

## **POPULISM IN A FRAME OF POLITICAL REALISM: AUTHORITARIAN POPULIST NATIONALISM IN HUNGARY**

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*Abstract:* using Hungary as an example, the article argues that populism is not an ideology, but rather an argumentative strategy used by politicians to maintain power and secure public support. It argues that populist nationalism does not have even a thin ideological content. The main argument of the article is that there is no underlying political morality in the Orbán regime because it is based purely on realist politics.

The article highlights how the Hungarian authoritarian populist regime uses exclusive ethnic nationalism and otherisation and how its actions against formerly autonomous institutions are built on an anti-establishment attitude, anti-pluralism, and exclusionary identity politics.

*Keywords:* Hungary – populist nationalism – otherisation – realist politics

In this article, using Hungary as an example, I will argue that authoritarian populism is not an ideology and that purely realist politics can function within the populist framework by borrowing values from ideologies (even from thin ones), such as exclusionary ethnic nationalism. I will look at this through the example of the populist regime in Hungary, which pursues power politics while speaking the language of exclusionary nationalism. I will illustrate my point with two examples: the concept of the nation in the 2011 Fundamental Law, and the 2015 refugee crisis.

Authoritarian populism is not an ideology<sup>1</sup> because, in my view, every ideology is based on moral values and a shared moral value system, which is not found in the authoritarian populist framework. Morality provides a basis for critical evaluation of human actions by reference to moral standards, which cannot be challenged on the basis of the power-seeking goals of the political leader. Authoritarian populism places no such constraints on the actions of the populist leader which is why populism can be so diverse (from left to right).

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<sup>1</sup> H. Krieger, 2019, 975.

Because of the lack of common shared values, I cannot agree with those who suggest that populism is an ideology because it «considers society to be ultimately separated into two homogeneous and antagonistic groups, “the pure people” versus “the corrupt elite politics” can also work within the populist frame, and which argues that politics should be an expression of the *volonté générale* (general will) of the people»<sup>2</sup>. This distinction and the reference to the general will in itself can hardly be called ideology. So, I also disagree with those who argue that populism is a «thin-centred ideology» that depends on elements of other ideologies<sup>3</sup>, although I think it is a reasonable argument that populism cannot stand alone, and with those who argue that populism is a particular moral conception of politics<sup>4</sup>. Nevertheless, I consider populism to be a useful analytical framework for analysing the threats to constitutional democracies and to the constitutionalisation of international law. Because if we try to identify common features of authoritarian populist governments, we find that populist leaders' argumentative strategies and governmental practices<sup>5</sup> are common, based on anti-establishment attitudes, anti-pluralism and exclusionary identity politics (otherisation)<sup>6</sup>. Because of its anti-pluralism and exclusionary identity politics authoritarian populism leads to the erosion of democratic institutions and «its resulting system of governance deny constitutional democracy»<sup>7</sup>. Sajó describes the antipluralist and exclusionist populist strategy in the following way «the people become homogeneous via identification of the enemy»<sup>8</sup>. However, such a policy is detrimental to society: «a people that needs enemies in order to remain a people will become hostile, antagonistic, and intolerant»<sup>9</sup>.

Moreover, precisely because of these characteristics, populism is not predestined to deliver on its promises to «real people». Promises such as closing borders, leaving the European Union or dismantling institutions that support social pluralism may be realised, but they do not necessarily deliver the results that individuals expect. For example, the success of populist politicians in gaining power and achieving policy goals shows that accusing immigrants of taking jobs, overburdening care institutions (such as hospitals) and reducing the quality of services (such as schools) can lead to easy popularity – at a high cost. This is because populist narratives would be weakened if populist governments took effective steps to resolve social conflicts, such as measures to improve the efficiency of care systems or to create jobs. This characteristic makes populist nationalism uninterested in addressing social conflicts. Authoritarian populism, therefore, by its very nature, is not interested in eliminating social conflicts, but rather in deepening them,

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<sup>2</sup> C. Mudde, 2004, 562.

<sup>3</sup> C. Mudde, C.R. Kaltwasser, 2017.

<sup>4</sup> J.W. Müller, 2016.

<sup>5</sup> H. Krieger, 2019, 975.

<sup>6</sup> J.W. Müller, 2016, 3.

<sup>7</sup> A. Sajó, 2021, 7.

<sup>8</sup> Ivi, 127.

<sup>9</sup> Ivi, 137.

because it does not and cannot give its supporters what they crave, because by its very nature it builds on deepening social fault lines.

The narrative offered by authoritarian populist leaders sees transnational structures, including the European Union, as a source of danger, with their hegemony over nation-states and their transnational aspirations, which, according to them, threaten the identity and sovereignty of nation-states and which, if successful, could lead to a loss of control over one's own destiny/nation. This is not surprising when one considers, for example, that Timothy Garton Ash argues that the opposite of populism in the European context is the European Union itself<sup>10</sup>.

### ***Exclusionary populist nationalism in Hungary***

When authoritarian populist politicians use the ideological elements of exclusionary ethnic nationalism<sup>11</sup>, they describe the dominant nation as an endangered group and the sense of belonging to the dominant nation as an identity that needs to be protected from the erosive effects of globalisation and transnationalisation<sup>12</sup>. The strategy of exclusive populist nation-building in the Schmittean sense<sup>13</sup> is based on the constant search for enemies and the need to protect the nation (the «true people») from external and internal enemies.

By exclusionary nationalism in this article, I mean a form of ethnic nationalism that bases a sense of national belonging on the distinction between «us» and «them» and the resulting image of the enemy<sup>14</sup>. I am therefore concerned with the phenomenon of an exclusionary form of nationalism being expressed in populist rhetoric. All political systems have to construct some kind of identity on the basis of which they can act. Defining the content of a sense of community identity – and thus defining the national identity of the state – can be done either by identifying a group of «others» or by resorting to «otherisation»<sup>15</sup>. In this case, «who are we?» is defined in relation to the others who are seen as opposed to us. The identities that emerge are fundamentally supported in many cases by the total failure of policies to address social inequalities.

Populist movements using the ideological elements of ethnic nationalism base their politics on exclusionary moral principles that are at odds with the inclusive values of constitutional democracies<sup>16</sup>. Populist politicians are interested in widening social cleavages, polarising society and demonising perceived enemies. Their movements are

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<sup>10</sup> T. Garton Ash, *Does European Populism Exist?* 4:35, <http://www.youtube.com/watch?v=bJC7JAOccfw>

<sup>11</sup> C. Miller-Idriss, 2019.

<sup>12</sup> P. Blokker, 2005, 371, 388.

<sup>13</sup> C. Schmitt, 2007, 28-29.

<sup>14</sup> C. Miller-Idriss, 2019, 20.

<sup>15</sup> B. Majtényi, 2017,

<sup>16</sup> B. Bonikowski, 2017, 185.

permeated by references to the uniqueness and exceptionalism of the nation and the emphasis on this exceptionalism over others, a discursive strategy that exploits the conflict between society and elites/former elites. Their narratives are also reinforced by the teaching of history and the politics of memory, which reiterate the «greatness» of the nation and its glorious past, as well as the failure to reflect on the sins of the past. The strength of these movements is explained by the fact that they amplify people's economic and other fears and link them to the image of the enemy they have created.

The Hungarian version of populism which uses the ideological elements of nationalism to achieve its goals, shows that populism manifests itself not only in efforts to undermine the institutions of constitutional democracy, but also in efforts to dismantle autonomous structures in general. It also has ambitious goals in other spheres, such as in the field of culture. For populist nationalism, it is important to occupy symbolic space, to define the cultural roots of institutions and to transform sites of memory, so that anti-elitism is not limited to politics but also extends to academia, the universities, the arts, the economy or the media. The turn in Hungarian public law is also characterised by anti-establishment and mistrust of democratic institutions. The occupation of cultural institutions and all institutions with some degree of autonomy from the government has become an obvious goal of populist nationalism in Hungary. When exclusiv populist nationalism operates as a regime (such as the authoritarian regime in Hungary), the maintenance of anti-elitism will increasingly require the identification and naming – or even the creation – of external enemies, such as supranational or international institutions.

Influencing the media is also seen as of key importance for populists. Even though populist nationalists use simplistic rhetoric they often benefit from the support of some parts of the media and the desire of others to provide balanced information. The political «success» of anti-immigrant hate propaganda in Hungary illustrates that after a populist-nationalist regime comes to power brings a large part of the media under government control, and silences the opposition or neutral media, it is possible to successfully use public money to finance the search for the enemy, and even to build a political system to fight the enemy, which is always found in different formations (migrants, Roma, civilians, Soros, CEU, academia, Brussels, etc.). The search for enemies and the fight against them leads to the restriction, impossibility and dismantling of independent institutions. Marginalised groups (migrants) can become enemies of the nation, as can those who show solidarity with them, even if only partially, and those who promote inclusive values (NGOs, Soros, international organisations or even the European Union itself).

Because of its distrust of autonomous institutions, populist nationalism can never become like conservatism, even if populist politicians are sometimes inclined to call themselves conservatives. This is often one of the ways in which they are able to infiltrate mainstream politics, or to function for a long time as a member of a European conservative party group, as Fidesz did even after the dismantling of democratic

institutions in Hungary, as an active member of the European People's Party until 2021. Populist politicians, unlike conservatives, are not opposed to sudden change, claiming that a leader who represents the real interests of the people can represent the will of the people and is also the one who is called to lead the changes. In this respect, their unbridled desire for institutional change makes them more akin to the Jacobins, although they are destroying the institutions not of feudalism but of constitutional democracy.

As a result of this search for enemies, populist-nationalist politicians stress that the dominant ethnic nation is under constant threat from external and internal forces. The true will of the people is represented by the populist leader, who also reveals the dangers facing the nation. The migration crises of 2015 provide an obvious opportunity for these leaders to blame migration for various social problems and to demand the reassertion of control over migration.

This type of populist movement using the slogans of nationalism refers to the need for revolutionary changes and relies on populist framing of national interests against global phenomena (e.g. refugee crisis, international protection of human rights); therefore, the enemies of the nation could be not only the racialised others (e.g. refugees)<sup>17</sup>, but also the former elite and democratic institutions which, according to the populists, work against the interests of the nation («the true people»). As the example of Hungarian hate propaganda against «migrants» shows, otherisation could be successfully disseminated and financed by state sources, because in Hungary the government successfully maintains the atmosphere that it is in a constant struggle to defend Hungarians against various enemies, which could be a country (the Netherlands, Norway, Sweden), an institution (e.g. the EU, human rights NGOs, the IMF, the UN), a group of individuals (refugees, LGBTQI people) or even an individual (e.g. George Soros)<sup>18</sup>.

### ***Exclusionary Identity Politics: the Nation Will as the Basis of Otherization in the Hungarian Constitution***

Referring to the general will of the people and supporting majority decision-making does not mean that the true will of the people is reflected in the overwhelming majority of votes. In 2010, due to Hungary's disproportionate electoral system, the Fidesz-KDNP coalition won two-thirds of the seats in parliament with 52.73% of the vote<sup>19</sup>. This electoral success was declared revolutionary by the new government, which referred to it in the Declaration of National Cooperation as a revolution of the ballot box. The two-third victory was repeated in 2014, 2018 and 2022 due to the construction of a nationalist-

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<sup>17</sup> M. Feischmidt, P. Hervik, 2015, 3.

<sup>18</sup> B. Majtényi, Á. Kopper, P. Susánszky, 2019, 173.

<sup>19</sup> Az Országgyűlés 1/2010. (VI. 16.) OGY politikai nyilatkozata a Nemzeti Együttműködésről. [https://2010-2014.kormany.hu/download/d/56/00000/politikai\\_nyilatkozat.pdf](https://2010-2014.kormany.hu/download/d/56/00000/politikai_nyilatkozat.pdf).

populist regime by adopting a new constitution and restricting the competencies of the formerly independent institutions, among other things, restricting media freedom and transforming the electoral system.

Autocratic states mostly base their identity on the anti-egalitarian legacy of an imagined past, including a view of exclusive concepts of nation that sidelines vulnerable groups. Since 2010, the Hungarian state has built such an anti-egalitarian interpretation of the nation, undermining the moral equality of its inhabitants that is essential to constitutional democracy<sup>20</sup>.

The Hungarian Constitution of 2011 (named Fundamental Law) was the first EU Member State constitution adopted after the Lisbon Treaty and after the economic debt crisis of 2009. The Fundamental Law was introduced by a lengthy preamble (National Avowal), which defines the state's national identity. The preamble provides a pre-modern list of non-neutral cohesive values such as fidelity, faith and love, while it does not mention, for instance, the principle of equality as a common value of the political community. The Preamble introduces an ethnic concept of the nation as a source of the state's power. It is made clear in the very first sentence of the preamble: «WE, THE MEMBERS OF THE HUNGARIAN NATION, at the beginning of the new millennium, with a sense of responsibility for every Hungarian, hereby proclaim the following». Furthermore, the Fundamental Law links the nation to Christianity, stating that «we recognise the role of Christianity in preserving nationhood». There is no reference to the political nation: the phrase «we the people» and the sense of common identity it expresses do not appear.

The Hungarian Constitution combines the notion of the ethnic nation with the pre-modern values (e.g. fidelity, faith and love) mentioned above, which determine who belongs to the ethnic nation. The use of the concept of nation in the Fundamental Law and its use as an argumentative strategy of the populist leader and as a governmental practice best illustrates how the constitutionally constructed concept of the ethnic nation together with the otherization can restrict fundamental rights and undermine democratic institutions.

The Fundamental Law has provisions that are explicitly against vulnerable groups and support mainstreaming prejudiced discourses. For example, Article L (1) protects the family as the basis of the «nation's survival». As understood in the constitution, family is based on marriage between a man and a woman and the relationship between parents and children. The provision serves as a basis to restrict women's autonomy, the rights of sexual minorities and the rights of childless couples. There is also a provision that provides a direct basis for incitement against refugees: «No foreign population shall be settled in Hungary» (Article XIV (1)).

In Hungary, one can observe a process whereby antigypsyism and extreme right-wing discourses on the segregated Roma minority have become increasingly mainstream,

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<sup>20</sup> B. Majtényi, 2021.

given that an ever wider swath of society relates to these discourses. These discourses are also supported by the Fundamental Law, which has Article XV Paragraph 4, which uses the term «catching up» alongside equality of opportunity. The term, which was also used during the state-socialist era in Hungary, refers to those situations where Roma, takes action in order to reach the socio-political status of the majority. According to this paternalistic concept, the efforts of the Roma are necessary for the success of social inclusion policies. This paragraph makes it possible to limit those rights who do not make enough efforts to improve their peripheral social situation according to the present Hungarian government. Furthermore, Article V declares: «Everyone shall have the right to repel any unlawful attack against his or her person or property, or one that poses a direct threat to the same, as provided for by an Act». The article is denounced for protecting the ethnic Hungarian middle class from the socially excluded (among whom Roma are overrepresented). This provision contributes to a violent climate and is an indirect form of discrimination against socially marginalised groups.

The Fundamental Law authorises the legislature to punish homelessness as part of the right to adequate housing. «Using a public space as a habitual dwelling shall be prohibited» (Article XXII (3)). Other parts of the Fundamental Law also seemingly use the language of human rights but misinterpret them. Human dignity «generally protects the individual personality», not the dignity of the community, especially not that of the majority community. Despite this, Article IX mentions that «The right to freedom of speech may not be exercised with the aim of violating the dignity of the Hungarian nation». Since the parliamentary majority exercises constitutional power in the name of the ethnic nation, criticism of the government might violate the dignity of the Hungarian nation.

Article U (1) states, «The form of government based on the rule of law, established in accordance with the will of the nation». Subparagraph a) further claims that «the Hungarian Socialist Workers' Party and its legal predecessors and other political organisations established to serve them in the spirit of communist ideology were criminal organisations [...] and betraying the nation». The provision is very similar to Robespierre's concept that the nation's will is expressed in law, which can be derived from Rousseau's «general will». According to Jacobin ideology, «the state represents the people's will, and the existence of plural institutions and social forces only fragments that will»<sup>21</sup>. In the Hungarian Constitutional regulation, the «general will» appears as the ethnic nation's will. (In contrast to this, the general will meant the political nation's will for the Jacobins.) In addition to this Article, the «will of the nation» also appears in the preamble, which states that «our Fundamental Law shall be the basis of our legal order: it [...] expresses the nation's will». It means that in the name of the «nation's will», the government can limit the rights of their political opponents who «betray» the nation. Not the political arguments are common between Jacobins and the present Hungarian government, but

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<sup>21</sup> W. Safran, 2003, 439.

rather the actual way they exercise power and the assumption that the laws express the nation's will.

As Sajó mentioned people and even the nation «is an empty construct in constitutional law»<sup>22</sup> and populism can fill the term according to the political interests of the regime. Accordingly, Rousseau's «general will» appears in the new Hungarian constitution as the will of the ethnic nation. In the name of the ethnic «nation's will», the government can restrict human rights, for example, the rights of its opponents. The Fundamental Law follows the interests of the government rather than moral values and threatens constitutional democracy. As I will show below, the Hungarian authoritarian regime recognises the primacy of exclusionary nationalism only when it suits the interests of the regime, and the text of the Fundamental Law allows for a flexible reference to the will of the nation.

### ***Otherisation as a basis of realist politics***

The Hungarian regime characterised by leader Viktor Orbán is based on Schmittian politics of the otherisation. Otherization necessary turns against human rights and as I mentioned earlier, anyone can become an enemy (refugees, human rights defenders, civilians, Soros, the EU, universities, academia, LGBTIQ people, etc.). Schmittian politics opens the way for authoritarian populist politics that nobody and nothing – not even an independent state or civil institutions – should stand in the way of the government, and the government is justified to rely on authoritarian forms of governance and to turn against these agents in the name of the national interest. Furthermore, the regime applies a nepotistic distribution of wealth and positions to retain power, creating an uneven playing field by limiting political opponents' access to information. In such regimes, the leader's inner circle may resemble a princely court's. However, they cannot be called Machiavellian since the end-justifies-means principle does not work in them, as such regimes have no moral purpose. Their actions are driven not by the perceived or real interests of the nation, but solely by the wish to maintain and strengthen their power.

Suppose somebody follows moral principles other than the government or is simply not in the position to conform to this expectation. In that case, the government can restrict their human rights according to the «nation's will», the name of the imagined «We». The basic values in the Fundamental Law are freely shaped by the leaders' will, which is supposed to be «the will of the nation». The values listed in the Fundamental Law, such as fidelity, faith, and love, can be shaped at the whim of power-hungry politicians and can serve as arguments for the leader's personality cult.

The system operates rationally because it consistently serves the regime's interests of power and sees politics as a continuous struggle. Its actions are thus determined by

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<sup>22</sup> A. Sajó, 2021, 125.



the need to maintain control over society, a relentless lust for power, and the knowledge that all power is fragile and in constant need of reinforcement. The regime applies a nepotistic distribution of wealth and positions to retain power, creating an uneven playing field by limiting political opponents' access to information. A particular moral conception of the political community does not constrain the system's operation. However, the Orbán regime appears to be working and enjoying social support even though its functioning cannot be described in terms of moral principles.

One manifestation of this indifference towards moral values is the fact that, in its communication, the regime regularly associates Christian values with hate campaigns against various societal groups. Another characteristic feature of the Fundamental Law is that there are provisions contrary to international and European law, though it declares compliance with them. It should also be noted that the lost cases before the Strasbourg and Luxembourg courts have not prompted the Hungarian government to bring its anti-refugee and anti-NGO policies into line with the European Convention on Human Rights or EU law. In addition, the indifference to moral issues manifests itself in the hunger for power, the theft organized from above, the pandering to various dictators for political advantages in foreign policy, and the intensive destruction of institutions in the name of conservative values. In contrast, Polish politicians at least give the impression of rock-solid faith in destroying their constitutional institutions and in being consistently anti-Putin, sometimes even anti-Russian in their politics.

Take an example of apparent hypocrisy: Hungary claims to be cooperating with international human rights mechanisms and uses the persuasive language of human rights. In fact, however, when demanding transparency, it is not about making state operations more transparent, but rather about putting extra administrative burdens on independent NGOs. In doing so, it follows the logic, devoid of moral principles, that human rights violation occurs only where conduct conflicts with the regime's interests. Internationally, however, the Hungarian regime acts mainly in defence of its sovereignty, linking it to the protection of national identity. In this respect, it seems to be succeeding because, as I explain in the next chapter for example, changes in Hungarian refugee policy after 2015 were practically unaffected by international refugee protection, international human rights protection, or EU law. However, the Hungarian state openly violated, among others, the principle of open borders, the prohibition of discrimination, and the prohibition of inhuman treatment – by first starving and illegally detaining refugees in the transit zones, and later by closing its southern borders to asylum seekers (including the transit zones). The state later distinguished between refugees from Afghanistan, Syria and similar countries, on the one hand, and those arriving from Ukraine, on the other, when it opened the Ukrainian border to asylum seekers while keeping the southern border closed.

### ***The Hungarian refugee policy after 2015***

The easiest way to illustrate the workings of the Hungarian regime is to look at its refugee policy because the refugee issue is one of the favourite topics of populist politicians. As a consequence of the search for enemies, populist-nationalist politicians always stress that the dominant ethnic nation is under constant threat from external and internal forces<sup>23</sup>. The true will of the people is represented by the populist leader, who also reveals the dangers facing the nation. It is an obvious opportunity for these leaders to blame migration for various social problems and to demand the reassertion of control over migration.

As with other exclusionary populist movements, there is a strong anti-immigration sentiment among supporters of Hungary's authoritarian regime, which at times provides a coded language used in mainstream politics to gain popularity through racist messages, and at other times manifests itself in unvarnished racism. Anti-immigration also provides an opportunity to define the nation as «white» and «Christian»<sup>24</sup> in the face of Muslim immigration, which can be linked to many other forms of xenophobia.

The attitudes of populist politicians towards international law and the EU in Europe are also well illustrated by the Hungarian refugee policy and the inertia of international institutions towards populist regimes. Populist governments tend to see international law as a law of coordination between states and try to reinforce the principle of non-interference and sovereignty and reject multilateralism<sup>25</sup>. Like other populist leaders in political speeches, Hungarian Prime Minister Viktor Orbán supports a bilateralist vision of international law: «The era of multilateralism is at an end, and the era of bilateral relations is upon us»<sup>26</sup> In the following, I will also examine the effectiveness of EU law in terms of its ability to influence the seemingly cooperative member states' asylum policies. By seemingly cooperative member states I simply mean states, such as Hungary which cooperates with international institutions on the surface and does not openly reject the whole international and European refugee protection and human rights framework.

As I mentioned earlier, I see Hungary as a state that pursues a purely realist policy, driven primarily by the political benefits of securitising the refugee issue and otherisation<sup>27</sup>. The Hungarian government took the opportunity to securitize the refugee issue when the Syrian crisis began in 2015 and to promote a «clash of civilizations» narrative, identifying migrants/refugees as threats to Hungarian identity, culture, and also to the Hungarian labor market<sup>28</sup>.

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<sup>23</sup> P. Blokker, 2005, 388.

<sup>24</sup> H. Gusterson, 2017, 209.

<sup>25</sup> H. Krieger, 2019, 996.

<sup>26</sup> Ivi, 979.

<sup>27</sup> See in detail, B. Majtényi, 2022.

<sup>28</sup> B. Majtényi, 2019.

The Hungarian case is also interesting because the populist Hungarian regime used those well-known techniques for non-compliance with international human rights obligations, which were previously used mostly by authoritarian regimes outside the EU framework. One example of this is some states which are part of the universal and regional human rights protection systems while seeking to escape effective international monitoring are restricting the rights of independent NGOs and founding GONGOs (Government-Organized Non-Governmental Organizations). The background to actions against NGOs is that NGOs play a key role in the operation of international monitoring mechanisms providing data from independent sources to international monitoring mechanisms for example by presenting proposals, and submitting shadow reports. The restrictions on NGOs' operation which result in data poverty make it difficult for international monitoring mechanisms to function effectively.

The conflict between Hungary and EU refugee law began in 2015 with the reaction of the Hungarian government to the Syrian refugee crisis. According to the Dublin regulation, the Member State where an asylum seeker first entered the EU is responsible for the asylum procedure. In the summer of 2015, the Hungarian state first started registering asylum seekers predominantly coming from Syria but after a time despite this obligation transported the Syrian refugees without registration from the southern border to the Austrian border.

In August 2015, a fence was built on the Serbian-Hungarian border to close the Western Balkans route; later, the Croatian and Slovenian borders were also closed, after which the transit zones have been the only places to submit asylum claims. In September 2015, the Government declared a crisis situation due to mass immigration in two counties, in March 2016, the scope of the crisis situation which granted broad powers to the executive was expanded to the whole country and continuously extended every six months. Hungary does not declare the principle of a closed border directly, and in the formal sense the southern borders remained open, but after a time only one asylum seeker per day could enter the territory of Hungary through the transit zones. Prime Minister Viktor Orbán explained in one of his interviews the border closure for the domestic audience as follows: «We . . . want to conserve the foundations of Europe. We don't want parallel societies, we don't want to exchange populations and we don't want to replace Christian civilization with a different one. This is why we build fences, we protect ourselves and we don't allow migrants to flood us»<sup>29</sup>. The prime minister in his speech spoke about George Soros (Hungarian-born American philanthropist, who supports civil society) network too that seeks to undermine the cultural integrity of Hungary by supporting asylum seekers. The Hungarian government also introduced after 2015 several anti-immigration media and billboard campaigns targeting also Soros<sup>30</sup>.

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<sup>29</sup> O. Gajdics, 2017.

<sup>30</sup> See in detail: B. Majtényi, Á. Kopper, P. Susánszky, 2019.

The Sixth Amendment of the Hungarian Constitution was adopted in 2016, it grants the executive the right to declare a «terror threat situation», in this situation, the government may introduce extraordinary measures. This amendment was later repealed by the 9th Amendment to the Fundamental Law and more broadly gave the government the possibility to introduce extraordinary measures by overhauling the emergency legal regimes. October 2016, a referendum (the so-called «quota referendum») initiated by the government was held to ask Hungarians about the EU asylum quota system. The question posed to voters was the following: «Do you want the EU, even without the approval of the Hungarian Parliament, to be able to prescribe the mandatory resettlement of non-Hungarian citizens in Hungary?» The referendum was invalid due to low attendance (only 43.35 percent of voters attended the referendum). After the referendum on the European asylum quota, the Constitutional Court adopted a resolution on the protection of the constitutional identity of Hungary. According to the Constitutional Court, the constitutional identity of Hungary is a preexisting fundamental value above the written constitution as well as international and European law: «The Constitutional Court establishes that the constitutional self-identity of Hungary is a fundamental value not created by the Fundamental Law – it is merely acknowledged by the Fundamental Law. Consequently, constitutional identity cannot be waived by way of an international treaty – Hungary can only be deprived of its constitutional identity through the final termination of its sovereignty, its independent statehood»<sup>31</sup>.

The securitisation of the migration can generally easily be used for populist politicians to exercise control over independent institutions<sup>32</sup>. Act LXXVI of 2017 on the Transparency of Organizations Financed from Abroad obliged associations NGOs that receive at least 7.2 million HUF annually from foreign sources to register with the court as an organization receiving foreign funding, to annually report about their foreign funding, and to indicate the label «organization receiving foreign funding» on their website and publications. The Act also shows that the government is abusing human rights arguments, when it demands transparency, it is not about making the operations of the state more transparent but about constraining the latitude of independent NGOs. In doing so, it follows the logic, devoid of moral principles, that human rights violation occurs only where conduct conflicts with the interests of the regime. In 2018, as part of its «Stop Soros» legislative package, criminalizing «helping or supporting illegal migration». As another element of the «anti-migration» legislative package the «extra tax on activities supporting migration» was also introduced. In order to get «civil» support the government has begun to sponsor GONGOs which supported the anti-refugee and anti-NGO policies of the government, for example, the Center for Fundamental Rights

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<sup>31</sup> Resolution 22/2016 (XII. 5.) of the Constitutional Court of Hungary, [http://hunconcourt.hu/letoltesek/en\\_22\\_2016.pdf](http://hunconcourt.hu/letoltesek/en_22_2016.pdf).

<sup>32</sup> A. Sajó, 2021, 213.

(founded in 2013) in support of government refugee policies published reports and participated in meetings of international institutions<sup>33</sup>.

The starvation of the refugees in the transit zones started in August 2018.<sup>34</sup> In these cases, the Hungarian Helsinki Committee successfully requested interim measures from the European Court of Human Rights (ECtHR). Despite the decisions of the ECtHR, denying food in transit zones remained a practice. (It was the usual practice of the Hungarian authorities that, as a result of the ECtHR decisions, the refugees were provided meals by the authorities but later resumed starvation.) In November 2019, Lajos Kósa vice president of the government party FIDESZ stated that the country does not have an obligation to provide food for tourists visiting the country «the ten million tourists who enter Hungary do not get meals from the Hungarian state either, they are not starving either»<sup>35</sup>, implying that the same standard should apply in the two cases. The Hungarian government generally does not execute the judgments of the ECtHR and fails to apply Strasbourg's practice in domestic legislation, and because the Hungarian media is not free the government can communicate to its citizens that they should pay extra costs because international organizations fined us.

Populist nationalism's willingness to restructure institutions is also demonstrated by the fact that the Hungarian government saw in the COVID-19 epidemic an opportunity to limit the powers of parliament on the grounds of the supposed interests of the people. The government, recognising the potential for further restrictions on fundamental rights and institutions in the pandemic situation, has introduced measures other than the general legal framework, with reference to crisis situations. In June 2018 the Hungarian Parliament adopted the 7th Amendment to the Fundamental Law. According to the amendment, no foreign population shall be settled in Hungary. In March 2020, in response to the COVID-19 pandemic, the government introduced the so-called state of danger and adopted the Authorization Act, «conferring sweeping emergency powers to the executive»<sup>36</sup>. The government has already maintained the crisis situation it envisages due to mass immigration since 2015, and in 2020 it has also declared a medical emergency due to the coronavirus.

In 2020, the court of the European Union, the Court of Justice also stated in one of its judgments (C-924/19) that Hungary unlawfully detains people in the transit zone and this practice also infringes the right to a fair asylum procedure. According to the court judgment: the drastic limitation of the daily number of asylum seekers authorized to enter those transit zones and establishing a system of systematic detention in the transit zones. This also led to a push-back practice, i.e. the removal of all third-country nationals

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<sup>33</sup> Alapjogokért Központ, in: <http://alapjogokert.hu/>.

<sup>34</sup> *Hungary Continues to Starve Detainees in the Transit Zones Information update by the Hungarian Helsinki Committee*, 23 April 2019, <https://helsinki.hu/wp-content/uploads/Starvation-2019.pdf>

<sup>35</sup> A. Kalman, 2019.

<sup>36</sup> *Freedom in the world 2021: Hungary*, Freedom House, <https://freedomhouse.org/country/hungary/freedom-world/2021>.

staying illegally in Hungary's territory without observing the procedures of the Qualification Directive. After that, the Hungarian Minister of Justice argued that by requiring Hungary to provide the guarantees of the Qualification Directive for the entry of third-country nationals into its territory, Hungary loses control over its territory, which infringes the national identity of the state<sup>37</sup>. After the decision of the Court of Justice, the government decided to close down transit zones at the southern border. The new legal framework adopted afterwards further restricted access to asylum in Hungary. According to the new regulation, a statement of intent has to be submitted by the asylum seekers at one of the Hungarian diplomatic missions, which made it practically impossible for asylum seekers to apply for asylum in the territory of Hungary.

In 2021, as a response to the CJEU judgment (C-78/18) which found the 2017 «Transparency of Organizations Financed from Abroad» incompatible with EU jurisprudence, a new law on the transparency of NGOs was adopted also vilifying NGOs and threatening them with administrative control carried out by the State Audit Office. In 2022, Máté Kocsis, leader of the Fidesz faction, asked the new minister responsible for secret services that sovereignty protection is needed against NGOs<sup>38</sup>. In 2022, the European Court of Human Rights delivered a judgment (Case of M.B.K and Others v. Hungary) in the case of a family who was detained in the transit zone in 2017. The Court found that keeping an Afghan family for more than 200 days in metal containers in the transit zones was unlawful detention under inhuman conditions therefore, Hungary should pay compensation to the family. The principle of non-discrimination means that the legal rules shall apply to refugees without discrimination as to race, religion, or country of origin. However, the Hungarian state later distinguished between refugees mainly coming from Afghanistan, and Syria, on the one hand, and those arriving from Ukraine, on the other, when it opened the Ukrainian border to asylum seekers while keeping the southern border closed. As Viktor Orbán stated: «migrants are stopped. Refugees can get all the help»<sup>39</sup>. Ukrainian nationals and their family members can travel to Hungary and apply for temporary protection («menedékes») status in Hungary. However, temporary protection is generally not requested in Hungary, as the local institutions of refugee protection were dismantled by the Hungarian state after 2015.

In the international arena, Hungary seemingly cooperates with EU institutions and international human rights mechanisms but misuses the persuasive language of human rights. The Hungarian regime acts mainly to defend its sovereignty, linking it to the protection of national identity. Using these arguments, the regime seems to be achieving its goals because, for example, changes in Hungarian refugee policy after 2015 were practically unaffected by international refugee protection, international human rights protection, or EU law. However, the Hungarian state openly violated the principle of open

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<sup>37</sup> N. Chronowski, A. Vincze, 2021.

<sup>38</sup> S. Czinkóczy, 2022.

<sup>39</sup> A. Coakley, 2022.

borders, the prohibition of discrimination, and the prohibition of inhuman treatment - by first starving and illegally detaining refugees in the transit zones, and later by closing its southern borders before asylum seekers and applying a racist double standard towards refugees.

Although the general view is that EU law due to its supranational nature is more effective than international law, after the outbreak of the Syrian refugee crisis in 2015, the EU asylum law and policy have also proved its ineffectiveness against arguments based on sovereignty and reinterpretation of the human rights and refugee protection framework. Not only EU law but also international law and global justice, in general, require the principle of open borders and the principle of non-discrimination and prohibition of the inhuman treatment of refugees. However, these basic principles could also be violated by an EU member state pursuing a realist politics, as shown by what happened after 2015, without serious consequences.

The European Union, for example, in its disputes with the Hungarian system, could act more effectively if it took the view that the Hungarian government's arguments and populist politics are not about protecting the country's values and national identity but about the government's momentary interests. International organizations could argue that the international protection of human rights and the foundations of global justice cannot be overridden by state politics that does not consistently follow moral values. This would require international organizations to return to purely moral arguments in these debates, and the entire spectrum of their own policies should be determined by the principles of global constitutionalism.

### ***Conclusion***

In this article I argued, using Hungary as an example, that populism is not an ideology, but rather an argumentative strategy used by populist politicians to stay in power and secure public support. I argued that populism does not necessarily have a thin ideological content, even if it uses the values of ideologies: a populist regime can pursue purely realist politics. The article shows how the Hungarian populist regime uses exclusive ethnic nationalism and otherisation, and how its actions against formerly autonomous institutions are based on anti-establishment attitudes, anti-pluralism and exclusionary identity.

The Hungarian example shows that the populist narrative using exclusive ethnic nationalism can undermine or eradicate the plural political community based on inclusive values on which the institutions of constitutional democracy are built. The Hungarian case also demonstrates, that the changing construction of national identity, the demand for populism using nationalist rhetoric and the populist politicians who ride its waves with varying degrees of skill, partly influenced by global, regional and local social processes,

threaten human rights, the rule of law, constitutional institutions, strengthen anti-Europeanism and weaken solidarity within society.

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