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Published in:
Politique Européenne

DOI:
10.3917/poeu.072.0094

Publication date:
2021

Document Version:
Submitted manuscript

Hungary's renationalisation strategies: how a populist radical right government may seek control over (EU) migration policy

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Authors' manuscript published as: Trauner, Florian and Stutz, Philipp (2021): Hungary's renationalisation strategies: how a populist radical right government may seek control over (EU) migration policy. In: *Politique européenne*, 2 (72), 94-118.

ABSTRACT In which ways can a populist radical right government such as the Hungarian under Viktor Orbán constrain the EU's influence in the migration domain? By conceptualising different 'renationalisation strategies', the article demonstrates how the Hungarian government has managed to enhance control over migration capabilities (policies) and decision-making (politics). By opposing EU law and extensively using emergency laws depriving supranational law of its meaning, the Fidesz government has pursued a national anti-migration agenda largely incompatible with European and international law. The Commission and other EU actors have sought to counter these strategies, but their toolbox has been either difficult to implement or only about to develop.

Stratégies de renationalisation de la Hongrie: comment un gouvernement populiste de droite radicale peut chercher à contrôler la politique migratoire (de l'UE)

RÉSUMÉ De quelle manière un gouvernement populiste de droite radicale tel que le Hongrois sous Viktor Orbán peut-il limiter l'influence de l'UE dans le domaine des migrations? En conceptualisant différentes « stratégies de renationalisation », l'article montre comment le gouvernement hongrois a réussi à renforcer le contrôle national sur les capacités de migration et la prise de décision. En s'opposant au droit de l'UE et en utilisant largement les lois d'exception privant le droit supranational de son sens, le gouvernement Fidesz a poursuivi un programme national anti-migration largement incompatible avec le droit européen et international. La Commission et d'autres acteurs de l'UE ont cherché à contrer ces stratégies, mais leur boîte à outils a été soit difficile à mettre en œuvre, soit sur le point de se développer.

Introduction

EU migration and asylum policies have been among those EU policies facing the highest pressure to reform (Costello/Mouzourakis, 2016). In 2015 and 2016, the arrival of more than a million migrants on European soil triggered a temporary collapse – or, a 'failure' – of the Dublin system and heated debates on the proper balance of 'solidarity' and 'responsibility' among member states (Trauner, 2016; Ripoll Servent, 2019). The field was not only marked by tensions among member states with high and low numbers of asylum applications. Different academic, civil society and political actors have also been concerned that migrants and asylum seekers have struggled to get access to rights provided to them by European and international law (e.g. Moreno-Lax, 2017; ECRE, 2020).

However, can EU member states actually – and more permanently – ignore the EU's and international legal obligations notably in the field of asylum? How would the EU's supranational institutions react if a member state sought to do so? This article seeks to answer these questions by looking at the renationalisation strategies of the Hungarian government under Viktor Orbán. In power since 2010, Viktor Orbán has been one of the longest-serving prime ministers among the EU's leaders, becoming an 'inspiration' (Zerofsky, 2019; Kelemen, 2020) for challenger parties all over Europe. Viktor Orbán seeks to position himself as a leader of Europe's wider populist and nationalist wave (Kriesi/Pappas, 2015; Ágh, 2016; Coman/Leconte, 2019). The Fidesz party under the leadership of Viktor Orbán corresponds to the description of a 'populist radical right party' (Mudde, 2007). The Hungarian case and EU migration policy is hence a most likely case study in a double sense – firstly, the Hungarian government is likely to challenge the influence of the EU institutions at the national level and, secondly, migration is the policy field in which this kind of strategies may be most visible.

This article has also a conceptual ambition by developing our understanding of 'renationalisation' strategies. In terms of structure, the article starts by outlining four renationalisation strategies (ignoring, altering, removing and avoiding legal constraints) and how they may be used by a populist radical right *government.* The article then delves into the empirics of how the Hungarian government and others have sought to (re-)gain control over (EU) migration policy-making. We draw on quantitative and qualitative data from the EU's statistical office Eurostat, policy documents, academic research and media reports to understand the renationalisation strategies of the Hungarian government and the EU's response to it.

The renationalisation of policy-making in the EU

There are already different bodies of literature interested in how a member state government may interact with the EU level. Examples are the Europeanisation concept (e.g. Radaelli, 2000; Cowles et al., 2001), the strategic 'use' of Europe by member states (e.g. Woll/Jacquot 2010; Slominski/Trauner 2018) or theories of differentiated integration (e.g. Leuffen et al., 2013; Winzen/Schimmelfennig, 2016), which help understanding why some member states diverge more than others. The Europeanisation literature even acknowledges the possibility that European pressure may empower domestic actors opposing reform/change (Heritiér et al., 2001), producing the 'paradoxical effect' that 'national policies become less "European" than it was' (Radaelli, 2000, 15). Europeanisation research hence allows for 'less Europe' or 'more divergence' as one possible outcome (among others) but does usually not search for it.

This article proposes a more fine-tuned conceptualisation for understanding how a determined government may limit supranational legal constraints. It works with the concept of

'renationalisation', which some scholars have already used to contrast Europeanisation dynamics (Jenichen/Liebert, 2019) and others to understand the growing role of member states vis-à-vis the EU's supranational institutions (e.g. Hillion, 2010). By looking at Norway, Brekke and Staver (2018) even applied a renationalisation lens for the field of migration, yet they refrained from developing assumptions to be used more widely.

Supranational constraints no more?

In the context of the EU, renationalisation may be best understood as the process in which a given member state government seeks to limit and reduce the EU's influence on their domestic policy-making processes. The key research focus is hence the national room of manoeuvre that a member state may acquire over policy-making processes and outputs. Adapted to this article, it may take the form of more autonomy over decision-making procedures (politics) and more control over migrants' rights and duties (policies).

As such, the strategies of renationalisation may not only be applied by populist radical right parties holding government positions. Yet, these parties are the most likely ones in terms of seeking a repatriation of authority and constraining the EU's influence. They tend to associate 'Europe' with a variety of 'threats' that jeopardise the 'national community'. Those include migrants, cosmopolitan elites and international agents. 'European integration combines several of these threats and poses one more: it undermines national sovereignty' (Hooghe et al., 2002, 976-977; see also Wodak, 2015) . As a matter of fact, Viktor Orbán and other populist leaders actively contrast themselves from a liberal, Western Europe, which would betray its 'original, concrete Christian values' (Coman/Leconte, 2019, 862). They propose a very different discourse centred on national sovereignty. A delegitimization of the European supranational level may allow populist radical right parties to justify the 'take-over' of national policy-

making processes. Borders and migration play a crucial place in these discourses. A 'hyper-visible spectacle of migration produces particular representations of the Hungarian state as the protector of a national public' (Cantat, 2020). Such processes of othering particularly target migrants but are not confined to them. Other societal groups such as Roma are getting increasingly marginalised too (Cantat/Rajaram, 2018).

INSERT TABLE 1 HERE

A first option for member states is to formally remove supranational legal constraints, e.g. by disintegrating from EU projects such as the Eurozone or the Schengen cooperation. It has rarely happened at EU level as the EU institutions tend to refrain from allowing a particular member state to repatriate competences hitherto attributed to the EU level.

A second option is to alter supranational legal constraints by relying on national 'emergency laws' that effectively deprive European and international law from its meaning and implications. Emergency laws are meant to allow a government to deal with an emergency situation but it is often very uncertain what an 'emergency situation' actually is (Neal, 2010). Extraordinary means of policymaking – *hors-norme* – get justified, regardless of whether or not they contradict European or international legal norms on, say, the protection of refugees.

A third option is to simply ignore and openly oppose supranational constraints and the implementation of EU laws. This strategy may differ from more 'hidden' forms of non-compliance triggered by factors such as member states' administrative capacities (Treib, 2014).

An open opposition with EU law may allow to mobilise the own electorate and put forward a particular position, notably Euroscepticism and anti-migration (or both). It can be justified by a questioning of the supremacy of EU law in domains that are seen to be part of a national 'constitutional identity' (Kelemen/Pech, 2019, 3). Autocrats have proactively used the legal ambiguity of the concept of 'constitutional pluralism' to undermine the EU's legal order (ibid).

Finally, negotiating the repatriation of new powers from the EU level – or at least to avoid adding any new competences to the EU level – is an element of the wider repertoire of member states to regain control over policy-making. They can build blocking minorities or work towards institutionalising a different rationale of an existing policy. In the EU's multi-level system, policy-processes are closely interlinked.

(European) challenges to renationalisation strategies

It is often highlighted that authoritarian regimes manage to consolidate their power by carving out democracy from within. Without free media, independent judiciary, and right for political and economic competition, fair elections are no longer possible. While citizens still vote, they end up in a 'pseudo-democracy' (e.g. Frantz, 2018) or in a 'competitive authoritarian regime' (Levitsky/Way, 2010). As a matter of fact, the fiercest opposition usually comes from within societies, be it investigative journalists, independent judges, opposition politicians and civil society actors who operate under increasingly hostile conditions. This perspective is also of relevance for a renationalisation lens. There are endogenous and exogenous factors defining the extent to which a government can get unconstrained from the EU's supranational influence.

From a rational choice perspective, a cost-benefit calculus of the involved actors will define whether or not a given member state manages to enhance the national room of manoeuvre for

policy-making. The underlying assumption is that populist radical right parties will re-nationalise EU policy-making processes if they can do so. Their effectiveness will depend on the degree of opposition and resistance exerted by fellow EU actors and/or domestic competitors. At EU level, the political 'costs' are defined by factors such as the unity and determination of fellow EU member states, the European Commission and the European Parliament. The European Commission, in particular, may opt for an issue linkage (e.g. between compliance and EU funds) or a *judicialisation* of the relations with a cooperation-hostile member state (on a conceptualisation of issue linkage in migration governance, see e.g. Tsourapas, 2017). As such, it is known that the decisions of the Court of Justice of the EU (CJEU) are likely to constrain the executive branch of a member state, for instance with regard to the expulsion of irregular migrants (Acosta/Geddes, 2013). However, this kind of legal dynamics was observed in governments run by mainstream parties, and not by those run by populist radical right parties potentially more willing to change a polity's checks and balances. In the following, we will test these conceptual assumptions for the case of Hungary in EU migration policy-making.

Hungary's renationalisation strategies in the migration field

Already pre-migration crisis, the Hungarian government perceived asylum issues primarily in the context of its 'fight against illegal migration' and alleged abuses of the country's asylum system (UNHCR, 2012, 2). However, as late as October 2013, the Hungarian government under Viktor Orbán adopted a new migration strategy that underlined Hungary's responsibility to fulfil European and international legal obligations, including refugee protection (Government Decree 1698/2013).

The arrival of an increasing number of migrants in early 2015 marked a turning point in the Hungarian-EU relations. A total of 177,135 migrants applied for asylum in Hungary during 2015 (Eurostat, 2019). The Commission reacted to the increasing number of newly arriving migrants with the adoption of the European Agenda on Migration (European Commission, 2015a). A flagship proposal was the installation of an 'emergency relocation scheme' for a total of 160,000 migrants from three frontline member states, namely Hungary, Greece and Italy. The Hungarian government of Viktor Orbán strongly rejected the Commission's idea of it being a 'frontline state' and opposed the idea of effectively hosting an EU refugee camp that registers and distributes newly arrived migrants (Robinson, 2015). Another reason for senior politicians from Hungary, and also the Czech Republic, Romania and Slovakia, to oppose the Commission's plans was that they were openly against the admission of Muslim refugees from the Middle East and North Africa (Barber, 2015). Viktor Orbán himself presented migration as a 'clash of cultures' in which an 'exodus' of mostly Muslim migrants would threaten a 'Christian' Europe (quoted in Karnitschnig, 2015). By outvoting the four opposing Eastern European member states, the Council agreed on the relocation of a total of 160,000 people from Italy and Greece in September 2015. Hungary, by contrast, intensified its efforts to take over control over policy-making on migration issues.

Altering legal constraints: Among the first measures in reaction to more migrants arriving in early 2015 was an anti-migrant billboard campaign with 'openly hostile and exclusionary messages about immigration to the Hungarian public' (Juhász, 2017, 40-41). The campaign rhetorically justified the adoption of 'emergency measures', notably the creation of a 175 km long and 4-metre high steel and barbed wire fence, first to Serbia (July 2015), then at the Hungarian-Romanian and Hungarian-Croatian border in autumn 2015. The emergency rhetoric became further codified in the 'Act No XX' of March 2017. Special procedures and

extraordinary competences for law enforcement authorities were permitted for a 'crisis situation caused by mass immigration' (Ibid). The law suggested that every asylum seeker entering as an 'irregular migrant' should be detained in special 'transit zones' at the Hungarian-Serbian border (two of which were erected). Access to these zones was limited. Only 5 persons per day may be admitted – a number that was reduced to an average of 2 as of early 2018 (UNHCR, 2018). A complete – and 'indefinite' – entry stop was imposed in March 2020 based on the argument that many of the migrants would come from Iran and carry the coronavirus (Hungarian Government, 2020b). During the entire asylum procedure (not only administrative procedure but also court appeals), a person has been required to stay in this zone unless he or she agrees to leave Hungarian (and EU) territory towards Serbia. The authorities have pursued a strategy of deprivation, exemplified by the fact that they even sought to deny food to rejected asylum seekers in these special zones. By February 2020, the European Court of Human Rights has intervened a total of 18 times granting interim measures in cases of food deprivation inside the Hungarian transit zones (ECRE, 2020). The border fence in combination with the concept of transit zones 'amounts to an almost total denial of access to the Hungarian territory and practically an insurmountable barrier in the way of access of refugee status determination' (Nagy, 2017; Gil-Bazo, 2017).

The creation of new hurdles for migrants to enter and stay in Hungary has gone hand-in-hand with a criminalisation strategy for migrants framed as 'illegals' and those who engage for migrants' rights. As an element of the 'Hungarian border spectacle' (Cantat, 2020), courts determined harsh sentences for some migrants. Cantat (2020) refers to a case of a Syrian migrant sent to prison for 10 years on charges of 'illegal entry and 'acts of terror' (for attempting to break through the border fence and throwing stones at the police). In June 2018, a new Hungarian legislation called 'Stop Soros'-law made it a criminal offence for an

organisation or an individual to support – including through legal advice – asylum and residence applications. The law also includes sanctions for anyone trying to approach the 'transit zones' in which the asylum seekers are held as well as a new 25 per cent tax on foreign donations for organisation considered to support 'illegal migration' (Politico, 2018).

Hungary institutionalised its approach of using 'emergency laws' and a 'crisis narrative' to (permanently) avoid the constraints of European and international law, even after the numbers dropped to new lows. In 2019, 500 migrants applied for asylum in Hungary. This number went down to 115 in 2020. Those were among the lowest numbers in the EU (Eurostat, 2021). Despite the decreasing numbers, the 'national state of emergency' due to 'mass migration' first declared in March 2016 was repeatedly prolonged, with the Hungarian government increasingly emphasising 'the threat of terrorism … as a result of mass immigration' (Hungarian Government, 2017) and, as of 2020, the alleged health risks stemming from migrants. There would be 'a clear link between illegal migration and the coronavirus outbreak', according to the Fidesz government (Hungarian Government, 2020c).

Ignoring legal constraints: As mentioned, the Commission initially proposed to define Hungary as a 'beneficiary' of the emergency relocation mechanism. This would have given Hungary effectively an opt-out from relocating asylum seekers from other EU states (European Commission, 2015b). However, Hungary rejected this. Once the emergency relocation scheme was adopted for Greece and Italy (Council Decision 2015/1601), the Hungarian government mobilised against it with a nation-wide referendum. After the 'largest ever Hungarian advertising campaign' (Nagy, 2016) costing about EUR 50 million and entitled 'Save the Country!', the Hungarian government posed the following question to all eligible voters: 'Do you agree that the European Union should have the power the impose the compulsory

settlement of non-Hungarian citizens in Hungary without the consent of the National Assembly of Hungary?. 41 per cent of the electorate cast a valid vote (in 98 per cent of the cases, the answer was a 'no'). This missed the constitutional quorum of 50 per cent for validation. The Hungarian government still claimed it a success. It refrained from relocating any asylum seekers from Greece and Italy and used the referendum result to press for constitutional change, among others to insert that 'foreign populations shall not be settled in the territory of Hungary' (quoted in Nagy, 2016).

Hungary's non-compliance with the emergency EU relocation scheme was open and even actively communicated. What was the state of Hungary's compliance with other migration laws which did not receive a similar amount of public and media attention? Figure 1 looks at the country's compliance with the Dublin Regulation, a crucial EU migration law over a period of ten years. With regard to Dublin transfers, the requests of the other EU member states to bring back asylum seeker to Hungary remained at a relatively high level and peaked in 2016 – the year of the migration crisis. However, Hungary has de facto stopped to accept any Dublin requests and transfers of asylum seekers from other states as of 2015 (these transfers are outside the relocation mechanism discussed beforehand). By contrast, Hungary continued to request and transfer asylum seekers in the other direction – from its territory to other member states. Figure 1 hence underpins that the Fidesz government de facto stopped to apply the Dublin regime (at least with regard Dublin transfers of asylum seekers towards the Hungarian territory).

INSERT FIGURE 1 HERE

Hungary's usage of European resources: What has been Hungary's usage of the operational capacities available at EU level? To shed light on this aspect, we have gathered data with regard to Hungary's operational cooperation with Frontex, the EU's border and coast guard agency. It is important to highlight that Frontex is not the only agency dealing with migration issues. Europol, too, has become quite involved in migration management, thereby contributing to the 'securitisation' of irregular migration (Piquet, 2016). Yet, Frontex is arguably the most relevant one so this article will focus on the Hungarian-Frontex relations.

With regard to Frontex, Hungary benefited more from Frontex return operations than border control assistance. During the migration crisis, Hungary employed up to 47,000 border guards and policemen at its Southern borders (Frontex, 2016a). Under a 'Visegrad-4-border-protection' scheme, Poland, Slovakia and Slovakia added several dozens of their national border guards. By contrast, in 2016, Frontex only deployed 58 officers at the Hungarian-Serbian borders, the majority of which helped Hungarian authorities to apprehend persons crossing the border in an irregular manner (Frontex, 2016b, 2). Regardless of the small size, the Frontex operation in Hungary put pressure on the agency. Senior Commission officials hinted the Frontex director about the 'possible negative impact for the reputation of the European Border and Coast Guard Agency' (European Commission, 2016) given the allegations of Hungary's fundamental rights breaches. NGOs such as Hungarian Helsinki Committee directly asked the Frontex management to 'ensure that Frontex and Frontex-operations play an active role in preventing and investigating the widespread violence at the Serbian-Hungarian border' (Hungarian Helsinki Committee, 2016). Frontex was hence increasingly seen as an actor potentially curtailing human rights violations and the room of

manoeuvre for the Hungarian police – an expectation which was difficult to live up to given Frontex' limited engagement.

The cooperation between Hungary and Frontex has been less adversarial in the return field. The analysis of Frontex return data demonstrates that Hungary has been using Frontex capabilities in an average way. It has rarely taken the lead in operations, yet few Eastern European states have done so (43 per cent of all Frontex return operations between 2016 and 2018 were organised by only one member state, that is Germany). An exception was Hungary's lead in the first Frontex Joint Return Operation to Afghanistan (Frontex, 2018, 25) – a country to which return operations have remained contested in the EU due to the fragile security situation.

INSERT TABLE 2 HERE

The European response and challenge

What have been the EU's institutional powers and capacities to constrain the renationalisation strategies of the Hungarian government? A distinction will be made between the activities of the EU's supranational institutions, notably the European Commission and the European Parliament (EP), and the Council of the EU.

European shaming and blaming: The Commission's and EP's strategy was twofold. First, they sought to engage in a public debate, and particularly, counter the disinformation made by the Hungarian government. In a social media campaign, the Commission presented its view on 'factually incorrect or highly misleading' claims such as 'Brussels wants to force Hungary to

let in illegal immigrants'.[1] Second, the EU's supranational institutions engaged directly with the Hungarian government to end overt opposition with EU law, be it through the exchange of (administrative) letters and other (formal and informal) contacts. A flagship debate was organised in the context of the EP's vote on whether or not to launch an Article 7 procedure against Hungary. Speaking in front of Members of European Parliament, Prime Minister Orbán attacked his critics of hypocrisy and put the blame on 'George Soros and his NGOs [who] want to transport one million migrants to the EU per year. ... We reject this' (Orbán, 2018). The impact of this and other debates has been limited. The public engagement between the EU's supranational institutions and the Hungarian government has primarily provided an opportunity for each side to highlight the own approach, without compromising on substance. As the EP's Sargentini report highlights,

> 'Over the years, the European Parliament and the European Commission addressed many of the concerns as set out in this report, in different ways, with different actions and numerous exchanges with the Hungarian authorities. The European Parliament debated on multiple occasions with the Hungarian prime minister, ministers and other governmental officials. However, no substantial changes have been made to safeguard the rule of law in Hungary' (European Parliament, 2018, 31).

Judicial politics: The CJEU has also become a major arena for the contestation of the Hungarian government, notably with regard to the strategy of altering supranational legal constraints. Already in the midst the migration crisis, on 6 October 2015, the Commission sent an 'administrative letter' to the Hungarian government expressing concerns over certain practices such as the border procedure in the transit zone and the accelerated returns of migrants to Serbia as a 'safe third country'. In July 2018, the Commission referred Hungary to the CJEU, arguing that the excessive length of detention in Hungarian transit zones and a near

[1] See the Commission facebook campaign 'Facts matter – European Commission responds to Hungarian National Consultation' available at: https://www.facebook.com/notes/european-commission/our-response-to-the-so-called-stop-brussels-consultation/1486604851357916/ (last accessed on 7 April 2021).

impossibility to get access to asylum procedures make Hungarian legalisation incompatible with EU law. It also questioned the legal compatibility of Hungary's 'Stop Soros'-law, which renders (civil society) support for asylum seeker a criminal offence (European Commission, 2018a). The legality of the 'Stop Soros' law with the European Convention on Human Rights was also challenged by the Open Society Foundation funded by George Soros. As soon as the law entered into force, it filed a complaint with Hungary's Constitutional Court and the ECtHR on the same day 'because of the current and ongoing damage being done by the legislation and because Hungary's courts have become increasingly reluctant to challenge the government' (Open Society Foundation, 2018; for a more academic account on democractic backsliding, see Bochsler/Juon, 2019).

Another legal conflict unfolded about Hungary's refusal to comply with the emergency relocation scheme for asylum seekers from Greece and Italy (Council Decision 2015/1601 of 22 September 2015). Being outvoted in the Council, Hungary, together with Slovakia, challenged the EU's competence to enact such a relocation quota. In the joined cases C643/15 and C-647/15, the CJEU dismissed the action and maintained that Hungary should participate the scheme implying the acceptance of a total of 1,294 asylum seekers. In reaction to Hungary's refusal to comply, the Commission launched an infringement procedure against Hungary in June 2017, together with Poland and the Czech Republic (Judgment of the Court in Cases C-715/17, C-718/17 and C-719/17). Once Hungary was found in violation of EU law in spring 2020, the Hungarian Justice Minister emphasised that 'the judgment has no further consequence. As the "quota decision" have long since ceased to have effect, we have no obligation to take in asylum seekers' (Hungarian Government, 2020a). Indeed, no relocation took place after the judgement.

A legal constraint on the Hungarian approach of using 'transit centres' was made in the CJEU judgment of 14 May 2020 (joined cases C-924/19 PPU and C-925/19 PPU). The Court of Justice of the EU ruled against Hungary, suggesting that migrants were held in 'detention' at these transit zones. This would amount to a 'deprivation of liberty' given that 'the persons concerned cannot lawfully leave that zone of their own free will in any direction whatsoever'. The detention would not be allowed to exceed four weeks (Ibid). The court ruling compelled the Hungarian government to transfer around 300 remaining migrants to asylum reception centres inside the country (EurActiv, 2020). At the same time, the Hungarian government emphasised that it would now automatically reject any asylum application from migrants having passed a 'safe transit country' (a status all of Hungary's neighbours have). According to the government spokesperson, all future applications would now have to be submitted outside of Hungary 'at consulates in neighboring, secure countries' (Kovács, 2020). Concretely, asylum seekers (also those already present in Hungary) need to submit a 'declaration of intent' for an asylum application in one of two possible consulates (in Kyiv and Belgrade). Only a single digit number of individuals were allowed to (re-)enter Hungary after they drafted such a declaration (AIDA, 2020, 11).

The Hungarian government has hence exchanged one practice making it near-impossible to get asylum with another. The outcome is likely to be the same. Since April 2017, the UN High Commissioner for Refugees has recommended to suspend all transfers of asylum seekers to Hungary under the EU's Dublin system, unless and until Hungary's law would get again compatible with EU and international law (UNHCR, 2017).

Issue linkages: The strongest tool which the EU has at its disposal to sanction non-compliance with the EU's founding values is the Article 7 procedure. It may lead to a suspension of a

member state's voting rights in the Council of the EU. In December 2017, the European Commission triggered this procedure against Poland due to concerns over the government's influence on the judiciary. The European Parliament triggered the same process against Hungary in September 2018. A report by MEP Judith Sargentini accused Viktor Orbán's government of posing a 'systemic threat' to the rule of law in Hungary and the fundamental values of the EU (European Parliament, 2018). Hungary's treatment of migrants and asylum seekers was only one out of twelve areas of concerns for the EP. The others included the independence of the judiciary, corruption, freedom of expression, academic freedom, and the rights of Roma and Jewish minorities (European Parliament, 2018, 5). With regard to migrants, the EP particularly criticised the government-sponsored campaigns which would draw 'parallels between terrorism and migration, inducing hatred towards migrants' (Ibid, p. 9), the curtailing of rights for NGOs dealing with migrants and the treatment of migrants (e.g. arbitrary detention, no access to asylum procedures). In the wake of the report's adoption by the Parliament, however, member states have struggled to follow up in a united and determined way. Hungary and Poland have committed to veto punishment on the other. Some member states criticised the EP's lead in Hungary's case as an attempted power grab from nation states (Zalan, 2018).

While implementing the 'nuclear option' of the Article 7 procedure has proven difficult, EU actors have sought other ways to put pressure on Hungary, most notably a closer linkage between EU funds and Hungary's compliance with rule of law standards and EU law more generally. Little surprisingly, any such linkage has been contested by the Hungarian government, as exemplified by an exchange of letters between Viktor Orbán and Jean-Claude Juncker. The Commission President rejected the Hungarian request to receive reimbursement for its border fence against irregular migration (Hungary argued the fence would protect the

whole Schengen area) and referred to the country's 'lack of solidarity' in the participation of the relocation quota. This would be regrettable given that Hungary would be the state benefiting most from EU cohesion funds. In his response, Orbán vividly rejected any such link. 'I would like to inform you that we are confounded by the part of your letter that creates a link between the question of immigration and cohesion funds. Such a relationship does not exist and is not permitted by the current EU acquis' (Orbán, 2017).

As a matter of fact, the Commission proposed to change the *acquis* to make this kind of cross-policy links possible. In May 2018, it suggested to protect the Union's budget in case of 'generalised deficiencies' in the rule of law systems of member states (European Commission, 2018b). By going for an ordinary legislative proposal, the Commission aimed to de-couple decision-making on rule of law from the EU's Multiannual Financial Framework, which requires unanimity in the Council (Koenig, 2018). Still, when the EU decided on the EU's next budget including the extraordinary EUR 750 billion recovery fund ('Next Generation EU') in July 2020, the 'rule of law'-linkage became a highly contested issue. Hungary and Poland threatened to veto the EU recovery fund over their opposition to a new 'rule of law'-mechanism. Only after agreeing on a two-page declaration on the application of this mechanism, the European Council of December 2020 was able to adopt the EU recovery fund. The rule of law mechanism has been seen as a 'small but potentially important step' (Gros, 2020). However, it will be limited in terms of overall influence. It does not ask to defend the principle of the rule of law more widely but only to 'protect the financial interests of the Union' (ibid).

Again, this debate on the issue-linkage has taken place between Hungary's rule of law situation and EU funds (not touching upon individual policies). This can also be seen in another salient

case of issue-linkage, that is whether or not Orbán's Fidesz should be allowed to remain a member of the conservative European People's Party (EPP). After calls for an expulsion have intensified, the EPP suspended the Fidesz membership in March 2019. To re-gain full membership rights, Fidesz was asked to end a targeted campaign against Jean-Claude Juncker and refrain from engaging in similar action and settle the legal disputes over the Central European University in Budapest which was founded by George Soros (Politico, 2019). The controversy was not solved. In February 2020, Fidesz was suspended indefinitely. In March 2021, the Hungarian party finally left after the EPP had adopted amendments to its internal rules of procedures which would have allowed to curtail the rights of some members (EurActiv, 2021).

Overall, therefore, the EPP no longer hosts the Fidesz party and the EU has a new rule of law mechanism in the budgetary cycle of 2021 to 2027. However, compliance with EU migration law has not been singled out to put pressure on the Hungarian government.

Conclusions

This article has assessed the strategies and behaviour of Hungary under the Fidesz government in the field of EU migration policy. The research has had a wider research interest, namely to assess how a populist radical right government may enhance the national room of manoeuvre for policy-making processes regardless of supranational legal constraints. It has proposed has four possible strategies of renationalisation (removing, altering, ignoring and avoiding supranational legal constraints). The findings may be of relevance for other governments with populist radical right parties in power, yet the dynamics of renationalisation are likely to be more pronounced in Hungary compared to other member states. There is probably no other member state in which democratic standards have eroded to a similar extent (Kelemen, 2020;

Pech/Scheppele, 2017). This makes it all the more relevant to carefully analyse how member states seek to impact the trajectory of European integration at a policy level.

The Hungarian case highlights that community building have almost exclusively taken place at national level, with reoccurring public campaigns portraying 'Europe' as a problem and 'migrants' as a threat. Hungary has managed to limit supranational legal constraints and enhance domestic control capacities (in terms of both decision-making powers and physical control of the country's external borders). The Hungarian government has implemented a national anti-migration agenda largely incompatible with European and international law, notably with those elements protecting the rights of migrants (and actors engaging for them). National efforts have aimed at preventing migrants from coming and, if they still manage, from claiming rights. This has happened by extensively using emergency laws and emergency measures depriving supranational law of its meaning and openly ignoring EU obligations such as relocating asylum seekers from Greece and Italy.

The article has assumed that the effectiveness of renationalisation strategies depends on the EU's institutional capacities as well as on relative costs and benefits of the involved actors. Indeed, different EU actors have sought to enhance the costs for the Hungarian government. The Commission, in cooperation with the European Parliament and some member states, have sought to link EU funds to Hungary's rule of law-performance, although this happened at a relatively general level without establishing specific conditionalities for the migration theme. A key reaction of the European Commission has also been to legally challenge the Hungarian government on different migration-related issues. The CJEU has constrained the action of the Hungarian government with regard to some measures (such as 'transit centres' for newly arrived asylum seekers). However, the Hungarian government has kept on making it (near)

impossible to have access to the asylum procedures by coming up with new approaches (such as allowing to apply for asylum only at consulates in neighbouring states).

What are the wider implications of these findings? The Hungarian government has used the supranational European level as a proverbial punching bag to delineate national boundaries and enhance domestic power. The half-heartedly European integration in the migration field has provided a favourable context to limit supranational legal constraints and strengthen domestic control over capabilities and decision-making. The EU has sought to counter these renationalisation strategies, but the EU's toolbox has been either difficult to implement (such as the Article 7 procedure) or only about to develop (such as linking compliance with EU laws to the EU's funds). Hungary has managed to disintegrate (de facto, not de jure) at a policy level from within EU membership.

Acknowledgement

The authors would like to thank Ilke Adam, Liesbet Hooghe, Sebastian Oberthür, Frank Schimmelfennig, Sara Silvestre and the anonymous reviewers for constructive comments on earlier versions. Research assistance by Rossella Marino and Giulia Rigirozzo is gratefully acknowledged.

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