# QRP

## Quarterly on Refugee Problems – AWR Bulletin

**QRP**

# EDITORIAL

# Answering the Call of History:
# It's the Migration Policy [1]

*Ralf Roßkopf[2]*

The sheer facts are alarming: A record high of 108.4 million forcibly displaced worldwide, 29.4 million refugees under UNHCR's protection, 5.7 million fleeing Ukraine in just one year, becoming the largest forced displacement crisis in terms of magnitude and velocity in 2022 (UNCHR 2023: 7-8). Neither with respect to the war in the Ukraine nor in general is there any indication that things might change to the better, soon. Quite the opposite:

> "New and ongoing conflicts continue to force people to flee in 2023. During 2023, more than 1 million people have been forced to flee their homes in Somalia due to conflict, floods and drought. In April, conflict erupted between competing armed forces in Sudan and is already having devastating effects on the civilian population, including the over 3.5 million internally displaced Sudanese and 1.1 million refugees hosted in the country. At least 190 children have been killed in the fighting, and the number of acutely food insecure people in the country is estimated to be set to increase by more than 2 million in the next three to six months. As of end-May 2023, an estimated 1.2 million people had been newly displaced within the country and a further 378,300 had fled to neighbouring countries. By the end of May 2023, the number of people forcibly displaced within Myanmar increased by 331,600 from the end of 2022 to stand at 1.8 million,38 while the number of internally displaced people in the Democratic Republic of the Congo climbed to 6.2 million.39 UNHCR's global estimates of refugees and asylum-seekers reached 35.4 million by the end of May 2023." (UNHCR, 2023: 10 [footnotes omitted]).

The number of irregular border crossings at EU's external borders rose by 18% in the first eight months of 2023, the highest turnout since 2016, which was primarily due to an almost doubling of arrivals through the Central Mediterranean route (+96%), correspondingly raising the number of dead and missing migrants to a new high since 2016, too (2,749 as of Sept. 15) (IOM, 2023). The return of refugees, while remaining a durable solution for some, is outnumbered by new refugees by the factor of 22, leading to protracted displacement in most cases (UNHCR, 2023).

Countries having been envisioned being partners in the European Union's external migration policies, disqualify by experiencing coups d'état in the Sahel (since 2020 two in Mali, two in Burkino Faso, one in Guinea, one in Niger) (Haidara, 2023) or by their authoritarian or failing State character in Northern Africa, leading to maltreatment respectively ruthless detention and pushback measures against migrants (Ben Bouazza, 2023; Human Rights Council, 2023).

Leaving receiving States with few morally and legally indisputable options to actually "manage" arrivals, this plays into the hands of antidemocratic movements propagating

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accelerated asylum procedures at the border if not externalization (cf. in this issue Hoffmann, H. [2023]. Selected Developments related to Migration, pp. 299-315).

Fear of an uncontrolled influx of migrants has been the fuel for the rise of right-wing nationalist parties and governments in Europe for a decade – long enough to reshape institutions and the perception of large parts of the youth (cf. in this issue Franz, B. [2023]. Youth Extremism in Budapest, pp. 225-250) but also to an overall attack on the institutions of free movement within the EU and humanitarian protection at its borders under the cloak of combating the COVID-19 (cf. in this issue Friedery, R. [2023]. New Crisis, same Attitude, pp. 250-265). Again and again, it is up to the European courts to protect fundamental freedoms and rights under European law and to correct violations to some extent (cf. in this issue Hofmann, H. [2023]. European Jurisdiction on Refugee and Complementary Protection, pp. 283-299). However, the massiveness and multiple inconsequentiality of violations pose a real danger to the idea of a European area of freedom and the rule of law – and do not herald anything good for the coming elections at national and European levels.

This makes it all the more important to rely on scientific findings, e.g. that the creation of resources and resilience in countries of origin and first refuge not only is a humanitarian imperative but has all the potential to incentivize remaining in the region and to counteract onward migration (cf. in this issue Adem, A.M. et al. [2023]. Forced Migration and Resilience in the EHAGL Region, pp. 200-224) – and that accepting migration as a factum by receiving societies could lead to a win when proactive integration measures are taken (cf. in this issue Anderson, P. [2023]. "Give me a chance!", pp. 266-282).

It remains to be seen whether the necessary unity which EU Commission President Ursula von der Leyen invoked in her State of the Union address "Answering the Call of History" on 13.9.2023 (European Commission, 2023) will lead to a success of the New Pact on Migration and a reform of European refugee policy and law that lives up to challenges, potentials and morals alike.

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# RESEARCH ARTICLES

# Forced Migration and Resilience in the EHAGL Region: Resource Caravans and Passageways of Urban Refugees in Addis Ababa [1]

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## Abstract

*The paper presents the plight of cross-border displacement in the East, Horn of Africa and Great Lakes (EHAGL) region by exploring the resilience experience of adult refugees living in Addis Ababa. The study is based on resource caravans and passageways principles of the COR theory and defining resilience as a process of harnessing resources to sustain well-being. The study followed a qualitative research approach and primary data were collected from in-depth interviews and focused group discussions (FGDs) with urban refugees, Key Information Interviews (KIIs) with humanitarian professionals, participant observation of neighbourhoods and refugee organizations. Primary data were triangulated by review of relevant documents. The collected data were analysed thematically using the framework method. Results of the study indicate that refugees left their countries to escape state repression and conflict. While transiting, refugees cited insecurity, political instability, conflict, family separation and deportation as the reasons behind their move to Ethiopia. Forced military recruitment and repatriation, extortion, discrimination, fear of attack and cost of living are additional resource loss factors. Migration from refugee camps in different parts of Ethiopia to Addis Ababa was driven by intrastate conflict, inter-communal violence, poor living conditions in and around the camps and the perceived opportunities and resources of the city. Albeit the well-being of refugees in the city is influenced by a range of resources, diaspora support, particularly among Eritrean refugees, is the most consequential resource mobilized by the refugees to build their resilience. This has turned the city into a passageway of refugee resilience and emigration. Yet, efforts to build refugee resilience in the city are challenged by a number of barriers such as the difficulty of obtaining work licenses and permits, organizational constraints, language barriers, and refugee misconceptions. Addressing severe resource loss factors of resilience and well-being in origin, transit and destination countries of the EHAGL region is sine qua non to prevent and manage the scourge of forced migration in the region.*

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## *Key Words:*

*Addis Ababa, EHAGL, forced migration, resource caravans and passageways, refugee resilience*

## 1.  Introduction

Refugees and asylum seekers flee their places seeking a place of safety and sanctuary from an imminent threat to their well-being (d'Orsi, 2015). They face persecution, violence, flight, and exile (Hien, 1993). Their life challenges unfold across different geographies encompassing their homeland and country of exile (Wessels, 2014). This long process represents a significant transition that has deleterious effect on their life (Shakespeare-Finch & Wickham, 2009). Moreover, the prolonged nature of cross-border displacement obliges them to be in a refugee like situation for the remainder of their life (Devictor & Do, 2017). In response, refugees in a Protracted Refugee Situation (PRS) endeavour to weather the pre-migration trauma and the post-migration difficulties they often face in their life through the mobilization of resources they have at their disposal (Schweitzer, et al., 2007; Khawaja et al., 2008; Renkens et al., 2022).

Despite the presence of enormous resource and resilience among the refugee population, the coverage of mental health problems such as post-traumatic stress disorder, anxiety disorders, and depression within the refugee population have overshadowed the research on the well-being of refugees as the substantial chunk of the literature have been focusing mainly on the clinical and trauma based perspectives of the displaced (Thomas et al., 2011; Kiteki, 2016; Issari et al., 2021). In relative terms, there is a paucity of research that puts refugees at the center by emphasizing their experience of resilience, strength and active struggles (Lavie-Ajayi & Slonim-Nevo, 2017; Tippens, 2019). Despite the Global South hosting the overwhelming majority of the world's refugee population (Gorlic, 2022), available studies have not treated the issue of refugee resilience in both urban and developing world context from the perspective of resource caravans and passageways (e.g. see Sigamoney, 2018; Ikanda, 2018; Tippens, 2019; Yotebieng et al., 2019). In addition, a review of previous studies on refugees in Addis Ababa warrants a research on the topic of refugee resilience. Thus, the purpose of this paper is to address these gaps in the context of the developing world by giving weight to the refugees' experience of resource loss and gain in the course of the cross-border displacement process.

This study intends to use the Conservation of Resources (COR) Theory principles of resource caravans and passageways to explore the phenomenon of refugee resilience. Resilience is a complex multidisciplinary construct that has been defined in various ways so what it means literally depends on how it is defined (Southwick et al., 2014; Wu & Ying, 2021). In the context of this study, resilience has been defined as a process of harnessing resources to sustain well-being (Panter-Brick & Leckman, 2013). This definition is vital to understand the construct of resilience in the context of cross-border forced migration in three different ways. First, the word process brings dynamism to the application of resilience in the context of forced migration by unfolding it over the course of displacement that goes far beyond just an attribute and a capacity. Second, the word resource enables to understand the most important resources of well-being among vulnerable groups like refugees. Third, the use of well-being goes beyond the narrower version of resilience as health and absence of pathology. At this juncture, it is important

to bring how the two central concepts of resources and well-being, which make up the notion of resilience in the context of the study, are used. Well-being is defined from a eudaimonic point of view as the fulfilment of a person's functioning in terms of satisfying one's needs, goals and demands (Ryan & Deci, 2001; Ryan et al., 2008). Resources refer to the refugees' social, cultural, personal and material means of securing their well-being in the process of cross-border displacement (Ryan et al., 2008). The presence of at least one stressor is a prerequisite to the discussion of resilience (Ungar, 2011). The stressors under the realm of the study refer to general adverse circumstances that include suffering and difficulty that are related with hardship, trauma and daily stressors spanning the pre-migration, transit and post migration phases of displacement (Fletcher & Sarkar, 2013).

The COR theory's concepts of 'resource caravans' and 'passageways' are well suited to explore the aforementioned version of resilience. According to the theory, people are protective of what they value as essentials and when these resources are lost, threatened to be lost or when the investments on them fails, they react in different ways. The tendency of these resources to either aggregate or fail to aggregate and to not exist in isolation is known as resource caravans (Hobfoll, 2014). These resource caravans exist and persist in the context of the environment; hence, giving emphasis to the environmental context, which has been metaphorised as resource caravan passageways, should be vital in dealing with trauma response. In COR theory, passageways refer to the environmental conditions that facilitate the change of resources either positively or negatively (Halbesleben et al., 2014). Looking at refugee resilience through the lens of resource caravans and passageways offers a three pronged advantage. First, the environment is given a weight in understanding refugees' pathways of resilience building. Second, it can help to grasp cultural nuances of resilience building. Third, it acknowledges refugees as actors that try to negotiate and navigate their way out of the predicaments they find themselves in. Thus, the concepts of resource caravans and passageways have the ability to characterize the phenomenon of resilience among refugees as they grapple with different stressors, try to adjust their footing in life, and even thrive. By doing so, the paper provides an insight into issues and general problems of forced displacement in Africa by taking the East, Horn of Africa and the Great Lakes Region (EHAGL) in general and Ethiopia in particular as corridors of cross-border displacement. The main objective of the article is to explore the resilience experience of refugees living in Addis Ababa from the perspective of resource caravans and passageways theoretical perspective.

The study adopts the broader refugee definition of the 1969 OAU convention governing the specific aspects of the refugee problem in Africa (Arboleda, 1991). Accordingly, refugees are people who are outside their country of nationality and are unable or unwilling to avail themselves to the protection of that country due to a well-founded fear of prosecution for reasons of race, religion, nationality, membership of a particular social group, political opinion, external aggression, occupation, foreign domination as well as events seriously disturbing in either part or the whole of their country of origin or nationality (OAU, 1969).

## 2.    Research Methods

### 2.1    Research Setting

The study is conducted considering the EHAGL region as a case in point. The EHAGL region is composed of three sub regions within East and Central Africa namely the Great Lakes Region, the East African region and the Horn of Africa. The region is regarded as a major hotspot of forced migration and it has shown a steady rise in its number of refugees and asylum seekers over the last decade (see figure 2). As a result, countries in the region have been the source, transit and destination countries of refugees (see figure 1). The region takes the mantle in hosting the largest number of refugees and asylum seekers in Africa. Within the region, Addis Ababa is an important refugee spot city as it is currently hosting more than seventy thousand refugees coming from twenty six different nations with Eritreans and Somalis being the two largest urban refugee groups (Betts, 2019; RRS, 2022). It is therefore a crucial city for conducting a study on the phenomenon of refugee resilience in its wider scope. The study used sefers (neighbourhoods) and operational offices of refugee organizations as primary field sites as they are the two main locations in the city where refugees gather in significant numbers.

Figure 1 below shows the overall situation of cross-border displacement in the EHAGL region as of February 2023 (UNHCR, 2023). As shown there, except Eritrea, which is a significantly net refugee sending country, all other countries are source, transit and/or destination courtiers of refugees in the region.
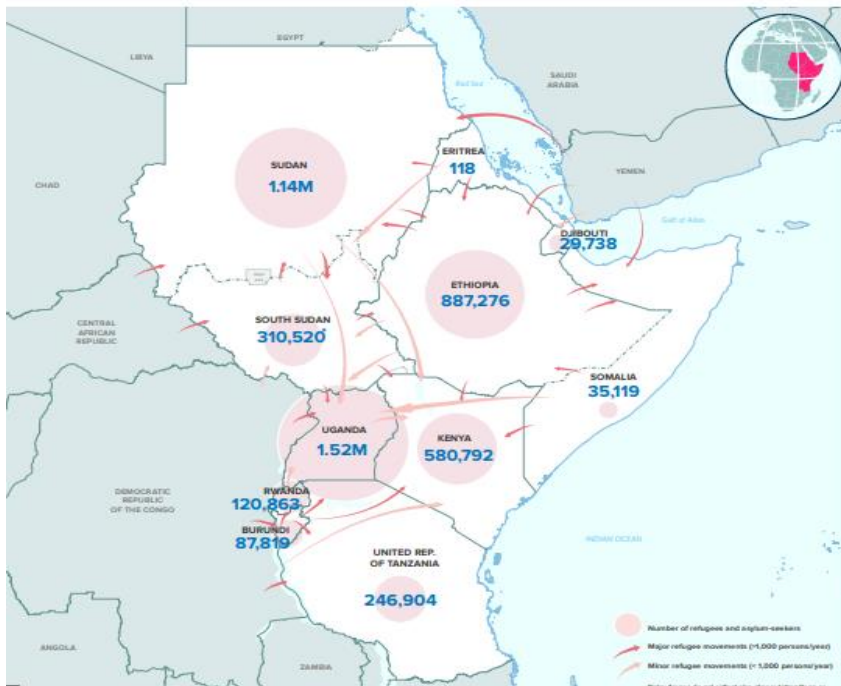


*Figure 1 Total no. of refugees and asylum-seekers in the EHAGL region by country of Asylum as of 28 February 2023 (Source UNHCR Regional bureau for East, Horn of Africa and the Great Lakes)*

Figure 2 below also indicates the ten years (2013- 2023) annual number of refugees and asylum seekers in the region. As shown in the figure, there is a steady increase in the number of refugees and asylum seekers showing that cross-border displacement has become a norm of the region.

**ANNUAL TREND OF DISPLACEMENT**

| 2013 to 2023 |       (in millions)

4.63 M 4.57 M 4.56 M 4.69 M   4.93 M 4.92 M 4.96 M

3.51 M

2.46 M 2.89 M

1.93 M

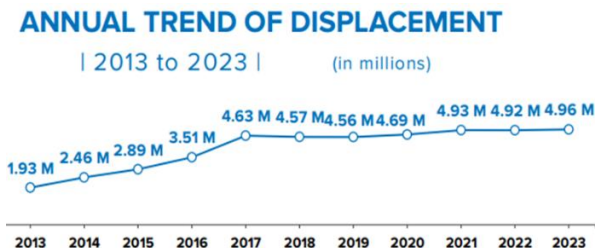2013  2014  2015  2016  2017  2018  2019  2020  2021  2022  2023

*Figure 2 Annual trend of cross-border displacement in the EHAGL region (2013-2023) (Source UNHCR Regional bureau for East, Horn of Africa and the Great Lakes)*

## 2.2    Data Collection Tools and Procedures

Data were collected using in-depth interviews (n=46), focus group discussion (FGDs) with Eritrean refugees (n=3), key informant interviews (KIIs) with humanitarian and government officials (n=6), participant observation of sefers (neighbourhoods) and secondary data including proclamations and websites of refugee organizations such as UNHCR, DICAC, DRC, NRC and ZOA. The study was conducted in two phases. First, contact was made with refugee focusing governmental and non-governmental organizations in Addis Ababa to recruit potential research participants. Then, empirical qualitative data were collected using the aforementioned data collection tools. The in-depth interviewees were selected with the intention of maintaining the heterogeneity of participants. FGDs were conducted only with Eritrean refugees since it was difficult to gather other refugees as they are either small in number or difficult to bring them in one setting. In addition, the extremely large number of Eritrean refugees residing in Addis Ababa also necessitated the deployment of FGD in their case in order to involve them in large numbers within a reasonable period of time. FGD participants were recruited by offering incentives and through local networks and contacts. Two of the FGDs had five respondents whereas the third one had six participants.

To collect the qualitative data, three research assistants (Eritreans refugees with previous experience of working in humanitarian situations) were recruited and inducted on the purpose, methods and modalities of the data collection. In order to incorporate the views of humanitarian professionals and practitioners, key informant interviews were conducted with two government officials and six representatives of NGOs. Participant observation in different sefers of Addis Ababa was also conducted in order to understand the whereabouts of refugees in the city and the resources they have at their disposal for sustaining their well-being. The observation has focused on observing refugee concentrated sefers, visiting refugee owned and cultural business establishments and restaurants as well as participating in cultural activities carried out by the refugee communities in the city. To this end, repeated transect walks have been made across the sefers. While conducting the participant observation, closer attention was made to the conversation among refugees as well as exchanges carried out with non-refugee inhabitants of the city. Notes were taken during the field observation

sessions and compiled later on to form ethnographic field notes of the study. Interviews were conducted in English, Amharic, Tigrigna, Arabic, Nuer, and Kiswahili languages with interpreters hired to cater for refugees who preferred to be interviewed in their mother tongue.

This ethnographic study is part of a larger research project that was conducted between June 2022 and December 2023. Prior to the commencement of the data gathering stage, ethical clearance of the study was issued by the review committee of the Centre for African and Asian Studies in the Addis Ababa University. The interpreters were inducted about the purpose and methods of the study prior to data collection. All interviewees were recorded on a portable device and transcribed verbatim. Coded names were assigned to the actual names of the study participants in order to ensure confidentiality. A consent script was read for the participants and their verbal consent was obtained before each of the data collection session. Since the study investigates the life experience of refugees in Addis Ababa, refugees were sceptical and fearful initially when they were approached to be involved in the study. However, attempt was made to win back their trust by establishing gradual and repeated contact with them. To that end, participant observation enabled the data collector to get close to the day to day life of the refugees in the city.

## 2.3   Data Analysis

The study conducted a thematic framework analysis for analysing and interpreting observation notes, interview scripts as well as discussion and relevant secondary data. According to Gale et al. (2013), this method is helpful for identifying commonalities and differences while analysing qualitative data as well as for establishing associations between different parts of the data to elucidate descriptive and/or explanatory conclusions that band together around themes. The seven steps of conducting the thematic framework analysis include transcription, familiarizing oneself with the data, coding, developing a working analytical framework, applying the analytical framework, charting the data into the framework matrix and interpreting the data. The study used the N Vivo 9 qualitative data analysis software which can assist with data management and analysis.

## 3.   Findings

### 3.1   Resource Loss Factors at the Time of Initial Displacement

Literature shows that pervasive resource loss is the prime reason for cross-border displacement of people. When refugees talked about the life they had in their countries of origin, they pointed out a number of nuanced adversities that threatened the resources they had and forced them to flee their homeland. Some of these resource loss factors include political repression, state fragility, interethnic civil war and multipartite civil war.

All Eritrean FGD participants underscored  the manner in which their life back home had been compromised severely as a result of the prevailing repressive political environment that exists in their country, the most notable form of it being the presence of "me 'ekebi zeyblu hagerawi agelglot" (indefinite mandatory national service) that was levied on every adult citizen of the country. According to the FGD participants, the high degree of state censorship that existed in the country permeated different spheres of life beyond

the military. This has prevented the majority of Eritreans from achieving their personal dreams and aspirations. This total control of the state bears down on ordinary citizens of the country in the form of acts of human rights violations and crowding out of political and economic spaces making them unsafe and unable to pursue their life goals. The state's domination in the political and economic sectors of the country starved off their participation in these domains of life. The human right violations range from the violation of basic rights like freedom of expression and movement to extreme forms of rights violation like arbitrary arrests, detention without trial and persecution on religious and political grounds. A woman Eritrean refugee disclosed how hopelessness about her future life fuelled her displacement as she was transfixed by the unchanging political condition of their country for as long as she could ever remember it in their life. Likewise an interviewee from Burundi, Bujumbura fled his country in 2011 after witnessing the killing of his parents due to the violence committed by government security forces. This shows how political violence persisted to exist in the country long after the presumed ending of the civil war in 2005.

Another cause for displacement is insecurity and marginalization amidst state fragility in the context of Somalia. In this regard, interviewed Somalia refugees discussed how their life was affected as a result of the prevailing insecurities in different parts of their country. Two interviewees from the Somali Bantu community narrated how they had to initially flee from Kismayo to Mogadishu and then leave Somalia as their life was put in danger when they had to endure attacks and persecutions targeting their community amidst the volatile security situation of their country. Another twenty-one years old former Mogadishu resident said the al-shabab threatened the life of his mother for working with the federal government's ministry of health on the polio eradication programme. A twenty-five years old former inhabitant of Gulgudud region in the Galmudug state of Somalia close to Ethiopia talked about how the unpredictable security situation of the town made him runaway crossing the border of Ethiopia.

The third identified cause of displacement is interethnic conflict. Data obtained from South Sudanese interviewees indicated that the civil war they experienced in their country was ethnic in nature as belligerents on the warring sides were coalescing along ethnic lines. Targeted attacks against perceived targets of opposing ethnic communities were common occurrence after the outbreak of the war. South Sudanese refugees interviewed in the study recounted how their experience of violence in the aftermath of the war casted a shadow on their life. They narrated experiencing traumatic events like loss of loved ones, gunshot wounds, being caught up in crossfire and the danger of being abducted by militant groups while they were living inside their country. The refugees from Congo cited the civil war in the Eastern part of their country as the underlying reason that made them leave their country. One of the Congolese refugees, for example, narrated how he had to flee his home town of Goma in North Kivu following the eruption of Mount Nyamulagira in 2001 towards the direction of Bukavu in South Kivu only to be displaced again into Rwanda as a result of the fight that ensued between the government soldiers and rebel groups that operate in eastern DRC. Two of the Burundian refugees attributed their forced departure to the civil war that engulfed their country from 1993-2005 as they narrated experiencing the loss of loved ones in the course of the gruesome civil war that overwhelmed their country.

The involvement of multiple countries in the conflict in Yemen and Syria is another cause for the displacement of Yemeni and Syrians. Regarding this matter, Yemeni refugees emphasized the eruption of a multipartite civil war between the Yemeni government and the Houthi fighters as the crisis that turned their lives upside down. They were exposed to different traumatic events that made them flee their country. A thirty-three years old Yemeni former resident of Sana'a explained how she fled from Yemen amidst the raging war as follows:

> "Where I lived in Sana'a, there were mountains and the Houthi rebels mounted a missile a top of the mountains. In return, Saudi Arabia blanket bombed in the city to strike the missiles. We had to endure witnessing the horrible loss of life and destruction of property that was happening as result. I felt completely unsafe. That is the time when I decided to leave Sana'a and Yemen."

Likewise, a forty-one years old Syrian refugee described the horrible effects of the Syrian civil war on the lives of Syrians to explain why they were forced to leave their country.

> "We used to have a good life, but our house was destroyed as a result of the war. Our shop was destroyed and we lost everything at once. We were lucky to leave Syria alive. Our life was the only thing we could salvage."

Refugees also lost their resources while they were on the journey to flee their country. While fleeing their home, they faced multiple risks including physical, psychological, economic, social and cultural ones. All these risks in one way or another have deteriorated the available resources of migrants. In this regard, Eritrean FGD participants stated about the stress they went through as they anxiously awaited the day they left their country. They pointed out the importance of paying brokers in securing a safer route out of the country. Eritrean refugees attempting to escape alone have a high chance of facing different risks including getting caught, facing attacks by wild animals or becoming causality of the government's shoot to kill policy along the country's border areas. The story of an Eritrean refugee who had been a victim of rape and unwanted pregnancy and ended up being caught inside Eritrea as she was fleeing to Ethiopia illustrates the incredible risk of fleeing Eritrea, and is an example of the risk that migrants face in their journey to flee their country. She had to wither time in prison for her crime of escaping from Eritrea and stigma surrounding her unwanted pregnancy before succeeding in her second attempt to flee to Ethiopia. Similarly, South Sudanese, Congolese, and Burundian refugees mentioned about the very long treks they had to make while leaving their countries often facing exhaustion, hunger and wild animal attacks. The Somali refugees experienced making long and arduous journeys as they were exiting their country. Some had to pay exorbitant prices to embark on a boat that took them out of Mogadishu. All these risks of refugees resulted in a loss of physical, social, psychological and economical resources. In such circumstances, refugees had to rely on the resources at their disposal for the different risks they took and investments they made while they were leaving their countries.

The Syrian and Yemeni refugees spoke about investing whatever asset they had at their hand to finance the journey of leaving their respective countries. For example, information collected from a Syrian refugee revealed that he left his country by selling his properties with small amount of money just to rent a vehicle that eventually took his family out of Syria. Another Syrian interviewee mentioned that, as the war was unfolding in the country, he sold his belongings to catch the final flight departing from Syria to

Sudan. The Yemeni informants also mentioned the investments they had to make while leaving their country. An interviewed Yemeni refugee recounted how he invested his lifelong saving to finance his flight out of Aden to Djibouti when he escaped the conflict in his country. Previous investment the refugees made on social ties helped some of them in securing a pathway to Ethiopia. In this respect, a Somali refugee disclosed about the role of chain migration in his journey to Ethiopia as he and his siblings came to the country following the footsteps of their mother and a friend of their mother's arranged their journey to Ethiopia.

Despite the resource loss and different kinds of risks that refugees endured and the investments they made while leaving their countries, they all agreed, they were under strained resource loss of displacement. This demonstrates the maxim "resilience as a process of harnessing resources to sustain well-being" at play during the initial phase of their cross-border displacement.

## 3.2    Situating Resource during Second time Displacement/Migration

Considerable numbers of refugees and asylum seekers pointed out that they had settled and started living in other countries after leaving their respective countries of origin. For some refugees, it took only a few days to leave those countries while others stayed for quite a long time. Most were forced to flee again while some made a conscious decision of migrating to Ethiopia hoping to leverage the perceived resource they would get by moving to the country.

### 3.2.1  Pervasive Resource Loss

Refugees can be prone to multiple displacements in their life time if they experienced a situation that put their well-being in danger. In the study, there were refugees who were forced to leave the countries they were seeking asylum and flee to Ethiopia. Their resource was compromised to a degree that put their life in harm's way when they were living in these countries. Congolese and Burundian refugee interviewees who arrived to Ethiopia after passing through and staying in the East African countries of Rwanda, Tanzania, Uganda and Kenya mentioned how they felt unsafe while they were in those countries and had to move further north into Ethiopia. A thirty-three years old Congolese refugee said he decided to leave Rwanda because he felt threatened as a result of the tense relationship that existed between the governments of Rwanda and the Congo despite being in a country of people who share common cultural and linguistic features with him. Another thirty-two years old Congolese refugee mentioned that powerful people in Uganda who supported the March 23 Movement (M23) forced him to back and even work with the rebel group simply because he hailed from the Tutsi ethnic group that the rebel group is "allegedly" fighting for. He reported that

> "They obliged you to fight for your tribe just because you hail from the same tribe they belong to despite the fact that you are personally an ardent proponent of peace and non-violence".

He did not want to take the risk of staying there and decided to leave Uganda.

Interviewed Burundian refugees also stated feeling threatened when they were in Tanzania and Kenya. They attributed the sense of fear and anxiety they were having in those countries to the danger of being attacked and forcibly returned to Burundi by agents and supporters of the Burundian government. The situation a forty year old Burundian refugee found himself in when he was staying in those countries can attest to

this claim. When he was staying in Tanzania, he, his wife and their two children had been forcefully repatriated to Burundi from Mtabila refugee camp in Kigoma, western Tanzania. This is in the aftermath of a forceful closure and destruction of the camp following the agreement that was reached by the government of Tanzania and Burundi in December 2012. Haunted by his childhood trauma and hearing the imprisonment and murder of fellow returnees in Burundi, it took him and others only a day to embark on a trek to Tanzania once again as it was the closest and only way they knew out of their supposed home country. But their intention during the second time was not to stay in Tanzania because of what had already happened to them. Thus, he said they first went to Kasulu, a Tanzanian town close to Burundi. From there, they took a bus to Mwanza, in Northern Tanzania, before eventually crossing the Kenyan border via the Sirari-Isebenya border crossing. He said he stayed in Kenya for one year applying to get a refugee status and decided to cross the border of Ethiopia when he realized that he was no longer safe there because of the danger posed by supporters and spies of the then Burundian government.

A forty-one year old Bantu Somali refugee on his part narrated about how he stayed in Yemen for 8 years and managed to start a family life after exiting Somalia only for him to be displaced again from Yemen as a result of the civil war in the country forcing him to seek asylum for the second time in his life in Ethiopia. Refugees fleeing Yemen identified Mukala (South Yemen) to Bosaso (Puntlnad), Aden (South Yemen) to Berbera (Somaliland) and Aden (South Yemen) to Obock as the three routes refugees from Yemen use when crossing the Arabian Peninsula to the Horn of Africa. There are also Eritrean refugees that were in another country prior to fleeing to Ethiopia due to the adverse circumstances they experienced in Eritrea. Specifically, one Eritrean refugee explained how the outbreak of the South Sudanese civil war forced him to flee South Sudan and enter Ethiopia via Sudan after living in the country for four years.

### 3.2.2  Perceived Resource Gain

The fact that refugees leave one host country to travel to another does not mean that they cease to be considered as a refugee or simply become migrants. However, refugees still make conscious decisions about changing their choice of country of asylum based on the perceived resource they expect to gain by moving to another country. This study identified refugees who relocated from their countries of first asylum by hoping to leverage on the resources they hoped to get in Ethiopia. A thirty-three year old Yemeni refugee who was a banker and had a better life before the start of the war in Yemen had invested her saving to migrate to Egypt when the war broke out. But she did not feel welcomed in Egypt because of the visa restriction that was put on Yemeni citizens arriving in Egypt. She then decided to move to Ethiopia instead of seeking refugee status in Egypt as her parents were Yemenis of Ethiopian origin and she felt that it was better to move to Ethiopia. Another forty year old Yemeni refugee flew out of Aden with his children to Djibouti amidst the ongoing war in his country but found it convenient to move with his children to Ethiopia as they could not cope with living in Djibouti due to the expensive cost of living. Another twenty five year old Yemeni left his country by taking a boat trip from Hadramount to Bossaso in the Puntland region of Somalia and said he was not able to get any kind of support from the UNHCR despite paying $30 to get registered in Hargeisa, which finally made him decide to move to Ethiopia.

A thirty-three year old Congolese, who identified himself as a banyamulenge Tutsi, remarked that he was jailed on suspicion of being a member of al-shabab when he was both in Tanzania and Kenya despite holding a Congolese ID. Such kinds of mistreatments led him to think that Congolese Tutsi refugees are not welcome in those countries, which made him decide to flee to Ethiopia. When a twenty-six years old South Sudanese refugee was asked why he came to Ethiopia via Sudan, he explained that he was cut off from his family members who were residing in Nasir, a town close to the Ethiopian side of the border due to the ongoing war. He then had to escape to Sudan and move to Ethiopia to reunite with his family who managed to reach Gambella safely. Similarly, all the participants from Syria that were interviewed in the study claimed entering into Ethiopia from Sudan in order to escape the fallouts of the political instability that had become a common occurrence of the country. An Eritrean interviewee on his part stated that Eritrean refugees who managed to save some money in their time in Israel preferred Ethiopia as one of the relocation countries to invest their savings given the extremely discriminatory Israeli immigration policy and the refusal of the Eritrean government to accept Eritrean returnees from Israel.

### 3.3 Resource and Well-being Compromise in Refugee Camps

Refugees stated that they were able to avoid some of the resource loss issues they were having in their prior setting when they started residing in the refugee camps of Ethiopia. Yet, they pointed out facing various environmental factors that forced them to leave the camps and relocate to Addis Ababa. Two slightly somewhat different range of opinions emerged when the refugees were asked how they saw the quality of life they had when they were residing in the camps. FGD participants and in-depth interview informants who were in different refugee camps prior to their arrival in Addis Ababa made reference to how the limited resources they had were further undermined due to the severe situation that existed inside the camps eventually forcing them to move to Addis Ababa. They complained about how their well-being was compromised as a result of the lack of adequate medical services, meagre allocation of monthly rations, limited and low paying employment, underdeveloped infrastructure, harsh climatic conditions as well as conflict and security issues that existed in and around the camps. For these refugees, the conditions were unbearable and they considered them as the main factors that made them look for every opportunity they could find to relocate to Addis Ababa. Other refugees indicated that they were willing to remain in the camps with the support they were getting from UNHCR, the World Food Programme (WFP) and other donors but they had to leave after the existing situation deteriorated and threatened their life.

Refugees in Ethiopia are allowed to remain in Addis Ababa de jure only if they originated from minority countries or are critically ill at the time of their arrival. Otherwise, refugees in Addis Ababa are expected to stay in one of the refugee camps that are sprung out in different remote areas of the country and indulge in one of the two processes of securing a city residence permit. The first choice offers a pathway of temporary relocation to Addis Ababa for camp refugees on grounds of medical treatment and physical protection. For example, a South Sudanese mother with her two children was relocated to Addis Ababa from Kule refugee camp in Gambella region, Ethiopia, after their tent was set ablaze following refugee-host community violence that already claimed the life of her brother-in-law. Another 23 year old South Sudanese refugee was relocated to Addis Ababa following the injury he sustained due to the collapse of an illegal gold

mining that claimed the life of two of his co-workers on the spot in an area close to Tsor refugee camp of the Benishangul-Gumuz region, Ethiopia. He said he was engaged in such kind of illegal activity in order to support the meagre and untimely food ration they were getting at the camp. There were also Eritrean, Somali, Congolese and Burundian refugee participants who were relocated to Addis Ababa because of the life threatening health situation they had when they were in different refugee camps. The second pathway of urban relocation is through the Out of Camp (OCP) scheme of relocation to urban areas for refugees that can support themselves and provide a security guarantor for staying in the city. A 27 years old blind Eritrean refugee narrates how he managed to relocate to Addis Ababa from Adi-Harush refugee camp in Tigray through the OCP in the following manner:

> "After arriving in Adi-Harush camp, I stayed there for two months. There was a girl who helped me in terms of maintaining my hygiene and doing my laundry. I was with her for two months. When she left to Addis Ababa to pursue her process to go abroad through marriage, I did not know anyone that could take care of me. On her own initiative, she said she would take care of me and I came to Addis to be with her."

Initially, this urban relocation scheme was offered only for Eritrean refugees but it has now been extended for refugees of other countries. However, Eritrean refugees still remain as the main beneficiaries of this arrangement. An Ethiopian humanitarian professional working for the Refugee and Returnee Services (RRS) attributed this to the three advantages Eritrean and to some extent Somali refugees have over the other refugees in Addis Ababa. First, the law was initially applied only for Eritrean refugees and that has paved the way for them to be in Addis Ababa in large numbers. Second, the fact that the culture of the two communities is prevalent in the capital city motivates them to relocate to Addis Ababa. Most importantly, they are likely to get financial support from relatives and family members abroad and this entices them to relocate to the city of Addis Ababa through the OCP and pursue their dreams.

Nevertheless, there were Eritrean refugees that had been relocated to the city on their own without adhering to these working principles on the ground. For instance, an interviewed Eritrean refugee explained how he moved straight from the border to Addis Ababa when he arrived in Ethiopia and started working at a barbershop that was owned by his fellow countryman in order to save money before returning back to the camp to attain registration and residence permit. He eventually chose to return back to the city after securing only his registration even if it was illegal to be in the city without the residence permit. He justified his decision to move back to Addis Ababa because of the difficult living conditions and bureaucracy he observed when he was in Adi-Harush refugee camp. The relatively better living condition and work opportunity is also the reason for his relocation to Addis Ababa. The two years long armed conflict in northern Ethiopia that took place between November 2020 and 2022 also saw an influx of Eritrean refugees who were residing mainly in the four refugee camps that were located in Tigray region of Ethiopia. In this regard, an interviewed Eritrean refugee recounted the moment the war made its way inside the Adi-Harush refugee camp as follows:

> "Fighting erupted at 10:00 in the morning. Soon, mortars began landing in the middle of the camp. Some people got hit. There was a child who was called wedi keshi [the son of a priest]. He is about ten or eleven years. When he got hit, he died instantly. His sister was hit as well. An infant who was their neighbour also got hit. He was about six months old. Houses numbering three to four were hit with the fractures of the mortar."

Seeing the deteriorating condition at the camp in the days and months following the war and interruption of important services including food aid, he had no choice but to leave the conflict zone. Thus, he went to a higher ground to beat the fizzling mobile network and managed to contact his uncle in Canada who sent him money to finance his journey to Addis Ababa. What followed was his trip to Gondar with his friend where they accessed money and embarked on their journey to Addis Ababa. As soon as he arrived, he was received by his cousin who already managed to leave to Germany at the time of the interview. The study did not find Somali refugees that relocated to the city on their own. However, conversations with members of the host community revealed an existing trend of unregistered Somali citizens coming from Somalia and spending a few days in one of the different pensions that are sprung out in the Bole Mikael sefer of Addis Ababa before embarking on another journey that takes them out of the city in another direction in what purportedly could be construed as act of illegal human trafficking and smuggling that might be taking place in the area.

## 3.4.    Refugee Resilience in Addis Ababa

### 3.4.1. Opportunities of Refugee Resilience in Addis Ababa

Cities in the developing world are increasingly becoming important passageways that shape the well-being and resilience of refugees. They provide refugees the opportunity to dwell on their social, cultural and personal resources in their own unique way. In the course of the study, observation was made about how the life of refugees in Addis Ababa is influenced by the procession of resources they possessed.

- *Social Resources*

Social support, albeit varied in its intensity, is one of the refugee resource pools that dictated how refugees lead their life in Addis Ababa. Discussants and participants from the refugee community claimed receiving different forms of social support during their stay in the city. However, the act of receiving remittances was significantly recurring among Eritrean participants. In fact, the existence of a sizable number of unemployed Eritrean refugees who were able to live in both metropolitan and suburban parts of the city was evidence of the influence of remittances within the community. Eritrean refugees specifically discussed how their fellow countrymen and women immigrated to other countries with the financial and informational assistance, and how that could one day enable their migration dreams to come to true. A case in point is a testimony of a twenty-four years old Eritrean woman. She explained how the financial support she received from her relatives abroad was crucial for covering her daily cost of living in Addis Ababa. She also remarked how her cousin and former roommate was able to migrate illegally to Uganda through Kenya thanks to the financial support from their relatives living in Europe. She never put the idea of migrating to another country off the table as well. A forty-two years old Eritrean refugee on his part identified the route to Libya and Uganda as the most common illegal route for Eritreans leaving Ethiopia. He said he was pleading with friends and relatives abroad to help him relocate out of Ethiopia by any means, as he believed that he had a slim chance of relocating abroad through the resettlement program. Eritrean participants identified migration to Canada through the Group of 5 (G5) immigration process and migration to other Western countries through marriage and family reunification as the two common legal migratory pathways of their fellows in Ethiopia. The group of five (G5) is a process where 5 or more

Canadian citizens or permanent residents arrange to sponsor a refugee living abroad to go to Canada. The involvement of Eritreans in costly business undertakings such as managing to invest, register and work in taxi hailing companies and opening service establishments like shops and restaurants can also indicate the importance of remittances.

In-depth interview informants from other refugee countries also mentioned getting financial support from abroad. A twenty seven year old South Sudanese refugee stressed the significance of the monthly financial assistance from his brother in the United States for paying his tuition fee at a private medical institution and pursuing his ambition of becoming a medical nurse. Another Yemeni immigrant, who was able to work at the Development and Inter-Church Aid Commission (DICAC) as a volunteer social worker, claimed that if it were not for the remittances she got from her family overseas, including her brother who had been relocated to Norway from Ethiopia, she would not be able to make ends meet. But the occurrence of the support had not been reported as recurrently as it had been reported by the Eritrean participants. One possible explanation for this could be gleaned from the way key informant interviews perceived refugees in the city in terms of the extant support they had from their respective diaspora communities. An interviewed officer at the Refugee and Returnee Services [RRS] of Ethiopia attributed the reason for the high number of Eritrean refugees and less number of other camp based refugees in Addis Ababa to the abundant support the Eritreans enjoyed from their large diaspora population. According to this informant, the less diaspora support of the other refugees had made it difficult for them to survive in Addis Ababa. As such, they mostly preferred to stay in the camps. Likewise, the response of a Congolese interviewee to the question why the majority of Congolese refugees opted to stay in the camp despite the expansion of the OCP scheme for every camp based refugee was "as far as the Banyamulenge people are concerned, it is difficult to survive on our own in the city because we do not have many people abroad which can support us".

Social resource in the form of organizational support that is provided to the refugees by GOs, IOs and NGOs is the other resource of refugee resilience available in the city. According to the Ethiopian refugee proclamation, the Refugee and Returnee Services (RRS) is the main organization that is assigned to oversee refugee related activities (FDRE House of People's Representative, 2019). Actually, the importance of RRS and the UNHCR in the life of the refugees in the city is evident from the recurrent occurrence of their names in the refugees' accounts of their life and the high number of refugee service seekers inside the liaison office compound of the two organizations at enkulal fabrica sefer of the city during data collection. Both the UNHCR and the RRS had an important place in the life of refugees as they had to be physically present in these places to access the crucial services pertaining to Refugee Status Determination [RSD], relocation, transfer, registration, protection and other similar services that are provided by the organizations.

Addis Ababa is home to a number of NGOs catering for the needs of refugees, some of which have been in the city for a long time. The three main types of assistance offered by the organizations are short-term humanitarian support, psychosocial support and long-term resilience building support. Short-term assistance, such as a monthly living allowance, medical cost coverage, the supply of edibles and hygiene kits, and temporary

shelter, was mainly directed towards meeting the immediate needs of urban vulnerable refugees. Psychosocial support, including counselling services, reconciliation programs, information sharing and referrals, language interpretation services, community centre services, and home visits, are provided to address the social and psychological needs of the refugees. Long-term organizational supports such as educational supports for refugees of different age groups, short vocational skills and awareness raising trainings, financial grants sponsoring income generating activities and scholarships, were intended to bolster the well-being and resilience of refugees over a longer period of time. These supports played a vital role particularly in supporting the life of refugees that relied on them for survival.

The other theme of social support that frequently emerged in the study was communal support, which refers to the assistance refugees received from their local community members and Ethiopians in the city. The amount of community support they had varyingly affected their well-being. Interviewees reported communal support coming from Ethiopians including the provision of a roof over their heads, giving them a little reprieve from the housing shortage that affects not just the refugees but also residents of the city. The communal support coming from their fellow compatriots, however, is the recurrent sub-theme that emerged in the data. For instance, there were refugees who had individuals receiving them when they first arrived in the city and that helped them to make a smooth transition and adaptation of life as opposed to refugees who had no one helping them. Eritrean refugees in particular invoked the blood kinship they have with Ethiopians of mixed Eritrean background and how they had used them as guarantors when they relocated to Addis Ababa and needed to get a work license for their business. Furthermore, refugees rented residential places in groups of two or more as a strategy to offset the expensive cost of housing in the city. This has helped them to reduce their expenditure in addition to providing a sort of emotional security as they were able to reside with someone who shared similar experience. Strengths drawn from intra-refugee associations were also cited as a source of communal support that the refugees had. Being both formal and informal in nature, these associations attempted to help their respective refugee communities in times of social occasions and emergencies.

- *Cultural Resources*

As cultural resources are important for improving well-being by providing information, skills, and beliefs acquired within a cultural context, people from different refugee backgrounds discussed how they used them when they try to survive and succeed in Addis Ababa. Information collected from Burundi and the Congo refugees described how they leveraged their fluency in French and Kiswahili to work at private schools and international organizations. The Somali interviewee refugees explained how they benefited financially from their part-time and full-time work as interpreters and Somali language instructors in hotels, schools and other service centres. Yemeni refugees shared their experiences of working in Yemeni and Arabic restaurants as well as in the informal perfume and frankincense trade. Similarly, refugees from Syria and Yemen revealed how they partnered with Ethiopians to open up Middle Eastern restaurants and bakeries, but this was only done by those having financial clout. The majority of the Syrian refugees cited begging as their primary source of income in Addis Ababa. In fact, at the height of their arrival in the capital, it has been normal to observe Syrian refugees begging on various traffic signal crossroads of the city. Two of the Syrian participants

reflected that they preferred earning their income doing any available job in the city. Yet, the income they could get from it would not be able to support their family needs. So, they made begging in the streets their number one choice. It might not be unusual to see members of other refugee nationals begging in the streets of the city as well. But the way the Syrians did it seemed to be in an organized and planned manner as it involves whole family members begging in different parts of the city and returning to their common residential places in the evening.

Cross-regional petty trade was also identified as the most prevalent cultural source of income by the South Sudanese participants. For example, one lady recounted her attempt of smuggling dried fish from Gambella and sell it to South Sudanese residents of Addis Ababa. Others were involved in smuggling inexpensive goods from Moyale and Jigjiga and shipping them to Addis or Gambella. The South Sudanese women also brought up their engagement in starting domestic cultural businesses such as doing hair braiding, handicrafts, and cooking as well as selling traditional South Sudanese food as a means of generating income. As the biggest refugee community in Addis Ababa, the utilization of cultural resources as a means of revenue generation was also widely observed among Eritrean refugees. In fact, it is common to find different Eritrean owned business establishments like shops and restaurants in heavily populated Eritrean sefers such as Lafto, Gofa Mebrathaile, Saris Addisu Sefer and Bole Arabsa catering for the needs of both refugees and host communities. The refugees were also keen on stressing how visiting religious sites and praying had a positive impact on their lives. Eritrean refugees, in particular, had the freedom to follow some of the banned religions back home and discussed how that has a positive impact on their well-being. In terms of learned culture, long-term city residents stated how they leveraged their knowledge of the host environment's cultural resources to enrich their well-being. In this regard, Eritrean and Somali refugees also reflected how the presence of huge Eritrean and Somali community in the city positively impacted their well-being.

▪ *Personal Resources*

Personal resource, referring to the physical and internal aspects of individual resource, has also been presented as a resource pool that had a perceived knock on effect on refugee resources, well-being and resilience. For example, Eritrean and Congolese refugees did mention how desperate women often indulge in acts of prostitution as a means of securing their livelihood. Interview and observation data showed the refugees' practice of procuring menial job employments in different organizations like refugee owned business establishments, diplomatic residences and international organizations. This could also be taken as another example in which refugees used their personal resources to secure their well-being. The hope of relocating to a third country at some point in their future life also served as an impetus that informed the day to day life of the refugees, particularly among those with high hopes of immigrating abroad.

### 3.4.2  Constraints of Refugee Resilience in Addis Ababa

Despite the tendency of perceiving refugees as resilient individuals that are capable of utilizing the resources they have at hand and maintaining their well-being, their pathway to ensuring resilience is riddled with diverse challenges. Certainly, these challenges are likely to grow particularly in the context of an urban environment that is situated in a particular context of the Global South.

- *Policy Constraints*

Various refugee stakeholders complained about various environmental constraints frustrating efforts of resilience building in the city. However, the difficulty of getting work permit and license has been identified as the main obstacle of refugee well-being in the city. Although article 26 of the current refugee proclamation grants refugees the ability to work, it falls short of fully providing them that right as it stipulates that they "may be afforded the most advantageous treatment as accorded to foreign nationals in areas permitted to foreign nationals" (FDRE House of People's Representative, 2019). According to the information collected from an Ethiopian government humanitarian official, the goal behind the refugee work right's exclusive nature was justified by the need to preserve residents' access to employment in a nation with a high rate of youth unemployment. However, refugee participants did express their dissatisfaction with the way refugee employment laws discriminated against them. In this regard, an interviewed Burundian refugee with multiple foreign language skills and a driver's license, stated that he gave up looking for work after losing the jobs he was able to secure due to lack of a work permit. He then reverted for job offers in the informal market, which pays significantly less than formal employment. Even some of the refugees who were successful in finding paying job complained about being paid less than Ethiopians who were performing the same type of work, blaming the proclamation that does not protect their employment rights as the primary culprit. Moreover, the majority of the businesses that are allowed for refugees are not those open to citizens. As a result, they must partner with Ethiopians to obtain a work permit and launch their own business and this would leave them open to claims of ownership by the licensees. In fact, the refugee participants did provide examples of extortion and loss of investment that they and their fellow business owners faced. Interviewed refugees also expressed that although government agencies like the Ministry of Labour and Skills and the Ministry of Trade in collaboration with the RRS issued work license and permit on an individual basis, this was done to a very limited number and for symbolic reasons on some special days and occasions like the celebration of the World Refugee Day. According to humanitarian professionals working in different NGOs in Addis Ababa, the delay and failure in addressing the work permit and business license had a negative effect on the resilience building projects in the city as refugees who enrolled on different trainings became disinterested after learning about the almost impossible scenario of getting a work permit and license in the end. On top of this, donors funded urban refugee projects in the city on the promise of refugee employment. Thus, when these projects failed to materialize, they took away the possibility of galvanizing funding for future projects. This led to putting a lot of burden on the refugee resilience building endeavours in the city.

The delay in drafting and enacting regulations and directives slowed the applicability of the recently enacted refugee proclamation at the lower echelons of society. This is having a ripple negative effect on both individual refugee lives and general refugee related activities of the city. Refugees reported observing employees of governmental and private service providers lacking knowledge on issues of refugee benefits, legal rights and obligations and how that had a negative effect on the well-being of refugees in the city. A number of examples were given in this matter, ranging from not willing to serve refugees due to not recognizing their ID cards to not knowing how to apply the proclamation in the context of specific scenarios.

▪ *Practical Constraints*

Institutional constraints, referring to challenges of well-being arising from core and ancillary refugee serving organizations, are other forms of constraints that limit the well-being of refugees. Most of the refugees criticized the refugee service provided by the RRS and UNHCR on a number of points. First, recipients of monthly financial assistance from the UNHCR lamented about how the assistance was even barely sufficient to cover their basic needs which puts a huge strain on their life. Second, refugees were critical of the high level of disorganization of the organizations as it led to a delay and confusion in accessing some of the vital services they get from them. They complained how the interruption and delay in the process of resettlement, Refugee Status Determination (RSD) and renewal of identification cards had a negative outcome on their well-being. Third, they were frustrated with the lack of transparency and accountability they observed in the organizations which they thought encouraged corrupt practices and made them feel helpless at times. Officers working in these organizations, on their part, put the sheer mass of Eritrean refugee service seekers in the organizations as the main challenge that overwhelmed and overstretched the already limited human, material and financial resource capacity of the organizations.

Refugees also stated that refugee resilience building projects provided by NGOs were full of short comings. First, they narrated how they were discouraged by the meagre allowance that was not even enough to cover the cost of transportation forcing them to boycott the resilience building programs that they were enrolled. Second, the start-up capital provided for venturing into private micro and small enterprise is very small which left refugees idle even after completing a certain resilience building training. Some others were grateful for the available support from these organizations but pointed to the mismatch between demand and supply as the number of NGOs that exclusively focused on urban refugees were very few in number. Officers working at refugee NGOs of the city, on the other hand, stated how they were impacted by funding cuts and resource shortages which had a knock on effect on their operation on the ground. Interviewees from different refugee NGOs also pointed out the lack of having a common urban refugee database that could serve as a refugee repository.

In addition to the policy and organizational focused limits, other environmental constraints had also come to light in the study. One is the impact of language barrier. This had to do with how their inability to communicate in the local languages affected their ability to obtain services and information. However, this particular constraint was more prevalent on those refugees that did not had a long experience of staying in the city as well as on those that had a less cultural tie with the host community. Another barrier to their well-being in the city was the propensity of some hosts to view refugees as wealthier. This has led private service providers to raise consumer prices against them compounding the already dire financial situation. Interviewee informants also indicated that the refugee situation in the city is not immune to the political, economic and social crisis that happens in the country. Some Eritrean and South Sudanese refugees, for instance, mentioned how they felt victims of mistaken identification or caught up in internal politics particularly following conflicts involving member of their ethnic kins in different parts of Ethiopia. Eritrean refugees displayed high tendency of disbelief and scepticism as they were approached for interviews and FGDs, which could be linked to the presence of a strong perception among the refugees about the presence

of Eritrean regime operatives operating inside the city clandestinely. Others specified how the high inflation rate in the country ate in to the already meagre resource of refugees and how the effect was being extremely felt particularly by vulnerable refugees who relied only on financial assistance for a living. In sum, the well-being of refugees in the city is frustrated by a number of constraints at the level of policy and practice and that is having a lot of impact on the resilience building effort of the refugees in the city.

## 4.  Discussion

This study presents a descriptive account of cross-border displacement in the Greater Horn of Africa and Great Lakes region by examining cross border displacement and the resilience experience of refugees in Addis Ababa. It uses the resource caravans and passageways corollaries under the COR theory as a lens of zooming into the phenomenon as there has been a call to focus on the resource and resilience of refugees for its implication for theory, research and practice (Issari et al., 2021; Renkens et al., 2022).

During the initial phase of displacement, each of the refugees experienced pervasive resource compromises that led them to flee their homeland. Eritreans cited the repressive political environment in their homeland as the overriding factor that forced them to flee their country. They put government repression in the form of me 'ekebi zeyblu hagerawi agelglot (indefinite military and national service), as one of the resource loss factors that led them to flee their country. The political, economic and socio-cultural domains of life in the country are under strict control of the government engendering feelings of hopelessness and pathways of cross-border displacement. Previous research puts Eritrea as one of the most repressive and among the top ten refugee source countries of the world (Ogbazghi, 2011; Hepner, 2013; Kibreab, 2016). Conflict was the common denominator of cross-border displacement for the rest of the refugees. The Somali refugees cited insecurity and fear happening amidst the decade's old protracted civil war of their country as the main reason of displacement from their homeland. Persecution against the Bantu, extortion by the al-shabab and being caught up in a raging battle against the backdrop of the intermittent civil war their country has been mired in for decades were illustrations of immediate resource loss factors that were brought up by the participants. Previous studies have shown armed conflict and its associated and recurring resource loss factors like drought, human right violations and persecution as the main drivers of displacement in Somalia (Abdi, 2004; Hammond, 2014; Odeysuge, 2020).

South Sudanese participants attributed their forced displacement to the onset of the December 2013 civil war that casted a shadow on their life. The ongoing South Sudan civil war that has begun in 2013 has produced Africa's worst refugee crisis with Uganda, Ethiopia and Sudan hosting most of the asylees (UNHCR, 2023). The Congolese refugees referred the prevailing civil conflict in the eastern part of their country as the main reason that made them run away. The literature review identifies the Congo as a source of refugees fleeing natural and man-made disasters (Amsi, 2006; Ronald, 2022). Burundians said their displacement was induced following the civil war that engulfed their country from 1993 to 2005 and the continued state repression and violence that haunted them afterwards. Burundi had a notorious history of civil war and political violence that led to the outflow of refugees from its borders (Schwartz, 2019). Meanwhile, Syrian and Yemeni refugees linked their displacement to the multipartite

conflict that happened in their respective countries. The human toll of the protracted multipartite civil wars in Syria and Yemen has been discussed by a number of authors (Byman & Speakman, 2016; Al-Absi, 2018).

Refugee movement towards the city of Addis Ababa is influenced by resource loss factors in countries of first asylum and refugee camps as well as the resources they hoped to gain by moving to Ethiopia and the city of Addis Ababa. The Burundian and Congolese participants fled countries of Rwanda, Tanzania, Uganda and Kenya due to resource loss factors such as fear of forced recruitment in to guerrilla insurgency and forced repatriation, fear of attack as well as discrimination and extortion they experienced in these countries. Previous scholars have also identified these resource loss factors of refugee well-being in the context of East Africa (e.g., Pavanello et al., 2010; Muleefu, 2013; Akello, 2019). Yemeni refugees raised different resource loss factors that made them move to Ethiopia. Resource loss factors such as high costs of living in Djibouti (Frows & Akumu, 2016), insecurity, extortion and bribery in Somalia (Al-Absi, 2022) and Yemeni visa waiver cancelations in Egypt (Al Desoukie, 2016) drove others to move to Ethiopia. Meanwhile, the Syrian refugees said they relocated to Ethiopia in the aftermath of the 2019 political instability in Sudan (Tobin & Kanhoush 2020). There were also neighbouring country refugees that lived in other countries before coming to Ethiopia. South Sudanese refugees who fled to Ethiopia via Sudan cited family separation as a resource loss factor that made them move to Ethiopia.

Somali and Eritrean refugees who were in Yemen and South Sudan referred to the civil war in the respective countries as the resource loss factors that made them move to Ethiopia. Information regarding the presence of Eritrean refugees who were deported from Israel also surfaced in the study (Yaron et al., 2013). Even though camp life gave the refugees the opportunity to evade some of the major resource loss threats they faced in their previous settings, it presented its own diverse resource loss factors that made them relocate to Addis Ababa. Relocation on medical grounds, relocation through the OCP and self-settlement are the three main ways the refugees escaped the punishing environments of the camp and repositioned themselves in Addis Ababa. Inter-communal violence, inter-state conflict as well as harsh and deteriorating living conditions inside the camps are forwarded by the refugee participants as the resource loss factors that forced them to move to Addis Ababa. Previous studies both inside Ethiopia and elsewhere have shown the difficult living conditions of the camps and the trend of refugees relocating to urban areas to benefit from the advantages cities offer over rural areas (Fábos & Kibreab, 2007; Kobia & Cranfield, 2009; Checchi et al., 2007; Meyer et al., 2016; Arega, 2017; Massa, 2020).

Refugees exhibited resilience inside the city by utilizing the different resources at their disposal as they strived to meet their needs, pursue their aspirations, and manage their demands. Social support in the form of financial assistance from abroad, particularly among Eritrean refugee participants, was the most consequential resource that shaped the well-being of the refugees in the city by enabling them to make investments in ventures of business and emigration among others. The role of remittances in sustaining the life of urban refugees in other transit cities have already been discussed previously (see Grabska, 2006; Lindsley, 2007; Pavanello et al., 2010; Jacobson et al., 2014; Anyanzu & Wet-Billings, 2022). Organizational and communal supports are the other forms of social resources that influenced the well-being of refugees in the city.

Organizational supports from core refugee organizations like the UNHCR and RRS as well as NGOs were vital particularly in sustaining the life of beneficiary vulnerable refugees. Communal supports from their respective family members and ethnic nationals as well as other refugees and Ethiopians (albeit on rare occasions) also played a role in enhancing the well-being of the refugee residents in the city.

Refugees from all countries were able to exploit their cultural resources in various ways as a means of securing their well-being in the city. In fact, certain patterns of refugee cultural resource use as a means of sustaining refugee well-being did emerge in the study. Examples include enrolment in teaching foreign language like English, French and Kiswahili among refugees from the Great Lakes region, working as Somali and Arabic language interpreters among Somali refugees, opening up different business establishments like restaurants and traditional clothing and accessory shops among Eritrean refugees, begging in the streets of some neighbourhoods of Addis among Syrian refugees, selling perfumes and frankincense in the streets among Yemeni refugees, and preparing and selling traditional meals among South Sudanese refugees. Religion, host community cultural similarity and adaptation are the other examples of cultural resources that have been cited as having a positive influence on their well-being. There were also participants that put personal resources in the form of physical attractiveness, energy and hope of relocation to a third country as important resources that helped them in maintaining their well-being. However, their effort of building resilience in the city is under duress from a number of socio-political challenges that are detracting their well-being. The participants identified the difficulty of obtaining refugee work license and permit and the delay in drafting and enacting regulations and directives that will expedite the implementation of the recently enacted Ethiopian refugee proclamation as the major passageway constraint of refugee resources and well-being in the context of Addis Ababa. Organizational constraints, language barrier, host communities' misconception that refugees are wealthy as well as the country's political and economic crisis are additional barriers of urban refugee resilience that have been identified in the study.

## 5.    Conclusion and Recommendations

The various causes of displacement have caused the loss of resources for refugees from different countries in the region. Refugees have faced resources loss at varies stages of their migration process. While losing their resources at the same time they have invested their available resources to escape the problem they have faced in the various phases of displacement. Moreover, to build their resilience in the face of displacement, refugees have harnessed various forms of resources from different sources through still they are in dire need of resources to sustainably build their resilience.

The results of the study highlight the need for a complex response by multiple stakeholders to prevent and manage cross-border displacement in the EHAGL region at initial and lateral stages. Resolving politically entrenched resource loss factors of persecution and conflict that endanger the well-being and resilience of citizens in origin countries could be vital to minimize forced migration at the grassroots level. Ensuring the protection and resilience of refugees by controlling passageway resource loss and gain factors that detract and enhance the well-being of refugees at the lateral stages of displacement could play a role in stifling the shockwaves of forced displacement both within and across member states. This translates into combating and controlling

resilience diminishing factors like discrimination, forceful military recruitment, extortion, refoulement, fear and the danger of being attacked in countries of first asylum and intrastate conflict, inter-communal violence and poor living conditions and black box bureaucracy in and around the camps in the context of Ethiopia as well as promoting and enhancing resilience enabling factors like tending to the high work license and permit demand among refugee stakeholders, expediting the drafting and enactment of regulations and directives that aid in fast-tracking the implementation of the Ethiopian refugee proclamation, improving the service quality and shortage of resources at core and ancillary refugee serving organizations, and tackling the different environmental constraints of refugee well-being in the context of Addis Ababa. Resolving the problem of refugees requires a multi sector as well as multi organization collaboration and partnership that needs to be mobilized by refugee agencies including UNHCR and the source, transit and destination countries of forced displacement.

## 7.    Limitation of the Study

The huge logistics and resources the investigation of the study required meant that it had to rely on qualitative tools in order to capture the pre-migration, transit and post-migration resilience experience of adult refugees at the Horn of Africa. Samples in the study are not large enough to establish a pattern that could be generalized conveniently. However, the study has used a multi-method approach to gather and examine multiple forms of qualitative data. Notwithstanding the limitation, it is believed that the study has been able to provide the application of the resource caravans and passageways principle of the COR theory to understand the scourge of cross border displacement in the EHAGL region by taking the experience of adult urban refugee residents in the city of Addis Ababa as a case in point.

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**QRP**

# Youth Extremism in Hungary: Relevant Issues and Trends[1]

*Barbara Franz*[2]

## *Abstract*

*Around the globe, young people appear to be interested in and joining extremist groups – from violent jihadist movements to militant left-wing groups.*[3] *Despite the political fragmentation that appears to be a global phenomenon, in many countries, these groups have remained fringe groups. This is not the case in Hungary. Here, the government itself has stimulated extremism. The ruling party, Fidesz, has created an illiberal state, and many young Hungarians seem to favor illiberal or other undemocratic governmental structures over democratic alternatives. This paper seeks to highlight some recent changes in the perception of young people by analyzing shifts in issue perception and importance among young extremist acolytes in Hungary. Particular attention has been paid to the issues of migration, the Trianon trauma narrative, anti-Semitism, trans-people and women's rights. Some of the changes in perception have occurred in association with massive governmental propaganda efforts, which influence the interest of and civic engagement among young extremist acolytes. The paper emphasizes that extremist youth's focus has been adjusting to new political and global topics, such as the American trope of 'woke-ness' and issues surrounding trans-people. However, much of the ongoing discourse has remained firmly anchored in the peculiar regional and national Hungarian circumstances. Social media has interlinked many geographically distant groups and allowed for an avid exchange of ideas between youth globally. Some issues, such as immigration, are universally opposed by right-wing extremists; however, the underlying reasons differ greatly and are influenced by the national political discourse. Other topics that might be seen as extremely relevant by U.S.-based youth extremists, e.g., identity issues, such as homosexuality and women's rights, are understood differently by Hungarian right-wing youth. However, even among Hungarian youth on the political right, there is diversity among cohorts whose political ideologies and life experiences are nuanced and based on a number of structural and political developments.*

### *Key Words:*

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[3] Defining extremism, Lipset and Raab (1970: 4) noted the following: "in terms of specific issues, extremism mostly means the tendency to go to the poles of the ideological scale". Given the focus of this paper, I use extremist and extremism here interchangeably with radical right, extreme right and ultra-nationalism, and base 'extremist' on the individual's self-definition.

# 1    Introduction

Throughout the world, we are experiencing a political shift toward the populist extreme right (e.g., Rodrik, 2021; Goodhart, 2017; Miller-Idriss, 2020; Mudde, 2014). For the first time in one hundred years, the popularity of autocratic regimes outweighs the public approval for democracies (Freedom House, 2022; Müller, 2022). How did we get here? The standard explanation for this trend is that older, less educated people belonging to (ethnic) majorities, often feel overwhelmed by the speed and direction of changes that have occurred during their lifetimes in their countries (Norris, 2020). In addition, young people are frequently depicted as being the drivers of progressive change, often seen as key figures in popular movements for same-sex marriage, legal equality for transgender and LBGTQ individuals, the legalization of marijuana, abortion rights, and so forth. This might be true for a considerable cohort of young people who are actively involved in groups like Black Lives Matter and the Iranian #MahsaAmini movement. Young people are on the forefront of many radical identity and ecological movements. However, explaining the current political climate with a generational divide remains too simplistic and one-dimensional. Many young people have been alienated and turned away from liberal politics and progressive causes and ideologies. Throughout the previous decades, survey-based studies have shown that the majority of young people are indifferent about, or suspicious of, politics. Internationally, young people have been less concerned, less interested, and less involved, and are more apathetic and cynical than previous generations (Seippel & Strandbu, 2016). However, in the authoritarian country, Hungary, research has revealed that alongside a passive majority, various youth cohorts have been politically mobilized at both ends of the ideological spectrum (Szabó & Oross, 2012). This mobilization was especially successful for the extreme right. Research dating back to the mid-2000s has shown the steady flow of the young electorate toward the far right (Krekó et al., 2011). Instead of remaining apathetic, it seemed a new generation of young people began to embrace autocratic and extreme right-wing ideologies in Hungary. Researchers have pointed out that youth are more likely than adults to support far-right-wing parties, and recent studies such as Feischmidt (2020b) have shown the most powerful explanatory factor of sympathy for the far right is age. In other words, generational differences affect far-right sympathy to a much greater degree than social or economic status or level of education. Studying far-right affinity of young Hungarians allows us to analyze how much of this rising trend of youth extremism is a reaction to unfulfilled economic expectations and young people's consequent basic rejection of liberalism and its so-called "woke causes" and how much of this trend is determined by cultural and social drivers and psychological proclivity.

# 2    Methodology

This mixed methods paper is based on survey data (Bíró-Nagy & Szabó, 2022), a literature review, participatory observation at a number of right wing rallies in Budapest between September and December of 2022 (e.g. National Day on October 23 and All Saints March on November 1), and a number of in-depth, open-ended interviews conducted with researchers of the radical right, including Margit Feischmidt, Máté Kiss, Balázs Majtényi, Zsolt Körtvélyesi, and Istvan Grajczjar. I also conducted a content analysis of the webpages of two extremist groups with strong youth cohorts Mi Hazánk and Identitiás Generáció. In addition, I spoke extensively with one extremist young acolyte. In this study, I am focusing on what Kathleen Blee (2007) calls the 'internalist perspective', attempting

to decipher individual motivations that prompt young social actors to side with extreme-right political movements.

## 2.1 Hungarian Youth – The Data

The most recent study of the attitudes of young Hungarians is part of the 2022 cross-national Friedrich-Ebert-Stiftung Youth Study (Bíró-Nagy & Szabó, 2022) which focuses on seven countries, including the Visegrád four (V4) – The Czech Republic, Slovakia, Poland and Hungary – and the three Baltic states – Estonia, Latvia, and Lithuania.[4] The following focuses on the Hungarian survey results. Some of the more striking results of this survey discussed in the paper include: Young Hungarians are less interested in politics, and their political participation "lags far behind that of their peers in the other V4 countries" (Bíró-Nagy & Szabó, 2022: 68). A majority of respondents (56%) believe that one needs good contacts with the government to succeed in Hungary. According to one-third of young Hungarians (33%), Fidesz can only be removed from power by force. Only one in five young people think that elections are free and fair (22%), reliable information is available to the public (19 %) and the system of checks and balances works (18%) (Bíró-Nagy & Szabó, 2022: 6). The study's data indicates that actual political participation and intention to participate among Hungarian 15–29-year-olds lags far behind that of their peers in the other V4 countries.

To be sure, geography matters. Budapest is the liberal capital of Hungary. In the 2022 parliamentary election, the opposition coalition 'United for Hungary' defeated Fidesz by 7 percentage points (40.78% to 47.78%) ("2022 Hungarian Parliamentary Election", 2022). However, the newly-formed far-right Mi Hazánk (Our Homeland) received 4.11% of the votes and the satirical Hungarian Two-Tailed Dog party received 5.19% of the votes in Budapest. While remaining the liberal capital of the country, roughly 10% of the Budapest vote went to radical right-wing parties, and one of them, Mi Hazánk, received six seats in the parliament (Tait & Garamvolgyi, 2022). This exemplifies the divided nature of the electorate and some of the deep contradictions the country holds, which are also apparent among young people.

While some of the issues that are important for Hungary's right-wing youth can be classified as international, and driven by the global community, such as questions surrounding misogyny and transgender acceptance, others are very much created by the political system. Key features of the public discourse surrounding migration and the so-called 'Trianon Trauma' have been created domestically in order to foster a very specific ethnic and ultra-nationalist understanding of the Hungarian nation.

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[4] The study was conducted during the spring and summer of 2021 in seven countries simultaneously with the support of the Friedrich-Ebert-Stiftung (Bíró-Nagy & Szabó, 2022). The sample of 1,500 Hungarian respondents was drawn from the Ipsos Online Access Panel. It was quota-sampled according to age, gender and region in order to achieve a sample that reflects the target population. Of the interviewees, 23% are between 15 and 18 years old, 39% are between 19 and 24, and 38% are between 25 and 29. These central socio-demographics had been pre-defined so the respondents could be targeted directly via email because the quantitative part of the study was conducted online. Data was collected between 10 June and 20 July 2021. The qualitative fieldwork consisted of 10 in-depth interviews and 3 focus groups and took place between 12 April and 22 April 2021.

## 3    Fidesz and Hungary's Anti-migration Stance

Young extremists' stance on immigration and the fate of migrants and refugees in Hungary has been strongly influenced by the political anti-migrant campaigns that Fidesz organized between 2015 and 2018.

Overall, Hungary's anti-immigrant stance is widely known. The relevance of the anti-immigration topic in Hungarian public opinion is well documented (for example, Barna & Koltai, 2019; Bocskor, 2018; Goździak, 2019; Thorleifsson, 2017). Historically, however, Hungary was not more xenophobic than other Central European nations. Indeed, until fall of 2014, immigration was not a pertinent political issue for Hungarians. In the Autumn 2014 Eurobarometer, a mere 3% of respondents mentioned immigration as one of the two most important issues facing Hungary. At that time, overall, Hungarians were less likely (18%) than the average EU citizen (24%) to believe that immigration was an important issue facing the European Union (Eurobarometer 2014, 83-89, as cited in Bíró-Nagy, 2022).[5] However, once Fidesz started its anti-immigration campaign in the spring of 2015, the issue exploded in the Hungarian domestic agenda. The perception that immigration was an important issue peaked in Hungary at 68% – ten points higher than in the average of the EU 28 – in the fall of 2015. Overall, in Europe the worry about migration dropped markedly in the following months – although it still remained a widespread concern – as the migration pressure itself eased up. In Hungary, however, the anxiety about this issue declined far less significantly. As Andras Bíró-Nagy shows, in October 2016 – more than one year after the massive influx of migrants and refugees into Europe ended – still 68% of the Hungarian population believed that immigration was among the country's top two concerns (2022: 416).

Thus, the prevalence of anti-immigration sentiments in Hungary's public is certainly linked to the three year long anti-migration campaign by Fidesz. Since 2015, refugees and migrants, and those (e.g., NGOs, EU, George Soros) who the government claims have helped them and brought them to Europe, have become perceived as the main enemies of Hungary (Bíró-Nagy, 2022: 409). In reality, the migration 'crisis' was a god-send for Fidesz, who, due to corruption and mismanagement, had begun to lose popularity and lost seats in municipal elections in 2014 and 2015. Once the Fidesz government launched its anti-migration campaign, the tide quickly began to turn.[6]

In addition to the fierce anti-immigration campaign, the government reacted to the 'migration crisis' with the building of a 325-mile fence along its border with Serbia to keep asylum-seekers out of the country, making unauthorized entry across the fence grounds for immediate prosecution and deportation, ordering a referendum on the EU's migrant quota mechanism, adopting new laws that made it practically impossible for anyone to legally claim a refugee status in Hungary and hampering the work of NGOs that deal with

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[5] Original question: "What do you think are the two most important issues facing the EU at the moment?" (Eurobarometer 2014, 82-89, cited in Bíró-Nagy, 2022).

[6] A good example for the anti-migrant campaign is this video that János Lázár – Minister of the Prime Minister's Office from 2012 to 2018 – posted on his Facebook page in March of 2018, spouting xenophobic descriptions of Vienna's 10th district: https://budapestbeacon.com/janos-lazars-xenophobic-video-provokes-outrage-in-austria-and-germany/.

migration. Since the start of the Fidesz anti-migration campaign, the migration issue has remained the most salient topic in Hungarian politics.

Fidesz's actions successfully manipulated public opinion to reach xenophobic heights never seen before. As shown above, migration, while it was a marginal issue prior to 2015, began to be seen as one of the two most urgent key problems for the Hungarian public in 2016. Indeed, Europe experienced a substantial influx of 1.3 million refugees and migrants in 2015, about 170.000 of whom travelled along the Western Balkan route through Greece, Serbia and Hungary (Birnbaum & Witte, 2015). Most transited into Western Europe and the number of accepted asylees who actually stayed in Hungary was in the hundreds. Notwithstanding that only a very small number of refugees applied for asylum in Hungary, Fidesz managed to focus the public attention on immigration by instigating a continuous anti-immigration campaign that lasted until the 2018 election (Bíró-Nagy, 2022).

Fidesz appropriated key elements of this campaign (and other populist ideas) from Jobbik, the other Hungarian radical right party. Jobbik initially appeared to have been much more creative regarding selecting ultra-right wing popular issues: for example, it was Jobbik who raised the idea of building a physical wall on Hungary's southern border, and Jobbik campaigned already in 2015 on the idea of holding a quota referendum in response to the EU's controversial plan to relocate migrants. However, Fidesz successfully expropriated these ideas. The quota referendum was held on October 2, 2016, and a staggering majority (98.36% or 3,362.224 votes) opposed the EU proposal to send refugees to Hungary. However, the turnout of 43% fell short of the required 50% for the result to be valid (MacDowall, 2016). Nevertheless, the result, while invalid, was still celebrated by Fidesz as a major win. It also strongly indicated that Fidesz's campaigns had politicized a very large minority of Hungarians, including substantial cohorts of youths.

With a number of their fear campaigns, Victor Orbán and his government successfully boosted the public's rejection of immigration in the following years. In a 2017 campaign entitled 'Let's stop Brussels!', Fidesz attacked the European Union and the politicians who were presumably less opposed to immigration (Cerulus, 2017). In 2018, a campaign against the so-called 'Soros Plan' was launched, which the Hungarian government claimed was a plan by the Hungarian-American billionaire George Soros to settle millions of migrants from Africa and the Middle-East in Hungary (Solomon, 2017; Euronews, 2021). Public attitudes against accepting refugees and migrants became aligned even closer with Fidesz's staunch rejection of any and all immigration (Krekó et al., 2019). These campaigns followed the 2015 state-sponsored disinformation campaign that was based on billboards strategically placed all over Hungary featuring images that played on both economic and cultural fears of the public with respect to migration. The main messages were the following: 'If you come to Hungary, you need to respect our culture!', 'If you come to Hungary, you cannot take the jobs of Hungarians!', 'If you come to Hungary, you need to follow our laws!' (Nagy, 2016). These billboard messages clearly indicated that their real aim was not to warn immigrants but to shape the Hungarian public's thinking about this issue (Bíró-Nagy, 2022).

The campaigns intensified and built upon fear and pre-exiting feelings of xenophobia. However, –considering the quite significant governmental efforts through campaigns, public speeches, and anti-immigration legislation – for example, the 'Stop Soros' law, passed in 2018, that criminalizes giving aid to asylum seekers and undocumented

migrants – one would assume that hundreds of thousands of migrants and refugees were either seeking asylum in Hungary after entering the country through the Western Balkan route or were supposed to be relocated to Hungary through the EU migration relocation scheme. This was not the case. Hungary accepted 145 and 155 individual refugees in 2015 and 2016 respectively[7] and was supposed to accept 1.294 migrants through the EU migrant relocation scheme (Goździak, 2019). Despite these minuscule numbers, Fidesz's anti-immigrants' campaigns were exceedingly successful.

Today, largely due to these campaigns, a majority (63%) of young Hungarians state that they are anti-immigration (Bíró-Nagy & Szabó, 2022: 65 & 47) and 30% express feelings of Islamophobia. Studying the Budapest chapter of Identitiás Generáció,[8] Kiss (2022) explains that members of this group see themselves as the extreme right's future elite. The extremist group has organized a number of unconventional protest actions. For example, being strongly anti-Muslim and Islamophobic, they opposed the Budapest visit of the Turkish president Recep Tayyip Erdoğan on November 7, 2019. In order show their disgust, "they organized a 'bacon eating' performance on the Gül Baba Türbéje"—the tomb of Gül Baba, also known as Jafer, who was an Ottoman Bektashi dervish poet and companion of Sultan Suleiman, the Magnificent.[9] With actions such as eating pork bacon, the participating members of Identitiás Generáció aimed to humiliate Erdoğan, Gül Baba, and Muslim people in general. This was a successful action for the participating members because, for them, the tomb has a political, jihadist meaning – it is connected to the conquest of Europe by Muslims – and with the bacon eating performance, they could defy Erdoğan and, by extension, Muslims and the Hungarian government that had invited Erdoğan. In Budapest, this was only one small action, in addition to a number of other protests organized against Erdoğan's visit by Kurdish sympathizers and other mostly left-wing groups. The 'bacon eating performance' is an example of how a campaign by Fidesz led to political actions that did not lead to the responses the party desired.

Another such example is Hungary's Identitiás Generáció campaign 'against immigration and Islamization' of Europe (Almássy, 2021). Ábel Bódi, leader of the Hungarian chapter of Identitiás Generáció, said that members of his chapter joined the Austrian chapter led by Martin Sellner in the 'Defend Europe' campaign, which organized actions to prevent the rescue of migrants and refugees crossing the Mediterranean Sea, often in ramshackle boats and on self-made floating devices (Nótin, 2019).

'Defend Europe' was certainly popular among other extremist youth groups, such as Mi Hazánk. The most recent youth-movement-turned-political-party that won six seats in parliament in the 2022 election, Mi Hazánk, uses a picture of the party members behind a 'Defend Europe' banner on their homepage.[10] Bacon-eating on the tomb of Muslim

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[7] It accepted 105 refugees at first instance in 2017, 70 in 2018, 20 in 2019, and 85 refugees in 2020 (Medve, 2022).

[8] Identitiás Generáció is the Hungarian chapter of the Movement Identitaire which is a relatively recent pan-European, extreme right political youth movement whose ideology seeks to assert the right of Europeans, especially white people in Europe to Western culture and territories, claiming that these belong exclusively to them. The first chapter of this pro-white, anti-Muslim and anti-globalist youth movement started in France in the early 2000s and has been growing rapidly ever since (Camus & Lebourg, 2017).

[9] Author's interview with Mate Kiss on October 27, 2022 at ELTE, Hungary. See also Kiss (2022).

[10] https://mihazank.hu/mihazankifjai/.

historic figures, Defend Europe actions and Mi Hazánk's anti-COVID 19-lockdown protests are all performances that attract media and public attention and thus, if publicized well, are good recruiting events, all the while outflanking Fidesz in terms of right-wing extremism.

Nevertheless, salient political topics and issues are often driven by the party in power. This was certainly the case with the immigration issue in Hungary. In this regard, and despite the ingenious actions and performances of Identitiás Generáció and Mi Hazánk, Fidesz today is seen as representing the will and interest of the nation against migrants and refugees who are designated as enemies and depicted as posing a threat to Hungary (Krekó et al., 2019). This plays on provincial fears and xenophobic instincts that many Hungarian citizens tend to harbor. The ramifications of Fidesz's public campaigns, the referendum, the border fence and other policies are still felt today. According to the 2022 Friedrich-Ebert-Stiftung (FES) study, one-third of young Hungarians could be considered hard-line nativists; these young people express strong anti-immigrant opinions that are 'exclusionary' and rigidly 'pro-assimilationist' (Bíró-Nagy & Szabó, 2022: 64).

# 4    Ultra-Nationalism based on Historic Victimhood

## 4.1    The Trianon Trauma

Islamophobia and xenophobia often are associated with racism and ultra-nationalism. 40% of Hungary's youth consider themselves to be 'proud Hungarians' (Bíró-Nagy & Szabó, 2022: 60). These feelings, like the prevailing strong anti-immigration climate, are also very much government-instigated and -driven. Margit Feischmidt (2020a) shows how what is called the 'Trianon Trauma' emerged as a 'cult' produced by memory politics in order to foster a new form of Hungarian nationalism. This ultra-right nationalism is mainly based on the re-emergence of a discourse on trauma in relation to the Trianon Treaty and the historic nostalgia related to the pre-Trianon 'Golden Age' of Hungary – the so-called 'Greater Hungary.' Many young people today deeply feel a sense of historic victimhood and nationalist nostalgia.

The 'Trianon trauma' represents an important marker of extremism in Hungary. It refers to a supposedly continuing trauma resulting from an unjust historic experience more than 100 years ago - the excision of Hungary in the post-World War I Trianon Treaty of 1920. In this treaty, Hungary lost large parts of its territory and roughly two-thirds of its pre-World War I population to neighboring states.

The vision of the past of 'Greater Hungary' thus refers to the territory of the Hungarian Kingdom before 1920. According to Feischmidt (2020a: 165), this has been revived by the Hungarian far-right scene with the aim of "creating a powerful object of fantasy that could become the cornerstone of a new nationalist discourse." The Fidesz government, and a number of other far-right actors, have spent a great amount of money and energy infusing symbolic spaces like Trianon with meanings that are associated with the country's glorious past, contrasting it with the hated, shameful predicament of today's 'small' Hungary.

The 'Golden Age' roughly overlapped with the time of Hungary's inclusion in the K&K monarchy after the Compromise of 1867. With the Compromise, Hungary became part of one established military and diplomatic alliance of two states—Austria and Hungary—ruled by one royal family, the Habsburgs. Large elements of Hungarian society strongly opposed

the compromise, seeing it as a betrayal of vital Hungarian interests and the achievements of the reforms of 1848 (Gerő, 1997). After fighting World War I on the side of the Triple Alliance (*Mittelmächte*), Hungary ended the war on the losers' side. Similar to the German and Austrian excision of territory and population when creating the Weimar and First Austrian Republics, the 1920 Treaty of Trianon created a rump Kingdom of Hungary. Hungary lost over 70% of its historic territory along with over three million Hungarians, who mostly lived in the border territories outside the new borders of the kingdom (Frucht, 2004: 360).[11] Partly because of the intent to win back the territories lost at Trianon, the Kingdom of Hungary, the so-called Regency, joined Nazi Germany in World War II. In early 1941, it did gain back the territories lost in Trianon, but by 1944, following heavy setbacks for the German war machine, Hungary's government negotiated secretly with the Allies an exit strategy from the war. Once Nazi Germany learned of this, Hungary was occupied within days in March of 1944. The extremist Arrow Cross Party's leader, Ferenc Szálasi, established a new Nazi-backed government, effectively turning Hungary into a German-occupied puppet state. As a consequence of the German occupation, Adolf Eichmann, with the collaboration of the Hungarian authorities, arranged for the transportation of 550.000 Hungarian Jews to extermination camps during the last days of the war, mostly Auschwitz (Cesarani, 2005). Hungary was occupied by the Red Army in 1944 and, once a Soviet satellite state, experienced state socialism between 1945-1989. While Hungary's historic experience in the 20th century is not unique, it is one of extremes.

However, this short historic synopsis alludes to the fact that Hungary historically was a diverse country with substantive Jewish and ethnic-German populations and other minorities. Today, Hungary is ethnically a relatively homogenous country. The largest ethnic minority is the Roma population, who make up 5–6% of the total residents in Hungary (Kemény & Janky, 2006, as cited in Majtényi, 2022). The proportion of the migrant population is low; the number of immigrants per 1,000 inhabitants remains well below that in most Western European countries. The crude immigration rate - the number of immigrants related to the size of the population in the destination country – has been fluctuating between 1.8 and 2.6 per 1,000 citizens since 2000, whereas, in the majority of Western European countries, this rate is greater than 5 or, in some cases, even more than 10 per 1,000 citizens (Gödri, 2015). Because most migrants settle in Budapest, the city can leave the casual visitor with the mistaken impression that Hungary is a multi-ethnic diverse country (Franz, 2022).

The 'Golden Age' is a curious tale that has been spun since modern Hungary was only quite briefly (1920-1944) an independent state after Trianon was enacted. The Hungarian imagination focuses instead on pre-Trianon 'Greater Hungary' which refers actually to the time when Hungary was the junior partner in the Austrian-Hungarian Empire. In the early 2010s, Jobbik proposed the creation of a national day commemorating the 1920 Trianon treaty (Bíró-Nagy, 2022: 408). Yet only in the late 2010s, Fidesz created this national holiday and thus took ownership of this historical revisionism: The government (re)built Medieval castles such as Visegard along the Danube (Pleskovics, 2023), renamed streets and put up new statues. Ultra-nationalist actors surrounding Fidesz became the 'engine' of this new form of memory politics. The revisionism of this trauma narrative became part

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[11] Upon the dissolution and break-up of Austria-Hungary after World War I, the Hungarian Democratic Republic and the then Hungarian Soviet Republic were briefly proclaimed in 1918 and 1919, respectively.

of the public discourse and has been boosted by recent writings of a number of historians[12] and by what Feischmidt (2020a) calls "agents of public history" who maintain memorial houses[13], publish historical magazines and, in general, engage in the building of a nostalgia-industry.

## 4.2    Ethno-nationalism and Fundamental Law

The state's role in this revisionism becomes clear when one looks at the preamble of the new constitution, the Fundamental Law, passed in 2011. In it, 'the National Assembly declare[d] the 4th of June, the day of the enforced Peace Treaty of Trianon of 1920, a Day of National Cohesion' (Act No. 45 of 2010, as cited by Feischmidt, 2020a: 4). The Law for National Cohesion calls the peace treaty signed on June 4th, 1920 "one of the greatest tragedies of Hungarian history" and stresses that the "political, economic, legal, and psychological problems [caused by the treaty] remain unresolved to this day" (Feischmidt, 2020a: 4). The law also asserts the existence of one 'single Hungarian nation' and states Hungarian communities should be based on 'cross border cohesion'; it endeavors to link regret for lost territory with historical self-criticism and proclaims a 'national commitment' toward those Hungarian minority communities living today outside of the current state's territories. The law states that the Hungarian parliament "feels obliged to call upon present members of the Hungarian nation and those of future generations to strive for national cohesion" (Feischmidt, 2020a: 4). Thus, the Fidesz government legally stipulates national solidarity and togetherness based on an ethnic understanding of what it means to be Hungarian.

The 2011 Fundamental Law and the new citizenship law codified this change from a broader national community to an ethnolinguistic communality – adopting an exclusive concept of nation. Balázs Majtényi (2022: 39) shows that new Fundamental Law provides a list of exclusive "non-neutral cohesive values such as fidelity, faith, and love, belonging to Christianity and belonging to the Hungarian ethnic nation" while not mentioning "principle[s] of equality or the protection of human rights as values." This definition excludes the Roma minority and other long-term residents of non-Christian faiths, and fails to guarantee them basic fundamental rights. This means that today "members of recognized national minorities, such as Roma and other, non-ethnic Hungarians not considered a 'national' minority, such as Jews, have become secondary citizens" (Majtényi, 2022:48). The Roma have been marked by discrimination, social isolation, ethnicized poverty and structural racism (Ladányi & Szelényi, 2006). Furthermore, Majtényi (2022) points at the illiberal political system after 2010 that created institutions representing state power, which, ill-disposed to the Roma, have made matters worse.

While de facto becoming much more exclusivist as a nation, at least in ethnic terms, memory politics and revisionism overall have instigated massive feelings of victimhood and ultra-nationalism as two features of Hungary's newly invented history and tradition

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[12] For example, Archimédesz Szidiropulosz (2004) wrote a three volume monograph about Trianon and came to the conclusion that Hungarian national identity was so severely damaged that it never recovered.

[13] For example, the House of Hungarianess (Magyarság Háza) which is a public institution devoted to supporting the development of 'Hungarian-Hungarian relations' and the promotion of 'national' values and the Trianon Museum, which was inaugurated on 4 June, 2004, in the Zichy Palace in Várpalota (Feischmidt, 2020).

(Hobsbawm, 1983). The 'Trianon Trauma' is seen as a hallmark of being Hungarian today. One young extreme right acolyte's comments regarding Hungarian history and the Trianon trauma show clearly how successful memory politics has transformed the national discourse:

> "I'm enamored by Hungary's history. I view our history as endless sorrow and happiness at the same time. It's very vivid. And I think we have somewhat of a unique history. In comparison to our region, which is also very colorful. I don't think there are many countries in the world that have been punished that much, and fucked over, as we were. Like in comparison perhaps Armenia. Armenia got extremely fucked over."

The acolyte sees Hungary's history as a story of victimhood of circumstances or betrayals in general and emphasizes Trianon as one such inflection point, where the Hungarian nation was sold out. This acolyte's discursive appropriation of the concept of Trianon portrays an understanding of pre-Trianon Hungary as the natural manifestation of the Hungarian nation's territory and population – which could inspire the symbolic reconstruction of this 'Greater Hungary' in the future. For the young interviewee, the Trianon experience serves as an explanation and justification of the current political, economic, and perhaps socio-psychological situation that Hungarians are facing today. He continues:

> "And I constantly bring up the example that if, for example, Czechia, the Sudentenland, would be controlled by Germany, Poland and Austria and like 30-40% of actual Czech population would actually be living there, I'm absolutely sure that Czechia would not be this prosperous, happy and stable democracy that you know today. ... We had a very very, very brief place in the sun in Hungarian history. I mean you could argue any way you want that we didn't have but during the Austrian-Hungarian monarchy, we Hungarians, we feel like we fought for that in 48 [1848]. That we deserved to have that status in the empire. And for us, that was like a place in the sun. And for a moment, even if it was just by name or something we felt like a great power and then it was ... it wasn't just taken away but we were reduced to such an extent that we just ... we were extremely violated by that."

As in other ethnic nationalist ideologies, historic victimhood plays a crucial often mobilizing role. In the Trianon trauma discourse, Hungarians, who consider themselves economically, culturally, morally and politically superior, were tricked into giving large parts of their territory and, even more importantly, their population, to inferior neighbors (Feischmidt, 2020a: 10). The young extremist explains:

> "You have a sore, you have some extreme spiking around that you are not able to do your best, and that just blankets the whole of society, every strata. ... Did you know that Hungary has the largest percentage of people in Europe who think that the territory surrounding our country should be ours – 67%. We literally have this Hungarian joke that we are neighbored by ourselves. It's a very common saying and it's very sad. You literally go across the border in every direction and you go 50km, and everybody speaks Hungarian, even the Ukrainians speak Hungarian. And it was a 100 fucking years ago."

'Greater Hungary' is not only perceived as the mirror-opposite of contemporary 'smaller Hungary' but as a rallying symbol for national solidarity. With the invention of this 'old-new political tradition' (Hobsbawm, 1983) the Trianon trauma-cult addresses a widespread need for collective self-esteem and personal pride by providing adherents the opportunity to express grievances and then channelling these grievances into anger against others – neighboring states surrounding Hungary and ethnic minorities within Hungary – instead of Fidesz and associated elites. The acolyte continues:

"[...] we are neighbored by ourselves. And that just by statistics it has been proven many times that the number of Hungarian people surrounding us is much more [higher] than is originally given. Because the amount is the people that are not afraid of calling themselves Hungarian. And there are people mandated by their surroundings or by their employer or something. For example, in Romania, in Transylvania there are 7% of the people who are state-less, not state-less, nation-less on paper. What are those people? I'm sure they are not Romanian. So it's atrocious, and it's very sad."

The Trianon trauma narrative offers an avenue for overcoming personal and collective trauma through the symbolic assertion of national unity and superiority. Referring to the work of Clifford Geertz, several scholars have identified the idea of a 'nation' as a narrative, "a story which people tell about themselves in order to lend meaning to their social world" (Feischmidt, 2020a referring to Ram, 1994, citing Geertz, in Wodak et al., 1999: 11). The problem with the Trianon Trauma narrative is that it creates a meaning that is based on not only victimhood but also exclusivism, a taste of superiority, and directing aggressive feelings toward neighboring countries.

Researchers who have attempted to uncover the structural drivers underpinning support for new forms of narratives have argued that the success of new right-wing cultural and political ideologies would not have been possible without the presence of economic grievances that compel those who experience them to confront the ideological status quo and its defenders (Ivarsflaten, 2008; Sik, 2015; Piazza, 2017; Abou-Chadi et al., 2022; Feischmidt, 2020a: 11). Public celebration of national cohesion through events such as the annual commemoration of the signing of the Trianon Treaty on June 4 reinforces Hungarian victimhood and the legitimacy of the concept of ethnic citizenship and membership to the nation, excluding not only the traditional minorities such as Roma and Jews but also all more recent migrant groups. Historic revisionism initiated by the Fidesz government led to the invented ethno-nationalist grievances based on victimhood experienced more than 100 years ago. Thus, memory politics in Hungary arguably led to poor relationships with neighboring states, new forms of national inclusions and citizenship of Hungarians living abroad, and the exclusion of non-ethnic Hungarians living in Hungary. The Trianon trauma became symbol for national solidarity, and Hungary's ethno-nationalism centered on an identity of victimhood.

Just like the massive anti-immigration campaigns, the extensive historic revisionism has substantially influenced young people's views. As the 2022 FES study shows, 40% of young Hungarians are proud nationalists, and 45% harbor anti-Roma sentiments (Bíró-Nagy & Szabó, 2022). Fidesz's campaigns and policies surrounding anti-immigration and revisionism, such as the Trianon trauma, have had considerable traction and influenced young people's beliefs and perspectives. Other Fidesz campaigns gained less traction. Hungary's youth did not (entirely) buy into the narrative expressed by Fidesz public campaigns and policies focused on anti-semitism, homosexuality, and women's rights, and, influenced by other sources, altered Fidesz positions or used them in political expressions and practices that they were not intended to. In these cases, the messages of Fidesz were curiously transmuted by their intended recipients; a case in point is the 'bacon eating' protest described above.

# 5 Issue Adjustment: Anti-Semitism, Homosexuality, Transgender People, and Women's Rights

Extensive public opinion campaigns and historic revisionism are just two methods the Fidesz government uses in order to influence and manage the electorate. These methods are crucial, because they distract people from thinking too much about the escalating excessive corruption (Rogers, 2020; Snegovaya, 2020; Fazekas & Tóth, 2016) in the country.

## 5.1 Antisemitism & Sorosozás

My participatory observation experience and conversations were restricted to the city of Budapest. This might help explain the rather curious finding that extremist youth feel relatively less threatened by homosexuals than by other 'out-group' cohorts such as Roma and Muslims. This finding is supported by the 2022 FES study (Bíró-Nagy & Szabó, 2022: 5, 47, 49) whose authors repeatedly stress that "young [Hungarian] people are least likely [among the V4 countries] to express hostility towards homosexuals and Jews" (Bíró-Nagy & Szabó, 2022: 5). The acolyte I interviewed expressed objections to the strong anti-Semitism of Mi Hazánk: "I cannot do Mi Hazánk. Mi Hazánk is too radical. They are full of Holocaust deniers. It's full of Holocaust deniers. And that's just a red light for me. I can't stomach it." Young Hungarians' anti-Semitism stands at 15% and remains relatively minute (Bíró-Nagy & Szabó, 2022: 47).

This is somewhat surprising because the Fidesz government engaged in a massive anti-Semitic campaign featuring the Hungarian-born American Jewish billionaire George Soros. The government promoted a conspiracy theory that blamed Soros for trying to destroy Hungary and Europe's traditions and independence by sponsoring the 'invasion 'of Muslim migrants (Kalmar, 2020: 7). Jenne and colleagues (2022: 47) define Sorosozás ('Soros-bashing') as a recent Hungarian neologism that is used to describe the government's practice of repetitively and reflexively associating all manner of negative local and international developments with Soros – "using a tone of rejection, condemnation, and even ridicule." In these conspiracy theories, Soros is represented as the hidden master behind NGOs, the European Union and several national governments that fostered multiculturalism with such woke issues as gay rights and gender equality, all depicted as an attack on the values of the Christian world (Kalmar, 2020). Indeed, the fact that Sorosozás effectively rallied popular support for Orbán's regime indicates the existence of relatively strong and hidden anti-Semitic features in the broader Hungarian society. Nevertheless, young extremists seem to be more Islamophobic than anti-Semitic. The 2022 FES study found that 40% of young Hungarians harbor anti-Muslim feelings but only 15% are anti-Semitic (Bíró-Nagy & Szabó, 2022).

Studying the Budapest chapter of Identitiás Generáció, Kiss (2022) explains the existence of a multi-layered reality of anti-Semitism in the modern extreme right groups. He notes that officially, "of course, they are not anti-Semitic. It's a thing of the past and, of course, we should concentrate on new enemies, like Islam and Muslim people. Well, basically non-Europeans" (see also, Kiss, 2020). However, Kiss remembers during his fieldwork that, in various instances, members of Identitiás Generáció made references to, for example, the 'inbreeding among Jews' but they would not share such sentiments in official statements

and 'on tape'.[14] An estimated 75.000 to 100.000 Jewish people live in Hungary – which is the largest Jewish population in East Central Europe (World Jewish Congress [WJC], 2023). Most Hungarian Jews live in Budapest, and Hungary has a high proportion of Holocaust survivors. In addition, intermarriage is widespread. According to WJC, Hungarian Jews are especially well represented in science and academia. These might all be reasons why the Soros campaign did not influence the extremists I spoke with in the manner one would assume. And, as Kalmar (2020) points out, in some instances anti-Semitism might also have been replaced by Islamophobia.

## 5.2    LGBTQ & Trans Rights

The lack of anti-Semitism is not the only traditional extreme-right feature that is ambiguous, and in some instances appears absent from the narrative. In addition, the acolyte I interviewed clearly expressed a degree of tolerance toward homosexuals, when he stated:

> "Even though I don't like very hard LGBTQ propaganda, and changing society in this way, I still think that these people exist and they should have a right to life and stuff. I'm not against gay people marrying either. I think it has been a very common part of the human experience that someone is gay."

To be sure, the FES Study (Bíró-Nagy & Szabó, 2022) emphasizes that, in comparison to other V4 countries, Hungary has the highest rate of young people who feel they would be disturbed by the presence of a gay neighbors (19%). However, the lines to other minorities are blurry. In contrast to rather tolerant attitudes toward homosexuals, this interviewee had very strong negative feelings about trans people:

> "But that's not the same for transgender people. It's a different book ... Do you know the Trevor's Institute? No? It's like the biggest LGBTQ NGO in the US. And they have statistics about suicide rates in the US. And they have this specific statistic about transgender people. During the last 10 years the suicide rate for transgender people is 50%. It's absolutely over-represented in society. And even though you make all these changes in society, you make all these inclusive language ... and bathrooms and everything, this number does not budge. One single second. It's horrific. It must be horrible to wake up one day and not like the appendage you are born to. It's fucking impossible to imagine. I'm saying that these people in my mind have very serious psychological disorders that should not be solved by changing every little part of society around them. I'm fine with them changing their appearance if it actually helps them. But the vast majority does actually not. But I really don't think telling a 16-year old girl that cutting off her tits actually and changing her appendage is going to solve the stuff that she feels in her head. I'm very hellbent on that fact. You know there is this extreme medical lobby behind this; they perform these operations and everything. The problem is that I think I know how people who are this unstable think and if you are in a place of that sorrow if you actually lift your hands up and tell them: "Boy, oh boy, your happiness is just on the other side of this $300.000 operation!" they are going to want it. And it's very sad. I think the whole thing is disgusting."

Although traditional extreme right anti-trans language also describes trans people as mentally ill, these comments differ by how strongly they emphasize the supposed psychological illnesses surrounding trans issues. These opinions fall in line with the popular and false assumptions about gender-affirming care as being 'child abuse' and that trans children are being 'chemically castrated' (SPLC, 2021). In his 2014 blog post

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[14] Oct. 27 interview, see footnote 4.

called 'Transphobia is Perfectly Natural' Gavin McInnis, the Canadian far-right commentator and founder of the Proud Boys, describes the process of transitioning as one of self-mutilation. While in principal agreeing with this definition, the Hungarian interviewee sees trans-care as a feature of the American progressive society, which in his eyes, is not healthy.

Trans issues may be a political issue in Hungary but, practically, they are a non-issue: Hungary's parliament passed a law to end legal recognition for trans people in the spring of 2020, and legal gender changes in the country have effectively been frozen since 2017 (Walker, 2020).

## 5.3   Women's Rights & Feminism

A recent multinational study by Andrew Penner et al. (2023) found that, in Hungary, the gender gap in earnings among those aged 30–55 years is relatively small and hovers at 10%. That study also shows that almost all of the pay differences in employment in Hungary occur in jobs where men and women do the same work for the same employer but women earn 10% less. Among young Hungarians, it almost seems young women were expecting this. In the FES study (Bíró-Nagy & Szabó, 2022: 21) 7% more women than men said they worked outside their professional field (39% vs 32%), and 10% more women said they were overqualified for their job (38% vs 28%). Pointing toward systemic discrimination against women, these findings are also reflected in the interviews I conducted. In terms of women's rights and feminism, the young extremist expressed only vaguely vailed misogyny, strongly opposing what he called 'postmodern feminism' based on his experience being enrolled in an undergraduate course that had been taught by an 'American-educated feminist':

> "Last time, when I was doing my B.A., I had this immense enlightened thing that my opinion didn't matter because I was a cis-gender white man, patriarch, a fuck head. You know that experience turns you away from foreigners for a fucking life time. Because I dare to question the gender wage gap. It's a very enlightening experience to not have your opinion matter because you are part of the oppressing group. It's fucking unbelievable. … My problem with postmodern feminists is that they think that all women want to be like men. And that is literally degrading women. For example in Germany 97% of women believe that men and women should be equal. There are 8 or 9% who claim that they are feminist. … For me, feminism means dominating men, oppressing them!"

The acolyte's interpretation of and his exposure to feminist ideology seems to be in line with the 'Manosphere's' ideological mix of misogyny and white supremacy in the U.S.A. and other countries of the global North (ADL, 2018). The interviewee does not hate all women – as many Incels (Involuntary Celibates) claim they do – but he adheres to biological essentialism when speaking about women. He also emphasizes that he has been victimized as a white Hungarian man by Western educated feminists. His interpretation of feminism is similar to the US-American Proud Boys members' view that women are taking over men's roles and earning more university degrees; and that men – especially white Christian men – are becoming marginalized (SPLC, n.d.). However, in most countries of the North-West, these messages are prevalent in the 'men's rights' blogosphere and online message boards, such as Reddit's RedPill forum, that promote a

toxic version of masculinity.[15] By contrast, in Hungary, 'gender' has been politicized by the Fidesz government itself as 'gender ideology' which supposedly threatens 'traditional' families, children's identity and, overall, the future of Europe. Rather than feminism or women's rights, the term 'gender ideology' is used in publicly-funded news outlets, in order to polarize society and keep anxiety levels high. The government referenced 'gender ideology' in its refusal to ratify the Istanbul Convention[16] and in its 2018 decision to remove accreditation from gender studies M.A. programs in Hungarian universities.

In general, the acolyte's perspective has been facilitated by the Fidesz government's application of a politics of symbolism regarding gender studies. This young acolyte is very much in line with implied messages of misogyny when stating that "feminism [note: not gender!] means dominating men, oppressing them." Fidesz government representatives adhered in their public statements to using the term 'gender' rather than 'feminism.' For example, László Kövér, one of the founders of Fidesz, repeatedly referred in his speeches to 'gender craziness', that will result in Hungary being a "futureless society of man-hating women and feminine men living in dread of women" or compares what he calls 'genderism' to "a human experiment that is nothing better than, let's say, eugenics in Nazi times" (quoted in Zsubori, 2018). The explanation for why the term 'gender' began to symbolize an entire range of anti-feminist, pro-patriarchy stances is, at first, surprising.

The word 'gender' does not exist in Hungarian. Using the English word in this 'least anglophone EU country' is confusing for many Hungarian people – which comes in handy for the Fidesz government that seeks to demonize it (Zsubori, 2018). Furthermore, as Eszter Kováts (2020: 13) shows, there is a strong link between the introduction of the field of 'gender studies' and the post-socialist neoliberal economic policy in the country. Her argument is based on Susan Zimmermann's (2007) findings that describe how implementing gender studies in the countries of the former Eastern bloc in the 1990s was less a commitment to gender equality and to gaining more knowledge in the field than to the values of liberal democracy and the ensuing social-economic order as enacted in Anglo-Saxon countries. Along the same lines, Andrea Pető (2018: 2) emphasizes that gender as a category of analysis arrived in Central Europe together with the neoliberal market economy and Anglo-Saxon dominance in science after 1989. This so-called

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[15] While there were some similarities between the language used by American and Hungarian extremists, it seems Hungarian young acolytes often use ultra-nationalism to frame their misogynist expressions. For example, one infamous post of the extremist US blogger, Matt Forney, expresses his anti-female sentiments on the Men's Rights Activists website 'Return of Kings' in the following way: "The vagina is the perfect representation of the nature of females. An empty vessel, a hole, a void with no identity of its own. Without a man to fill her with his essence, she is as useless as a crabapple rotting on the sidewalk" (cited in ADL, 2018). White supremacists frequently refer to women as 'thots,' which stands for "that ho over there" (ADL, 2018). These statements emphasize misogyny as the core feature, while the acolyte I interviewed stressed nationalism to be above all else. For example, he asked: "You know who has the largest dicks?" After I didn't reply, he insisted that polls have shown that it's clear that Hungarians have "the largest dicks" in Europe.

[16] The Istanbul Convention is the first legally binding instrument which "creates a comprehensive legal framework and approach to combat violence against women" and is focused on preventing domestic violence, protecting victims and prosecuting accused offenders (https://rm.coe.int/arm-2021-coe-istanbul-convention-handbook-for-parliamentarians-eng-081/1680a4cf89).

'Europeanization' – the notion that gender equality in Western terms became a condition for 'joining Europe' – became part of the field of women's and LGBTQ rights (Valkovičová, 2017). Considering that in most socialist countries women had achieved political and legal equality chronologically much earlier than in many Western capitalist countries and that the new economic realities under liberalism and democracy resulted in massive distress and prolonged financial hardships, the concern with gender issues (as with other identity issues) might have appeared strange and alien to many who were struggling to make ends meet. Nevertheless, the Fidesz government not only intentionally uses the misleading expression 'gender ideology', but also questions the educational relevance of gender studies.

In practical terms, Orbán reduced women's rights to family policies, such as preferential loans for newly-wed couples planning to have children or exemptions from personal income tax payments for women who have given birth to and raised at least four children (Kováts, 2020: 85-86). Hungary's family policy is clearly narrowly construed as a demographic policy, excluding such issues as the education system, child poverty, or care for the elderly. However, among women of the middle and lower class, the policy addresses what Maxine Molyneux (1985) calls 'practical gender interests', that is, the interests that arise within the constraints of a given gender order, of course without questioning the order itself. Most Hungarians – men and women alike – experience paid work as exploitation (Gregor & Kováts, 2019; Grzebalska & Kováts, 2018). In this context, the main concern of women is not how to manage household and family duties while working, but rather how to escape the workplace to be able to spend time at home with their families, "while making a decent living from one job (not two or three), in which a primary objective would be an 8- rather than a 12-hour workday" (Kováts, 2020: 87). Therefore, many Hungarian women welcome government policies that support family incomes and allow women to spend less time at work. Indeed, this phenomenon partially explains the popularity of Fidesz among women.

The first gender studies program was launched in Autumn Semester of 2017 at Eötvös Loránd University (ELTE), the largest public university in Hungary. In addition to cleverly playing into the economic interests of whole classes of women, the Fidesz government led the resistance against gender studies programs. The government argued that the traditional family model was under threat by transgender and queer activism, implying that these were key elements of the curriculum for gender studies. These narratives were designed to create fears of transgender and queer people and implicitly propagated the idea that gender studies can create and contribute to change in the mainstream society. However, although the 2017 'gender ideology' campaign may have had some success, it did not affect young Hungarians as strongly as the anti-migration campaign that ran during the same period did. According to the FES study (Bíró-Nagy & Szabó, 2022: 48), among young Hungarians only 10 % would feel very bad if a gay family moved in next door, 9% would feel bad and a total 73% would be not be bothered by it – nearly one third would have no opinion (29%), and nearly one quarter of young Hungarians would feel good (23%) or very good (21%) about their new gay neighbors.[17]

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[17] 6% said they do not know and 2 % did not answer the question.

# 6    Analysis

A defining feature of Hungary's political system is the use of ongoing campaigns paid for by public funds, based on hate-filled propaganda that target alleged enemies, such as immigrants and George Soros. The majority of Fidesz' public opinion campaigns has been remarkably influential in the sense that they achieved their objective to distract and divide the population and escalate irrational fears and anxieties. In some instances, however, the results have included unintended consequences. With these campaigns, the Fidesz government has turned the state into an active agent of the extreme right in order to keep the electorate focused on identity issues and to deflect from the rising Hungarian illiberalism and rampant corruption (Rogers, 2020; Snegovaya, 2020; Fazekas & Tóth, 2016).

Many Fidesz parliamentarians and some of Orban's close friends have become successful business owners, and this fact has not gone unnoticed. A majority of young people, for example, are aware that in order to get a good job it is important to know the right people.[18] According to the FES Study (Bíró-Nagy & Szabó, 2022: 31), six out of ten young Hungarians consider networking with influential people more important than experience abroad when looking for a job (61%), and a majority of respondents (56%) believe that one needs good contacts with the government to succeed in Hungary (Bíró-Nagy & Szabó, 2022: 78). It is well known that corruption is wide-spread and normalized.[19] So much so that in Budapest, the city with the largest opposition to Orbán's party, many young people use a phone app – ingeniously called 'NOligarchia' – that allows customers to avoid frequenting those bars and restaurants that are (co-)owned by Fidesz parliamentarians.

While still featured prominently in Fidesz's political platform and used as red herrings in large public-opinion campaigns, anti-Semitism, homosexuality, and women's rights apparently influenced the population, and, as shown in this study, young people, but not necessarily as planned. Not all right-wing youth are anti-Semitic, and while misrepresentations of feminism and wide-spread misogyny is a feature of extremist-right groups, not all Hungarian young right-wing acolytes are rigidly opposed to women's rights such as abortion. My informant, for example, explained:

"When I was [younger] I was not nationalistic at all. I very much disliked being Hungarian. And then … I was growing up. And in the West the left became more, more radical and not to my taste … [with] politically correct culture and woke-ism, and everything like that. I listen to the arguments. And I cannot comprehend them, [but] I'm pro-choice. I think abortion should be allowed until a reasonable time. If someone cannot decide within three months, I think they

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[18] This has long been a theme in Hungarian society – see Zsigmond Moricz's 1932 novel Relations.

[19] I spent last fall in Budapest on a Fulbright Scholar award. The Hungarian Fulbright Commission organized the final holiday party in the cafe Scruton, named after the conservative English philosopher Roger Scruton. The cafe is owned by Zoltan Szalai, who is on the board of Matthias Corvinus College and also runs a glossy, pro-government weekly called Mandiner. The cafe received a $2 million donation of once-public money for use as an event space in 2021. When I pointed out to Károly Jókay, the Director of the Hungarian Fulbright Commission, that the owner was a well-known member of the extreme right, he looked somewhat puzzled and asked how I knew this. I believe that he was surprised not that the owner (Szalai) was a member of the extreme right, but that I knew this fact.

> should keep it. I think that the mother should decide, [or] if it actually risks their life, if they want to kill it. I'm not in line with American conservatism. I'm Hungarian. We always had abortions."

Like other comments by this acolyte, the comment about "politically correct culture and woke-ism" in this statement signals a critical view of so-called Western and especially American 'liberal' values which is one key feature of the extreme right in Hungary. A number of authors (Gyáni, 2012; Feischmidt & Pulay, 2017) who study right-wing youth culture found that acolytes reject Western 'individualistic materialism' and instead often articulate that they more highly value community and belonging than individualism, and more value national heritage than the pursuit of liberty. For Feischmidt (2020a), this resistive stance came in the form of a roughly sketched anti-globalism, of which a critique of cultural liberalism was an explicit, and anti-capitalism an implicit element. Similarly to extremist youth groups in Germany and other countries where new nationalistic and far-right popular cultures ('*rechtextreme Alltagskultur*'; Langebach & Raabe, 2009; Miller-Idriss, 2018) are flourishing, young radical Magyars use their own national clothing brands (Molnar, 2016) and music (Feischmidt & Pulay, 2017)[20] and have created their own cultural activities – called heritage work – surrounding their involvement in historical re-enactment activities, including the revival of 'old' rituals, crafts, and cultural traditions. Feischmidt (2020a: 164) concludes that a generational shift in extremist youth culture is under way in Hungary today; it is a development that is motivated by the overall rejection of the secular, cosmopolitan and individualistic agenda of the globalized Western and American liberal elites. Instead, Hungarian extremism centers upon an identity that encompasses ethno-national superiority and historic victimization, and is based on a conservative ethos that underpins this reactionary tendency (Holmes, 2010). This might explain the anger that the acolyte expressed repeatedly when referring to the U.S.A. For example, he states:

> "[Americans] think of themselves as this all-knowing God-being who has all the information and knows better than anybody. And Americans have this gene and it's fucking disgusting. They are raised like this actually. And this radical individualism that is implemented in the minds of American people is just atrocious. And it creates mental problems. Immense mental problems."

Interestingly, while very critical toward American culture and identity, the acolyte is strongly pro-EU and pro-Russia. He states:

> "And I very much love the EU for the single reason that, even though it is more humanitarian than I would think [is necessary], … the EU takes care of the consumer, e.g. the controls that the EU mandates on food production, health care, etc. I think that in the U.S. people are much more treated like cattle. In the U.S., in the Anglo-Saxon perspective, you are an individual and you have to take care of yourself. The government is not going to."

However, Europe is different. Drawing a clear distinction between the U.S. and the EU, the acolyte does not believe that Hungary's illiberalism might become problematic for the country's EU membership. Instead, he states: "I don't think the [Hungarian government] system is incompatible with something the EU can tolerate. I really don't think that. […] Institutional corruption and clientelism is a necessity of the system." In addition, the acolyte explained that he is working for a Russian import-export company and claimed:

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[20] Hungarian 'national rock' was born from a fusion of skinhead rock music and folk rock music. Lyrics typically blend radical political critique (anti-establishment, anti-globalism, anti-liberalism) with old national mythology.

"I'm a Russophile; I'm [currently] learning Russian: Hungary has a very big interest in keeping Russia in Europe." The acolyte's kind of ultra-nationalism and chauvinism leads in turn to an understanding of what good government entails in Hungary. When referring to Fidesz' public campaigns, he states:

> "I tell my intellectual friends that [Fidesz's messages] are not made for you [the well-educated]. It's made for the 60% that can actually be motivated and manipulated by these messages. And I do agree that the vast majority of people should be led, one way or another. And without much government control this is a very hard thing to do. And having this soft dictatorship that Fidesz had built up is the best of the worst options."

While this quotation also exemplifies the interviewee's identity as being part of the extremist elite, he is not alone with these beliefs based on autocratic rule. Of the young Hungarians polled by FES (Bíró-Nagy & Szabó, 2022: 58), 44% believe democracy is not a good form of government. According to a majority of young Hungarians (57%), the country needs a strong leader. This is a remarkably high proportion given that, in the other countries of the region, only one-third of young people (29–35%) feel the same way. The acolyte's justification for this anti-democracy stance lies in Hungary's past and unique geopolitical identity:

> "If I open a history book, its fucking amazing what Hungarians have done. We were never a country that had a huge middle class. It was always the elite doing things. And there was always the proletariat, doing the things that the elite hasn't. They were suffering. You can call it whatever you want. And this western vision of us being [like] the Americans or the Austrians just does not resonate with Hungarians."

Furthermore, the young man has a clear affinity for fascism, referencing the ideology repeatedly. For example, in order to explain his attitude toward anti-Semitism, he stated: "I don't think that Fascism necessarily involves an animosity against Jews. But it has to have an enemy. People need to have an enemy." Referring to the 'Trianon Trauma' as revisionism, the acolyte explains his conundrum with democracy in the following way:

> "Revisionism and democracy are absolutely incompatible. Because the [democratic] institutions do not [allow] revisionism take place. The control of the national institutions that they are put there for that exact purpose that no longer can have such power to do something like that. And that's something in the back of my head that I like about Fidesz because, for me, that's the regime that somehow would be able to do this [be an illiberal autocracy] and still is tolerable.

The interviewee was clearly aware that his nationalism is not complementary with democratic forms of government. Justifying his autocratic stance, he explained: "But I really like the basic idea of a society as a whole and the government should be the one that comes first and not the individual. That sounds extremely Orwellian but I really like the idea." Furthermore, for him, it has to be government leading the people rather than the people voting for the government they aspire to have, because: "I know for sure that the vast majority of people doesn't know what's good for them. That's why I think the government should mandate what is good for people and what is not." While much of his 'internalist' perspective reflects the current political situation regarding Hungary's role in the EU, the acolyte's anti-democratic ideology combined with Hungarian misogyny shows a more differentiated picture of extremist youth in Hungary today.

However, not all young people may be able to connect the Trianon trauma to revisionism and autocratic rule. Surprisingly, therefore, only relatively few young people in Hungary

(14%) believe that dictatorship might be better than democracy (Bíró-Nagy & Szabó, 2022: 59). However, in combination with the large cohort of young people who have checked out of the political discourse (80%), this data illustrates the large disgruntlement with the current system and the lack of interest in getting involved in politics even on a rudimentary level. An important repercussion of disenchantment that young people feel and their consequent non-involvement in politics is that a small minority of ultra-right wing youth can exert a disproportionate influence on the political system.

The FES 2022 study found that within the V4 region, young Hungarians report the lowest willingness to participate in hypothetical future elections (71%) (Bíró-Nagy & Szabó, 2022: 56). The study shows that Hungarian youth seem to be highly fragmented in terms of ideological preference between liberal pro-Western on the one hand and nationalist and pro-Russia on the other. However, a large majority of young Hungarians are anti-immigration (63%) and 40% are proud of their Hungarian citizenship. Hungarian youth is quite diverse with a large cohort who is critical of the Orbán government and an at least equally large segment that has bought into pro-Fidesz and extreme right ideologies – the FES study (Bíró-Nagy & Szabó, 2022: 65) considers one-third of young Hungarians 'hard-line nativists' - and distrustful of democratic forms of government.

This finding stands in rigid contrast to my personal experience, teaching at ELTE during the fall semester. My more than 40 students adhered to various political ideologies but none of them saw themselves on the extreme right of the political spectrum. Moreover, none of them said that they have friends or acquaintances who adhered to the right. As an English-speaking professor and Fulbright Scholar in Budapest for four months, it was remarkably difficult to find extreme right youth who were willing to be interviewed. There may be a number of reasons for this – for example, the fact that Budapest is an ethnically diverse city. In contrast to the relative homogenous countryside and smaller cities, Budapest hosts most of the country's immigrants – more than 90,500 migrants reside in the city (Medve 2022) – and attracts millions of tourists each year. In 2019, the last year prior to the COVID pandemic, 4.4 million tourists visited Budapest (Medve, 2023). According to the Hungarian Tourist Bureau, tourism accounted for more than 13% of the country's GDP in 2019, and the industry provides about 10% of Hungary's total employment (Franz 2022). For residents in Budapest, the exposure to out-group members seems to occur frequently because Magyars, tourists and migrants live side by side, and it is thus impossible to avoid contact with non-Hungarians. Studying, living and working with each other creates a closeness that alleviates the worst stereotypes of others.

## 7    In Conclusion

By pulling together information from sources ranging from a large survey to interviews with Hungarian researchers who are experts on the radical right, to a literature review and in-person observation at right wing rallies in Budapest in late 2022, to an in-depth interview with one extremist young acolyte, certain new insights about right wing extremist youth in Hungary, and about the role of Fidesz as a catalyst for the spread of right wing extremism, were revealed.

This paper's 'internalist perspective' fleshed out individual and collective trends among Hungarian youth, especially members of extremist youth groups. Overall, Hungary's youth is more anti-immigrant and xenophobic and more ultranationalist in a chauvinistic, ethnically exclusivist way than are other right wing young people. The key to understanding

this strong xenophobia and ultra-nationalism lies in the Fidesz government's long periods of publicly funded campaigns which magnified the barely disguised mistrust for strangers and ethnic minorities in the country, and its revisionist policies. The government's anti-immigration campaign was especially successful and led to a substantial rise in xenophobia and anti-migrant sentiments, not just among the right but also in the mainstream population. Fidesz's revisionist history campaign to invent a great past that was supposedly lost due to international deception has largely succeeded in increasing many Magyars' nativist feelings, which include also strong notions of resentment towards non-Hungarians whom they see as responsible for the lasting trauma produced by the Trianon Treaty. This is also true for young Hungarians. Indeed, extreme nationalist feelings and strong xenophobia go hand in hand in Hungary. As a result, there are widespread feelings of historic victimhood, domestic ethno-nationalism against the Roma population and migrant communities, and support of an aggressive foreign policy towards countries that are Hungary's neighbors.

While anti-immigration campaigns and 'memory politics' (Feischmidt, 2020a) were highly effective in distracting and dividing Hungarians by escalating irrational mistrust and anxieties, other measures produced less clear-cult results, especially in the youth cohorts, and may even have resulted in some embarrassments for Fidesz, for example, the 'bacon eating' performance on the tomb of Gül Baba to protest the visit of Erdogan in November of 2019. Other government efforts, such as the Sorosozás and 'gender ideology' campaigns, were less effective in producing a conformist youth: Young Hungarians are not necessarily anti-Semitic and do not buy into traditional tropes of womanhood (Bíró-Nagy & Szabó, 2022). For example, the extremist interviewee articulated a somewhat ambivalent stance toward Jewish people, but stood firm regarding the Holocaust and the history of Jewish people in the region, as well as regarding abortion and gay rights.[21]

Regarding other topics such as trans rights – that had been regulated out of existence in Hungary already in 2017 – the FES (Bíró-Nagy & Szabó, 2022) poll is silent. However, in the interview, the extremist acolyte has a strong opinion that aligns in many ways with the typical 'manosphere' narrative. Overall, strongly exclusivist nationalist feelings dominated the interviewees viewpoint on many issues, including migrants, gender and history.

The FES study found strong nationalist trends among Hungarian youth overall. The notion that both the members of the Hungarian chapter of Identitiás Generáció and our interviewee understand themselves as intellectual elites, in contrast to far right youth in the US, for example, who are often anti-elite and anti-intellectual -  brings new insights to the field and allows for potentially new ways to reach these young people. This also fits with Orban's plans to build a college that, in the future, will become one of the major flagship institutions, breeding Hungary's next generation of right-wing elites who will run the country for the next decades. The Mathius Corvinus Collegium (MCC), a richly endowed elite college, has been created for that purpose. In 2019 the government funding for MCC was greater than the total combined budget of Hungary's 27 other institutions of higher

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[21] As mentioned above, it was difficult to find extreme right youth who were willing to be interviewed in depth as was this acolyte. Fortunately, the Hungarian-speaking experts on right wing youth with whom I conducted in-depth interviews had done extensive interviews with extremist youth living in both the countryside and the cities. Non-Hungarian researchers should be aware of how difficult access to extreme right youth can be, especially to those residing in Budapest.

education (Laffitte & Léotard, 2021). This sort of funding allowed MCC to invite some of the extreme right's international celebrities, such as the former Fox News political commentator, Tucker Carlson, and Niall Ferguson, senior fellow at the conservative Hoover Institute and author of *Civilization: The West and the Rest* (2011). Other universities did not do so well. For example, ELTE, the largest public institution and the only one in Budapest that has so far successfully opposed Fidesz' influence on teaching and research, saw their public funding cut and had to work on a shoe-string budget which led to frigid classrooms and early winter breaks, simply because the heating bill could not be paid. However, considering the generous scholarships provided for students at MCC on the one hand and the cold classrooms at ELTE on the other, it is curious that MCC's spacious, warm classrooms are half empty and ELTE's cold classrooms are overfilled with young, eager students. Apparently, in Budapest, it seems the vast majority of young people are much more interested in professors whose research and teaching still adheres to the principals of objectivity, freedom of speech and academic freedom, rather than the government-funded restrictive teachings and research in support of an illiberal, xenophobic and nationalist Hungary. And popularity matters. The one practical implication this article strongly supports is that Western scholars should visit Hungary's colleges and universities, especially the few free and chronically underfunded ones, give lectures and speeches, and help open doors – both metaphysical and real ones - for the next generation of young Hungarians who are very curious and interested in learning about how things are done in other countries.

Of course, further research is needed to uncover more details about the self-understanding of young Hungarian extremists, specifically the particular elements of extremist thought among young people that differentiate them from other countries' extremists. In addition, it would be valuable to better understand the differences between those youth who reacted to the Fidesz campaigns by becoming more right wing and extreme in their views, those who rejected these campaigns, and those who simply became disenchanted with politics and disassociated from them.

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**| QRP**

# New Crisis, Same Attitude? EU External Border Measures and Third-Country Nationals in Pandemic Times[1]

*Réka Friedery[2]*

## Abstract

*At the time of the COVID-19 pandemic outbreak, the European Union restricted the movement of third-country nationals into the EU. The aim of this study is to provide an overview of the tools the European Union used to promote a more effective role for the EU's external borders in managing the crisis. The study looks at the nature of the measures, i.e., restrictive or non-restrictive, to understand the policy of crises management and the measures relations with each other and assesses them within the EU legal framework. The study points out that the mobility restrictions of third-country nationals brought up the memory of the 2015 migration crises, which was also unexpected and thus prevented the EU from taking the lead in coordinating Member States' actions. The study emphasises that, although the EU was still not ready with an advanced crisis management response, the external borders system offered an opportunity to facilitate a more coordinated response by Member States. This opportunity has been seized in light of the present crises, almost offsetting the delayed EU actions in connection with the unilateral actions made by Member States on their internal borders.*

## Key Words:

## 1    Introduction

As a consequence of the COVID-19 pandemic, Member States have adopted national responses, and one of the central pillars of the response to the pandemic has been to encourage the restriction of social contact to reduce the infection rate in the population, a principle which has been translated into public policy measures to reduce mobility within and across borders (Zaiotti & Abdulhamid, 2021). At the same time, some Member States created border corridors for thousands of seasonal workers, which was a major departure from the general idea that free movement should be temporarily sacrificed for the sake of public health (Ramji-Nogales & Goldner Lang, 2020). According to the Schengen Borders Code, border controls are not only in the interest of those Member States at the external borders, but also all Member States that have abolished border controls at their internal borders. Controls can help, among others, against illegal immigration and human trafficking and prevent threats to internal security, public policy, public health and

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international relations of Member States. One could say this set the direction for the management of the pandemic, as border measures were used as an immediate solution to prevent the cross-border spread of COVID-19.

It is noteworthy to mention here that at the beginning of the pandemic, the World Health Organisation (WHO) did not generally consider travel restrictions to be the most effective way of combatting the pandemic, nor did it agree that proof of vaccination should be a condition for entry into another country (World Health Organization, 2021).[3] It did not recommend the introduction of travel or trade restrictions, based on the data available at the beginning of the pandemic (World Health Organization, 2020). Indeed, it considered that banning travel to affected areas or denying entry to travellers from affected areas is generally ineffective in preventing the introduction of infection, but can have a significant impact on the economy and society (World Health Organization, 2020a). WHO later updated its recommendations on the management of the pandemic, highlighting measures that better balanced the benefits and unintended consequences of their application (World Health Organization, 2020b). Although we can observe an increased role of emergencies over the past two decades in the EU, the Member States' response to the first wave of the pandemic was surprisingly uncoordinated, and national measures limited the EU's effectiveness in fighting the disease, jeopardising the proper functioning of the single market and the Schengen area (Beaussier & Cabane, 2020). During the 2015 migration crisis, it was clear that the lines between border controls and other internal security measures were becoming increasingly blurred in many countries as seen in the Netherlands, where Article 23 of the Schengen Borders Code has been used in the context of increased police controls in response to growing irregular migration, or in Hungary and Austria, where border fences have been built (Guild et al., 2016).

## 2    Soft Law for Mobility Management

On supranational level, we can notice that soft law instruments are increasingly used by the EU institutions in forms of action programmes, communications, codes of conduct, guidelines, notices, recommendations etc., that contain policy goals in various areas with the common feature that they do not have legally binding effects. The European Commission uses many soft law instruments as guidance for Member States, and the competence of the Commission to adopt soft law has already been long established by Article 211 of the Treaty establishing the European Community, whereby Article 292 of Treaty on the Functioning of the European Union (TFEU) contains the provision that the Commission shall adopt recommendations. The European Parliament also stressed that 'soft law' constitutes a widely accepted interactive form of EU regulatory policy along with coordination, cooperation, negotiation and hierarchy, stressing that EU institutions must consider both legislative and non-legislative options when deciding, on a case-by-case basis, what action, if any, to take (European Parliament, 2007). There is a rich case law concerning the nature of soft-law, and the European Court of Justice (ECJ) has already stated in *Grimaldi* that recommendations are generally adopted by the institutions of the Community when they do not have the power under the Treaty to adopt binding measures

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[3] The organisation opposed the requirement for proof of vaccination because of the unanswered questions about whether the vaccination was effective in reducing the spread of infection and, therefore, recommended that vaccinated persons should not be exempt from other measures to reduce the risk of travel.

or when they consider that it is not appropriate to adopt more mandatory rules[4] and that Article 155 of the Treaty Establishing the European Community (EEC Treaty) gives the Commission the right to formulate recommendations or deliver opinions which, according to Article 189 of the Treaty, are not binding.[5]

Following the outbreak of the pandemic, the European Council and the European Parliament sought to find the most coherent, consolidated and united institutional response possible – a common vision, an effective strategy (Ciot & Sferlic, 2021). Although at the beginning of the pandemic, there was already an EU decision on serious cross-border threats to health,[6] an EU governance framework was being developed and the European Centre for Disease Prevention and Control (ECDC) was in place as an EU agency, the latter did not have sufficient powers for an effective coordination of the Member States (Renda & Castro, 2020). However, because of the lessons learned and the need to further strengthen the options, the European Council and the European Parliament started to move towards a draft regulation on serious cross-border threats to health[7] aimed at among others to response measures by the Union and the Member States in the event of cross-border threats to health.[8]

As for the pandemic, timing was a key factor influencing the effectiveness of the measures, and a number of studies have supported the view that if the measures had been implemented in China a few weeks earlier, it is likely that the spread of the virus would have been significantly less within the country and internationally (Grépin et al., 2021). Due to the spread of the virus, the European Commission proposed in its March 2020 Communication[9] that Member States temporarily restrict non-essential travel from third countries to the EU+ for one month. This included a pause to visa processing and issuing by EU consulates and embassies.[10] Member States agreed on coordinated action

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[4] See ECJ, Judgement of 13/12/1989, Salvatore Grimaldi v Fonds des maladies professionnelles, C-322/88, para. 13.

[5] See ECJ, Judgement of 13/11/1991, French Republic v Commission of the European Communities, C-303/90, para. 30.

[6] Decision No 1082/2013/EU of the European Parliament and of the Council of 22 October 2013 on serious cross-border threats to health and repealing Decision No 2119/98/EC (Text with EEA relevance) (*OJ L 293,* 5/11/2013, pp. 1–15).

[7] Council of the European Union. (2022c). *Press Release Provisional agreement on new EU law on serious cross-border threats to health*. https://www.consilium.europa.eu/en/press/press-releases/2022/06/23/provisional-agreement-on-new-eu-law-on-serious-cross-border-threats-to-health/.

[8] Regulation (EU) 2022/2371 of the European Parliament and of the Council of 23 November 2022 on serious cross-border threats to health and repealing Decision No 1082/2013/EU (Text with EEA relevance) (PE/40/2022/REV/1, *OJ L 314,* 6/12/2022, p. 26–63).

[9] European Commission. (2020b, March 16). *Communication COVID-19: Temporary restrictions on non-essential travel to the EU*, COM(2020) 115 final.

[10] The Communication complements the previously issued Guidelines on border management measures to ensure the protection of health and the availability of goods and essential services (COVID-19 Directive), which were published when Member States unilaterally introduced measures restricting the free movement of persons across the EU's internal borders. The guidelines set out principles for an integrated approach to the use by Member States of exemptions for the effective management of borders to protect health. It states that health checks on all persons entering the territory of the Member States do not require the formal introduction of internal border controls (see in more details: Friedery, 2022b).

at the external borders as recommended in the Communication, and non-essential travel was limited to 30 days from 17 March. In this context, the Commission adopted two new Communications in April[11] and May,[12] proposing a one-month extension of the non-essential travel restrictions, which were agreed upon by the Schengen Member States and the four Schengen associated states, and the entry ban was extended until 15 June 2020. The scope of the travel restriction covered non-essential travel from third countries to the EU+ area, but also included exemptions and exceptions. Exemptions applied to travel by all EU citizens, all nationals of Schengen associated countries and their family members, third-country nationals who were holders of a residence permit under the Long–Term Residents Directive and persons who held a right of residence or a national long-stay visa under other EU directives or national legislation. Exceptions were made for persons with an essential function, such as health professionals, and persons with a need, such as persons in need of international protection.[13]

However, the European Commission also tried to coordinate exit strategies for both internal and external borders[14] with the publication of an exit roadmap in April where the EU's priority was also indicated: Member States would coordinate the removal of measures, but the primary objective of these decisions was to remain the protection of public health in the short and long term. The roadmap foresaw a second phase of reopening the external borders to allow non-EU citizens to enter the EU, taking into account the spread of the coronavirus outside the EU and the risk of reappearance. In addition, the need to restrict non-essential travel to the EU was to be kept under review to ensure compliance with the measures taken by EU Member States and Schengen-associated countries to restrict social contacts. In June 2020, the Commission proposed that Member States harmonise visa procedures, as the entry ban and restrictions were slowly being lifted in Member States. It also called for a uniform way of processing visa applications and the introduction of a coronavirus test as a prerequisite for visa procedures.[15] Next to this, also in June, the Council proposed the lifting of restrictions for residents of the 14-15 countries listed in its recommendation and proposed the review of this list in every second week. Member States could make this subject to the health

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[11] European Commission. (2020c, April 8). Communication from the Commission to the European Parliament, the European Council and the Council on the assessment of the application of the temporary restriction on non-essential travel to the EU, COM(2020) 148 final.

[12] European Commission. (2020d, May 8). Communication from the Commission to the European Parliament, the European Council and the Council on the second evaluation of the application of temporary restrictions on non-essential travel to the EU, COM(2020) 222 final.

[13] The following persons were included: health professionals, health researchers, elderly care professionals, border commuters, transport staff and, to the extent necessary, other transport staff engaged in the carriage of goods, diplomats, staff of international organisations, military personnel and humanitarian aid workers in the performance of their duties, transit passengers, passengers travelling for compelling family reasons, persons in need of international protection or other persons travelling for a permitted stay for humanitarian purposes (European Commission, 2020b, March 16).

[14] European Commission. (2020, April 17). Joint European Roadmap towards lifting COVID-19 containment measures 2020/C 126/01 (C/2020/2419, *OJ C 126,* 17/4/2020, p. 1–11).

[15] European Commission. (2020e, June 12). *Communication from the Commission Guidance for a phased and coordinated resumption of visa operations*, 2020/C 197 I/01 (C/2020/3999, OJ C 197I, 12/6/2020, pp. 1–4).

situation, restrictive measures and economic and social considerations.[16] But it is necessary to emphasise that although Member States agreed on a list for lifting restrictions, only a few applied it.

Another step towards an unified approach was the adoption on 13 October of a coordinated approach to restrictions on free movement.[17] This stated that any measures restricting free movement taken to protect public health must be proportionate and non-discriminatory and, if the epidemiological situation allows, should be lifted. The recommendation identified four key areas for coordinated action by Member States: a common system based on a colour code (green, orange, red, grey), common criteria for Member States when deciding whether to introduce travel restrictions, clearer measures for travellers from higher risk areas (testing and voluntary quarantine) and clear and timely information to the public.[18] Several criteria have been set out: the possible lifting of restrictions must take account of the epidemiological situation in the EU, their effectiveness depends on coordination, Member States cannot decide unilaterally, and they can only be lifted gradually and with full transparency.

We shall conclude that the harmonisation of restrictive measures on free movement by Member States has been a key priority in almost all EU documents, precisely because at the beginning of the pandemic, Member States introduced measures on internal borders independently and without coordination. However, on the issue of the EU's external borders, i.e. restrictions on third-country nationals, there was a high degree of coordination. This was underlined by the so-called emergency brake mechanism,[19] under which the Commission acted very swiftly on the COVID-19 mutation in the southern part of the African continent, with flights from the affected African region being stopped and travellers from the region being placed under strict quarantine. The mechanism meant that if the epidemiological situation in a third country or a region deteriorated rapidly, and in particular if a variant of the virus of concern emerged, Member States had to introduce urgent temporary restrictions on all travel into the EU.[20]

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[16] Council of the European Union. (2020a). Council Recommendation (EU) 2020/1186 of 7 August 2020 amending Council Recommendation (EU) 2020/912 on the temporary restriction on non-essential travel into the EU and the possible lifting of such restriction (ST/10095/2020/INIT, *OJ L 261*, 11/8/2020, pp. 83–85).

[17] Council of the European Union. (2020b). Council Recommendation (EU) 2020/1475 of 13 October 2020 on a coordinated approach to the restriction of free movement in response to the COVID-19 pandemic (Text with EEA relevance) (*OJ L 337,* 14/10/2020, pp. 3–9).

[18] The recommendation insisted that Member States should not restrict the free movement of persons to and from green areas, should respect the differences in the epidemiological situation between orange and red areas, should act in accordance with the principle of proportionality and should not, in principle, refuse entry to persons entering from other Member States. Member States that consider it necessary to introduce restrictions may require that persons entering from non-green areas are quarantined or tested upon arrival.

[19] Council of the European Union. (2022a). Council Recommendation (EU) 2022/107 of 25 January 2022 on a coordinated approach to facilitate safe free movement during the COVID-19 pandemic and replacing Recommendation (EU) 2020/1475 (Text with EEA relevance), (ST/5400/2022/REV/1, *OJ L 18, 27/1/2022*, pp. 110–123).

[20] The emergency brake mechanism did not apply to EU citizens, long-term residents in the EU and certain categories of persons travelling on grounds of essential need. On 10/1/2022, the use of the "emergency brake mechanism" ended.

# 3 "Pandemic" Technology for Mobility Management of Third-Country Nationals

EU public health emergency coordination presupposes the existence of common methods for collecting data on the spread of the virus, the characteristics of infected and recovered persons and their possible direct contacts, a common testing strategy at the EU level for cross-border health emergency response; these are, in practice, the exclusive health competences of each Member State (Alemanno, 2020). One of the results of the pandemic is that Member States and the EU have turned to digitalisation to deal with the crisis. Putting new disease detection technologies at the heart of EU health security initiatives has been instrumental in the emergence of a new EU-wide combined health surveillance practice (Roberts, 2019).

On 14 June 2021, the European Parliament and the European Council adopted Regulation (EU) 2021/953, which set up the framework for the issuance, verification and acceptance of the interoperable EU digital COVID certificate,[21] initially only until 30 June 2022 but later extended until 30 June 2023[22] in line with the epidemiological situation.[23.] In this context, Regulation (EU) 2021/954 was adopted,[24] which extended the EU digital COVID framework to third-country nationals residing legally in a Member State and who are, in accordance with EU law, entitled to travel to other Member States.[25] This means that the framework applied to EU citizens, their family members and third-country nationals who were legally residing in the territory of a Member State and met one of the following criteria: they had been vaccinated, or had recovered from COVID-19 or had tested negative. Accordingly, the issuing, cross-border verification and acceptance of three types of digital identity cards were allowed: vaccination cards, test cards and health cards.[26] The Regulation emphasised the harmonisation of restrictive measures on free movement as restrictions on free movement were mostly introduced unilaterally by Member States without coordination between themselves or at EU level (see for more details Friedery, 2022b).

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[21] In the 27 EU countries plus Iceland, Liechtenstein, Norway and Switzerland.

[22] Regulation (EU) 2022/1034 of the European Parliament and of the Council of 29 June 2022 amending Regulation (EU) 2021/953 on a framework for the issuance, verification and acceptance of interoperable COVID-19 vaccination, test and recovery certificates (EU Digital COVID Certificate) to facilitate free movement during the COVID-19 pandemic (Text with EEA relevance) (PE/27/2022/REV/1, *OJ L 173*, 30/6/2022, pp. 37–45).

[23] European Commission. (2022b). *Proposal of 2 February 2022 for a Regulation of the European Parliament and of the Council amending Regulation (EU) 2021/953 on a framework for the issuance, verification and acceptance of interoperable COVID-19 vaccination, test and recovery certificates (EU Digital COVID Certificate) to facilitate free movement during the COVID-19 pandemic*, COM(2022) 50 final.

[24] Regulation (EU) 2021/954 of the European Parliament and of the Council of 14 June 2021 on a framework for the issuance, verification and acceptance of interoperable COVID-19 vaccination, test and recovery certificates (EU Digital COVID Certificate) with regard to third-country nationals legally staying or residing in the territories of Member States during the COVID-19 pandemic (Text with EEA relevance) (PE/26/2021/REV/1, *OJ L 211*, 15/6/2021, pp. 24–28).

[25] 1.7 billion cards were issued by 22 June 2022 (Schengenvisa News, 2022a).

[26] Passengers who tested negative for antigens were given a certificate of recovery, which was not possible before (Schengenvisa News, 2022b).

As mentioned above, due to the still present virus and certain travel restrictions within the EU, the European Commission proposed to extend the COVID Regulation by Regulation (EU) No 2022/1034 and to introduce several amendments. First, the Regulation reintroduced the obligation for the Commission to submit a detailed report by 31 December 2022; Regulation (EU) 2021/953 had already required the Commission to publish a report. The report provided an overview of, inter alia, the implementation of the Regulation and other developments regarding the EU digital COVID certificate and its domestic use by Member States.[27] In addition, it clarified that vaccination certificates must include all doses administered, regardless of the Member State in which people received the vaccine. The EU also introduced an extension of the range of authorised antigen tests used to qualify for the digital COVID certificate, the possibility to issue a certificate of cure following antigen testing and the possibility to issue a certificate of vaccination to persons participating in clinical trials. It should be pointed out that no prior impact assessment was carried out when the Regulation was extended, which would have highlighted the effectiveness and proportionality of the measures affecting fundamental rights. This would have been particularly important as the certificate required the processing of personal data (European Data Protection Board [EDPB] & European Data Protection Supervisor [EDPS], 2022).

Thus, this digital certificate scheme opened up to non-EU countries[28] meaning that countries could apply for an equivalence decision issued by the European Commission, allowing non-EU countries (and territories) that joined the scheme to have their cards accepted directly under the same conditions as the EU digital card.[29] This solution facilitated the mobility of third country nationals and EU citizens vaccinated outside the EU to enter the EU.[30] But we shall emphasise that the Recommendation containing these changes allowed, but did not oblige, Member States to issue an EU digital COVID certificate to a non-EU national wishing to enter the EU on request, provided that the applicant presented reliable proof of vaccination. Additionally, the extension of Regulation (EU) 2021/954 to third-country nationals could have been foreseen and its impact on

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[27] European Commission. (2021). *Report from the Commission to the European Parliament and the Council pursuant to Article 16(1) of Regulation (EU) 2021/953 of the European Parliament and of the Council on a framework for the issuance, verification and acceptance of interoperable COVID-19 vaccination, test and recovery certificates (EU Digital COVID Certificate) to facilitate free movement during the COVID-19 pandemic* (COM[2021] 649 final). https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52021DC0649&from=EN.

[28] See more: Council of the European Union. (2022b). Council Recommendation (EU) 2022/290 of 22 February 2022 amending Council Recommendation (EU) 2020/912 on the temporary restriction on non-essential travel into the EU and the possible lifting of such restriction (ST/6159/2022/INIT, *OJ L 43, 24.2.2022*, pp. 79–83).

[29] See more: European Commission. (n.d.). Commission implementing decisions on the equivalence of COVID-19 certificates issued by non-EU countries. Legal documents explaining that COVID certificates issued in these countries (and territories) are accepted in the EU, and vice-versa. https://commission.europa.eu/strategy-and-policy/coronavirus-response/safe-covid-19-vaccines-europeans/eu-digital-covid-certificate/commission-implementing-decisions-equivalence-covid-19-certificates-issued-non-eu-countries_en.

[30] When a country joins the scheme, its certificates automatically become valid in the EU. Validation of certificates is required for third-country travellers vaccinated with one of the vaccines authorised by the European Medicines Agency (EMA), but Member States may also choose to accept additional vaccines, such as those on the WHO's emergency use list.

fundamental rights, including the right to data protection, should have been more thoroughly assessed (EDPB & EDPS, 2022). Although all measures restricting the free movement within the EU, including the requirement for travellers to hold an EU digital COVID certificate, have been abolished since August 2022, Member States could use the EU digital COVID certificate in case the countries needed to temporarily reintroduce travel restrictions due to the pandemic situation. The EU Digital COVID Regulation extended until June 2023 and has already provided the necessary framework to address the impact of restrictions on free movement and at the same time facilitate travel.[31]

## 4    Refuge and Asylum during Pandemic Management?

Pandemics, like migration flows and terrorist attacks, also affect border policy (Kenwick & Simmons, 2020), and although many of the restrictions put in place were a response to the virus, it has become clear that many restrictions have been associated with or applied to other instruments to manage migration (Sanchez & Achilli, 2020). Furthermore, the impact of border policy on the EU's external borders [32] as a policy to manage the pandemic appears to have affected a range of areas, such as the regulation of international travel or the processing of asylum applications. Specific attention was also paid to the effects of the COVID-19 pandemic on migrants internationally (Manca, 2022) and at the regional and national levels (Föltz, 2022).

As mentioned at the beginning of the article, the European Commission proposed in March 2020 that Member States should introduce a temporary ban on third-country nationals entering the Schengen area. As far as primary law is concerned, Article 67(2) TFEU states that the Union shall develop a common policy based on solidarity between Member States regarding the control of external borders, ensuring fair treatment of third-country nationals. Furthermore, this policy was aimed at ensuring the control of persons and the efficient monitoring of border crossings at the external borders (Art. 77[1][b] TFEU), and the gradual introduction of an integrated management system for external borders (Art. 77[1][c] TFEU).[33] Regarding the relevant secondary legislation, Regulation (EU) 2016/399,[34] also known as the Schengen Borders Code (SBC), contains the rules on the

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[31] European Commission. (2022a). *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee, and the Committee of the Regions. EU response to COVID-19: preparing for autumn and winter 2023* (COM[2022] 452 final). https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52022DC045.2

[32] The external border of the Schengen area is 50,000 km long, 80% water and 20% land, with a surface area of 4,312,099 km$^2$ and a population of 419,392,429. See: https://www.schengenvisainfo.com/schengen-visa-countries-list/#the-essential-features-of-the-schengen-zone

[33] Art. 77(2) TFEU outlines: For the purposes of paragraph 1, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall adopt measures concerning: (a) the common policy on visas and other short-stay residence permits; (b) the checks to which persons crossing the external borders are subject; (c) the conditions under which nationals of third-country shall have the freedom to travel within the Union for a short period; (d) any measure necessary for the gradual establishment of an integrated management system for external borders; (e) the absence of any form of control for persons, whatever their nationality, when crossing internal borders.

[34] Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code) (codification) (*OJ L 77*, 23/3/2016, pp. 1–52).

control of persons at the external borders, the conditions of entry and the conditions for the temporary reintroduction of border controls at internal borders in the Schengen area.[35] The SBC sets out the entry conditions for third-country nationals, allowing Member States to assess on a case-by-case basis whether third-country nationals should be considered as a threat to public health. In this context, Member States should ensure close cooperation between border control services and transport operators.[36]

It is important to emphasise that there is no explicit ban on entry in the SBC, only on persons crossing the external borders of the EU [37] and the way in which checks are carried out. Article 14 of the SBC only states that entry may be refused if a person does not fulfil the conditions laid down in Article 6, including that the person does not represent a threat to public policy, internal security, public health or the international relations of the Member States. In particular, the person is not the subject of an alert in the national databases of the Member States for the purposes of refusing entry for the same reasons.[38] According to the Code, a threat to public health is any disease with pandemic potential according to the WHO International Health Regulations, other communicable diseases or contagious parasitic diseases, if they are covered by the protection provisions applicable to nationals of Member States (Art. 2 SBC).

Member States have a discretionary power to authorise the entry of third-country nationals into their territory who do not fulfil one or more of the conditions laid down in Article 6(1) of the SBC on humanitarian grounds, on grounds of national interest or because of international obligations. However, when looking at the wording, they may admit a person who is the subject of an alert, since the SBC only declares a notification obligation, i.e. the Member State authorising the entry must notify the other Member States. Also, we shall point out that during the pandemic, only a few States took advantage of the possibility to exempt asylum seekers from the entry ban, thus this called into question the right to

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[35] Articles 25, 28 and 29 of the Regulation allow Member States to temporarily reintroduce border control at internal borders in the event of a serious threat to public policy or internal security. Article 29 may be used in exceptional circumstances where the general functioning of the Schengen area is threatened by persistent and serious shortcomings in external border control and where these circumstances constitute a serious threat to public policy or internal security in the area without internal border controls or in certain parts of it, the Council, acting on a proposal from the Commission, may propose that one or more Member States decide to reintroduce border control along the whole or parts of their internal borders.

[36] Council of the European Union. (2020a). Council Recommendation (EU) 2020/1186 of 7 August 2020 amending Council Recommendation (EU) 2020/912 on the temporary restriction on non-essential travel into the EU and the possible lifting of such restriction (ST/10095/2020/INIT, *OJ L 261*, 11/8/2020, pp. 83–85). https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32020H1186

[37] According to the SBC, external borders are the land borders of the Member States, including those crossings landlocked or river waters, maritime borders and airports, river, sea and lake ports, provided they are not internal borders. Border control may be reintroduced on grounds of public policy or internal security, which clearly does not include public health, but requires a broad interpretation of public policy in the context of the current pandemic and, thus, includes public health.

[38] A person for whom an alert has been issued for the purposes of refusing entry under the SBC is a third-country national who is the subject of an alert in the Schengen Information System (SIS) see more https://home-affairs.ec.europa.eu/policies/schengen-borders-and-visa/schengen-information-system/alerts-and-data-sis_en

asylum as protected by the Charter of Fundamental Rights of the European Union. This position of Member States is well-illustrated by the experiences during the introduction of internal border controls. As I mentioned before, although the SBC does not mention a ban on entry, the EU has already covered external borders in its first ever guidelines on border management measures (COVID-19 Directive)[39] which were issued precisely because of the unilateral introduction of border controls by Member States restricting free movement within the EU. It explained that Member States have the possibility to refuse entry to non-resident, third-country nationals if they show relevant symptoms or have been particularly exposed to the risk of infection and pose a threat to public health. But alternative measures to refusal of entry, such as isolation or quarantine, can be used if they are deemed more effective.

We shall emphasise the situation of asylum seekers regarding third-country nationals. In relation to migration and to the standpoint of Member States, it is worth pointing out that Member States did not exclusively cite COVID-19 as the reason for the reintroduction of border controls, as we can observe that migration was a constant reason for border control and was used in conjunction with COVID-19 as reason to impose restrictions during the pandemic. Interestingly, in the period up to 30 October 2022, France was the only one that mentioned the virus, among others, as a reason leading to the introduction of border controls.[40] It should be stressed that according to the Code, migration and the large number of third-country nationals crossing the external borders are not, in themselves, considered a threat to public policy or internal security (see Art. 26 SBC).

Border policy affected the functioning of asylum and reception systems across the EU. This was already evident at the beginning of the pandemic with the closure of the external borders in March 2020, and this was followed by further steps taken by Member States. The EU Charter of Fundamental Rights was to be applied when Member States' measures combatting COVID-19 were linked to the implementation of EU law (European Union Agency for Fundamental Rights, 2021). When implementing measures to address public health, refusing entry to all asylum seekers or applicants of a particular nationality were not in line with the right to asylum and may have led to a violation of the principle of non-refoulement (European Union Agency for Fundamental Rights and Council of Europe, 2020). Asylum seekers faced the closure or suspension of asylum centres and access to them due to travel restrictions on travellers to Europe. For example, the Austrian Federal Office for Immigration and Asylum closed both its branches and primary reception centres shortly after the country introduced entry restrictions (European Asylum Support Office [EASO], 2020). Poland suspended access to reception centres for foreigners after 1 March 2020 due to the health and epidemiological situation (European Union Agency for Fundamental Rights, 2020b), and Greece temporarily suspended access to asylum by

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[39] European Commission. (2020a, March 16). COVID-19: Guidelines for border management measures to protect health and ensure the availability of goods and essential services (2020/C 86 I/01). https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52020XC0316%2803%29
[40] See more: European Commission. (2023). Member States' notifications of the temporary reintroduction of border control at internal borders pursuant to Article 25 and 28 et seq. of the Schengen Borders Code. https://home-affairs.ec.europa.eu/system/files/2023-07/Full%20list%20of%20MS%20notifications%20of%20the%20temporary%20reintroduction%20of%20border%20control%20at%20internal%20borders.pdf

March 2020 in response to the large numbers of migrants and refugees gathering along its land border with Turkey (European Union Agency for Fundamental Rights, 2020a).

Public health was used in anti-immigration public dialogue in Hungary when the country introduced a state of emergency and indefinitely suspended access to border transit areas for asylum seekers because of the risks related to the spread of the COVID-19, and citing the need to protect the people in transit zones and the country in general.[41] Act No. LVIII of 2020,[42] adopted following the outbreak of the COVID-19 pandemic, stated that in the event of an epidemiological risk, a third-country national must submit, in person, a declaration of intent at the Hungarian Embassies in Belgrade and Kyiv before being able to initiate the asylum procedure in the country. According to Hungary, the procedure of Art. 268- 270 of the Law of 2020 was justified on public health grounds and to hinder the spread of the virus. This declaration was to be assessed by the National Directorate General for Aliens Policing. Nevertheless, the European Commission launched an infringement proceeding, among other grounds that, though it acknowledges that the COVID-19 pandemic requires the adoption of measures to limit the spread of the virus, Member States could only take necessary and proportionate measures to protect public health. Hence, such measures cannot have the effect of preventing access to the international protection procedure.[43] The Court of Justice ruled that Hungary failed to fulfil its obligations under Article 6 of Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (para. 25). The Court found that the new legislation deprives third-country nationals or stateless persons concerned of the effective exercise of their right to apply for asylum in Hungary, as guaranteed by the Charter of Fundamental Rights of the European Union, and is not justified by the objective of protecting public health put forward by Hungary. Additionally, the measure has disproportionate interference with the right of applicants for international protection, and the obligation of third-country nationals or stateless persons to move potentially exposes them to the disease which they could subsequently spread in Hungary (para 60). Therefore, the maintenance of this system is unjustified, especially since the epidemiological entry restrictions were lifted on 7 March 2022, and the Government ended the state of danger due to the COVID pandemic on 1 June 2022 (Asylum Information Database [AIDA], 2023).

Thus, we can say that refuge and asylum were not factors taken into consideration when Member States introduced border measure to fight the pandemic, moreover, in several cases the pandemic was used to tighten the rights of asylum seekers.

## 5    Conclusion

The effects of the COVID-19 pandemic will be with us for years to come, as it has influenced borders and border policies along with the 2015 migration crisis. The public health crisis, following the 2015 migration crisis, has accelerated the use of new

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[41] Website of the Hungarian Government. (2020, March 3).

[42] Act No. LVIII of 2020 on Transitional Rules related to the Termination of State of Danger and on Epidemiological Preparedness (A veszélyhelyzet megszűnésével összefüggő átmeneti szabályokról és a járványügyi készültségről szóló 2020. évi LVIII. törvény).

[43] See: ECJ, Judgement of 22/6/2023, *European Commission v Hungary*, C-823/21, ECLI:EU:C:2023:504.          https://curia.europa.eu/juris/document/document.jsf?text=&docid= 274870&pageIndex=0&doclang=HU&mode=req&dir=&occ=first&part=1&cid=268610

technologies to monitor and control mobility. The migration crisis led to the introduction of reinforced border control, which has remained popular ever since, regardless of the reason for its introduction, be it public security or public health.

The suspension of Schengen has meant an extension of restrictive measures on movements at internal borders in some states. The EU entry ban, the closure of external borders, was introduced as a measure to ensure that the external borders would not pose a further threat to Member States. However, the introduction of digital certificates for third-country nationals offered an alternative to lessen the restriction.

On the one hand, the evolution of the epidemic into a pandemic (World Health Organization, 2020c, March11), namely when coronavirus spread world-wide, has highlighted the inadequacy of the current rules and the shortcomings of pre-defined responses to emergencies caused by diseases with epidemiological potential. On the other hand, it should be noted that the lack of solidarity between Member States – which is prevalent within so many topics – was present both when restrictions on travel to the EU were introduced and when they were lifted. Thus, while the EU was still not ready for an established crisis response leading to coordinated action at internal borders, the external border regime offered an opportunity for the EU to gain a leading role and for the Member States to act in a coordinated manner. The EU has been able to use this opportunity to counterbalance the delayed EU action on unilateral national measures on internal borders.

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**| QRP**

# POLICY REPORT

# "Give Me a Chance!":
# Developments in Vocational Training for Refugees since the Summer of Migration in the Context of Migration Movements in Germany[1]

*Philip Anderson[2]*

## *Abstract*

*This article looks into the background to recent migration movements in Germany. In order to understand the stance of the German government, as well as large parts of civil society, it is important to look at the longer-term historical setting of migration to and from the German-speaking lands. Ethnic-culturally German territories were for a long time areas of emigration. It was only from the 19th century onwards that patterns of large scale immigration began to emerge. Indeed, it was only after the reunification of modern Germany at the end of the 20th century that there was broad political, legislative as well as societal acknowledgment of Germany as a country of immigration.*

*The article goes on to examine the "summer of migration" in 2015 and the connotations of the high levels of immigration of asylum seekers and refugees – many of whom were young – which that entailed. Against the background of demographic change (Germany as an ageing society) and an increasingly dramatic skills shortage, there is a realisation of the need to enable young refugees to acquire relevant qualifications in order to better access the labour market. Developments in vocational training through the Dual System – in particular in Bavaria in southern Germany – are examined in this context. Shortages of skilled labour in small and medium-sized enterprises have been a key driver in establishing Vocational Training Classes (VTC). These aim to provide asylum-seekers and refugees with valid school certificates as well as a programme of job training orientation. These are the prerequisite to young refugees being able to go on to successfully attain vocational qualifications under the Dual System.*

*The final part of the article offers a considered assessment of the lessons to be derived from these programmatic developments over the last few years: What further forms of support are required to enhance the social and labour market integration of refugees, and what is the way forward for Germany in developing a sustainable, resources-*

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[1] This work is licensed under a Creative Commons Attribution-NonCommercial-NoDerivatives 4.0 International License and was accepted for publication on 9/9/2023. It is based on a presentation at the Conference Save, Orderly and Regular Migration: Transnational Skill Partnerships, that was held at the Technical University of Applied Sciences Würzburg-Schweinfurt, 24-26/5/2023

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*orientated set of immigration and integration instruments for newly-arrived (forced) migrants in the long term?*

## Key Words:

*Germany; vocational training; integration; labour market access; influx; policy*

## 1    A Brief History of Germany's Migration Movements until 2015

For a long time, Germany was a geographical, linguistic and cultural entity rather than a nation state. For this reason, among others, it was more often a source of emigration as opposed to a target destination for immigrants. There were patterns of migration to Eastern Europe in the Middle Ages (e.g., well-known groups such as the *Siebenbürger Sachsen* or the *Donauschwaben)*. Later, Catherine the Great, a princess originating from a small German principality, encouraged the emigration of her countrymen to Eastern parts of the Tsarist Empire, trusting in their ability to develop agriculture and networks of local trade with the concession of ten years of tax-free residence.

This was promulgated in the Edict of 1763 with a letter-of-invitation for potential colonists, as part of a policy of settlement also practiced in the Austro-Hungarian Empire and in Prussia. It was attractive for many from German territories, as they could thus free themselves from serfdom and would enjoy religious freedom. It was followed up by a further edict under Alexander I in 1804 confirming the concessions for settlers. It is estimated that some 50-55,000 Europeans settled in the Ukraine, Moldavia and the Transcaucasus as a result (Krieger, 2017).

Prussia provides a good example of interest in the settlement of qualified immigrants. Following the revocation in 1685 by Louis XIV of France of the Tolerance Edict of Nantes, which had been promulgated in 1598 by Henri IV, the Prussian monarch, the Great Elector Friedrich Wilhelm, encouraged the immigration of French Huguenots into Brandenburg. His Edict of Potsdam of the same year (1685), guaranteeing freedom of religion and civic rights to the French Protestants, was an innovative step at that time and set a conscious counterpoint to the repressive religious policy of the French monarchy.

There was, however, a key economic motive underlying this approach. The Great Elector was particularly interested in drawing on the renowned skills of the Huguenots in textile manufacture to make uniforms for his army, and the relatively poor and sparsely-populated Prussian state profited from the immigration of a skilled and cultured elite into Brandenburg in the longer term. This is clearly evident up to the present day in the built-environment heritage of the French Protestant community as represented by the ensemble of the *Gendarmenmarkt* in Berlin – often said to be "Berlin's loveliest square" (Hanewinkel & Oltmer, 2017).

The most important goal of emigrants from the German lands in the 19th century was of course America. It is estimated that some 20 million people from all over Europe left via the ports of Hamburg, Bremen and Bremerhaven in the course of the century. Some 5.5 million Germans settled in the United States between 1816 and 1914 (Oltmer, 2016). Large populations of German emigrants also accrued in South America in Brazil and Argentina and similarlyin Canada.

Immigration into the German territories began before the unification of Germany under Prussian suzerainty with the upswing in coal-mining, steel and other heavy industries in

the middle of the 19th century. Labour migrants came primarily from Poland to the Ruhr area in the course of the Industrial Revolution. Despite the associated economic boom, there was considerable poverty and unemployment, and the factories were run under semi-feudal conditions. Some 40,000 to 50,000 Polish-speaking immigrants lived in the Ruhr area but found themselves confronted with pressure to assimilate to the German language and culture of the ethnic German majority, though there was nonetheless the shared religious faith of Catholicism. A Polish familial and cultural heritage has been evident in the Ruhr area ever since.

Covering migration processes during the First and Second World Wars as well as the inter-war period is beyond the framework of this essay. Nevertheless, we should note that part of the xenophobic, "master race" ideology of the Nazi regime categorized the Poles as Slavic "sub-humans" to be exterminated as part of the broader agenda of the genocide of the Holocaust which – with clear geographical, programmatic intent – established the extermination camps in Polish territory. This was the space designated for radical "cleansing" of the "racially impure" (Lehnstaedt, 2017).

At the end of World War II, Germany became a huge fulcrum of migratory movement as 12 million displaced persons – concentration camp survivors, former slave labourers and POWs – were relocated in 1945-47. A similar number of ethnic Germans and refugees came into the core central European German lands from the East, fleeing the advancing Red Army. These numbers of uprooted people presented huge logistical and organisational challenges, which the Allies had to deal with following the collapse of Nazi Germany.

The next significant wave of immigration came with the hiring of so-called "guest workers" on the basis of inter-governmental Employment Agreements, beginning with Italy in 1955. Labour migration was required with the burgeoning "economic miracle" in West Germany from the late 1950s and especially from 1961 with the cutting of the inflow of people of working age from the GDR due to the construction of the Berlin Wall.

Originally, workers were hired on the basis of the rotation principle, by which they were supposed to return home after two years. But both the employers and workers set their faces against this as there was little sense in sending workers home once they had acquired the requisite work skills and language basics, only to begin from scratch with the next batch of immigrant workers. Most were young and male (ca. 80%); as a rule they lived in barracks adjacent to their places of work and were employed as unskilled workers in sectors of industry which were unattractive to the resident population on account of low pay and poor working conditions (Berger & Mohr, 2010).

While most returned to their home countries, by 1973 some 2.6 million of these "guest workers" had settled in Germany. At this time, rising unemployment and the oil crisis caused by the Yom Kippur Arab-Israeli war led the German government to terminate the agreements, thus stopping the supply of labour migrants to Germany – officially at least.

Henceforward, the only legitimate path for continued immigration was family reunion, meaning that the proportion of the migrant population in gainful employment in Germany steadily decreased over the following years through the immigration of spouses and minors. The only exception to this was the continued immigration of medical and care workers as well as nurses, of which there was an ongoing shortage, from South Korea, India and the Philippines (Berlinghoff, 2018).

A brief summary of immigration to the GDR makes plain that 1961 was also a watershed moment for the East German state. Until the erection of the Wall, some 2.7 million East German citizens left for West Germany, many of whom were qualified workers. This gave rise to an increasing skills shortage in Eastern Germany. In the 1970s and 80s, there was a limited intake of young people from "socialist brother states", such as Vietnam, Cuba and Angola, who came to work, do apprenticeships or to study technical subjects such as engineering. Under the terms of these "state agreements", family reunion was not allowed and the migrants were obliged to return once their contracts (as apprentices or workers) had expired.

A number of exiles from Chile came to East (and West) Germany following Pinochet's coup against the elected government of Salvador Allende in 1973. Equally, numbers of "boat people" from Vietnam were given sanctuary in 1978. As a rule, both the labour migrants and refugees lived in hostels separate from the majority population, with whom they were only allowed to fraternise with permission. They received a part of their wage only after returning to their homeland and were obliged to hand over a part of their income to their government (Berlinghoff, 2018). In other words, migration to the GDR was subject to strict surveillance and control.

After 1990 and the reunification of modern Germany, there were other migratory movements. Apart from the strong internal movement of young people of employable age from the Eastern to Western *Länder* (federal states) the early nineties were also characterised by increased immigration of ethnic Germans from the countries of the former Soviet Union and the Eastern bloc. Equally, there was a rise in the number of asylum seekers. Many came to Germany during the wars and conflicts following the break-up of the former Yugoslavia.

However, increasing global mobility and the development of global migration networks meant that the world was "shrinking", inasmuch as not only asylum seekers with a clearly defined experience of persecution in the sense of the Geneva Convention (1951), but also many others with complex, multiple motives were on the move in search of a better, safer life.

One result of these developments was a dramatic increase in the numbers of people applying for asylum in the early 1990s – legal, alternative channels such as labour migration being largely closed – as Germany had one of the most generous asylum regimes worldwide as a key element in the legacy of the Nazi period. This migratory "displacement effect" gave rise to intense and controversial debate in Germany in the early nineties and resulted in wide-ranging restrictions in asylum procedure and recognition practice. This meant the number of those attaining some form of refugee status fell dramatically in the following years.

From the early noughties, a sea change in immigration policy gradually became evident, driven by an increasing awareness of demographic change (an ageing native population) and a skills gap – a serious problem for the backbone of the German economy, the *Mittelstand* (mid-tier) of small and medium-sized enterprises. Thus, alongside a liberalisation of the rules allowing assumption of German citizenship (1999), there was an encouragement of immigration of highly-qualified workers beginning with a *Green Card* regime starting in 2000 and the ongoing promotion of a somewhat nebulously-defined "welcoming culture" for immigrants. The key element in this was the rolling out of language

course and integration programmes to ease immigrants into the German education and training system, labour market and society (from 2005 onwards).

The Federal Office for Migration and Refugees (BAMF) has since been responsible for the nationwide installation of these programmes to enhance long-term absorption of immigrants into German society. Since then, there has been the development of what may be termed an "integration industry", i.e. a range of actors in cooperation, from local administration, language course providers, social services, schools and a variety of civil society organisations to the entire gamut of political decision-makers at local authority, *Länder* and federal government level to enable the newly-arrived to adapt, adjust, acquire skills and access the training and labour market.

This is, however, based on the assumption that those concerned have a right to remain. Thus, these instruments are not available to asylum-seekers with little prospect of recognition or the right to stay in Germany. Equally those without residential status are excluded – rigorously. Germany is one of the countries adopting a policy of strict denial of residential status and access to social rights to *sans papiers* – though thanks to civil societal pressure, the undocumented have been allowed limited access to health care and schooling (Anderson, 2011).

## 2    The "Summer of Migration": The Influx of Asylum Seekers to Germany in 2015

It is against this historical background that we should view the dramatic turnaround in asylum policy in Germany which took place in 2015 and 2016. The following graph gives an idea of the development in the numbers of applications for asylum from the early nineties to 2019 in Germany.

**Graph 1: Asylum Application Figures 1991-2022**
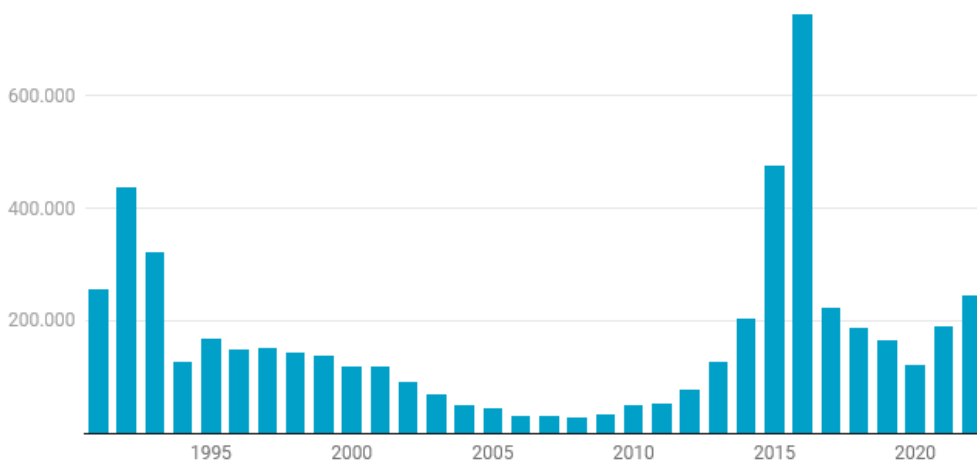


Grafik: © MEDIENDIENST INTEGRATION 2023 · Quelle: Bundesamt für Migration und Flüchtlinge · Daten herunterladen · Erstellt mit Datawrapper

*Source: MEDIENDIENST INTEGRATION. https://mediendienst-integration.de/migration/flucht-asyl/zahl-der-fluechtlinge.html*

As we see, the rise in entry of asylum seekers actually pre-dated the steep increase of 2015. The most important single cause was the collapse of the Syrian state after the failure of the "Arab Spring" and the descent of the country into a bitter civil war. Millions of people were uprooted, initially seeking refuge in the neighbouring states of Jordan, Lebanon and Turkey. There is little doubt that the enormous increase in Mediterranean forced migration movement was, to some extent, commercially driven: the hugely expanded *demand* for routes to safety from a relatively well-to-do Syrian middle class led to the creation of multi-million large scale professional human smuggling *supply* structures, from which other nationalities – with the financial wherewithal – could equally profit. In the 2010s, the large-scale mafia organisations in the Mediterranean shifted operations away from drug- to human smuggling – from forced prostitution to up-market provision of guaranteed smuggling services to target countries for the moneyed middle classes (Tinti & Reitano, 2016).

This background context led to the boost in migration pressure in 2013-15. To begin, the northern European countries continued to leave Italy and the other Mediterranean "front line" countries to deal with these issues alone. Signal moments, like intense media coverage of the tragedies off Lampedusa and Pope Francis' trenchant critique of the EU's evasion of human rights responsibility, helped prepare a sea change. Italy and Greece in particular were massively overstretched by the numbers of uprooted people arriving and, understandably, felt abandoned by the northern member states of the European Union in particular.

It was, however, the mass movement of refugees along the Balkan route in 2015 and the impossibility of stopping these human caravans without violence that prompted German Chancellor Angela Merkel in the summer to make what has become a legendary decision: to open the German borders, proclaiming *"Wir schaffen das" ("We'll manage it").* The significance of this step was huge. A bottleneck had been created by the sheer numbers travelling the Balkan route and the Hungarian government, under Victor Orban, in particular refused to allow an official uptake of asylum seekers. Chancellor Merkel made the decision for a range of political and other reasons which cannot be explained in detail here. Suffice to say that one factor had been the acknowledgement that, in view of the German past, especially the Nazi period, the Federal Republic could not be seen to be repelling (by force) masses of refugees who were in evident need and clamouring for entry at its borders. The images of a broadly-welcoming German society accepting large numbers of refugees from the south went around the world in the summer and autumn of 2015. Within Germany, the longer-term challenges of absorption and integration have been a prime dimension of migration and integration policy in Germany since then.

In the international, and especially the European, context, the preparedness of Germany to take on board so many asylum seekers has been a novel development in migration and integration policy. The priorities arising out of the hugely-increased inflow of uprooted people at the European level focused, from the German governmental point of view, on sharing responsibility. Within Europe, agreements to distribute numbers of entrants (primarily) from the Mediterranean in the countries of the European Union proved particularly difficult to realise. This approach met with stiff resistance, particularly in Eastern Europe.

Externally, the focus was increasingly on closing down channels of access: shutting off the Balkan route, reaching agreements with the Libyan authorities to prevent migrants from

leaving their coastal area, an increasingly restrictive Frontex (the EU border management organisation) policy to prevent access to Europe from the sea and negotiations with the Erdogan government in Turkey to repatriate Syrians who reached Greece. From a humanitarian perspective – enunciated clearly in reports over the years by the United Nations High Commission on Refugees (UNHCR, 2007) – the policy of "pushback" of asylum seekers was clearly in contravention of the principle of *non-refoulement.* Moreover, the Frontex strategy denied migrants in need the internationally-recognised chance to make an application for asylum.

In 2016-2019, the humanitarian dilemma presented by migrant movement in the Mediterranean was put into sharp perspective by the missions of civil society initiatives from Germany such as the ships *Sea Watch* and *Sea Eye*, used to rescue migrant boats in distress. The vessels were frequently denied the right to dock at European ports – a policy promoted most vocally by the Italian populist politician Matteo Salvini – and indeed (in a grotesque juridical twist from a human rights perspective) helpers on board were faced with charges for "human smuggling", potentially leading to sentences of many years of imprisonment for the ships captains, such as Carola Rackete of *Sea Watch 3* following her mission of June 2019 in which she rescued 53 migrants on the high sea (Rackete, 2019).

On the other hand, within Germany there has been innovative development educational and apprenticeship programmes for newly-arrived immigrants. In the following section, we shall focus on the particular educational and training needs of young refugees and the evolution of vocational training approaches in Bavaria to enhance skilled entry into the labour market.

## 3 Refugee Migration to Germany since 2014-15, Vocational Training and Access to the Labour Market. Vocational Integration Classes in Bavaria

2015-16 may in retrospect be viewed as the exceptional year for immigration to Germany. Below, we see a graph showing the division of asylum seeker applications in Germany according to nationality. It shows the preponderance of applicants from Syria.

*Graph 2: The ten nationalities with the highest number of applications for asylum in Germany of the year 2016*
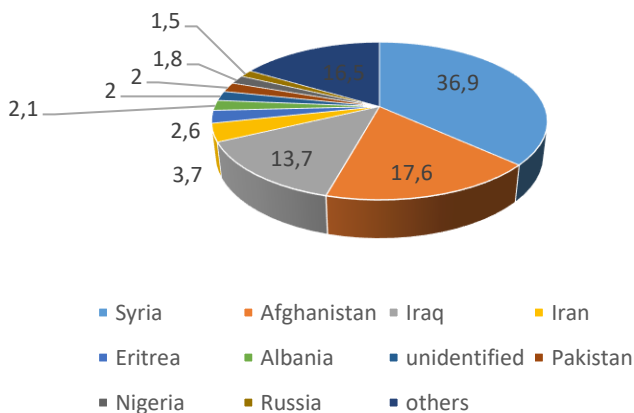


Source: Bundesamt für Migration und Flüchtlinge (2016: 20)

The author's interviews and research form the basis of the following observations on the situation of the unaccompanied minors in Germany (Anderson, 2016). The research was conducted on the basis of the method approach of *Grounded Theory,* which aims to develop typologies and types. This enabled hypotheses to be developed and refined in the course of the empirical phase. In consultation with the Bavarian Ministry of Education and the City of Munich Schools Department, semi-structured interview guidelines were developed to address pertinent issues in and around the Vocational Training Qualification (VTQ) classes for asylum seekers and refugees. In a pre-test phase, initial interviews were conducted with experts, generating first tentative hypotheses which were refined and developed in the course of the main research phase.

After an analysis of the results, conclusions with recommendations for policy-makers and practitioners were presented to stake-holders in a final round of discussions. Validity of the analysis and practicability of the recommendations were the main focus of these discussions. Apart from young asylum seekers themselves, expert interviewees/interlocutors included teachers, social workers, therapists, administrative workers, local politicians and others. The study was published in 2016 and has provided the basis for ongoing decision-making on improvement of the VTQ classes.

One of the most interesting developments with the hugely increased influx of asylum seekers from 2015-16 has been the development of state-supported access to vocational training, in particular the so-called Dual System, an established educational programme enabling systematic technical and commercial qualification for the German labour market. This specific innovation for the new immigrant generation has been particularly pronounced in Bavaria in southern Germany, not least because the need for qualified personnel in manufacturing and production is so great in this part of the country. A key feature has been the development of Vocational Integration Classes specifically designed to provide asylum-seekers and refugees with a school qualification through a two-year course concentrating on vocational orientation, which enables them to go on to do an apprenticeship in any one of dozens of potential crafts and trades which are traditionally part of the German manufacturing, commercial and services system.

The driving factor for these training classes was the intermeshing of two factors influencing the readiness of the German *Mittelstand* (mid-tier, small and medium-sized enterprises) to mobilise resources for the qualification of this target group: demographic change (i.e. an ageing population) and a chronic skills shortage in a wide range of trades.

With the huge rise in asylum seekers entering Germany in the period of 2014-16, these classes have expanded enormously, from a few hundred students in the principal cities of Munich and Nuremberg in 2011-12 to a total of 1,150 classes with places for 22,000 pupils in the 2016-17 school year (Bavarian Ministry of Education, 2018). The numbers then reduced due to the diminished entry numbers of asylum seekers so that in the school year 2018-19, some 10,500 pupils were attending these classes (Bavarian Ministry of Education, 2019: 44).

In this context, training courses on developing intercultural skills have increased enormously, corresponding in the last few years with a drastic increase in demand from a whole range of professions in the social, health and educational sectors – from social pedagogues via child and adolescent psychiatrists to teachers in schools/classes of every

type and grade – providing the wherewithal to enable young refugees to pass the vocational training course successfully.

Professionals working in particular with asylum seeker families or unaccompanied refugee children have to be aware of the dangers of "culturally-tinted spectacles" as the German expression has it. Thus the ability to change one's culturally-determined perspective (*What is the other person's take on thi*s situation?*)* is an essential element in developing culturally sensitive skills and minimising potential sources of conflict (Erll & Gymnich, 2013).

On the one hand, it is important not to ignore one's own values and concepts; on the other hand, it is important to display a readiness for culturally-sensitive dialogue and exchange. This is all the more true when dealing with refugees who have entered Germany in recent years, who – in contrast to the generation of those with a migration background who have grown up in Germany – have experienced social conditioning outside the European context. The great majority of those entering the country as asylum seekers experience a "steep learning curve" in the course of a process of forced migration. They encounter, and must come to grips with, people with differing cultural, religious and ethnic backgrounds on a daily basis and in varied contexts. This is particularly true of unaccompanied minor refugees.

Unaccompanied minors under 18 years of age are absorbed into the youth service system and, after an initial *clearing phase,* are allotted a place in a residential group for unaccompanied minors – assuming there are no adult relatives in the EU with whom family reunion can be initiated (Bundesarbeitsgemeinschaft Landesjugendämter, 2014). The first goal of the newly-arrived is to get their bearings – in the comprehensive sense, to actually "arrive" in the here and now. In this context, the broad range of supportive networks for refugees which sprouted everywhere in Germany in the period between 2014-2015 are very important. Voluntary helper groups in larger and medium-sized towns as well as in rural villages provide often sustained longer-term support both for refugee families and unaccompanied young people. This mobilisation of local policy-makers, administration and professionals, especially in the educational, health and social sectors – together with civil society engagement – has enabled absorption and day-to-day integration of refugees. It has also turned their reception into a "mainstream" topic in German public discourse and policy-making.

If we examine the lives of the newly-arrived unaccompanied minors, we get an idea of the range of challenges they face. The top priority is learning the language, but they have to cope with the challenges of strange cultural surroundings, homesickness, grief and loss of their loved ones. Then there is the issue of trauma. Studies proceed from the assumption that at least 50% of unaccompanied minors suffer from some degree of traumatisation (Bergler, 2015; Hargasser, 2014). One of the important tasks facing care and social workers, teachers and other professionals is recognising the symptoms: sudden outbreaks of fright, blackouts, aggressive outbursts – but also apathy, pronounced sensitivity to light or loud noises, insomnia or acute withdrawal behaviour. In the Bavarian context the special training courses and professional counselling offered by the *Refugio* organisation, based in Munich, are of great value. This psychotherapeutic institute has specialised in the treatment of traumatised refugees and the victims of torture for over twenty years and has developed considerable expertise in therapeutic sessions conducted through specially-trained interpreters (Refugio München, 2020).

Practitioners emphasise the importance of getting access to language courses off the ground as soon as possible. The legal terrain is complex here, as access to courses is dependent on the intermeshing constellation of the individual asylum application, residential status and availability of courses on the ground. In practice, local voluntary networks often work in tandem with residential unit care workers to enable participation in a language course as soon as possible. Over time – and especially with the drastic reduction of new entries from 2017 – provision of language tuition has been made possible on a comprehensive basis.

> "The group of refugees that has entered Germany in the last few years is extremely heterogeneous. This fact was emphasised repeatedly by expert interviewees, and herein reside the educational and vocational training challenges. Their social and educational backgrounds vary enormously and these factors intermesh with intellectual and experiential elements to determine levels of performance and achievement. Some unaccompanied minors will begin by wrestling with the basics of literacy in order to begin to learn the (German and native) language. At the other end of the spectrum, there will be pupils who have had 9 or 10 years of schooling, speak good English, have a grounding for an academic course in the foreseeable future – and may well have thought ahead to save their certificates in their cell phones before taking flight.

> Soft skills are an essential part of the picture in terms of social acceptance, especially by their central European peer group: the young Syrian from Aleppo who speaks good English, has varied contacts on Facebook and Instagram, followed the latest Hollywood films and is conversant with Hip-hop culture, will establish contacts much more easily than, say, the young Afghan from a mountainous region with very little schooling, possibly a long and stressful period of forced migration because of lack of funds – as well as little experience with young women of his age who do not wear the veil. The latter will feel much more inhibited by the notion of Do's and Don'ts in the German Disco than will his Syrian counterpart."(Anderson, 2019: 66-67)

It is natural for young people to want to feel free and autonomous. After a time of insecurity and the tribulations of the migration process, these young people need a time to get acclimatised, to *just be*, in order to recover something of their lost childhood (as a therapist put it). The need for support and for role models is an essential element in this, and the social workers in residential units or teachers and social workers at school are often key figures who can assume this role.

From a (social) pedagogic point of view, it should be borne in mind that these young men (more than 80 % are men) have an "assignment" to fulfil: they have been chosen to have the chance to get a good qualification and find a job in order to earn a good income. This is why the family of origin "invested" a considerable sum in the form of payment to the human smuggler. In an age of virtual communication, these familial expectations are much more ever-present (in the classroom, wherever the adolescent is living, in their contacts with other young people from their home area) than, say, 20 years ago. The social media, the tweets or the mobile phone messages mean that family members are consistently in the picture – sometimes, so teachers report, almost to the extent of being invisible presences in the classroom.

The accommodation situation plays a vital role in success or failure at school or during an apprenticeship. In residential groups for unaccompanied minors, the young people have as a rule a) the peace and quiet to do their school and homework, b) the resources to get extra tutorship if required and c) most important, the professional guidance and support to enable them to navigate their way among the 550-odd trades and vocations available

in the German system. Thus, they can be in a position to make informed choices about a potential apprenticeship or other venues of qualification.

The situation is very different for those over 18 years who are likely to be in a much more difficult position, because they may well be living in a hostel, maybe sharing a room with 3 to 4 other people, mostly adults and often with considerable burdens and stresses of their own. There is little space and scarcely the requisite peace and quiet to do their homework, after-school tutoring may not be available and advice on vocational training and apprenticeships will be at a premium. Moreover, there is the "social space" aspect: the young refugees will be acutely aware that they are in a social no-man's land. The hostel (mostly located in less desirable parts of town) is not the kind of place you invite your class friends to for a party or to impress your new European girlfriend. Young refugees have to learn to deal with feelings of embarrassment or shame due to these living conditions.

Searching for security and a sense of belonging, these young people are constantly undermined by a lack of secure residential status or recognition as a refugee in the narrower legal sense. Professionals pointed out in the interviews that even the fear of an impending deportation order can undermine their charges and render them incapable of concentration on their studies and everyday lives for weeks at a time.

With regard to taking on an apprenticeship, the unaccompanied minors (UMs) are faced with different types of pressure. There is the economic burden of having to pay back the debt to the human smuggler – who may well be tightening the screw on the home family to receive his money. The relatives will in any event be expecting some kind of "payback" from their sponsored relatives soon, and they may find it hard to grasp why training over three or more years should even be necessary (*What do you mean sales training? You've been a salesman in our shop for years!*").

In addition to this, certain types of professions may be regarded as less prestigious. For instance, in some cultures working in the building trade is looked down upon as "dirty work." The issue of working with one's hands in any context may well be problematic for a young man who has been told by relatives that he *must* attain a university qualification. This is in turn a challenge for the social workers or teachers who have established a trusting relationship with their charges: keeping them on course for an apprenticeship. For, as the latter come to realise how long and stony the path to well-paid work in a qualifications-oriented society like Germany can be, there is the danger they may simply give up in frustration or turn to apparently "easier" but more fraught, and possibly illegal, ways of making quick money.

It is important for the receiving society in general to realise that these processes take time. UMs are (or should be) viewed as candidates for life-long learning. Resources should be made available so that they can have a second (or third) attempt at learning a trade. Once they have learned how things function in Germany, have mastered the language to the extent of comprehending the nuances of specialist terms and have a broader awareness of the range of vocations that they might choose from, the playing field begins to become level. Under these circumstances, stable and trusting relationships with experienced and caring professionals (as role models) will be the essential bricks and mortar to motivate

the UMs to stay for the long haul in the world of work, and not to succumb to a sense of resignation (Scharrer et al., 2012).[3]

Once students have completed their two-year course in the Vocational Integration Classes (VIC), they hope to have found a place for an apprenticeship. Experience has shown that, if possible, some form of *mentoring* is advisable during the initial phase of vocational training. The linguistic and specialist challenges both at the workplace and at vocational school are considerable. Moreover, whereas the UMs have enjoyed intensive tuition in the (smaller) VIC classes to date, at "conventional" vocational school they are faced with the challenge of specialist language terms relating to their field as well as front-on classroom teaching with limited or no resources for tutoring in smaller groups. In rural areas, the pupils may also have to wrestle with the additional difficulty of the strong regional (Bavarian) dialect the teachers may speak. Linguistically and socially, it may be hard for them to meet the challenges of the different "life worlds" of small-scale business and vocational school (Staatsinstitut für Schulqualität und Bildungsforschung München, 2014).[4]

Nonetheless, there has, over the last few years, been a coordinated development of supportive labour market integration instruments at the local level for this specific target group. For example the local Labour Offices provide resources for measures like the Assisted Training Program (*Assistierte Ausbildung)*, whereby a young asylum seeker is given language and vocational guidance by a social worker on a one-to-one basis. Problems arising at the workplace can also be dealt with, with the social worker acting as an intermediary, if required. Training supervisors at work, particularly in small and medium-sized enterprises (SME) are often grateful for culturally sensitive advice regarding their charges, such as information on aspects of Arab customs, culture and Islam or advice on how to detect signs of trauma. Professional bodies, such as the Chambers of Trade and of Industry and Commerce, have supported integration in the workplace over the last few years by appointing Refugee Ombudsmen who advise and organise courses for the SMEs.

One of the greatest challenges facing the adolescents is the lack of secure residential status and the uncertain prospect of remaining in Germany. This is particularly true if students come from "countries of safe origin", such as Balkan states like Kosovo and Montenegro, but most controversially from Afghanistan. Policy became much stricter regarding this group after 2016 and only relaxed after the return to power of the Taliban in Kabul in 2021. The number of Afghani UMs has consistently been among the highest among all UMs. Many young people facing potential deportation have been in Germany for a number of years and are either in training or already have jobs. They dread the "*yellow letter"* from the Foreigner's Office, stating that they must leave the country voluntarily; if they fail to do so, they face deportation.

Practitioners complain of a constant sense of underlying uncertainty, which undermines the students' ability to concentrate on school, become adjusted to life in their new surroundings and to plan for the future. This is why employers have consistently called for

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[3] Cf. for a culturally-sensitive view of the challenges faced by migrants in small and medium-sized enterprises (SME): Scharrer et al., 2012.

[4] Cf. for documentation with practical tips on preparing young refugees for the challenges of an apprenticeship: Staatsinstitut für Schulqualität und Bildungsforschung München, 2014.

a guarantee that asylum seekers who have not attained recognition as a refugee or another form of secure residential status will be able to remain at least for three years' training plus an additional 2 years as qualified workers, the so-called *3+2 rule*. In practice, this principle has – after much criticism of restrictive policy on the part of the Bavarian Ministry of the Interior (responsible for issuing permits enabling UMs to begin apprenticeships via the Aliens Offices at local level) – been conceded (Industrie- und Handelskammern in Bayern., n.d.).

There is an ongoing need for access to good quality language teaching starting as early as possible after arrival in the country. Professionals argue that *learning German is the key to integration* and essential even for those asylum-seekers whose prospects of remaining are uncertain. They need to lead their everyday lives in Germany; language skills are essential for this and even in the case of removal, knowledge of German may well be regarded as a recognised skill in the home region.

Social participation is a valuable dimension in developing a sense of belonging. Here, the voluntary sector is of great importance. One of the striking facts about the influx of refugees from 2014 onwards has been the degree of civil society engagement. Rural areas in particular, with the long established tradition in Germany of people being involved in Clubs (*Vereine*) of all kinds, have provided a basis for community involvement. Whether it is the local choir, music and sports clubs or the local (voluntary) fire service, these spaces allow people to get to know each other and share activities and interests in this broader, interactive context. Good language skills are not necessarily a prerequisite. Particularly for young asylum-seekers, soccer is an ideal way to get to know one another and promote uncomplicated inclusive processes with one's peers (Buntkicktgut, 2021).[5]

Good intermeshing cooperation on the part of local actors at the municipal level is of particular importance. Some cities have much more experience with the development of intercultural policies to prevent conflict between communities and enhance quality of life for minorities than others, e.g. Munich or Nuremberg. Professionals in the social, educational and health sectors in cities like Munich, working in government offices, the welfare and charity sector, grass roots initiatives or campaigning groups, have developed networks over the years and meet regularly in workshops and seminars. This has helped bridge ideological gaps, overcome conflicts and promote a sense of a shared search for practicable, professional solutions to problems. Good, regular communication, as well as mutual respect for differing institutional roles and interests, are essential elements in this.

Structures of the youth service need to be flexible and needs-oriented. This means it is important to implement *transitional structures* for those 18-year olds who have lived in residential units and have to move out into hostels or their own accommodation. They still require counselling on vocational training and jobs as well as support in dealing with the demands of everyday life. The German youth service has good models for promoting independent living for young people who have lived in care. These can be amended for the needs of this target group.

Then there is the need for broad-based *psychotherapeutic support* (for traumatised clients) and training courses and supervision for professionals working with them. These

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[5] Cf. for street football league in Munich set up in the 1990s, specifically for asylum seekers who – at that time – were unable to access the local youth football clubs: http://buntkicktgut.de/.

courses should be made available for volunteers as well as the professionally-trained employees. Beyond this, there has been a steep rise in the need for supplementary training for child and adolescent psychiatrists as well as for out-patients departments of psychiatric clinics. The issue here for example is: How do psychiatric professionals deal with asylum seekers who go into psychosis as a result of their experiences during forced migration? Equally important is the need to provide for qualified interpreters who can meet the challenge of therapeutic translation in a crisis-induced context (Bayerisches Zentrum für Transkulturelle Medizin 2016).[6]

In summary, linguistic, social and educational integration processes take time. Helping young people with a refugee background adapt to the needs of the vocational training and job market requires a targeted and well thought-out use of resources, and these should be employed on a sustainable basis. Quite separate from the humanitarian-moral dimension of this commitment, it is a long term "investment" in societal and economic development that will prove to be well worth it.

# 4    In Conclusion: Germany and Migration Policy for the 21st Century. Quo Vadis?

In this essay, we have examined Germany's stance on migration, looking at the history of German emigration and immigration, the development of asylum policy, programmes for vocational training aimed at young refugees and ancillary forms of support to enhance their social and labour market integration.

There are a number of main tendencies which can be discerned, particularly if we are to consider what may be the way forward for migration in a European context and the future trends. First, we may assume that a greater European coordination of concepts and a more dynamic practice in migration regimes will develop on account of demographic change, the consequences of an ageing society for the economy and the resulting skills shortage in many areas of life – with all of the attendant knock-on effects for the welfare state and for the everyday mechanics of social and civil society cohesiveness.

But in this regard, we are not just talking about Germans getting older on average and living longer – and the according need to fund their long term economic and social security. The dynamics of population change through increased mobility around the planet, the universal need for higher levels of qualification and lifelong learning, urban populations being vastly more varied, all these factors mean that intercultural diversity in all manner of relationships is rapidly becoming a norm.

In other words, there are far more bi- and multi-cultural partnerships and, thus, more "multi-ethnic kids" with a middle-class, better educational background; and they are far less prepared to accept their family members being treated as second-class citizens (Ott, 2020). The ramifications of the global *Black Lives Matter* movement give a presentiment of this new self-awareness and resultant critical vocal protest. The monocultural, "white ethnic German" bastions of economic, social and working world power are thus more likely to be questioned and undermined in the course of the next generation – by more self-confident, better-qualified, professionally successful people of multi-ethnic background in

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[6] Cf. for interpreters service in Bavaria specialising in translation in therapeutic and legal contexts for refugees: Bayerisches Zentrum für Transkulturelle Medizin, 2016.

many walks of life. The urban/urbane creative professions and social media figures, influencers etc. already give an indication of this new, diverse and talented demographic.

This process may well be enhanced by the effects of the culturally-sensitive educational reforms of the last two decades in elementary and primary school education which have been the background to developments described here. This dynamic has, moreover, been boosted by the raft of measures of the last few years enabling language training for, as well as vocational and academic integration of, asylum seekers – with an unprecedented mobilisation of resources to make these younger generation immigrants "fit for labour market purpose". In this article, we have discussed one aspect of this in the form of the courses aimed at developing language skills, attaining school certificates and promoting vocational training for refugees and "new migrants".

The end result may well be that, within a generation, German society and the world of work will have become far more diverse at all levels and in virtually all sectors of business and administration. Equally, there could, by contrast, be a massive, "pro-ethnic-purity" backlash in the sense of the policy goals of the populist right wing party *Alternative for Germany* (Alternative für Deutschland – AfD), fighting back against all the tendencies described above. The aim of this movement would be to entrench ethnic German monoculturalism and a latter-day form of German white supremacy. Under present-day circumstances, it is difficult to imagine democratic majorities emerging in modern Germany for this kind of radical xenophobic *volte-face* in mainstream debate and policy-making. But one never knows.

In conclusion, we thus return to the role Germany is playing and will play in the future. The Merkel years, which came to an end in autumn 2021, were characterised by an awareness of Germany's international mediating role as a constructive member of international organisations. This has entailed commitment in funding, professional engagement and support of a spirit of international cooperation to solve the challenges facing the planet in the 21st century, of which the constructive solution of complex, intermeshed migration issues is but one dimension.

One of the most difficult of these policy threads will be the harmonisation of migration policies across Europe – entailing the various target groups of expert/academic, labour, refugee, family reunion, educational, elderly migrants and many more. The disparate interests and diverse national migration traditions within Europe will continue to prove hard to reconcile with one another, Eastern and Western Europe tending to pull in different directions. Germany can aim to be a voice and actor advocating constructive social and human rights-oriented solutions within the frame of an open European migration policy toward those from third states.

Though not within the scope of this article, paths of European migration policy development have been given a new dimension with the waves of forced migration set loose by Russia's attack upon the Ukraine and the resulting exodus of millions of Ukrainian citizens and other inhabitants into southern and western Europe.

We may, finally, conclude that German migration and refugee policy has often been and remains ambiguous. On the one hand, asylum seekers with little chance of recognition face a harsh regime-restricting access to society and resources which might enable integration – they are often set on a trajectory toward removal. On the other hand, immigrants with a prospect of remaining are given chances. It is in the areas of social,

educational, vocational and labour market integration of newly-arrived migrants and refugees that, in recent years, meaningful steps forward have been taken and the resources made available for long-term integration processes. In these areas, Germany has shown a readiness for the creation of innovative parameters to enable dynamic empowerment of the latest generation of "new immigrants".

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# JURISDICTION

# European Jurisdiction on Refugee and Complementary Protection:
# January to June 2023[1]

*Holger Hoffmann[2]*

*This compilation of case law samples, summarizes and refers to jurisdiction of international relevance for the application of legal standards in the field of refugee and complementary protection by the European Court of Human Rights (ECtHR) and the European Court of Justice (ECJ) in the period January to June 2023*

## 1.    European Court of Human Rights

(Note: The judgments are not referred to chronologically, but in the order of the ECHR articles).

### 1.1    ECtHR, Judgement of 17/1/2023 - 84523/17 - Daraibou v. Croatia: Art. 2 violated because the lives of detained migrants were not protected and a fire in the detention centre was not properly investigated

Mr. Daraibou, a Moroccan national, was detained in a Croatian police station together with other migrants. One of them allegedly started a fire which resulted in the death of three migrants and serious injuries to the defendant. During the incident, two guards were responsible for monitoring the detainees. Disciplinary measures were taken against one guard, but no criminal proceedings were initiated. Croatia initiated significantly more criminal proceedings against the complainant. However, these proceedings were discontinued after his deportation to Morocco. The complainant alleges a violation of Art. 2 because the guards did not prevent the fire and no effective investigation of the incident was carried out.

The ECtHR ruled that protecting the health and welfare of detainees includes the duty to protect life from foreseeable dangers. The guards should have taken basic precautions with regard to persons in custody in order to minimise the risk of serious incidents. However, their surveillance while in the police station was seriously deficient, e.g. the video surveillance was not used continuously, and the officers in charge left the station and, thus, could not prevent the fire. The police station and its staff had also been ill-prepared for a fire. Art. 2 was therefore violated in the material aspect.

The procedural aspect of the right to life was also violated. A full investigation would have been necessary to establish the circumstances of the incident and to identify those responsible. The initial response of the authorities to the incident was prompt, but the

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investigation was not thorough. It only explored possible criminal or disciplinary responsibility of individual police officers, but not whether there were more general institutional shortcomings or failures that allowed the incident to be rectified and similar mistakes to be prevented in the future.

## 1.2 ECtHR, Judgement of 2/2/2023 - 59435/17 - Alhowais v. Hungary: Art. 2 and 3 violated in the deportation of the Applicants to Serbia, which led to the death of one of them

A Syrian national was crossing the Tisza River from Serbia to Hungary by boat with other persons, including his brother and an Iraqi family. The boat could not reach the shore because of the dense reeds. The refugees abandoned the boat. Hungarian police officers noticed them and allegedly shouted "Go back to Serbia", let loose police dogs, sprayed tear gas and threw stones at the refugees. The defendant and his brother tried to swim back to Serbia, but the brother drowned. The Hungarian authorities investigated the incident, but the public prosecutor's office stopped the investigation: it could not be established beyond doubt that criminal offences had been committed by the Hungarian police officers.

The ECtHR first examined possible procedural violations of Art. 2 and 3. The criminal legal investigation into the ill-treatment by police officers had been limited to examining whether they could be held responsible for throwing stones, spraying tear gas and using police dogs. Other elements of the operation were not considered. The investigation did not provide an assessment of the state's responsibility to protect the right to life. Art. 2 was thus violated.

The decision of the public prosecutor's office to close the investigation was based, to a considerable extent, on oral testimonies (mainly of the officials) and contradictions in the migrant's statements about the actual circumstances of the incident. The mother of the affected family was not interviewed; the authorities did not attempt to locate other affected migrants who had left Hungary or explore other possibilities to clarify the contradictions in the facts. Furthermore, Hungary failed to identify other police officers present and take their statements. The investigation had therefore been inadequate and ineffective; thus, the procedural part of Art. 3 was also violated.

Hungary also violated Art. 2 in a material way. The border police had sufficient knowledge to assess the dangers of crossing the river and to organise border operations accordingly. The border police were aware that the migrants were approaching Hungary, but did not prepare a rescue operation. There were also no organised procedures, as the officers did not follow an operational plan in search and rescue situations. They had, therefore, not taken all the operational measures that could reasonably be expected to avoid a real and immediate danger to the lives of the refugees and to protect the life of the person – who later drowned – as soon as they received information that one of the migrants was in distress. The lifeboat was only instructed to assist in the disembarkation of the Iraqi family, but no check was made to see if any other persons needed assistance. Furthermore, the border police did nothing to search for the brother, after which the rescue boat had left the spot where he had apparently disappeared. The rescue capacities did not meet the requirements of the emergency.

### 1.3 ECtHR, Judgement of 26/1/2023 - 60990/14 - B.Y. v. Greece: Art. 3 violated due to ineffective investigation into the deportation of an asylum seeker to Turkey

The complainant, a Turkish citizen, claimed to have been forcibly deported from Greece to Turkey, although he had previously tried to apply for asylum in Greece.

On the procedural part of Art. 3, the ECtHR ruled on the complainant's allegation that Greek police officers had handed him over to Turkish authorities and, thus, subjected him to treatment in violation of Art. 3. The Greek authorities would have been obliged to carry out an effective investigation first. The registration number of the vehicle involved in the deportation belonged to the Greek police, but no investigation was carried out nor were any police officers interviewed. Eyewitnesses who were present at the alleged abduction were only able to testify eight months after the event. The incident had therefore not been effectively investigated and, thus, Art. 3 had been violated in the procedural aspect.

With regard to the material aspect (handing the complainant over to the Turkish authorities, inhuman and degrading treatment), the court found that the parties described the facts of the case differently. The Greek authorities had not confirmed the complainant's presence in Greece before the alleged abduction. The eyewitnesses could not testify that the person in the car was the complainant. The complainant had not provided any concrete or corroborating evidence of his presence in Greece, which would shift the burden of proof to the Greek authorities. Therefore, it could not be established that the substantive aspect of Art. 3 had been violated. These findings were also used to assess the Art. 5 complaint. The ECtHR found that Greek authorities had not violated Art. 5.

### 1.4 ECtHR, Judgement of 30/3/2023 - 21329/18 - J.A. and Others v. Italy: Art. 3, 5 and 4 of Protocol No. 4 violated due to detention of Tunisian nationals in Lampedusa hotspot and collective expulsion

The four Tunisian complainants had been rescued by an Italian ship that brought them to Lampedusa. They remained in the Lampedusa hotspot for ten days, where they were allegedly unable to leave the closed area of the hotspot or contact authorities, while living in inhuman and degrading conditions. The complainants and approximately 40 more people were then taken to the airport, where they were asked to sign an entry refusal form. They were then deported to Tunisia.

The ECtHR ruled that difficulties arising from an increased influx of migrants did not release the state from its obligations under Art. 3. The poor material conditions in the hotspot, taking into account the information provided by the complainants and supported by photographs and several reports, violated Art. 3.

The inability of the applicants to leave the closed area of the hotspot was clearly tantamount to a deprivation of liberty under Art. 5, all the more so as the maximum duration of their stay there was not laid down by any law, and the legal framework did not permit the use of the Lampedusa hotspot as a detention centre for foreigners. The applicants were neither informed of the legal reasons for their deprivation of liberty, nor could they challenge this de facto detention. Italy also violated Art. 5(1), (2) and (4).

The refusal of entry and deportation orders did not adequately take into account the individual situation of the complainants. Rather, according to Art. 4 of Protocol No. 4, they were collective, impermissible expulsions.

## 1.5 ECtHR, Judgement of 4/4/2023 - 55363/19 - A.D. v. Greece: Art. 3 violated due to poor living conditions of a pregnant woman in the hotspot of Samos

A.D., a pregnant woman from Ghana, was accommodated at the Reception and Identification Centre (RIC) in Samos. She stated that she was six months pregnant when she arrived. Her medical history stated that she had already suffered several miscarriages. She had been living in a tent outside the RIC, where she did not have access to proper sanitation. After her tent was destroyed, she lived in another one on the RIC premises. There, too, the sanitary facilities were in a precarious hygienic condition.

The ECtHR declared the complaint admissible. The complainant's accommodation needs had only been taken into account after the birth of her child, although the authorities had been aware of them almost three months earlier. The complainant had been living in RIC Samos for about two and a half months while she was in the advanced stages of her pregnancy and needed special care. Her accommodation and (non-)treatment exceeded the threshold of seriousness required for the application of Art. 3. Greece, therefore, violated Art. 3. The ECtHR rejected the Greek government's objection that the complainant had not submitted written applications to the competent Greek authorities or courts and had therefore not exhausted domestic remedies.

## 1.6 ECtHR, Judgement of 13/6/2023 - 4892/18 and 4920/18 - H.A. and others v. Greece: Art. 3 and 13 violated because of living conditions in the Moria "hotspot"

The case concerned, inter alia, the living conditions of 67 third-country nationals accommodated in the Moria "hotspot" and the impossibility for two of the complainants to be reunited with their family members in Germany due to significant delays in the registration of asylum applications in Greece. The defendants had declared their intention to apply for asylum on 26/10/2017, their applications were registered on 20/12/2017 and the restriction to leave the island was lifted on 3/1/2018. The ECtHR removed 43 cases from the register because the defendants did not maintain contact with the lawyer, leading to the conclusion that they had lost interest in their cases or did not want to pursue their applications.

With regard to the remaining proceedings, the ECtHR ruled that the living conditions, due to the overcrowding, the resulting difficulties and the acute lack of ability to satisfy at least basic needs, were inhuman and degrading within the meaning of Art. 3. The complainants had also not been able to effectively appeal against this. Greece had therefore violated Art. 3 and 13.

The application for family reunification to Germany was rejected because the German authorities had questioned the family ties. Therefore, this delay did not lead to a violation of Art. 8.

## 1.7 ECtHR, Judgement of 4/5/2023 - 7534/20 - A.M. and Others v. France: Art. 3 and 5 violated because of the detention of a mother and her three children

A.M., an Angolan mother, and her three children, aged 8 months, 6 and 13 years, were detained for 10 days in two different centres for transfer to Portugal under the Dublin III Regulation. The family was only released by the French authorities after the ECtHR issued a provisional measure under Art. 39.

The ECtHR ruled that France had subjected the children to treatment in which, taking their age into account, conditions and duration of detention exceeded the threshold of severity required by Art. 3. The mother's refusal to board was not determinative of whether the threshold of severity was exceeded in relation to the children. Because of the inseparable bond between mother and children, France had also violated Art. 3 with regard to the mother.

Since the French authorities and courts had not reviewed whether the detention of the mother and her three minor children constituted the "ultima ratio", France had violated Art. 5.1 with respect to the children. The lack of review of lawfulness was also attributable to the French courts, as they were obliged to review the lawfulness of the detention of minors.

## 1.8 ECtHR, Judgement of 4/5/2023 - 4289/21 - A.C. and M.C. v. France: Art. 3 and 5 violated for detaining a mother and her baby before deportation

A mother and her seven-and-a-half-month-old child were placed in a French detention-like centre at for nine days before being deported to Spain.

The ECtHR ruled that France had subjected the very young child to treatment which, in view of the conditions and duration of detention, exceeded the threshold of severity required by Art. 3. Because of the inseparable bond between mother and child, France had also violated Art. 3 with regard to the mother.

Furthermore, there was a violation of Art. 5(1) and (4). Although the authorities had considered less restrictive measures in their original decision on detention, they had not sufficiently examined whether the extension of detention to facilitate the child's departure was the "ultima ratio". The French courts were obliged to ensure the legality of the detention. Since the detention was originally intended to last only 48 hours and was later extended by court order up to 28 days, the lawfulness of the extended detention had not been assessed for the child in accordance with Art. 5(4).

## 1.9 ECtHR, Judgement of 17/1/2023 - 26879/17 - Minasian and others v. Republic of Moldova: Art. 5. para. 4 violated due to detention of children with their mother without the children being parties to the proceedings

A mother and her three minor children were legally residing in Moldova after fleeing persecution in Georgia. The family irregularly crossed the border into Romania, but were immediately returned to Moldova. The Moldovan Bureau for Migration and Asylum (BMA) ordered the return of the mother to Ukraine; her children were not mentioned in this decision. All the defendants were subsequently detained.

On the basis of Art. 5(1), the ECtHR ruled that the mother's application was inadmissible because she had failed to lodge a complaint against her deprivation of liberty in the domestic proceedings. However, the children had no remedy under Moldovan law. Therefore, their appeals were admissible.

The ECtHR ruled that the children's detention was unlawful because they were not the subject of the expulsion decision and all the decisions of the national courts only stated that they were accompanying their mother. The children could not challenge their detention because there was no legal basis for doing so. For more than a month, their detention or release depended on the legal situation of their mother. Moldovan courts had

not examined whether detention was "ultima ratio", as the children's situation had not been investigated and it had not been examined whether detention would have been appropriate, in particular with regard to contacts with peers, recreational activities and other activities. Moldova had therefore violated Art. 5 para. 4 with regard to the children.

## 1.10 ECtHR, Judgement of 9/2/2023 - 11247/18 - R.M. and Others v. Poland: Art. 5 violated due to detention of children

The complainants, R.M. and her three children, were detained for seven months until they were deported to Russia. After the Polish government admitted a violation of Art. 8 and undertook to compensate the complainants for the damage, the ECtHR dismissed this part of the complaint. It also ruled that claims under Art. 3 concerning the duration of the children's detention were included in the comparison with Art. 8. The detention of one of the children with psychosomatic symptoms did not violate Art. 3 as he was accompanied by the family and his health was monitored by professionals.

The material conditions for the children's admission to the detention facility were correct, but the facility constituted a place of deprivation of liberty. The national authorities had not explained whether the detention of the children for approximately seven months was alternatively loosely "ultima ratio" and what steps they took to keep the detention period to a strict minimum. The information provided to the complainants did not explain the legal basis and reasons for the detention. They, therefore, did not have a fair opportunity to challenge the legality in court. Art. 5(1)(f) was, therefore, violated in relation to the children, and Art. 5(4) in relation to all the defendants.

## 1.11 ECtHR, Judgement of 23/2/2023 - 21325/16 - Dshijri and 4/4/2023 - 26250/15 and 26819/15 - H.N. and M.M. v. Hungary: Art. 5 para. 1 violated for detention despite lawful stay during asylum procedure

The complainant, Mr. Dshijri, an Iraqi national, crossed the Hungarian border coming from Ukraine and applied for asylum. During the procedure, he was granted a residence permit for Hungary on humanitarian grounds, but was detained for four months because his identity and nationality were allegedly not clarified. According to the authorities, this could thwart the asylum procedure and pose a risk of flight. Less restrictive measures were considered inapplicable as the complainant had neither connections in Hungary nor means of subsistence. The complainant submitted declarations to clarify his identity. His detention was nevertheless prolonged until he was granted subsidiary protection.

As in Dzhijri v. Hungary, the cases of H.N. and M.M. concerned the detention of asylum seekers in Hungary on the grounds of an alleged risk of absconding and in order to clarify their identity. Humanitarian residence permits were granted for the duration of their asylum procedures and, subsequently, refugee status was granted .

The ECtHR found in all proceedings that the defendants had been granted a residence permit, which they held throughout the proceedings, and ruled that Hungary's argument that detention was intended to prevent unauthorised entry could not be accepted, as the defendants already held a humanitarian residence permit. Nor should detention be ordered merely because a person had applied for asylum. There was no indication that the defendants were not cooperating with the authorities. Hungary's argumentation on the necessity to clarify their identity and to prevent their escape was not sufficiently substantiated. Therefore, Hungary had violated Art. 5(1).

### 1.12 ECtHR, Judgement of 30/5/2023 - 8757/20 – Azzaqui v. Netherlands: Art. 8 violated, as mental illness was not sufficiently taken into account before withdrawal of residence permit

Azzaqui, a 50-year-old Moroccan national, was granted a permanent residence permit for the Netherlands as early as 1991. Since 1982, he has committed numerous offences, including rape in 1992. Due to a recognised mental illness/personality disorder, he was considered incapable of culpability and was predominantly placed in a custodial hospital. Due to good behaviour, he was transferred to a supervised facility in 2016. During the revocation process, he relapsed (substance abuse), which is why he was ordered to be placed in the custodial clinic again by the court. In 2018, his residence permit was revoked, and a ten-year entry ban was imposed because he posed a threat to public order.

The ECtHR found that the decision on revocation interfered with the private life of the defendant and, therefore, examined the proportionality of the measure. It was acknowledged that the convictions were violent and sexual offences, which could constitute a "very serious reason" to justify expulsion. However, the authorities had not taken the defendant's severe mental illness into account as a mitigating factor. Little attention had been paid to the complainant's personal circumstances (good behaviour during the stay at the custodial clinic and positive progress after his relapse into drug abuse). Neither the Ministry nor the courts had taken the complainant's personal circumstances sufficiently into account. The complainant's medical treatment was aimed at reintegration into Dutch society, so no steps had been taken to prepare him for a return to Morocco. The authorities had not sufficiently taken into account the difficulties the applicant might encounter in Morocco due to his psychological vulnerability. They failed to sufficiently weigh the conflicting interests. As a result, his right to private and family life had been violated and Art. 8 was infringed.

### 1.13 ECtHR, Judgement of 22/6/2023 - 1103/16 - X.X. v. Poland: Art. 1 Protocol No. 7 violated due to deportation of a Belarusian national who allegedly poses a threat to national security

A Belarusian national with an unlimited residence permit for Poland was expelled because his stay was a threat to Poland's national security. The allegation was that he was working with Belarusian secret services. No additional reasons were given. The authorities classified certain documents issued at the beginning of the procedure as secret, so that neither the complainant nor his lawyer had access to them.

The ECtHR found that the complainant was subject to significant restrictions in the exercise of his right to be informed of the facts underlying the expulsion decision and his right of access to the documents and information on which the authority based its decision. The necessity of these restrictions was not independently examined and found to be justified. The complainant had only received general information about the charges against him and had not been informed about the possibility of gaining access to the documents contained in the file through a lawyer with the required security clearance. The complainant had already been deported to Belarus, which made it very difficult for him to present his case. The fact that the decision was made by independent, high-level judicial authorities was not sufficient to compensate for the procedural limitations. The procedural restrictions imposed on the complainant violated his rights under Art. 1 of Protocol No. 7, even taking into account Poland's discretionary powers.

## 1.14 ECtHR, Judgement of 4/7/2023 - 13258/18, 15500/18, 57303/18 and 9078/20 - B.F. and others v. Switzerland: Art. 8, violated if family reunification is denied because refugees are dependent on social assistance

This case concerns four Eritrean nationals, B.F., D.E., S.Y., S.M., and one Chinese national of Tibetan origin, J.K., who live in Switzerland. They were recognised as refugees, but were not granted asylum, rather "provisional admission", as their reasons for fleeing had arisen after leaving their countries of origin and as a result of their own actions. This meant that the legal entitlement to family reunification no longer existed. Although this was still possible on a discretionary basis, it was conditional, among other things, on no social assistance being claimed. The applications were therefore rejected in all cases because all the applicants received social assistance. The Swiss Federal Administrative Court ruled that there was no violation of Art. 8 ECHR.

The ECtHR first held that Switzerland had a margin of appreciation in deciding whether to grant family reunification to refugees whose reasons for being granted protection arose only after they had left the country and on the basis of their own actions. However, refugees should not be required to "do the impossible", e.g. live independently of social assistance. The ECtHR therefore examined whether the applications were processed flexibly by the Swiss authorities, taking into account the necessary assessment of discretion, and whether an individual assessment was carried out with regard to the protection of the right to family life.

After examining various relevant elements, the ECtHR focused in particular on the failure to claim social assistance. He first found that J.K. had been integrated into the labour market for years and had done everything that could reasonably be expected to support himself and his family.

The ECtHR then assessed S.Y.'s situation and found that it was difficult for her to work full time as she was raising her three minor children alone. The ECtHR therefore held that by working part-time she had done all that could reasonably be expected to support herself and her children. Not being dependent on social assistance would constitute a permanent obstacle to family reunification for her.

With regard to the situation of B.F. and D.E., the ECtHR found that B.F. had never been gainfully employed in Switzerland, as she was recognised as being unable to work. The court was not convinced that the Swiss Federal Administrative Court (BVerwG) had sufficiently examined whether her state of health made it possible for B.F. to work, at least to some extent. In light of this, the ECtHR ruled that Switzerland had violated Art. 8 ECHR because there was no proper balancing of the complainant's interest in family reunification and the country's interest in protecting its economic well-being.

## 1.15 ECtHR, Pending ("Communicated") Proceedings Related to Refugee Protection

### 1.15.1 *17/4/2023 - 35090/22 and 38444/22: Does forced deportation from Greece to Turkey violate Art. 2, 3, 5, 13 and 35?*

All cases concern third-country nationals who were returned from Greece to Turkey without prior trial and detained on an island in the Evros River. The Turkish authorities forced the defendants to cross the river, whereupon the defendants' representatives requested assistance from the Greek authorities and the ECtHR granted interim measures. Turkey abandoned the complainants on two different islands, but later returned them to the

original island, where a child died. The Greek authorities arrested the complainants and took them to a reception centre.

In relation to Greece, the ECtHR asks the parties, inter alia, whether domestic remedies were exhausted, whether the authorities violated Art. 2 and 3, whether the defendants had an effective remedy and whether their deprivation of liberty violated Art. 5(1), 5(2) and 5(4). With regard to Turkey, he asks whether domestic remedies have been exhausted and whether the authorities have violated Art. 2 and 3.

### 1.15.2  17/4/2023 - 10063/22 and 11762/22: On the compatibility of an expulsion of the complainants by Greece to Turkey with Art. 2, 3, 5 and 13?

This case concerns the deportation of a couple from Greece to Turkey without prior proceedings. The defendants left Turkey because they had been sentenced to imprisonment for their involvement in the FETO and entered Greece to move on to the wife's family in France. Greece sent them back to Turkey, although they stated that the woman had the right to stay in Greece and that the man was being persecuted by Turkey. The couple is currently serving their sentence in Turkey.

The ECtHR asks whether the defendants have exhausted domestic remedies, whether Greece has violated Art. 2 and 3, whether the defendants had an effective remedy and whether they were deprived of their liberty in violation of Art. 5(1), 5(2) and 5(4).

### 1.15.3  5/6/2023 - 55558/22: On the compatibility of Poland's treatment of detained Syrian applicants for international protection with Art. 3 and 8?

An Iraqi mother and her two minor children had crossed the Belarusian-Polish border and were held in a Polish-guarded centre until their deportation. The legality of their detention was confirmed by several Polish courts. The authorities did not grant them refugee status. The mother was admitted to a psychiatric hospital, after which the defendants were released and left for Germany. The ECtHR asks whether the defendants have exhausted all legal remedies, whether they were subjected to inhuman or degrading treatment and whether their private and family life was violated.

### 1.15.4  5/6/2023 - 27915/22: Compatibility of Lithuania's treatment of an Iraqi asylum seeker with Art. 3, 5 and 13?

An Iraqi national applied for asylum in Lithuania. He was accommodated in a migrant camp where he allegedly had no access to a lawyer. The complainant now lives in Germany. The ECtHR asks the parties, inter alia, whether the material conditions in the camp violated Art. 3, whether the complainant had an effective remedy to challenge them and whether he was deprived of his liberty within the meaning of Art. 5.

### 1.15.5  12/6/2023 - 25203/22: Compatibility of the deprivation of French nationality of an Algerian by France and the subsequent expulsion order with Art. 8 ECHR?

On 12 June 2023, the ECtHR communicated its case no. 25203/22. The case concerns the deprivation of French nationality of an Algerian-born applicant and the subsequent deportation order he had issued. He had acquired French nationality by naturalisation and had been imprisoned for his alleged participation in a criminal organisation in preparation for a terrorist act. The Court asks whether Art. 8 ECHR has been violated.

### 1.15.6 12 and 19/6/2023 - 12752/22, 15182/22 and 40833/22: Compatibility with the ECHR of repatriation, living conditions at the Polish-Belarusian border and available legal remedies?

The cases concern eleven foreigners, including minors, who attempted to enter Poland in an irregular manner. Allegedly, the Polish authorities ignored their applications for international protection and deported them back to the Belarusian side of the border without a formal decision, while other decisions were immediately enforced without investigating the individual situation. Moreover, some applicants were stranded in the border forest area without food, water or shelter and in harsh weather conditions. The applicants invoke Art. 3 and 13 of the ECHR and Art. 4 of Protocol No. 4.

## 2. European Court of Justice

### 2.1 ECJ, Judgment of 12/1/2023 - C-280/21 - P.I. v. Lithuania: The term "political opinion" is to be interpreted broadly; it includes a situation where the act in defence of the interests of an applicant is perceived as opposition to a (private) group influencing the state through corruption

This case concerned a third-country national who applied for international protection in Lithuania on the basis of criminal proceedings in his country of origin. His application was rejected because he did not state a reason within the meaning of the Refugee Convention, which includes the term "political conviction". After the applicant appealed against this decision, the Supreme Court of Lithuania referred questions to the ECJ on the interpretation of Art. 10 of Directive 2011/95 (Qualification Directive).

The ECJ emphasised that the Directive had to be interpreted in the light of its general scheme, its purpose and with regard to the Refugee Convention and the Charter of Fundamental Rights of the European Union (hereinafter: CFR). The wording of Art. 10 of the Directive implied that the term "political opinion" was to be interpreted broadly. Referring to the UNHCR Handbook, the ECJ ruled that the Guiding Principles suggest a broad understanding of the term "political opinion", which encompasses any opinion or issue concerning the state apparatus, government, society or politics.

### 2.2 ECJ, Judgment of 12/1/2023 - C-323/21, C-324/21, C-325/21 - B., F. and K. v. The Netherlands: On the transfer deadline for readmission applications under the Dublin III Regulation

B. (and similarly F. and K.) applied for asylum successively in Italy, Germany and the Netherlands between March 2017 and December 2018, in Germany and the Netherlands two times each. At times he was considered a fugitive. On 4/10/2017, Italy granted the German application in the Dublin procedure, which meant that the 6-month period for transfer began to run. It was extended to 18 months until 4/4/2019 due to B.'s flight to the Netherlands. B. brought an action against the negative Dutch decision of 8/3/2019. The Dutch court set it aside because Germany had become responsible on 4/4/2019 due to the expiry of the transfer deadline (Art. 29 Dublin III Regulation).

The Netherlands had also submitted a transfer request to Italy, which was granted. Germany and the Netherlands disagreed on the expiry of the transfer deadline on 4/4/2019, i.e. from the date on which Italy granted the first German request for readmission after 18 months. The question was whether Germany, as the first Member

State (MS) to request Italy's readmission, was still considered a "requesting MS" in the sense of Art. 29(2) of the Dublin III Regulation, or whether the Netherlands, as the last MS to request readmission, was entitled to this status.

The ECJ ruled that the change of responsibility (here: to Germany) pursuant to Art. 23 and 29 of the Dublin III Regulation also applies if during this time the person has filed a new application for international protection in a third MS (here: the Netherlands) and this has led to the acceptance of an application for re-admission filed by this third MS by the requested (originally responsible) MS (here: Italy).

According to Art. 27(1) of the Dublin III Regulation in conjunction with Art. 47 Charter of Fundamental Rights, the applicant must have an effective and speedy remedy in the third MS in order to invoke the transfer of responsibility to the second MS. The second MS remains responsible for processing the application if it has exceeded the time limit, irrespective of whether the first MS has accepted a possible request for return from the third MS.

## 2.3 ECJ, Judgment of 15/2/2023 - C-484/22 - G.S. v. Germany: Protection of the best interests of the child and the right to family life in the return proceedings of a minor

The applicant, who was born in Germany in December 2018, is a Nigerian national. In decisions of March 2017 and March 2018, the Federal Office for Migration and Refugees (BAMF) established a ban on deportation to Nigeria in favour of the applicant's father and a sister born in 2014. By decision of 13/6/2019, the BAMF rejected the applicant's application for refugee status, for recognition as entitled to asylum or for subsidiary protection and threatened to deport him to Nigeria, setting him a deadline of 30 days for voluntary departure. A complaint was filed against this.

The Administrative Court dismissed most of the claims, but lifted the threat of deportation on the grounds that his deportation was not compatible with the right to family life enshrined in both Art. 6 of the Basic Law and Art. 8 of the ECHR because of the ban on deportation in favour of the father and one of the plaintiff's sisters. The young applicant could not reasonably be expected to be separated from his father. The BAMF appealed against the ruling to the Federal Administrative Court, arguing that the reasons opposing deportation, namely the best interests of the child and respect for family ties within the meaning of Art. 5(a) and (b) of Directive 2008/115, were not to be taken into account in the procedure for threatening deportation, for which the BAMF was responsible. They could only be taken into account in the context of a further procedure concerning the execution of the deportation. The regional foreigners authorities were to be permanently responsible for this. With its referral to the ECJ, the BVerwG essentially wanted to know whether the BAMF's reasoning was correct.

The ECJ ruled that Art. 5 of Directive 2008/115 prevented the MS from issuing a return decision without taking into account the relevant aspects of family life raised by the third-country national in order to prevent the issuance of such a decision (reference to judgment of 8/5/2018 - C-82/16 - K. A. and Others [Family Reunification in Belgium], para. 104). Specifically, before adopting a return decision, the MS must make a full and detailed assessment of the minor's situation and take due account of the best interests of the child (reference to judgment of 14.1.2021 - C-441/19 TQ ./. Netherlands [Return of an unaccompanied minor] para. 60). It is not sufficient for the person to be able to assert

these protected interests only in the context of subsequent proceedings on the enforcement of the return decision in order to obtain a stay of enforcement, if necessary. Consequently, Art. 5(a) and (b) of Directive 2008/115 preclude national case-law according to which the obligation to take into account the best interests of the child and his or her family ties when issuing a threat of deportation is deemed to be fulfilled as long as the deportation is not (yet) carried out.

## 2.4  ECJ, Judgment of 16/2/2023 - C-745/21 - L.G. v. Netherlands: National law may oblige an MS to consider an asylum application on a discretionary basis if this is in the best interests of the child

A Syrian woman travelled to the Netherlands via Lithuania, applied for asylum and later married a third-country national legally living in the Netherlands. The Dutch authority did not process the application because Lithuania was responsible and had accepted the Dutch request to take her back. The applicant appealed against the refusal, citing the best interests of the unborn child. The referring court found that under national law, the pregnant applicant's child is deemed to be born if this is in the best interests of the child. The Dutch court then referred questions on the Dublin Regulation to the ECJ.

The ECJ ruled that Art. 16(1) of the Dublin III Regulation does not apply if there is a relationship of dependency either between a spouse who has applied for international protection and the spouse who is legally resident in the MS where international protection has been applied for or between the unborn child of this spouse and the spouse who is also the father of the child.

Art. 17(1) of the Dublin III Regulation precludes a national rule which obliges authorities to examine the asylum application of a pregnant applicant solely on the basis of the child's well-being if other criteria speak in favour of the responsibility of another MS. Art. 17 does not prohibit this. However, the national court had to examine whether national standards had been violated because the application for international protection had been rejected even though the applicant was pregnant at the time of the application.

## 2.5  ECJ, Judgment of 30/3/2023 - C-338/21 - S.S. and Others v. The Netherlands: On the relationship between the Dublin Procedure and the Residence Directive for Victims of Trafficking in Human Beings

For three third-country nationals, applications for international protection in the Netherlands had been rejected. The authority ordered their transfer to Italy, and Italy agreed. They then applied for a humanitarian residence permit as victims of trafficking. The Secretary of State ruled that the applications were irrelevant. The persons concerned applied for a review, which was unsuccessful. In the opinion of the Secretary of State, the transfer deadline stipulated in Art. 29 of the Dublin III Regulation was not enforced by the review application.

The ECJ ruled that Directive 2004/81 on the issuance of residence permits to third-country nationals who are victims of trafficking in human beings does not prevent MS from allowing an appeal against the refusal of a humanitarian residence permit with suspensive effect on the prior transfer decision under the Dublin III Regulation. This practice strengthened the protection of third-country nationals by enabling them to remain in the MS until the decision on the appeal. The Directive 2004/81/EC stipulates that victims who cooperate with law enforcement authorities may receive a residence permit. Art. 6 of

Directive 2004/81/EC provides for a reflection period for victims to recover, to escape the influence of the perpetrators and to make an informed decision on whether to cooperate with law enforcement authorities. During this reflection period, they could not be transferred under the Dublin III Regulation.

However, if an application pursuant to Directive 2004/81 is rejected and an appeal is lodged against it, which has a suspensive effect under the respective national law and, therefore, prevents a transfer pursuant to the Dublin III Regulation, this is not an appeal pursuant to Art. 27(3) of the Dublin III Regulation. The expiry of the transfer deadline pursuant to Art. 29 (1) and (2) of the Dublin III Regulation is neither suspended nor interrupted by this.

### 2.6  ECJ, Judgment of 30/3/2023 - C556/21 - E. N., S. S. and J. Y. v. The Netherlands: Dublin Regulation allows provisional measures requested by authorities only at second instance

This case concerned three third-country nationals who had applied for international protection in the Netherlands. The Secretary of State submitted requests for withdrawal to other MS, which were granted. Therefore, the asylum applications were not processed in the Netherlands. The courts of first instance in the Netherlands annulled these decisions and ordered the Secretary of State to take a new decision on the applications. The Secretary of State appealed and applied for interim measures, which were granted by the Council of State. The Council of State then referred questions to the ECJ for a preliminary ruling.

The ECJ ruled that MS may establish a second instance court to decide on an appeal against a transfer decision and lay down procedural rules, including interim measures, as this is not regulated by EU law. A court of second instance could, at the request of the authority, take interim measures to suspend the transfer deadline. However, this was only permissible if the implementation of the transfer decision had already been suspended during the first instance appeal proceedings pursuant to Art. 27(3) or (4) of the Dublin III Regulation.

In contrast, in the proceedings under review, the transfer decision was not stayed at first instance, so the possibility of applying for a temporary injunction at second instance would allow the authorities to postpone a transfer deadline and thus avoid jurisdiction to process the applications, which would unduly delay the progress of the protection proceedings and undermine the objectives of the Regulation. This was inadmissible.

### 2.7  ECJ, Judgment of 18/4/2023 - C-1/23 - Afrin v. Belgium: EU law precludes standards that require family reunification to be applied for in person at the competent diplomatic mission without exception

This case concerned a Syrian family, X. and Y. and their children A. and B., of whom Y. is recognised as a refugee in Belgium, while X. and their joint children are still in Syria. They applied for family reunification by e-mail, stating that they were in an exceptional situation that prevented them from submitting the application in person to the Belgian diplomatic mission abroad. The Belgian authorities stated that an application in writing and by e-mail was inadmissible under Belgian law. In the appeal proceedings, the Belgian court requested a preliminary ruling on the compatibility of the Belgian standards with the Family Reunification Directive.

The ECJ ruled that Union law precludes national rules which require family members of the sponsor, in particular those of a recognised refugee, to appear in person at the competent consular post of a MS, even if it is impossible or excessively difficult for them to get to that post. Requiring personal appearance at the diplomatic mission or consular post in order to apply for family reunification, without allowing for exceptions to take into account the specific situation of the sponsor's family members, would de facto prevent them from exercising their right to family reunification. Such a national rule, applied without flexibility, undermines the objective pursued by the Directive, deprives it of its effectiveness, violates the right to respect for family unity enshrined in the EU CFR and constitutes a disproportionate interference with this right in relation to the legitimate objective of combating fraud. However, MS may require the family members of the sponsor to appear in person at a later date. MS must then facilitate such an appearance and reduce it to the strict minimum.

## 2.8 ECJ, Judgment of 26/4/2023 - C-629/22 - A.L. v. Sweden: Art. 6(2) Return Directive obliges MS to allow an irregularly-staying third-country national who has a right of residence in another MS to leave there before a return decision is taken

The case concerned the third-country national, A.L., who was staying in Sweden irregularly but held a temporary Croatian residence permit. The Swedish authorities expelled him and asked him to leave Sweden. At the same time, they imposed a (re-)entry ban. However, they did not ask him to return to Croatia voluntarily, as they assumed that he would not comply anyway. However, A.L. did indeed leave voluntarily and appealed against the decision. In the course of the proceedings, the Swedish court referred questions on this to the ECJ.

The ECJ ruled that Art. 6(2) of the Return Directive obliges a MS to allow an irregularly residing third-country national who has a right of residence in another MS to go to that state before a return decision is taken. This also applies if they consider it unlikely that he or she will comply with such a request. Art. 6(2) of the Return Directive had direct effect and could therefore be invoked by individuals before national courts. If a MS does not allow the third-country national to go to the other MS voluntarily before issuing a return decision, the national authorities and courts dealing with an appeal against that return decision and the associated entry ban are obliged to take all necessary measures to remedy the non-compliance with the obligations arising from Art. 6 of the Return Directive. This could lead to the invalidity of the return decision and the entry ban.

## 2.9 ECJ, Judgment of 27/4/2023 - C528/21 - M.D. v. Hungary: TFEU and Return Directive preclude the issuing of an entry ban on a third-country national who is a family member of EU citizens if individual circumstances ("dependency relationship") are not taken into account

This case concerned the third-country national, M.D., who had settled in Hungary with his mother, his partner and their common minor child. The two last mentioned have Hungarian citizenship but have not exercised their right to free movement within the EU. M.D.'s application for a permanent residence permit was rejected because he had been sentenced to imprisonment for helping migrants cross the border illegally. He was considered a threat to national security. Hungary revoked M.D.'s residence permit and issued a return decision and an entry and residence ban without examining his personal situation. In the course of the proceedings, M.D. left Hungary.

The ECJ ruled that Art. 20 of the Treaty of the Functioning of the European Union (TFEU) must be interpreted as preventing Hungary from adopting a decision prohibiting the entry into the territory of the EU of a third-country national who is a family member of a Union citizen who has never exercised his or her right to free movement, without first having examined whether there is a relationship of dependency which would de facto force that Union citizen to leave the territory of the EU. If such a relationship of dependence exists, a travel and residence ban based on national security may only be issued after weighing all relevant circumstances, in particular taking into account the best interests of the child who is a citizen of the Union.

The entry ban falls within the scope of Art. 11 of the Return Directive, although no return decision has been taken. Art. 5 of the Return Directive precludes a third-country national from being the subject of a decision prohibiting him from entering the territory of the EU on the same grounds as the withdrawal of his residence permit, without taking into account his state of health, his family life and the best interests of his child. The national courts would have to disregard national legislation that is incompatible with Art. 5 of the Return Directive and, if necessary, apply the provision of the Directive directly. The Return Directive and the EU Charter of Fundamental Rights of the European Union (CFR) preclude the practice of Hungarian authorities which, relying on the SIS alert, refuse to apply a final court decision ordering the suspension of the enforcement of an entry ban.

## 2.10 ECJ, Judgement of 22/6/2023 – C-823/21 – EU Commission v. Hungary: Hungarian embassy procedure disproportionately hinders the possibility to apply for asylum

In 2020, following the outbreak of the COVID-19 pandemic, Hungary enacted a law that requires certain third-country nationals or stateless persons who are on the territory of Hungary, or present themselves at the Hungarian borders and wish to claim international protection, to go through a pre-procedure. They must go to the Hungarian embassy in Belgrade (Serbia) or in Kiev (Ukraine) to personally submit a declaration of intent to file an application for international protection. After examining this declaration, the competent Hungarian authorities may decide at their discretion to issue a travel document allowing entry into Hungary to apply for international protection.

The EU Commission considered this to be an unlawful restriction of access to the asylum procedure contrary to Art. 6 of the Asylum Procedures Directive in conjunction with Art. 18 Charter of Fundamental Rights of the European Union.

The ECJ agreed: a pre-trial or other administrative formalities were not laid down as a requirement in Art. 6 of the Asylum Procedures Directive and were contrary to its objective of ensuring effective, simple and rapid access to the procedure for granting international protection. The Hungarian law unduly restricts the effective exercise of the right to apply for asylum and to remain during the examination of the application. Hungary's objection that this is justified, inter alia, for reasons of public health, is not valid. The regulation is neither appropriate nor proportionate to achieve the objective of protecting public health. The authorities had not demonstrated that no other proportionate measure could be taken. Hungary had generally invoked the threat to public policy and internal security to justify the compatibility of its legislation with EU law, without demonstrating that it was necessary to derogate specifically from the requirements of Art. 6 of the Directive.

### 2.11 ECJ, Judgment of 6/7/2023 - C-8/22 - XXX. v. Belgium; C-663/21 - A.A. v. Austria; C-402/22 - M.A. v. The Netherlands: Clarification of the requirements for withdrawal and refusal of refugee status in the case of third-country nationals convicted of a criminal offence

All three legal disputes here concerned the contestation of decisions on the recognition or rejection of the refugee status of third-country nationals who had been convicted of a crime classified as particularly serious.

In the Belgian case (C-8/22), the ECJ clarified that the withdrawal of refugee status requires that the person concerned has been convicted of a particularly serious criminal offence and that it has been established that he or she constitutes a serious danger to the general public of the MS in which he or she resides. The danger could not be assumed on the basis of the conviction alone. The MS could only make use of the possibility of disqualification if both conditions prescribed by EU law were met - without being obliged to do so. The principle of proportionality had to be observed: The offences must be particularly serious and there must be a considerable danger to the general public.

The balancing of the refugee's interests against the security interests of the MS was of decisive importance in the Austrian case (C-663/21). The ECJ ruled that the authority was not obliged to take into account the extent and nature of the measures to which the third-country national could be exposed upon return to his or her country of origin.

The Dutch case (C-402/22) concerned the interpretation of the term "final conviction for a particularly serious offence". The ECJ took the view that this only covered offences that most seriously affected the legal order of the society in question. The degree of seriousness could not be achieved by cumulating less serious offences. The assessment of gravity involves an appreciation of all the particular circumstances of the case in question, such as the nature and degree of the penalty threatened (let alone imposed), the nature of the offence committed, any mitigating or aggravating circumstances, whether the offence was committed intentionally, the nature and extent of the damage caused by the offence and the nature of the criminal proceedings for the punishment of the offence.

### 2.12 ECJ, Judgment of C-608/22 (case still pending) - A.H. v. Austria: Does the Taliban's accumulation of measures against Afghan women constitute an act of persecution? If so, is individualisation still necessary?

The questions referred by the Austrian Administrative Court are:

1. Is the accumulation of measures taken, promoted or tolerated in a state by an actor who is de facto in power, and in particular, constituting that women

   - are denied participation in political office and political decision-making processes,

   - are provided no legal means to be able to receive protection from gender-specific and domestic violence,

   - are generally at risk of forced marriages although such marriages have been banned by the de facto governmental actor, but women are not effectively protected against forced marriages and such marriages are sometimes performed with the participation of de facto state officials, knowing that they are forced marriages,

- are not allowed to pursue gainful employment or are only allowed to do so to a limited extent at home,

- are granted a more difficult access to health facilities only,

- are denied access to education - completely or to a large extent (for example, girls are only granted primary school education),

- are not allowed to stay or move in public without being accompanied by a man (in a certain relationship of relatives), at most in the case of exceeding a certain distance from the place of residence,

- have to cover their body completely and veil their face in public,

- are not allowed to practice any sport,

within the meaning of Art. 9(1)(b) of the Qualification Directive be regarded as so serious that a woman is affected by it in a manner similar to that described in subparagraph (a) of Art. 9(1) of the Directive?

2. Is it sufficient for the granting of the status of a person entitled to asylum that a woman is affected by these measures in the country of origin solely on account of her sex, or is it necessary to examine her individual situation in order to assess whether a woman is affected by these measures - to be considered cumulatively - within the meaning of Article 9(1)(b) of Directive 2011/95/EU (the Qualification Directive)?

**|QRP**

# NEWS & NOTES

# Selected Developments related to Migration: Update from Europe[1]

*Holger Hoffmann[2]*

This is a compilation of news and notes of relevance on political developments in European refugee law and policies.

## 1. Activities of the EU Institutions for an "Integrated European Border Management" and for the "Reform" of the CEAS

### 1.1 The EU Commission's Position for the "Trialogue"

Politically, the reporting period at the EU level was marked by the preparation of the meeting of Interior Ministers on 08/09 June 2023. At the meeting on 9 February 2023, the EU Council already pointed out the importance of effective control of the EU's external land and sea borders as part of a comprehensive approach to migration and called on the Commission to rapidly finalise the strategy for integrated European border management.

The Commission followed this up with its Communication of 14 March 2023 on "establishing the multiannual strategic policy for European integrated border management" (COM [2023] 146 final - link to the official version of 20 June 2023 after adoption in the Council: EUR-Lex-52023DC0146-EN-EUR-Lex). The Communication serves as a political framework for action and orientation for the implementation of "effective integrated European border management" from 2023 to 2027, ideally pursuing different objectives simultaneously: Facilitating legal border crossings and increasing the effectiveness of the EU's return policy; ensuring effective prevention of unauthorised border crossings at the external borders; preventing and detecting serious crime with a cross-border dimension, such as migrant smuggling, terrorism, trafficking in human beings, arms and drugs; cooperating effectively with third countries; and ensuring rapid registration and care for persons in need of or seeking international protection. As the Commission states in its Communication, integrated European border management is supposed to contribute to a high level of internal security in the Union, while fully respecting fundamental rights and the free movement of persons.

The overarching goal is to increase the number of actual returns. To achieve this, Member States (MS) must request and use the support available through Frontex at all stages of the return process. This concerns, in particular, the support of return operations through Frontex, support by Frontex for the digitalisation of national return case management

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systems based on the system developed by Frontex, support for training and deployment of Frontex return experts, and participation in Frontex joint reintegration services. The Commission Recommendation on mutual recognition of return decisions and acceleration of the return procedure, presented at the same time as this Communication, is an important step towards a common EU return system. The aim is to achieve greater convergence between MS in migration management and to facilitate and accelerate returns.

The implementation would be the joint responsibility of the MS authorities responsible for border management, return, and Frontex. Frontex, in close cooperation with the MS and the Commission, would have to develop a new technical and operational strategy for integrated European border management. The technical and operational strategy should be adopted by the Frontex Management Board within six months of the adoption of the Communication, i.e. by the end of 2023. The border management authorities of the MS would still have the main responsibility for their respective external border sections, while the members of the European Border and Coast Guard Agency would have a duty of loyal cooperation and exchange of information within the community. The basis is a "four-tier access control model", which includes measures in third countries, measures of cooperation with neighbouring third countries, control measures at the external borders as well as measures within the Schengen area and in the area of return. Frontex and the MS should take and adapt measures at all levels on the basis of risk analyses (including "near-real-time situation monitoring").

The EU's financial instruments are crucial for the effective implementation of the strategy. This applies, in particular, to the "Border Management and Visa Instrument" (BMVI) and the "Asylum, Migration and Integration Fund" (AMIF). Activities within the framework of integrated European border management are supported by EU funds at both the EU and national level.

Frontex activities are financed through its budgetary resources from the general budget of the EU. Support to third countries is provided through the "Neighbourhood, Development and International Cooperation Instrument – Global Europe" (NDICI-GE) and the "Instrument for Pre-Accession Assistance" (IPA III), complemented by relevant measures under the BMVI and AMIF. Furthermore, certain key external borders will be strengthened through targeted Union actions, including the mobilisation of EU funds to support MS in developing border management capabilities and infrastructure, surveillance means and equipment, and bilateral funding. Through the instrument for "technical assistance", MS can apply for support to implement the relevant components of the national strategy for integrated European border management. It has not been explicitly written, but what is meant by this is, among other things: Poland may have border fortifications financed by the EU – something that was still very controversial until 2022.

## 1.2    Decisions of the EU Ministers of the Interior of 08 June 2023

The European Commission published its Communication on establishing the multiannual strategic policy for European integrated border management on 14 March 2023, and the European Parliament published its Communication in April 2023. On 8 June 2023, the EU interior ministers (MIs) then concretised their negotiating positions in the Council and agreed on their positions for the so-called "trialogue" with the European Parliament (EP) and the Commission. The main contents of this agreement:

Above all, the MIs agreed on a 178-page labyrinth of complex, probably hardly practicable procedural rules aimed at further limiting the number of people receiving international protection in Europe. The main point: the agreements lower protection standards. Whether the proclaimed goals of deterrence, rapid repatriation, and a reduction in "secondary migration" will be achieved remains to be seen.

The Dublin rules remain largely untouched, the rules on jurisdiction remain the same, and the principle of the responsibility of the State through which the first entry was made continues to apply. Improvements proposed by the Commission, such as a broader family definition to allow family reunification with siblings, were rejected.

As before, all those seeking protection in the EU should be registered, without exception, at the place where they first set foot on EU soil. Those who have a good chance of being recognised as having protection status should go through a regular asylum procedure. A second group is made up of those whose chances of recognition are slim. The fast-track procedure applies to them. In particular, these are currently protection seekers from the Maghreb States (Morocco, Algeria, Tunisia). They have to wait for their case to be processed under conditions similar to detention. Strictly secured reception centres are also planned for families with children, contrary to what the German Federal Government wanted. Will this be compatible with the ECtHR's previous ruling on Articles 3, 8, and 5? So far, it is not. On the contrary, with regard to minors, the ECtHR clearly rejects detention-like placements; with regard to families with minor children, they must be limited to what is absolutely necessary – generally shorter than three months.

The MIs essentially pursue two goals: "secondary migration", which arises because Italy and Greece feel overburdened instead of registering arriving people as the current rules already provide, is to be curbed, and the number of migrants arriving in the EU is to be reduced in general. The central terms for this are "responsibility" and "solidarity".

Responsibility: The States at the external borders should initially hold 30,000 places for fast-track procedures at the borders and register refugees there (as a reminder: in 2022, 880,000 initial applications for asylum were filed in all EU States combined). Asylum seekers who come from countries where the EU-wide recognition rate is below 20% are to be held there until a decision is made on their application. The procedure is to last a maximum of twelve weeks, and rejected asylum seekers are to be deported within a further twelve weeks. In return, the other EU states undertake to accept a certain number of asylum seekers. Italy is to take the lead in setting up and running the asylum centres at the external borders. In return, it will receive money from the EU – exactly how much is still unclear.

Solidarity: There are to be fixed rules on how asylum seekers are to be distributed among the MS. Solidarity is obligatory but flexible, i.e. all countries have to contribute but can choose whether to take responsibility for people by offering resettlement, capacity building, or a financial contribution. 30,000 people are to be resettled per year in the EU. The adequate capacity of each MS (minimum number or target for border procedures) is to be determined by a formula based on the total capacity and the number of "irregular" entries (i.e. people entering to seek protection). For Germany, according to the key worked out by the Commission, this means taking in about 6,000 persons. Apart from Germany and France, it is foreseeable that not many other states will initially participate in the redistribution. The others will wait and see whether the new procedures will reduce the

number of asylum seekers in their countries. In return, they can buy their way out with €20,000 per asylum seeker they do not take in against their quota. The money flows into a European fund to fight the causes of flight.

A new idea in the Council Decision are so-called "responsibility offsets" - a kind of complementary form of solidarity. For example, instead of accepting refugees from Greece on a quota basis, Germany could suspend transfers back to Greece. However, it is uncertain what exactly has been agreed to with regard to these "offsets" for solidarity obligations (reduction of the solidarity obligations of one country towards others), e.g. in the case of the offer of transfer places and offsets for solidarity payments (reduction of the solidarity claims of a country under pressure) in the case of non-acceptance of Dublin transfers.

The definition of "migratory pressure" and whether this includes "instrumentalisation" and search and rescue (SAR) situations also remained open. A separate SAR mechanism proposed by the EU Commission was rejected.

The period during which the country of arrival should be responsible for applicants varies:

- two years for persons entering via the external border;
- 15 months after a rejection in the border procedure – to give States an incentive to use the border procedure;
- 12 months for people rescued at sea – to give States an incentive to stop watching people drown.

All available data is to be centrally recorded and stored upon arrival in the EU – as has actually been the case up to now, except that Greece and Italy do not practice it. The aim is to facilitate the return of rejected asylum seekers to "safe third countries". The EU is to draw up a list of such countries, but the MS can also independently declare third countries as safe. Germany has so far only listed Norway and Switzerland. Spain lists Morocco and most Latin American countries. Greece also considers Turkey a safe third country for refugees from Syria and other countries.

What is new is that the requirements by which third countries can be declared safe will be significantly lowered. In the future, this will also be permissible for parts of a State and for States that have not signed the Refugee Convention. For example, Italy could declare parts of Libya a safe third country. The States of the Western Balkans could also be classified as safe third countries. However, these changes do nothing to increase the likelihood that these States will be willing to take in "returnees" without significant financial contributions from the EU.

Art. 43a of the Asylum Procedures Regulation, as adopted by the Council, states that a "safe third country" does not have to have signed the Refugee Convention (also applies to states that have signed the Refugee Convention only with a geographical reservation, such as Turkey), rather it is sufficient if

- "effective protection is guaranteed". This is already fulfilled if the persons concerned can "remain" in this State (i.e. no claim to legal residence),
- there are sufficient means of subsistence,
- emergency medical care is guaranteed,
- access to "primary education" exists.

There was a controversial discussion on what kind of connection there had to be between the person seeking protection in the EU and the "safe third country". BMI Faeser argued that mere transit was not sufficient. Rather, there must be a "connection" between the asylum seeker and the country to which he or she is deported, for example through relatives. She failed with her demand, especially due to Italy's resistance, which rejects such a link element. It was decided that there must be a connection that makes a reference to protection in the third country seem "reasonable" (this is already the wording of the current asylum procedure directive). Since it was clear that without Italy there would be no agreement, it was decided that each country could apply the "link element" as it saw fit – e.g. transit through Niger would suffice for a return to that country. In the text, the explanatory recital states that MS decide what counts as such a link. Only after Italy accepted this compromise did other States also vote in favour. BMI Faeser hopes that improvements can still be achieved in the trialogue.

Hardliners, like the Austrian MI Karner, demanded the "Rwanda model", i.e. to be able to deport asylum seekers to a third country regardless of whether the person had ever entered it before. Such a model is ruled out by the "connection demand", but "deals" with States on the flight routes (such as the EU-Turkey Deal) are still possible.

It remains unclear what is to happen to people whose asylum application is rejected in the fast-track border procedure. Should their country of origin not take them back, according to most, they should be able to be sent to any other State. For African refugees, for example, Niger was explicitly mentioned (Note: On 25 July 2023, the military staged a coup against the president in this "strategic partner state" and "anchor of stability", where among others about 100 soldiers of the German armed forces are stationed. Whether a State with such insecure domestic politics can be assessed as "suitable for repatriation" and whether there is a willingness to accept people to be deported is open to question.

Hungary and Poland rejected all resolutions because they do not want a common asylum system for Europe. Bulgaria, Malta, Lithuania and Slovakia abstained, for different reasons. According to the current timetable, agreements should be reached by the end of 2023. Time plans of the EU institutions, however, have often been "smoke and mirrors" in the past. The reason for this haste could be that a new EU Parliament will be elected on 9 June 2024 and – if no agreement has been reached by then – the principle of discontinuity obliges a new start, especially since the EU Commission will also be newly appointed.

If there are no further delays and the EU Parliament still votes on a compromise in 2023, it can be assumed that a conservative majority will essentially agree to the rules agreed to in the Council. Then comes the implementation period, which, in this case, should take place two years before the restrictions take effect. Thus, amended rules will come into force at the earliest by the end of 2025 respectively the beginning of 2026.

**Excursus on the German negotiating position:** In the coalition agreement of 2021, it was still stated:

> "We want to end illegal refoulement and the suffering at the external borders. We want better standards for protection seekers in asylum procedures and in integration in EU states. The asylum application of people who arrive in the EU or are already here must be examined thoroughly" [translation by the author].

When the German government presented its position on European refugee policy and reform plans to the Bundestag on 4 May 2023, it agreed in principle to the introduction of

mandatory border procedures, but wanted to limit their application: Unaccompanied minors and families with children should be exempted from fast-track procedures at external borders because they cannot be expected to live in camps under detention-like conditions. A compulsory solidarity mechanism regarding responsibility for asylum procedures could be introduced and, at the same time, the Dublin system could be tightened. In the end, MI Faeser succeeded with regard to the minors; but with regard to the families, the only action taken was a note in the minutes stating her concern. Other governments, on the other hand, argued that favourable treatment for families with children would invite "abuse".

The German government wanted a "minimum standard, essentially the standard guaranteed under the Refugee Convention" to apply to "safe third countries", i.e. access to studies/training, the labour market, and family reunification should also be included in the regulation. However, the resolution does not say this. The Federal Government did not explicitly demand that a "safe third country" must have signed the Refugee Convention, as provided for in the previous law.

On 17 May 2023, more than 50 organisations of the German civil society published a joint statement as an appeal to the German government on its position on the reform of the CEAS and demanded:

- no compromises at the expense of refugee protection;
- the German government should live up to its humanitarian responsibility and take its own coalition agreement seriously;
    1) for humane and fair asylum procedures: No compulsory border procedures at the EU's external borders!
    2) for refugee protection in the European Union: no lowering of the requirements for "safe third countries"!
    3) for real solidarity in the reception of refugees: no continuation of the failed Dublin system!

This appeal went unheard in the negotiations of the EU interior ministers.

The Federal Government Commissioner for Migration, Alabali-Radovan, defended the planned reform of EU asylum law. Germany and Europe must not shirk their responsibility, she told "Redaktionsnetzwerk Deutschland". Legal and secure access routes are an important part of this responsibility.

## 1.3 The EU Summit in Brussels – 29/30 June 2023

The meeting of the heads of government (European Council) ended without a joint declaration on migration policy. Poland and Hungary oppose the asylum law reform. Poland demanded that the EU's asylum plans be revised. The admission of refugees must remain voluntary and each MS must decide for itself how to support countries with high rates of migration. In the future, the consensus principle should apply exclusively in migration policy decision-making, instead of making decisions by majority vote. Hungary also rejects the planned distribution of refugees and compensation payments. The Polish head of government, Morawiecki, said he would present a new proposal on EU refugee policy in Brussels.

Chancellor Scholz, on the other hand, said the agreed solidarity mechanism was a major breakthrough. It meant that the States at the EU's external borders had to make a

contribution by registering the arrivals and giving them the opportunity to apply for asylum. At the same time, other states would have to take responsibility for some of the refugees so that the burden did not remain solely on the border states.

## 1.4    The Price of Cooperation

The financial incentives bargained for "cooperation" and accepting returns is currently shown by Tunisia: The State is in a severe economic crisis, and negotiations on a new loan from the IMF for $1.9 billion are stalling because Tunisia's President calls the reforms ordered by the IMF demanding. According to the Italian MI, 53,800 migrants arriving from Tunisia from January to June 2023 were registered on Lampedusa and Sicily, doubling the amount in 2022. On 11 June, EU Commission President, Ursula von der Leyen, travelled to Tunis with the Dutch and Italian heads of government, Rutte and Meloni, to offer President Saied the following in return for Tunisia's willingness "through cooperation with the EU" to keep migrants out of Italy:

- ▪ Economic aid in the amount of 900 million Euros;
- ▪ 105 million Euros for border security (border, search and rescue operations; measures against smugglers and to repatriate migrants);
- ▪ 150 million Euros in support of the Tunisian State budget.

On 10 June 2023, one day before the visit, President Saied ruled out Tunisia acting "as a border police for Europe. If the agreement between Tunisia and the IMF is reached, Italy wants to add another 700 million Euros. On 16 July, the above-mentioned persons signed a Memorandum of Understanding to support Tunisia based on the above figures. BMI Faeser flew to Tunisia on 18 June, together with the French MI Darmanin, and offered so-called "talent partnerships" there: The aim was to offer young people professional opportunities in the EU. It remains to be seen whether, and if so, to what extent, use will be made of this.

## 2    On the Situation at the EU's External Borders – January to June 2023

### 2.1    Central Mediterranean Route

In a statement published on 16 June, Frontex noted that half of "irregular migration" to the EU takes place via the central Mediterranean route. Two days after the shipwreck off Pylos, Frontex announced that between January and June 2023, there had been more than 56,000 illegal crossings on the central Mediterranean route – double the number in 2022 and the highest increase since 2017. According to Italian figures, as many as 82,000 refugees had arrived there via this route by the end of June. According to figures released by IOM in mid-April 2023, the first three months of 2023 were the deadliest first quarter since 2017, with a total of 494 documented migrant deaths in the central Mediterranean. The IOM further pointed out that NGO-led SAR efforts had declined significantly.

> "With more than 20,000 deaths recorded on this route since 2014, I fear that these deaths have been normalized. States must respond. Delays and gaps in State-led SAR are costing human lives,"

said IOM Director General Antonio Vitorino.

On 14 June, a ship with hundreds of people on board capsized off Pylos (for details: see section "Greece" below). It was sailing from Libya towards Italy. Only 104 people could be

rescued, 78 were recovered dead, the others were swept away by the ship. According to the NGO "AlarmPhone", 750 people were on board. Other sources report about 400 people – one of the biggest refugee tragedies in Europe.

UNHCR head, Türk, already stated on 13 April 2023:

> "Delays in State-led rescues on the Central Mediterranean route were a factor in at least six incidents this year leading to the deaths of at least 127 people. The complete absence of response to a seventh case claimed the lives of at least 73 migrants."

He called for concerted efforts to ensure swift rescue and "dignified, effective and thorough reception in a safe place":

> "Experience teaches us that adopting a tougher line on curbing irregular migration will not prevent departures, but rather result in more human suffering and deaths at sea. Instead, it would be far better for countries to provide safe and regular pathways for migration and prevent unnecessary deaths."

UNHCR reported at the end of July that in the first half of 2023, at least 289 minors died on refugee routes across the Mediterranean – double the number in 2022. It was likely even significantly more, UNHCR said, because many boat accidents were not registered.

The EP has adopted a resolution calling for a new and coordinated EU-wide search and rescue mission to be carried out by EU countries and for Frontex to end the "shame" in the Mediterranean. The EP condemns criminal smuggling and human trafficking and stresses that "safe and legal pathways are the best way of avoiding loss of life". The Commission is called on to assess MS' current practices on SAR operations, to investigate shipwrecks, to help MS improve their capacity to save lives at sea, and to share data on EU and MS' funding of third countries such as Libya, Turkey, Egypt, Tunisia and Morocco, as well as to ask Frontex to improve the available information on its SAR operations. MS are urged to keep their nearest safe ports open to NGO vessels and not to criminalise those who help migrants in need. The Libyan authorities are specifically accused of taking apprehended migrants to detention centres where they are subjected to "torture and other ill-treatment, including rape."

Below are "pars pro toto" excerpts from ECRE's weekly bulletins, which show that deadly tragedies occur almost daily on the central Mediterranean route:

### 2.1.1 Italy

In early April, the Italian coast guard rescued 400 people who had passed through Malta's SAR zone. A day later, "AlarmPhone" reported: "100 people off the coast of Libya in urgent distress!" On the same day, the crew of the rescue organisation Sea-Watch International witnessed "two illegal returns" to Libya by the EU-funded so-called "Libyan coast guard". According to the IOM, more than 4,200 people had been intercepted by Italy and returned to Libya by 15 April, as well as 418 migrants between 18 and 24 June 2023 alone.

On 15/16 April, 600 people were rescued off Sicily by the Italian coast guard. On 16 April, the NGO "AlarmPhone" reported two ships in distress in the Maltese SAR zone with 60 people. After Malta had initially instructed passing merchant vessels not to intervene, they were eventually rescued by these merchant ships at the request of the Maltese authorities.

On 20 April, the NGO ship "Humanity1" rescued 69 people. The Italian authorities ordered Ravenna in northern Italy as the competent port, more than 1,600 km from the ship's position at the time of the rescue. "SOS Humanity" pointed out the dangers this posed to survivors who were exhausted and suffering from hypothermia, some in absolutely critical conditions. In a statement on 21 April, the NGO stressed that, on February 22 and February 23, rescue ships from the "Lifeline" and "Sea-Eye" missions had already been assigned to distant ports. It said the

> "systematic assignment of distant ports by the Italian authorities since 12/22 does not comply with international maritime law, which states that a place of safety should be assigned 'with minimum deviation from the ship's voyage'."

SOS Humanity, together with the NGOs "Mission Lifeline" and "Sea-Eye", sued Italy before a court in Rome for "systematic illegitimate port policy".

On 11 July, the crew of the "Humanity1" rescued 204 people from distress at sea, including pregnant women and 50 unaccompanied minors, in four actions within a very short time. In the evening, two survivors and three relatives had to be evacuated by the Italian authorities for medical reasons. The organisation added that its crew stabilised two other boats with a total of about 100 people in distress and waited for the coast guard to rescue them. Instead of ensuring quick and safe disembarkation, the Italian authorities reassigned the port of Ancona, which requires three days of navigation.

Italy declared a six-month state of emergency with regard to immigration on 11 April. This allows the government to issue exemptions in "emergency situations" related to arrivals from the sea. After the state of emergency was declared, the Italian government requested EU funding to relocate migrants from the overcrowded island of Lampedusa to the mainland. EU Budget Commissioner, Hahn, said that the coasts of Lampedusa are EU coasts and that Italy is therefore the main recipient of European migration funding.

"Sea-Watch International" said on 14 April that the state of emergency would allow authorities to "to quickly turn away people who reach the Italian coast alive". The Italian Bishops' Conference (CEI) also voiced criticism and called on the government to focus on the situation on the island of Lampedusa, where thousands of migrants live in an overcrowded hotspot with a capacity of only 400 people. Asylum seekers report prison-like conditions in the reception centres.

A French-inspired voluntary EU resettlement programme aimed at reducing arrival pressure following SAR actions resulted in about 300 transfers from Italy to Germany by May 2023.

### 2.1.2 Route Tunisia–Italy and Situation in Tunisia

More than 16,000 Tunisian nationals reached Italy by sea in 2022.

The total number of dead or missing people off the Tunisian coast rose to more than six hundred in the first half of 2023. Since May, there have been almost daily reports of operations by the Tunisian coastal watch. Already on 18 April, a boat with 19 people had sunk off the coast of Sfax, leaving 15 people missing. Sea-watch International reported that its "Seabird" aircraft had identified two boats in distress on 15 April. Responding to a distress call from the aircraft crew, the "NGO EMERGENCY" then rescued 55 people from an overcrowded inflatable boat. In a second operation, a further 221 people were rescued

off Lampedusa by the Italian coast guard. In early July, the "EMERGENCY" recovered the bodies of 13 migrants from sub-Saharan Africa and rescued 25 after their boat sank off the coast of Sfax on its way to Italy. On the same day, the "AlarmPhone" hotline reported 45 lives in danger off the coast of Tunisia. They were rescued from a fishing boat, but two people had fallen overboard and drowned. According to reports, a 4-year-old child, who was on a boat with her mother, also died. On 9 July, at least ten migrants went missing after their boat capsized off the Tunisian coast.

The number of push-backs by the Tunisian coast guard to Tunisia has increased significantly in recent years. In the first quarter of 2023 alone, 14,963 people were prevented from leaving Tunisia by sea and forcibly dragged back against their will.

Since spring 2023, the Italian government has been stepping up cooperation with Tunisia – a country that is becoming increasingly unsafe for people fleeing – instead of improving its own reception system. NGOs published a joint statement reminding the EU and MS like Italy, which provide significant funding for migration cooperation, that Tunisia is neither a safe country of origin, nor a safe third country:

> "Given the Tunisian ongoing authoritarian state transformation and the extreme violence and persecution of the Black population in Tunisia, as well as of people on the move, political opponents and civil society actors, we urge authorities of the European Union and its member states to withdraw their migration control agreements with the Tunisian authorities."

The EU and Tunisia signed a Memorandum of Understanding on 11 July to curb migration across the Mediterranean (for details of the agreement, see above 1.4). The aim is a "strategic and comprehensive partnership" between the two sides. EU Commission President, von der Leyen, subsequently spoke of a good package. She was joined at the meeting in Tunis by Tunisian President Saied, Italian Prime Minister Meloni, and Dutch Prime Minister Rutte. Saied said they were determined to implement the agreement as soon as possible. Rutte tweeted that together they wanted to fight the business of smugglers and curb illegal migration with more controls, registrations, and repatriations. Meloni stressed that she hoped for similar agreements with other North African countries.

The planned migration agreement between the EU and Tunisia, worth more than 1 billion euros, could lead to a strengthening of Tunisian security services and encourage European "front states" to send asylum seekers back to Tunisia. On 9 July, Green MEP's Strik therefore demanded of EU Commission President von der Leyen and the EU Council to watch the increasing number of migrants being deported to the Libyan border by President Saied, being trapped between an autocratic and a criminal regime, without water, food, shelter and medical care. Strik asked whether this was part of the deal or its consequence and urged to protect these people.

Deportations to the desert and incited violence against sub-Saharan migrants in Tunisia put the agreements between the EU and Tunisia to the test. There are increasing reports that groups of "sub-Saharan" migrants, in particular, have been taken by Tunisian authorities to the Libyan border or by bus from Sfax to the desert border with Algeria and left there without any help. In mid-July 2023, 191 migrants were rescued in the desert near the Tunisian-Libyan border, allegedly abandoned there by Tunisian security forces, according to IOM. The people were provided with food, clothing and temporary shelter by helpers and Libyan border guards. The NGO "Human Rights Watch" accused Tunisian security forces of sending the people towards the border. A few days before, the Tunisian

Red Crescent had already rescued more than 600 migrants from the desert. Footage distributed by "Human Rights Watch" showed the group begging for water and saying that people were dying. According to reports, Tunisian authorities had rounded up 800 to 1,000 people and abandoned them in the area without food or water. According to local relief organisations, 500 to 650 were later returned by the authorities to southern Tunisian towns. The expulsions followed riots in the coastal town of Sfax, where hostility and violence against people from sub-Saharan Africa erupted after the death of a local man on 3 July.

After the clashes in Sfax, Tunisian President, Saied, said:

> "Tunisia is a country that accepts onto its territory only those that abide by the laws. It does not agree to be used as a transit zone or settlement territory for people coming from other African countries, nor does it agree to be the guardian of any borders other than its own. [...] These migrants are receiving humane treatment emanating from our values and traits, contrary to what colonial circles and their agents are circulating."

### 2.1.3  Route Libya – Italy

Despite mounting evidence of systematic human rights violations and criminal activities by the so-called Libyan coast guard, EU funds continue to flow there. On 6 July, Commissioner Johansson said:

> "I also have to say some of the countries that are neighbouring and transit are more difficult than others, like Libya, where we also have clear indication of criminal groups being [...] infiltrating also in the coastguards."

A former Libyan police officer is quoted "The Libyan coast guard and smugglers are one together", adding "They are not under the law, they are above the law."

Giorgia Jana Pintus, a researcher at "ARCI", an Italian NGO, estimates that the Libyan Coast Guard has received a total of about 100 million euros in aid from the EU and Italian authorities, but "[t]o this day, the majority of the funds located under the EU's trust fund programme is not traceable by the public," she said. "And we don't know how and with which criteria human rights monitoring and assessment was carried out."

According to the Frontex Consultative Forum's Annual Report 2022, half of Frontex's sightings resulted in either SAR operations or illegal returns by the so-called (EU-financed) Libyan Coast Guard from international waters as a result of the exchange of information between Frontex and Libyan authorities.

> "It is reasonably foreseeable that intercepted/rescued survivors will suffer serious fundamental rights violations after their disembarkation in Libya, including murder, enslavement, arbitrary detention, torture and ill-treatment, trafficking, extortion, enforced disappearance and sexual violence,"

the report says. According to the IOM, a total of 418 migrants were intercepted and sent back to Libya from 18 to 24 June 2023, and almost 8,000 in total from January to June. A UN fact-finding mission warned of "arbitrary detention, murder, rape, enslavement, sexual slavery, extrajudicial killings, and enforced disappearances" in Libya. The EU is complicit in providing financial support to the Libyan Coast Guard and the Libyan Directorate for Combating Illegal Migration (DCIM).

On 18 April, refugees in Libya reported that security forces had raided homes of refugees and immigrants, claiming that people had been preparing for boat crossings. During the operations, 917 people had arbitrarily been detained."

On 7 July, the "Ocean Viking" operated by "SOS MEDITERRANEE" rescued 46 people, including four single women, a four-year-old girl travelling with her father, and more than ten unaccompanied minors from a fibreglass boat in distress drifting in international waters off Libya's coast. After rescuing them, the vessel received a distress call about a boat with 11 people on board and proceeded to evacuate them. After the evacuation, the so-called, EU-funded Libyan Coast Guard began a series of dangerous but unsurprising manoeuvres, first attempting to block the route of the two fast boats at an extremely high speed and then opening fire. The Libyan coastguard fired on the rescue ship during the "SOS Mediterranée" rescue operation. According to "EURACTIV", which was on the scene, the shots came from a vessel that the EU had donated to the Libyan coastguard in a ceremony on 22 June.

> "During the operation, "@SOSMedIntl" crew & 11 survivors faced a security incident with a Libyan patrol vessel shooting in close range of our fast rescue boats."

> "The shots were fired less than 100 meters from the rescue team and the survivors - including a woman and five unaccompanied children - who were trying to return to the Ocean Viking."

On 10 July, the ship Seabird, operated by the NGO "Sea-Watch", discovered about 250 people in distress being intercepted by the Libyan militia ship "Tariq Ben Zayed", even though Maltese authorities had urged the militia not to do so. The militia ship made fun of the crew of the Seabird when they said they would carry out the rescue operation.

Shortly after this incident, the Italian authorities initially ordered the "Ocean Viking" to proceed to the location of a distressed boat with more than 250 people on board in the Maltese search and rescue region. Later, it was ordered not to proceed, as the coordination of the distress at sea was supposedly taken over by Malta. However, the ship was forcibly intercepted by a Libyan Navy vessel, "Ocean Viking" reported. It is the third time since the beginning of the year that the crew of the "Ocean Viking" has been involved in a dangerous incident during a rescue operation. "IFRC" and "SOS Mediterranée" called on all governments to ensure that humanitarian workers can provide life-saving assistance at sea without risking their lives. The "Ocean Viking" disembarked 57 survivors on 11 July after a three-day voyage, after the Italian authorities had once again assigned a distant port. After disembarkation, the Italian authorities conducted a seven-hour inspection of the ship, which led to its indefinite detention because – according to "Ocean Viking" – "very few technical and administrative deficiencies" were found, which "have never been flagged during the 7 PSCs undergone by the Ocean Viking in the past four years."

## 2.2   Malta

The NGO "Sea-Watch" once again draws attention to the "criminal behaviour" of the Maltese authorities. Malta has acted in the central Mediterranean by lying, breaking the law and deliberately leaving people to drown, Sea-Watch said, referring to two incidents on 24 June. At first, Maltese authorities had instructed the merchant vessel "MANTA ZUHAL" to contact Libyan authorities about an emergency, resulting in the forced repatriation of 43 people to Libya by the merchant vessel. The second concerns a boat that was stranded at sea for three days without fuel, where one person fell overboard and

drowned, and Malta ignored the mayday call from the Seabird aircraft, even though it was almost 38 km from the drowned boat. Eventually, the merchant ship "LACONIA" arrived, but a Maltese speedboat ordered it to abandon ship. Malta refused to make a rescue, lied to the distressed people about Italy's geographical proximity, and only gave them fuel.

## 2.3 Atlantic Route in Spain

Between 1 January and 31 May 2023, 4,406 people arrived in the Canary Islands via the Atlantic route, compared to 8,268 in the same period in 2022. According to the IOM, about 1,500 people have died on this route since 2021. The NGO "Caminando Fronteras" assumes that the number is much higher. In 2022 alone, 1,784 people had lost their lives.

One year after the Melilla tragedy, victims and their families are still waiting for a thorough investigation by Spanish and Moroccan authorities, "Human Rights Watch" (HRW) said on 22 June. Both Spain and Morocco have exonerated their security forces following flawed or insufficient investigations into the violence at the border with the Melilla enclave. The lack of coordination between the two countries on SAR operations continues to cause deadly delays. While UN experts estimate at least 37 dead, according to the Moroccan NGO "Association for Human Rights - Nador", 77 people are missing.

*Route via the Canary Islands:* On 13 July, "Salvamento Marítimo" rescued a boat with 22 persons from Algeria, including 2 women and 2 children. According to Spanish law, any stowaway who has not applied for asylum must be returned by the operator of the vessel to the port where the journey began. The Spanish coast guard rescued 86 men off the Canary Islands on 12 July while searching for three missing ships that left Senegal 18 days ago with a total of at least 300 people on board. On 14 July, the NGO "Walking Borders" reported 20 people had been found dead in a Senegalese canoe after being at sea for at least two weeks. 40 people survived.

## 2.4 Greece

On 14 June, a ship with hundreds of people on board capsized off the coast of Pylos. It was sailing from Libya towards Italy. Only 104 people could be rescued, 78 were recovered dead, and the others were swept away by the ship. According to the NGO "AlarmPhone", 750 people were on board, other sources report about 400 people. It is one of the biggest refugee tragedies in Europe. The Greek interim government declared three days of national mourning. State President, Katerina Sakellaropoulou, and other politicians went to Kalamata, where most of the 104 rescued people are being cared for, to show their solidarity with them. Government friendly Greek media stressed that it was all "the fault of the human traffickers." The refugees drowned because they were crammed into a completely dilapidated ship "by criminal human traffickers", wrote the daily newspaper Apogevmatini. The Greek government is thus deflecting attention from Greece's share of responsibility. According to Prime Minister Mitsotakis,

> "[i]t is very unfair for countries such as Greece ... to be burdened with the task of managing this problem or be accused of actually not saving people at sea when this is what our coast guard does every day."

The Greek government has launched an investigation led by the attorney general, but serious concerns have been raised about neutrality and transparency.

The NGO "Refugee Support Aegan" (RSA) describes, in detail, how the survivors were treated after the shipwreck:

> "During their stay in the Port of Kalamata, survivors were piled up in detention conditions in a warehouse, where they slept on the floor and were not allowed to go out even to contact their relatives/acquaintances who were arriving in shock from other countries."

The survivors were subjected to

> "the demanding process of asylum interviews under extremely truncated procedures without sufficient time for preparation, legal assistance or appropriate psychosocial support."

These hearings did "not meet basic procedural guarantees for vulnerable persons."

New evidence from the BBC challenges the Greek coastguard's version of events and charges of manslaughter and people smuggling against nine Egyptian survivors. Two survivors told the BBC that the coastguard had instructed all survivors to say that the nine Egyptian men were responsible for people smuggling. A joint investigation by the Guardian, ARD/NDR/Funk, Solomon and research agency "Forensis" – based on numerous sources including distress signals, videos and photographs from the HCG (Hellenic Coast Guard), Frontex and nearby merchant vessels, as well as logs and witness statements – confirms a number of efforts by the HCG to distort and manipulate evidence relating to the incident and to suppress witness statements. All survivors of the wreck had their phones confiscated by members of the HCG. Those survivors said their phones had been protected in waterproof cases and contained videos they had taken immediately before the capsize. None of these phones have yet been returned to their owners.

Furthermore, the investigation confirms:

> "Nearby commercial vessels that were initially summoned by the HCG to provide assistance were subsequently ordered to leave after the ΠΠΛΣ 920 arrived on the scene. Likewise, repeated offers by Frontex, the European Border and Coast Guard Agency, to deploy aerial surveillance assets were ignored, and none of the several cameras onboard the ΠΠΛΣ 920 nor its AIS tracking system were activated that night as is required."

In the log of the vessel, it was documented that masked men attached a rope to the trawler, mentioning the involvement of a special operations team called "KEA". It is not unusual for "KEA" to be deployed in risky situations, but the presence of such a team suggests that the trawler should have been intercepted for safety and maritime security reasons alone. The captain reported to the Greek authorities that the "Adriana" was swaying dangerously. The BBC later confirmed the authenticity of the video, writing: "BBC Verify has confirmed the footage was filmed when the coastguard claimed the boat was not in need of rescue - and was in fact filmed by the coastguard itself."

Within a month of the disaster, there were at least 22 other incidents in the central Mediterranean (including bodies washed up on the Libyan coast) in which more than 50 people died or went missing, according to the IOM. Frontex has produced a "Serious Incident Report" to identify possible human rights violations. This allows details of incidents to be collected and passed on to other investigating authorities. Frontex itself does not have the legal power to investigate the incidents.

## 2.5 External Borders in the East of the EU

### 2.5.1 Lithuania

Lithuania, known for the de facto legalisation of push-backs, has stepped up the deployment of border guards on its border with Belarus in response to the alleged threat of *"waves of migrants"*. The commander of the Lithuanian Border Guard, Liubajevas, referred to an increase in *"illegal migration"* on the Belarusian border with Poland and Latvia.

### 2.5.2 Poland

In the last two years, at least 48 bodies have been recovered at the Polish border with Belarus, where hundreds of migrants are struggling to survive in the Bialowieża Forest, hoping to reach Europe. An unknown number of people have died. Hundreds of people on the run are in danger. They are beaten by Polish border guards, bitten by dogs, their money is taken from them, and their phones are destroyed so they can no longer communicate. All this is done to stop them from entering the country. Both the ruling "PiS" and the opposition, led by the former president of the European Council, Tusk, are using anti-migration rhetoric in the run-up to the parliamentary elections in autumn.

Balkan Insight reports, the Polish opposition had taken up the challenge posed by the "PiS" government that started scaremongering about migration a few weeks ago. Donald Tusk, the leader of the largest opposition party, declared via video that *"Poles must regain control of their country and its borders,"* and accused the government of hypocrisy. Tusk's remarks – which triggered accusations of racism and Islamophobia from NGOs – came in the context of easing visa requirements for citizens of Muslim-majority countries to address labour market shortages. The Polish government has announced plans for a national referendum on the country's participation in the resettlement programme in accordance with the agreements of the EU interior ministers of 8 June. It is to take place in parallel with the parliamentary elections.

In 2021, the Polish parliament passed a law allowing border guards to immediately expel migrants who cross the border irregularly and reject asylum applications without examining them – de facto "legalising" push-backs. Poland erected a 186km steel wall in 2022 to prevent migrants from crossing the 416km border, but this has not stopped the attempts. While reports of serious attacks have been mounting for years, Polish border guards deny using force. *"There are no complaints against Polish officials. If someone thinks that a Polish border guard used force, they should complain in court,"* their spokeswoman said.

## 3 Great Britain: News on the "Rwanda Deal"

As a reminder, on 13 April 2022, the UK government entered into an agreement with the government of Rwanda on an "asylum partnership". Under this agreement, asylum seekers whose applications had not previously been examined by the UK could be "resettled" in Rwanda. On 14 June 2022, in the case K.N. v. UK - No. 28774/22, the ECtHR ordered interim measures to stop threatened deportations to Rwanda. It took particular account of concerns expressed by the UNHCR that asylum seekers transferred from the UK to Rwanda would not have access to fair and efficient refugee status determination procedures. There is a risk of treatment that would violate CSF rights. As Rwanda is not

bound by the ECHR, there is no legally enforceable mechanism for return to the UK even after a successful legal challenge to the transfer decision.

The UK appeal concerned ten asylum seekers from Syria, Iraq, Iran, Vietnam, Sudan and Albania and the charity, Asylum Aid. They appealed against the decision (first instance) that the "Rwanda Deal" was not fundamentally unlawful, only that its implementation by the Home Office was flawed. The Ministry of the Interior did not want to examine the asylum applications of the individual applicants, but to deport them to Rwanda, where their applications were to be decided within the framework of the Rwandan asylum system according to the "Migration and Economic Development Partnership", which comprises a declaration of intent and several diplomatic verbal notes. The declaration includes the assurance that the Rwandan asylum system will be implemented in Rwanda. It includes assurances from the Rwandan government that will be used by the UK to classify Rwanda as a "safe third country".

On 29 June 2023, the Court of Appeal declared the government's Rwanda Plan unlawful. Rwanda was not a safe third country. There were valid reasons to believe that asylum seekers sent to Rwanda were at real risk of being mistreated there, in violation of Art. 3 ECHR. This was apparent from the history of Rwanda described by the UNHCR, the serious concerns expressed by the UNHCR itself, and the actual circumstances of the current asylum procedure in Rwanda. The Court of Appeal also pointed out that Rwanda could only comply with its assurances if it had control mechanisms and systems in place to enable it to do so. However, both history and the current situation showed that these mechanisms were not yet in place. Furthermore, asylum procedures are not monitored by third parties, so it is impossible to ensure that they are fair. In addition, appeals before the ministry and the court remain largely unexamined.

Furthermore, the Court of Appeal emphasised that the institutions responsible for asylum seekers arriving from the UK were precisely those that had committed violations in the past. The country was not safe, and the administration there was overburdened to carry out asylum procedures. The relocation of asylum seekers to Rwanda would result in their applications being examined under a system with serious deficiencies that have not been remedied, nor is there any prospect of this happening in the near future. Rather, there were valid reasons to believe that asylum seekers in Rwanda were at real risk of being turned back. This violates Art. 3 and Art. 6 of the ECHR. It could also not be ruled out that persons seeking protection from Rwanda would be deported to their countries of origin, even though they were entitled to asylum.

The Court of Appeal allowed an appeal to the Supreme Court. Prime Minister Sunak announced that he would file the appeal.

The press reported that the UK had not built up any capacity to receive migrants and had not signed a readmission agreement with EU states since Brexit. Many people are therefore accommodated in hotels, which results in high costs. However, plans to "transfer them" to Rwanda are estimated to cost just under £170,000 per person. According to a published Home Office document, this sum is made up of costs in Rwanda, for the work of the authorities, and for transport. The amount is significantly higher than that of accommodation in the UK. In addition, there is an agreed one-off payment of 140 million pounds to Rwanda to build up the infrastructure to receive the refugees.

The "Illegal Immigration Bill", which obliges the authorities to detain and deport refugees, was initially approved by the House of Commons, but met opposition in the House of Lords. It sent the bill back to the House of Commons with 20 amendments. The aim was to defuse the most stringent of the planned measures. However, the House of Lords can only demand amendments, but cannot ultimately block the law.

The British government weakened some parts of the law due to the criticism of the House of Lords. In particular, a clause was deleted that would have made it possible to deport people who had already entered the country before the law came into force. In addition, the period for which unaccompanied minors can be held in detention pending deportation was reduced from 28 to eight days. Although the law has now been passed by the House of Commons, it is currently blocked by the pending legal proceedings.

Resistance to the plans is also forming in Rwanda. Even if it is still unclear how many people the UK will actually be able to deport, there are already not enough jobs and natural resources for everyone in Rwanda – fears Frank Habineza, leader of the Green opposition party. Moreover, both Rwanda and the UK have signed the UN Refugee Convention, which obliges countries to deal with refugees appropriately and offer protection. It is questionable whether the agreement sufficiently respects these principles.