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Hungary as a Norm Entrepreneur in Migration Policy

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Abstract

This paper analyses Hungary as a small state within the EU and the policy it applied during the refugee crisis of 2015/2016 that changed the landscape both on the European and Hungarian level. During the crisis, Hungary acted as a small, interest-maximizing Member State constrained by domestic political interests, and it not only refused to participate in common European policy proposals aimed at solving the crisis, but it also engaged in unilateral actions perceived as solutions, such as erecting a border wall on the southern border of Hungary. This paper examines how Hungary acted during the refugee crisis with the help of small state theories. Presenting the events, legislative changes and discourses surrounding migration policy in the past years will show that Hungary managed to take advantage of the refugee crisis by acting as a norm-entrepreneur by articulating its own views and convictions about the right way to solve the crisis, and also about the future of the EU as a whole. Many EU Member States joined Hungary in its migration strategy, so it became the leading country of the anti-immigration block in Europe.

Keywords: Hungary, refugee crisis, migration, sovereignty, norm advocacy, small states

1 Introduction

This paper discusses migration and asylum policy in Hungary in light of European Union regulations, with a special focus on the refugee crisis of 2015/2016, which changed the landscape on both the European and Hungarian level. The research examines what kind of policy Hungary followed towards the EU with regard to this issue from the perspective of the theory of small state studies. During the crisis, Hungary acted as a small, interest-maximizing Member State constrained by domestic political interests. It not only refused to participate in common European policy proposals aimed at solving the crisis, but it also engaged in unilateral actions perceived as solutions, such as erecting a border wall on the southern border of Hungary. This paper seeks an answer to the question how did Hungary as a small EU Member State act during the refugee crisis. The research presumes that the Orbán government managed to take advantage of the refugee crisis by acting as

a norm entrepreneur – a smart small-state strategy – which gave the Prime Minister the opportunity to articulate his own views and convictions about the right way to solve the crisis, and also about the future of the EU as a whole. Norm entrepreneurship refers to the strategy when a country takes a certain stance regarding a specific policy and successfully convinces others of its own normative convictions. Many EU Member States joined Hungary in its migration strategy, so it became the leading country of the anti-immigration bloc in Europe. At the same time, the research will reveal that while some interest-driven strategies can be explained by small state theories, there are a number of symbolic, rogue¹ Member State actions that cannot be accounted for even by the academic literature. This paper will try to provide conclusions about Hungary's performance as a small EU Member State in the policy area of migration and asylum. It will apply an inductive method: showing the impact of specific Hungarian migratory regulations and actions on the EU level of handling the migration crisis. First, the theoretical background of small state studies will be presented. Then, the Hungarian regulations concerning migration policy in light of the EU regulations and their changes due to the crisis will be examined. Last but not least, the paper will show how Hungary took advantage and became a norm entrepreneur in this policy area during the crisis.

2 Small states – norm entrepreneurs

Generally, small state studies offer a framework for analysis within the discipline of IR/European studies that gives the researcher valuable insight into the behavior of states. Nevertheless, some researchers are doubtful about this argument and ask whether the concept of smallness is a useful analytical tool at all (Baehr, 1975: 455–456). Others claim that small state studies are relevant only to the extent that they allow us to understand the behavior of states in international politics (Conrad, 2013). In my view, if only the latter statement is true, then the researcher can still gain a lot from turning towards small state studies because the latter represent a useful analytical tool or conceptual framework for analyzing certain types of country behavior and strategies, both on the individual level in the international arena and within international organizations. Although small state studies are frequently criticized due to the broadness of the category of 'small' and the diverse nature of states that belong to the group, I argue that the approach is a good starting point for analysis because the small state concept can facilitate understanding of the behavior of the examined state (Gerger, 1975). This is especially true in the case of the European Union. Although small Member States outnumber large ones, the latter are generally believed to be the engine of policy-making, leaving the small ones at the margins of theoretical and empirical attention in terms of their role in EU governance. Researchers who deal with small states argue that these countries are worth examining because they are likely to show some commonalities that are different from those of large states, thus it can be expected that their behavior will be different as well (Thorhallsson, 2000). Authors usually identify the main characteristics of small countries that put them in a special, usually more difficult situation in the international arena than their larger peers. These characteristics are, for example, vulnerability (Bailes & Thorhallsson, 2013), openness (Katzenstein, 2003: 9)

¹ 'Rogue' in this paper refers to a policy of a country that runs counter to mainstream, rule-abiding, norm-respecting Member State action in the European Union.

and a lack of resources (Panke, 2012: 329). One of the most prominent researchers of small EU Member States, Diana Panke, derives all her arguments from the presumption that small EU Member States face structural disadvantages in relation to exerting influence in EU policy-making (Panke, 2008). The main components of the disadvantage of the smaller ones, thus their most important characteristics, are their lack of political power, their insufficient resources to develop policy expertise, the fact that they joined the EU recently, and their lack of expertise and proficiency to operate as policy forerunners (Thorhallsson, 2000; Panke, 2012). The existence of this structural disadvantage is the central tenet of research that focuses on small states and it determines the common thread in most small state studies: scholars who research this topic usually try to discover how the latter countries can manoeuvre in their narrow or broad spheres of interest, and how they can successfully influence international (or European) policy making or promote their own interests. There are certain conditions under which small states can successfully pursue their objectives in the EU. The main researchers of the topic outline strategies for small Member States and the circumstances under which they can exercise influence despite their disadvantages in the EU. These are, in particular, being an old Member State (Panke, 2010: 799), possessing policy expertise (Börzel, 2002; Jakobsen, 2008), having good economic, institutional and administrative capacities (Campbell & Hall, 2009: 547), creating coalitions or partnerships (Meerts, 1997: 463), and having a unified national position (Kronsell, 2002), among others. Many researchers consider institutional aspects, such as holding important positions in the EU (e.g. the Council Presidency) (Luther, 1999: 65), having close ties with the European Commission (Bunse et al., 2005), and applying the 'community method' in decision-making (Veebel, 2014: 161) to be important, too. Political elites can also play a huge part in defining the strategies of small states (Campbell & Hall, 2009).

Although this paper examines Hungary as a small state within the EU, it is not evident that Hungary actually belongs to the category of small countries, therefore it is necessary to define what qualifies as 'small' in the current research. Diana Panke identified the allocation of votes among states in qualified majority voting in the Council, and defined as small those states with fewer votes than the EU average (Panke, 2010). Based on this categorization, she identified nineteen small states (20 after the accession of Croatia in 2013). This paper uses Panke's understanding of 'small,' because the distribution of votes in the Council reflects the size and population of the Member States, so it is a clear and comprehensive categorization. Although since the introduction of the double majority system in 2014, the system of weighted votes is no longer applied in the EU, Panke's categorization still can be used. The old QMV system is still a good basis for differentiating between small and large EU members as it forms the basis of a clear and comprehensive system of categorization that reflects size and population. Based on these terms, Hungary can be identified as a small Member State of the EU.

A distinct type of small state behavior discovered in the 1990s–2000s within small state studies is the 'smart state strategy' (Arter, 2000: 677). Scholars argue that smart states are able to 'exploit the weakness of small states as resource for influence' by having well-developed preferences, being able to present their initiatives as being the interests of the whole EU, and being able to mediate (Grøn & Wivel, 2011). The concept has been further developed by Caroline Howard Grøn and Anders Wivel (2011), who argue that certain developments in the EU introduced by the Lisbon Treaty undermine the traditional

small state approach to European integration (Grøn & Wivel, 2011). Therefore, the authors identified the characteristics of an ideal smart strategy that small states should apply in order to accommodate and ‘take advantage of the new institutional environment.’ They created three variations of ideal smart state strategies: the state as lobbyist, the state as a self-interested mediator, and the state as a norm entrepreneur. Gunta Pastore (2013) also examined the recent behavior of small states, focusing mainly on the youngest EU Member States, and found that these countries moved closer towards a small state smart strategy, which includes compromise-seeking behavior, persuasive deliberation, lobbying, and using coalitions. This paper aims to prove that norm entrepreneurship is a strategy Hungary started to apply in 2015 during the refugee crisis in Europe that helped Prime Minister Orbán to become an advocate for national sovereignty and – from a certain perspective – the ‘protector of the EU’ from ‘the migrant invasion’ (kormany.hu, 2018).

3 Migration and refugee regulations in Hungary after the refugee crisis

The Hungarian migratory framework introduced during the refugee crisis is based on certain provisions of the Hungarian Fundamental Law (formerly, the Constitution) and several legal acts that modified the pre-crisis migration system of the country. The Fundamental Law of Hungary outlines that Hungary is obliged to provide asylum to displaced persons (Article XIV (3)), and that it is prohibited to expel anyone to a country in which they would be in danger. Thus, Hungary fulfilled its obligations stemming from international law about providing asylum before the crisis escalated. However, the seventh modification of the Hungarian Fundamental Law enacted some changes, and assessed that those citizens who arrived in Hungary through safe states were not eligible for asylum (Paragraph 4). Moreover, the Fundamental Law also declares that ‘foreign people cannot be resettled into Hungary’ (Paragraph 1). These changes were enacted in 2018 and raise questions about Hungary’s compatibility with international law and European migratory standards.

The refugee crisis of 2015/2016 resulted in general hostility towards immigrants on the side of the Hungarian government and the general population; moreover, the previously well-functioning Hungarian migration system was also modified (Hungarian Helsinki Committee, 2017). The most frequent decision of the Hungarian authorities regarding asylum applications between 2013 and 2016 was either rejection or termination. This meant that there was hardly any substantive decision-making in the system, and that in the majority of cases evaluation and asylum applications were left to another Member State (Nagy, 2016: 1037). The unusually low rate of recognition was alarming compared to the previous years (Nagy, 2016: 1039). A government decree (No. 301 of 2007, November 9) dealing with the procedure and support for applicants was amended 17 times between 2014 and 2019 (Tóth, 2019: 130). The possibility for potential refugees to acquire international protection was decreased both through physical and administrative means, while illegal border crossings were criminalized, the circumstances of those who were let into the country did not meet the minimum humanitarian standards, and solidarity and cooperation with the EU regarding the matter were reduced to a minimum (Vető, 2017). In 2015, the Hungarian government spent 84 billion HUF on migration control and more than 100 billion HUF in 2016 (Tóth, 2019: 131). The Hungarian Helsinki Committee, in a paper that analyzes

the Hungarian way of handling the refugee crisis and provides suggestions for an effective and sustainable refugee system, argues that the main purpose of the re-calibration of the Hungarian refugee system during the crisis was first of all to prevent the entry of refugees to the country; second, to stop refugees from applying for asylum; and third, to urge refugees to move towards Western Europe as soon as possible. The Committee claims that the Hungarian legislation and government actions are contrary to international law, and that Hungary is neglecting its obligations stemming from EU membership and the Schengen zone (Hungarian Helsinki Committee, 2017). In 2015, a record number of asylum claims were filed in Hungary (177,135 applications), four times more than in 2014. This increase was not accompanied by an increase in financial assistance for this policy area, but instead Hungary tried to handle the situation by creating a physical barrier first, and then by legal mechanisms (Hungarian Helsinki Committee, 2017: 8). The following pages describe the most important actions of the Hungarian authorities in relation to their attempt to stop migration: namely, creating a list of safe third states, erecting a border wall, and creating transit zones.

3.1 *Safe third states*

One of the most significant changes to the Hungarian migratory system was induced by Act CVI of 2015 on the amendment of Act LXXX of 2007 on Asylum. This law allowed the government to adopt a list of safe third states. In July 2015, government Decree 191/2015 promulgated the list of safe third countries and the list of safe countries of origin. The two lists were identical. The first major change in the refugee status determination procedure came in July 2015 through Act CXXVII of 2015 on the establishment of a temporary security border-closure, and on the amendment of laws relating to migration. This law aimed at accelerating and simplifying asylum procedure in general, but the more significant component of it was the construction of a physical barrier at the Serbian-Hungarian border. Moreover, the act imposed shorter deadlines for the authorities to decide on asylum-seekers' cases and for applicants' right to remedy, expanded the list of potential places they could be detained, and also had the effect that persons could be removed from the country before the first judicial review of their applications had even started (Nagy, 2016: 1046). It is important to note here that these acts were not new to the EU acquis, and it was within the right of the country to promulgate them. However, Hungarian legislators chose the options least favorable to asylum seekers. They also put a huge burden on Serbia by designating it a safe country, thereby forcing it to process hundreds of thousands of applications (Nagy, 2016: 1046). In this case, it is very hard to define where the line is between fulfilling the country's commitments to Schengen by protecting the EU's borders, and making the lives of refugees harder. Creating the list of safe states was not a violation of EU law, meaning that it falls within the category of interest-based Member State action. However, if we take into account the burden this imposed on Serbia and the effect it had on refugees, together with other acts of the Hungarian government, it may be categorized as rogue Member State action. In March 2020, the first Chamber of the CJEU found in a preliminary ruling procedure that refusing to process an asylum seeker's application for international protection because they had arrived to Hungary through a safe state ran counter to Directive 2013/32/EU (Court of Justice of the European Union, 2020).

3.2 Border wall along the Serbian and Croatian border

In autumn 2015, the construction of a wall on the Southern borders of Hungary started, and this action was followed by certain legislative acts aimed at reducing the number of immigrants, without taking humanitarian aspects into consideration. In 2016, a second portion of the wall was built in order to stop immigrants entering from the Western Balkans route, and to keep the problem outside Hungary by pushing the whole issue towards Serbia and Romania (Tóth, 2019: 129). The wall – stretching along more than 170 kilometers of the Serbian and Croatian border – was intended to prevent refugees from entering the country, and crossing the wall was declared a crime by authorities. These measures resulted in a dramatic drop in asylum applications between October 2015 and January 2016, which clearly shows the impact of the ‘fences’ (Nagy, 2016: 1040). This strategy is called externalization in the academic literature. It is important to highlight that Hungary was a policy promoter in its erection of a fence (or a norm entrepreneur, in other words). Hungary saw an opportunity to act against mainstream EU policies and become a leader of anti-immigrant voices in the EU. This happened on the one hand by refusing to participate in the mandatory relocation mechanism of the EU, and on the other hand by erecting the fence along the Southern border of Hungary. These activities indeed served as examples that could be followed by fellow EU Member States. The former position was indeed adopted by some of the V4 countries, and the latter by many more EU countries: by the end of 2018, 10 out of the 28 EU members had erected different kinds of border walls (Stone, 2019). It is important to highlight that no legal criticism may be levelled against the fence itself, as it is defined as a means of protecting the border of the EU in a crisis situation.

3.3 Transit zones

Act CXL of 2015 on the amendment of certain acts in connection with mass migration was the second major change introduced to Hungarian asylum law during the refugee crisis. It adopted an overarching legal framework that amended and affected several other acts (the Asylum Act, Criminal Code, Borders Act, etc.). The basis of the acts was declaring a ‘crisis situation caused by mass immigration’ through which the government could justify its unusually strict policy against asylum seekers. Transit zones were established with the purpose of hosting public officials responsible for managing refugee status determination procedures. However, access to the zones was limited: officials had the authority to decide how many people they would permit to enter a container where the administrative procedures were handled (Nagy, 2016: 1064). A new border procedure was introduced that was only applicable in the transit zone. This process combined detention without court oversight through the imposition of a very rapid procedure involving permitting no real access to legal assistance, and making the use of legal remedy almost impossible (Nagy, 2016: 1048). In addition, a number of criminal procedural rules were changed in a way that removed the protection from immigrants accused of crimes related to the irregular crossing of the fence (Nagy, 2016: 1049). Some researchers argue that, as surprising as the latter initiative may seem, from a legal point of view these acts could be passed because both the Geneva Convention and UNHCR are unclear in relation to this area. In 2016, the UNHCR concluded in its country paper that it ‘considers that Hungary’s law and practice in rela-

tion to the prosecution of asylum seekers for unauthorized crossing of the border fence [is] likely to be at variance with obligations under international and EU law' (UNHCR, 2016).

Act CLXXV of 2015 is called the Protection of Hungary and Europe against the introduction of a compulsory implemented quota, even though it concerns the reception of asylum seekers and the burden sharing of a common European refugee policy. This is part of the government's campaign of deception towards its citizens, which targets refugees and blames the EU's migration policy, both of which are clear manifestations of symbolic, rogue behavior. This law entrusted the government to turn to the CJEU for the annulment of Council decision 2015/1601, pursuant to Article 263 TEU, as will be discussed later (Tóth, 2019: 136).

The rhetoric behind the government's actions was that the country wants to stop illegal migration, while providing proper treatment to those people who have legal documentation for applying for asylum. However, this standpoint did not take into consideration the fact that many refugees could not possibly have the necessary papers due to the conditions under which they were forced to flee their home countries. Moreover, the criminalization of refugees is contrary to the Geneva Convention (Hungarian Helsinki Committee, 2017: 9).

By the end of 2016, several legislative changes had entered into force in Hungary. Act XCIV of 2016 (which entered into force in July) legalized the pushing back of refugees to the non-Hungarian side of the wall without any legal procedure or remedy. Anyone caught within an 8 km radius of the fence was 'escorted' back to the southern side of the wall. This practice, according to the Helsinki Committee, violated Hungarian, European, and international refugee law (Hungarian Helsinki Committee, 2017: 9) and detention during the border procedures might be considered to be a 'legally indefensible punishment' (Nagy, 2016: 1065). In May 2020, the CJEU's decision in two joint cases about the transit zones was published. It stated that 'the placing of asylum seekers or third-country nationals who are the subject of a return decision in the Röszke transit zone at the Serbian-Hungarian border must be classified as "detention"' (Court of Justice of the European Union, 2020). The Court held that persons seeking international protection can be detained, but only for a maximum of four weeks. Moreover, the body also made remarks about the conditions in the transit zones, namely Röszke. The CJEU found that the conditions prevailing in the Röszke transit zone qualified as deprivation of liberty, primarily because the persons concerned could not lawfully leave the zone in any direction. As a result of the judgement, the Hungarian government decided to close the transit zones on the Hungarian-Serbian border (About Hungary, 2020). With this decision, although the government decided to comply with the CJEU ruling, it also made asylum applications more difficult. Since then, asylum seekers have only been able to submit their applications at Hungary's foreign missions. The closing of transit zones might also be problematic from the perspective of the Asylum Procedures Directive, which outlines that asylum applications should be handed in at the border of the given country. If Hungary continues to 'outsource' this task to its foreign missions, it may even face another legal procedure for violating EU law.

The European Commission launched an infringement procedure about the new Hungarian asylum law in December 2015, referring Hungary to the CJEU in July 2018 (European Commission, 2018). In an opinion delivered in June 2020, Advocate General Priit Pikamäe argued that 'there has been a failure to fulfil obligations for breach of ensuring

effective access to the asylum procedure, and for breach of the procedural safeguards relating to applications for international protection, to the unlawful detention of applicants for that protection in transit zones and to the unlawful removal of illegally staying third-country nationals' (Court of Justice of the European Union, 2020).

The Hungarian government's most significant measures and the reaction of the international community to them prove that Hungary's policy-making during the refugee crisis can be evaluated in two distinct ways. In some cases, Hungary acted within its sovereign Member State rights, and was even protected by EU or international law (such as the case of erecting the border wall). However, in other cases it took advantage of the ineffectiveness of EU normativity and engaged in rule-breaking behavior that violated common EU values and principles (for example, in how Hungary placed the burden on Serbia by declaring it a safe state, or the rhetoric it used against 'migrants' during the crisis). Although the CJEU acted in some cases and urged Hungary to change its policies – for example, in its judgement about the transit zones leading to their closing – such pronouncements may not be enough to provide for the effective legal protection of asylum seekers, and nor are they strong enough to address rogue Member State behavior. Closing the transit zones might have stopped the detention of refugees, but it did not make their asylum applications any easier. This is further proof that the legal toolkit of the EU that can be applied to stop violations of EU law might be limited.

4 Hungary and the refugee crisis: evaluating the strategy of the Hungarian government

Hungary, being a transit, source, and destination country of regular and irregular migration (IOM, 2019), was among the first Member States to respond with strict measures to stop immigrants: by building a fence on its southern borders, modifying the applicable criminal and administrative laws, linking the phenomenon of immigration directly to terrorist activities, and arguing that Hungary would protect its borders (and those of the EU as well) at all costs (Euronews, 2019). Moreover, the anti-immigration stance also appeared in Prime Minister Orbán's rhetoric. In a speech delivered to the assembly of the Hungarian diplomatic corps in August 2014, he promised 'rock-hard official and domestic policy not supporting immigration at all' (kormany.hu, 2014).

4.1 *Hungary as a norm entrepreneur in the area of migration*

The refugee crisis provided a great opportunity for the Hungarian government to stick to its 'thematized realism.' This is a kind of realism that appears only in certain strategically important policies. While Hungary aspires to defend its national policies and interests in cases such as immigration, with other less significant policies that do not have much of an external component, it complies with EU rules and values.

Based on the above-mentioned measures of the Hungarian government, it is apparent that Hungary became a norm entrepreneur in the years of the European refugee crisis. According to Björkdahl, norm entrepreneurship is an activity through which actors 'successfully convince others of their own normative convictions, thereby creating an ideational basis for changing the institutional environment and/or specific policies.' Norm promotion does not require the same hard power resources that great powers possess, thus 'norm ad-

vocacy is a strategy to gain influence often used by otherwise powerless actors' (Björkdahl, 2008). Grøn and Wivel argue that when small states decide which policy areas they are going to focus on, they should take into consideration the dominant discourses in the EU (Grøn & Wivel, 2011). In this case, the discourse focused on the crisis situation that the refugee influx was causing in Europe and the apparent incapability of the Dublin system to regulate migratory flows in Europe. Björkdahl also argues that norm advocacy becomes even more convincing if the advocate acts as a forerunner in the given policy area, and complies with the norms it propagates (Björkdahl, 2008). During the refugee crisis, the 'right' or 'desirable' behavior that Hungary tried to promote was the utmost protection of national sovereignty and the European borders through stopping 'illegal' migrants from entering the EU through Hungary. Some experts even talk about the 'Orbanization of Asylum Law,' because the attitude of Hungary in handling the migration crisis spread to other EU Member States as well. S. Peers argued in relation to the EU–Turkey deal in 2016 that certain policies of the EU 'copy and entrench across the EU the key elements of the Hungarian government's policy, which was initially criticized: refusing essentially all asylum-seekers at the external border and treating them as harshly as possible so as to maintain the Schengen open borders system' (Peers, 2016). It is interesting to add here that although the Visegrád countries seemingly acted similarly in handling the refugee crisis and rejected the idea of compulsory relocation, in general the group is not homogenous. Hungary and Poland acted quite differently from the Czech Republic and Slovakia. Moreover, out of the four, Hungary could be considered the most radical, with its 'total denial of the fact that irregularly arriving persons may need protection within the EU' (Nagy, 2017: 2).

4.2 The defense of Member State sovereignty as the key Hungarian card

While before January 2015 asylum seekers and 'illegal' migrants were not yet mixed up in the rhetoric of Hungarian government officials, the Charlie Hebdo attack brought about a change in this regard, and after that every would-be immigrant, regardless of whether they sought protection, was considered undesirable (Nagy, 2016: 1053). The anti-immigrant campaign of the Hungarian government was accompanied multiple times by a so-called 'National Consultation': this involved the government sending out letters together with a questionnaire to Hungarian citizens about 'immigration and terrorism' (kormany.hu, 2019). Moreover, in May 2015 a billboard campaign was also started, in which posters alongside Hungarian main roads portrayed immigrants as criminals. The billboards also included messages or notes 'addressed to immigrants' such as 'if you come to Hungary, you should respect our culture,' and 'if you come to Hungary, you cannot take our jobs.' The language of the billboards was Hungarian, which is a clear indication of the real target audience of the campaign (Nagy, 2016: 1054). In June 2017, Viktor Orbán compared the flow of refugees to the Ottoman invasion (Tharoor, 2015) and emphasized that 'No nation may be given orders about who it should live alongside in its own country, as that can only be a nation's sovereign decision' (kormany.hu, 2019). These rhetorical elements, however, were totally unfounded: Hungary was mainly a transit country, so the majority of asylum seekers did not want to stay in the country but to continue on their way to other parts of Europe; moreover, most of the asylum claims were not properly processed due to the newly introduced Hungarian measures throughout 2015 (Nagy, 2016: 1040). One could thus argue, as Boldizsár Nagy does, that immigration was actually a 'total non-issue' in Hungary

(Nagy, 2016: 1040). However, the use of the concept of sovereignty combined with the hostile rhetoric towards refugees was a deliberate decision by the Hungarian government, as it served the purpose of covering its rogue, symbolic politics. The government could easily argue that what Hungary did was not against EU values and norms, but served to protect national identity and sovereignty.

Hungary's particularist stance on the topic of European migration policy not only became manifest in hostile rhetoric and domestic actions against refugees, but the country also tried its best to reject the EU's attempts to reform its migration and refugee policy, and it did so most intensively in relation to the so-called 'quota system.' At its Justice and Home Affairs Council meeting on 22 September 2015, EU ministers adopted the decision to distribute 120,000 persons in clear need of international protection among 26 Member States of the EU (Council of the European Union, 2015). The Hungarian governing party had serious doubts about the legitimacy of the content of the Council Decision, mostly because they considered the whole idea of the quota system to be senseless and dangerous. Moreover, leading Hungarian politicians considered the Decision to be against EU law because it was not approved through a just legal process, national parliaments not being included in the decision-making (Fidesz.hu, 2016). On the day of the contentious Council meeting, the Hungarian Parliament adopted a resolution with the title 'Message to the leaders of the European Union' which was designed to send a symbolic message to the leaders of Europe about the extreme threat immigration poses to the continent. On 6 November 2015, in line with a motion by Fidesz, the Hungarian Parliament accepted a resolution which considered the Council's Decision to be illegitimate and in breach of the principle of subsidiarity.

On 17 November 2015 the Parliament enacted the already mentioned Act CLXXV 'about acting against the compulsory settlement quota in defense of Hungary and Europe.' The law confirms the illegitimacy of the September Council Decision based on the principle of subsidiarity and calls on the Hungarian government to launch a legal proceeding before the European Court of Justice based on Article 263 TEU. The newly accepted Hungarian law argued that the EU's quota plan would increase crime, spread terrorism, and endanger Hungary's cultural values. Hungary's Minister of Justice László Trócsányi emphasized that 'although Member States have agreed to give up their sovereignty to a certain extent in return for EU membership, they still kept some rights to themselves, such as regulating who they allow to enter their country and who they want to keep out' (Magyar Idők, 2015).

As a result, on 3 December 2015 Hungary filed a lawsuit against the Council before the CJEU (Hungary v Council Case C-647/15). In the motion, Hungary claimed that the Court should annul the contested Council Decision, or as an alternative annul it insofar as it referred to Hungary. By choosing to turn to the CJEU, Hungary wished to set a precedent in relation to protecting an EU Member State's sovereignty, and affirm 'its position as a Member State which regards the Union primarily as an arena for vindicating its national interests, and which is not hesitant to prioritize its own interests, mainly in areas which fall within competences retained by the Member States, over those of other Member States and of the Union' (Varju & Czina, 2016).

By bringing this case before the CJEU, Hungary also wanted to set a precedent in defense of Member State sovereignty and interests. Thus, the Hungarian government par-

anticipated before the EU court based on two sources of motivation: the desire to defend domestic national interests, and to promote a national vision in Europe (with the aim of influencing EU law or practices) (Granger, 2014). In addition, the Orbán-government's hard stance on immigration was part of a consciously built political campaign based on Member State unilateralism combined under the broad rhetorical umbrella of national self-defense, and also coupled with creating a 'Hungarian solution' to the migration crisis on the European political agenda (Varju & Czina, 2016). 'While pleasing the domestic electorate was also on the agenda, the adoption of the parliamentary resolution and the act calling for the government to act before the EU Court of Justice was a calculated step towards making [a] case to establish [the] fatal legal deficit [in] the contested Council Decision of violating the rights of national parliaments and the principle of subsidiarity' (Varju & Czina, 2016).

In October 2016, Hungary conducted a referendum about the 'quota-system' of the EU, in which Hungarian citizens were asked whether they agreed with the obligatory settlement of foreigners in Hungary by the EU without the consent of the Hungarian Parliament (Vető, 2016). The referendum was mainly symbolic and part of the Hungarian anti-immigration campaign, which is proved by the fact that the timing of the referendum was completely outdated. It was held on 2 October, which was weeks after the Bratislava Summit that basically rejected the compulsory relocation system based on country quotas. The referendum was ultimately ruled invalid because participation did not reach the 50 per cent threshold, although 98 per cent of respondents answered 'no' to the question (Nagy, 2016: 1073). Despite the result, the Hungarian government went on with its campaign and inserted a clause on the prohibition of compulsory settlement into the Hungarian Fundamental Law during its seventh amendment. It can be argued that the referendum was counter to the principle of loyal cooperation, as outlined in article 4(3) TEU (Nagy, 2016: 1074).

Hungary was not the only EU Member State to choose the path of law to contest an EU decision regarding the refugee crisis. Robert Fico, the Slovakian prime minister, announced as early as in October 2015 that his country would file a complaint against the Council on the subject of handling the migration crisis. The Slovak politician claimed that the Council decision should have been taken unanimously (Robert, 2015). Slovakia finally initiated legal action before the CJEU on December 3 (Slovakia v Council, Case C-643/15), which also called for the annulment of the September Council Decision. The CJEU handled the Slovak case together with the Hungarian one. In July 2017, Advocate General Yves Bot issued his opinion on the two cases, proposing that the Court should dismiss both actions and ordering the two countries to pay their own costs (Bot, 2017). In September 2017, the Court dismissed both cases in their entirety and declared that relocation was lawful and obligatory. After this failure, Hungary still continued its anti-immigrant campaign and launched a National Consultation on the 'Soros Plan,' asking citizens in questionnaires whether they agreed with the compulsory relocation of immigrants among EU Member States (Juhász et al., 2017: 22). In December 2018, the Global Compact for Safe, Orderly and Regular Migration (GCM) (IOM, 2019) was accepted by 152 UN Member States. Several EU Members did not join the pact: Slovakia did not vote, Hungary, the Czech Republic and Poland voted against it, and Austria, Bulgaria, Estonia, Italy, Latvia and Romania abstained from voting (Gotev, 2018).

In December 2017, the Commission referred Hungary, Poland, and the Czech Republic

to the CJEU for non-compliance with their legal obligations concerning relocation (European Commission, 2017). The infringement procedures which started against these Member States in June that year were escalated to Court level because the replies provided by the countries were not found to be satisfactory by the Commission. The Council Decisions regarding this matter required all EU countries 'to pledge available places for relocation every three months to ensure a swift and orderly relocation procedure' (European Commission, 2017). However, none of the three Member States relocated any refugees (either ever, or for more than a year), and they did not pledge to do so, which is why the Commission forwarded the case to the CJEU. The hearings about the so-called 'Quota case' started in May 2019. In April 2020, the Court came out with its judgement in these joint cases, and ruled that '[b]y refusing to comply with the temporary mechanism for the relocation of applicants for international protection, Poland, Hungary and the Czech Republic have failed to fulfil their obligations under European Union law' (Court of Justice of the European Union, 2020). There was much more at stake in this procedure than just enforcing compliance with EU law, and the three Member States in question must have been aware of this when they failed to fulfil their obligations. The CJEU's condemning judgement can be considered a strong message to Member States, because the need for adherence to EU values, such as the rule of law, was thereby confirmed. However, it should also be mentioned that the principle of loyalty was not mentioned in the judgement.

5 Conclusion

Hungarian refugee policy after 2015/2016 set a dangerous precedent for Member State unilateralism, as not only asylum law, but several rules pertaining to the Single European Market were also violated (Ziegler, 2019: 33). Small state theories come to our rescue in explaining some of the Hungarian governments' interest-based acts during the refugee crisis, and we can determine that Hungary indeed acted as a norm entrepreneur in projecting its own views about refugees onto other EU Member States. However, the paper also shows that small state behavior did not always prevail, but when the normative leverage of the EU was weak, it gave way to rogue, symbolic Member State conduct (such as generally referring to people in need as 'migrants,' and thus invoking a hostile environment towards them in Hungary).

The potential breaches of EU and international law prove the lack of willingness on the side of Hungary to implement the appropriate measures and ensure the fulfilment of obligations stemming from the Treaties, secondary legislation, and other acts, like the relocation decision (Nagy, 2016: 1080). The essence of being a member of an organization is the understanding of its members that they are forming an alliance with the goal of pursuing a common endeavor. These virtues however, are no longer present in Hungary's attitude towards the EU. 'Mutual trust between Member States and trust in the EU institutions on which the EU is built are crumbling. This is the cumulative result of the inability and occasional reluctance to perform by the EU Member States at the external borders combined with the free-riding attitudes and restrictive practices of others, including Hungary and some other Visegrád countries' (Nagy, 2017: 15). The latter countries' refusal to participate in the fair sharing of responsibility through offering protection to asylum seekers, and their poor performance in returning those not in need of protection undermines the

efforts of those countries that have sought an EU-wide solution based on loyalty and solidarity (Nagy, 2015: 15). The present author agrees with Nagy, who argues that Hungary once was an eminent member of the European club in the field of asylum, but it has performed a U-turn and become a renegade, not only by destroying its own asylum system, but also by blocking the solidarity measures of the EU (Nagy, 2017: 413). Moreover, it has done so by applying a successful small state strategy – norm advocacy, which might set a dangerous precedent in other policy areas within the European Union.

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