during the election campaign. Chancellor Angela Merkel (CDU) refused this and the CDU did not plan to introduce such a cap. After the elections, the two parties agreed on a common line and formulated that 'a total of 200,000 admissions per year on humanitarian grounds (refugees and asylum seekers, beneficiaries of subsidiary protection, family reunification, relocation and resettlement, minus forced and voluntary returns of future beneficiaries of protection) shall not be exceeded' while at the same time a commitment 'to the right to asylum in the Basic Law and the Geneva Convention and to our obligations under EU law to process any application for asylum' was made. Alliance 90/ The Greens were against a cap. This cap and the discussion about family reunification were key issues during the negotiations about a potential CDU/CSU, FDP and Alliance 90/The Greens coalition after the elections; and they failed to agree.

b) Integration policy

In their electoral programme, the CDU/CSU called for binding agreements on integration measures: in case of a refusal to co-operate or non-compliance with the law there should be consequences "up to the loss of the right to stay". The SPD's electoral programme put education at the centre of integration policy and that "the necessary refugee integration measures have to be borne exclusively by the local authorities". In this regard, in 2017, additional Länder introduced so-called residence obligations, which forces particular groups of beneficiaries of protection as well as certain other status groups to take up residence at a specific place (positive residence obligation) or restricts taking residence in specific places (negative residence obligation). The AfD demanded that immigrants with a permanent right to stay "assimilate", saying that it was their duty to "adapt to their new home and to the German predominant common culture, not the other way round". The FDP's electoral programme claimed that current integration courses were only an "official minimum standard" and did not "meet the requirements of our modern immigration society any more". The party called for a "new, modular integration programme which offers individualised support across several levels". The Left emphasised that integration was a mutual process which was a task for both immigrants and society as a whole. Alliance 90/The Greens criticised in their electoral programme that the 'inhumane tightening of the asylum law in the last few years' hampered integration. Among other things, the party called for an integration law, for access to integration courses regardless of the residence status and for decentralised refugee accommodation.

c) Age assessment of unaccompanied minors

For young migrants, a lot depends on the question whether they are legally adults or not. Their age has an impact on whether they are entitled to specific support for children and youths, whether child-specific bans on removal apply etc. That is why the question of how age is assessed has repeatedly been discussed in the last few years. By end 2017, the debate was fuelled once again by a media report which claimed that many unaccompanied minors lied about their age and by a murder in Kandel, where a jogger was killed by a refugee who had been registered as an unaccompanied minor, but was later found to be of age in a court ordered medical report. Several politicians called for a law to make medical age assessments obligatory. Expert associations have rejected these calls and pointed out that it is difficult to determine a person's age and that errors are common. A heated debate focused on the advantages and disadvantages of medical age determination methods and on the existing rules. Thomas de Maizière, who was minister of the interior at the time, demanded at the beginning of January 2018 that Book VIII of the German Social Code be amended accordingly and that standardised procedures be developed.

2.1.2. Relevance of different arguments used for or against immigration in the political and public debate

The 2015 migration flows changed the ethnic, cultural and religious fabric of places and spaces of arrival, and generated debates on security, identity and belonging within German society.

Asylum migration remained at the centre of the migration policy debate in 2016. Over the course of the year, the political, societal and administrative focus shifted gradually towards the integration of recognised refugees into society at the local level and voluntary and forced returns of those persons whose asylum applications had been rejected. At the start of 2016, the migration policy debate was shaped by the incidents during the new-year celebrations of 2015/16 in Cologne and other German cities, where hundreds of women had experienced sexual assaults. Among the suspects were foreign as well as German nationals; among the non-German suspects there were numerous refugees (Federal Office for Migration and Refugees, 2017).

This was followed by a number of legal initiatives, including the Act on the Faster Expulsion of Criminal Foreigners and Extended Reasons for Refusing Refugee Recognition to Criminal Asylum Seekers or the Act on the Introduction of FastTrack Asylum Procedures (Asylum Package II). The latter introduced the possibility of fast-track procedures in special reception centres and restrictions to family reunification for certain beneficiaries of subsidiary protection. The adoption of the Act was preceded by controversial discussions both within the government coalition and broader society. Especially the restriction on family reunification was widely criticised by civil society groups and by the opposition (Federal Office for Migration and Refugees, 2017).

In 2016, the Heads of State and Government of the EU Member States and the Turkish Prime Minister signed an agreement (EU-Turkey Agreement) which provides for the return to Turkey of all third-country nationals who irregularly entered the EU from Turkey and are not in need of protection, and for the admission of Syrian refugees from Turkey in the EU Member States.

The agreement was criticised strongly by the opposition and by parts of German and European civil societyy (Deutsches Institut für Menschenrechte (DIM), 2016; Elkenberg/Keßler, 2016; Deutschlandfunk, 2017). When in 2016 the border crossings along the Balkan route were successively closed, parts of the government welcomed this, whereas the chancellor stressed the importance of a European solution over the unilateral closing of borders (CDU/CSU 2016a; Zeit Online 2016). The EU-Turkey Agreement and the closure of the Balkan route led to a substantial decrease in the number of new arrivals from March 2016.

The integration of refugees was an important issue and numerous integration measures were introduced at the Federal, Land and local level. The civil society supported increasingly the asylum seekers and refugees in 2016. The entry into force of the Integration Act on 6 August 2016 presented important positive changes in the integration for asylum seekers and for persons whose deportation has been suspended. However, several provisions, especially the differentiation according to the prospect to remain were subject to controversial debates.

In autumn 2016, return policy increasingly became a central point of discussion within the migration policy debate, for example through the conclusion of an agreement with Afghanistan aimed at easing both forced and voluntary return procedures and as a result of which several collective deportations have taken place since December 2016. This was criticised by pointing out that Afghanistan is not a safe country for forced returns. The focus on return was reinforced through the attack on the Christmas market in Berlin on 19 December 2016 (Federal Office for Migration and Refugees, 2017). According to the Federal Minister of the Interior Thomas de Maizière, the preceding failed attempts to deport the person who later committed the attack were the reason to prepare a bill to improve the enforcement of the obligation to leave the country. The bill was adopted by the Federal Cabinet on 22 February 2017 (Jansen, 2016). Among other things, it foresees the examination of personal data from the smart phones of asylum seekers without their consent and the option to oblige them to remain in reception centres for a prolonged period of time (Kölner Stadtanzeiger, 2017; Jansen, 2016).

The public and political debate following the attack can be seen in the context of individual attacks, assaults and other crimes perpetrated by or attributed to asylum seekers which sparked a broad and controversial debate. On the other side, the country also experienced a high degree of rejection and attacks on asylum seekers in 2016.

The high number of newly arrived asylum seekers within a comparatively short space of time placed a huge burden on established administrative structures, accommodation at initial reception facilities, registration, the asylum procedure as well as the administrative courts that have had to deal with a significant increase in appeals against asylum decisions, follow-up accommodation and timely participation in society (Grote, 2018). Public discourses developing around the migration topic are also highly selective, often stereotypical, and tend to mingle various topics that are currently at stake in order to arrive at simplified solutions. This is the case in the recent debate on refugee migration in Europe, which relates to debates on culture, identity, security, criminality and religion and is increasingly instrumentalised by right wing parties, who collected a considerable share of votes during the last parliamentary elections throughout Europe (Glorius, 2018). Reforms to immigration, integration and citizenship policies introduced since the late 1990s have withstood the backlash. Although public opinion is not as favourable as it was before or during the 2015 refugee crisis, majority of younger Germans and residents of large cities and towns remain committed to diversity (Triadafilopoulos, 2019).

There was unparalleled civic support for refugees which often enabled housing and supplies for the refugees since the public structures seemed to have been temporarily overstrained, considering the sheer number of asylum seekers. At the same time, violent acts against refugees and their accommodation facilities also increased significantly. Studies conducted by the Bertelsmann Foundation about the welcoming culture in Germany confirm this trend: Germany as an "open and mature society shaped by immigration" in 2015 and 2016, but scepticism towards immigrants has also grown. The study also shows that a society shaped by immigration is largely being viewed as normal by the younger generation. The future assessment of immigration will also depend on the successful integration refugees into society. Experiences with refugee migration in the past have shown that approximately 50% of the refugees become

employed within five years of arriving in Germany Bundeszentrale für politische Bildung (BPB) (2018).

2.2. Policy in action

2.2.1. Assessment of the governmental position on immigration, together with the information on its evolution (2015-2018)

The central point of the coalition agreement that the government intends to avoid any loss of control in the future: it aims at reinforcing efforts "to govern and to limit" migration towards Germany and Europe "so that a situation like in 2015 is not replicated" (Thym, 2018).

Merkel opted to keep Germany's borders open in late August 2015 as other countries in the region were closing theirs, declaring, "We can do this" (Wir schaffen das). At the end of August 2015, according to article 17 of the Dublin III Regulation, Germany decided to examine asylum claims of Syrian citizens, without sending them back to the country of first entry.

Germany was effectively committing to a permissive asylum policy. Some days later, she further stressed that there would be no legal limit to the number of refugees Germany would be accepting. Her message resonated around the world, signalling migrants the possibility to successfully seek asylum in Germany. Thus, the temporary asylum policy change (i.e., the suspension of the Dublin procedures), coupled with Merkel's speech, constituted a "pull" effect for asylum seekers and migrants. Over one million asylum seekers entered Germany in 2015, leading to 476,649 applications for asylum that year and another 745,545 in 2016. But as of 21 October 2015, Germany put the standard Dublin procedures back into place

The years since 2015 undoubtedly have seen a strengthening of anti-immigrant sentiment among segments of the German population and the political class. This shift in the public mood has led to some important changes in policies: measures introduced to reassert control over migration flows have sharply reduced annual admissions of asylum seekers (Triadafilopoulos, 2019).

At the Berlin Christmas market in December 2016 that left 12 people dead. It was carried out with a truck by a failed Tunisian asylum seeker who had not been deported after his application was rejected. The grand coalition government responded to these developments by moving to reestablish control over Germany's frontiers, reforming asylum policy, and redoubling efforts to process a massive backlog of asylum applications and speed the integration of those granted protected status. Rejectected were sent back to their countries of origin. Germany spearheaded a 2016 EU deal with Turkey aimed at stopping the flow of refugees to Europe. The Turkish government pledged to better control its coastlines and accept rejected asylum seekers in exchange for 6 billion euros (to help it meet the needs of the 3.5 million Syrian refugees it was sheltering) and the possibility of visa-free travel for Turks in the EU. These measures sharply reduced the number of asylum applications in 2017 and 2018.

The peak of the refugee crisis in Germany was reached in the second half of 2015. The government enacted a permissive asylum policy, while the German Chancellor encouraged a welcoming culture, possibly further increasing arrivals. Starting from June 2015, the number of registrations in the EASY system was increasing at a higher pace than the number of asylum applications. After Merkel's speech at the end of August, the German share of extra-EU first-time asylum applications increased sharply (BAMF, 2017).

The fact that the aspect of asylum is dominating political debates and the calls for limiting refugee migration are growing obscures the fact that Germany will have to continue to rely on immigration from abroad due its demographic development. The gradual opening of Germany for (qualified) labor migration abroad is also impacted by this situation. Lobbying efforts for

more liberal immigration laws by the German industry have led to a reduction of migration barriers and a paradigm shift in migration policies. For some years now, representatives from politics and business have been discussing the development of a "welcome and recognition culture" in order to positively influence this decision. What is intended, is to increase Germany's attractiveness for potential (qualified) immigrants. The objective is to support a development of the state into a true "home" for migrants and their descendants. Initially, the term referred primarily to the influx of specialists but has been increasingly connected to the refugee issue since 2015 (BMI, 2016).

During the summer of 2018, a fierce debate on how to counter "secondary movements" (to Germany) of potential asylum seekers took place inside the German government. The discussions nearly put an end to the parliamentary group between the CDU and the (Bavarian) CSU, which had existed with a very short interruption in 1976 since 1949. The CSU opted for full controls at the German-Austrian border and the refusal of entry for all persons that are not in the possession of valid documents for an entry to Germany. In this regard, German law should be applicable and so no Dublin procedure would be necessary. The CDU and in particular Chancellor Angela Merkel preferred a "European solution" in cooperation with the other Member States based on agreements under Article 36 of the Dublin III Regulation.[17] This provision allows for Administrative Arrangements, one signed with Greece, one with Spain only for the purpose of "the exchange of liaison officers" and the "simplification of the procedures and shortening of the time limits relating to transmission and the examination of requests to take charge of or take back applicants."

As a compromise, the so-called "Asylkompromisse", it was decided to extend the "fiction of non-entry" that applies to the (non-Schengen) transit zones (Transitzentren) of international airports to this border area. This fiction of non-entry should allow for controls on German soil and the refusal of entry would (legally speaking) push the person that had already reached German soil outside the territory into a perceived no man's land between the controlling officer and the Austrian border. This effect might be called a "border spell" as the persons – unlike in the non-Schengen zone of an international airport – have already legally and physically crossed the border between the two states and had previously already entered the Schengen territory. According to its construction, the zone lies between the controlling officer and the physical Austrian border, and would be transformed by the refusal of entry into a non-Schengen territory and an EU Law free zone, where German national law and not the SBC or the Dublin III would be applicable (Hruschka, 2019).

The German economy being Europe's largest is a leading exporter of machinery, vehicles, chemicals, and household equipment. Germany benefits from a highly skilled labor force, but, like its Western European neighbors, faces significant demographic challenges to sustained long-term growth. Low fertility rates and a large increase in net immigration are increasing pressure on the country's social welfare system and necessitate structural reforms. Also, it is unsurprising Germany and Sweden are the favoured destinations. It is not financial assistance that attracts people per se, but some guarantee that the state will support them and enable them to become active members of society (Dimitriadi, 2016).

Economic immigration, especially for highly skilled foreigners, remains a top priority. New policies, most notably the Integration Act of 2016, have been introduced to assist in the labormarket integration of refugees, an unheralded move that aims at both harnessing the influx of refugees for economic purposes and avoiding the mistakes of the past by making economic and social integration public-policy priorities. Nevertheless, the Skilled Immigration Act marks an important step towards the normalisation of German migration policy. Since the new law is

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[17] https://eur-lex.europa.eu/legal-content/en/ALL/?uri=celex%3A32013R0604.

limited to skilled labour migration, we can expect future governments to adopt bills playing with the "immigration" metaphor, and they may be eager to prevent European legislation from limiting their room for manoeuvre decisively. The Skilled Immigration Act shows that demographic change and the shortage of skilled labour in some labour markets is gradually resurfacing as an alternative reference point, for which the political dynamics are different, since the general public and most political parties tend to support moderately generous entry rules. Moreover, there can be feedback loops between the rules on labour migration and the debate on asylum (Thym, 2019).

2.2.2. Challenges in implementation of the common EU migration policies in the relevant country

There is an important debate about migration for economic purposes by third-country nationals. German debate on migration are safe countries of origin, dual citizenship or the upper limit, which both supporters and opponents employ as a symbol to demonstrate their general approach towards migration, asylum and integration policy.

The so-called 'upper limit' became popular at the height of the "refugee crisis" to signal that uncontrolled immigration should come to an end (although the political justification shifted towards the administrative, social and financial limitations of integration efforts in the meantime). It was often associated with a possible rejection of the border, although the CSU never spelt out clearly what the upper limit concept might involve in practice.

Reform of the Dublin Regulation has important legal and practical repercussions. Germany's minister for the interior, Horst Seehofer, had famously dubbed the Western Balkans route the "reign of illegality" during 2015/16, thereby indicating that Germany's open borders policy and "the wave-through approach" were contradicting the spirit of European rules: no more than 10% of all surrender procedures initiated by domestic authorities were 'successful'.

During the crisis, asylum procedures were infamously lengthy and resulted in massive delays and quality deficits despite considerable efforts on the part of the federal asylum office to hire new staff and to increase efficiency. Moreover, swift asylum decisions are to be accompanied by more efficient return procedures, which is hardly surprising given that roughly half of all asylum applications are being rejected, if no protection status under German or European law is granted. As a result, there are more and more people in Germany which are obliged to leave the country, but do not do so, since German authorities are notoriously ineffective in complying with the EU law obligation for an effective return policy.

The coalition agreement voiced explicit support for a "fair distribution mechanism" (which, in practice, would entail that less asylum seekers end up in Germany than under the Dublin III regime). Moreover, it reaffirmed that the primary responsibility of the state of entry shall be a 'paramount consideration', while adding, somewhat ambiguously, that an unlimited jurisdiction of the state of entry cannot be the answer.

It supports further harmonisation of asylum procedures and reception conditions, including the Commission's proposal that full social benefits shall only be available in the Member State responsible under the Dublin rules.

Moreover, there are abstract references to Frontex as a "veritable border police", cooperation with UNHCR, IOM and countries of origin or transit, relocation and resettlement (depending on the number of entries via the asylum system) as well as the root causes of irregular migration – although the coalition agreement shies away from giving us detailed information of what that they want to do in practice. Finally, the government states that intra-Schengen border controls are "justified" for as long as the external EU borders are not "protected" effectively, thereby indicating that the new government is not willing to terminate border controls in the near future.

There was a lively and highly politicised debate over family reunion in Germany, which, for legal reasons, concentrated on those with subsidiary protection, since the EU legislature had laid down a generous regime for refugees under the Geneva Convention in the Family Reunification Directive by exempting the latter from the economic self-sufficiency, accommodation and integration requirements most third-country nationals (and German nationals) have to comply with. As a result, the Bundestag cannot change family reunification rules for Convention refugees. The political desire to curtail family reunification rules concentrated on those with subsidiary protection as a result. While German immigration law had originally applied the "ordinary" regime for third-country nationals, including the financial self-sufficiency requirement, the Bundestag had aligned rules for all beneficiaries of international protection in August 2015. These generous new rules were suspended a few months later at the height of the "refugee crisis" for a two-year period. In contrast to the heated debate on family reunification for beneficiaries of subsidiary protection, other family migration issues do not feature in the agreement. The CDU did not insist on its earlier call for a revision of the Family Reunification Directive nor did the grand coalition revisit the long-standing debate on language requirements as a precondition for family reunification with third-country nationals or Germans. Of course, these questions may resurface during the next Parliament, but for the time being the grand coalition seems to be exhausted from discussions on subsidiary protection.

2.2.3. Existing and potential conflicts between national policies and common EU policy position

Some EU Member States, including Germany, argued that the operation 'Mare Nostrum' was an important pull factor for human smugglers and irregular immigrants, and served as a "bridge to Europe" as emohasised by the German interior minister de Maizière. The number of arriving refugees became a priority of the government, which sought to increase cooperation especially with Turkey to this end (Bundesregierung 2016f). On 18 March 2016, the Heads of State and Government of the EU Member States and the Turkish Prime Minister signed an agreement (EU-Turkey Agreement) which provides for the return to Turkey of all third-country nationals who irregularly entered the EU from Turkey and are not in need of protection, and for the admission of Syrian refugees from Turkey in the EU Member States (see Chapter 4.3.3). The agreement was strongly criticised.

In February and March 2016, the border crossings along the Balkan route were successively closed by the neighbouring States. Parts of the government welcomed this, whereas the chancellor stressed the importance of a European solution over the unilateral closing of borders. Together with the EU-Turkey Agreement, the closure of the Balkan route led to a substantial decrease in the number of new arrivals from March 2016. In autumn 2016, return policy increasingly became a central point of discussion within the migration policy debate, for example through the conclusion of an agreement with Afghanistan aimed at easing both forced and voluntary return procedures and as a result of which several collective deportations have taken place since December 2016. This was criticised by representatives of the opposition, by welfare associations and by volunteers working with refugees who have repeatedly pointed out that Afghanistan is not a safe country for forced returns (see Chapter 7.3) The reasons for failed deportation attempts can be varied, but they include ongoing appeal processes, a lack of cooperation with authorities in the countries of origin of the migrants affected and also failed asylum seekers going into hiding.

Furthermore, there has been a total ban on deportations to Syria due to the ongoing security situation there, meaning that even failed asylum seekers pegged for deportation would not be sent there for the time being.

In 2016 only 272 people have been relocated from Greece and Italy out of the 120,000 that was originally agreed upon. Germany has presented the hotspots as a prerequisite for relocation, however, despite Italy having three hotspots, relocation numbers remain extremely low. This is partly due to the unwillingness of member states to put themselves forward for the challenge and partly due to flaws in the system (Dimitriadi, 2016).

At the end of 2019, Germany has proposed an automatic relocation scheme for asylum seekers in which their applications would be examined at the EU's external borders. Key aims were to scrap the Dublin regulation under which asylum claims are dealt with in the country of first arrival. To reform the Common European Asylum System (CEAS), the document calls for an initial assessment of asylum applications at the external border, a new regime for determining which member country is responsible for examining an application, and measures to stop asylum seekers moving illegally from one country to another. There is no new proposal on returning people to their home country, which is a key issue as less than half of rejected migrants are successfully returned. In the German plan, EASO, the EU agency for asylum, would be responsible for the asylum claim and would determine which member state is responsible for examining the asylum application. Regarding access to the welfare state: "accommodation and social benefits would be provided only in the member state responsible" but "social benefits should be funded EU-wide as far as possible" and "paid according to an index which would ensure that benefits are at an equivalent level across the EU, independent of the member state" (Barigazzi, 2019). Such an automatic relocation scheme is designed to be permanent and not merely used in a crisis, with several Member States regarding it that could make migration seem attractive.

3.   Immigration as a legal issue

3.1.   Brief description of the applicable legal framework in a relevant country together with the analysis of its actual implementation

In 2019 there was an extensive reform of German asylum and migration legislation. Seven laws were enacted as part of the so-called "migration package" in July 2019 and introduced numerous changes to the Asylum Act, the Residence Act, the Asylum Seekers Benefits Act. The core of these changes were the Skilled Workers' Immigration Act and the Act on Temporary Suspension of Deportation for Training and Employment. The Skilled Workers' Immigration Act is to "create a legislative framework for selective and increased immigration of skilled workers from third countries." The Act on Temporary Suspension of Deportation for Training and Employment, on the other hand, was passed to provide certain foreigners, whose deportation has been temporarily suspended, with legal certainty regarding their residence status and create the prospect of a long-term stay.

a) Asylum Act

The right of asylum is enshrined in Article 16a of the Basic Law of 1949 as a fundamental right. It is the only fundamental right which is applicable only to foreigners. The admission procedure for asylum seekers is governed by the Asylum Procedure Act. Asylum seekers whom border authorities permit to enter the Federal Republic of Germany or who are found in the country without a residence permit are transferred to the nearest reception centre of the relevant state. Using the nation-wide system for initial distribution, they are assigned to reception centres of the individual German states according to a formula defined in the Asylum Procedure Act (Federal Ministry of the Interior, Building and Community, 2020). The Germany-wide "EASY" distribution system is used to determine which German state is responsible for acceptance (Berlin.de, 2020).

The Federal Office for Migration and Refugees provides counselling and legal assistance to asylum seekers. This is regulated in a new provision, but there are concerns with regard to the quality of these new counselling arrangements as it raises questions over the independence and potential conflict of interests. Thus, ECRE insists both on the role and the importance of NGO counselling to adequately inform asylum seekers, as it ensures a fair and efficient asylum procedure. Another important change relates to the access to employment of asylum seekers, the bill foresees that an asylum seeker is entitled to employment. In addition, "arrival, decision and return" (AnkER) centres were established in August 2018. The main purpose is to centralise all activities at one location and to shorten the asylum procedure, which is a concept that was already applied in the "arrival centres" across Germany and in "transit centres" set up in three locations in Bavaria. Most Federal States have not participated in the AnkER centres scheme. At the end of 2019, only three Federal States had agreed to establish AnkER centres, in most cases simply by renaming their existing facilities so that in many cases all that had changed was the label on such centers (Knight, 2019).

b) Asylum Seekers' Benefits Act

One of the main 2019's amendments to the Asylum Seekers' Benefits Act is the extension of the waiting period for applicants to access "normal" social benefits, thereby delaying the access to benefits of an additional 3 months. Individuals residing in these centres are considered as constituting a "community of destiny" in which it is wrongly presumed that they will conduct common activities (e.g. buying groceries, cooking together etc.) which allow them to save costs. Another radical change is that persons who have already been granted international protection in another EU Member State, and whose obligation to leave the territory is enforceable, are excluded from all social benefits after a transition period of two weeks (Asylumineurope, 2019).

c) Residence Act

The main changes to the Residence Act relate to the enforcement of the obligation to leave the federal territory. Overall, the introduction of the 'Orderly Return Law' substantially facilitates the use of "custody pending departure" under Section 62b with the aim to enforce deportations. The 'Orderly Return Law' is to make it harder for rejected asylum seekers to avoid deportation by reducing the barriers to imposing detention for deportees. The 'Orderly Return Law' which officially is called the 'Second Law for the Improved Execution of Deportations' was introduced on August 21, 2019. It was designed to give more power to authorities to apply sanctions against those who do not comply with the lengthy deportation procedures in Germany. Under the new law, people who are a flight-risk can now be detained prior to their deportation.

Furthermore, the law allows authorities to start proceedings against migrants and refugees who lie on their asylum applications.

Also, new type of detention was established that can be described as 'detention to obtain participation', whereby foreigners can be detained when they fail to comply with their obligations to cooperate and to clarify their identity.

The rules on pre-removal detention have also been modified and the risk of absconding (*Fluchtgefahr*) becomes the focal point allowing the authorities to detain a person for the purpose of deportation. Overall, these measures make it easier to integrate and deport migrants. The seven laws are a mixture of softer measures, like easier immigration and better job opportunities, and tougher deportation rules. InfoMigrants explains what the laws mean for refugees, asylum seekers and migrants in Germany.

Another law of the new policy package is to make it easier to integrate skilled non-European foreigners into Germany's labor market. This pertains both to foreign citizens who have applied for asylum in Germany and to individuals applying for a work visa in a third country (Bathke,

Benjamin, 2019). "Skilled workers" within the meaning of the Skilled Workers' Immigration Act are university graduates and highly qualified workers from third countries outside of the EU who have a domestic, a recognized foreign, or an equivalent foreign university degree (skilled worker with academic background) or who have completed domestic or equivalent foreign qualified vocational training (skilled worker with training). Those skilled workers may immigrate to or remain in Germany in order to look for a job and work in their area of expertise, provided they possess the required German language skills and have means of subsistence (US Library of Congress, 2019).

3.2. Existing and potential conflicts between national law and legal practice of a relevant country and applicable EU rules

Since August 2018, asylum seekers can also be denied entry at the Austrian-German land border if the authorities are able to demonstrate within 48 hours that they have already applied for asylum in Greece or Spain. In these cases, the transfer to the concerned Member state is not based on the Dublin Regulation but on administrative arrangements between Germany and these countries. Between August 2018 and October 2019, only 40 forced returns took place on the basis of these agreements and the Administrative Court of Munich raised serious doubts about the legality of the new procedure in a decision of August 2019.

The authorities continued to face criticism for their failure to carry out deportations as a total of 32,482 returns or Dublin transfers which had been scheduled in 2019 did not take place. The government was unable to state the reasons for the failure of deportations in the overwhelming majority of cases. Nevertheless, the focus in the political debate remained on deportations which supposedly failed as a result of absconding. As a result, a reform was carried in August 2019 to improve the enforcement of the obligation to leave the country. The new measures include: (i) increased powers for law enforcement authorities to access apartments for the purpose of deportation; (ii) new criteria to order detention based on an alleged risk of absconding – such as the refusal to cooperate in obtaining travel documents or the non-compliance with instructions of the authorities; (iii) a new ground for detention to enforce the 'obligation to cooperate' with the authorities; and (iv) the possibility to hold pre-removal detainees in regular prisons until June 2022 (Informationsverbund Asyl und Migration, 2020).

Germany along with several Member States, agreed in individual cases to voluntarily take in a certain number of rescued refugees in distress at sea. The Dublin III Regulation provides the legal basis for doing so. Opposition parties and civil society actors welcomed the willingness of the Federal Government but criticised that the actual transfer of refugees rescued in distress at sea to Germany frequently takes too long. Moreover, they argue that distribution is based on the Königstein key and not on the willingness of the cities and municipalities to admit them.

Significant problems were noted in the context of family reunification of asylum seekers living in another European state (such as Greece and Italy) with family members in Germany pursuant to the provisions of the Dublin regulation. Several issues are also reported in family reunification procedures with family members trying to join a beneficiary of protection in Germany. This includes a lack of coordination among the relevant authorities, an increase in the number of pending family reunification procedures, and waiting periods that can reach up to a year or more. The length of family reunification procedures raises particular concern when it comes to unaccompanied children, as German courts have argued that their right to family reunification may end once they become adults. Nevertheless, courts have also repeatedly urged the authorities to prioritise family reunification procedures of unaccompanied minors who are about to turn 18 years old.

Another serious matter of concern, which violates the current Return Directive, is the place of pre-removal detention. The bill provides that, until 2022, pre-removal detention can be in

regular prisons instead of specialised institutions, although detainees will be held in premises separate from inmates.

In July of 2017, stricter regulations for those with exceptional leave to remain and for people classified as "potential dangers" were implemented through the Law for Better Implementation of the Obligation to Leave the Country. It stipulates that people who pose a "danger for life and limb of third parties" can be more easily detained prior to deportation and be monitored through an electronic ankle bracelet. In the future, the Federal Office for Migration and Refugee may also export data from laptops and mobile phones to determine the identity and origin of an asylum applicant. Critiques pointed out that all refugees coming to Germany were being treated like potential criminals and subjected to increasing disenfranchisement (ECRE, 2019a). In addition, everyday circumstances will serve as an indicator of a risk of absconding, such as the fact that a person has paid money to come to Germany or that they made false statements at some point, even if these have later been corrected. This is a blatant shift to the disadvantage of those affected and also contradicts the principle that detention should only be used as a last resort (ECRE, 2019b).

Germany concluded Administrative Arrangements with Portugal (under Article 36 Dublin III Regulation), Greece and Spain. Such agreements exist between Germany and Austria and – concluded in September 2018 – between Germany and Portugal. Some of the criticism are that the application of such constructions within the Schengen area presupposes the existence of (quasi) permanent border controls. Such controls are not only violating the main principle of the Schengen acquis the free movement within the Schengen area (Hruschka, 2019). Also, it should not be considered as a "gentlemen's agreement", nor as an administrative arrangement under Article 36 Dublin III Regulation but rather as a binding bilateral treaty whose provisions establish obligations that go beyond the scope of obligations established under the Dublin III Regulation. This contravenes EU law which does not allow legislation at national level or bi/multilateral inter-se agreements in policy areas of shared competence. In fact, through such agreements, Germany cooperates with Member States serving as a key point of entry in the EU by creating a "Quasi-Dublin" system creating obligations that go beyond the scope of the Dublin III and limitations that are not foreseen in the Regulation (EDAL, 2018).

Regarding asylum law, recognition rates differ strongly. It is exclusively a responsibility of the Federal Office for Migration and Refugees, which makes the initial decision about asylum applications. One notices considerable differences if one extrapolates the decision to the 'länd' where they are made (Riedel & Schneider, 2017). The case officers are not only influenced by the credibility of individual requests but preferences and moods that prevail in the land guide their decisions thus decentralised decision making on asylum requests has in all likelihood a considerable discriminatory potential (Schneider & Riedel, 2017).

The airport procedure (at the airports of Frankfurt/Main and Munich) in Germany has severe deficiencies in practice: asylum seekers have reduced procedures without comprehensible information and adequate interpretation, applicants with special procedural needs such as pregnant women or persons with disabilities are subjected to lengthy interviews with the BAMF without benefitting from "adequate support" guaranteed to them by the recast Asylum Procedures Directive, the entire airport procedure is without effective access to means of communication or remedies against arbitrary detention (ECRE, 2019c).[18]

4. Synthesis

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[18] http://www.asylumineurope.org/news/23-05-2019/ecre-report-airport-procedure-germany.

The German migration policy is Janus-faced. On one hand, we can observe that immigration is a permanent feature in the German society. Germany can look back on a long history of migration. This is underlined by the fact that Germany is a country of immigration, migration is not a new phenomenon, there were several waves towards Germany. On the other hand, the state steadily builds up the new direction of its migration policy and the focus is strongly on the liberal approach regarding the necessary migration of missing labour power and on integration. The focus in more on restrictive measures and on the reduction of arrivals, and on the integration of refugees. Germany gradually developed from a country that accommodated guest workers to a country with regulated immigration.

Altough Germany is one of the most prominent advocate for harmonising several aspect of migration policy, whith introducing the Skilled Immigration Act, the direction of not to leave migration policy reform to supranational harmonisation got clear. Regarding the 2015 events and the later elections, it is clear that questions regarding social integration have increased significance. Immigration and its several elements were the single most important issue for the German population during the election and this could have played a role in the increasing of support for AfD. The German society is familiar with immigration but the sudden, huge number, and the culturally more distinct migrants from previous immigrants created a ground for anxieties. In the past, immigrants were from similar culture, and in the case of Turkish "Gastarbeiter", there were in the country for the purpose of work laid down in bilateral agreements. The welcome culture was strongly affected by the terror attacks, crimes made by immigrants, and the stabil sense of everyday security furthermore weakened with the arson attacks on refugee accommodations and anti-immigrant demonstrations. Most of the violent acts took place in the 'poorer' East Germany and there is a link between these events and the vote shares for extreme right and populist right-wing parties. Questions of national identity and the place of Islam got significance in the public discourse. Thus, debates around religion, society, economy, welfare system, national security and national identity in Germany became grounds on which populism started to recruit and thrieve.

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4. Greece

Country Report Prepared for the DEMOS Project

Author: **Angeliki Dimitriadi**, Senior Research Fellow ELIAMEP

with contribution from **Georgia Vasilopoulos**, Research assistant ELIAMEP

1. Background information 2015-2018

Migration[19] to Greece is not a recent phenomenon. A country that has been on the receiving end of irregular migrants from Albania throughout the 1990s and early 2000s, Greece emerged as a transit state for asylum seekers from 2004 onwards (Dimitriadi, 2018). It has since received continuously mixed migratory flows that ebb and flow, in parallel to a consistent presence of third country nationals with legal status.

1.1. Legal Migration

The stock of migrants legally residing in the country as of August 31, 2019 (Triandafyllidou & Gemi, 2019) stood at 552,485 (see Figure 1)

Figure 1. Stock of foreign population in Greece, 2019

	Size of immigrant stock	% of total resident population
Total TCN population	552,485*	5.2
Total EU28 countries' citizens (non-Greeks)	63,900**	0.6
Total immigrant stock	616,385	5.8
Total population in Greece	10,722,300***	100.00

Source: Triandafyllidou & Gemi, 2019, compiled by the authors

The foreign population of third country nationals since 2015 has remained relatively stable with EU nationals experiencing a slight decrease over the years (see Table 1 below). According to the Ministry of Migration Policy's statistics on resident permits, on August 31, 2019 the stock of migrants legally residing in Greece stood at 552,485.

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[19] The term migrant is used to denote both asylum seekers and economic migrants and is reflective of the mixed migratory flows of the past five years arriving through the Greek-Turkish borders.

Table 1: Stock of Foreign Born Population
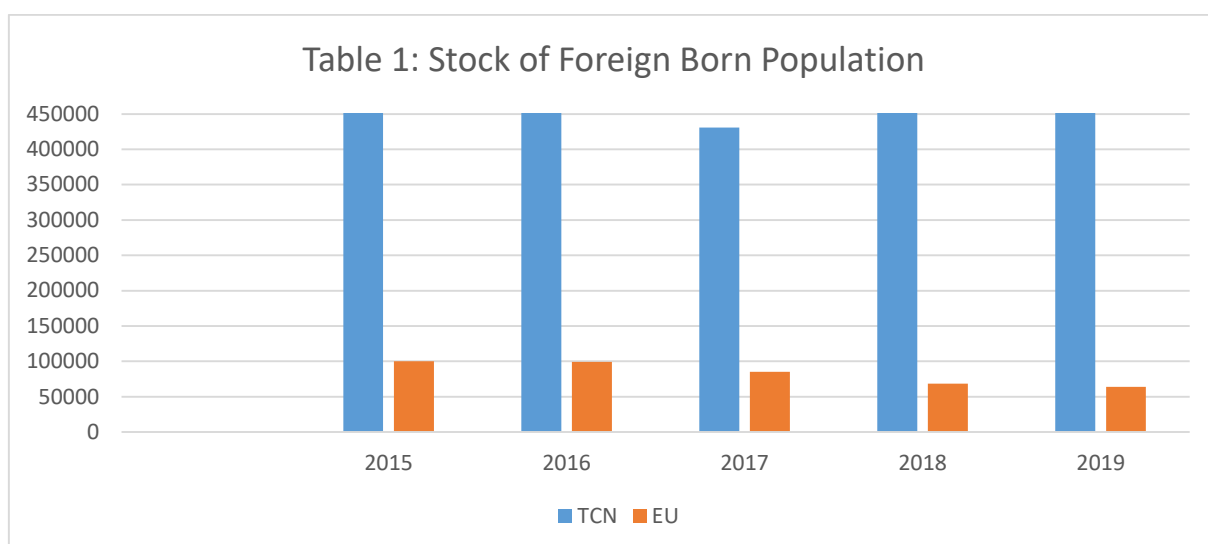
Source: Reports prepared for the OECD Network of International Migration Experts, 2015-2019.

1.2 Irregular Migration

The 'long summer of migration' (Kasparek & Speer, 2015) unfolded in 2015 but its origins lie in the Arab Spring of 2011. As the situation in Syria and the neighbourhood continued to deteriorate, Syrians fled first to Jordan and Lebanon and by 2013 increasingly to Turkey. A complex mix of factors pushed forward the Syrians to Europe (see Crawley et al., 2016; Squire, et al., 2017).

In 2015 alone, 856,723 irregular arrivals entered through the Greek maritime border (UNHCR, 2020). Of those, 88% originated from the top ten refugee-producing countries, with Syrians constituting almost 60% of incoming numbers, followed by Afghans (20%, ibid). Arrivals differed from previous years. There were more families, women with children and unaccompanied minors than in previous years. The peak of arrivals was the autumn of 2015. Indicatively, Lesvos received 120,000 migrants in October 2015. Since then, arrivals fluctuated with a steady increase noticeable in the land border post 2016, which is outside the EU-Turkey Statement framework.

Table 1. Registered irregular arrivals 2015-2018

Previous years	Sea arrivals	Land arrivals	Dead and missing
2018	32,494	18,014	174
2017	29,718	6,592	59
2016	173,450	3,784	441
2015	856,723	4,907	799

Source: UNHCR Operational Portal: Refugee Situations: Greece, https://data2.unhcr.org/en/situations/mediterranean/location/5179

The top three nationalities of these irregular border crossings were mainly Syrians, Iraqis and Afghans for the sea border and Syrians, Turkish, Pakistanis for the land border (Frontex, 2018). This is also reflected in asylum applications (see Chart 1) where Syrians were the main

nationality closely followed by the Afghans until 2018. In 2019, Afghanistan overtook Syria as the main country of asylum applicants in Greece (see Table 1).

Chart 1. Asylum applications 2015-2019

Asylum Applications

	2015	2016	2017	2018	2019
Asylum Applications	13187	51053	58638	66966	77287
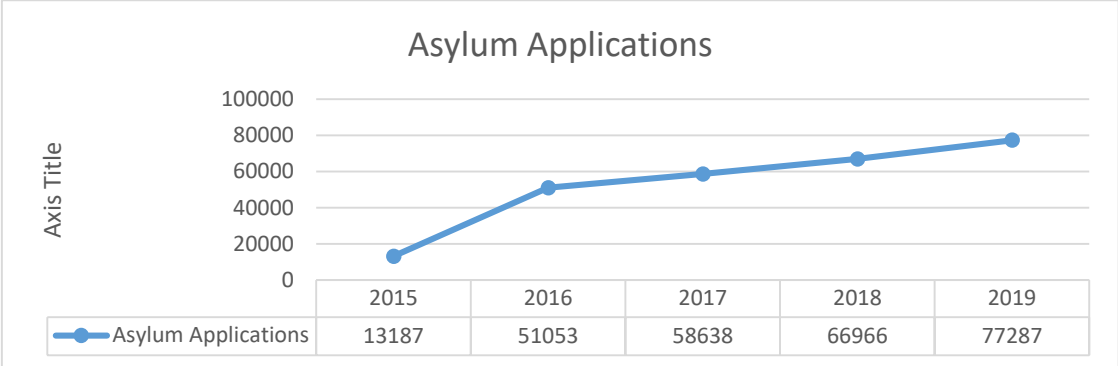
Source: Greek Asylum Service, 2019, compiled by the authors

The presence of Turkish nationals was also relatively new. In the aftermath of the attempted coup in July 2016 in Turkey, Greece has been one of the main recipients of asylum applicants from Turkish citizens with most applications accepted. In 2018, 4,834 asylum applications were received.

Table 1. Main nationalities of asylum applicants, 2019

Top Countries of Origin	Asylum Applications
Syria	10,856
Afghanistan	23,828
Iraq	5,738
Pakistan	7,140
Other nationalities	29,725

Source: Greek Asylum Service, 2019

Asylum, and irregular migration overall, were between 2015-2018 a priority for the government but also critical issues for all political parties in Greece. Coupled, with the financial crisis, the 'European refugee crisis' affected Greece in an unprecedented manner.

2. Immigration as a political issue

Immigration has been politicized since the 1990s in Greece. A frame of analysis for politicisation draws from de Wilde who understands politicisation as an increase in 1) salience and 2) diversity of opinions on specific societal topics. Salience is defined as the importance attributed to an issue (De Wilde, 2011; Pasetti Garcés-Mascareñas, 2018). Polarisation means there are different attitudes to the issue and the 'solutions' proposed. The two do not coexist

necessarily. For example, a topic may have salience and polarisation in the parliamentary discourse but only salience in the media and public opinion polls.

According to Triandafyllidou, contrasting political discourses have to be understood in relation to the positioning of each country as a "frontline or final destination", past experiences of hosting migrants (or lack thereof) and current challenges including Euro-scepticism (Triandafyllidou, 2018). Thus, it is the national factors that drive responses to the refugee crisis.

A survey undertaken by Bansak et al. (2016) with 18,000 citizens from 15 European countries found that most respondents had preferences for asylum seekers with higher employability, severe vulnerabilities and with a Christian cultural background. According to their analysis, Christian asylum seekers are preferred over Muslim asylum seekers. From 2016 onwards, ethnicity and religion play a key role in the debates taking place in various capitals across Europe, including Athens. The presence of a growing Muslim population brought to the forefront once more the issue of (or absence of) integration and multiculturalism. For countries, like Greece, whose dominant discourse has been of a homogeneous nation and with little attempt at integration, the arrival and stay of the migrants raised additional societal challenges. The political context reflected but also fed the growing social discontent with Europe's management of the refugee crisis.

2.1. The positions of major domestic parties (including the parties in the government) on the problem of immigration and their evolution, relevance of the immigration issue in the national elections (2015-2018)

Unlike other EU Member States, Greece was already in 'crisis' in 2015. The question of the bailout agreement, the referendum and the second elections of September 2015 posed a far more existential issue for Greece than the refugees.

Two elections took place in 2015. The first was held in January 2015. SYRIZA won the popular vote, with New Democracy coming second and Golden Dawn third. The socialist party of PASOK, the centrist party of POTAMI, the Independent Greeks (ANEL) also won seats in the Parliament. SYRIZA (coalition of Radical left) formed a coalition government with the ANEL. The two parties represented the opposite ends of the political spectrum.

In July 2015, a referendum was held on the bailout agreement. Despite the result of the referendum and the 'no' vote, the government accepted the proposed bailout package resulting in a loss of confidence vote in Parliament. An early parliamentary election took place on 20 September 2015. Migration was a key issue but not the main priority, with the economy dominating. The coalition government of Syriza-ANEL remained in power, with the centre-right party of New Democracy (ND) becoming the main opposition party, while the far-right Golden Dawn (GD) continued to be the third political force in the country. Other parties that won parliamentary seats were the centre-left coalition of PASOK and Democratic Left (DIMAR), the centrist Potami party and the centrist Enosi Kentroon party (EK) that entered the Parliament for the first time, as well as the Communist party (KKE) (Ministry of Interior, 2018).

Both Syriza and ANEL are considered populist parties, despite representing two opposite ends of the political spectrum. Whereas SYRIZA's populism conceives of "the people" to reflect the economically and politically marginalised Greeks that are being excluded by the elites "ANEL's populist discourse adds clearly nativist and socially conservative overtones, defining "the people" as a community with specific cultural boundaries" (Aslanidis & Kaltwasser, 2016: 5). Syriza campaigned on an anti-austerity and anti-systemic platform, which was portrayed as a clash between the established and corrupt elites versus the Greek public. In that sense, the party adopted a straightforward populist stance domestically, though as Aslanidis & Kaltwasser (2016) rightly point out, it adopted a milder discourse when abroad.

ANEL was a populist far-right wing party which was born as a split from New Democracy (Malamidis & Dimitriadi, 2018). ANEL, like SYRIZA, emerged in the 2015 elections as an anti-systemic party, anti-austerity, with a clear anti-Semitic and Islamophobic stance. The party employed a conspiratorial rhetoric with the enemy being the "Other" (the Americans, Merkel, the Turkish consulate, etc.; Georgiadou, 2019). Although ANEL had milder xenophobic positions compared to other parties (e.g. Golden Dawn), these became rather salient when the issue of citizenship for second generation migrants was at stake (Georgiadou, 2019: 204-207) in the summer of 2015. Though the two parties significantly differed in their approach to migration they shared the same definition of the establishment and the 'elite', which was not limited only to the domestic establishment, but also international institutions and actors seeking to impose economic policies on the Greek public.

2.1.1. The discourse on migration of the coalition government (SYRIZA-ANEL)

On migration, its position was antithetical to that of the previous government of New Democracy. SYRIZA prioritized (at least officially) the end to detention of undocumented persons and the end of the 'sweeps' instituted under the previous government. The party sought to shift the dominant rhetoric and refused to speak of *λαθρομετανάστες* [illegal immigrants] encouraging instead the usage of the term undocumented or irregular (*παράτυποι*).

As the European refugee "crisis" unfolded, SYRIZA's discourse sought to portray Greece as a hospitable country, "We showed them that Greece is a hospitable country and that the Greek people is a hospitable people. We proved that we have a surplus of ethics and values as both country and people. Let's generously give this surplus of love today." (CNN Greece, 2016) Drawing on references from ancient Greece, the notion of *philoxenia* (hospitality) and the experience of Greece with refugees, an official discourse was grafted and maintained until 2017. Prime Minister Tsipras lay the blame on Europeans, for the continuation of the Syrian civil war (i.e. Europe's unwillingness to intervene) but mostly for the absence of European solidarity between Member States but also with the refugees: "I feel ashamed as a member of this European leadership, both for the inability of Europe in dealing with this human drama...[certain European countries] shed hypocritical crocodile tears [...] for the dead children on the shores of the Aegean" (in reference to the death of Aylan Kurdi in August 2015, Reuters, 2015).

The 'blame game' became the core theme of the political debates between parties in Greece during the period in question, which is characterised initially by little discussion on migration despite the unfolding tragedy on the islands of east Aegean. However, there was a purpose to laying the blame at Europe's door. The Euro-crisis was linked with the migration crisis, with the former utilised as a bargaining chip to gain more financial assistance for Greece (Nestoras, 2015). It was also useful domestically to portray Greece as standing up to its European partners and defending the European norms and values.

SYRIZA's position in the refugee crisis resembled its position in reference to the Greek debt crisis. The government wanted a radical renegotiation of Greece's debt to its European creditors, and a radical overhaul of the European asylum policy. Emphasis was placed on humanitarianism instead of detention and deportation. However, the promised policy shift failed completely as it was largely symbolic and did not account for the rapidly increasing flows throughout 2015 (Skleparis, 2017). In a surprising move, SYRIZA supported the EU-Turkey Statement of March 2016. In the face of it, the Statement was antithetical to the government's discourse on migration. However, the government was supportive of the agreement. Former PM Tsipras repeatedly stressed that "Turkey plays a major part, a key role in the current [migration] developments" and he concluded by saying that Greece would be supporting an agreement for the "substantial control of the refugee flows from the neighbouring country to

Greece" (Statement of the Prime Minister of Greece, 2016). SYRIZA underscored that with this agreement, Turkey is recognised as a problematic partner on the issue of irregular migration for the first time (Hellenic Parliament IZ, 2016).

In March 2016, the Bank of Greece published data suggesting that in 2016 alone, the cost of managing the migration crisis would exceed EUR 600 million (Kathimerini, 2016). This emergency assistance comes in addition to EUR 509 million already allocated to Greece under the national programs for 2014-2020 (European Commission, 2016). The financial assistance was a powerful incentive for the coalition government to mend bridges with its European partners. From 2016 until 2018, the official discourse of SYRIZA changed. Germany was no longer the 'enemy'. It was replaced by Hungary and the Visegrad four, who refused to participate on the intra-EU relocation scheme (2015-2018), erected fences and barriers which resulted in the closure of the Western Balkan route and who argued against immigration and multicultural societies (Reuters, 2015).

ANEL's position on immigration varied. It took an opposing stance to the Citizenship Law (Law 4332/2015, 9 July 2015) proposed but maintained a far more low-key presence and rhetoric on asylum and irregular migration. One of the main pledges of the Syriza party during the campaign was the amendment of the citizenship law for the second generation born in Greece. The bill would allow for children of migrant origin, born and/or raised in Greece to acquire Greek citizenship. ANEL rejected the bill. This was not entirely unexpected considering the far-right basis of the party. The opposition stemmed from its support of *jus sanguinis* as a way of acquiring citizenship, i.e. one had to be born Greek and descend from Greek parents. One of ANEL MP's argued that "When it is time for action and you don't have enough money, you should make a choice: to choose the Greek citizens and not the migrants for your policy allowances" (Hellenic Parliament, Plenary Session 2015). Within ANEL the perspective that the European elites sought to reduce the national element from the Greek society, was prominent. This would be achieved by integrating in the society a group of citizens without any cultural or national orientation. Instead, the European "elites will reserve the jus sanguinis – their citizenship, their autonomy" (ibid). Overall, the party stood against multiculturalism, particularly as regards the integration of migrants practicing the Muslim faith long before the refugee crisis emerged.

A different approach in regard to the refugee crisis was adopted, for two reasons. On the one hand, both parties had to reach consensus maintain the coalition government. On the other hand, the leader of ANEL, Panos Kammenos, became Minister of Defense, and the ministry in turn undertook the responsibility for the organization and set up of reception spaces in the mainland and the hotspots for arrivals. In other words, ANEL was responsible for implementing a significant part of the SYRIZA policy on migration. There was also a certain usefulness to the differences of the two parties. While SYRIZA sought to influence European policy and extend the financial assistance to Greece for the refugees, ANEL often reminded EU partners that, "[i]f Europe leaves us in the crisis, we will flood it with migrants, and it will be even worse for Berlin if in that wave of millions of economic migrants there will be some jihadists of the Islamic State too" (The Telegraph, 2015; The Independent, 2015). Both partners were utilizing Greece's position as a front-line state to yield concessions from the European partners, with ANEL catering to the domestic audience while SYRIZA wooed the European partners. By 2017, ANEL and SYRIZA converged in supporting the EU-Turkey Statement, a position they maintained until the end of the coalition government.

2.1.2 The opposition parties and migration

New Democracy (ND) was the main party in opposition. ND is the conservative party of Greece. Throughout 2015, New Democracy, as most parties, remained focused on the economic crisis and the bailout agreement. By early 2016, migration re-emerged as a focal issue in the party's discourse. ND had supported the Statement, though it had found it to be complex and with points that required clarification, particularly in regard to the restriction of arrivals to the hotspots to enable returns to Turkey (Hellenic Parliament Plenary session, 2016). ND had proposed a threefold strategy: the need to create closed type of pre-departure centers for irregular migrants, the strict and effective separation of refugees from migrants and effective border controls (EfSyn, 2016). This would be further explained in the proposal for a national migration strategy the party released in June 2016. The 40-page document outlines the key priorities and opens with security: "Security is the first and primary aim of a migration policy. Social and economic security of citizens is the fundamental obligation of the State and it is a prerequisite for everything else: acceptance of the 'other', the protection of human rights of migrants and the realization that many of them are refugees fleeing from war zones" (own translation of the author) (Naftemporiki, 2016).

Building on this, the plan suggests an end to squats, extensive document checks across the country, return of refugees to their countries of origin once the root causes of their movement is resolved, and the construction of different facilities for those who apply for asylum from those who are "illegal economic migrants". Border controls are also the focus of the proposal, alongside the speed up of the asylum process and strict control over the NGOs operating on the ground (ibid). The overall strategy had positive as well as negative elements.

ND also opposed the citizenship bill proposed by SYRIZA, though in the end it voted in favour of most the articles. New Democracy's shadow defence spokesman Vassilis Kikilias referenced a front-page article in right-wing *Estia* newspaper, claiming that "the government has added 43,000 foreign voters to the electoral register for the Athens A' district, while it steadfastly refuses to give the vote to expatriate Greeks." The article claimed that by granting citizenship, SYRIZA sought to increase its electoral appeal amongst the new voters (Malamidis & Dimitriadi, 2018). Aside from concerns that the citizenship bill would be used to garner votes for SYRIZA, objections were also raised in regard to how citizenship would be granted. ND objected primarily to two articles in the bill (Article 1 & Art 10). The party's spokesman noted the draft law was not fully in line with the Constitution, however the biggest objection to the law regarded minor children acquiring citizenship upon enrollment in Primary School. ND expressed concerns that their parents would enroll the children and once citizenship was acquired, they would leave for other EU Member States. The party wanted citizenship to be offered after the nine-year mandatory education was completed. Thus, the approach differs significantly from ANEL. Though both seek to define who is Greek and who should have access to citizenship they differ in the way they framed the debate.

Throughout 2017 and 2018, the criticism towards the coalition government on the handling of the hotspots and the returns to Turkey increased. In 2016 the situation in Athens had deteriorated, with thousands homeless or housed in squats and informal settlements like the former airport at Elliniko. ND increased its criticism of the management of the crisis which would become constant theme throughout the period in question and would come to form a critical part of the response of the new government under ND in 2019.

The remaining parties also represented in Parliament were the centre-left coalition of PASOK and Democratic Left (DIMAR), the centrist Potami party and the centrist Enosi Kentroon party (EK) that entered the Parliament for the first time, as well as the Communist party (KKE). Golden Dawn had also retained its electorate percentage and held the third place in Parliament.

Golden Dawn presents itself as a nationalist organization and rejects the far-right attribution often given to it, by arguing that the far-right is a political betrayal that developed through rightwing parties aiming to "coopt patriotism and serve the Zionist status quo" (Fragkoudaki, 2013). Contrary to its European counterparts, it does not try to smooth over its anti-Semitism and neo-Nazi approach and has a rich criminal activity against external and internal enemies, such as migrants, students, LGBT+, activists and union members (ibid, 2013:53). As expected, it opposed the citizenship bill, the hotspots and the Statement. The organization in fact, opposed the presence of migrants in Greece, claiming the policies implemented were part of the "plans for the Islamization of Greece". GD argued that "the state that robbed the Greek taxpayer is feeding for free murders from Africa and Asia" resulting in "public spaces, ports and boulevards being occupied illegally. Church bells no longer ring in our cities so that the Islamists are not disturbed." (To Pontiki, 2016). These sentiments were continuously reflected in the discourse of the organization. However, the organization was sidelined by the mainstream parties that did not, for the most part, align with the former's positions.

Of the mainstream parties, Potami had a middle-of-the-road approach to the events and outcomes of 2015-2018. Though the party continuously stressed the need to respect the human and fundamental rights of migrants, it also expressed concern about the possibility of thousands being stranded in Greece. In its 10-point plan proposal submitted in 2016, POTAMI notes in reference to Greece that, "If we continue to be embarrassed and panicked, we run the risk of having hundreds of thousands of immigrants trapped in the country, of different cultures and codes of integration" (translation, authors own) (Liberal, 2016). The implication being that Greece would be unable to integrate them. However, unlike ND, POTAMI was in favour of a national program of integration for those that had arrived in the past years, to boost the Greek economy and production. The party supported the Statement and wanted returns to Turkey within 48 hours of those rejected or opting out of asylum. It continuously criticized the government over poor conditions of reception and particularly the rapid deterioration of the hotspots. It also fervently supported the demand voiced by the Mayors of the islands hosting hotspots for the transfer of the arrivals to the Greek mainland (POTAMI, 2017). Thus, it functioned as a bridge between SYRIZA and ND, bringing forward suggestions that were aligned with both parties' core positions.

The centre-left coalition of PASOK and Democratic Left (DIMAR) held similar positions, though they utilised their objections to the policies of the coalition government to repeatedly ask for an all-party government (EfSyn, 2016). The coalition had expressed concerns over the implementation of the Statement. Though they supported the deal, they feared that the hotspots would transform into permanent settlements on the islands rather than temporary registration centres. In this, they were proven right. Though they supported the initial efforts of SYRIZA in 2015, acknowledging the unprecedented scale of arrivals to Greece, from 2016 onwards they criticized the government's implementation, particularly in regard to the conditions in the hotspots, the impact on the local economies but also the absence of European solidarity. The coalition supported the bill on citizenship, an early draft of which had already passed under the previous PASOK government.

KKE is a party deeply entrenched in the communist dogma with rhetoric which resembles that of the Stalinist era. Ideologically, KKE remains devoted to proletariat and class struggle (Visvizi, 2017). However, it had the most consistent position on migration, criticising from the early days the EU and the Greek government for policies that stood in violation of the UN Convention for Refugees (Risospastis, 2015). The party refused to agree on the common national position proposed by SYRIZA, which was agreed to by most parties in 2015. More than any of the other parties, it called on the Greek government to undertake its responsibilities regarding reception and provision of decent conditions to the refugees (ibid). The only point of

convergence with the other parties was its criticism of the NGOs, however, unlike the other parties the objections stemmed from an ideological difference. KKE wanted the financial assistance to go directly to the Greek government that would undertake service provisions, boost the national reception system and the asylum service. Thus, it objected to the money being given directly to international and nongovernmental organisations (Zarianopoulos, 2015) Similar to the other parties in Parliament, KKE voted in support of most of the articles in the citizenship bill but opted out of supporting the Articles that transposed EU legislation.[20]

3. Policy in action:

Policy measures undertaken in 2015-2018 focuses on asylum seekers and irregular arrivals. Criticism over policy implementation was a common thread in the political discourse in Greece, targeting the coalition government primarily. In most cases the criticism was valid, as the implementation fell short of the policies designed. Additionally, initiatives were delayed with most taking place in 2016, a year into the refugee crisis.

3.1. Assessment of the governmental position on immigration, together with the information on its evolution (2015-2018)

Four drivers defined Greek policy in the period 2015-2018. The first was the introduction of the hotspot system in May 2015. The second was the relocation program, referring to the intra-EU transfer of 60,000 from Greece to other EU member states. The third was the closure of the Western Balkan route which coincided with the fourth driver, the EU-Turkey Statement. Almost all the policies implemented were driven and shaped in response to the reaction and policies implemented by European partners. However, even under these circumstances, implementation can only be described as a failure. In 2015, services were scarce and poor, and there was no special care for vulnerable people. Registration took several days and sometimes even longer, and there was a complete absence of organised reception facilities on the islands and the mainland (Rosakou, 2017; Skleparis, 2017). The asylum service had been unable to respond to the rising number of asylum applications because of the closure of the route. The asylum service became operational in 2013, designed to process approximately 20,000 asylum applications each year. In 2018 alone, the service received 66,969 new applications.

The European Commission proposed a "hot spot" approach in response to the disproportionate migratory flow experiences in Greece in 2015. These hotspots were established on Eastern Aegean islands (Lesvos, Chios, Samos, Leros, Kos) to swiftly register incoming migrants (AIDA). The hotspots were also meant to identify vulnerable persons and eligible nationalities for the implementation of temporary relocation of people with an imminent need of international protection to alternate EU member states (European Commission, 2015). The hotspots transformed from screening centres to detention facilities under the auspices of the EU-Turkey Statement in March of 2016. A geographical restriction of movement was imposed, to facilitate returns to Turkey. Geographical restriction means that the newcomers cannot leave the island where they registered until the end of their asylum process (Greek Council for Refugees, 2018). In practice, the Statement has increased the pressure on Greece that has been unable to cater to the needs of the migrants 'hosted' on the islands. In the hotspots, in 2017 more than 14,000 people were trapped in spaces designed to accommodate 3,000. Unfit for

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[20] Directive 2011/98/EU of the European Parliament and of the Council of 13 December 2011 on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State; Directive 2014/36/EU of The European Parliament and of The Council of 26 February 2014 on the conditions of entry and stay of third-country nationals for the purpose of employment as seasonal workers.

long-term stay, in most cases tents have been set up around the existing infrastructures as an emergency accommodation measure. This impacted access to health education but also to the asylum procedure which was facing significant delays. The poor food quality and the gaps in medical staff and means of transportation to the hospital hinder timely access to healthcare services (Greek Council for Refugees, 2018b: 38-40). In parallel, suicidal tendencies critically increased with self-harm incidents and suicide attempts that also involved children (Greek Council for Refugees, 2018b: 38-40). This was a situation that continued throughout 2017 and 2018. While conditions varied in the mainland, the situation in the hotspots remained consistently poor and at times worsened as arrivals increased.

Greece set up 50,000 accommodation places across the mainland, following a request by the European Commission. Of these, approximately 20,000 were funded by DG ECHO for the implementation of the ESTIA program run by UNHCR. ESTIA was initially designed to facilitate relocation, by providing urban accommodation to the most vulnerable that were prioritised for intra-EU transfer. This meant that only nationalities eligible for relocation could be housed in apartments. In total, 22,822 relocation requests submitted by Greece had been accepted for the transfer of asylum seekers to other EU member states of the 60,000 places originally allocated (data from the Greek Asylum Service, 2018). The failure of relocation resulted in a reorganisation of the program that has since offered housing to vulnerable individuals and families irrespective of nationality.

A cash-assistance program was rolled out in parallel to ESTIA by UNHCR and the IRC for those applying for asylum. What is critical is that none of these measures were initiated or implemented by the Greek government. Instead, the management of migration had been given *de facto* to international organisations and NGOs that tried to respond to emerging needs as quickly as possible. The only concrete action by the Greek government regarding accommodation was the development of 30,000 places in camps spread across the mainland. For the day-to-day operations, the government relied once more on NGOs while service provision varied greatly both in quality and quantity. Camps were (and remain) in need of health care, education, services for survivors of gender-based violence, and mental health and psychosocial support services (Skleparis, 2017). Some access to the services was available, but the quality varied greatly across camps, with further divergence evident when compared to the hotspots.

3.2. Challenges in implementation of the common EU migration policies in the relevant country

Greece is a unique case in the EU as regards migration and asylum policies. The geographical location of the country and absence of an asylum and reception system prior to 2010 (Dimitriadi, 2018) meant that the country was already behind in achieving the minimum standards set out by the CEAS. The arrival of thousands of refugees merely aggravated an already problematic situation.

The European Commission brought legal action against Greece in December 2015, "[...] for failing to correctly register migrants. The absence of registration made the creation of hotspots imperative. Thus, the two issues are linked.

The biggest challenge for Greece was the implementation of returns to Turkey. The Action Plan for the implementation of the Statement (December 8th, 2016) calls on Greece to "remove administrative obstacles to swift voluntary return from the islands", upon receipt of a negative first instance decision." (European Commission, 2016b). They maintained the right to appeal but the assumption was that the appeals would uphold first instance decisions. This was not the case. Most appeal committees refused to consider Turkey as a safe third country. It should be highlighted that in 2016, the overwhelming majority of second instance decisions by the

Backlog Appeals Committees overturned the first instance inadmissibility decisions based on the safe third country concept, despite pressure from the European Commission.

The Greek government introduced an amendment to the composition of the Appeals Committees and restructured their composition to include administrative judges. As a result, 98.2% of decisions issued by the Independent Appeals Committees in 2017 upheld the first instance inadmissibility decisions based on the safe third country concept.

From March 2016 until the end of 2018, a total 1690 persons had been returned under the Statement. Main nationalities were Pakistanis, followed by Syrians, Algerians and Afghans. 47% had not expressed a desire to apply for asylum or withdrew their application. The extremely low rate of returns has remained a challenge for Greece. There are multiple reasons for the failure of the policy: the attempted coup in Turkey in July 2016, concerns by the Greek Asylum Service that Turkey was not safe for non-Syrians, lengthy delays in asylum processing in Greece, and refusal from Turkish authorities to accept everyone listed by their Greek counterparts. (Basak et al, 2018).

3.3. Existing and potential conflicts between national policies and common EU policy position

The most controversial aspect of EU policy for Greece has been and remains the Dublin Regulation. The Dublin regulation determines which EU Member State is responsible for the application of a third country national or stateless person for international protection. In 2011, returns under Dublin were suspended for Greece following the decision by M.S.S. vs Belgium and Greece. The decision of the European Court of Human Rights made returns to the country impossible as it was deemed to violate several articles of the European Convention on Human Rights. The suspension of Dublin to Greece was in place when the refugee crisis unfolded. In December 2016, a recommendation was issued by the European Commission to resume Dublin returns to Greece for applicants entering the European Union from 15 March 2017 and onwards. This initiative was met with disapproval in a letter addressed to the President of the European Commission and the Greek Minister of Migration Policy by the Greek Council for Refugees, SolidarityNow, NGO Aitima and members of the European Council for Refugees and Exiles who wrote: "The envisaged resumption of transfers of asylum seekers under the Dublin III Regulation to Greece is in our view premature in light of the persistent deficiencies in the Greek asylum system, that are unlikely to be resolved by the envisaged date of 15 March 2017" (ECRE, GCR, Aitima and SolidarityNow, 2016). Dublin is the cornerstone of the CEAS and its most problematic element. It has consistently failed to perform as designed and was not created to address situations of high influx. Its renegotiation was a key point in the discussions between Greece and the European Commission however to this day no agreement has been reached at EU level for a new Dublin that would include a permanent redistribution mechanism of asylum applicants.

4. Migration as a legal issue

4.1. Applicable legal framework

The period 2015-2018 was rich in legislative initiatives and amendments, focused predominantly on improving the functioning of the Asylum Service and implementation of the Statement.

On 3 April 2016 the Greek Parliament adopted L 4375/2016 titled "On the organisation and operation of the Asylum Service, the Appeals Authority, the Reception and Identification Service, the establishment of the General Secretariat for Reception, the transposition into Greek

legislation of the provisions of Directive 2013/32/EU, provisions on the employment of beneficiaries of international protection and other provisions". L 4375/2016 has partially attempted to regulate the establishment and function of hotspots and the procedures taking place there. However, national legislation failed to effectively regulate the involvement of the EU Agencies, for example Frontex agents (AIDA, 2017). Article 46 of Law 4375/2016 is intended to transpose Regulation (EU) no 604/2013 of the European Parliament and of the Council to determine which Member State is responsible for a third state national application. Law 4375/2016 also transposes the 2013/32/EU Recast Asylum Procedures Directive, establishing the General Secretariat for Reception and expanding asylum services.

L4375/2016 was meant to facilitate the implementation of the EU-Turkey Statement. In practice a parallel asylum process emerged, which is neither prescribed in the CEAS nor applied elsewhere in the EU. A fast-track asylum application based on (in)admissibility took place on the islands versus regular procedure in the mainland. The Statement drastically impacted the ability of the Asylum Service to perform and placed an additional burden on an already bureaucratic and slow system (Dimitriadi, 2017).

The organization and functioning of asylum services were revamped under Law 4375/2016 which transposed the Directive 2013/32/EU of the European Parliament and of the Council related to "common procedures for granting and withdrawing international protection". The accrued backlog of applications was addressed by providing two-year residence status if an application has been submitted five years prior. In addition, Article 64 of Law 4375/2016 gives applicants the right to apply for the annulment of application decisions, however, these applications do not have automatic suspensive effect and thus, the applicant may be relocated before the judicial review is conducted (Papatzani et al. 2020). Additionally, Law 4540/2018 "on the transposition into the Greek legislation of the provisions of Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 on the requirements for the reception of the applicants of international protection (recast, L 180/96/29.6.2013 and other provisions" (Official Gazette A 91/22.5.2018) included the provision for Greek-speaking EASO personnel to participate in the national asylum procedure.

The biggest challenge has arisen from the emergence of two parallel asylum systems in the country as a result of the Statement (see AIDA, 2018; Dimitriadi & Sarantaki, 2018). Asylum seekers arriving after 20 March 2016 on the Greek islands are subject to a fast-track border procedure. To achieve this, until 2018, certain nationalities were prioritised for registration of the intent to submit asylum, particularly the Syrians. This created multiple problems for non-Syrians who remain stranded on the islands waiting for their application to be processed three years later. In 2018, the European Ombudsman found that "there are genuine concerns about the quality of the admissibility interviews as well as about the procedural fairness of how they are conducted." In February 2019, FRA noted that "almost three years of experience [of processing asylum claims in facilities at borders] in Greece shows, [that] this approach creates fundamental rights challenges that appear almost unsurmountable" (FRA Opinion, 2016). This shows that asylum continued to function in a limited way in 2018, two years after the Statement and three years since the refugee crisis began.

The legal basis for the establishment of the Appeals Authority was amended twice in 2016 by L 4375/2016 in April 2016 and L 4399/2016 in June 2016, and then in 2017 by L 4661/2017 (AIDA, 2018). These amendments are closely linked with the examination of appeals under the fast-track border procedure, following reported pressure to the Greek authorities from the EU on the implementation of the EU-Turkey statement, and "coincide with the issuance of positive decisions of the – at that time operational – Appeals Committees (with regard to their judgment on the admissibility) which, under individualised appeals examination, decided that Turkey is

not a safe third country for the appellants in question" (NHCR, 2016), as highlighted by the National Commission on Human Rights.

Further amendments to the procedure before the Appeals Committees that have been introduced by L 4540/2018 echo the 2016 Joint Action Plan on Implementation of the EU-Turkey Statement, and are visibly connected with pressure to limit the appeal steps and accelerate the procedure. This includes the possibility of judicial members of the Appeals Committee to be replaced in the event of "significant and unjustified delays in the processing of appeals" by a Joint Ministerial Decision, following approval from the General Commissioner of the Administrative Court.

Greek Law 4332/2015 amended the provisions of Law 4521/2014 and the Code of Greek Citizenship. It "harmonizes" or transposes European Parliament and the Council Directives 2011/98/EU into Greek legislation. Passed in July 2015 under SYRIZA governance, Law 4332/2015 drew from Law 3838/2010 ("Ragousis Law") and eased the path to citizenship for children of foreign-born parents (second-generation).

4.2. Existing and potential conflicts between national law and legal practice of a relevant country and applicable EU rules

Although the CEAS has brought an increased level of harmonisation in applied standards, there is no "common" or unified European Asylum System but rather 28 different asylum systems with common minimum standards. In many ways this has resulted in minimal harmonisation and, therefore, often low standards (Wagner et al, 2016; Scipioni, 2018). At the same time, the European Union has no competence on issues such as citizenship and/or integration. This leaves significant room for Member States to adopt their own policies.

Greece, until 2016 did not offer access to social benefits, education and accommodation to asylum applicants. The SYRIZA government undertook significant legal reforms to amend the access to services for both recognised refugees and asylum seekers. According to Article 69 and 71 L 4375/2016, recognized refugees receive full and automatic access to the labour market without requiring a work permit. Article 17(1) L 4540/2018 provides the same conditions and perquisites to vocational training programmes for Greek nationals and asylum-seeking applicants. These "same conditions and prerequisites as foreseen for Greek nationals" disregards the difficulty involved in providing necessary documentation by asylum seekers, automatically placing them in a different position from Greek nationals. Article 17(2) L 4540/2018 addresses this concern by designating the Joint Ministerial as responsible for assessing an applicants' skills if they do not have proper documentation.

According to a survey issued by the UNHCR in October 2018 with 1,436 asylum seekers and refugee participants, "[m]ost participants reported difficulties in accessing the labour market. They attributed this to a lack of information, high unemployment rates, lack of required documentation (e.g. residency permits, passport), language barriers, the remoteness of some sites from cities, and lack of job advise and placement support […] The lack of Greek language classes, which most perceive to be required for integration, was a commonly referenced issue. While most participants have social security numbers (AMKA), they have difficulty obtaining other documents such as AFM and unemployment cards from OAED." (UNHCR, 2018).

Preparatory classes for all school-age children (4 to 15 years old) were established by a Ministerial decision in 2016, specifically targeting students who live in open temporary facilities. Implemented in public schools neighbouring the camps, the program taught Greek, English language, mathematics, sports, arts and computer science (European Parliament, 2017). Regardless, migrant children face challenges as they try to integrate with other students because

the implementation rate of additional programming is slow, they need to catch up, and higher education (secondary school, university, and even vocational training) remain inaccessible.

Asylum seekers and beneficiaries of international protection over the age of 15 were targeted for a pilot program of Greek language courses in January of 2018. The Ministry of Education and the Ministry Migration Policy were funded by Asylum, Migration and Integration Fund (AMIF) to advance the program, with 2,000 participants between the ages of 15 and 18 and 3,000 participants older than 18 (ibid).

Vulnerable people and those without social security are provided with free access to public health services and pharmaceutical treatment based on Article 33 of Law 4368 adopted in 2016. Unfortunately, administrative barriers persist due to a lack of awareness of the 2016 law by health professionals and complications with issuing social security.

Under Article 14(8) of Law 4375, the head of the Reception and Identification Procedure is expected to guide vulnerable groups and individuals to social support and protection institutions. In practice this did not take place. MSF issued a report in October 2016 which underscored the lapses in the system that do not appropriately identify vulnerable populations (especially survivors of sexual violence, unaccompanied children, patients with chronic diseases, and those with special needs) but more importantly, do not connect them with necessary resources (MSF, 2016).

Despite the legislative initiatives, Greece continued to fall short of service provision to recognised refugees and asylum seekers. There was no direct link between asylum and integration- a gap that Greece has not been able to address to this day. Thus, though not explicitly in conflict with EU legislation, Greece falls short in the practice and implementation comparatively to other EU Member States.

5. Synthesis

The period of 2015-2018 proved particularly challenging for Greece. The country first functioned as a transit stop and eventually a country of strandedness for thousands of migrants. A very clear gap existed between the official government discourse and the reality on the ground. Humanitarianism and hospitality were initially promoted as the official approach of Greece but little evidence of this existed in practice. With little accommodation facilities, an asylum service understaffed to handle the number of asylum applications and the hotspot approach implemented on the islands, Greece has emerged as a country that is a member of the EU but falls short of the standards set by the Common European Asylum System. The majority of initiatives undertaken were in fact, funded by the European Commission and implemented by international organisations and NGOs as implementing partners. There is little evidence of a national migration and asylum policy, with the country more focused on responding to the pressure applied by its European partners. This resulted in significant shortcomings, with Greece failing to address the needs of the migrants.

The period 2015-2018 also showed the shortcomings of the EU policy on asylum that remains grounded on placing more responsibility on frontline partners rather than burden sharing and responsibility- sharing across the EU. Solidarity was never part of the original design of the Common European Asylum System and it continues to this day to be a critical shortcoming of EU migration policy. Nonetheless the refugee crisis serves as a valuable lesson. Neither the Statement nor the closure of the Western Balkan route proved sufficient in reducing arrivals in the medium-term. In 2019, Greece was once more on the receiving end of large numbers that arrived in a country fatigued with the presence of refugees. Without a common strategy on how to address and solve refugee issues collectively, policies of containment and deterrence will not

provide anything more than short term relief. Without a national holistic policy on migration that links asylum with integration, Greece will continue to fall short of the European framework in the future.

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5. Hungary

Country Report Prepared for the DEMOS Project

Author: **Zsolt Kortvelyesi**, Research Fellow, CSS Institute for Legal Studies, Hungary, Budapest

1. Background information

The size of foreign-born population in Hungary is 564,761 or 5.78% (Eurostat). This is in line with the low value in the Central and Eastern European (CEE) region (not counting the special cases of Baltic states with Russian population and post-Yugoslav states with now-foreign population from former republics, CEE countries have the lowest ratio of foreign-born population). Hungary does not have a history of immigration comparable to older EU member states. Most naturalized citizens have traditionally been Hungarian co-ethnics living in neighboring countries. Under a 2010 amendment, members of this group do not have to establish residence in the country to be able to naturalize (external ethnic citizenship). In public discourse, ethnic Hungarians moving to Hungary are not considered migrants. In the first years after the 1989/90 regime change(s), the vast majority of immigrants where ethnic Hungarians (Gödri, 2010: 88–89).

The number of resident non-citizens varied between approx. 140,000 and 160,000 in the analyzed period, with around two-thirds having arrived from Europe (Gödri 2010: 88-89). Immigration to Hungary is relatively low, in the ten thousand, mostly European in origin, with the leading countries being Romania, Ukraine, Germany and Slovakia. Immigration from Ukraine has increased considerably, due most likely to the conflict and probably disproportionately involving ethnic Hungarians (Table 1).

Table 1. Legal migration taken together, not counting EU citizens, are in the tens of thousands per year, with a peak in 2018

Permits issued by reasons / year	2014	2015	2016	2017	2018
Employment and remunerated activities	13 010	12 650	14 500	25 637	62 362
Education	10 615	12 576	14 103	19 258	29 039
Family	7 742	6 984	5 740	5 397	8 198
Other reasons	5 576	5 895	5 254	5 714	6 820
Official visits	1 611	1 742	1 843	2 120	2 799
Other grounds	929	499	515	797	2 061
Total	**39 483**	**40 346**	**41 955**	**58 923**	**111 279**

Calculations based on data from BAH. Employment and remunerated activities combined for years 2017 and 2018 (separate in the data source).

The data show that the increase in 2018 is due to income-related activities like employment and, to a lesser extent, to education.

The number of people granted protection following an asylum application is considerably lower. The number of asylum seekers used to be relatively steady, in the low thousands. From 2013 to 2015, we can see increases by orders of magnitude, up to the peak at 177,135 in 2015.

Table 2. Asylum seekers and recognition statistics in Hungary

Year	Asylum seekers	Refugees (recognized as)	Received subsidiary protection status[21]	Ratio of recognition under all categories
2000	7 801	197	680	11.24%
2001	9 554	174	290	4.86%
2002	6 412	104	1 304	21.96%
2003	2 401	178	772	39.57%
2004	1 600	149	177	20.38%
2005	1 609	97	95	11.93%
2006	2 117	99	99	9.35%
2007	3 419	169	83	7.37%
2008	3 118	160	130	9.30%
2009	4 672	177	220	8.50%
2010	2 104	83	190	12.98%
2011	1 693	52	153	12.11%
2012	2 157	87	375	21.42%
2013	18 900	198	221	2.22%
2014	42 777	240	243	1.13%
2015	177 135	146	362	0.29%
2016	29 432	154	278	1.47%
2017	3 397	106	1 185	38.00%
2018	671	68	299	54.69%
2019	500	22	38	12.00%

Source: KSH on own calculations based on KSH, https://www.ksh.hu/docs/hun/xstadat/xstadat_eves/i_wnvn003.html

What the numbers do not show is that in 2015, there were two waves of asylum seekers. In the beginning of the year, many came from Kosovo, most of them likely not qualifying and in fact refused recognition, while starting summer 2015, Syrian and Afghan asylum seekers started to show up at the border in larger numbers. This latter trend continued. In 2016–18 the share of Afghans from those filing for asylum was around 40%, Iraqi 12-36%, Syrians 7-17%, Pakistanis 4-13%, Iranians around 3-4% (other national groups below 4%).[22]

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[21] 'Oltalmazott' or 'befogadott'.
[22] Calculations based on data from BAH.

The ratios for 2017 and up are misleading in that the true filtering has been happening at the border, with the decisive majority of asylum seekers not even getting to the point where they could file a request that would show up in the statistics. (See more on transit zones under Section 2.2.1 below.)

The number of people who received some type of protection remained low, with the ratios of recognition falling to extreme lows (0.29% in 2015). This is largely due to measures that violate international and European human rights standards (for an overview of these, see Sections 2.2.3 and 3.2.).

Table 3. Number of asylum decisions by type.

Type / number of decisions by asylum authority	2015	2016	2017	2018
recognition as refugee	146	154	106	68
subsidiary protection ('oltalmazott')	356	271	1 110	281
subsidiary protection ('befogadott')	6	7	75	18
discontinuation	152 260	49 479	2 049	160
rejection	2 917	4 675	2 880	595

Data source: BAH

It is often emphasized that Hungary was and remained a transit country, which is true for many asylum seekers. This, however, might hide the fact that this is at least partly[23] a result of the inadequate regime these people experience and also the fact that there is in fact a sizable immigrant population. (The relative economic position and the linguistic isolation are other possible factors.) The shortcomings of integration policies were only aggravated by measures in the 2015–18 period that saw earlier supportive integrative measures – themselves criticized as inadequate, leading in documented cases to homelessness[24] – completely dismantled (Szabó, 2019).

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[23] The relative economic position and the linguistic isolation are other possible factors.
[24] Parliamentary Commissioner communication, AJB-1692/2010, https://bit.ly/3rKQv9U, p. 9.

Table 4. Incoming and outgoing 'Dublin' requests and transfers, submitted by and received by Hungary (':' – no data)

	Incoming 'Dublin' requests	Outgoing 'Dublin' requests	Incoming 'Dublin' transfers	Outgoing 'Dublin' transfers
2010	2,047	446	695	178
2011	1,718	139	411	70
2012	1,433	191	335	126
2013	7,756	314	850	32
2014	7,930	1,815	827	89
2015	:	:	:	:
2016	26,740	:	:	204
2017	6,805	896	129	217
2018	2,644	277	65	53
2019	1,694	200	1	28

Source: Eurostat

Hungary is a transit country for human trafficking and (facilitation of) irregular migration. It is also a sending country for human trafficking and regular migration. An official report put the number of Hungarians who moved to other EU countries at over 461,000 in 2017 (Gödri, 2018: 238).

2. Immigration as a political issue

2.1. Political context

2.1.1. The positions of major domestic parties (including the parties in the government) on the problem of immigration and their evolution, relevance of the immigration issue in the national elections (2015-2018)

Immigration in the public discourse in 2015-18 was mostly about asylum seekers, but the government terminology was using the term "(economic) migrant", associated with crime and terrorism. Immigration became a key issue in all subsequent political campaigns, even in local elections. (Local governments in Hungary have no competences that could influence national migration policies.) Bognár et al. (2018) call this the "moral panic button" that they describe as a high-cost and long-term mass manipulation technique that relies on controlled media, billboard campaigns, the "National Consultations" (questionnaires sent out to all citizens with multiple choice questions that are criticized for deviating from polling standards in their formulation that influences answers). Combined with other illiberal (anti-pluralist, anti-constitutionalist) measures, this effectively eliminated meaningful pluralism. A crucial aspect of the regime in Hungary that is important to understand the political context of immigration is the authoritarian turn that led to political hegemony, domination in political discourse, the media, with strong anti-pluralist effects combined with anti-constitutionalist (undermining the separation of powers, the rule of law and, ultimately, human rights). Given the limits of this report, I am only referring to these but will not elaborate on these features.

The concentration of power also means that the positions of the government and of the governing party alliance (with FIDESZ and a small entity that is only nominally a separate party, the Christian Democratic People's Party) are undistinguishable (for details of government positions and policies, see Section 2.2.1 below).

Public discourse was dominated by government narratives, simplified statements and focuses on more abstract issues like "Hungary's identity", "ethnic homogeneity", "defending Christian culture", "fight against pro-migrant forces" and "liberalism", internationally as well as domestically but increasingly more on the EU level, and less on concrete policy questions. Some understand this as a securitizing meta-framing that builds on fear to maintain support and mobilization, with effects of polarization and enemification (Majtényi et al., 2019). "Pro-immigration", "liberal" forces, including those in the EU (termed 'Brussels' in this narrative), non-responsive bureaucracies and secret deals have to be fought by the genuine representatives of the people and protectors of national sovereignty and "Christian Europe" (used in a cultural-civilizationist sense).

The government narrative was aggressively employed in the large part of media (those under direct or indirect government control, which covers the majority of outlets), which led to increased xenophobia and also changes in the language (Bernáth & Messing, 2016). The word 'migrant' ('migráns') became a dirty word, with constructed expressions like 'migránsozás' (talking about migrants in a negative way). The government actively campaigned against immigration, asylum seekers and refugees almost without stop, inciting hatred (Milka Tadić Mijović & Šajkaš, 2016: 4; Magyar Helsinki Bizottság, 2015). Government agencies, the police and the security services readily played into this framing by strengthening the connection to threats and criminality (Bernáth & Messing, 2016: 11–12).

Thematization of migration was first apparent in the context of the Charlie Hebdo case. Government actors identified non-European immigration as a cause for concern but emphasized the non-religious elements like culture and human rights. It was Jobbik that took a traditional extreme right position, talking about the clash of civilizations. Even this was tamed, however, by earlier pro-Islam statements of the party leader. The idea of a referendum on the issue and the border fence were also first advanced by Jobbik (Bíró-Nagy, 2018: 272).

Subsequent developments saw a quick shift in the government position towards the narrative on an existential threat to European and Christian civilization, with racial undertones, links to criminality and terrorism, dehumanization (Bernáth & Messing, 2016). This narrative allows speakers to play on post-socialist *ressentiment* and talk about the failure of the West to integrate and deal with its own post-colonial problem. This can go as far as Prime Minister Orbán claiming that true refugees are fleeing the multiculturalist catastrophe in Western countries and Hungary is willing to take them in, as opposed to "economic migrants" from outside Europe (Orbán, 2017).

A party headed by former socialist PM Ferenc Gyurcsány (DK, Democratic Coalition) questioned most vehemently this narrative, supporting a party member who vandalized the border fence and the party leader sheltering asylum seekers in his home. His former party, the Socialists (MSZP, Hungarian Socialist Party) mostly kept a low profile, with most commentators seeing this as a sign that they wanted to be both critical of the government and to avoid wandering too far from what they considered as a generally anti-immigration public opinion. LMP (Politics Can Be Different), the green party seemed to be torn between a classical human rights-based approach and the opposition to what they saw as globalist pro-immigration positions. The opposition, with few exceptions (usually from smaller parties like Együtt, or Together, and Párbeszéd, or Together), took over the language of the threatening crisis and

opted for a criticism of the government for failing to deal with the problem (Bernáth & Messing, 2016: 11).

The voice of the opposition was generally weak due most to factors like the hegemonic media landscape and the curtailed funding and parliamentary powers. Most parties avoided strong statements that could have been labelled in the dominant government narrative as pro-migrant ("migrant-lover", "migrant-stroking"), not willing to defend the proposal of an EU-wide quota mechanism. While there was criticism of the fence, its costs and effectiveness, there was a single minor opposition party ("Együtt" or "Together") that would have eliminated the fence. (The party did not make it to the Parliament in the following, 2018 elections.) This hesitant and ineffective criticism was also true for the "quota referendum" campaign in 2016. It is emblematic that the large number of government billboards that in many places outnumbered all other (commercial) billboards were not countered by visible opposition campaigns but by a mock party (Hungarian Two-tailed Dog Party) operated from donations, relying on parodies of government messages.

The topic of irregular migration and the quota was carefully selected by the government and also as a result of the constant focus on migration in the government framing, the overwhelming majority of votes for the pro-government position was taken for granted.[25] Under Hungarian law, for a referendum to be valid, more than 50% of the voting population should cast a valid vote. As a result, most opposition parties and non-government-affiliated (civil society) organizations suggested either abstention or casting an invalid vote, for they saw the invalidity of the referendum as the only realistic goal. It was a small liberal party that campaigned for a valid but anti-government-position vote (MTI, 2016), fueling rumors of government influence (Keller-Alánt, 2018).

There were unsuccessful attempts, by the opposition, to refocus the migration debate from the asylum question, especially after the number of asylum seekers decreased considerably, talking instead about 'the real migration issue', i.e. the hundreds of thousands (Gödri, 2018) who left Hungary for more well-off member states for work, the issues in health care, or corruption.

Migration became the central topic, a godsend at a time when public support for the governing party started to shrink, with increased support for far-right Jobbik in 2015 (Tóka, 2018). The government strategy was to make migration the number one issue and presenting it as an existential threat to the nation. Government-affiliated (both state and private) media outlets have been strongly working on establishing the threat of immigration in line with government narratives (Magyar Helsinki Bizottság, 2015c). One of the high-profile examples was the video of the head of the Office of the Prime Minister who showed streets in Vienna, commenting on the non-white immigrants who took over parts of the city, which led, according to him, dirt and disorder.[26] The timing and the narration makes it clear that the video, which was temporarily removed by Facebook for the violation of community guidelines, sought to persuade voters that an opposition takeover will result in a similar immigrant takeover.

The topic of immigration was made central to Hungarian politics, discourses and political campaigns. As a result, Hungarians, together with the Estonians and the Czechs, are the most concerned about this issue (Simonovits & Szeitl, 2019: 309). In Hungary, "the proportion of those who opposed immigration and who had a negative attitude toward the impact of immigration doubled or even tripled" between 2014 and 2016 (Simonovits & Szeitl, 2019: 309). After an initial decrease in xenophobic attitudes in 2015, coinciding with the anti-immigration

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[25] The text of the question put to referendum was as follows: "Do you want the European Union to be entitled to prescribe the mandatory settlement of non-Hungarian citizens in Hungary without the consent of the National Assembly?".

[26] Only available from Google Cache: https://bit.ly/2X3FVNa.

campaign of the government, xenophile attitudes effectively disappeared, and xenophobic attitudes that were already high increased further (Table 5; Messing & Ságvári, 2018). In European comparison, the rejection index of third country nationals stands it for Hungary, at 48%, with Estonia and the Czech Republic following Hungary with 29 and 28%. It is again this background that there is still a face of Hungary that is welcoming to migrants. This is confirmed by migrant accounts (Bernát et al., 2019: 38) as well as civil activities that surged in 2015 to help asylum seekers (Feischmidt & Zakariás, 2019).

Table 5. Attitudes towards aliens

	Xenophobes	Thinkers	Xenophiles
2014	39	51	10
April 2015	46	45	9
July 2015	39	56	5
October 2015	36	60	4
January 2016	53	46	1
October 2016	58	41	1
January 2017	60	38	2

Source: Simonovits, 2020: 162

2.1.2. Relevance of different arguments used for or against immigration in the political and public debate

The governing parties employed the narrative constructed by PM Viktor Orbán which despised the failed multiculturalist West and declared a struggle against pro-immigration, liberal forces inside and outside Hungary, to maintain the ethnic homogeneity and the national identity of the country. Immigration is primarily of an economic nature and Europe will cease to be Europe, nations will not be recognizable anymore if we let in immigrants from other countries. Those who are in need should receive support where they live, and only 'true refugees' should get protection, especially those fleeing multiculturalism and arrive from Western countries.[27] The dominant government narrative depicted asylum seekers as motivated by economic considerations, often not poor in the traditional sense (e.g. having mobile phones and means to pay to smugglers) instead of a justified fear from persecution, war etc. In any case, Hungary is not bordering conflict zones, so whoever arrives to Hungary arrived through a safe third country and Hungary has no obligation to take people in who did not come directly from countries where they were in danger. Those who criticize the government are against Hungarian interests and are mercenaries of the pro-immigration forces. As such, they present a threat to the nation and not legitimate political actors and people who happen to hold a different opinion in a policy field (for more on the government position, see Section 2.2.1 below).

As the opposition voices remained weak and dispersed, it was often NGOs active in the asylum and refugee field whose position was contrasted with that of the government. The most visible was the Hungarian Helsinki Committee that had been providing support to asylum seekers for decades. Civil rights activists referred to humanitarian, moral obligations as well as international and European obligations embodying this ethic, and the dubious factual basis for

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[27] "We shall let in true refugees: Germans, Dutch, French, and Italians, terrified politicians and journalists who here in Hungary want to find the Europe they have lost in their homelands", in the words of PM Orbán (2017).

anti-refugee statements (Magyar Helsinki Bizottság, 2015c). They often used historical examples of Hungarians taking refuge in other countries (after the revolutions of 1848-49 and 1956), or Hungary helping others in the years of transition (East Germans, Hungarians from Romania and Yugoslavia) (Magyar Helsinki Bizottság, 2017b). Seeking to undermine the argument of a threat to the country, critiques pointed out that, even at the peak of asylum seekers, most never intended to stay in Hungary. Accounts often voiced criticism of the confusion of terrorism and immigration, describing asylum seekers as potential terrorists instead of human beings fleeing from terrorism.[28] Government messages were labelled as hate speech by the UN Human Rights Committee (Nebehay, 2018). As the fears instigated by sustained anti-immigrant messages, reports of incidents against (falsely[29] or rightly identified, Szomszéd, 2017; Panyi, 2015) migrants emerged.[30] The International Religious Freedom Report for 2015 of the United States cited reports, from the Muslim community, of "physical and verbal attacks and threats, including 10 to 15 physical assaults against Muslim women wearing headscarves." (US Department of State, 2015) Furthermore, "Muslim leaders said the public hostility toward the community stemmed from anti-Muslim rhetoric of senior government officials" (US Department of State, 2015).

Less central were arguments about economic benefits from immigration or the fact that Hungary has never been homogenous,[31] especially not in the past of "Great Hungary", glorified in government narratives, when less than half of the population was ethnic Hungarian. A sociologist was targeted in a pro-government smear campaign after a statement about migrants being, in general, better qualified than the average population (HVG, 2018).

2.2. Policy in action

2.2.1. Assessment of the governmental position on immigration, together with the information on its evolution (2015-2018)

Immigration became a central narrative for the government, justifying government positions more generally.[32] The migration framing encompassed practically all political areas. E.g., the European criticism of the rule of law situation in Hungary was presented by the government as a "revenge" of pro-migration forces for having built the fence (Ministry of Foreign Affairs and Trade, 2018). More generally, "[a]ll changes in asylum and migration law together with administrative modifications have been connected to the domestic political purposes (using the referendum on relocation, poster campaigns against migrants, intimidation of NGOs, etc.) instead of operating European or global migration context" (Bernát et al., 2019: 21). The government declared that all "attacks on Hungary" are motivated by immigration (i.e. the country's anti-immigration position) (Government of Hungary, 2018).

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[28] "Migrants are portrayed as dangerous enemies in both official and public discourses in this country." (United Nations, 2019).

[29] The number of false complaints about "illegal immigrants" also raised, according to the police. http://www.police.hu/hirek-es-informaciok/legfrissebb-hireink/helyi-hirek/nem-igaz-a-hir.

[30] See https://bit.ly/3n72XNZ. In one case of anti-migrant violence, authorities were unwilling to bring charges, and only sustained civil rights action allowed the case to get to court. https://bit.ly/397Xe5B. For a list of some documented cases, see: https://bit.ly/38YKn5E; https://bit.ly/34Yaecn.

[31] These arguments often came from academic commentators. For such an account, see e.g., the publications by Professor Boldizsár Nagy in the Hungarian media: https://bit.ly/2KKqjfe.

[32] For an example from after 2018, there were attempts to connect the spread of the virus to the larger narrative of the threat of illegal immigration that initially proved unsuccessful, but, in the later phases, stressing this connection appeared again in government rhetoric.

Officially, immigration policy in Hungary rests on the Immigration Strategy adopted in 2013.[33] The document specifically refers to the EU requirements and uses a language of full compliance. The Strategy reiterates commitments to uphold international obligations under asylum law and to cooperate with civil society actors. It is in line with European standards, while it goes against actual Hungarian practice.

The official line talks about zero immigration, not becoming a country of immigration as opposed to Western countries. This is contradicted by both the official immigration strategy and actual practice: work-related immigration rules and investment-based visa program. Number of visas issued was growing from 2014, with work-related migration being a leading ground; the number of such visas (work and remunerated activities) increased from 25,637 (2017) to 62,362 (2018) in the final two years of the period covered in this report (see Table 1 in Section 1).

Applicants who bought € 250,000, later 300,000 worth bonds issued by the state treasury (repaid by the state in five years) could benefit from an investor visa ("golden visa") program from 2013 to 2017, granting long-term residency rights. According to reports, 6583 individuals benefited from this scheme (Zöldi, 2019). An NGO report concluded that the program closed with a loss for the taxpayers (Romhányi, 2018).

Just like in the case of citizenship and many other fields of law, general, often restrictive laws are circumvented by targeted preferential regimes. In a field of immigration that is not treated as immigration in the political discourse, ethnic Hungarians in the neighboring countries can naturalize without moving to Hungary, following a 2010 amendment, while the non-preferential rules of naturalization remained stringent, with a general eight-year residency requirement. The number of new citizens surpassed one million, or ten per cent of the resident population, in 2017 (Government of Hungary, 2017).

In a high-profile case, former Macedonian Prime Minister Gruevski was transferred by Hungarian diplomats and was promptly recognized as a refugee in Hungary while sought under corruption charges in his home country and sentenced to two years of imprisonment (Vass, 2019). He did not have to wait in the transit zone as all others (see below), although he arrived through Serbia, and was instead escorted by Hungarian diplomats. After a July 2018 amendment to the Asylum Act, all asylum seekers received inadmissibility decisions, with the sole exception of Mr. Gruevski. (Hungarian Helsinki Committee, 2018: 12).

A program was established to support Christians in need, "to display [Hungary's] solidarity conscientiously and visibly to international public opinion" (Hungary Helps Agency, n.d.). The program emphasizes that it seeks to help people stay where they live (Hungary Helps Agency, n.d.).

According to media reports, hundreds of refugees are accepted and supported by the Hungarian government (Thorpe, 2019). The deputy prime minister rejected that they could be labelled "migrants" as they have Hungarian ancestors (Thorpe, 2019).

The central element of the immigration narrative, asylum policy went through frequent changes but the direction remained after the 2015 turn. That year brought significant changes to the immigration system and marked a turn in asylum-related policies. Ever since, access to protection and integration measures largely disappeared. A fence was built, and consecutive

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[33] Az 1698/2013. (X. 4.) Korm. határozattal elfogadott Migrációs Stratégia és az azon alapuló, az Európai Unió által a 2014-2020. ciklusban létrehozásra kerülő Menekültügyi és Migrációs Alaphoz kapcsolódó hétéves stratégiai tervdokumentum, http://belugyialapok.hu/alapok/sites/default/files/MMIA_.pdf. In English: The Migration Strategy and the seven-year strategic document related to Asylum and Migration Fund established by the European Union for the years 2014-20, https://bit.ly/2LgGq3G.

measures led to a situation where a tiny fraction of asylum seekers can access asylum procedures and even less are recognized as refugees or deserving other types of protection. A report in 2019 concluded that "the building of the fence at the Serbian and Croatian border, the hindering of the civil society, the closing of the refugee reception centers, the destruction of the welfare and legal basis of any pro-migration institution that provides almost no integration support for asylum-seekers made Hungary practically a closed country for asylum seekers" (Bernát et al., 2019: 5).

In Summer 2015, many asylum seekers gathered and stayed in Budapest. Early September, after not being able to move to Austria, their next destination, a crowd started walking towards Austria on the highway. This triggered a reaction from the government, providing buses that took them to the border. Yet, due to earlier experience and a general mistrust, many were first unwilling to board buses. Most citizens who would have been willing to help did not take the risk of helping as many claimed this could qualify as a crime (smuggling). Austrian citizens were allowed to help. An agreement finally allowed asylum seekers to be transferred to Austria and Germany (FRA, 2016: 5).

The government built a fence along its southern border in 2015, later extended, despite claims, by the minister of interior, that those who attempt at irregular border crossing are intercepted at 97–98% rate (Magyar Helsinki Bizottság, 2015b, para. 2). In the mid-September to mid-October period, the government was transferring, to the Austrian border, asylum seekers who got around the Serbian border and came to Hungary through Croatia, without registration or other processing (Magyar Helsinki Bizottság (Hungarian Helsinki Committee), 2017: 8).

The governing majority criminalized the illegal crossing of the border and established transit zones (Magyar Helsinki Bizottság, 2015f) on the border with Serbia (Röszke, Tompa) and at the airport (the zones were closed in 2020 after the decision of the ECJ, see in Section 3.2 below). The number of entries to the transit zones and the applications that could be filed from there was limited, eventually shrinking to a single application per day per transit zone. These measures pushed irregular migration into more dangerous tactics like transfer in cargo area of trucks (Rendőrség, 2018), or even under trucks (Kisalföld, 2015). In one case, 71 asylum seekers suffocated in a tractor trailer (IOM, 2015).

When the number of asylum seekers did not decrease, the government and the governing majority adopted amendments to legalize push-backs, first limited to an 8-km zone of the border, later extended to the entire country. Complaints of police violence emerged. According to a 2017 report based on the visit of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), "a significant number of foreign nationals interviewed by the delegation alleged that they had been physically ill-treated by Hungarian police officers in the context of their apprehension and return through the border fence towards Serbia (push-backs)" (CPT, 2018: 3). The CPT also noted that "the arrangements currently in place do not provide effective protection against refoulement, including chain refoulement, and recommends, inter alia, that the Hungarian authorities put an end to the practice of push-backs to the Serbian side of the border" (CPT, 2018: 4).

As a result of these events, asylum seekers quickly disappeared from the country (Bernát et al., 2019: 42–43). Both the presence and the march of the asylum seekers was used as images supporting the government narrative of the "migrant threat". These images continued to be used, sometimes supported by imported photos.[34] The limited entry to the transit zones led to crowds accumulating before the entry point. The resulting tensions culminated in a 2015 case

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[34] The photo most often used in the quota referendum campaign showed asylum seekers marching in Croatia, in fact led by police.

where a crowd of asylum seekers stranded on the Serbian side protested against the action of the Hungarian police, with some of the participants becoming violent (FRA, 2016: 20). The Hungarian police dispersed the crowd (with Serbia claiming to have its territory violated) and 10 people were charged and eventually sentenced, in a controversial court case, to prison sentences, under terrorism charges (Magyar Helsinki Bizottság, 2016b).

It has been a long-documented feature of Hungarian asylum procedures that people leave before the authorities could conduct their assessment and decide on the request asylum seekers themselves initiated. This was in fact a crucial reason for authorities to maintain that asylum seekers should remain in closed institutions while their procedure is pending (a reasoning human rights activists in turn rejected as disproportionate).

Mass detention has been a long-criticized feature of the Hungarian asylum regime, from well before 2015 (Hungarian Helsinki Committee, 2013: 42–50) and even predating 2010 (Nagy, 2013). The failure to provide food to asylum seekers held in transit zones was recurrently halted then reinstated as a response to interim measures of the ECtHR (Magyar Helsinki Bizottság, 2018). By June 2016, the existing elements of the integration regime (for those few who received protection) was effectively dismantled (Mijatović, 2019: 4; Szabó, 2019), arguing that migrants should not get more than citizens[35] (for more details on the legislation affecting asylum, see Section 3.1 below) The dismantling of the asylum system falls especially heavy on groups that are particularly vulnerable, including children (Bakonyi et al., 2017), women and LGBTI persons (Bakonyi, 2018),[36] and victims of torture (Barna & Gyulai, 2016).

2.2.2. Challenges in implementation of the common EU migration policies in the relevant country

The central challenge to the implementation of EU policies in the field of immigration was that the government built on the narrative of a constant fight against pro-immigration forces that include "Brussels", the name that became a smear name for the EU in pro-government narratives. At the same time, however, they also sought to maintain the narrative of complying with all international and European obligations.

The government specifically rejected the argument that it broke the principle of solidarity, which culminated in legal arguments challenging the legality of the relocation quota (see under 3.2 below). It argued that Hungary was actually doing more than its fair share in the form of border protection, including the fence, and that taking in a larger number of refugees or asylum seekers would go against national sovereignty and identity, the goal of maintaining 'ethnic homogeneity'. The fact that Hungary continued to process (a small number of) asylum applications and to recognize (an even smaller number of) refugees was used to argue that there is in fact compliance with asylum requirements. E.g., a deputy state secretary argued, in an interview with a Maltese journal, that Hungary took about 1300 refugees, answering a question about the obligation "to take about 1300 migrants" under the EU quota (Micallef, 2018), a narrative that created some confusion and was later taken over by the entire government.

The standard position of external Schengen border states like Greece, Italy or Hungary was that the Dublin regime is unfair in that it puts an unfair burden on these member states. (In the case of Hungary, it is also important that Dublin transfers to Greece, a country most asylum seekers cross well before arriving at the Hungarian border, were generally halted from 2011[37] to

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[35] Even though EU funds are available for integration programs (Albert, 2017).

[36] The ECtHR found the detention of a gay asylum seeker to be in violation of his rights. O.M. v. Hungary, Application no. 9912/15, Judgment, 5 July 2016, ECHR.

[37] ECtHR, M.S.S. v. Belgium & Greece, App. No. 30696/09, Judgment of 21 January 2011; CJEU, Joined Cases C-411/10 and C-493/10 N.S. v. Secretary of State for the Home Department, Judgment of 21 December 2011.

2017.[38]) This would imply that these states would be the most vocal supporters of a relocation regime. The government of Hungary, in fact, has been opposing such proposals. The challenge to EU policies culminated in the government-initiated national referendum on European asylum quotas. The relevant bodies – the National Electoral Committee as well as the Constitutional Court, both less than independent institutions after public law changes establishing the regime – green lighted the initiative despite unconstitutionality on at least three grounds (Szente, 2016). While the results of the referendum were invalid due to the low turnout, the government relied on the high number of yes votes to justify its position (98.36% of the valid votes favoring the government position, rejecting quotas, with a high number of invalid votes at 6.17%[39]). As the post-referendum period fell to the only time where the governing majority lost its supermajority in the parliament, due to interim elections, an amendment to the Fundamental Law could not pass. The Ombudsperson and the Constitutional Court nevertheless helped out the government by initiating and adopting, respectively, a resolution that read into the Fundamental Law the amendment that could not be adopted by legislative means, supporting the government narrative that relied on identitarian and sovereigntist arguments against EU quota proposals.[40]

2.2.3. Existing and potential conflicts between national policies and common EU policy position

The position of the Government of Hungary conflicted fundamentally with the positions of EU, Council of Europe and UN bodies as is documented below (Section 3.2). In the words of Council of Europe Commissioner for Human Rights Dunja Mijatović, "it is extremely difficult to access the refugee determination procedure in Hungary", "applicants cannot access an effective remedy", face "excessive use of violence by the police during forcible removals" and the Hungarian practice is "in violation of European and international asylum law" (Mijatović, 2019: 4).

The transparency necessary to do a thorough assessment of government measures and practices is missing. Independent experts were denied entering facilities in a number of cases (Hungarian Helsinki Committee, 2017a: 11),[41] including a UN delegation.[42]

Against the scenery of incompatibility, the government in many cases sought to maintain some level of compliance that can be likened to the "fake compliance" phenomenon familiar from the literature on pre-accession conditionality (Noutcheva, 2009). For instance, the creation of closed transit zones while not providing food, only allowing in one person per day, and automatically rejecting all applicants arriving through Serbia rendered asylum protection meaningless in most cases. In other cases, the government engaged in a direct conflict with EU norms, arguing, e.g., that instead of taking in asylum seekers and refugees, it discharges its duties under European solidarity in the form of protecting the borders. The Commission pointed

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[38] Commission Recommendation of 8 December 2016 addressed to the Member States on the resumption of transfers to Greece under Regulation (EU) No. 604/2013, C(2016) 85.

[39] The number of invalid votes cast is, for some reason, not available from the site of the National Election Office, the disappeared number is available through external cached version of the site at https://bit.ly/3n02UmY. The results in English are not available at all ("Results" here: https://www.valasztas.hu/web/national-election-office/37). For the reasons of the high ratio of invalid votes, see under 2.1 above.

[40] Decision 22/2016. (XII. 5.) AB. In a similar vein, see Decision 2/2019 (III. 5.) AB, stating, among others, that "the right to asylum is not the refugee's individual subjective right".

[41] "In October 2017, the authorities terminated cooperation agreements with the HHC and have denied access to police detention, prisons and immigration detention after two decades of cooperation andover2,000 visits. The HHC can no longer monitor human rights in closed institutions. No other organisation conducts monitoring visits in the closed facilities, including the transit zones, that would result in public reports." (Hungarian Helsinki Committee, 2018, p. 12)

[42] UN human rights experts suspend Hungary visit after access denied, Press Release, UNIS/MA/237, 15 November 2018, http://www.unis.unvienna.org/unis/en/pressrels/2018/unisma237.html.

out, in response, that no à la carte solidarity is possible, members should comply with EU law requirements in their entirety (Juncker, 2017). Once it was established that food needs to be provided to those held in the transit zones, a prominent government politician countered that the country does not have an obligation to provide food for tourists visiting the country, implying that the same standard should apply in the two cases (Magyar, 2019).

The paradox of the Dublin procedure is that the less compliant the Hungarian asylum system is, the less people are sent back (following decisions that find the Hungarian asylum regime to be in violation of minimum standards). This effectively rewards non-compliance in the eyes of a regime who seeks legitimacy by declaring itself anti-immigration.

3. Immigration as a legal issue

3.1. Brief description of the applicable legal framework in a relevant country together with the analysis of its actual implementation

Key elements of the Hungarian asylum system rest on Act No. 80 of 2007 on Asylum (with its implementing Govt. decree no. 301/2007 (XI. 9)), Act No. 2 of 2007 on the Entry and Stay of Third-Country Nationals (and its implementing Govt. decree no. 114/2007 (V. 24)) and Govt. decree no. 9/2013 (VI.28) on the rules of execution of asylum detention and bail. All of these saw extensive and recurring amendments in the 2015–18 period. Many of the key provisions did not stand scrutiny under EU law (see Section 3.2 below).

The increased number of asylum seekers arriving to Hungary did not trigger government action first. Later, state-organized buses took asylum seekers to the Austrian borders, without proper registration under the Schengen acquis, later including those bused to the Hungarian border by Croatian authorities (Bernát et al., 2019, n. 9). The events culminated in the building of the fence along the southern border (see earlier) and the surrounding amendments marked a clear break for asylum policy and asylum seekers (Bernát et al., 2019: 33).

Amending Act No. 127 of 2015 (August) authorized the Government to designate safe third countries, and the Government acted upon this authorization, declaring by force of law, Serbia as a safe third country, with decree no. 191 of 2015,[43] against earlier expert and judicial assessments.[44] The strict enforcement of this rule led to removal against UN call (Magyar Helsinki Bizottság, 2017a).

Amending Act No. 127 of 2015 eliminated effective procedural guarantees and expanded the time of detention (Magyar Helsinki Bizottság, 2015d). The amendment limited the right to use one's native language in criminal proceedings by eliminating the obligation to provide translations of the indictment and the judgment (Magyar Helsinki Bizottság, 2015e). The law also introduced what is called the "immigration-related emergency", stating its conditions. While these were not met, after the first month (Tóth, 2015: 62–63; Magyar Helsinki Bizottság, 2015g), the Government continued to prolong it (Magyar Helsinki Bizottság, 2019), every six months since,[45] expanding it the entire territory of the country.[46] This special legal order means

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[43] Govt. decree no. 191/2015. (VII. 21) Gov. decree, Art. 2.

[44] For a comprehensive legal assessment giving directions for the judiciary, see the relevant guidelines from the supreme court: 2/2012 (XII.10) KMK. vélemény a biztonságos harmadik ország megítélésének egyes kérdéseiről, https://bit.ly/3rNAf8n. The document conflicted with subsequent restrictions introduced by law, most importantly concerning the declaration of Serbia as a safe third country and was repealed in 2016. See Hungarian Helsinki Committee, 2017, p. 11.

[45] In the reviewed period: Govt. decrees 270/2015 (IX. 18), 41/2016 (III. 9) (expanding the territorial scope as well), 272/2016 (IX. 5), 36/2017 (III. 6), 247/2017 (VIII. 31), 21/2018. (II. 16), 159/2018 (IX. 3).

[46] Already in the second instance of declaring the emergency, see Art. 2 of Govt. decree no 41/2016 (III. 9).

that individual rights can be limited in more extended ways, including property rights, freedom of movement, but also the possibility to use the army in border protection.

Amending Act No. 140 of 2015 (September) introduced simplified assessment and moved the procedure to the transit zones, with the exception of vulnerable applicants (Hungarian Helsinki Committee, 2016a: 9). The territory of this 'pre-transit zone' area is legally Hungarian soil but is not considered to be falling within the responsibility of the Hungarian authorities, leading to dire circumstances (Hungarian Helsinki Committee, 2016b). The circumstances in transit zones are described by asylum seekers as 'jail-like' (Bernát et al., 2019: 33–34). The law also criminalized irregular border crossings (Magyar Helsinki Bizottság, 2015a). Criminal proceedings followed, including aggravated cases, e.g. damaging the fence, where the statutory sanction is two to eight years of imprisonment (FRA, 2016: 12). After a 2017 amendment, all applicants, with the exception of those under 14, had to remain in the transit zones throughout the entire procedure, effectively universalizing detention (Magyar Helsinki Bizottság, 2017). Asylum applications were also moved to the zones, applications could only be filed from within the transit zones, with the exception of those lawfully residing in Hungary (Hungarian Helsinki Committee, 2018: 11). The number of people who could enter daily decreases in several steps, to five in 2016 (Hungarian Helsinki Committee, 2017a: 11), eventually down to one person per day per transit zone from 28 January 2018 (Hungarian Helsinki Committee, 2018: 11). The decision on who can enter is not transparent, leading to complaints. A 'community leader' chosen from within the asylum seekers by themselves communicates with the authorities and keeps, in the case of Röszke (border with Serbia), three separate lists (Hungarian Helsinki Committee, 2017a: 17), later following the decisions of the Serbian Commissariat for Refugees (Hungarian Helsinki Committee, 2018: 18).

Amending Act No. 94 of 2016 (July) introduced pushbacks: apprehended asylum seekers can be pushed back to the Croatian or Serbian side from the zone within 8 km from these borders, without registering either the applicant or the asylum request. A 28 March 2017 amendment (Act No. 20 of 2017) expanded this rule to the entire country. There are reports of violence associated with this process (Hungarian Helsinki Committee, 2017b; MIGSZOL (Migrant Solidarity Group of Hungary), 2016), and due also to the undocumented nature of these actions, legal remedy is not available. In most cases, Serbia did not take back asylum seekers officially (Hungarian Helsinki Committee, 2018: 38). As a result, pushback measures happen like outside existing legal guarantees. FRA, the EU's human rights body writes, based on NGO reports, that "local vigilante groups participated in pushback incidents against asylum seekers along the Serbian-Hungarian border during the summer of 2016. NGOs registered multiple cases of violence in which asylum seekers and refugees who tried to enter Hungary – including children and women – were beaten, threatened and exposed to humiliating practices by these paramilitary groups before being pushed back to Serbia" (FRA, 2016: 7–8).

A 2016 amendment reduced the review period and document validity to three years in all cases (asylum and subsidiary protection; Hungarian Helsinki Committee, 2017a: 12). Integration measures largely disappeared. An April 2016 amendment eliminated the earlier allowance rule ("pocket money:; Hungarian Helsinki Committee, 2017a: 12). Amending Act No. 39 of 2016 (June) revoked remaining integration measures like housing support (Hungarian Helsinki Committee, 2017a: 12; Magyar Helsinki Bizottság, 2016a). Earlier support included providing accommodation for a period of time, the operation of refugee camps (gradually closed down as asylum seekers were forced to the transit zones), 'integration contracts', regular allowance. only accommodation for 30 days in the transit zones to be counted from arrival. NGOs and local government organizations are the only one to provide some form of support (Bernát et al., 2019: 37). This means that even those lucky few who are recognized as refugees are without meaningful support to help integration into mainstream society. The lack of financial means,

language skills, recognition of degrees, lack of connections and prejudices all lead to the meagre opportunities of integration (Bernát et al., 2019: 37 and 38).

Amending law Act No. 6 of 2018, dubbed "Stop Soros" as part of the anti-Soros, anti-EU and anti-immigration campaign, effective from July, established an automatic rejection of requests from those who arrived through countries where the applicant is not in danger.[47]

Act No. 41 of 2018 (August) introduced a 25%[48] "special tax on immigration" on activities that provide material support for activities helping immigration, measures that, directly or indirectly, facilitate immigration, including the organization of and participation in media campaigns and seminars, the organization of education, the network-building and operation, propaganda activity presenting immigration in a positive light.[49] This effectively targets all NGOs that try to inform asylum seekers and support the integration of refugees, tasks abandoned by the government, in line, e.g., with the recommendation of the UN High Commissioner for Refugees and its office located in Budapest. The OLIve (Open Learning Initiative) initiative of Central European University (later forced out of the country, in violation of EU law[50]) offering learning opportunities for refugees was also closed as a result of the law (UNHCR, 2018c). The most well-known NGOs working on asylum cases refused to pay the tax ("Menedék", Refuge Association; TASZ – Hungarian Civil Liberties Union and the Hungarian Helsinki Committee). The Hungarian Helsinki Committee challenged the legality of the law before the Constitutional Court and the ECtHR.[51] (The Constitutional Court suspended its procedure, waiting for the judgment of the CJEU on the matter; to date there is no information on the ECtHR case.) Targeting asylum-related activities in these laws (criminalization and taxation) was criticized by the OSCE and Venice Commission in two joint opinions.[52]

With another anti-NGO, anti-transparency move, the government ended civil oversight based on long-time cooperation in a number of areas, including those involving the police, the Immigration and Citizenship Office, the Hungarian Helsinki Committee, and the UNHCR (Magyar Helsinki Bizottság, 2017c).

The thorough criminalization of asylum-related acts also hampers NGO activism. Act No. 6 of 2018 criminalized "aiding and supporting illegal immigration", with up to one year of imprisonment, including the act to providing information and legal assistance.[53] The lax definition of the activities means that attorneys who present applicants who are later found to be ineligible to asylum under the stringent Hungarian conditions can also face prosecution. The UNHCR stated that the amendments "deprive people who are forced to flee their homes of critical aid and services, and further inflame tense public discourse and rising xenophobic

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[47] New Art. 51-2f of Act No. 80 of 2007.

[48] Art. 253-4 of Act No. 41 of 2018.

[49] Art. 253-2 of Act No. 41 of 2018.

[50] C-66/18, European Commission v Hungary, Judgment of the Court (Grand Chamber), 6 October 2020, ECLI:EU:C:2020:792,
http://curia.europa.eu/juris/document/document.jsf?text=&docid=232082&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=11250103.

[51] See the descriptions and petitions at https://www.helsinki.hu/a-magyar-helsinki-bizottsag-birosag-ele-viszi-a-civileket-fenyegeto-uj-szabalyokat/; https://www.helsinki.hu/wp-content/uploads/HHC-alkjogi-panasz.pdf; https://www.helsinki.hu/wp-content/uploads/Application_HHC_SS3.pdf; https://www.helsinki.hu/wp-content/uploads/Application_HHC_25_percent.pdf.

[52] https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2018)013-e and https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2018)035-e, respectively.

[53] Art. 353/A of the Penal Code. The Constitutional Court found the Act compatible with the Fundamental Law, and concluded that it is enough to declare constitutional requirements for the implementation. Resolution No. 3/2019. (III. 7.) of the Constitutional Court of Hungary.

attitudes." (UNHCR, 2018b) Amending Act No. 143 of 2015 criminalized unlawful border crossing and damaging the fence (3 to 20 years of imprisonment).[54] Amending Act No. 20 of 2017 (28 March 2017) made it a misdemeanor to leave the designated area around the border (in addition to other measures like restricting the mandatory assignment of guardians to minors under 14). A new ground for denying asylum to those who committed a crime punishable with five years of prison or more (following a final verdict) was introduced in 2018.

In the summer of 2018, Seventh Amendment to the Fundamental Law, several additions meant to protect Hungarian sovereignty and national identity against 'pro-immigration' measures from the EU, as a direct response to the relocation quota, including the most direct clause that makes it unconstitutional to grant asylum to someone who arrived through a safe third country. The amendment added a reference to the protection of national identity in the preamble as well as a reference to national sovereignty in the clause on EU law, also including an anti-immigration reference. The amendment requires a two-third majority for migration-related legislation.

"No foreign population shall be settled in Hungary. A foreign national, not including persons who have the right to free movement and residence, may only live in the territory of Hungary under an application individually examined by the Hungarian authorities. The basic rules on the requirements for the submission and assessment of such applications shall be laid down in a cardinal Act." (Art. XIV(1))
"A non-Hungarian national shall not be entitled to asylum if he or she arrived in the territory of Hungary through any country where he or she was not persecuted or directly threatened with persecution." (Art. XIV(4))
"The basic rules for granting asylum shall be laid down in a cardinal Act." (Art. XIV(5))
"We hold that the protection of our identity rooted in our historic constitution is a fundamental obligation of the State." (Preamble)
"Exercise of competences under this paragraph shall comply with the fundamental rights and freedoms provided for in the Fundamental Law and shall not limit the inalienable right of Hungary to determine its territorial unity, population, form of government and state structure." (Art. E(2))
"The protection of the constitutional identity and Christian culture of Hungary shall be an obligation of every organ of the State." (Art. R(4))
"The police shall participate in preventing illegal immigration." (Art. 46(1))[55]

Relevant sections of the Seventh Amendment to the Fundamental Law of Hungary

The account of the UNHCR illustrates well the implications of the post-2015 asylum regime. The UN office followed closely the fate of three Afghan families and found the following. The families were detained in the transit zones from January to May 2019. In May, two families were escorted back to the Serbian side of the border. UNHCR staff did not have access to the part of the transit zone where the families were held. The families told that the adult member

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[54] Art. 352/A, B, and C of the Penal Code.

[55] Seventh Amendment to the Fundamental Law of Hungary, adopted on 28 June 2018. Official translation available at https://bit.ly/2X31EoI.

did not receive food for five days. The third family's removal was blocked by an injunction of the ECtHR (UNHCR, 2019).

3.2. Existing and potential conflicts between national law and legal practice of a relevant country and applicable EU rules

The relevant Hungarian law is subject to European acquis including the Schengen norms after Hungary entered the Schengen zone in 2007. Genova Conventions including the expansion of the geographical scope ratified in 1989. EU law encompasses a wide area of immigration and asylum law, incorporating also the obligations under international law. In addition to international fora cited earlier (UN bodies[56] including the UNHCR and the UN Working Group on Arbitrary Detention; Council of Europe bodies including the ECtHR, the Venice Commission, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment; or the OSCE ODIHR), the dismantling of the asylum regime triggered action from EU bodies. The section below will provide a short overview of the most important decisions of the European Court of Justice (ECJ) in the field.

The ECJ ruled that a central piece of the Hungarian asylum legislation, the automatic rejection of applications by asylum seekers arriving from countries where they do not face danger (most commonly, Serbia, see above in Section 2.3) is in violation of EU law.[57] In a different case, pending before the Court, it was the Commission that brought an action against Hungary requesting the ECJ to rule again on the third country exclusionary rule[58] (the ECtHR also found violations of European standards. It found returns without individual assessment, based on declaring Serbia a safe third country, in violation of established standards, Art. 3 of ECHR in this case). The ECJ also ruled that the eight-day time limitation should be put aside as incompatible with EU if it would undermine effective guarantees of international protection. In a different case, the Court stated the same for a sixty-day rule.[59]

The practice of not providing food for asylum applicants in the transit zones is, according to the Commission, against EU law, triggering an infringement procedure in 2019[60] (the ECtHR was granting interim measures for the same violation in numerous cases, but the government regularly reverted the practice; this problem ceased with the closing of the transit zones in 2020).

The Commission brought action against Hungary, Poland and the Czech Republic for failing to fulfil their obligations under the relocation decision. The ECJ agreed with the Commission and declared the three countries to be in violation of EU law concerning relocations.[61]

The ECJ declared the practice to keep asylum seekers in the transit zone to legally qualify as detention,[62] its current rules to be in violation of EU law, its length should be limited to four

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[56] See also the account of the UN High Commissioner for Human Rights, critical of the Hungarian situation: https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24551&LangID=E.

[57] ECJ, C-564/18, LH v Bevándorlási és Menekültügyi Hivatal, judgment, 19 March 2020, ECLI:EU:C:2020:218.

[58] C-821/19, Commission v Hungary (communicated), https://bit.ly/2Ms03Xp.

[59] ECJ, Case C-406/18, PG v Bevándorlási és Menekültügyi Hivatal, judgment, 19 March 2020.

[60] https://ec.europa.eu/commission/presscorner/detail/EN/IP_19_5994.

[61] C-715/17 (Poland v Commission), C-718/17 (Hungary v Commission) and C-719/17 (Czech Republic v Commission), judgment, 2 April 2020, ECLI:EU:C:2020:257.

[62] In a 2019 judgment, the ECtHR did not find transit zones to qualify as detention (the Grand Chamber overruled the earlier – unanimous – judgment of the Court in this regard. (This in no way interferes with the more demanding standard of the ECJ decision concerning detention.) The Strasburg court nevertheless found a violation on other grounds. Ilias and Ahmed v. Hungary, App. no. 47287/15, Grand Chamber judgment of 21 November 2019. The ECtHR also halted in some cases transfers to the transit zones: halted by the ECtHR: https://www.helsinki.hu/a-strasbourgi-birosag-leallitotta-nyolc-gyerek-es-egy-terhes-no-atszallitasat-a-tranzitzonaba/.

weeks and the decision should be individualized with reasons stated.[63] In what led to a major overhaul of the Hungarian asylum situation, the government reacted by closing the transit zones altogether.[64] This brought a considerable improvement in the case of those already in the zone (they were transferred to accommodation from where the asylum seekers are able to go out and come back and benefit from more meaningful procedural guarantees), but made it even harder for others to seek asylum in Hungary. New applications can only be filed at embassies (outside Hungary) and asylum seekers have to wait for the end of the procedures there. This means that other countries (like Serbia) will be responsible for the applicants (given the conditions in the transit zones, this will most likely mean that asylum seekers will wait out the procedures in better circumstances). While humanitarian visas and applications at embassies are accepted practice, not allowing asylum seekers to request protection at the border, within Hungary goes against international commitments and EU norms and is likely to trigger a new round of compliance procedures (which can take years while the practice can stand). The UNHCR argues that the law, adopted in response to the ECJ ruling, violates existing standards, most importantly the access to territory and non-refoulement.[65]

The ECJ remedied a crucial procedural impediment, the inability of courts to directly overrule and change the decisions of the asylum authority. This led to a potentially endless back-and-forth with new rejections after court invalidation, declared to be in violation of EU law.[66]

The ECJ ruled it incompatible that the courts cannot alter only invalidate the decisions of the asylum authority.[67] The problem arose because the authority could (and did) rule after the annulment of its decision against the court ruling and, in a second round, the court was still powerless to decide on its own, other than sending the case back again. The ECJ stated that in such cases, the national norm that does not make it possible for the court to change the administrative decision can be put aside as incompatible with EU law.

The ECJ reviewed, at the initiative of a Hungarian court, the law that excludes applicants from asylum and subsidiary protection if they committed a crime punishable to at least five years. The ECJ ruled, in its judgment of 13 September 2018, that looking at the punishment provided by law is not enough and an individualized assessment of the crime should be carried out before the applicant can be excluded from protection.[68]

In the case of SA, the ECJ found the Hungarian provision that automatically allows the rejection of asylum applications from persons having committed a crime for which possible punishment is five years of prison or more. EU law requires the individual assessment of whether the concrete crime is serious enough to justify exclusion.[69]

The ECJ declared the practice of assessing the sexual orientation of asylum seekers via psychological experts to be in violation of EU law.[70]

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[63] ECJ, C-924/19. PPU. and C-925/19. PPU., FMS, FNZ, SA, SA jr. v Országos Idegenrendészeti Főigazgatóság Dél-alföldi Regionális Igazgatóság and Országos Idegenrendészeti Főigazgatóság, judgment (Grand Chamber), 14 May 2020, ECLI:EU:C:2020:367.

[64] See the motivation of legislative amendment on page 221 here: https://www.parlament.hu/irom41/10748/10748.pdf.

[65] UNHCR Position, https://www.refworld.org/docid/5ef5c0614.html.

[66] ECJ, C-556/17, Alekszij Torubarov v Bevándorlási és Menekültügyi Hivatal, judgment, 29 July 2019, ECLI:EU:C:2019:626.

[67] ECJ, Case C-406/18, PG v Bevándorlási és Menekültügyi Hivatal, judgment, 19 March 2020.

[68] Ibid.

[69] https://www.helsinki.hu/a-magyar-jogallamisag-mellett-allt-ki-az-europai-birosag/.

[70] ECJ, C-473/16, F v Bevándorlási és Állampolgársági Hivatal, judgment, 25 January 2018 (request for a preliminary ruling from the Szegedi Közigazgatási és Munkaügyi Bíróság, Hungary).

A law targeting NGOs receiving funding from abroad, including organizations active in the asylum field, including requirements of registration, declaration and publication, under the burden of penalties, was found incompatible with EU law as discriminatory and violating rights under the Charter of Fundamental Rights and the free movement of capital.[71]

In a case where the ECJ has not ruled but the opinion of the Advocate General (AG) is available, the Commission challenged key elements of the post-2015 asylum regulation of Hungary.[72] The AG agreed on most points, including the undue limitations on access to asylum (only limited-access transit zones), the inadequate legal guarantees in assessing asylum applications, the automatic detention of applicants or the pushback provisions. With the closure of the transit zones, some of these claims do not stand even if the violations continue or access dwindled further.

A procedure under Article 7 TEU is also pending. This is the grand-scale device to make sure member states are in compliance with Article 2 TEU values and principles including democracy, human rights, and the rule of law. Serious violations of asylum law are among the issues listed in the proposal of the European Parliament to the Council.[73] The latter should decide, by qualified majority, on whether there is a serious breach of Article 2 values in which case the European Council could decide unanimously on possible sanctions.

4. Synthesis

The government and the governing coalition, implementing the narrative established by PM Viktor Orbán, engaged in a strategy that plays on xenophobic sentiments that increased nationally as a result of relentless anti-immigration campaigns. Government and pro-government statements targeted not only immigrants but also those who help asylum seekers or criticize the government's asylum law record. Immigration became a reference point that is used in broad political areas, seeking to justify government position against the EU's criticism of the rule of law situation in Hungary. Domestic guarantees did little to constrain the rights violations and, in some cases, even boosting anti-immigrant sovereigntist government proposals. The voice of the opposition remained weak and ineffective in presenting a counter-narrative.

The asylum law of Hungary took a turn in 2015 that contravenes international and EU obligations and has denied meaningful venues for asking international protection. It led to unnecessary suffering in many document cases of deaths, torture, including police-inflicted injuries, inhuman and degrading treatment, including the lack of food and the prolonged detainment of asylum applicants in conditions, the lack of procedural guarantees, the elimination of even basic integration measures and the targeting of civil actors who step in to provide essential services. As the UNHCR concluded, "Hungary has practically closed its borders to people seeking international protection, in clear breach of its obligations under international and EU law. […] The building of physical barriers at the border and the introduction of restrictive laws and policies have increased the suffering of people who have often fled unbearable conditions in their countries of origin." (UNHCR, 2018a) The major

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[71] C-78/18, Commission v Hungary, judgment, 18 June 2020, ECLI:EU:C:2020:476.
[72] C-808/18, European Commission v Hungary, Opinion of Advocate General Pikamäe, 25 June 2020, ECLI:EU:C:2020:493.
[73] European Parliament resolution of 12 September 2018 on a proposal calling on the Council to determine, pursuant to Article 7(1) of the Treaty on European Union, the existence of a clear risk of a serious breach by Hungary of the values on which the Union is founded (2017/2131(INL)), https://www.europarl.europa.eu/doceo/document/TA-8-2018-0340_EN.html.

elements of the extremely restrictive regime were found to be in violation of Hungary's legal obligations.

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6. Italy

Country Report Prepared for the DEMOS Project

Author: **Andrea Crescenzi**, Professor, Sapienza Universita di Roma

1. Background information

The Italian National Institute of Statistics (ISTAT) estimated that on 31 December 2018 there were 5.255 million foreign nationals residing in Italy, equivalent to 8.7% of the country's population, in addition to 1.34 million who had acquired Italian citizenship. In total, there were 6.6 million people from 200 different countries living in Italy on 31 December 2018. The most represented nationalities were the following: Rumanian (1.207 million people), Albanian (441,000), Moroccan (423,000), Chinese (300,000), and Ukrainian (239,000). These five nationalities accounted for almost 50% of all foreigners living in Italy (ISTAT, 2019).

There was a slightly larger presence of women (51.7%) compared to men, even though percentages varied depending on nationality. For instance, women comprised 77.6% of the Ukrainian population in Italy, but 26.5% of Senegalese residents. Data showed that the average age of the foreign population living in Italy was 35. The foreign population on Italian soil lived mainly in the most developed Regions in the north (57.5%) and in the centre (25.4%), with increasing but much more limited percentages in the *Mezzogiorno* (12.2%) and Islands (4.9%). The Regions with the largest number of foreign nationals were Lombardy (1,181,772 – equivalent to 11.7% of all resident population), Latium (683,409 – 11.6%), Emilia-Romagna (547,537 – 12.3 %), Veneto (501,085 – 10.2 %) and Piedmont (427,911 – 9.8%). The Provinces with the largest number of foreign residents were Rome (556,826 – 12.8%), Milan (470,273 – 14.5%), Turin (221,842 – 9.8%), Brescia (157,463 – 12.4%), and Naples (134,338 – 4.4%) ("IDOS," 2019: 9).

ISTAT calculated that foreign workers comprised around 10.6% of all workers in Italy at the end of 2018. Most of them worked in the service sector (home help and family care, hotels and restaurants, cleaning and moving services), industry, and agriculture (Ministry of Labour, 2019: 16).

As regards irregular immigration, although there are no official statistics, 279,000 to 461,000 foreigners were estimated to be living in Italy at the end of 2018 (OECD, 2018, p. 173). In the same year, the number of migrants who arrived on Italian coasts was 23,370, a reduction of 87.9% compared to 2017 (119,369), and of 92.85% compared to 2016 (181,436) (Ministry Home Affairs, Statistics 2018).

In 2018, a reduction was also recorded in the number of applications for international protection (i.e. all persons who have lodged for asylum, subsidiary protection or any form of protection): 53,596 compared to 130,119 in 2017, 123,600 in 2016, and 83,970 in 2015. The top three nationalities of asylum applicants in 2018 were Pakistani (7,368 applications), Nigerian (6,336), and Bangladeshi (5,026), compared to Nigerian (25,964), Bangladeshi (12,731) and Pakistani (9,728) in 2017; and Nigerian (27,289 and 18,174), Pakistani (13,660 and 10,403) and Gambian (9,040 and 8,022) in 2016 and 2015 (Ministry Home Affairs, Asylum 2018).

Moreover, of the 95,576 asylum applications examined in 2018 (as against 81,527 in 2017, 91,102 in 2016 and 71,117 in 2015), 67% were rejected; refugee status was afforded to 7% of applicants, subsidiary protection to 5%, and humanitarian protection to 21%.

There were a total of 189,243 people in Italy who had been afforded some form of international protection (refugee status, subsidiary protection, or humanitarian protection) at the end of 2018, compared to 167,335 in 2017 (147,370 in 2016 and 118,047 in 2015) (UNHCR, 2019: 66).

2. Immigration as a political issue

2.3. Political context

2.1.1. The positions of major domestic parties (including the parties in the government) on the problem of immigration and their evolution, relevance of the immigration issue in the national elections (2015–2018)

In recent years in Italy, immigration policies were adopted on an emergency basis, mainly focusing on migrant flows and arrivals by sea. This approach inevitably affected the response of both right – and left – wing parties, and had an impact on the measures taken.

Generally, the narrative of right-wing parties is that the migration flow is mostly uncontrolled and that migrants come to Italy to seek a job. Once in Italy, they find a saturated labour market, end up living by their wits, and are often recruited by criminal organisations. For these reasons, the entry of migrants should be prevented, or the situation in the country would become even more unbearable.

The traditional narrative of left-wing parties is that poor people flee from wars and are ready to risk their lives crossing the desert and the sea, to reach the country. Left-wing parties propose accepting and integrating migrants. They also point to Italy's need for a young population to counter the decline in birth rate and the ageing of the population.

The Five Star Movement (M5S) is new in the political arena, and is hard to place in the usual political spread between the left and the right. The M5S is less aggressive than right-wing parties on the migration issue, mirroring the more moderate views of its supporters, who are mostly in favour of migrant reception.

As is the case with all populist movements, Italian populist movements, the League and Brothers of Italy in particular, and to a lesser extent the M5S, exploited the disillusionment with traditional politicians, and relied on the opposition between us (Italians) and them (migrants and refugees).

Generally speaking, in order to explain Italian populism, we have to take into account the economic hardship faced by the country in the recent years and the difficulties encountered by traditional parties to find appropriate remedies to address social issues like unemployment, security and increasing inequality.

In this situation of crisis of the old parties, the gap between the people and the "elite" increased and favoured movements like League, Brothers of Italy and Movement 5 Stars, which promised a radical change to traditional politics.

The League and Brothers of Italy are typical right-wing populist parties. Both have a charismatic leadership, Matteo Salvini and Giorgia Meloni respectively, and both took a strong anti-immigration position.

The Five Star Movement is a different kind of populist party. As highlighted on several occasions by its members, the M5S is not really a party: it is a movement, and it cannot be included in the traditional left or right paradigm. In addition, there is no charismatic leadership, but a constant appeal to the direct action of the people and the citizens. For these reasons, it developed innovative organisational strategies and used social networks to mobilise and communicate to its followers, and to coordinate local meetings. For these reasons, the M5S is

considered as a populist and anti-establishment "party". As regards immigration issues, over the years M5S showed ambiguous positions.

As regards League, in recent years the rightist component has become more extreme. Salvini has been inspired by Marine Le Pen and Donald Trump in his policymaking.

Like the U.S. president, Salvini used social media to present himself as a strong man who can solve Italy's problems and, *in primis*, the immigration issue. The right-wing parties knew that immigration was one of the main issues that Italians care about. Hence, they engaged in the rhetoric on immigrants considered as a threat to national identity, security, the welfare state and employment.

These approaches became apparent during the campaign for the general election that was held on 4 March 2018, the only one at a national level that has taken place in the reference period.

At a general level, the Italian electoral system is governed by Law No 165 of 3 November 2017 ("Law No. 165," 2017), providing that the election programmes of all political parties should be deposited with the Ministry of the Interior and made public (Article 4.1).

In the election programmes of centre-right forces (Forza Italia, League, Brothers of Italy), the issue of immigration was linked to that of terrorism. In addition to a review of the European treaties, the centre-right coalition championed the control of national borders, a stop to migrant landings, the repatriation of illegal migrants, the signing of agreements with the countries of origin of economic migrants, and the abolition of humanitarian protection.

In the election programme of the M5S, four lines of action concerning immigration could be identified. The first general line concerned the management of external borders, with the provision of legal entry channels and the fight against trafficking in human beings. As part of this framework, there was a proposal to allow the submission of applications for international protection at the diplomatic missions (embassies and consulates) of the Member States in the countries of origin or transit. The second line of action concerned a review of the Dublin system and the setting up of an automatic and mandatory distribution mechanism of asylum seekers among all EU Member States, with sanctions for those that would fail to meet the obligations taken. Finally, at a domestic level, the programme provided for the immediate return of irregular migrants and a reform of the asylum system, with faster procedures for application examination and a more transparent management of funds.

Similarly, the election programme of the Democratic Party (PD) proposed a better control of external borders. Like the M5S, the PD intended to review the Dublin Regulation, with a mandatory redistribution of asylum seekers in all EU countries, and a sanction system for those who failed to meet the established quotas. This framework included a proposal to sign readmission agreements with the States of origin and of transit, and the setting up of humanitarian corridors. At a domestic level, the PD proposed an improvement of the migrant reception system and the introduction of the *IusCulturae* principle for granting Italian citizenship.

From this short presentation of the main Italian political parties' election programmes, a couple of points may be made. First, it may be noticed that some programmes were more detailed, whereas others comprised shorter slogan-like statements. The second is about the content of the programmes. Many proposals did not take into account the main rules of law on asylum. As regards the specific proposal of amending EU founding treaties, none of the programmes spelt out how to do this.

During the election campaigns, the key topic was immigration. As said before, League, as well as Brothers of Italy, have had strong position against illegal immigration and foreigners and,

more generally, towards EU migration policies. Even M5S during their electoral campaign proved to be increasingly anti-migration. On the contrary, PD and Forza Italia took more moderate positions, which turned out unsuccessful in electoral terms.

2.1.2. Relevance of different arguments used for or against immigration in the political and public debate

In the last years, migration flows in Italy have evolved in a context of economic crisis. Indeed, it should be pointed out that the financial crisis (started in 2008) and a massive arrival of migrants (from 2011) has led to a negative situation for Italian migration policies, in addition to the perception, in public opinion, of an unprecedented emergency.

Most of Italian population perceived the financial crisis from 2008 as a threat in terms of unemployment and inflation. It should be recalled that after 2008, the unemployment rate in Italy continuously increased, and that in 2014 peaked at 12.7%. It should also be noted that the financial crisis mostly affected the young population, and that in 2014, over 42% of the young population was unemployed.

For these reasons, immigration was one of the main themes of the March 2018 elections, and the relevant proposals outlined in the election programmes were given much consideration in pre-election debates.

It should be noted that an already tense climate worsened following some news stories that involved people from foreign countries. Many political parties, not only centre-right ones, talked of immigration as an emergency, and highlighted a potential social risk. In particular, the League focused on the sense of insecurity, making the countering of immigration the spearhead of its election campaign. The theme of social resentment was channelled and reduced to an opposition between Italians and foreigners, leading voters to believe that closing the country to immigrants was a solution to many of the country's problems. Moreover, the large media coverage of arrivals of migrants by sea magnified the perception that the borders were, to some extent, out of control.

The use of a strongly discriminatory and anti-European language in debates may be explained in pre-election polls. In fact, estimates showed that almost one Italian in three would vote for a political party that would put 'Italians first'. After employment, Italians considered immigration as one of their most urgent problems. Polls also suggested that immigration was often linked to criminal activity and perceived by the population as a threat to their cultural and social identity, and to their access to the labour market and welfare system. Finally, polls showed a geographical and social differentiation in the perception of the migration phenomenon. In fact, countering immigration was a theme that was felt more strongly in the north than in the south, especially in the outskirts of cities. Socially, a sense of insecurity was more pervasive among unemployed people and housewives, and among the least paid and least skilled workers in the private sector (IPSOS, 2018: 116).

As a result, the March 2018 general election rewarded the political parties that placed a strong focus on the immigration issue. The centre-right coalition obtained more than 37% of votes, the M5S alone almost 33%, and the centre-left coalition almost 23% (Ministry Home Affairs, Election Results, 2018).

Due to the absence of a clear majority that could rule the country, consultations led to a government alliance between the M5S and the League, which combined their election programmes in a shared document (Government Contract). In this Government Contract, the theme of migration was given great consideration, which led to the adoption of very stringent political and legislative measures (M5S, League, 2018).

As regards the results of the election, many analysts agree that the theme of immigration control stirred the attention and concerns of traditionally left-wing voters, too. They also found that there was an association between the hostility of the population towards immigration and their distrust towards European institutions and the integration measures that had been undertaken domestically in recent years. More generally, Italian citizens felt frustrated with the ruling class and with inequality and lack of opportunities for new generations, and disappointed with EU Member States, which had not helped Italy to manage its sea borders (Levi, Mariani and Mongiardo, 2019).

The countries of arrival cannot handle migration flows alone on behalf of Europe. It should be pointed out that if Italy (and of course other countries of arrival, like Greece) is left alone in the management of migration flows, it is not because of decisions made by the European Commission or other EU Institutions. For instance, we could mention initiatives taken to increase the distribution of applicants for international protection who are already in the territory of the Union (the relocation mechanism adopted by the Council in 2015).

The relocation system was a first implementation of the principle of solidarity and fair sharing of responsibility between Member States, as set out in Article 80 of the Treaty on the Functioning of the European Union (TFEU). However, the principle of solidarity was undermined by a lack of cooperation from a considerable number of Member States, the Visegrad countries in particular. Probably, the real issue is that all Member States have to change their approaches to the migration issues (Crescenzi, 2019).

2.4. Policy in action

2.2.1. Assessment of the governmental position on immigration, together with the information on its evolution (2015–2018)

Politically, the period 2015 – 2018 saw the succession of three governments with three different Ministers of Home Affairs: Angelino Alfano (21 February 2014 – 12 December 2016), Marco Minniti (12 December 2016 – 1 June 2018), and Matteo Salvini (1 June 2018 – 5 September 2019). They are responsible for the main immigration measures.

Before the coalition formed by M5S and Lega took power, PD had governed the country with two different cabinets: Renzi (2014-2016) and Gentiloni (2016-2018). The PD was not able to recognize the depth of the post-2008 recession and the gravity of unemployment, particularly among young people. It also had failed to understand the effect of the immigration issues among the Italian population, which also affected traditional left-wing voters.

The policies adopted in this period by the three Minister of Home Affairs before mentioned, despite some differences, were all intended to manage and contain the arrivals of migrants on Italian shores. This aim was pursued through two lines of action: at a European level, the implementation of the relocation system, adopted by the European Commission, in EU Member States; and at an extra-European level, the strengthening of relations with migrants' countries of origin and transit.

In the period 2015 – 2016, in order to fully implement the European Agenda on Migration, Italy adopted a Roadmap (Ministry Home Affairs, Roadmap, 2015) and a Ministerial Circular (Ministry Home Affairs, Circular Ministerial, 2015), transposing the relocation measures taken by the European Commission, and it set up six hotspots (Pozzallo, Porto Empedocle, Trapani, Lampedusa, Augusta, and Taranto).

At the same time, the Ministry of the Interior signed a Memorandum of Understanding with migrants' countries of origin on the management of migration flows and return. The

Memorandum signed with Sudan on 3 August 2016 falls within this framework (Ministry Home Affairs, Memorandum of Understanding, 2016).

Two lines of action also characterised migration policies in the period 2016 – 2018: the NGO Code of Conduct and the agreements made with migrants' countries of origin and transit. The NGO Code of Conduct outlined a set of rules NGOs had to abide by during rescue operations at sea. Italian authorities could take measures with respect to the vessels, should the NGOs fail to sign or comply with the Code of Conduct (Ministry Home Affairs, Code of Conduct, 2017). The Memorandum of Understanding with Libya of 2 February 2017 on the strengthening of border security and the fight against irregular migration fall instead within the framework of international cooperation concerning immigration (Italian Government, Memorandum of understanding, 2017).

In the period 2018–19, migration policies were at the core of the newly formed government in its first months of office. In particular, the Government adopted a stricter line in this area, with a set of measures concerning NGOs working in the Mediterranean and the closure of Italian ports to vessels with migrants on board.

Three additional decisions were also taken. First, a 1.5% tax was introduced on money transfers to non-EU countries (the so-called remittances, which amounted to € 6.2 million as of 31 December 2018) (Law No. 136, 2018, art. 25 *novies*). Second, the country did not join the Global Compact for Migration adopted by the UN in December 2018. Third, cooperation was strengthened with the countries of origin and transit for managing departures and repatriation.

As regards the Global Compact, the Italian Governments that initially supported it were different (with Renzi and Gentiloni Prime Ministers) than the Government in charge at the moment of its adoption. Indeed, as mentioned before, in December 2018, the government coalition was composed by the M5S and the League.

The priorities of these two parties were, *inter alia*, to stop irregular migration and to radically change the relationship with the EU. However, their ideas on how to proceed to reach those aims diverged widely. In the case of the Global Compact, different points of view between League and M5S led firstly to a state of uncertainty and, after a few months, to the decision by the Italian Parliament to withdraw from the Agreement.

In particular, League and Brothers of Italy considered the Global Compact as a risk in terms of State's sovereignty. They believed that it established a sort of right to migrate, encouraged irregular cross-border movement, and promoted continuous migration flows, using demographic and economic reasons. Finally, they considered the Global Compact like a dowel of a project, aimed at annihilating borders, cultures, and, in particular, national sovereignty in the field of migration.

Overall, in recent years, immigration policies have become a hotbed of tension. In this sense, populist parties have put the topic of immigration, and especially of managing the migration phenomenon, at the core of their political and governmental activity.

2.2.2. Challenges in implementation of the common EU migration policies in the relevant country

One of the primary challenges that Italy had to tackle in the period 2015–2019 concerning EU policy implementation was the transposition of the Reception Directive and of the Asylum Procedures Directive. This was made by Legislative Decree No. 142 of 18 July 2015 ("Legislative Decree No. 142, 2015). Operationally, the government took steps aimed at improving the migrant reception system on domestic soil and reducing the time required to process asylum applications.

Then, Italy undertook to apply the lines set forth in the European Agenda on Migration. In particular, three main policies were pursued: signing cooperation agreements in the area of migration with third countries; managing the Central Mediterranean migration route; and especially activating relocation procedures.

The lines of action proposed in the European Agenda on Migration included strengthening solidarity and shared responsibility between EU Member States by setting up a temporary distribution scheme for applicants of international protection already on EU soil. The aim was to help Italy and Greece face the emergency situation characterised by the sudden influx of third-country nationals on their soil. The relocation plan, adopted by Council Decision (EU) 2015/1523 and Council Decision (EU) 2015/1601 in September 2015, required the beneficiary states – Greece and Italy – to strengthen their asylum and return systems. In particular, they had to set up 'hotspots' for the identification, registration and fingerprinting of newly arrived migrants. The relocation procedure was to be triggered within two months of the decision being taken by the authorities of the EU Member States, which had to cooperate by giving priority to applicants with special vulnerabilities.

2.2.3. Existing and potential conflicts between national policies and common EU policy position

As one of the main instruments for fighting illegal immigration, the Italian Government signed a set of bilateral agreements on immigration.

Generally, these were readmission agreements aimed at obtaining the cooperation of foreign countries' authorities in returning irregular migrants. Some of them were part of wider ranging agreements, which included forms of cooperation between law-enforcement authorities, especially with countries with the highest migration pressure.

The agreement made by Italy with non-European countries is in line with the indications outlined in the European Agenda on Migration. In fact, since 2015, the external dimension of the EU migration policy focused on supporting third countries involved in migration routes, with the aim of reducing migration flows and repatriating irregular migrants. The support of Italy by the EU is part of this approach, after Italy signed a Memorandum with Libya, with an allocation of € 39.92 million for a better management of migration flows in the Central Mediterranean route (4 May 2017) (European Commission, Migration and Border Management, 2017) and the adoption of an Action Plan to reduce pressure and increase solidarity (4 July 2017) (European Commission, Action Plan, 2017).

However, the use of Memorandums with third countries raised some criticism. On a political level, issue was taken with the fact that these Memorandums were signed with non-democratic states, such as Sudan, or with countries that are not very respectful of human rights, such as Libya. It was highlighted, in fact, that Libya was not a party to the Geneva Convention Relating to the Status of Refugees and to the main international agreements on human rights protection. Moreover, there were reports of inhuman and degrading treatment in migrant detention centres in Libya.

A specific request in this regard is made in the Joint Report of the Office of the United Nations High Commissioner for Human Rights and the UNSMIL Mission of 20 December 2018 on the situation of human rights of migrants and refugees in Libya: "The European Union and its Member States must also reconsider the human costs of their policies and efforts to stem migration to Europe and ensure that their cooperation and assistance to the Libyan authorities are human rights-based, in line with their own obligations under international human rights and refugee law, and do not, directly or indirectly, result in men, women and children being trapped in abusive situations with little hope of protection and remedy" (UNSMIL, OHCHR, 2018).

A second remark may be made on the content of these Memorandums. They are characterised by a preventive nature, which was not the case with the re-admission agreements traditionally signed by Italy, which allowed the repatriation of people once their protection application had been rejected following a substantive examination. By contrast, the memorandums (still in force) concern people who might be in need of protection, but whose application is not examined because that is a responsibility of the country of origin.

For instance, the Memorandum with Sudan established that it is up to the Sudanese authorities to identify, examine, and issue travel documents for return operations (Article 9). Moreover, in the event of an emergency situation, as established by the parties, the identification of irregular migrants may be done directly on Sudanese soil, once the return has taken place (Article 14). The application of this Memorandum stirred much protest in Italy. In this regard, an appeal is still pending before the European Court of Human Rights (ECHR) by some Sudanese nationals who were forcibly returned to Sudan by the Italian government on 24 August 2016 after being arrested in Ventimiglia (*Case W.A. and others v. Italy*, 2017).

A last remark may be made on memorandums: they may lead to the violation of the right to *non-refoulement*. In fact, a considerable proportion of scholars and of civil society believe that, through these memorandums, Italy is delegating *refoulements* to migrants' countries of origin or transit. This practice violates many international rules. Italy was already condemned by the ECHR in 2012 for the violation of Article 3 (prohibition of torture and inhuman and degrading treatment), and Article 13 (right to an effective remedy), as well as Article 4 of Protocol No. 4 to the Convention (prohibition of mass expulsion) (*Case Hirsi Jamaa v. Italy*, 2012). It is useful to recall that the *refoulement* prohibition is also affirmed at a European level in the Treaty on the Functioning of the EU (Article 78.1), the Charter of Fundamental Rights (Article 18-19), and the Qualification Directive (Article 21).

As regards the relocation system, the roadmap and the circular mentioned above provided for the setting up in Italy of six hotspots (Pozzallo, Porto Empedocle, Trapani, Lampedusa, Augusta, and Taranto), with the aim of reaching an overall initial reception capacity of 2500 places. However, many operational and organisational difficulties were met in this effort.

Operational delays were encountered in setting up hotspots and expanding their reception capacity. Moreover, the need arose to set up mobile hotspots, since many of the arrivals occurred in places other than the six locations identified. In terms of organisational aspects, in contrast, the main difficulties were the adoption of standard operational protocols in hotspots, staff training, coordination between different offices involved, the registration and processing of the applications submitted by persons to be relocated, and the setting up of ad hoc procedures for unaccompanied minors.

Lack of cooperation between States added to domestic difficulties. In fact, even though the relocation programme was mandatory, only a few member states gave it full implementation. Available data shows that only 31,503 relocations had taken place –10,265 from Italy and 21,238 from Greece – at the end of 2017, the programme deadline, compared to 160,000 planned relocation (European Commission, Relocation, 2017).

Lack of cooperation by other EU Member States led the Italian authorities to take more stringent measures in the period 2018–2019. In particular, NGOs carrying out rescue operations in the Mediterranean were forbidden to enter Italian ports, as they were accused of having ties with traffickers' networks. At a general level, closing ports was used as a way to put pressure on and force other EU Member States to receive a number of asylum seekers, following the failure of relocation measures. However, with the exception of a few occasional agreements for a voluntary distribution of asylum seekers between some states, the relocation measure based on a concept of solidarity did not succeed. This lack of solidarity between states was then used in

an anti-EU perspective; the European Union was blamed for most of the shortcomings recorded in managing the migration phenomenon.

3. Immigration as a legal issue

3.1 Brief description of the applicable legal framework in a relevant country together with the analysis of its actual implementation

The subject of immigration is regulated by Law No 40 of 6 March 1998 (Law No. 40, 2018), and by Legislative Decree No 286 of 25 July 1998, Consolidated Act on Immigration and the Condition of Foreign Nationals (TUI) (Legislative Decree No. 286, 1998). The right of asylum is regulated in the Italian Constitution: "A foreigner who, in his home country, is denied the actual exercise of the democratic freedoms guaranteed by the Italian constitution shall be entitled to the right of asylum under the conditions established by law" (Article 10.3). However, it should be pointed out that Italian legislation does not define the conditions to access the right of asylum. The relevant rules have been defined, for the most part, through the transposition of Community law.

In the reference period of the Report, three decrees concerning immigration were adopted, which amended the TUI: Decree Law No 13 of 17 February 2017, Urgent provisions for the acceleration of international protection proceedings, as well as the fight against illegal immigration (Decree Law No. 13, 2017); Decree Law No 113 of 4 October 2018, Urgent provisions on international protection and immigration–public security (Decree Law No. 113, 2018); and Decree Law No 53, of 4 June 2019, Urgent provisions concerning public order and security (Law Decree No. 53, 2019).

Overall, the immigration of non-EU nationals is governed by the principle of immigration quotas. Yearly, on the basis of the labour force demand, the government adopts the Immigration Quota Decree (*Decreto flussi*), establishing the number of foreign nationals who can enter the country for work reasons. For 2018, the Decree of the President of the Council of Ministers of 15 December 2017 provided for the entry of 30,850 non-EU workers (Decree of the President of the Council of Ministers, 2018).

By contrast, illegal entry and stay on national territory is considered a crime punishable by a fine or removal. In particular, removal may be carried out by escorting the person concerned to the border by the police (if there is a risk of absconding, the application is manifestly unfounded, or if he or she poses a risk to public policy, etc.) or by voluntary departure, including through an assisted voluntary return programme.

As regards integration, foreign nationals who reside legally in Italy are afforded the fundamental rights of freedom and equality enshrined in the Constitution as well as a number of civil, social, and political rights that are recognised by ordinary law. In domestic law, a particular emphasis is placed on the right to health, which is guaranteed to all foreign nationals, including those who fail to comply with entry and residence requirements (Articles 34–36 TUI). However, there are still forms of discrimination in place, linked, among other things, to access to goods and welfare services. As far as education and training is concerned, attainment and attendance levels differ between Italians and foreign nationals. As regards work, there is a greater presence of foreign nationals in low skilled sectors, with an average monthly pay that is 24% lower than that of Italians (slightly above € 1,000 compared to almost € 1,400, respectively). In the case of foreign female workers, the pay is even lower.

Finally, acquiring Italian citizenship is governed by Law No 91 of 5 February 1992 (Law No. 91, 1992). It is established that Italian citizenship may be granted to foreign nationals after ten

years of residence in Italy; to stateless persons, after five years of residence in Italy; to foreign nationals' children born in Italy when they attain 18 years of age; to the spouse of Italian nationals; and to adult foreign nationals adopted by Italians (Articles 3–5). Decree 113/2018 introduced the possibility to revoke already acquired Italian citizenship if a person is considered to pose a risk to the State. Revocation is made by Decree of the President of the Republic (Article 14).

3.2 Existing and potential conflicts between national law and legal practice of a relevant country and applicable EU rules

The three decrees above adopted between 2017 and 2019 were affected by the particular situation Italy was facing in that period. In fact, the Italian asylum system was under pressure, as a result of a strong increase in migration flows due to the war in Syria and the situation following the Arab spring. As indicated in the first paragraph, a total of 391,285 asylum applications were submitted in Italy between 2015 and 2018. For these reasons, the decrees had the greatest bearing on three main issues: the procedures for examining the applications for international protection, the reception system, and the management of arrivals by sea.

A first general remark may be made on the emergency criterion used to adopt the decrees. Actually, scholars agree that all three decrees do not fulfil the constitutional and legislative requirements of need and urgency. In fact, they contain diverse, but immediately applicable rules, for which an ordinary legislative process, following a parliamentary debate, would have been more appropriate.

Below follows an analysis of the individual decrees, with an emphasis on the elements that are in contrast with the main European provisions contained in the Reception Directive and the Asylum Procedures Directive in particular.

Decree 13/2017 was the first to be adopted. A remark may be made on the new procedural elements introduced by the Decree, in particular, the possibility to video record the applicant's interview before the Territorial Commissions for the Recognition of Refugee Status (Article 6.1) and the elimination of the appeal for asylum applications (Article 6.13). Video recording does not ensure privacy and security, and it may now be used instead of having the applicant physically present at a hearing. Decree 13/2017 establishes that the presence of the applicant at the hearing may be ordered by the judge exclusively if he or she deems it appropriate after reviewing the video recording of the interview before the Commission (Article 6.10 and 6.11). It is clear that the right to a hearing is an essential and indispensable element of the process, especially in the case of international protection, because the statements of an applicant are an objective pre-requisite in order to examine the credibility, and hence the recognition of the right.

As regards the second aspect, the text of the Decree provides for the abolition of the second instance of appeal for those who had their application rejected in the first instance. According to the drafters of the Decree, in fact, the setting up of special sections with judges having specific expertise would offer sufficient guarantees for determining the appropriateness of an asylum application. However, eliminating the appeal is a violation of the principle of equal confrontation between the parties and of fair proceedings enshrined in the Italian Constitution (Article 111) at a domestic level, and of the right to an effective remedy set out in the Charter of Fundamental Rights (Article. 47) and in the Asylum Procedures Directive (Article 46.3) at a European level. In particular, the Asylum Directive Procedure lays down that "Member States shall ensure that an effective remedy provides for a full and *ex nunc* examination of both facts and points of law […] at least in appeals procedures before a court or tribunal of first instance". Overall, attempting to eliminate the system backlog and accelerate procedures by giving up the guarantees of asylum seekers does not seem to be acceptable.

In this connection, it must be recalled that the Court of Justice has had occasion to rule, in its judgment of 28 September 2018,[74] that "Directive 2013/32/EU does not oblige Member States to provide an appeal against the first-instance appeals, or that an appeal at that instance should have automatic suspensory effect. The case before the Court concerned a request for a preliminary ruling from the Milan Tribunal regarding the suspensive effect of appeals and the criteria for assessing a need for suspension" (*Case F.R. v Home Affairs*, 2018, para. 32).

Another comment may be made on Decree 13/2017 concerning the hotspot system. The Decree does not incorporate what the European institutions have repeatedly requested to Italy, namely to regulate the phases of migrants' initial reception and identification by statute law. In fact, even though the Decree provides a legal basis for hotspots (Article 10, ter), it does not specify their nature, nor does it define how and for how long an applicant may be detained for identification purposes. This is a violation of the Reception Directive, stating that an applicant can be detained "only for as short a period as possible" for identification activity (Article 46). Moreover, it should be noted that Italy was condemned by the ECHR for the illegal detention of foreign nationals, in violation of Article 5 of the Convention, at the Lampedusa reception centre (hotspot) in violation of an effective remedy (*Case Khlaifia v. Italy*, 2016).

Law-Decree 113/2018, and in particular Title I (Articles 1–15), governing the area of immigration, raises the largest number of issues with reference to Community law.

The first is the abrogation of protection on humanitarian grounds. Protection on humanitarian grounds was provided for in TUI (Article 5.6) when asylum status or subsidiary protection could not be recognised, but there were serious reasons, in particular of humanitarian character or arising from constitutional or international obligations of the Italian State, to provide some protection to an applicant. Instead of humanitarian protection, the Decree introduced a number of special permits, with a validity of up to one year, to be issued exclusively for given reasons: medical care, natural disasters, acts of civic merit, exploitative working situations, domestic violence, and social protection (Article 1 paragraphs 1 and 2).

Although humanitarian protection was not formally provided at a European level, it was advocated in the Qualification Directive. In fact, Recital 15 states that persons that are not in need of international protection may be granted, on a discretionary basis, the right to remain in the country for compassionate or humanitarian reasons. Furthermore, domestically, the abolition of humanitarian protection is in contrast with the case-law of the Court of Cassation, which considered this permit as one of the instruments used to apply the right of asylum provided for in Article 10(3) of the Italian Constitution (Italian Court of Cassation, Decision No. 29460, 2019).

Law-Decree 113/2018 also contains a set of measures limiting personal freedom: from the detention of asylum seekers in hotspots to the extension of the detention of irregular migrants in pre-removal centres (CPRs) from 90 to 180 days.

As regards the detention of asylum seekers in hotspots (Article 3), this is in contrast with both the Italian Constitution and with the main international agreements in this area, such as the Geneva Convention Relating to the Status of Refugees and the European Convention on Human Rights. Moreover, this provision is in line neither with the Qualification Directive nor with the Asylum Procedures Directive, which establish that a person should in no way be detained for the simple fact of having submitted an application for international protection (Article 8) and

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[74] The Case concerned a Nigerian national who had applied for asylum in Italy, but was rejected on both instances. Upon appeal before the Supreme Court of Cassation, the applicant also requested interim measures to suspend the execution of the contested decision, due to the risk of being exposed to inhuman and degrading treatment in Nigeria.

that the Member States shall not hold a person in detention for the sole reason that he or she is an applicant (Article 26). These are, in fact, persons who have asked to access a right and, as such, cannot be deprived of their personal freedom. Moreover, the Decree does not define the cases in which detention can be ordered; they simply arise from their condition of not having an identity document, which is common to asylum seekers.

Article 3 of the Decree has additional elements, concerning the length and the place of detention, that contrast with the Reception Directive. Under the Decree, in fact, an applicant may be detained for identification activity for 30 days in hotspots or in initial reception centres, and 180 days in CPRs if their identity is not confirmed – making a total of 210 days. By contrast, the Reception Directive establishes that an applicant can be detained only for as short a period as possible (Article 9). As regards the facilities indicated in the Decree for the detention, the hotspots are first reception centres and, as such, do not provide special guarantees. By contrast, the Reception Directive provides that the detention of an asylum seeker should take place in detention centres offering specific reception standards (Articles 9–10).

Another form of detention provided for in the Decree relates to a foreign national awaiting removal, who may be detained in the place where the removal measure was taken if there is no availability in CPRs (Article 4). No indication is given of what this place actually is, nor of what sort of place may be considered appropriate. Moreover, the Decree does not even provide indications of the guarantees to be given to detainees. On these grounds, this provision does not comply with the Return Directive (2008/115/EC), Article 16, which establishes that detention should take place in specialised, clearly defined, detention facilities.

Another critical issue is that of accelerated procedures if an asylum seeker makes an application directly at the border or in a transit zone after being apprehended on grounds of having escaped or tried to escape controls. This provision seems too general and does not seem to be in line with the Asylum Procedures Directive. Presumably, a person who is apprehended at the border or in a transit area for having escaped or tried to escape controls does not wish to report to the authorities as soon as possible to apply for asylum (Article 31, paragraph 8). In the same way, the Decree does not seem to exempt vulnerable persons and those who have special needs from the accelerated procedure, unlike what is provided for in the Asylum Procedures Directive (Recital 30).

Similarly, the changes made on subsequent applications in the Decree raise a number of compatibility issues with the provisions of the Asylum Procedures Directive. In particular, the Decree establishes that an applicant is not entitled to remain on Italian soil awaiting the outcome of his or her procedure if they have made the application merely in order to delay or frustrate the enforcement of a removal decision, or if, after a decision rejecting the previous application, the subsequent application does not contain any new substantive elements. The Asylum Procedures Directive allows Member States to introduce provisions on the admissibility of subsequent applications provided that a preliminary examination is made as to whether new elements have arisen (Articles 40- 41), and that these provisions do not render impossible the access of the applicant to a new procedure (Article 42.2). If a subsequent application is considered to be inadmissible, the applicant is allowed to remain in the territory, pending the outcome of the procedure to rule whether or not the applicant may remain in the territory (Article 46.8).

A last remark is linked to the changes that the Decree made to the Reception system that was originally intended for asylum seekers and refugees (SPRAR), which is now available only to beneficiaries of international protection and unaccompanied minors (Article 12) ("Cittalia", 2018). Pursuant to the Decree, asylum seekers are hosted in regular reception centres, in which they await the decisions on their applications without partaking in any special activity or any

courses. In this way, beneficiaries of international protection are the only ones who have access to social and labour market integration programmes. Moreover, asylum seekers are now hosted in emergency facilities, whose standards of living are lower than those prescribed in the Reception Directive. That was not the case in SPRAR facilities. The reform did not lead to an overhaul of emergency facilities, nor to forms of cooperation between the two levels of reception.

Moreover, the Decree fails to provide a form of specific reception for vulnerable asylum seekers, who presently may only be hosted in initial reception centres. This again may be a violation of the Reception Directive (Articles 21–22).

Finally, it should be considered that the reform of the system dealt a serious blow to local economies, especially in the South, which had benefited from the spread of SPRAR projects. In the old system, in fact, migrants were distributed across the country, avoiding concentrations in large centres and easing rising social tension.

The precarious situation of asylum seekers is further aggravated by the provision in the Decree that they are no longer allowed to register at a registry office and obtain a residence permit (Article 13). However, access to social services is still guaranteed on the basis of the domicile they declared when completing their asylum application (Article 13.1).

The last relevant Decree in the area of migration is No 53/2019. In particular, the most controversial provision is Article 1, laying down that the Ministry of the Interior may limit or prohibit vessels that violate Italian immigration laws to enter transit or come to a halt in the territorial sea. A first remark that may be made on this Decree is linked to the concept of 'safe port' of landing, as affirmed in the International Convention on Maritime Search and Rescue (1979), establishing that people rescued at sea should be disembarked at the closest 'safe port', considering geographical proximity and humanitarian concerns. Now, for almost all vessels rescuing migrants in the Central Mediterranean, in the proximity of Libya, the first safe port is Italy. In fact, no other country is equipped to allow disembarkation without putting rescued people at risk.

Moreover, all rescued migrants are potential asylum seekers. In this sense, removing a vessel full of asylum seekers would be equivalent to collective *refoulement*, which is forbidden by the Treaty on the Functioning of the European Union (Article 78.1), the EU Charter of Fundamental Rights (Articles 18–19), and the Qualification Directive (Article 21).

4. Synthesis

In Italy, there were three governments with three different Ministers of the Interior between 2015 and 2018. The main political and legislative measures adopted in the area of immigration were affected by the pressure the Italian asylum system was under, as a result of a strong increase in migration flows due to the war in Syria and the situation following the Arab spring. In fact, in that period, Italy received a total of 391,285 asylum applications.

Despite some differences, all the policies adopted were intended to manage and contain the arrivals of migrants on Italian shores. At an internal (EU) level, that goal was pursued by setting up hotspots and activating the relocation system adopted by the EU Commission. At an external (non-EU) level, several cooperation agreements were concluded in order to control departures and manage the return of migrants. The internal approach encountered strong operational and organisational delays, which, combined with poor cooperation on the part of other EU Member States, made it possible to attain the expected objective only to a very limited extent.

Agreements with third countries met with much opposition, as they are based on prevention and, especially, as they may violate human rights.

From a legislative standpoint, in the period 2015–2019, three decrees were adopted, amending migration regulation. They mostly affected the procedures for the examination of applications for international protection, and the reception and management of arrivals. In particular, the procedural measures (the optional hearing of the applicant, the abolition of the appeal for asylum applications, and the elimination of the residence permit for humanitarian reasons) are the most controversial, as they are, in a number of respects, in contrast with what is provided for in the European Reception Directive and the Return Directive.

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7. Poland

Country Report Prepared for the DEMOS Project

Author: Katarzyna du Vall, Assistant professor, Jagiellonian University

1. 1. Background information

The Polish legal system draws a distinction between the following categories of migrants: (a) refugees (as defined in 1951 Refugee Convention relating to the Status of Refugees); (b) persons granted subsidiary protection; (c) tolerated stay permit holders; (d) asylum seekers; (e) persons granted humanitarian protection; (f) returnees; (g) economic migrants; (h) illegally present or residing persons (Kancelaria Senatu, 2016: 4-5).

Interestingly, the vast majority of migrants who came to live in Poland permanently (see Art. 25.1 of the Population Registration Act of 24 September 2010) were Poles returning from abroad (69% of all immigrants in 2018; 74% in 2017). Consequently, most of immigrants in the above sense arrived from the United Kingdom (3,500 in 2018) and Germany (2,300 in 2018). The third largest group were persons coming from Ukraine (1,900 in 2018; 1,400 in 2017) (GUS 2019, 27). It should be also noted that: "the year 2016 was the first one in the period considered here when the net permanent migration rate for Poland reached a positive value (1,500 people). In 2017, it increased to 3,600 people" (European Commission, 2019).

Simultaneously, the growth in a number of immigrants who stay temporarily could be observed (see below). These were mainly economic migrants. In addition, there was a large group of persons plnning to study in Poland, mainly from Ukraine and Belarus. Altogether there were 78,300 foreign students in 2018 and 72,700 in 2017 (GUS, 2019: 27).

1.1. Residence permits

Since 2014, Poland has welcomed approximately 1-2 million immigrants from Ukraine. Moreover, according to Eurostat, "in 2018, one out of five first residence permits was issued in Poland (635,000, or 20% of total permits issued in the EU)" (Strzelecki et al., 2020: 5).

Likewise, "in 2017, 1 out of 5 first residence permits was issued in Poland (683,000, or 22% of total permits issued in the EU)". Out of this number, 596,916 (87.4%) of persons indicated employment reasons (which result in 59% of all permits issued for employment reasons in the European Union); 34,709 (5.1%) educational reasons; 3,517 (0.5%) family reasons; and 48,086 (7%) other reasons (Eurostat, 2018a). As recognized by the OECD, "in 2017 Poland was among the countries with the highest number of temporary working immigrants, estimated at about 1.1 million" (Strzelecki et al., 2020: 20).

It should be noted that in 2017, 88% of all residence permits granted to citizens of Ukraine were issued in Poland. Moreover, Ukrainians "continued to receive the highest number of permits in the EU" with about half of all first residence permits issued in the EU in 2017 (…) issued to citizens of […] seven countries", namely: Ukraine, Syria, China, India, the United States, Morocco, and Afghanistan (Eurostat, 2018a).

In 2017, "the largest numbers of permits were issued for employment reasons, with the highest shares observed in Poland (87% of all residence permits issued in the Member State)" (Eurostat, 2018a).

As regards the distribution among different countries of origin, in 2017 Poland issued 585,439 (85.7%) residence permits for Ukrainians; 42,756 (6.3%) for Belarusians; 7,803 (1.1%) for Moldavians (Eurostat, 2018a).

In 2016, the number of first residence permits issued in the European Union to non-EU citizens was around 3.4 million. With 585,969 (17.5%) first residence permits issued in 2016, Poland counted the second highest number of such documents issued in the EU (15.4 first residence permits issued per thousand inhabitants; in the EU the figure was 6.5 per thousand on average) (Eurostat, 2017a). In terms of reasons for issuing first residence permits in Poland, in 2016 the vast majority concerned employment reasons (493,960; 84.3%). It was followed by educational reasons (32,676; 5.6%); family reasons (8,416; 1.4%); other reasons (50,917; 8.7%) (Eurostat, 2017a). What is more, Poland "was by far the first destination for employment related permits" (494,000 permits; 58% of all permits issued for employment reasons in the EU in 2016) (Eurostat, 2017a).

As regards the distribution among different countries of origin, in 2016 Poland issued 512,552 (87.5%) residence permits for Ukrainians; 28,165 (4.8%) for Belarusians; 7,613 (1.3%) for Moldavians (Eurostat, 2017a).

In 2015, the number of first residence permits issued in the European Union to non-EU citizens was around 2.6 million. One out of five first residence permits was issued in Poland (541,583; 20.8%), which was the second highest number in the EU (14.3 first residence permits issued per thousand inhabitants; in the EU the figure was 5.1 per thousand on average) (Eurostat, 2016). In terms of reasons for issuing first residence permits in Poland, in 2015 the vast majority concerned employment reasons (375,342; 69.3%). It was followed by educational reasons (39,308; 7.3%); family reasons (1,010; 0.2%); other reasons (125,923; 23.3%) (Eurostat, 2016). Thus, Poland "was by far the first destination for employment related permits" (53% of all permits issued for employment reasons in the European Union in 2015) (Eurostat, 2016).

As regards the distribution among different countries of origin, in 2015 Poland issued 430,081 (79.4%) residence permits for Ukrainians; 75,394 (13.9%) for Belarusians; 7,987 (1.5%) for Moldavians (Eurostat, 2016).

1.2. Citizenship

As for acquisition of Polish citizenship, statistics regarding top 3 recipient countries are as follows:

- 2015 – total: 3,974 granted citizenships; Ukraine (1,957, 49.2%); Belarus (472, 11.9%), Armenia (285, 7.2%); 94% of persons granted Polish citizenship were non-EU citizens (Eurostat 2017b);

- 2016 – total: 3,684 granted citizenships; Ukraine (1,885, 51.2%); Belarus (563, 15.3%); Russia (236, 6.4%) (Eurostat 2018b);[75]

- 2017 – total: 4,233 granted citizenships; Ukraine (2,397, 56.6%); Belarus (759, 17.9%); Russia (220, 5.1%) (Eurostat 2019b);

- 2018 – total: 5,115 granted citizenships (estimated, provisional); Ukraine (2,797, 54.5%); Belarus (1,109, 21.6%); Russia (243, 4.7%) (Eurostat, 2020).

1.3. Refugees

According to statistics provided by the head of the Office for Foreigners, the number of "applications and granting of protection status at first instance" in 2018 were the following (Helsinki Foundation, 2018):

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[75] It should be noted that: "Romanians (29,700 persons) and Poles (19,800) were the two largest groups of EU citizens acquiring citizenship of another EU Member State."

- total: 4,131 applications; pending at the end of 2018: 3,065; refugee status: 168; subsidiary protection: 191; rejection: 2,128; refugee rate: 6.75%; subsidiary protection rate: 7.76%; rejection rate: 85.56%;

- Russia: 2,721 applications; refugee status: 9; subsidiary protection: 61; rejection: 1,212; refugee rate: 0.7%; subsidiary protection rate: 4.75%; rejection rate: 94.53%;

- Ukraine: 466 applications; refugee status: 11; subsidiary protection: 74; rejection: 443; refugee rate: 2.08%; subsidiary protection rate: 14.01%; rejection rate: 83.90%;

- Tajikistan: 144 applications; refugee status: 10; subsidiary protection: 14; rejection: 77; refugee rate: 9.9%; subsidiary protection rate: 13.86%; rejection rate: 76.23%;

- Iraq: 71 applications; refugee status: 19; subsidiary protection: 8; rejection: 11; refugee rate: 50%; subsidiary protection rate: 21.05%; rejection rate: 28.94%.

The vast majority of persons coming to Poland are economic migrants. Nearly 73% of aliens arriving in Poland in 2018 declare their intention to join the labour market. Other applicants mentioned family reasons (12%) and opportunities to move onto university studies (10%) (UDSC 2018).

2. Immigration as a political issue

The presidential elections in May 2015 and parliamentary elections in October 2015 coincided in time with the migration crisis and the problem of the relocation system in the European Union. Thus, for the first time, a problem of migration and, in particular, refugees became one of the main themes of the election campaigns. The ongoing public debate seem to have played an important role in a significant political shift that Poland eventually experienced.

The question of migrants and refugees came up again during the local elections held in October and November 2018. However, this time it was a secondary matter.

2.1. Political context

There are two major political parties in Poland: *Prawo i Sprawiedliwość* (PiS, Law and Justice) and *Platforma Obywatelska* (PO, Civic Platform). PO governed since 2007, forming the government with a small *Polskie Stronnictwo Ludowe* (PSL, Polish Peasant's Party). PO was broadly perceived as liberal, modern, and seeking for a clear separation of the Church and state. Nonetheless, PO was in fact quite a conservative party, focused on improving economic situation in the country. In 2015 it lost both the general and presidential elections.

On May 24, 2015 Andrzej Duda – PiS candidate for a president – won the elections just by a very narrow margin.[76] He took office on August 6, 2015. Subsequently, in October 2015 PiS – the PO's main political opponent – won the general elections, securing a majority in the parliament.[77]

Thus, the PiS, together with some minor political parties, has governed since the autumn of 2015. "The Allied Right", as the coalition dominated by PiS it is often called, is regarded as conservative, illiberal, populist party. It is a member of the Eurosceptic European Conservatives and Reformists Party (Wigura et al. 2020, van Kessel 2015, Łętowska, 2018).

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[76] Andrzej Duda received 51.55% of the votes whereas Bronisław Komorowski received 48.45%, with a turnout of 55.34% (PKW 2015a).

[77] PiS received 37.58% of the votes; PO – 24.09%; Kukiz'15 – 8.81%; Nowoczesna – 7.60%; PSL – 5.13%, with a turnout of 50.92% (PKW 2015b).

Before 2015, the question of immigration to Poland has not been debated. According to P. Sadowski and K. Szczawińska: "[a]t the peak of the so-called migrant crisis, the European Commission presented legislative proposals regarding the relocation of asylum-seekers residing in Greece and Italy to other Member States (European Commission, 2015, May 27, 2015, September 9). It was the first and the last time that a genuine debate on immigration was taking place in Poland" (Sadowska and Szczawińska 2017: 218-19).

Likewise, the Helsinki Foundation for Human Rights noticed that a question of migrants and refugees appeared for the first time during the election campaign in 2015. A public debate on this problem was stormy; many anti-Islamic and anti-immigration voices could be heard. The debate was accompanied by numerous demonstrations, both supporting and opposing accommodation of refugees in Poland (Demczuk et al. 2018: 3).

In May 2015, PO's government announced that Poland would help 60 Christian families from Syria (Kopacz, 2015a). In September 2015, during the 25th Economic Forum in Krynica-Zdrój, Ewa Kopacz, Polish PM at that time, said that Poland cannot afford economic migrants. However, she emphasized that taking the refugees is the national obligation and a test of decency (TVN24, 2015). During a meeting with NGO's dealing with a question of migrants in September 2015, Ewa Kopacz said: "Thank you for not regarding migrants' 'quota' or 'threat'. For you they are simply real people who need help" (Kopacz, 2015b). Thus, the Kopacz's government rhetoric was moderate and reassuring. Although various questions, regarding for example public security, appeared, the government tried to calm down the public opinion.

Compared to PO's government, a possible change in rhetoric regarding refugees could be noticed during the political campaign in autumn 2015. Although PiS focused on social and ideological questions, it used the issue of refugees in the election campaign too. The party's rhetoric was based mostly on people's fears and prejudices.

In September 2015 Beata Szydło, then PiS's candidate for the PM, said that a decision to agree on accommodating migrants in Poland was a scandal; it was made contrary to the security grounds and public opinion. She also warned that it was not only about 7,000 people but many more, since they will be able to bring their families to Poland (Szydło, 2015).

2.1.1. The positions of major domestic parties (including the parties in the government) on the problem of immigration and their evolution, relevance of the immigration issue in the national elections (2015-2018)

As regards the positions of major domestic parties on the problem of immigration, 2 types of political factions will be analysed briefly: (i) the ruling coalition, (ii) other political groups in the Polish parliament.

The Polish parliament is composed of 2 chambers: the Sejm (the Lower House consisting of 460 MP's elected for 4 years) and the Senat (Senate, the Upper House consisting of 100 members elected for 4 years).

The 2015 parliamentary elections included 17 political factions (in case of the Sejm) and 7 (in case of Senate). The results were as following:

1. Sejm (PKW, 2015b):

- KW Prawo i Sprawiedliwość (37.58% votes / 235 seats) – the ruling coalition;

- KW Platforma Obywatelska RP (24.09% votes / 138 seats);

- KW Wyborców „Kukiz'15" (8.81% votes / 42 seats);

- KW Nowoczesna Ryszarda Petru (7.6% votes / 28 seats);

- KW Polskie Stronnictwo Ludowe (5.13% votes / 16 seats);

- KW Wyborców Mniejszość Niemiecka (0.18% votes / 1 seat).

2. Senat (PKW 2015c):

- KW Prawo i Sprawiedliwość (61 seats);

- KW Platforma Obywatelska RP (34 seats);

- KW Polskie Stronnictwo Ludowe (1 seat);

- 4 komitety wyborcze wyborców kandydatów niezależnych - independent candidates (4 seats).

Major extra-parliamentary political parties:

- Koalicyjny KW Zjednoczona Lewica SLD+TR+PPS+UP+Zieloni - The Allied Left (7.55% votes);

- KW KORWiN (4.76% votes);

- KW Partia Razem – The Together Party (3.62% votes).

It was somewhat surprising that no left-wing party entered the parliament, although around 10% of Poles voted for the left (The Allied Left and Razem). It was the result to the system according to which votes are counted (8% threshold for common lists of different parties). Consequently, during the analysis period moderate and radical right-wing parties dominated Sejm.

Additionally, in 2018 PiS won the elections in 9 out of 16 of local governments (*województwo*), however the overwhelming majority of the elected presidents of the Polish cities were independent candidates or those supported by Koalicja Obywatelska (KO, The Civic Coalition) with PO as its major actor.

a) Prawo i Sprawiedliwość

Programme of PiS: As for migration, the 2014 programme of PiS focused on the problem of Polish emigration to the West for economic reasons (PiS, 2014: 12-14). An issue of immigration was not tackled.

Activity of PiS: PiS strongly disapproved welcoming refugees in Poland, arguing that the idea of multiculturalism, promoted and implemented by the European Union, has failed. The government officials and leading politicians often associated migrants from the Middle East and Africa with terrorism and crimes. It seems that such rhetoric – based mostly on people's fears and prejudices – met the expectations of the society. The overriding opinion on welcoming migrants form Africa and the Middle East was one of scepticism.

Some examples: It seems that a speech given by Jarosław Kaczyński (a PiS leader) in Maków Mazowiecki in October 2015 was particularly significant. During the meeting with his voters, he said that in terms of migrants the Minister of Public Health should have formed an opinion. Kaczyński stated "threats already exist. Symptoms of very serious diseases can be observed, for example cholera in Greece, so diseases which have not been present in Europe for a very long time. […] Some speak of even more dangerous diseases. What is more, there are merely geographical differences. It means that various types of parasites that are not dangerous for migrants might be dangerous here. It does not mean anybody should be discriminated against. But it has to be checked" (Kaczyński, 2016).

Polish new PM's speech in the European Parliament in January 2016 should also be noted. Beata Szydło said that Poland had welcomed 1,000,000 Ukrainian refugees. In fact, the vast majority of Ukrainians in Poland were economic migrants – as Ukrainian ambassador in Poland, Andrij Deszczyca, explained. What is more, out of 4,000 applications for asylum made in 2015, only 2 persons received such status (Deszczyca, 2016). Thus, PiS tried to give misleading impression of Poland actually being involved in helping refugees from Eastern Europe.

In March 2016, just after the terrorist attacks in Brussels, Polish PM, Szydło said: "Now it is impossible to welcome any migrants in Poland"; "German Chancellor, Angela Merkel, pursued an open migration policy. She even invited them to Europe. I always repeat it was not Poland that invited migrants to Europe. We know that we should help and we want to help people who had to flee their countries due to war. We have always declared: they should be given financial support. But we should not welcome thousands of migrants that come to Europe to improve their lives. Among them there are terrorists, too" (Szydło, 2016a).

The visit of Pope Francis in July 2016 did not change the Government's attitude towards refugees. Although he called for help for them, Beata Szydło said: "We have to pay particular attention to Polish citizen's safety. My duty is to make Poles feel safe […]. We will increase the humanitarian aid for the Middle East and Africa […]. It is the best policy we can adopt" (Szydło, 2016b).

Likewise, Minister of the Interior, Mariusz Błaszczak, criticised the former government's decision on welcoming 7,000 refugees. He stated for instance: "We will not do anything that would threaten national security. We will not make another New Year's Eve like in Cologne, Dusseldorf or Hamburg happen in Poland" (Błaszczak, 2016a); "France is in a much more difficult situation than Poland. Poland would be in the same situation if the government had not changed. We would have thousands of immigrants from the Middle East and Africa, according to the former government's decision", "Immigrants from Africa and the Middle East do not integrate. That is the fact", "The core of European values and our culture is Christianity. We need to come back to our origins […]. They don't respect these values. What is more, they impose their values on us" (Błaszczak, 2016b), "It is a symbol of Western European open-door policy. It leads to terrorist attacks, it leads to immigrant's camp in Calais" (Błaszczak, 2016c).

Additional information: point 2.2.1.

b) Platforma Obywatelska

Programme of PO: A problem of migration policy was addressed in the PO's 2015 programme, i.e. the need for conducting "wise policy which guarantees that Polish society may not be threatened by uncontrolled migration" was mentioned (PO, 2015: 6). PO's programme also stated that: "the European Union must face up to the problem of migratory pressures on some member states, as well as the tragedy of refugees. Its actions must be directed towards eliminating the root cause of this problem, rather than ad hoc actions targeted to its consequences. We believe that European solidarity in terms of migration must be responsible; and the voluntary principle should be understood as a chance to decide on the scale of our engagement, if possible. It must be accompanied by full government control of the process of welcoming refugees; effective separation of refugees from illegal economic immigrants; possibility to verify immigrants in terms of security; and providing adequate funds in the EU budget for welcoming and integration of migrants in Members States. […] As a country guarding Eastern boarders of the EU, we will seek to include the question of migration from the East to the EU in the common migration policy. We expect solidarity from others, and we want to show solidarity […]." (PO, 2015: 66-67).

Activity of PO: See: point 2.2.1

c) Kukiz'15

Programme of Kukiz'15: In 2015, the Kukiz'15 movement announced the "Change strategy." The problem of migration was addressed in terms of Polish emigration abroad (Kukiz'15, 2015: 7 and 20).

Activity of Kukiz'15: In September 2015 Paweł Kukiz, the founder of Kukiz'15 movement, referred to the problem of refugees on his Facebook. The main ideas were as follows:

"Thesis 1: pictures depicting women with children are distorted, 75% of immigrants are men whose women and children stayed in countries, where allegedly they cannot survive.

Thesis 2: Since the beginning of the year, nearly 0.5 mln immigrants arrived in Europe. Around 2,000 died in the Mediterranean. The mass influx of another hundreds of thousand immigrants means death to many more thousands.

Thesis 3: Immigrants must be helped in the country of origin. […] A new "Marshall Plan" need to be proposed.

Thesis 4: We must send a clear message that there is no room for another hundreds of thousands of people. Otherwise, […] this situation would never change. Most of them should be sent back home, providing them with food for 14 days. The vast majority is young men, so they'll be fine. […]

Thesis 5: We talk about welcoming refugees, not immigrants. It's falsehood: there's no clear system that can distinguish one from another. […] Most of them do not escape from territory where the conflict was being played out, but they escape for economic reasons. Thus, they are economic immigrants.

Thesis 6: There can be no consent for quotas proposed by the European Commission, as long as the core problem of protecting borders is not resolved. […]

Thesis 7: Among immigrants, for example in Hungary, fighters of the Islamic State can be identified. There will be more and more of them, since they have announced that their aim is to bring terrorists to Europe. […]

Thesis 9: In Kazakhstan, Siberia, and Eastern Ukraine, at least tens of thousands Poles and descendants of Poles live, waiting for repatriation. They do not need to be assimilated; they will not launch terrorist attacks. […]" (Kukiz, 2015).

d) Nowoczesna

Programme of Nowoczesna: In July 2015 Nowoczesna presented its basic thesis. In its programme adopted in 2016, the migration crisis was only mentioned. In particular, it recognized a need for "common asylum and immigration policy". It also referred to the problem of emigration of Poles (Nowoczesna, 2016).

Activity of Nowoczesna: Nowoczesna regarded accommodation of refugees as Poland's moral obligation (IAR, 2015, Petru, 2015). During the party congress in May 2017, its leader, Ryszard Petru, stated: "As for refugees, we simply have to be fair. It is a major, complex problem all the more we cannot turn our backs on this situation. Today, Nowoczesna makes it clear: if necessary, Poland with its allies, has a duty to accommodate refugees, fleeing death, hunger, and war. However, we need to prepare for it in the best possible way. It's a task for the state and non-governmental organizations." (Petru, 2017: 11'-11'45").

e) Polskie Stronnictwo Ludowe

Programme of PSL: In PSL's 2015 "Declaration - Close to human affairs" the problem of migration was addressed in terms of Polish emigration abroad (PSL, 2015: 9, 13 and 23).

Activity of PSL: See: point 2.2.1 regarding to the PO's governmental activity.

Helsinki Foundation for Human Rights presented an interesting report regarding election campaign in 2018. The report was limited to candidates for mayors of 10 biggest Polish cities. According to this document, three attitudes towards the problem of refugees and migration could be outlined:

1) emphasis on openness and memory of multicultural past;

2) a pragmatic approach;

3) opposition to the idea of accommodating refugees (Demczuk et al., 2018: 8).

As stated in the Report, in 2018 the question of migration and refugees was not the main topic of a campaign (Demczuk et al., 2018: 33).

The report indicated, however, that in June 2017 a declaration on migration was adopted by 7 presidents of cities affiliated to the Union of Polish Metropolises. They were basically associated with the opposition. During the 2018 campaign, they were widely criticised for it (Demczuk et al., 2018: 8).

2.1.2. Relevance of different arguments used for or against immigration in the political, and public debate

As showed in point 2.1.1 of this report, regarding positions of the major domestic parties (including the parties in the government) on the problem of immigration, the most relevant arguments against immigration in the political and public debate appear to be as following:

- the question of public safety: the assumption that welcoming migrants from Africa and the Middle East might threaten national safety, in particular the risk of terrorist attacks may increase (that was the view of the ruling coalition and right-wing parties);

- the question of multiculturalism: the assumption that the core of the Polish culture is Christianity and integration of migrants from Africa and the Middle East is impossible, as they do not respect our values (that was the view of ruling coalition and right-wing parties).

As for the arguments for immigration, the most important was that of moral obligation. However, two major ways to solve the problem of migrants could be observed:

- the first one recognized the possibility to welcome refugees in Poland (i.e. the PO's government);

- the second one found humanitarian aid more appropriate (i.e. the PiS's government).

See also: point 2.2.1

2.2. Policy in action

2.2.1. Assessment of the governmental position on immigration, with the information on its evolution (2015-2018)

As indicated earlier, a significant change could be noticed in the rhetoric regarding migrants and refugees. PiS's leaders were fare more cautious. They also frequently appealed to fear and prejudice.

The influence of such activities on public opinion towards migrants was undeniable and the level of anti-immigration sentiments has increased. The potential reasons for such negative attitudes seem to be as follows: the refugee crisis and a growing number of terrorist attacks in Europe; the current Polish government's highly negative rhetoric concerning migrants from the

Middle East and Africa; right-wing and public media anti-immigration and anti-Islamic propaganda presenting Muslims as terrorists and criminals.

In this context, it should be noted that Polish public opinion was strongly divided. Judging by the media coverage, the majority of the society feared to welcome refugees on the sole ground of their religion, namely Islam. I.e., according to the opinion pool carried out in May 2015, 53% of Poles "were against offering international protection to refugees from the Middle East and Africa" (CBOS, 2015).

I.e., public opinion poll carried out by TNS in October 2015 had the following results: 73% of the respondents strongly agreed or tended to agree that welcoming refugees would cause increasing unemployment (64% in 2006); 68% of the respondents strongly agreed or tended to agree that welcoming refugees would cause more crime (55% in 2006); 30% of the respondents strongly agreed or tended to agree that welcoming refugees would enrich the national culture (48% in 2006); 30% of the respondents strongly agreed or tended to agree that welcoming refugees would enrich the country, since there are many talented and well-educated people (58% in 2006) (TNS Polska, 2015).

According to the public opinion poll carried out by CBOS in January 2016: 53% of the respondents were against welcoming refugees from areas of armed conflict; 37% of the respondents stated that Poland should accommodate refugees for a period until they can return to their countries of origin; 4% of the respondents stated that Poland should welcome refugees and permit them to settle in Poland (CBOS, 2016a).

Interestingly, an attitude of the respondents differs significantly regarding refugees from Africa / Middle East and Ukraine. According to public opinion poll carried out by CBOS in February 2016 67% of the respondents were strongly against or against welcoming refugees from Africa and the Middle East; 26% of the respondents were of the opposite view; 34% of the respondents were strongly against or against welcoming refugees from Ukraine; 59% of the respondents were of the opposite view (CBOS, 2016b).

The subsequent public opinion polls carried out by the CBOS in 2016 resulted in similar conclusions.[78]

2.2.2. Challenges in implementation of the common EU migration policies in the relevant country

In 2015 both the Polish governments (PO-PSL) and PiS criticized the way the EU attempted to face the migration crisis. Nevertheless, while the former one accepted relocation mechanism, the latter rejected it (Pędziwiatr and Legut, 2016: 672).

The 2015 EU refugee relocation mechanism was indeed contested by governments of several countries, including Poland (CJEU, 2020).

In response to this mechanism, in May 2016 Sejm adopted a resolution on "Defending the sovereignty of the Republic of Poland and the rights of its citizens," which states, among other

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[78] See: Centrum Badania Opinii Społecznej, Stosunek do przyjmowania uchodźców w Polsce i w Czechach, Komunikat z badań nr 54/2016, April 2016, http://www.cbos.pl/SPISKOM.POL/2016/K_054_16.PDF; Stosunek do przyjmowania uchodźców po ogłoszeniu nowej propozycji Komisji Europejskiej dotyczącej reformy polityki azylowej, Komunikat z badań nr 79/2016, May 2016: http://www.cbos.pl/SPISKOM.POL/2016/K_079_16.PDF; Stosunek do przyjmowania uchodźców, Komunikat z badań nr 98/2016, July 2016: http://www.cbos.pl/SPISKOM.POL/2016/K_098_16.PDF; Komunikat z badań nr 128/2016, September 2016: http://www.cbos.pl/SPISKOM.POL/2016/K_128_16.PDF; Komunikat z badań nr 136/2016, October 2016: http://www.cbos.pl/SPISKOM.POL/2016/K_136_16.PDF; Komunikat z badań nr 153/2016, November 2016: http://www.cbos.pl/SPISKOM.POL/2016/K_153_16.PDF; Komunikat z badań nr 169/2016, December 2016: http://www.cbos.pl/SPISKOM.POL/2016/K_169_16.PDF (all accessed: 27.10.2020).

things, that: "in the institutions of the European Union [...] attempts are made to impose on Poland a decision on the immigrants who have come to Europe. The announced decisions to solve this problem have no basis in European law, they violate the sovereignty of our country, European values and the subsidiarity principle of the European Union. They also pose a threat to the social order in Poland, the security of its citizens and the civilisation heritage and national identity. The Sejm of the Republic of Poland calls on the government to oppose any action against the sovereignty of the state and states that it is the government's duty to defend the national interest and constitutional order in the Republic of Poland" (Sejm, 2016a).[79]

In October 2016, another resolution was adopted (Sejm 2016b). It concerned Proposal for a Regulation of the European and of the Council Parliament establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person. The resolution states that the Proposal is not be in line with the subsidiarity principle.

Both resolutions were not legally binding, however they clearly indicate the nature of Polish authorities to a problem of accommodating refugees.

In December 2017 Mateusz Morawiecki was appointed as a new PM.

At that time, Beata Kempa was nominated minister responsible for humanitarian aid. She held that position from January 2018 to June 2019. The need for establishing a new post was explained as a reaction to "increasing humanitarian needs and migration pressure in the world" (Kempa 2019).

According to the activity report, Beata Kempa undertook, i.e. the following actions: cooperation with NGO's; establishing cooperation with agencies engaged in humanitarian aid; international cooperation. The report also mentioned coordination activities, i.e.: setting up a group of experts; organising a meeting with missionaries; organising an Innovative Humanitarian Aid Forum; presenting achievements before the Government; celebrating Holy Mass with the intention of peace in Syria; organising a "Polish humanitarian aid" exhibition (Kempa, 2019: 5-15). It should be noted that Beata Kempa focused on problems of Christians in the world.

The Supreme Audit Office has indicated that: "Although a Minister responsible for humanitarian aid was nominated in January 2018, until May 2019 no proposals for humanitarian aid policy were put forward. Humanitarian aid was granted within the scope proposed by NGO's" (Dziuba, 2020).

According to the European Commission, no people have been relocated to Poland since the launch of the scheme to December 2016 (European Commission, 2016). In June 2017 the European Commission concluded: "In total, more than 20,000 people have been relocated so far. While most of the Member States are now contributing fairly and proportionally to the implementation of the scheme, Hungary, Poland and the Czech Republic in breach of their legal obligations are neither pledging nor relocating from Greece and Italy" (European Commission, 2017). Likewise in 2018: "Hungary and Poland remain the only Member States that have not relocated a single person and Poland has not made any pledge since 16 December 2015" (Pędziwiatr and Legut, 2016: 672).

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[79] The results of voting were as follows: (i) 222 MP's belonging to PiS voted in favour of the resolution; 11 had not taken part in the voting; (ii) 29 MP's belonging to KUKIZ'15 voted in favour of the resolution; 7 had not taken part in the voting; (iii) 134 MP's belonging to PO had not taken part in the voting; 4 voted against; (iv) 29 MP's belonging to Nowoczesna had not taken part in the voting; (v) 6 other MP's had voted in favour of the resolution; 1 had not taken part in the voting.

2.2.3. Existing and potential conflicts between national policies and common EU policy position

As a preliminary remark, it should be noted that quite a number of the Polish legal acts concerning immigration and immigrants (laws: generally binding acts adopted by the national Parliament; and regulations: executive acts to the laws, issued mainly at the government level) are partly an implementation of the European Union and international law.

As for the new EU strategy targeted at solving migration crisis appeared during European Council summits, as well as European Commission meetings with European, African, and Turkish governments between March 2015 and March 2016 (Pędziwiatr and Legut, 2016: 672), the situation is ambiguous.

PM Ewa Kopacz's government was sceptical about compulsory and automatic relocation mechanism. It also criticized that mechanism as a durable solution (Pędziwiatr and Legut, 2016: 682). When Ms Beata Szydło was appointed as the new PM in November 2015, she announced that although a new government would respect EU migration policy, Pole's safety would remain the most important issue. It meant that the EU migration policy would be contested (Pędziwiatr and Legut, 2016: 685-686).

As A. Adamczyk points out: "After the attacks in Paris and Brussels, the Prime Minister stated on the Superstacja TV channel that she did not believe it feasible, for Poland to admit immigrants at the moment" (Adamczyk, 2019: 122).

It should be mentioned that in September 2018, during the summit of EU Heads of State and Government in Salzburg, a new Polish PM M. Morawiecki upheld the PiS government's view that Poland would keep refusing to welcome migrants within the relocation mechanism. As Adamczyk noticed: "Like other states in the Visegrad group, it continued to oppose forced relocation, preferring voluntary decisions by individual states. An additional argument to refuse to admit foreigners under relocation was the lack of a guarantee of the appropriate level of security in relation to these people." (Adamczyk, 2019: 122-123). According to Adamczyk: "the PiS government has remained consistent and not changed its opinion on the relocation and resettlement of people who require international protection to Poland. Moreover, from the beginning the government has maintained the attitude that people in need should receive aid at the site of conflict or in neighboring states. The inconsistency in the migration policy has primarily been related to the fact that, contrary to the opinions that Poland is closed for foreigners, the number of immigrants arriving in Poland has actually increased. […] despite the anti-immigrant government rhetoric, the number of foreigners in Poland has increased. Their number has grown even though the issue of immigrant influx has been associated with that of terrorist threat and reduced security level. Additionally, the statements of the ruling party's politicians have implied concerns with Poland accepting Muslim immigrants, while government representatives have signed employment agreements with countries where Islam is the dominant religion. The lack of coherence in Polish migration policy has resulted from the absence of a government document that would define such a policy. This has also translated into pursuing an ad hoc policy and the failure to develop a migration doctrine. This situation is dangerous as it makes Polish migration policy unpredictable" (Adamczyk, 2019: 134-135).

More information about the non-compliance with the EU requirements: point. 3.2.

3. Immigration as a legal issue

3.1. Brief description of the applicable legal framework in a relevant country together with the analysis of its actual implementation

As a preliminary remark, it should be noted that quite a number of Polish legal acts concerning immigration and immigrants (laws: generally binding acts adopted by the national Parliament; and regulations: executive acts to the laws, issued mainly at the government level) are partly an implementation of the European Union and international law.

An example of implementation of the EU law (e.g. Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States) is the Act of 14 July 2006 on the entry into, residence in and exit from the territory of the Republic of Poland of citizens of the European Union Member States and their family members. On the other hand, the regulations contained in the Polish law on the refugee status in the Act of 13 June 2003 on granting protection to foreigners within the territory of the Republic of Poland are partially based on the Convention Relating to the Status of Refugees drawn up in Geneva on 28 July 1951.

For the sake of clarity, it should also be stressed that when analysing Polish legal acts on immigration, it is always necessary to distinguish between the legal situation of an EU citizen, persons coming from outside the EU and persons with refugee status, as the legal regime in which the persons are located is different and the catalogue of rights and obligations to which the persons are subject also varies. The most important Polish legal acts regulating immigration will be listed below, together with their brief characteristics.

First of all, the Act of 12 December 2013 on foreigners (Act on foreigners)[80] should be indicated, which regulates the rules and conditions of foreigners' entry into, transit through, stay in and exit from the territory of the Republic of Poland, the procedure and authorities competent in these matters (Art. 1). However, its provisions do not apply to members of diplomatic missions and consular posts of foreign countries and other persons equated with them on the basis of acts, agreements or generally established international customs, provided that they are reciprocal and have documents confirming the performance of their functions entitling them to enter and stay on the territory of the Republic of Poland (with exceptions provided for in this Act), as well as to nationals of the Member States of the European Union, the Member States of the European Free Trade Association (EFTA) - Parties to the Agreement on the European Economic Area or the Swiss Confederation and members of their families who join them or reside with them (Art. 2). According to this Act, a foreigner is anyone who does not hold Polish citizenship (Art. 3.2).

Secondly, the legal act to which reference should be made is the Act of 13 June 2003 on granting protection to foreigners within the territory of the Republic of Poland (Act on granting protection to foreigners).[81] This Act sets out the principles, conditions and procedures for granting protection to foreigners on the territory of the Republic of Poland and the authorities competent in these matters (Art. 1). According to the Act, a foreigner is granted protection on the territory of the Republic of Poland by the granting the refugee status, granting subsidiary protection, granting asylum, granting temporary protection (Art. 3.1). What is important, each foreigner's application for protection is examined as an application for granting the refugee status, unless the foreigner explicitly applies for asylum or the request for protection results

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[80] Act on foreigners, Polish Journal of Laws 2013.1650 of 2013.12.30, as amended; this Act implements a number of EU legal acts including the Directive of 28 May 2001 on mutual recognition of decisions on the expulsion of third country nationals (OJ L 149 of 02.06.2001, p. 34), the Directive of 28 June 2001 supplementing the provisions of Article 26 of the Convention implementing the Schengen Agreement of 14 June 1985. (OJ L 187, 10.07.2001, p. 45), Directive of 22 September 2003 on the right to family reunification (OJ L 251, 03.10.2003, p. 12, as amended).

[81] Act on granting protection to foreigners within the territory of the Republic of Poland, Polish Journal of Laws 2012.680, of 2012.06.19, as amended.

from a court ruling on inadmissibility of foreigner's surrender or from the decision of the Minister of Justice on the refusal to surrender the foreigner (Art. 3.2).

Another act which relates to immigration issues is the Act of 14 July 2006 on the entry into, residence in and exit from the territory of the Republic of Poland of nationals of the Member States of the European Union and their family members,[82] which lays down the rules and conditions for entry into, residence in and exit from the territory of the Republic of Poland of nationals of the Member States of the European Union, nationals of the Member States of the EFTA – Parties to the Agreement on the European Economic Area, nationals of the Swiss Confederation, family members of the nationals referred to above who join or stay with them and the procedure and authorities competent in these matters (Art. 1).

From the point of view of this study and indication of the implementation of the provisions of the Polish law regulating immigration, it is necessary to briefly present the Office for Foreigners (*Urząd do Spraw Cudzoziemców*) (governmental administration office), headed by the Chief, who performs a number of tasks resulting from the aforementioned Act on Foreigners. The catalogue of these tasks includes, among other things: issuing decisions and decisions in the first instance and considering appeals against decisions and complaints against decisions issued in the first instance by other authorities in matters regulated by all three acts listed in this chapter; activities related to the functioning of the Schengen Information System, providing the authorities of other European Union Member States with a number of data on foreigners (details are regulated by the Act on foreigners in Art. 22). The head of the aforementioned Office is the central body of government administration (as Polish administrative law name it), competent, inter alia, in matters concerning the entry of foreigners into the territory of the Republic of Poland, transit through this territory, stay in and departure from it, granting the refugee status, granting a permit to stay for humanitarian reasons or a permit for tolerated stay, granting asylum to foreigners (Art. 16). The body examining appeals against the decision of the Chief of the Office for Foreigners is the Refugee Board in matters concerning granting the refugee status.

3.2. Existing and potential conflicts between national law and legal practice of a relevant country and applicable EU rules

As an introduction, it should be stressed that the three Polish legal acts mentioned above implement a number of legislative acts of the European Union. Thus, the Act on foreigners implements the provisions of several EU directives; similarly, the Act on granting protection to foreigners and the Act on entering the territory of the Republic of Poland implement several EU directives.

It is important to bear in mind what has already been pointed out, that distinguishing between the status of a person to whom one applies both Polish and European law. For example, according to the regulation on the free movement of workers within the Union,[83] such a worker enjoys the same social and tax privileges as employees of a given country (Art. 7.2). The Citizenship Directive,[84] on the other hand, despite the shortcomings signalled,[85] introduced the

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[82] Act of 14 July 2006 on the entry into, residence in and exit from the territory of the Republic of Poland of nationals of the Member States of the European Union and their family members, Polish Journal of Laws 2014.1525 of 2014.11.06 as amended.

[83] Regulation (EU) No 492/2011 of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union, OJ L 141, 27.5.2011, pp. 1-12

[84] Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, OJ L 2004.158.77, 30.04.2020.

[85] For example, the European Parliament states explicitly in its study that "there is evidence of serious shortcomings in the implementation of the Directive and of persistent obstacles to freedom of movement, as highlighted in the Commission's reports and Parliament's analysis of the application of the Directive, as evidenced by the

concept of "citizenship of the Union" into national legislation, which covers all Union citizens who move to or reside in a Member State other than the Member State of which they are nationals and their family members who accompany or join them. These EU laws are an example of how free movement of persons can be achieved and concern citizens of EU Member States.

The status of non-EU nationals from third countries is much more complex. Particularly noteworthy is the legal crisis related to the 2015 EU refugee relocation mechanism contested by the governments of several countries, including Poland (see below).

In response to this mechanism, Sejm adopted a resolution on "Defending the sovereignty of the Republic of Poland and the rights of its citizens" (see: point 2.2.1.).

The Court of Justice of the European Union ruled, however, in Joined Cases C-715/17, C-718/17 and C-719/17 Commission v Poland, Hungary and the Czech Republic that, by refusing to comply with the temporary relocation mechanism for applicants for international protection, Poland, Hungary and the Czech Republic failed to fulfil their obligations under EU law. In the opinion of the Court, those States could not, in order to evade the implementation of that mechanism, rely either on their obligations relating to the maintenance of law and order and the safeguarding of internal security or on the malfunctioning of the relocation mechanism which they allege. The Court pointed out that Poland was not entitled to derogate from the application of the relocation decision on the basis of Art. 72 TFEU, according to which the provisions of the Treaty relating to the area of freedom, security and justice, to which asylum policy in particular belongs, "shall be without prejudice to the exercise of the responsibilities incumbent upon Member States with regard to the maintenance of law and order and the safeguarding of internal security". Since that provision is a derogating provision from the general rules of European Union law and must be interpreted strictly. Consequently, the provision does not confer on the Member States the power to derogate from the provisions of European Union law by simply invoking the interests relating to the maintenance of law and order and the safeguarding of internal security, but requires them to prove the necessity of the derogation provided for in that provision in order to fulfil their obligations in that regard (CJEU 2020).

In this context, it should be noted that European law provides for common policies on border control, asylum and migration. In accordance with Arts. 79 and 80 of the Treaty on the Functioning of the EU, the Union should develop a common immigration policy aimed at ensuring, at all stages, effective management of migration flows, fair treatment of third-country nationals residing legally in Member States, and the prevention of, and enhanced fight against, illegal immigration and trafficking in human beings. The European Parliament and the Council shall adopt measures, inter alia, on: conditions of entry and residence; standards on procedures for the issue by Member States of long-term visas and residence permits, including those for the purpose of family reunification; the definition of the rights of third country nationals residing legally in a Member State, including those relating to freedom of movement and of residence in other Member States; and illegal immigration and illegal residence. In addition, the Union's immigration policies and their implementation are subject to the principle of solidarity and fair sharing of responsibility between the Member States, including at financial level.

It should be added that the management of immigration in the EU is multi-level in nature; it is a process that takes place both at the level of the European institutions and at national level, involving a large number of actors, including local authorities, etc. However, this is not always

an effective process in terms of the actual adoption of legislation on immigration issues (Matusz-Protasiewicz, 2014: 19-21, 129-130).

However, returning to the national law and the issue of immigration from third countries, pursuant to the Act on granting protection to foreigners, a foreigner is granted the refugee status if, due to a justified fear of being persecuted in the country of origin for reasons of race, religion, nationality, political beliefs or belonging to a specific social group, he cannot or does not want to benefit from the protection of that country. Moreover, the refugee status is also granted to a minor child of a foreigner who obtained the refugee status in the Republic of Poland, born on this territory (Art. 13). The implementation of the quoted provisions is well illustrated by the practice developed by the Polish administration concerning Ukrainian citizens. The protection resulting from granting the refugee status is extended to Ukrainians from Crimea occupied by Russia; from other parts of Ukraine, especially Lugansk and Donetsk regions, as long as there are grounds for granting the refugee status in the individual case (Kowalski, 2016).

A foreigner who does not meet the conditions for granting the refugee status shall be granted subsidiary protection in accordance with the Polish law, if his/her return to the country of origin may expose him/her to a real risk of suffering serious harm: death penalty or execution, torture, inhuman or degrading treatment or punishment, serious and individual threat to life or health resulting from the widespread use of violence against civilians in a situation of international or internal armed conflict - and because of this risk he cannot or does not want to benefit from the country of origin protection (Act on granting protection to foreigners, Art. 15).

Finally, a foreigner may, upon his/her application, be granted asylum in the Republic of Poland, if it is necessary to provide him/her with protection and if an important interest of the Republic of Poland so requires (Act on granting protection to foreigners, Art. 90). Asylum is an institution separate from the refugee status; both the asylum and the refugee status find their legal basis in the Polish Constitution and the refugee status and granting subsidiary protection are regulated both on the international (already mentioned Geneva Convention of 1951) and European level; the aim of the regulation at the EU level was to unify the interpretation of the definition of a refugee, however – as is indicated in the literature – this goal has not been fully achieved (Kowalski, 2016).

The annual reports of the Office for Foreigners constitute an important source of knowledge on the practice of the Polish administration in relation to immigration, inter alia, on legalisation of stay and international protection of foreigners. For example, the report for 2015 stressed that: "the Geneva Convention did not regulate issues related to the maintenance by the host country of persons applying for refugee status. The Act on granting protection to foreigners within the territory of the Republic of Poland provides for the possibility to provide such persons with social assistance and medical care and, optionally, with assistance in voluntary return to the country to which they have the right of entry or with assistance in transfer to the country responsible for examining the application for international protection. Social assistance includes assistance provided in a centre or assistance provided outside the centre, consisting in the payment of a cash benefit to cover the costs of stay in the territory of the Republic of Poland on their own. Moreover, a person who covered the costs of the funeral of a foreigner who died during the proceedings for granting the refugee status is entitled to a funeral allowance" (UDSC, 2016). The same report lists the European legal acts which have been implemented in the Polish legislation. Finally, the document states explicitly that: "the consequence of Poland's membership in the European Union is not only the need to adapt the provisions of national law to the EU regulations, but also the possibility to benefit from EU funds, including the European Refugee Fund" (UDSC, 2016: 36-38). In a similar spirit – pointing to a number of aspects of international law and the implementation of EU law – a report for 2016 and 2017 were issued.

In 2016 The Supreme Chamber of Control (NIK), in the information on granting protection to a foreigner in Poland, stated that: "the Polish administration received applications for the refugee status in accordance with the law. Guarded and residence centres for foreigners were also properly organized and run. However, NIK draws attention to the deficiencies concerning the supervision and preparation of state authorities to perform statutory tasks. The shortcomings also concerned the efficiency of the implementation of the refugee procedures, which, according to the Chamber, may be further extended by the newly introduced chapter of the proceedings for granting the refugee status. It is about introducing into the Act on foreigners a solution according to which proceedings concerning one person could be conducted by two different government administration bodies – the Border Guard and the Office for Foreigners. The information of the Supreme Chamber of Control states that "there are two separate proceedings concerning personal and socio-political situation of one foreigner: The Border Guard conducts proceedings to a large extent on the basis of evidence already collected and assessed by the Head of the Office for Foreigners" (NIK, 2016).

Concluding on the possible conflict between Polish and European law on immigration, it should be stressed that to a large extent Polish law is adapted to European law. Immigration from outside the EU is the subject of debate in Poland. The most serious legal implications are undoubtedly the violations of the EU law by Poland on opposing the mechanism of relocation of refugees in connection with their mass influx from outside Europe into the EU. The EU Internal Market is an area of access to a number of privileges for EU citizens. However, people from outside Europe can function in the EU – also in Poland – on the basis of international, European and national law, after meeting a number of criteria and successfully completing proceedings, e.g. for obtaining a visa. However, correct or incorrect application of national law and possible violation of European law should always be considered in an individual case.

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8. Slovakia

Country Report Prepared for the DEMOS Project

Author: **Andrej Školkay**, School of Communication and Media, Bratislava, Slovakia

Contributors**: Veronika Vass-Vigh** (primary research and data collection about political parties, School of Communication and Media, Bratislava, Slovakia), **Viera Žúborová** (primary research and data collection about governmental policies and political parties as well as media coverage, School of Communication and Media, Bratislava, Slovakia) and **Igor Daniš** (selected governmental data, School of Communication and Media, Bratislava, Slovakia)

Reviewed by: Radoslav Štefančík, University of Economics, Bratislava, Slovakia

1. **Introduction**

The following report provides an in-depth analysis of the im/migration situation, policies and debates in Slovakia in 2015-2018. First, it offers background information, followed by explaining approaches of the key political parties on immigration topic and description of key arguments and narratives used for or against immigration in the political and public debate.

The second part provides assessment of the governmental position on immigration, together with the information on its evolution.

The third part discusses immigration as a legal issue, including conflicts of policies at the EU and national level.

Finally, it offers key synthesis of findings as well as tentative recommendations, including reference to a set of detailed recommendations suggested by a local stakeholder organisation.

It is based on critical overview of available literature and additional research of legal and policy documents. The German Presidency of the Council of the EU is discussing the issue of refugees relocation during its current presidency.[86] Indeed, the European Commission introduced a blueprint of its new plan on asylum policy in September 2020. Furthermore, the government is going to revise the key policy documents in coming years. Thus, this issue is highly topical and deserves more analytical attention, especially if the aim is to come to a sound policy advise. For busy people, there is a succint summary with recommendations at the end of the report.

Especially during and around period in question, Slovakia had been transforming gradually from a country of emigration to a country of a limited transit for illegal migration, and it was becoming a country of final destination for legal migration (Bolečeková and Olejárová, 2017: 192). In fact, even terminology was changing, at least among experts, replacing a term illegal migration with a more neutral term irregular migration. However, we kept here multiple terms in place since the discourses at that time (political, media/public or expert level discourses) showed inconsistency. In fact, the term "irregular" migration could be found only as an ex/cetion from the rule in all types of discourses.

It should be mentioned the role of the media during refugee/migrant crisis, or, as it turned out, a crisis of European migration policy.

One has to differentiate analytically on the one hand between media coverage and commentaries, and on the other hand, political discourse as presented in the media (see for an example proper differentiation by Chudžíková, 2016).

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[86] See video from the German Parliament, speech by Heiko Maas, July 7, 2020, https://bit.ly/3oaIjh0.

In general, a longitudinal study based on framing and carried out in earlier and the most critical period (2013-2016) by Kovář (2019) found that the security-threat frame was the dominant frame in the media, while economic framing was significantly less frequent in Slovak media. While both quality media and tabloids employed the security-threat frame often, it was significantly more prominent in tabloids. This appears to be too general observation, though. For example, specifically for the 2016 year, the major Slovak mainstream media sources maintained objectivity and informed promptly, professionally and without unnecessary affects about topic of Islam (Islam and refugees were seen as almost identical issues in public discourse, although there was also strong correlation in public/media debate between migrants and (black) Africans), with emotional and sensational information presented in some alternative information sources (Bayrakli and Hafez, 2017: 523). Similarly, Chudžíková's (2016) micro-research pointed at relatively balanced coverage of the media on refugee/migrant issue in September 2015.

For the political discourse as presented by politicians and political parties in the media (two selected newspapers), the most dominant political actor was the governing party, the "*Smer-SD*". This discourse was changing since spring 2015 into electoral discourse for upcoming 2016 general elections, and from framing "it's not our problem, it's the responsibility of the EU", to a more political phrase, "migrant is a threat, and presents a danger – risk for our country". Similarly, the number of articles mentioning "migration/refugee crisis" was increasing, with two peaks – one in September 2015 and the second peak in the first quarter of 2016. Among other political actors who commented on refugees/migrant in positive way, the most visible was then President Andrej Kiska, while the most frequent political representant expressing negative perspective on various aspects of the crisis was then the P.M. Robert Fico (Žúborová and Borárosová, 2017).[87] However, institutionalization and shift between security–humanitarian discourses and threat–victim-framing throughout 2015 year was not typical only for Slovakia – it was actually found in Austria and the Czech Republic, too (Kluknavská, Bernhard, Boomgaarden, 2019). Moreover, the change in framing happened following the November 2015 Paris terrorist attacks when the humanitarian framing was quickly overwhelmed by a defensive securitisation frame in the media across Europe, especially in Central Europe (Georgiou and Zaborowski, 2017). Yet for Slovakia the first change in discourse – seeing migrants/refugees more closely related to Slovakia - could be seen already in late August 2015. At that time, 71 corpses of migrants/refugees were found close to Austrian-Slovak borders, but on Austrian side of the common borders (Chudžíková, 2016: 94).[88]

The political discourse in selected daily papers and Facebook from July 2017 to January 2018 on the issue of migration/refugees was rather marginal and relatively more sympathetic to refugees/migrants (Spálová and Szabo, 2018). The crisis seemed to be gone, and there were more important local issues like "captured state" and corruption.

In the later period (May-August 2018), local media reported on migration in a more diverse style than in either Estonia or the Czech Republic (Pospěch, Jurečková, Hacek, Chalupková, Ivanič, Kaal, Rense, Tokošová, 2019; and Ivanič in Kačmár, 2019). In particular, local media reflected migration within context of labour migration (there are many guestworkers or workers who moved abroad from Slovakia, seeking jobs and other opportunities for some time or permanently abroad). Furthermore, in contrast to Hungary and partially in contrast to Poland as

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[87] The chairperson of "liberal" party SaS, Richard Sulík was also strongly against migrants, seen them mostly from rational-logical point of view, while Kotleba-ĽSNS members and supporters did not mind expressing their contempt or hatred towards them openly.

[88] The refugees were found on the highway in Austria (from Hungary). It was close to Slovakia, but the refugees (or the van) did not travel through Slovakia.

well as the Czech Republic, negative coverage of migration or refugees did not occur in the mainstream media (but in so called alternative, mostly only online media). The mainstream media, including tabloid media, focused at problematic aspects of migration less often and in less negatively emotional manner than the Czech media. Conversely, the local media discussed also more often political issues and integration. Finally, although the dominant discourse in the mainstream media was lead by politicians, their presence in the media discourse was less frequent than either in Estonia or the Czech Republic (Pospěch et al., 2019; Ivanič, Kačmár, 2019).

Be that as it may, it was crucial that when migration crisis started in 2015, there were upcoming general election in a country in March 2016 – thus, refugees or "migrants" became useful scapegoat for many politicians and political parties running in the elections. As put by Mudde (2016, cited in Wiczanowska, 2017: 70), "securitization of the refugee issue shall be deemed as instrumentalization aimed at general elections of 2016." Within this context, a long tradition of ethno-centricism, populism and illiberalism/geographical closeness in Slovakia (Harris, 2019; Sekerák, 2019; Gallová-Kriglerová, 2016: 73) was unfortunately rather (un)helpful. Indeed, a research by Chromková-Manea and Kusá (2019) confirmed quite strong correlation between high level of ethnocentrism (to be born in a country, to command a language, to have parents with local origin, etc) and having negative attitude towards migrants in general in Slovakia (as well as in the Czech Republic). Moreover, there was no positive impact of increase in level of higher education on social distancing. Interestingly, ethnocentrism has actually increased between 2008-2017 period.

Fundamentally, there had been already applied emotional ethno-nationalist and homonegative discourses by anti-LGBT activists during the (ultimately unsuccessful) referendum on "The Protection of Family" held on February 7, 2015. This pre-referendum discourse already used the discursive cleavages of the dichotomy of "depraved Europe" and "traditional/pure Slovakia". Moreover, the frames used - "norms forced from above, legislature and judiciary activism, collapsing European civilisation, protection of national development and threat to the Slovak nation" (Valkovičová, 2017) were quite adaptable to discourse during refugee crisis which was ongoing about the same time and culminated a few months later (with two peaks, as mentioned). Thus, public was already accustomed to emotional rhetoric that fitted perfectly to negative refugee rhetoric narratives.

No wonder that, as put by Andrew Stroehlein, representative of Human Rights Watch at that time: "It appears that Slovakia has experienced migrant crisis without migrants. The number of refugees is minimal, yet paradoxically fear is enormous."[89] Yet even this was only partial truth. Apparently, and additionally to the above-mentioned contributing factors, there might have been impact of important short-term trend in legal migration. As put by Benč (2015: 62): "From a country where immigration in particular has had no mass nature, where the number of asylum seekers along with the quantity of migrants living and working in the country has been low,[90] Slovakia has been undergoing an important transformation on in this domain during the past 3-5 years. The inflow of **legal migrants** has been growing to an unexpected extent, carrying with it a great acceleration of challenges." The increase of foreigners between 2004 and 2016 (as much as 4.2 times) was the third fastest growth rate in the European Union in that period

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[89] TASR (2016, June 16). Slovensko prežíva utečeneckú krízu bez utečencov, hovorí Human Rights Watch (Slovakia is experiencing refugee crisis without refugees, says Human Rights Watch), https://domov.sme.sk/c/20194748/slovensko-preziva-utecenecku-krizu-bez-utecencov-hovori-human-rights-watch.html.

[90] The number of asylum seekers between 2001 and 2004 was really high, only then no one noticed. Slovak media by and large did not notice migration at all during this period, https://www.minv.sk/?statistiky-20.

(Letavajová and Divinský, 2019: 16).[91] Similarly, there was a reverse trend of number of illegal border crossings that were replaced in statistics with illegal stays in a country (Benč, 2015: 58).

Thus, what we could see in 2015 in Slovakia was a typical case of moral panic, based on four indicators (concern, hostility, consensus and disproportionality) – see Androvičová (2016: 54-58). Moreover, the arguments for the *elite-engineered* model of panic are the strongest here (Androvičová, 2016: 62). This can be seen in the following section. However, among the elite one can include some Christian and nationalist activists (or anti-LGBT activists) who initiated divising referendum and its discourse that pre-cooked mood in society. Moreover, Bolečeková and Olejárová (2017: 194) have suggested that recent **"historical experience" with the misuse** (to be discussed further) **of the asylum system could have had impact on the attitude of Slovaks concerning the 2015 refugee crisis.**

2. Background information

Slovakia has historically been country of emigrants rather than immigrants. There is no consensus among researchers as to how many foreigners (with a residence permit) live in Slovakia. The total number seems to be around 150,000 persons as of 2019. The Slovak Statistical Office uses the term foreigner and not migrant.

HRL (2020: 14) claims that there were 143,075 foreigners living in Slovakia in 2019. However, there were only only 2.2% of foreigners living in Slovakia at the end of 2018 (121,000 individuals) according to Letavajová and Divinský (2019: 7). In contrast, Bolečeková and Olejárová (2017: 192) used another definition and data which produced different perspective.[92] In their view, already at the beginning of 2014, the number of immigrants (i.e., persons with a place of birth outside of Slovakia) was approximately 174,900 (3.2% of the population), of which approximately 146,300 (2.7%) came from other EU member states and approximately 28,600 thousand (0.5%) moved from third countries. Fourth statistical perspective was offered Bargerová (2016, p. 28). According to her calculations, there have been 84,787 foreigners living in Slovakia at the end of 2015 (share 1.56%).

It can be estimated that more than a third of foreigners from "third countries" living in Slovakia represented permanently settled individuals or families and about 60% of them had temporary permits (Bargerová, 2016: 29).

Be that as it may, these included mostly legal migrants (mainly guestworkers) or other legal and illegal migrants that were granted various form of protection or, exceptionally, citizenship.

The estimates of undocumented immigrants or those having undefined status were about some 12,000 to 13,000 persons; the majority of them being most likely Ukrainians (Letavajová and Divinský, 2019: 19). In contrast, an estimate of those leaving the country over the past years was put at between 15,000 to 20,000 persons *annually* (Letavajová and Divinský, 2019: 15). For comparison, total population of Slovakia is about 5.4 million.

Slovakia had been throughout period in question among countries with the lowest ratio of asylum seekers in the EU (asylum requests per million citizens), and it was actually the country

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[91] Although the growth was rapid, but the foreigners came mostly (2/3) from the Member States of the European Union.

[92] Originally coming from „Foreign-born population by country of birth", 1 January 2014, Eurostat, https://bit.ly/3o6hJpf.

with proportionally the lowest number of asylum seekers in the EU in 2016 year.[93] Similarly, in 2017, Slovakia registered just around 160 asylum applications, the lowest number in the EU that year (GDP, 2019). In part this was result of its status as a transit country (refugees/migrants´ final destination were other countries, typically Germany or the UK), not being a major transit route for refugees /migrants in general (Benč, 2015: 61) and especially since autumn 2015 in particular,[94] as well as it was seen as a country with a very strict asylum granting policy.[95] The last point should be explained briefly here – the ministry of interior or the Migration Authority can grant asylum on "humaritarian" grounds or the government can offer a"temporary shelter" even without any need to claim any persecution (section 9 and section 29 respectively, of the Act 480/2002). Thus, what has been strict was actual aplication of the law, not only the law as such, as we shall discuss further. In any case, during 25 years (since 1993) there were only 856 successful asylum seekers out of 58,874 asylum requests (Berthotyová, 2019). Yet it should be mentioned that majority of refugees requested asylum only formally, once they were checked by the police on their route further west, north or south.[96] The fact is that even in times of crisis, Slovakia has not become a final destination for asylum seekers and irregular immigrants (Bolečeková and Olejárová, 2017: 196). Nonetheless, illegal migration of "migrants" (less so of "refugees") became one of the most discussed and the most controversial political issues particularly in years 2015 and 2016.

A very limited migration to Slovakia has traditionally constituted mainly by nationals of neighbouring countries, or countries with historical ties to Slovakia[97] or developing countries that have the trade links with Slovakia (Macková, Harmáček and Opršal, 2019). Between 2015 and 2018 we can, however, see a change in the share of migrants in Slovakia. The share of EU nationals among those migrants residing in Slovakia with valid residence permit continuously decreased (from 58% to 46%), and in 2018, there was already a higher share of third country nationals for that year (54% - see Table 1 in annex).[98]

The EU nationals were represented mainly by nationals of neighbouring countries - Czech Republic and Hungary (see Table 2 in annex). Among the third country nationals, traditionally, the largest groups are nationals of other Slavic countries: Ukraine, Serbia and Russia (see Table 3 in annex).

In terms of the inflow of legal immigrants (number of residence permits granted), the third country nationals made up clear majority of the applicants (see Table 4 in annex). This number has been constantly increasing since 2015, whilst the number of EU nationals remained quite constant (around 7,000 persons). Similarly as in the case of stock data (number of people with

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[93] ČTK (2017, January 25). Eurostat: Na Slovensku žiada najmenej cudzincov o azyl z celej Únie (Eurostat: There is the lowest number of asylum seekers in Slovakia out of the Union), https://dennikn.sk/666115/eurostat-na-slovensku-ziada-najmenej-cudzincov-o-azyl-z-celej-unie/?ref=tema.

[94] TASR (2015, October 25). Slovensko je mimo migračných trás, prevádzači sa mu vyhýbajú (Slovakia is outside of Migration Routes, Human Smugglers are avoiding the Country), https://domov.sme.sk/c/8051377/slovensko-je-mimo-migracnych-tras-prevadzaci-sa-mu-vyhybaju.html.

[95] The judge who deals with asylum requests suggested that low number of asylum seekers is a result of strict asylum policies. She argues that initially there was interest in asylum in Slovakia. 2.5.2015.

[96] For example, according to the Human Rights League, around 140-200 unaccompanied children are apprehended every year in Slovakia, of whom around 90% disappear from the shelters. Human Rights League, 2016, Disappearing children, http://www.hrl.sk/projekty/miznuce-detidisappearing-children. Bolečeková and Olejárová (2017, 194) argued that many asylum seekers left Slovakia over the course of the asylum procedure, even before a final decision on asylum was reached. This was the main reason for which, despite a considerable number of applications, asylum was only granted to a small number of applicants, and for which the data on refused, suspended or withdrawn applications for asylum can provide only an indication of the state of illegal migration in Slovakia.

[97] E.g. Serbia, with historical Slovak ethnic minority, see Bella, 2020 and Zlatanovic and Marušiak, 2017.

[98] Source of data on immigration: Ministry of Interior - http://www.minv.sk/?rocenky.

valid residence permit), in the case of third country nationals being granted residence permits, nationals of Ukraine, Serbia and Russia were the most often represented (between 60 and 70%).

However, when it comes to **illegal immigration we observe no substantial change between 2015 and 2018, i.e. during and after the European a crisis of European migration policy.**

Yet it is true that the authorities recorded an almost 100% increase in illegal migration in 2015 in comparison with 2014 year. However, in absolute numbers this was 2,535 checked illegal migrants. It is hard to call it a real crisis (Bolečeková and Olejárová, 2017: 196). Although this number reflects trend, rather than real number of irregular migrants, there was certainly a lot of coverage of "marching" migrants and related security measures adopted by some countries.

Over the years, the most frequent nationality of illegal immigrants was Ukrainian (34-69% - see Table 6). This is a bit unexpected fact since Ukraine is a neighbouring country. There was no political persecution or extreme poverty or other major factors that would encourage illegal immigration. Whilst we can observe an influx of people of Syrian nationality in 2015, this remains under 25% (582 individuals in total numbers in 2015) and decreased to 4% in 2016 (82 individuals). Similarly, people of Afghan nationality were among the group arriving in 2015 in larger numbers than usual (10%, 265 individuals). However, significantly, among those migrants/refugees entering Slovakia illegally, only 4-5% applied for asylum (see Table 6). Clearly, Slovakia was not among the main target countries of refugees. Only Ukrainians could see this as an option, due to language and culture similarity (and then free movement within Schengen area, and in particular to the Czech Republic or Germany). In fact, Ukrainians and some others entering Slovakia illegally could be seen mostly as illegal "guestworkers", while there was also increasing number of legal workers coming from Ukraine to Slovakia especially since 2012 (Benč, 2015: 52). Before 2015, and one can assume that this observation is valid for later period, too, Ukrainians appeared in the official statistics mostly due to staying over the granted period and then being checked and arrested at illegal work or on their way back home at the border crossing point, when leaving the Schengen area. There have been only a few Ukrainians apprehended while illegally crossing the border (Benč, 2015: 9-10, Bolečeková and Olejárová 2017: 196).

Over the course of four years, there were only 820 asylum applications submitted (see Table 7 in annex) and there were only 209 asylum applications approved.[99]

However, it should be mentioned that the statistical data in this case are more or less estimates, since they usually only display the volume of known illegal immigration (Bolečeková and Olejárová 2017: 195).

3. Immigration as a political issue

The issue of legal or illegal migration was found only very rarely in electoral programmes of political parties before 2002 and 2006 general elections (Štefančík, 2010b).

Alexandra Malangone, a lawyer and researcher at Slovakian NGO Human Rights League pointed out that there was a major discrepancy between the official policy and practice in Slovakia regarding the migration. She argued that Slovakia only minimally applied the EU's basic standards to the integration of foreigners in the country. She also pointed to the insufficient monitoring and evaluation of policies that have an impact on the integration of foreigners (Mihálik and Jankoľa, 2016: 5). Some studies (e.g. Bolečeková and Olejárová, 2017), as well as the case law (discussed further) suggest that this was often the case. The Migrant Integration

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[99] Source: http://www.minv.sk/?statistiky-20.

Policy Index showed that Slovakia's integration policies were "slightly unfavourable", but more telling was fact that the country ranked 34th place out of 38 compared countries for 2014.[100]

3.1 Political context

As mentioned, **a rapid increase of legal migrants in a few years before 2015 year,** and a very fresh discourse on LGBT issues (nicknamed "protection of traditional family"), had preceded an image of emotional threat of even larger number of illegal migrants or refugees. In this transformation, both already present and ongoing wider social trends and legacies (see some emerging trends in Hlinčíková, Lamačková and Sekulová, 2011), as well as rhetoric of politicians, duly and fairly reported by the mainstream media, played the key roles. Politicians in their majority, in turn, were motivated by upcoming general elections in the country. As put by Wiczanowska (2017: 1): "Slovakia constitutes the most vivid example pro-European parties changing rhetoric for more national which is quite transparent for the V4 countries."

Most local politicians attempted to capitalise on the refugee situation, although some of them possibly honestly believed that relocation won´t work and that Slovakia can and should show solidarity in other ways. Only a few of them defended more liberal position during refugee crisis. The first issue can be seen in the following political party positions, while the second position was clearly seen in the debate in the Parliament (to be discussed later).

3.1.1. The positions of major domestic parties on the problem of immigration and their evolution, relevance of the immigration issue in the national elections

The parties analyzed in this section are the parties represented in the Parliament in the period 2016-2020. For the year 2015, there was a single party government in Slovakia lead by Smer-SD. One of the parties that were successful in the 2016 elections – *Sieť* (The Network) – does not exist anymore under its original name. It disintegrated very shortly after the elections as a relevant political subject. Therefore, it is not included in this chapter, even though it was for a short period member of the government coalition. One of the parties present in 2012-2015 parliamentary session – Christian Democratic Movement (*KDH*) has narrowly failed in both 2016 and 2020 parliamentary elections. However, we included this political movement in our analysis since it was present in the Parliament in 2015 year.

The migration crisis has transformed the electoral discourse in 2016 (but not in 2020) by and large into issue of migration (Žúborová and Borárosová, 2017; Androvičová, 2016).

In general, the key words that characterised positions of mainstream political parties before 2016 general elections on immigration included: Security, defence, protection, humanism, sovereignty, international relations, responsibility.[101] However, there was imballance how individual parties approached this issue. Overall, this topic was too much in focus of political parties considering relevance of illegal and legal migration to Slovakia (Hlinčíková, 2016). Although migration was an important topic before the 2016 parliamentary elections, immediately before the elections, the importance of completely different topics grew, namely topics related to domestic problems, such as the strike of nurses and teachers.

Interestingly, a much more salient and long-term issue, emigration of Slovaks abroad (as permanent or temporary emigration of estimated between 300,000 and 350,000 Slovak citizens living abroad persons in total, Letavajová and Divinský, 2019: 15, also Baláž and Karasová, 2016: 44) was tackled marginally and in general terms in majority of electoral programmes

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[100] https://www.mipex.eu/slovakia.
[101] Although not mentioned here, an important term was also "EU refugee quota system".

(Hlinčíková, 2016) as well as during the campaign before general elections or in public discourse in general.[102]

The topic of migration was again used by political parties before the local elections held in November 2018 and in relation to the UN Conference to Adopt the *Global Compact for Safe, Orderly and Regular Migration* held in Marrakech in December 2018.[103] Two coalition parties present in the Parliament (*Smer-SD* and *SNS*), including oppositional *ĽSNS* and S*me rodina*, supported passing resolution against this Global Compact.[104] Only 15 MPs voted against this resolution, while 31 MPs showed no interest to vote and further 8 MPs did not participate in voting while present and 8 MPs were absent. The *Global Compact* was called "an ambiguous, one-sided document."[105]

Before discussing this issue further, to avoid confusion, as put by Mihálik and Jankoľa (2016: 10): "The political ideology of Slovak political parties does not always play a major role in conflict management." Or, as put bluntly and perhaps a bit exaggerated by a former MEP Boris Zala (2020), "Leaders and leadership of our (political) parties do not have in essence any political orientation (…). Personal ideo-political fundaments, value-based clear-cut orientation and integrity are totally absent."

In order to clarify populist orientation of parties to be discussed, we used the populism index according to the Populism and Political Parties Expert Survey (POPPA). This brought mixed results since some parties low on populism showed rather strong anti-immigrant rhetoric.

a) Smer-SD – "Direction-Social Democracy"

Party *Smer-SD*, led by Robert Fico, was in the government throughout the whole period (2015-2020). While before the elections of 2016 it had majority in the Parliament and led the single-party Government, after the elections *Smer-SD* become the majory party in coalition government together with the *Slovak National Party (SNS)* and *Most-Híd* ("Bridge").

Based on expert assessment, it showed rather low populism level - 3,96 magnitude of populism at 10 points scale (indicators: Manichean, indivisible, general will, people centrism and antielitism).106 Nonetheless, with respect to migration, it was rather significantly populist, as will be shown.

The topic of immigration became one of the main topics of the 2016 elections, especially for *Smer-SD*. After the start of the migration crisis in 2015, P.M. Robert Fico (also as leader of *Smer-SD*) strongly criticized the EU[107] for the system of quota in the reallocation of refugees (see Štefančík-Dulebová, 2017: 133). The party ran without a party programme in the 2016 elections, thus the electoral campaign and general programme priorities[108] are sources of information on the stance of the party towards immigration and the refugee crisis. *Smer-SD* changed its main electoral slogan from "We are working for Slovakia" to a new one "We are protecting Slovakia" in October 2015. The main message of the campaign was that refugee (migrants) and the refugee crisis are a threat to Slovakia and that *Smer-SD* will protect the

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[102] It is true that there exists *Concept of the State Policy of the Slovak Republic in Relation to the Slovaks Living Abroad for the Period of 2https://www.nrsr.sk/web/Dynamic/DocumentPreview.aspx?DocID=459416016–2020* (Government Resolution No. 571/2015).

[103] https://refugeesmigrants.un.org/migration-compact.

[104] See voting results at https://www.nrsr.sk/web/Default.aspx?sid=schodze/hlasovanie/hlasklub&ID=41004.

[105] https://www.nrsr.sk/web/Dynamic/DocumentPreview.aspx?DocID=459416.

[106] https://poppa.shinyapps.io/poppa/.

[107] In Slovakia, usually unidentifiable or vague "EU" is seen as culprit, not the European Commission (EC) or the European Parliament or the Council of the European Union or the European Council.

[108] Priorities of the Smer-SD party program for the years 2016-2020. 2016. http://strana-smer.sk/priority-programu-strany-Smer-SD-pre-roky-2016-2020-0.

country (see more in Práznovská, 2019: 271-273). This message was mainly visible on the billboards ("Protecting Slovakia") and in the speeches made by the party leader Robert Fico who frequently held press conferences in this topic (see Kysel, 2016).[109]

Robert Fico coupled this slogan with statements that touched on the security threat for Slovaks, such as that the security of Slovaks had a higher priority than the rights of migrants, or that the government monitors Muslims (Walter, 2019).

Between 2015 and 2016, the P.M. Fico clearly dominated the media space on the topic of international migration and thus significantly influenced the society-wide discussion on this issue (Štefančík & Dulebová, 2017: 153). The main messages communicated by the P.M. and his party was that the EU quota system is a non-systemic solution to the problem and that Muslim immigrants represent a security threat, they need to be monitored and anti-terrorist measures need to be taken. Fearmongering was one of the P.M.'s main communication strategies immediately before and after the parliamentary elections in 2016 (Štefančík & Dulebová, 2017: 153). However, the party also proposed some – mostly rather vague - solutions to the crisis such as the better protection of Schengen borders, the stabilisation of the situation in countries of refugees/migrants, and the establishment so called secure place (Bolečeková and Olejárová 2017: 217).

Robert Fico resigned as P.M. after a series of anti-government protests triggered by the murder of an investigative journalist and his fiancée in 2018. Based on the articles available on the website of the party,[110] the new P.M. Peter Pellegrini (*Smer-SD*) was more restrained in his communication on the topic of migration. In November 2018, he declared that the position of the government in the issue of migration has not changed, the party had continued to reject quota on the redistribution of migrants among EU M.S. At the same time, however, Pellegrini sharply rejected the abuse and unreasonable fearmongering in the topic of migration used by some opposition parties as part of the ongoing campaign for municipal elections.[111]

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[109]   Sources: https://www.aktuality.sk/clanok/311519/poznate-volebne-programy-politickych-stran-najdete-ich-tazko-ak-vobec/, https://dennikn.sk/366597/migracia-vo-volebnych-programoch-politickych-stran/.
[110] Articles available for the years 2018-2020: https://strana-smer.sk/archive/1.
[111] https://bit.ly/2Mu8KR1.

In the parliamentary elections held in February 2020, Robert Fico, the leader of *Smer-SD* (although electoral leader was P. Pellegrini) was again vocal on the topic of immigration. The Facebook campaign of the party and R.Fico was built primarily on putting in contrast the "pro-immigrant" policies of other parties (mainly party *Za ľudí* – For people, led by former president Andrej Kiska) with the policies of *Smer-SD* that support young families or pensioners (instead of immigrants):

"We at Smer - SD will never allow immigrants to rob our pensioners of their well – deserved thirteenth pension."[112] "The opposition promises helping migrants, we help our young families with doubling child allowances."[113]

"Peter Pellegrini - 34.1%. Mr. Kiska, even surveys show that Slovaks want higher pensions and support for families and not immigrants in Slovakia."[114]

b) SNS – "Slovak National Party"

The Slovak National Party (*SNS*) became member of the coalition government after the elections in 2016 and received no seats in the Parliament after the 2020 elections.

Based on expert assessment, it showed rather low populism level (4.43 magnitude at 10 points scale, indicators: Manichean, indivisible, general will, people centrism and anti-elitism).[115]

The leader of *SNS* (and Speaker of the Parliament 2016-2020) Andrej Danko supported the decisions of the government in 2015 and called for a referendum to strengthen the mandate of the government in defending its anti-immigration position at EU level.[116] In the 2016 election campaign, the party declared in its party programme assistance and support to refugees and adherence to the asylum process, but at the same time also supported strict border protection (Hlinčíková, 2016). SNS proposed to make illegal border crossings a criminal offense. However, it is not possible to apply for asylum at Slovak embassies abroad and the only possible way how to seek asylum would be to cross the border without a permit (Hlinčíková, 2016). Multicultural society could according to the party programme endanger the ethnic, cultural, religious and social integrity of Slovaks (Hlinčíková, 2016). In relation to Muslims, the party wanted to introduce restrictions on wearing burqa, and on the construction of minarets and mosques.

After *SNS* became member of the coalition government, the party's position on the issue of migration remained negative. In 2018, the party was against the adoption of the *Global Compact for Safe, Orderly and Regular Migration* which it considered to be in philosophical contradiction and inconsistent with Slovakia's security and migration policy.[117] Before the elections of 2020, the party programme mentioned as one of *SNS*'s successes preventing uncontrolled migration by blocking the Marrakech Convention (a nickname for the *Global Compact* - this was indeed stopped in the Parliament shortly before general elections)[118] as well as stopping the islamization of the country by stricter registration rules for chuches (There had been already introduced higher limits on religious groups membership under 2016-2020

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[112] Facebook page of Robert Fico: https://www.facebook.com/robertficosk/posts/1314123532104999.

[113] Facebook page of Robert Fico: https://www.facebook.com/robertficosk/posts/1320525978131421.

[114] Facebook page of Smer-SD: https://www.facebook.com/smersd/posts/3764472993592662.

[115] https://dataverse.harvard.edu/dataset.xhtml?persistentId=doi:10.7910/DVN/8NEL7B.

[116] https://www.parlamentnelisty.sk/politika/politici-volicom/Danko-SNS-Potrebne-je-referendum-o-migrantoch-252478.

[117] https://domov.sme.sk/c/20958965/sns-navrhuje-aby-sa-slovensko-nepridalo-ku-globalnemu-paktu-o-migracii.html

[118] See on this Dostál (2018). Dostál argued that argument used by SNS that this document was not in line with actuall security and migration policies of Slovakia was a lie.

government, with tacit reference to Islam).[119] Under the chapter on national security, the party also declared to push for an international solution to crises in Asia and Africa which would stop further migrants to Europe.[120] However, the party did not offer any specific solutions and the topic of migration in the *SNS* electoral campaign seemed to be rather marginal.

c) Most-Híd – "Bridge"

Similarly to the *SNS* electoral failure, whilst the "civic" party *Most-Híd* ("Bridge" in Slovak and Hungarian, it represents mainly the Hungarian minority in Slovakia) was one of government parties in the period 2016-2020, it did not gain any seats in the Parliament in the 2020 elections. Yet it was one of few parties that was rather moderate towards refugees. According to Štefančík & Dulebová (2017: 118) the centrist *Most-Híd* was the only parliamentary party in 2015 with neutral or even positive attitude in dealing with the refugee crisis. Indeed, it was probably the only political party that called for open solidarity with migrants (Mihálik and Jankoľa, 2016: 19). In contrast with the *SNS* and *Smer-SD*, *Most-Híd* also took a different path in the electoral campaign in 2016. In the party programme *Most-Híd* declared the need to adopt a new migration policy, but did not develop what it should be like. It also saw migration as an opportunity to recruit foreign experts, with an emphasis on "linking immigration to labour market needs" (Hlinčíková, 2016).

Based on expert assessment, it was not populist either – showing only 0.33 magnitude of populism at 10 points scale (indicators: Manichean, indivisible, general will, people centrism and anti-elitism).[121]

Source: SME - Jozef Jakubčo, https://domov.sme.sk/c/20070306/bezpecnost-hlasa-uz-aj-opozicia.html

There was only one exceptional case when a candidate for *Most-Híd* utilised tacitly anti-migration slogan "For a Safe Life" in 2016.

The statements of the leader of the party Béla Bugár from the period before the elections in 2020, furthermore, pointed to the fact that Slovakia was facing more severe problems than the migration, such as the collapsing healthcare system or corruption which *Most-Híd* wanted to

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[119] This law increases the number of required members of a religious community from 20,000 to 50,000 to be able to aspire to state registration. However, the Slovakian Muslim community counts about 5,000 members (BAYRAKLI and HAFEZ, 2017, p. 520).

[120] Party Programme of SNS, 2020, p. 12.

[121] https://dataverse.harvard.edu/dataset.xhtml?persistentId=doi:10.7910/DVN/8NEL7B.

focus on.[122] This approach was based on the low number of asylum applications submitted in Slovakia.

In 2018, *Most-Híd* supported the participation of Slovakia on the conference in Marrakech to discuss UN's *Global Compact for Safe, Orderly and Regular Migration*, whilst the *SNS* and in fact majority of MPs boycotted the event.[123] However, *Most-Híd* did not vote openly for or against associated declaration of the Parliament (most MPs presented themselves as "absent", while two MPs voted against resolution), condemning the Global Compact.

The party *Most-Híd* at the same rejected the mandatory quota as well as misusing the topic of migration for political gains.[124]

d) SaS – "Freedom and Solidarity"

SaS (Sloboda a Solidarita – Freedom and Solidarity), is one of the liberal parties in Slovakia. However, "its liberalism focuses on economic issues rather than social ones" (Sekerák, 2019: 237). The party was in the opposition until the elections in February 2020, when it became member of the coalition government.

The leader of the party Richard Sulík often presented Eurosceptic opinions which were in 2015 also accompanied by anti-immigration rhetoric mainly through the rejection of the mandatory quota system.[125] According to the 2016 party programme of *SaS*, refugees were seen as a security threat.[126] The party's solution (so called a five-point plan) to the refugee crisis was therefore to close EU's borders and to transfer the responsibility to the countries through which most Middle Eastern refugees came, by building two refugee camps financed by the EU, established in Turkey or the Balkans and in northern Africa. Moreover, all the illegal immigrants from the EU would be transferred to such camps where they would wait for their asylum application to be assessed.[127] (see more in Práznovská, 2019: 274-275; Bolečeková and Olejárová 2017: 217-218).

The anti-immigration rhetoric of the leader of the party has not changed over the period 2015-2020. In the 2020 electoral campaign the topic of migrants was marginal. There is no mention of refugees of migrants in the party programme of *SaS*.[128] However, in the period after the elections Richard Sulík stated that one of the points on which the creation of a next government coalition could be hindered was the topic of migration and more specifically the mandatory quota to accept refugees in Slovakia.[129]

Perhaps surprisingly, *SaS* populism index according to the Populism and Political Parties Expert Survey (POPPA) was rather low – just 3.3 points at 10 point scale. Specifically, attitude towards immigration was seen only at 1.55 level.

e) OĽaNO – "Ordinary People and Independent Personalities"

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[122] Sources: https://www.most-hid.sk/sk/most-hid-premier-prekryva-ozajstne-problemy-slovenska, https://www.cas.sk/clanok/368796/predseda-most-hid-bela-bugar-preco-chcem-prijat-migrantov/.

[123] Source: https://www.most-hid.sk/sk/solymos-slovensko-malo-ist-rokovat-o-globalnom-pakte-osn-o-migracii.

[124] Source: https://www.webnoviny.sk/most-hid-v-pripade-paktu-o-migracii-podporuje-lajcaka-ale-odmieta-spravy-o-povinnych-kvotach/.

[125] Also L. Galko, the former Member of Slovak Parliament had expressed extremely negative views on migrants.

[126] SaS party programme 2016: http://oldweb-sulik.sk/wp-content/uploads/2015/11/volebny-program-sas-volby-2016.pdf.

[127] Source: https://bit.ly/3n7Q0DA.

[128] SaS party programme 2020: https://sulik.sk/wp-content/uploads/2016/11/program-agenda-2020-sas-1.pdf.

[129] Source: https://glob.zoznam.sk/rozhovor-sulik-o-svojich-planoch-po-volbach-cervenou-ciarou-su-migranti-a-dane/.

OĽaNO with its leader Igor Matovič is not a typical political party, as "the movement was never a classical political party but rather ad hoc group of candidates or MPS without an organizational structure or membership base" (Hynčica and Šárovec 2018: 17 in Sekerák, 2019: 237). After being in the opposition in the period 2012-2020, *OĽaNO* won the 2020 elections and created a coalition government together with *SaS*, *Sme Rodin*a and a new party *Za ľudí* ("For People").

Its populism according to the Populism and Political Parties Expert Survey (POPPA) was 7 points at 10 points level scale.

In its 2016 party programme *OĽaNO* - similarly to *SaS* - first of all called for helping refugees outside of Europe, including the processing of asylum applications.[130] Yet it also put illegal migration among threats such as organised crime, weapons of mass destruction spread and terrorism (2016 Programme: 114). The solution was to be found in targeted financial developmental help, peace-making by the EU but also in refugee camps outside the Schengen area and then selection of refugees to be settled in a country (2016 Programme: 133). Overall the party's rhetorics regarding the migration crisis was seen as oscilating from negative to neutral (Štefančík & Dulebová, 2017: 151). In 2015-2016, the MP od *OĽaNO* called for distinguishing refugees from migrants and also for finding solutions to helping refugees, however, at the same time the solutions preferred by the party were to protect Schengen Area and the EU borders whilst rejecting the quota system (see Bolečeková and Olejárová 2017: 218).[131] Similarly, in its 2015 blueprint document, *OĽaNO* suggested to exclude from the Schengen Area those countries that fail to protect external borders (Bolečeková and Olejárová 2017: 218).

The *OĽaNO* called for a common EU strategy towards migrant crisis. This call for a common EU strategy was again repeated once the debate around rejecting UN's *Global Compact for Safe, Orderly and Regular Migration* started in Slovakia in 2018.[132] It found the UN *Global Compact* worthless because it did not address agreements with third countries on the return of refugees. However, *OĽaNO* MPs were divided on this issue. About a half of them did not participate in voting and another half was not oficially present during voting, and just two MPs voted against the negative Parliamentary resolution.

The party programme for the 2020 elections on the topic of migration was similar to the one from 2016, but migration was mentioned in fewer points under common security policy.[133] The focus of the 2020 campaign was mainly on the critique of the government and more specifically *Smer-SD*.

f) Christian Democratic Movement

The movement was in opposition during migrant crisis and then did not succeed either in 2016 or in 2020 general elections. However, although it expressed its solidarity with migrants, ultimately it voted in favour of Declaration of the Parliament in 2015. This could be explained by observation that the movement expressed visible solidarity but first of all related to refugees and not migrants. The movement ignored terrorism threats and more or less safety issues. The political leadership called for finding solutions such as creation of permanent EU representative for refugees as well as the need for common European migration framework (Mihálik and Jankoľa, 2016: 17).

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[130] OĽaNO party programme 2016: http://www.obycajniludia.sk/wp-content/uploads/2016/02/program-olano.pdf.
[131] Source: https://www.youtube.com/watch?v=Gq7ytcWRVqY.
[132] Source: https://bit.ly/353uNVc.
[133] OĽaNO party programme 2020: https://bit.ly/3n29Ekg.

Its populism index according to the Populism and Political Parties Expert Survey (POPPA) was 2.87.

g) ĽSNS - "Kotleba-People's Party Our Slovakia"

The party led by Marián Kotleba is "often described as far right, Eurosceptic, national–populist, neo-Fascist, conservative, homophobic and anti-immigrant." (Sekerák, 2019, p. 238). It is in the Parliament since the 2016 elections.

Its populism index according to the Populism and Political Parties Expert Survey (POPPA) was 9.27 – the highest among all relevant Slovak parliamentary political parties.

The anti-immigrant rhetorics of the party were present through the period of 2015-2020, often interconnected with the rejection of EU institutions. In the 2016 party programme the topic of immigration has a separate point - the fourth point of the ten-point programme has the title "We will not allow immigrants to occupy Slovakia". The party was against Muslim immigrants entering the country, calling them aggressive and claiming that they receive everything for free (in contrast with the local population). The only solutions the party offered to protect Slovakia from immigrants was securing the borders with the involvement of the army and the deportation of any immigrants who would enter the country.[134] The anti-immigrant measures are also clearly anti-Muslim, as the party also claims to protect the Christian and traditional values (see more in Štefančík and Hvasta, 2019).

Source: Medzicas.sk.http://medzicas.sk/marian-kotleba-v-slobodnom-vysielaci/

In short, the issue of migration and of the Roma community were at the centre of the 2016 campaign for *Kotleba-ĽSNS* (Walter, 2019).

The 2020 party programme similarly consisted of 10 points, however, immigrants were mentioned only marginally. The party claimed to introduce stricter immigration policy and the control of illegal employment of foreigners as part of its foreign policy plans that reject any "dictate from Brussels".[135]

h) Sme Rodina - "We are Family"

The movement showed strong identity-oriented politics, being Eurosceptic, anti-immigrant and having – formally - conservative family values (Sekerák, 2019: 237). The party entered the Parliament after the 2016 elections and was in the opposition until the 2020 elections. Currently

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[134] ĽSNS party programme 2016: http://www.naseslovensko.net/wp-content/uploads/2015/01/Volebn%C3%BD-program-2016.pdf

[135] ĽSNS party programme 2020: http://www.naseslovensko.net/nase-nazory/predvolebny-program-ls-nase-slovensko-2020/.

it is a member of the government coalition together with *OĽaNO*, *SaS* and *Za ľudí (For the People)*.

Its populism index according to the Populism and Political Parties Expert Survey (POPPA) was 7.83.

The 2016 party programme was very short. Nonetheless, it promised to build new fences and to increase budget for law enforcing authorities.[136] The party mentioned migrants as people who do not want to integrate or adapt to European way of life and values during the 2016 electoral campaign and also claimed they are economic immigrants, not refugees.[137] (see more in Práznovská, 2019: 275).

In 2018 the party supported rejection of the UN's *Global Compact for Safe, Orderly and Regular Migration*, arguing that it would undermine the sovereignty of Slovakia as the country might not be able to decide on its own who are not legitimate immigrants. The leader of the party argued against document despite the acknowledgment of the fact that it is a political document which is not legally binding.[138]

Similarly to the statements from 2016 party programme, the 2020 party programme also stated that 90% of the people entering the EU are not refugees, but economic immigrants. The party rejected any EU migrant quota and saw the immigrants as a security threat as well as a potential threat to the social system of the country and to the cultural identity of Slovak citizens.[139]

3.1.2. Relevance of different arguments used for or against immigration in the political and public debate

As mentioned, the topic of international migration before 2015 was an extremely marginal topic in Slovakia that the political parties paid almost no attention to (Štefančík & Dulebová, 2017: 114). However, the security discourse of migration had been important long before the refugee crisis. It was not frequent topic, but if migration was discussed by politicians, it was most often framed as a security issue (Androvičová, 2015; Koščová, 2012).[140] Yet polarization around immigration in Slovakia had not been significant within the political spectrum before 2015 refugee crisis, e.g. among political parties, but has been noticeable among individual politicians and other actors (mainly representatives of human-rights organizations) (Androvičová, 2015, p. 45). Therefore, it was not surprising that since the onset of the migration crisis in 2015, every political party took a stance on immigration, mainly by using arguments against immigration. These originated from both the government and opposition parties, particularly arguing that immigration is a security threat and that the predominantly Muslim migrants are culturally incompatible with the Slovak population. Some of the opposition parties in the period 2015-2020 also used the argument that immigrants would be a burden for the social system and would not contribute economically (e.g. *Kotleba-ĽSNS* and *Sme Rodina*).

The public debate in the context of international migration focused primarily on two levels: "First, the approach of the EU to the redistribution of refugees, or the so-called quota system. Second, the alleged incompatibility of domestic cohabitation with Muslim immigrants"

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[136] Facebook Boris Kollár – https://www.facebook.com/Boris-Kollar-1464024763918594/.
[137] Sources: https://www.facebook.com/watch/?v=782316545239525; https://demagog.sk/vyrok/vr14661/, https://tv.hnonline.sk/aktualne-videa/657125-prizivnik-kollar-sa-rozkrical-kvoli-utecencom-poliacik-mam-problem-byt-s-nim-v-jednej-miestnosti.
[138] Source: https://domov.sme.sk/c/20952896/sme-rodina-vyzyva-vladu-aby-nepodpisala-migracny-pakt.html.
[139] Sme Rodina party programme 2020: https://hnutie-smerodina.sk/dokumenty/Final-Program-SME-RODINA-volebny-program.pdf.
[140] At the same time, when the well-known migrant Anastazia Kuzminova won the Olympics, the migration was just fine.

(Štefančík & Dulebová, 2017: 152). On both levels, there was a prevalence of negative opinions presented by politicians.

Fear was often used to increase the parties' voting preferences, mainly by the key party *Smer-SD* and by its leader Robert Fico (Štefančík & Dulebová, 2017: 153). Typically, a word "refugee" was missing in commentary by P.M. Fico in his reaction to ruling of the Court of Justice of the EU on the case raised by the Slovak government in 2015 against decision to re-allocated certain number of refugees (Tóda, 2017b).

A mini-analysis (a week and three online media) of speeches of politicians from September 2015 pointed out that solidarity was understood as solidarity with first contact countries, less so with countries that were receiving refugees/migrants as final destination. However, even for the first group of states there were doubts raised as far as how these countries tackled the issue. Only a few politicians and public figures acknowledged co-responsibility of Slovakia. Occasionally, it was pointed at failed integration of Roma as a negative experience with integration. The quota issue was seen as dysfunctional policy suggestion. The solution was seen in stopping refugees at borders, providing help to countries of origin of refugees and to countries where refugees were located within EU (Chudžíková, 2016).

On 24 June 2015, the deputies of the Parliament approved a Declaration that in effect rejected the compulsory quotas agreed by the Council of the EU (Interior Ministers) and the EC, respectively, for the redistribution of refugees, but at the same time they expressed regret over the situation and a willingness to help solve the problem and accept refugees on a voluntary basis. The resolution 1837[141] was supported by MPs across the political spectrum – 125 out of 150 voted in favor.[142]

Importantly, debate in the Parliament was tempered by violent anti-muslim and anti-refugee demonstration organised just a few days earlier (on the World Refugee Day).[143] Moreover, Androvičová, 2016: 61) pointed out that it was exactly at the same time when the annual Globsec Conference happened. The importance of both events, as read by the people, was very similar: immigrants and terrorism are huge security threats (Androvičová, 2016). Yet this seems to be a bit exaggeration – most public did not have any clue about Globsec Conference.

All deputies disapproved violent demonstration. In particular, Martin Poliačik, M.P. (*SaS*), pointed out that this protest was not motivated by the quota issue. The quota issue was secondary topic. The primary topic of the topic was – as it was called officially – Protest Against Islamisation of Europe. In other words, it was against oppression of others on the basis of their religious belief, as well as on the basis of belonging to a certain group of people. Ľuboš Blaha (MP for *Smer-SD*) called this "neo-Nazi march".

Considering EU-wide importance of this topic, it may be useful to present additional opinions of some local MPs on this issue. This shows that parliamentary debate was not that much black-and-white as reported by the media and some analysts.

The first speaker was actually the P.M. Robert Fico. The P.M. Fico explained that there is a need for a more complex solution. The quota-based solution was seen as "boomerang". He cited vice-prime minister and minister of interior who called this approach as "invitation for (human)

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[141] Vyhlásenie Národnej rady Slovenskej republiky k riešeniu migračných výziev, ktorým aktuálne čelí Európska únia. Schválené Národnou radou Slovenskej republiky uznesením z 24. júna 2015 číslo 1837 (Declaration of the Parliament on Solution of Migration Challenges that are ahead of the European Union).

[142] NRSR: Poslanci odmietli kvóty na utečencov, chcú pomôcť na báze dobrovoľnosti (The Parliament: MPs rejected quota on refugees, they want to help on voluntary basis), https://bit.ly/3obiJZj.

[143] Protesty proti migrantom boli plné výtržností, extrémisti napadli aj rodinu zo Saudskej Arábie (Protests against migrants were full of excessess, extremists attacked a Saudi Arabia family, too), https://bit.ly/38YgC4P.

traffickers." Politically, Fico pointed at emerging a big conflict about the role and rights of the Council of the EU versus the role and rights of the EC. Furthermore, P.M. Fico announced that as chairing Visegrad 4 countries, Slovakia has contacted P.Ms. of the Czech Republic, Hungary and Poland. The goal was to pass a common declaration and to coordinate common steps on session of the upcoming Council of the EU. As a possible final step how to stop refugees´ relocation P.M. Fico suggested to call a referendum on behalf of the Parliament. It was mentioned that Slovakia is providing developmental aid, as well as it is providing humanitarian help to refugees from Syria. Finally, as put by the P.M. Fico, Slovakia as the only country of Schengen area was participating in humanitarian transfer of endangered persons (mostly mothers with kids). This was the result of trilateral cooperation with international organisations that has been ongoing for six years. The Government also decided to increase capacity from 100 to 150 persons which allows to offer temporary shelter for up to 300 refugees annually.[144]

Others speakers pointed out that there are some positive examples coming from civil sector and religious organisations. For example, M.Huba (MP for *OĽaNO*), mentioned a public call of more than 30 NGOs called "*Medditeranean Sea is Also 'Our Sea*',"[145] or initiative of the Commonwealth of Ladislav Hanus called "*Who can help*" aimed to help in integration of refugees resettled by the Government from Syria and Iraq.[146] Huba also compared past attitude of Slovakia to Jewish citizens who ended up in Nazi concentration camps. Huba argued that if Slovakia would accept about 700 refugees, i.e. just a 1% of those deported during WWII, that would be a "symbolic gesture, as well as a small practical contribution to correcting sins and crimes against humanity committed by our ancestors".

The overall message was that Slovakia is ready to help but disagrees with quota system (e.g. Ľuboš Martinák, MP for *Smer-SD*). Renáta Zmajkovičová (MP for *Smer-SD*) blamed "news coming from Brussels" for traumatising citizens. "It was natural, that people are afraid, there was coming something new and they have been afraid of inflow of people with strange cultures..." She also pointed out that it will be much more costly effort if this effort is meant seriously.

The most critical speech was delivered by Ľuboš Blaha, self-declared "true Marxist" (MP for *Smer-SD*, not a party member at that time). Blaha put both solutions (quota issue versus extremism on the streets) on the same level, labelling them both as "extrems." He explicitly blamed for the refugee problem USA and "Western powers", as well as colonialism. Moreover, Blaha mentioned that "Africans and Asians do not want to come to Slovakia". He saw two problems here: first, since these people do not want to stay in Slovakia, their "enforced internations" would go against human rights. Second, Slovakia should show solidarity with the biggest and richest EU M.S. – final destinations of these people.

Already mentioned Poliačik (MP) in response explained that the EU "Dublin system" forces migrants to go where they do no want to go. In this respect, František Šebej (MP on *Most-Híd* list) questioned decision of postponing the Dublin 3 system by Hungary. Jana Vaľová (MP for *Smer-SD*) tried to focus at practical issues: a need for financial sources and related accommodation options, as well as respecting the will of the local people.[147] Július Brocka (MP

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[144] There was no additional information provided, so it is hard to check all these claims by then P.M.

[145] See Stredozemné more je aj „naše more": Iniciatíva ku Svetovému dňu utečencov, (Mediteranean Sea is also Our Sea: Initiative on the World Refugee Day), http://www.old.hrl.sk/aktuality/stredozemne-more-je-aj-nase-more-iniciativa-ku-svetovemu-dnu-utecencov.

[146] See Kto pomôže sýrskym a irackým rodinám na úteku? (Who is going to hel Syrian and Iraqi families on the rune?), https://www.slh.sk/kto-pomoze/.

[147] https://www.nrsr.sk/web/Default.aspx?sid=schodze%2frozprava.

for *Christian Democratic Movement*) was sceptical about national solution only and announced that all members of his party club would vote for suggested Declaration.

As put correctly, but simplified by Wiczanowska (2017, p. 71): "Due to his ability of securitization, R. Fico managed to turn refugee crisis into a political consensus."

Overall, not only parliamentary debate, but the main discursive (de)legitimation strategies presented in the political framing of refugees lead to the refusal of acceptance of non-Christian refugees. In background, there was positive "us" and negative "others" representations. In short, the dividing line between "Slovaks" and "others" has been formed around cultural-religious (in)adaptability. Kissová (2018) argued that this discourse leads to notion that refugees or migrants are not worthy of solidarity. However, as mentioned, this last message was not explicitly present in the Parliamentary debate, on the contrary. Nonetheless, the parliamentary elections in March 2016 have intensified Islamophobia, particularly in the context of the so-called refugee crisis (refugees were seen by and large as Muslims, and not only in Slovakia[148]) and the campaign of radical political parties: *Kotleba – ĽSNS* and *Sme rodina – Boris Kollár,* but also by the political commentaries and campaign slogans by the majority of mainstream political parties, namely *Smer-SD, SaS, SNS.* Tellingly, the names of the Slovak politicians were differently negatively prioritised here: Fico, Sulik, Danko, Kotleba, and Kollár were seen as those especially being against Muslims (Bayrakli and Hafez, 2017: 521; see also Androvičová, 2016: 50-51).

More broadly speaking, there were different topics employed before and after adoption of the EU refugee redistribution system (at the EU level, not practically adopted in full scope in Slovakia). In the former period, economic interests, border protection, and organized crime were applied as main themes of (de)legitimation strategies. In the latter period, cultural interests, identity protection, and terrorism had been employed. Archaically, and absurdly (considering its normative universality) Christianity became an iconic response to global changes and had been used as a mobilizing tool for invoking nationalist and anti-EU sentiment (Kissová, 2018). This religious based selection or discrimination became the focus of international press (see e.g. O'Grady, 2015; Cunningham, 2016; Lerner, 2016).

After the general elections in March 2016 the topic of immigration was less common, just returning briefly during Slovak Presidency of the Council of EU in the second half of 2016. Moreover, with the debate on UN's *Global Compact for Safe, Orderly and Regular Migration* and the participation of Slovakia on the related Marrakech conference it became again part of the public debate throughout 2018. In late 2018, Slovak Parliament opted (just narrowly passing constitutional majority of 90 "yes" votes) not to vote in favour of approving the *Global Compact for Safe, Orderly and Regular Migration*. As a result, Mr Lajčák, the minister of foreign affairs resigned for a while. Mr. Lajčák was actually behind coordinating draft of this global compact idea while he was chairing special session of the UN on this topic.[149]

Mr. Lajčák commented discourse on migrants in Slovakia and within the V4 later on as follows: "The Visegrad Group has communicated a full range of rational and smart positions (on

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[148] Wiczanowska (2017, 66) pointed out that: "In this context a question of how the migrants have become Muslims shall be posed."

[149] Final Intergovernmental Negotiations on the Global Compact For Safe, Orderly and Regular Migration, 13 July 2018, https://www.un.org/pga/72/2018/07/13/final-intergovernmental-negotiations-on-the-global-compact-for-safe-orderly-and-regular-migration/.

migration) in a way that made its partners unhappy. [...] These (proposals) were commented, often in a very populist and negative way."[150]

In conclusion, the manufacture of migrants/refugees as cultural and security threats, particularly in the case of Muslim refugees, not only assisted in their dehumanisation, but it "also legitimised actions taken against them through the perpetuation of a particular discourse", as correctly pointed by Sajjad (2018) in a wider East European context.

In particular, opinion polls have shown that **social distancing towards a Muslim family has increased by 41 points (from 32 to 73 points) and by 38 points (from 21 to 59) for immigrant family between 2008 and 2017 period in Slovakia** (SITA, 2017). There was rather high public rejection of migrants and quota system in the late 2015 (Linczényi, 2017). In fact, refugees/migrants were seen more as "the EU" problem than local problem, although opinion polls fluctuated over time and dependend very much on issue at stake (and formulation of the questions) (see Bolečeková and Olejárová 2017: 211-213).

We are going to discuss policy actions legitimised by described discourse in the following section.

3.2 Policy in action

By and large, governmental and parliamentary positions have been documented in their discursive form in previous section. Therefore, we mention further official documents to illustrate this issue. However, some critics pointed out that it was not coincidence that the Parliament approved a number of anti-terrorist measures (Act 444/2015) in late 2015 year (Mikušovič, 2015).[151] Officially, it was reaction to terrorist attacks in Paris in November 2015. However, there were suspicions that this legislation was part of campaign (or its culmination) that connected refugees with terrorists. There had been criticism that these measures were passed in hastily way although they impacted basic human rights.[152] For example, as a result of this legislation, intelligence services are supposed to collect information about political and religious extremism expressed in a violent way, or about illegal international transport of persons and about migration of persons. The measures have been supported only by MPs for *Smer-SD* (that were in a single party majority government).

3.2.1 Assessment of the governmental position on immigration, together with the information on its evolution (2015-2018)

It should be mentioned here that Slovak authorities and experts did not pay sufficient attention to challenges associated with future legal and illegal migration with exception of protecting Schengen borders due to access to the EU and Schengen Area. The first serious attempt at tackling integration of foreigners was document passed in 2009. However, at about the same time (2010) prepared *Strategy of Development of Slovak Society* was seen as just a little and unsystematically focused at issue of migration. Moreover, there were presented just vague ideas

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[150] Aktuality (22.7.2019 19:07), Lajčák: Slovensko by v rámci V4 nemalo íst proti svojim záujmom (Slovakia should not go against its own interests within V4), https://www.aktuality.sk/clanok/710556/lajcak-slovensko-by-v-ramci-v4-nemalo-ist-proti-svojim-zaujmom/.

[151] See Ulcl (2015), Protiteroristický balík zákonov (Anti-terrorist Package of Legislation), PRO BONO 12/2015, http://www.ulclegal.com/sk/bulletin-pro-bono/2015/12/5414-protiteroristicky-balik-zakonov, also Ministry of Interior (2016, January 2). Od 1. januára 2016 je účinná nová protiteroristická legislatíva (There is valid a new anti-terrorist legislation since January 2016). https://www.minv.sk/?tlacove-spravy-1&sprava=od-1-januara-2016-je-ucinna-nova-protiteroristicka-legislativa.

[152] TASR (2015, December 21). Podľa balíka polícia, prokuratúra, súdy a tajné služby získajú od januára v boji proti terorizmu rad nových oprávnení (According to Package, the police, prosecutors office, courts and intelligence services will be entitled to new rights in their fight against terrorism since January), https://www.teraz.sk/slovensko/Smer-SD-prelomil-veto-prezidenta/172639-clanok.html.

and illegal migration was associated with terrorism and threats to democracy (Štefančík, 2010b).

There are these main documents regarding the immigration to Slovakia that are relevant for the analyzed period.

The first one is the official *Migration Policy of the Slovak Republic – Outlook 2020* (2011).[153] This document was created by the Ministry of Interior and together with the *Integration policy of the Slovak Republic* (2014) forms the basis for the policy in the area of immigration and integration. In fact, it rather summarises what migration policy includes in local conditions. In hindsight, it is puzzling what exactly was meant by this type of bureaucratic style sentences: "It (the document) is unambiguous expression of readiness and willingness to participate at harmonisation of migration policies of individual states within EU. It is also expression of solidarity with basic principles and the way it (EU) works during control of individual processes of migration" (p. 1). Clearly, later positions of the governments in 2015-2016 did not fully match with these aims. The *Migration Policy of the Slovak Republic – Outlook 2020* (2011) states that the most decisive political and legal framework in the area of migration policy is that of the EU although it also mentions a lack of EU-wide immigration policy.

The documents states three types of protection to "foreigners": asylum, subsidiary (sometimes translated as "complementary") protection and temporary refuge for "leavers" (*azyl, doplnková ochrana, poskytovanie dočasného útočiska – odídenci*). The document does not tackle in any detail these types of protections.

Additionally, the document mentions in general terms participation at relocation of foreigners under the EU banner, based on trillateral agreements with the government, the UN High Commissionaire for Refugees and IOM. Independently from these activities, the document mentions relocation of foreigners that were granted international protection in cooperation with other EU M.S. Finally, the document specifies missing a single inter-authority body (*jednotný prierezový orgán*) that would centralise tasks in migration policy of Slovakia. It envisions "perspective goal" to create "Immigration and Naturalisation Authority." However, this has not yet happened.[154] Instead, the platform for coordination of migration policy is the Steering Committee for Migration and Integration of Foreigners, chaired by the Director of the Migration Office.

An analysis by Bolečeková and Olejárová (2018), pointed out that the document in question does not list all the instruments of the migration policy. It is possible that: "Non-existence of the logical classification of the instruments of migration policy in the document may be one of the reasons of their ineffective application in the day-to-day running of the migration policy in the Slovak Republic." (Bolečeková and Olejárová, 2018: 237). Moreover, the sanctioning-regulatory instruments outweigh the more encouraging-positive financial and communicative ones. (Bolečeková and Olejárová, 2018).

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[153] https://rokovania.gov.sk/RVL/Material/7763/1, Migration policy of the Slovak Republic: https://www.employment.gov.sk/files/slovensky/ministerstvo/integracia-cudzincov/dokumenty/migracna_politika.pdf.

[154] There is the Migration Authority, but this has already existed for a long time. See Migračný úrad MV SR pôsobí už viac ako štvrťstoročie (The Migration Authority has been working already for a quarter of Decade), (*11. 07. 2019*), https://www.minv.sk/?tlacove-spravy-6&sprava=migracny-urad-mv-sr-posobi-uz-viac-ako-stvrtstorocie . This has been confirmed in email communication with Soňa Oboňová, European Migration Network (EMN) National Contact Point for Slovakia International Organization for Migration, sobonova@iom.int, Wed 7/8/2020 3:43 PM.

The second document, *Integration policy of the Slovak Republic* was published by the Ministry of Labour, Social Affairs and Family in 2014.[155] It is based on the EU recommendations in this policy area, and also relies on EU funding for integration projects. The document highlights the role of regions in implementing integration policies as well as the role of municipalities. *Integration Policy of the Slovak Republic* states among its principles "**equality**". Also, the document claims to be: "oriented on the **prevention of xenophobia and the elimination of prejudices and stereotypes towards foreigners**" (p. 17). Finally, "Cultural and **religious diversity** are also important aspects of education and they are traditionally found in Slovak schools; **children of foreigners enrich this even further**." (p. 24). However, the P.M. Fico openly said that Muslim refugees are "impossible to integrate" (in Gabrižová, 2016).

Furthermore, it is not clear what is meaning of this document since it also states that „It neither defines nor describes the current state of policies but proposes new visions and directions in the integration of foreigners [...]" (p. 4). Perhaps it is helpful in a sense that it makes distinction between "migrant"[156] and "asylum seeker".[157] In other words, this document was more or less of lip-service type. Indeed, 2019 report by Mészárosová and Oboňová (2019: 13) stated that this document was seen as outdated already in 2018. Similarly, on the one hand, suggested integration policies in labour marker were seen as very ambitious and complex. On the other hand, there were missing specific tools how to achieve stated goals (Gallová-Kriglerová, 2016: 68). Furthermore, in educational integration, schools lacked a support from the state authorities and integration of foreign-born kids was matter of individual initiatives of schools or teachers (Gallová-Kriglerová, 2016: 70-71).

It should be mentioned that there exist (in addition to already mentioned MIPEX study) an earlier study that attempted to identify suitable indicators for measuring success of foreigners´ integration. However, its conclusions suggested that there are missing data for such task (Vašečka, 2011).

There was a plan to elaborate a new *Integration Programme for Persons with Provided International Protection on the Territory of the Slovak Republic* (with deadline in June 2019).

Third, there is rarely among researched studies cited *Declaration of the Government 568/2015* (UV-35775/2015 (October 21, 2015).[158] This declaration followed meeting of the P.M. R. Fico and some ministers with initiators "*Plea for Humanity*" from October 1, 2015. It is possible that some additional positive impact could have Declaration of the Council of the Cabinet for human rights, minorities and gender equality from October 15, 2015.[159] The governmental document specified state support to NGOs in humanitarian and integration support of refugees. The government promised to provide a million EUR for NGOs in coming next years to support activities for refugees, as well as to increase a number of stipends for Syrian refugees to 30. There were some other promises such as a webportal that would inform about integration of foreigners in Slovakia and to offer language lessons and lessons about local culture for refugees, or *Integration Programme for Persons with International Protection*.

Fourth, the *Strategy of job mobility of foreigners in the Slovak Republic until 2020, with an Outlook to 2030,* which was published by the Ministry of Labour, Social Affairs and Family in

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[155] Integration policy of the Slovak Republic: https://www.employment.gov.sk/files/slovensky/uvod/informacie-cudzinci/integration-policy.pdf.

[156] A person who leaves a country or region with the aim to settle in a different country or region.

[157] A foreigner, who complied with the criteria pursuant to the Geneva Convention related to the Legal Status of Refugees and Act No. 480/2002 Coll. on Asylum as amended, based on which this person was acknowledged as an asylum seeker and provided with international protection in the form of asylum.

[158] https://rokovania.gov.sk/RVL/Material/12397/1.

[159] See Vyhlásenie Rady vlády pre ľudské práva, národnostné menšiny a rodovú rovnosť zo dňa 15.10.2015, https://www.radavladylp.gov.sk//22-rokovanie-rady/.

2018, is the most recent document (40 pages).[160] It was created due to the lack of skilled labour force in Slovakia (mainly in manufacturing). The document therefore focuses on legal migration. The short-term objective is to adopt emergency (hot-fix) measures to address the shortage of skilled labor in the Slovak labor market (p. 11). Most of the proposed measures aim to decrease the administrative burden for both the employers and the potential employees (immigrants). The document contains more specific measures, including changes in legislation, but without any deadlines (For more on job-market related migration see Bolečeková, 2019).

There are some legal background documents, first of all it is the Act on Asylum (480/2002) and then the Act 404/2011 on the Act on the Residence of Foreigners. These documents will be discussed later on. We are also going briefly to discuss related legislation. Similarly, we discuss "the effective solidarity concept" in the next paragraphs.

In summary, **Slovakia has nourished limited anti-(illegal)immigrant securitisation framed discourse some time before refugee crisis (at the level of some political parties, some "alternative media, and some politicians), while at the same time a number of legal migrants had been increasing. The official documents were rather formal and were primarily focused at reflection of ongoing challenges. Specifically, more legal foreign workforce was needed. This is only partially contradictory position[161] – it has been consistently argued that Slovakia wants to be selective in accepting foreigners. However, this was ultimately by and large not really flexible policy from the point of contributing to a solution of migration crisis in 2015.**

When it comes to the rhetoric of the government, it was built largely on anti-immigration statements in the period before the national elections in 2016. The P.M. Robert Fico frequently held press conferences where he criticized the quota system and stated that he wants "*to prevent the emergence of a comprehensive Muslim community in Slovakia*" (January 2016).[162] The fact that Slovakia's presidency in the Council of the European Union started in the second half of the same year, however, eased this rhetoric. The focus during the presidency was on protecting the borders of the EU and on proposing so called "effective solidarity" (Zachová, Zgut, Kokoszczynski and Gabrižová, 2017).

When Peter Pellegrini replaced Robert Fico as P.M. in early 2018, he continued to reject the quota system, however, his rhetoric was less anti-Muslim and anti-immigrant than that of his predecessor.

3.2.2 Challenges in implementation of the common EU migration policies in Slovakia

The Ministry of Labour is responsible for integration of foreigners and for labour migration as well as for protection of not accompanied minors (minors without parents or other guides). The Ministry of Foreign and European Affairs tackles mainly legal migration (visa policy). The Ministry of the Interior implements governmental migration and asylum policies mainly through the Migration Office and the Bureau of the Border and Aliens Police.

The Migration Office runs three types of facilities – "reception centre" (*záchytný tábor*), "accommodation centre" (*pobytový tábor*) and an "integration centre". There also is a special Emergency Transit Centre that serves refugees awaiting resettlement in the new country in

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[160] Strategy of job mobility of foreigners in the Slovak Republic until 2020, with a view to 2030: https://www.employment.gov.sk/files/slovensky/uvod/informacie-cudzinci/integracna-politika.pdf.
[161] Although contradictory, it is quite common in other states. This phenomenon is generally referred to as gap hypothesis.
[162] Source: https://domov.sme.sk/c/20070758/fico-musime-zabranit-vzniku-ucelenej-moslimskej-komunity-na-slovensku.html.

cooperation with IOM and UNHCR, financed by USRAP – United States Refugee Admissions Program.[163]

The Bureau of Border and Aliens Police runs two police detention units for foreigners (*Útvar policajného zaistenia pre cudzincov*) located near the Hungarian border, and close to the Ukrainian border, respectively.

There is not available any specific state-sponsored accommodation for persons granted international protection. These persons have to rely on help provided by NGOs or municipalities (HRL, 2020, 8).

Slovakia implemented majority of new or the most recent legal regulations concerning the common EU migration policy during period in question. The following challenges reflect issues that actually go from the perspective of its impact even beyond the common EU migration policies. In other words, these challenges are more universal than just focusing at EU perspective.

Global Detention Project (2016) reported that the government has pursued restrictive and discriminatory immigration policies since the onset of the refugee crisis in early 2015. There were indications of increasing numbers of families with children being placed in detention without consideration of alternatives. Despite legal safeguards families with children were routinely detained for several months and alternatives were rarely granted. On several occasions, the detention of families with children has been ordered for five or six months at the outset—hence not for the shortest possible period of time. Moreover, between 2016 and 2018, four UN human rights treaty bodies criticised Slovak immigration detention practices. In general, the most problematic aspects included detention centres' prison-like environments, the fact that the presumption in favour of majority is applied to unaccompanied children,[164] stringent conditions concerning eligibility for non-custodial alternatives to detention resulting in infrequent granting of alternatives, systematic detention of families with children, and the requirement for detainees to pay the costs of their own detention (GDP, 2019: 8).

In 2016, the UN Committee on the Rights of Persons with Disabilities (CRPD) expressed concern that detained asylum seekers with disabilities did not receive appropriate support and accommodation. In 2018, the UN Committee on the Elimination of Racial Discrimination (CERD) urged Slovakia to provide alternatives to the detention of asylum seekers, while in 2016, the UN Human Rights Committee (HRC) recommended that Slovakia ensure that the detention of asylum seekers is justified as reasonable, necessary, and proportionate considering each case's circumstances (GDP, 2019: 10).

3.2.3 Existing and potential conflicts between national policies and common EU policy position

The quota system to redistribute refugees caused a largely negative reaction in the political debate and subsequently in policy in Slovakia, as we have already shown (see more on official position of the government, in Bolečeková and Olejárová 2017: 209-211). The Slovak government (joined by Hungary) filled a case to the Court of Justice of the EU in Luxembourg in 2015 against compulsory relocation of refugees (*case C-643/15*), under which Slovakia was expected to accept 802 asylum seekers, although there was a very low chance to be successful with this legal lawsuit (see Mikušovič, 2015). The government instead agreed to give refuge to

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[163] See Postoj.sk (27. september 2015). V Humennom prijali 66 utečencov zo Somálska (They have welcome 66 refugees in Hummenné), https://www.postoj.sk/6075/v-humennom-prijali-66-utecencov-zo-somalska.

[164] This was in part related to the fact that age determination procedures in Slovakia relied on bone analysis and were seen as unreliable, especially with respect to children between 16-18 years old (Global Detention Project, 2016, 5).

149 Christians cherry-picked from internally displaced camps in Iraq (Kurdistan). The lawsuit was eventually dismissed by the Court of Justice.

Slovakia avoided the 2017 (ultimately successful) legal action of the European Commission against the Czech Republic, Hungary and Poland (Rios, 2020) on reallocation of refugees/migrants when it decided to accept instead of allocated 902 refugees from Italy and Greece, only 16 refugees from Greece (Geist, 2017). The Government promised to accept 100 refugees from Greece (this time focused not at religion but "at the most vulnerable people"), and supported 500 stipends/fellowships for students from Syria. In addition, the ministry of interior offered temporary accommodation for asylum seekers in Austria (more than 1,200 refugees). (Zachová, Zgut, Kokoszczynski and Gabrižová: 2017).

Ironically, it was the Slovak government that initiated or at least coordinated the rejection of the quota system by the V4 countries in 2015.[165]

Furthermore, the "ambitious plans for the harmonization of the asylum system according to the proposals of the EC "seemed to be far beyond what the country´s politicians could imagine."[166] Instead "flexible solidarity" or as it was re-designed and re-named, "effective solidarity", was intellectual contribution of the Slovak Presidency of the Council of the EU in the second half of 2016. It was presented in mid of November 2016 (see Nielsen, 2016). For some, this was by and large just nickname for an effort to avoid allocation or acceptance of what was seen as too large number of migrants/refugees (Tóda, 2017a; see also Végh, 2017), although it also helped a bit to ease negative emotions within EU. There wa ssome positive assessment of this proposal by some, e.g. by Heijer (2017). Nyzio (2017: 73) argued that, in addition to political marketing function, this proposal sent a signal that solution to refugee crisis should be found from bottom up. Finally, the tacit message was that the key decisions should be carried unanimously and not by the majority voting, concluded Nyzio (2017: 73). Yet the rules of decision-making had been agreed already before the voting took place.

The plan introduced three different mechanisms dedicated to dealing with three stages of immigration: normal, deteriorating and under severe circumstances. Under normal circumstances, the mechanism would be regular one. Under deteriorating circumstances, the M.S. would be required to relocate a well-defined proportion of applicant for asylum or to help the state affected by a problem in different way. This could include financial contribution to tailor made wider contributions relevant for both internal and external migration field (e.g. joint return operations, joint processing of applications, sharing reception facilities). During severe circumstances, the Council of the European Union should decide on additional supportive measures on voluntary basis. The plan was supported by V4 countries (Nyzio, 2017: 72). However, it is strange to observe that this plan was not present in a coherent form in the initial 36 pages long *Programme of the Slovak Presidency of the Council of the European Union* – it simply did not exist at that time.

The Slovak Presidency of the Council of the EU managed to make a deal on Eurodac database and on enabling the start of negotiations with the European Parliament on some aspects of the European Asylum Support Office regulation and in finalising the establishment of the new European Border and Coast Guard (Gabrižová, 2017: 13-14).

The Slovak Presidency of the Council of the EU actually stated its initial vision in tackling migration at the EU level in two sentences: "Schengen strong from outside and without doubts

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[165] Source: Declaration of V4 countries on migration in view of June European Council, 23.06.2015, https://www.vlada.gov.sk//v4-sa-dohodla-na-spolocnom-odmietnuti-kvot-pre-migrantov/.
[166] Source: https://euractiv.sk/section/buducnost-eu/news/v4-a-migracia-mala-sanca-na-zmenu-pozicii/.

from inside. Regulated flow of migrants" [167], or, as it was put at another place: "Sustainable migration and asylum policies".[168] In case of "unregulated migration … (SK PRES) confirms a need for complex solution […] SK PRES will enforce measures aimed removing causes of illegal migration and to helping countries of origin and their transit [...]". It is important to make closer cooperation with relevant international organisations...including NATO [...]" (p. 7 + p. 15). Moreover, SK PRES was rather skeptical about topics that will be relevant during its presidency within refugee/migrant context. The document only "assumed" that these topics may include: effective policy of return, implementation of readmission agreements, strengthening of cooperation with EU agencies entrusted with returning unsuccessful applicants, cooperation at state level in human trafficking and human smuggling. Moreover, the document also expected possible suggestion of revision of the mandate of EASO and introductory or advanced discussions on Common Asylum Codex (p. 35).

Apparently, there was no specific plan how to tackle migration issue in February 2016.[169]

Instead of having a clear and efficient plan, Slovakia with other V4 countries supported *ad hoc* cooperation with third countries (following example of migration compact with Turkey) and showed willingness to support strengthening of border protection financially or personally (Zachová, Zgut, Kokoszczynski and Gabrižová, 2017, see more specific proposals in Nyzio, 2017: 82-83). This meant, for example, that the Slovak police/army units were patrolling at Southern border of Hungary. Or, for example, Slovakia together with other V4 countries supported (or promised to support) financially the implementation of the Project led by the Italian government in cooperation with the Commission aimed at protecting the borders in Libya in 2017.[170] There was some cooperation and help coming from the Migration Office within EASO – e.g. asylum supporting teams in Italy, Greece and Cyprus in 2017 (MV SE, 2018).

However, this probably did not mean moving from being "policy-takers" to become constructive "policy-makers" in the EU. As put by Tabosa (2018), V4 countries are too much legally and institutionally constrained to become policy-makers on their own, or as a group. Thus, Tabosa (2018) argued, although the political elites can use strategies of securitization of migration that may lead to a "partial" identitarian shift, the V4 countries are still strongly constrained by the EU and the discourse will most likely keep not being translated into actions. Well, one can argue that even resistance to policy proposals or not abiding rules of the game can seriously impact policy choices.

Be that as it may, Slovak government was satisfied with the migration policy agreed at the EU summit in June 2018.[171]

[167] Source: Governmental Material UV-9777/2016, 23.02.2016, I. Slovenské predsedníctvo v Rade Európskej únie v kontexte súčasného diania The Slovak Presidency of the Council of the EU in the context of contemporary events), p.1, https://rokovania.gov.sk/RVL/Material/12707/1.

[168] Priorities of the Slovak Presidency, https://sk16.eu/m4/en/programme-and-priorities/priorities-of-the-slovak-presidency.html, See 1 July - 31 December 2016 Programme of The Slovak Presidency of the Council of the European Union, https://sk16.eu/m4/data/documents/presidency-programme-eng-final5.pdf.

[169] Source: Governmental Material UV-9777/2016, 23.02.2016, I. Slovenské predsedníctvo v Rade Európskej únie v kontexte súčasného diania The Slovak Presidency of the Council of the EU in the context of contemporary events), https://rokovania.gov.sk/RVL/Material/12707/1.

[170] See Statement of the Visegrád 4 countries on 14th of December 2017, https://bit.ly/2LhEI21, ČTK (14 December 2017), Visegrad Group to give EUR 36 million to protect Libyan border, http://praguemonitor.com/2017/12/14/visegrad-group-give-eur-36-million-protect-libyan-border.

[171] SITA (2018, June 29). Nová európska dohoda o migrácii je dobrá pre Slovensko aj Úniu, vyjadril spokojnosť Pellegrini (A New European Agreement on Migrtion is a Good News for Slovakia as well as for the Union, Pellegrini expressed his Satisfaction, https://www.webnoviny.sk/nova-europska-dohoda-o-migracii-je-dobra-pre-slovensko-aj-uniu-vyjadril-spokojnost-pellegrini/.

For illustration, official development assistance (ODA) was 78 mil. EUR in 2015. The main target countries included Ukraine, Kenya and Moldova. This is a bit strange from perspective of migration policy, considering that, with exception of neighbouring Ukraine, neither Kenya nor Moldova seemed to be primary source of illegal migration to or just passing through Slovakia (but these were Iraq, Syria and Afghanistan). Moreover, although the country has increased ODA by more than a quarter on year-to-year comparison (mainly due to migration crisis), still, this was well below official target (0.33% of GDP versus 0.103% GDP).[172] Thus, in spite of all this rhetoric, on the one hand, **Slovakia did not live up to its long-term commitments.** On the other hand, **there was some increase in spending during crisis and some help provided.**

4. Immigration as a legal issue

4.1 Brief description of the applicable legal framework in Slovakia together with the analysis of its actual implementation

Divinský, an expert on migration/refugee issues, argued that one of the reasons why the number of illegal migrants had increased in period 2001-2004 was actually due to "the liberal spirit of the asylum law" (cited in Bolečeková and Olejárová 2017, p. 193).

However, at the same time, Bargerová (2016, p. 26) argues that Slovak law and migration policy is confusing – there are more than 30 categories or definitions used according to specific legal status. Moreover, she claims that these categories and definitions are used inconsistently and not always in line with established international customs or these are too descriptive.

The key legal document is the Act on Asylum (Act 480/2002). This law has been changed four times in the period 2015-2018 (and twice since then). The act actually does not use terms "migrant", "immigrant" or "refugee" but instead a "foreigner" or "alien" and only occasionally "asylant – asylum seeker". Foreigner is anybody who is not a citizen of Slovakia.

As already mentioned, there are three types of protection granted to "foreigners": asylum, subsidiary protection and temporary refuge/shelter for "leavers" (*azyl, doplnková ochrana, poskytovanie dočasného útočiska – odídenci*). A "leaver" is a foreigner whom the ministry of interior granted, following decision of the Government (as discussed, the government shall pass a measure which defines beginning, conditions and end of temporary "shelter/refuge"), temporary "shelter" ("*dočasné útočisko*"). This is the main difference from asylum status which grants a permanent stay.

Subsidiary protection can be given to foreigners if they did not succeed in getting asylum. Still, there must be serious reasons to believe that an applicant would be persecutated upon return or face threats from internal or international military conflict. Subsidiary protection is provided for a year with possible extenstion to two years. A temporary "shelter/refuge" for "leavers" is meant for foreigners who come from war-torn countries, or where there is massive breach of human rights. In such cases, the government in line with decision of the Council of the EU shall pass a measure which defines beginning, conditions and end of temporary "shelter/refuge". This measure/decision should be backed by appropriate money allocation. In case of relocation of

Christians from Kurdistan, it is not clear whether this was based on decision of the government or decision of the ministry of interior.[173]

Chart: Scheme of Asylum Process
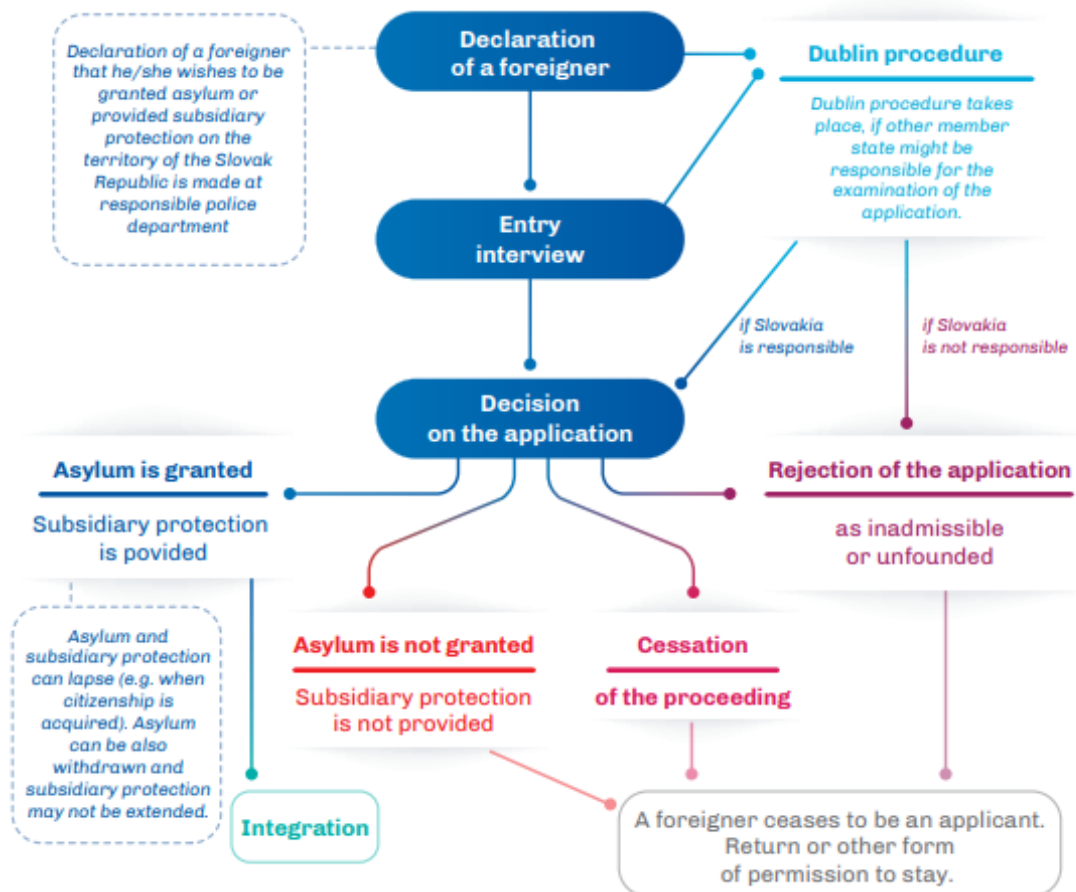
Source: Ministry of Interior (2019). The Immigration Office of the Slovak Republic. 25 Years (1993-2018) https://www.minv.sk/?tlacove-spravy-6&sprava=migracny-urad-mv-sr-posobi-uz-viac-ako-stvrtstorocie

The changes in the Act 480/2002 (as well as, simultaneously, in the Act 404/2011 and some other laws) specified details of various forms of protection of refugees, as well as incorporated two additional EU regulations (*2013/32/EÚ L 180, 29. 6. 2013*, and *2013/33/EU L 180, 29. 6. 2013*). The first change in 2015 reflected transposition of provisions of the (recast) Asylum Procedures Directive. Such an update was according to plan outlined in 2014 year.[174] Thus, it did not reflect refugee crisis. The second and third change impacted the Act 404/2011 indirectly, through a new Civil Administrative Code. Neither these changes reflected ongoing crisis since the validity of accepted changes was postponed to December 2018 or to later period.

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[173] MV SR (11. 12. 2015), Na Slovensko prišlo 149 asýrskych kresťanov (There have arrived 149 Asyrian Christians to Slovakia), https://www.minv.sk/?tlacove-spravy&sprava=na-slovensko-prislo-149-asyrskych-krestanov.

[174] NRSR (2015). Dôvodová časť (Explanatory Part), https://www.nrsr.sk/web/Dynamic/DocumentPreview.aspx?DocID=411263.

The 2018 changes in the Act 480/2002 specified some details related to administrative-procedural aspects, including extending already mentioned a list of bodies that can provide a legal help or advice (Act 198/2018 Z. z).[175] Neither these changes were reflection of experiences with refugees. In fact, the official explanation provided argued that the main goal of this legislation was transposition of section 31, subs. 3-5 of the Directive 2013/32/EU.[176] The Asylum Act states that the time limit for processing applications for international protection is six months, which can be further extended in specific circumstances. The Act also requires to request an opinion on the asylum application of all applicants above 14 years from the Military Intelligence, and not only from the Slovak Intelligence Service (state intelligence). The time limit to reply to this request was extended from 10 days to 20 days.

In summary, one could not find harsh measures in the update of relevant legislation as a result of refugee crisis (with exception of indirectly related the Anti-terrorist Act and the Act on Freedom of Religious Faith discussed at another place and changes in the Act 404/2011 discussed further). On the one hand, Androvičová (2017: 213) believes that "the partial improvement of the legislative conditions of so called "foreigners with supplementary protection" was probably also the result of efforts by NGO's who draw attention to the very complicated situation of this vulnerable group of migrants." Yet we do not know whether this is true or not.

The second relevant document tackling legal immigration is the Act 404/2011 on the Residence of Foreigners. It defines details of migration policy, including entry requirements, visas, expulsion, and immigration detention. Article 88 of the Act on the Residence of Foreigners provides grounds for immigration detention (*zaistenie*). Amendment by Act 179/2017 introduced restrictive measures for international students. Temporary residence for the purpose of study can now only be acquired by students who are younger than 20 years on the day of submitting the application. An update in 2018 introduced limitation of "permanent" stay to five years for persons without state citizenship. Previously, it was an unlimited term.

There are some related legal acts such as Act 327/2005 on providing legal help to persons in material deprivation. One can perhaps include here also a new law on the Developmental Aid (*392/2015*). Also, there was prepared an updated National Plan of Management and Control of Borders for 2019 – 2022 period. Finally, for integration of foreigners it is relevant the Act on State Citizenship 40/1993.

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[175] See NR SR (2018). https://www.nrsr.sk/web/Dynamic/DocumentPreview.aspx?DocID=451202; https://www.zakonypreludi.sk/zz/2018-198

[176] See https://www.nrsr.sk/web/Dynamic/DocumentPreview.aspx?DocID=451202.

4.2 Existing and potential conflicts between national law and legal practice of a relevant country and applicable EU rules

In general, any asylum seeker has the same rights as citizens, with some exceptions (e.g. regarding voting and participation in elections). Thus, what could be noticed was a subtle difference in (more informal than formal approach) towards asylum seekers and migrants in general as a problem. Indeed, the judiciary noticed that sometimes it looked like civil servants prioritised negative approach rather than positive approach when considering whether or not to provide asylum (Berthotyová in Prušová, 2015). As mentioned, the law does not differentiate between migrants and refugees in case of the Act of Asylum. It is by definition something else when somebody claims to be an economic migrant (a right to asylum in such cases does not guarantee any international covenant), or asks for permit to stay in a country as a guestworker. We have also discussed different types of protection given (or not) according to the Act on Asylum. The law also gives to a foreigner a choice. However, obviously, foreigners in most cases have no idea about local legislation. Thus, it all depends on an advice given by a lawyer provided or funded by the state or, since 2018, it is possible to get involved a representative of NGOs dealing with refugees in this administrative process.

4.3. The High-Level Judiciary and Refugees/Migrants

There is an interesting positive contribution of the high-level national judiciary towards regulation or supervision of asylum processing administration. The verdicts of Constitutional Court and (qualitatively less so, but still) of the Supreme Court, have defended rights of refugees/migrants against too narrow-minded approaches of the Migration Authority and other law enforcing bodies already before the 2015 refugee crisis and increasingly since then. In doing so, both courts referred to the common EU migration regulations or, more often, to the case law of the European Court of Human Rights or to the Covenant.

In general, judiciary navigated migration officers towards issues that should be of their interest in order to correctly assess asylum request during an interview. These included consistently claiming the same identity, to check whether there are no internal contradictions (minor contradictions should not be considered against interest of an applicant). Neither a lack of evidence or documents that could prove persecution should be taken in account. It was often the case that migration officers were biased towards negative information. This was a major reason why courts so often cancelled decision of migration authorities (Berthotyová in Prušová, 2015).

However, the judiciary tried to keep balance in mutual obligations. Thus, the Migration Authority is not obliged to seek arguments why an applicant asks for an asylum. The burden of proof is, in that sense, fairly divided among both sides. However, there is a slight advantage given to an applicant. An applicant can just claim but he does not have to prove his claims. It is the task of the Migration Authority to find contradictory information. If there is no contradictory information, if there is no proof that applicant has lied, it must be considered that he is a trustworthy person (Berthotyová in Prušová, 2015). The story must include aspects of persecution, as defined by the law: race, religion, political affiliation or membership to a certain social group. The right to asylum is not a universal tool for protection against any persecution but only selected ones (Berthotyová in Prušová, 2015).

There were some other interesting examples how the administrative judiciary defended rights of refugees. For example, the Constitutional Court criticised (*III. ÚS 110/2011 41/2011*) the Supreme Court and found its verdict in breach of an international Covenant. The case concerned an Afghan refugee who was to be extradited to Greece for further asylum/extradition proceedings. The Constitutional Court argued that it was based on too formalistic decision. In particular, it was not correct when the Migration Authority did not check local conditions in

Greece, although there was official information about imperfect asylum proceedings in Greece and unhuman conditions there in asylum camps. It was not sufficient to argue that the local law did not request to check situation there. In the view of Constitutional Court, the Covenant may not cover all details, and, in any case, it has priority before local legislation.

Similarly, the Constitutional Court criticised (*III.ÚS 717/2016-28*) the Supreme Court for verdict *1 Sža 26/2015* which was lacking arguments related to decision to continue in internation of an asylum seeker.[177]

The case *IV. ÚS 308/2011 12/2012* also concerned an Afghan refugee. The issue was that decision of the Migration Authority did not mention clear arguments that it considered in general and that it considered as legally relevant in particular, for not extending subsidiary protection.

The case *II. ÚS 147/2013 48/2013* tackled a man who asked for asylum in Slovakia 8 times and then fled to Austria (he was repeatedly extradited from Austria back to Slovakia, or entered Slovakia from other country, between 2004-2009). When he was prison in Slovakia for theft in 2010, he asked for asylum again. When he finished his prison term, the police put him in jail again for maximum 180 days allegedly in line with the Asylum Act. However, the Constitutional Court argued that judicial review (*posúdenie zákonnosti zbavenia osobnej slobody súdom*) of this jail sentence was too slow.

Nonetheless of criticism of verdicts by the Supreme Court (or maybe as a result of this criticism), the Senate of Administrative Collegium of the Supreme Court lead by Elena Berthotyová was awarded "the Best 2017 Verdict" for its verdict (*10 Sza 12/2016*). This ruling protected rights of a female asylum seeker from Afghanistan and her three minors. The case concerned confinement of this family. The court argued that this can be seen as a legal tool, however, the law allows to use less harsh measures. In that particular case, asylum seeker mother declared that it had in possession 6,500 EUR. Thus, financial deposit was possible instead of confinement. When issuing the verdict, the court also stated that minors should not be punished for immigration status (and failures) of their parents.

Furthermore, a judge Berthotyová (2019) explained that an asylum seeker usually is not able to provide any evidence, often not even an ID card. An asylum seeker can usually just claim hat he was persecuted. However, it is not a duty of an asylum seeker to prove his or her statement. Until the court has issued such verdict, an asylum seeker was positioned in disadvantageous situation which usually resulted in dismissal of his or her request for asylum. Slovak judiciary has passed a number of such ground-breaking decisions, e.g. concerning definition of asylum, regarding checking the real conditions and facts (*k zisťovaniu skutkového stavu, k zásade tzv. materiálnej pravdy, k štandardom a rozloženiu dôkazného bremena*), regarding individual reasons of persecution, on definion of an asylum on humanitarian grounds, regarding asylum seekers "sur place", etc.

There is ongoing rather significant asylum-related case. It tackles issue whether it is right to check at an asylum seeker, who converted to Christianity in Slovakia, how strong or honest is his new religious faith. The Migration Authority, supported by regional court, argued that his knowledge about Christianity were too low. The Supreme Court argued that it is absolutely not acceptable to demand from a converted person rather encyclopaedic knowledge about religion or checking how often that persons visits a church (Berthotyová in Prušová, 2015). Moreover, this lawsuit raised an issue what is the role of the court – typically, asylum seeking process is seen as an administrative procedure. Therefore, normally, an appeal court may only check whether formal, administrative criteria were upheld. It is not expected from the administrative

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[177] https://www.nsud.sk/data/att/76228_subor.pdf.

court to review the content or an issue at stake. This particular lawsuit lead court to believe that decision of the Migration Authority was contradicting the EU law. The Supreme Court asked for opinion the Court of Justice of the EU in 2017 (Prušová, 2017).

There are these the most recent selected examples of verdicts that tackled rights of migrants/refugees, as presented by the Supreme Court and lower courts, for 2019.[178] The case *R 61/2019 (10Sžak/18/2017)* - if a request for asylum is submitted by a mother of minors, of whom one suffers from a serious illness, this should be considered on humanitarian grounds - *10Sžak/18/2017*). The case *R 62/2019 (1Sžak/3/2018)* referred to Dublin Procedure (*17-604/201*3). The court argued that although there is no legal entitlement (*nie je právny nárok*) to this protection under its wordings, nonetheless, even when deciding a case on ad hoc basis, the administrative officer must decide in a way that there is rule of law and expected precedens-based decisions.[179]

However, there were cases when the Constitutional Court turned down constitutional complaints such a case tackling extradition to Russia or alleged illegal internation of returned refugee from the UK once he landed on the airport (*II. ÚS 129/2018*).

An overview of case law on migrants´(asylum seekers) detention was prepared by the Human Rights League.180

4.4. The Border and Foreign (Alien) Police Force and Migrants

The Report by the Ombudsperson on the Border and Alien Police Force performance (KVOP, 2015), highlighted many problematic aspects in the work and approach of the Office of the Border and Alien Police Force towards migrants in general. This was related mainly to reception conditions in which administrative procedures related to providing temporary permits were held.

Foreigners waiting for processing their requests faced in many cases low quality level administrative environment – in some places without access to basic level social services (toilets) at appropriate hygienic level. This meant that in some cases an applicant had to ask for a key to the toilet. In other cases, there was no sufficient room for all applicants to have a seat, or a table for comfortable filling in requested forms, or proper air-conditioning. At some places, there was no so called intimate zone available. The report argued that when taking into account time spent in such conditions of waiting, the conditions may be considered as breaking the right to human dignity and as breach of the right to protection against denigrating (*ponižujúcim zaobchádzaním*) attitude on the side of authorities.

As far as the administrative process was concerned, foreigners complained about impartial or incorrect information provided by the police.

The recommendation included to change administrative process from the police force to other part of public administration as well as that all concerned authorities should have publicly available text on the Act on the Residence of Foreigners in the English language.

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[178] NS SR (2019, December 11). Zbierka stanovísk Najvyššieho súdu a rozhodnutí súdov SR 6/2019 (Collection of Opinions and Verdicts of the Supreme Court and Courts in Slovakia), https://www.najpravo.sk/clanky/zbierka-stanovisk-najvyssieho-sudu-a-rozhodnuti-sudov-sr-6-2019.html.

[179] Aj v rámci aplikácie voľnej úvahy je správny orgán povinný rozhodovať tak, aby bola zachovaná právna istota a predvídateľnosť jeho postupu v súlade so zákonom a medzinárodnými dohovormi, ktorými je Slovenská republika viazaná.

180 HRL (not date). Prehľad relevantnej judikatúry krajských súdov, Najvyššieho súdu SR, Ústavného súdu SR a Európskeho súdu pre ľudské práva vo veci zaistenia zaistenie žiadateľov o azyl (An Overview of Relevant Case Law of regional couts, Supreme Court, Constitutional Court and EctHR on asyum seekers detention). https://www.hrl.sk/userfiles/files/JUDIKATURA%20vo%20veciach%20zaistenia_prehlad(1).pdf

The mainstream media have reported on these issues relatively often (see Dugovič, 2015; Vražda, 2016; TV Markíza, 2017; Šnídl, 2019; Dobrovicsová, 2019c Knapko, 2019; TV Joj (2020).[181]

As put by Bargerová (2016, p. 34), "available data suggest that Slovakia does not fully comprehend its own interest in integration of foreigners. It is especially surprising that the Ministry of Interior is not interested in integration of foreigners to such level as it was shortly before joining the EU."

5. Synthesis

Moral panic manufactured through securitisation of an issue of migration characterised Slovakia in 2015 year. In this discourse, nominally social democratic Prime Minister and social democratic party that was in a single party government throughout 2015, played the key, by and large negative role. Yet there was a very low number of illegal refugees apprehended. The discursive context was nourished by generally suspicious attitude of local publics towards foreigners, paradoxically, by and large caused by little interaction with foreigners in general or refugees in particular. At the same time, the number of legal migrants, mainly guest workers, was increasing shortly before the 2015 crisis. This contributed to negative image of migrants among some parts of the public. Be that as it may, there was only one relevant parliamentary party that defended openly and without restrictive conditions rights of refugees/migrants - *Most-Híd*. The second best position was of the *OĽaNO* movement that was ambivalent on this issue, while *Christian Democratic Movement* referred to the cultural and society-wide questions instead of threats and terrorism (although some of its representatives, e.g. acting as minister of interior, put emphasis on security-related issues in the past). Among other political actors, the most visible welcoming actor was then the President Andrej Kiska. It is true that the Parliament also expressed "a deep concern and regret over the tragic situation of migrants" and "the need for solidarity with other EU M.S." However, this solidarity should be based on "voluntary" principle, "geographical balance, as well as reflecting potential security risks and taking into account the cultural, historical and socio-economic specificities of each M.S."

Nonetheless, one can wonder, why there was so much negative attitude towards refugees in social democratic party that single-party ruled the country? The key explanation is possibly to be found in party position on political-ideological spectrum. As put by Marušiak (2010, p. 6), *Smer-SD* met the standards of the Social Democratic identity only in the social and economic affairs, while cultural and human-rights dimension, supra-national dimension and the dimension of equality and freedom "*Smer-SD*" met only partially or not at all. This was apparently still true in 2015 year. Clearly, *Smer-SD* was still maneuvering between "pragmatism" and "social democracy". This could help to explain "Janus faced" position of the Slovak government and Parliament during refugee crisis. However, for example neither "liberal" *SaS* party could be seen as truly liberal from cultural and human rights values perspective. In fact, there emerged more than constitutional parliamentary consensus rejecting the quota on migrants/refugees and constitutional majority rejecting the UN Global Compact.

Additionally, long term cultural traits that may have influenced slow and unfinished "socialdemocratisation" of the *Smer-SD* party was a legacy of ethno-centricism, populism and

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[181] See also Smutný príbeh pokračuje: Ľubka s egyptským manželom a dvoma deťmi opustili Slovensko (5.7.2019).
https://bit.ly/2Mu01OL.

illiberalism in political spectrum and society at large.[182] Yet there also was some logical-rational argument using recent experience with migrants/refugees who actually were not interested in getting asylum in Slovakia and in majority of cases left detention centers on their own, not waiting for the decision about asylum request.

On the positive side, the mainstream media, typical with liberal ideology, attempted to remain less passionate about refugee crisis than politicians or even the public at large, or media in some other countries. This was clearly noticed when one compares their framing on this topic internationally.

Thus, in this moral crisis, both already present (rapid increase of legal migrants in the past years and reported experience with "disappearing" migrants from detention centers) and ongoing wider social trends and legacies, as well as rhetoric of politicians, but also of some conservative civic voices, played the key roles. This was actually shown in ultimately unsuccessful referendum on "The Protection of Family" held in early 2015. This referendum discourse already introduced into the discursive cleavages of the dichotomy of "depraved Europe" and "traditional/pure Slovakia". Moreover, the negative frames used were quite adaptable to discourse during refugee crisis which was ongoing about the same time and culminated (with at least two peaks) a few months later. Thus, public was already accustomed to emotional negative rhetoric that fitted perfectly to negative refugee rhetoric narratives. This narrative was found useful as a key message for almost all political parties before the early 2016 general elections. Securitisation of migration thus lead (or contributed) to Janus-faced policies of the Slovak governments throughout 2015-2016 period. As a result, social distancing among population towards migrants and Muslims has increased.

Indeed, Slovak government´s attitude towards migration policy can be characterized with double standards both externally and internally: externally, there was internationally (and internally) declared solidarity with the situation of migrants/refugees and a call for (different way of) cooperation and (more) coordination within EU. The Slovak plan (supported by V4 countries), presented during its Council of the EU presidency in second half of 2016, called for "flexible solidarity" or as it was re-designed and re-named, "effective solidarity". However, the listed alternatives were not viewed as helpful by the frontier states in particular. One can wonder whether "flexibility" approach did not find some inspiration in overall longer cooperation within Visegrad 4 countries. As put by Strážay (2018, p. 58): "the idea of flexibility [...] has not only become a characteristic working strategy for V4 that distinguishes it from other regional cooperation formats in the EU ... but it is also ... the groups´ survival strategy." In other words, a lack of common interests, or a lack of useful alternative policies, may be covered by "flexibility" vocabulary.

Yet it should be also stated that virtually all governmental documents produced before the 2015 crisis indicated that the country wants to be selective in accepting migrants/refugees, while it also called for cooperation with partners within the EU. This certainly can be seen as a puzzling approach.

Furthermore, the government sponsored relocation of some 150 local Christians from Kurdistan, as well as provided assistance to Austria. Yet at the same time there was a unique (with Hungary) open legal action (ultimately unsuccessful) against majoritarian decision challenging pre-agreed rules of decision-making in the EU regarding relocation of refugees.

Furthermore, although Slovakia initiated and coordinated some limited international diplomatic public and legal protests, the country also accepted some limited, really symbolic, number of

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[182] For academic reflections on negative attitude of local population towards migrants/refugees, see discussion in Bolečeková and Olejárová 2017, 213-215).

additional refugees from Greece within EU relocation scheme. The country also showed some additional effort towards helping countries that tackled refugee crisis (Libya, Hungary, Slovenia, etc), including helping international organisation in long-term programme on refugees relocation. Thus it avoided successful lawsuit initiated (in a sort of ironic but unintended reciprocity) by the European Commission against some other neighbouring countries (Czech Republic, Hungary and Poland) on this issue.

The legislation on asylum and on "aliens", although subject to revisions during period in question, by and large did not reflect these external and internal processes and challenges. It included only aes few changes that could be seen as worsening position of refugees, as a result of securitisation of public discourse, while at the same time eased some regulations especially of humanitarian/health related types. Ironically, it was because during this period that Slovakia actually transposed new EU legislation on this issue, according to officially planned timeline. Although legislation is rather complicated and strict, it allows fast humanitarian gestures, if the Ministry of Interior (the Migration Authority) or the government wishes to do so.

Interestingly, the Constitutional Court and then Supreme Court played important role in making more human and easier accessible access to justice and conditions related to asylum seeking for refugees.

It should be mentioned that tacit anti-migrant rhetoric and policies could be found implicitly in another legislative acts: the Anti-terrorism Act and an update in Act on Freedom of Religious Faith that have been updated during the period in question, too.

Similarly, the ombudsperson pointed at some complications that faced regular migrants when tackling the Border and Foreign Police. With exception of some progress in increasing the quality of equipment and premises of the Border and Foreign Police, there seemed to be persisting problems in quality of services provided to foreigners (KVOP, 2020). There was controversial reaction of authorities to the latest report by ombudsperson (see Gucký, 2020 and Števulová, 2020).

Internally, Slovak governmental position was also "dual" (Janus-faced): on the one hand it showed a strong anti-migrant rhetoric, including passing strict anti-terrorist legislation (when refugees were linked in public discourse with Muslim religion and then implicitly or sometimes explicitly[183] with terrorism), while on the other hand there was a special declaration of the Government that provided huge resources to NGOs who were helping refugees and some other pro-refugees measures. Moreover, Slovakia at the same time passed a new law on international developmental assistance. The Ministry of Foreing and European Affairs established a post of *ambassador-et-large for* migration (HRL, 2020, p. 13). Yet the idea of "Immigration and Naturalisation Authority" as well as *Integration Programme for Persons with International Protection* have not materialised. This half-baked approach is somehow typical for Slovak bureaucracy – there is often discrepancy between wording of policies and laws, and actual policies and approaches.

It should be little surprising that in late 2018, on the statement: "It is our duty to welcome refugees fleeing war and affliction into our country", a third of Slovak respondents answered in affirmative (agree and strongly agree), while two thirds disagreed (including strongly disagreed). This was exact opposite as in case of Switzerland or Bosnia and Hercegovina. In fact, it was exact opposite as an average of all surveyed countries (Ispos/Fondpol, 2019).

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[183] For example, the P.M. R. Fico said: "*Many things are being said and written, but the Slovak government sees a direct link between the current migration flows and the (November) attacks in Paris and recent events in Germany,*" In Gabrižová, 2016.

Ultimately internally, unfinished "socialdemocratisation" of a *Smer-SD* party and in general not quite developed political party system (with too big role of leaders), as well as externally, ad hoc coalition policy tradition within the V4 called "flexible approach", lead to Janus faced policy of the Slovak government(s) during 2015 refugee crisis as well as during its Presidency of the Council of the EU in the second half of 2016. In background, this approach had deeper roots – Slovak political elites by and large prefer integration and cooperation within EU and thus do not want to be seen as too much uncooperative. As put by Najšlová (2011) at related and earlier example, Slovakia's efforts to shape the EU's Eastern policy have been a blend of solidarity and pragmatism, a permanent renegotiation between 'the logic of appropriateness' and the 'logic of consequentialism. Najšlová calls this approach "Pragmatic Follower, Occasional Leader." She explains this attitude towards EU's Eastern policy further that:

> "the solidarity dimension of this relation has drawn on Slovakia's transition experience and a certain similarity between Slovakia's historical experience and that of the EU's Eastern neighbors. The pragmatic dimension has been motivated by a national interest that prefers a democratic and better governed neighborhood, and, at the same time, by Slovakia's need to be respected and recognised as a relevant international player. At the same time, Slovakia as a small state has been using the EU arena to promote its foreign policy priorities and has selected the Eastern neighborhood as one of its contributions to the EU policy."

Moreover, in case of migration crisis, there was a call for cooperation from other Visegrad countries, as well as pressure from the local population that is by and large afraid of anything foreign.

There is a little hope that new immigration policy will be different. The old idea of "Immigration and Naturalisation Authority" is mentioned only as an option in the Manifesto of the Government for 2020-2024 period. Moreover, the Government promised to prepare new Migration Policy of Slovakia for 2021 – 2025.[184] In general, the new government seems to be equally ambiguous on solutions to migration policy as the previous governments: it points at risks associated with "unregulated migration flow and uncoordinated EU approach" while at the same time demands "to take into account legitimate interests of Slovakia" (p. 24).

Be that as it may, it is expected that Slovakia will face labour shortage of 37% in 40 years from now (Baláž and Karasová, 2016: 53).[185] Similarly, the population may decrease from 5.42 million to somewhere between 3.8-4.3 million in 2100 (Bleha, 2020). The issue of migration/refugees may be seen rather differently from this long-term perspective.

6. **Policy recommendations**

   1. It would be useful to support political party system development in Slovakia that would be more compatible with the European political party families. This may be challenge since the party system is in flux globally. We mean here that if a party claims to be belonging to a certain ideological camp, it should follow key principles of that ideological camp.

   2. It would be useful if the key policy documents (e.g. Migration Policy, Integration Policy, Asylum Policy or prognostic materials) would be written with a more practical

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[184] Programové vyhlásenie vlády Slovenskej republiky na obdobie rokov 2020 - 2024 (Manifesto of the Government 2020-2024), http://www.culture.gov.sk/programove-vyhlasenie-vlady-180.html.

[185] European Commission, 2015 Ageing Report.

focus and with specific aims but also including some visionary aspects (e.g. possible negative scenarios with alternative approaches). These documents beg for revisions. Currently, (as of October 2020) there is ongoing process of public consultation of a new draft of LP/2020/385 Migration Policy of Slovakia – Outlook 2025.[186]

3. Assessment of key policy documents should be double checked by external assessors (both current versions and annual assessment of their real application).

4. The key positive actors should be appreciated or supported locally and internationally (e.g. the mainstream media, ombudsperson, the high judiciary, selected academia, former leadership of party *Most-Híd*).

5. It should be developed a narrative why it is useful or necessary to help refugees, if clear majority of them really does not want to stay in the country and leaves the country for their final destination before asylum procedure is completed.

6. Administrative aspects of regular migration should not be tackled by the Police but by civil authorities. This change was actually already introduced to some degree in the summer of 2020. For that purpose, already planned central Migration and Integration Authority should be established or based on merging existing authorities.

7. There should be easily available online and in hard copies basic information for migrants and refugees not only about key legislation but also about cultural specifics in all languages of expected migrants/refugees. The authorities should monitor developments and be ready to prepare new language versions, if needed, within weeks (also HRL, 2020" 6-7). The current version is available from 2018 year and is available only in five languages.[187]

8. We also support recommendations suggested by Human Rights League, namely:

   a) to establish protected housing for vulnerable refugees (HRL, 2020: 6).

   b) to consider providing temporary shelter in not sufficiently utilised objects to specific individuals or groups awaiting extradition (HRL, 2020: 6).

   c) to introduce into legal system "administrative procedures for state-less persons" (HRL, 2020: 6).

   d) to establish state integration system for persons with international protection (HRL, 2020: 6).

There are quite many additional detailed suggestions for im/migration policies produced by HRL (see HRL, 2020: 33-57).

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[186] https://bit.ly/3hzaoMG.

[187] Guide for Asylum Applicants and Beneficiaries of International Protection in the Slovak Republic. A New Start in the Slovak Republic, https://bit.ly/3n8zovk.

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Annex

Table 1 - Number of valid residence registrations (stock)

	Third country nationals	EU nationals	Total
2015	35 261 (42%)	49 526 (58%)	84 787
2016	41 232 (44%)	52 015 (56%)	93 247
2017	50 395 (48%)	54 056 (52%)	104 451
2018	65 381 (54%)	55 883 (46%)	121 264

Table 2 - Number of EU nationals with valid registration for residence (Top 3 nationalities)

	1st	2nd	3rd	Total
2015	CZ – 9 927 (20%)*	HU – 7 593 (15%)	RO – 6 573 (13%)	49 526
2016	CZ – 10 317	HU – 7 813	RO – 6 907	52 015
2017	CZ – 10 663	HU – 8 057	RO – 7 149	54 056
2018	CZ – 10 970	HU – 8 503	RO – 7 420	55 883

* The share among these three countries does not change during the period 2015-2018.

Table 3 - Top 3 nationalities with valid residence permit among 3rd country nationals:

	1st	2nd	3rd	Total
2015	Ukraine – 10 706 (30%)	Serbia – 5 528 (16%)	Russia – 3 532 (10%)	35 261
2016	Ukraine – 13 024 (32%)	Serbia – 7 232 (18%)	Russia – 4 035 (10%)	41 232
2017	Ukraine – 16 102 (32%)	Serbia – 10 608 (21%)	Russia – 4 331 (9%)	50 395
2018	Ukraine – 24 913 (38%)	Serbia – 14 208 (22%)	Russia – 4 698 (7%)	65 381

Table 4 - Number of residence permits granted to aliens (inflow)

	Third country nationals	EU nationals	Total
2015	17 397 (73%)	6 388 (27%)	23 785
2016	17 434 (70%)	7 299 (30%)	24 733
2017	22 912 (78%)	6 601 (22%)	29 513
2018	32 048 (83%)	6 633 (17%)	38 681

Table 5 - Top 3 nationalities whom the residence permit was granted

(3rd country nationals):

	1st	2nd	3rd	Total
2015	Ukraine – 6 103 (35%)	Serbia – 2 776 (16%)	Russia – 1 541 (9%)	17 397
2016	Ukraine – 5 808 (33%)	Serbia – 2 362 (14%)	Russia – 1 702 (10%)	17 434
2017	Ukraine – 8 036 (35%)	Serbia – 4 654 (20%)	Russia – 1 835 (8%)	22 912
2018	Ukraine – 14 917 (47%)	Serbia – 6 327 (20%)	Russia – 1 882 (6%)	32 048

Table 6 - Illegal migration on the territory of Slovakia by nationality (top 5 nationalities)

and the number of asylum requests

	2015	2016	2017	2018
1st	Ukraine – 867 (34%)	Ukraine – 1 234 (57%)	Ukraine – 1 786 (66%)	Ukraine – 1 934 (69%)
2nd	Syria – 582 (23%)	Iraq –145 (7%)	Serbia – 227 (8%)	Serbia – 207 (7%)
3rd	Afghanistan – 265 (10%)	Serbia – 123 (6%)	Vietnam – 160 (6%)	Vietnam – 201 (7%)

4th	Iraq – 146 (6%)	Afghanistan – 114 (5%)	Iraq – 108 (4%)	Moldova – 66 (2%)
5th	Kosovo – 120 (5%)	Syria – 82 (4%)	Afghanistan – 34 (1%)	Afghanistan – 56 (2%)
Total	2 535	2 170	2 706	2 819
Number of asylum applications	112 (4%)	78 (4%)	119 (5%)	134 (5%)

Table 7 - Overview of asylum applications submitted

	1st	2nd	3rd	Total
2015	Iraq – 172 (52%)	Afghanistan – 37 (11%)	Ukraine – 25 (8%)	330
2016	Ukraine – 25 (17%)	Afghanistan – 16 (11%)	Syria – 14 (10%)	146
2017	Afghanistan – 23 (14%)	Vietnam – 21 (13%)	Iraq – 12 (7%)	166
2018	Afghanistan – 31 (17%)	Iraq – 24 (13%)	Yemen – 20 (11%)	178

Table 8 - Statistics on asylum in Slovak republic

Year	The amount of official request for asylum	Granted asylum	Non-granted asylum	Subsidiary protection granted/ no granted	Discontinued proceedings	Granted citizenship
1993	96	41	20	-	25	0
1994	140	58	32	-	65	0
1995	359	80	57	-	190	0
1996	415	72	62	-	193	4

1997	645	69	84	-	539	14
1998	506	53	36	-	224	22
1999	1320	26	176	-	1034	2
2000	1556	11	123	-	1366	0
2001	8151	18	130	-	6154	11
2002	9743	20	309	-	8053	59
2003	10358	11	531	-	10656	42
2004	11395	15	1592	-	11782	20
2005	3549	25	827	-	2930	2
2006	2849	8	861		1940	5
2007	2642	14	1177	82/646	1693	18
2008	909	22	416	66/273	457	4
2009	822	14	330	98/165	460	1
2010	541	15	180	57/101	361	3
2011	491	12	186	91/47	270	7
2012	732	32	334	104/153	383	0
2013	441	15	124	34/49	352	7
2014	331	14	197	99/41	163	12
2015	330	8	124	41/24	148	5
2016	146	167	82	12/13	35	3
2017	166	29	77	25/16	73	6
2018	178	5	128	37/23	69	18
2019	232	9	93	19/33	178	9

Source: Ministry of Interior of Slovak Republic, 2020