

**Constitutional Othering, Ambiguity and Subjective Risks of Mobilization in
Hungary: Examples from the Migration Crisis**

Abstract

This article discusses how an illiberal regime within the EU can hinder the mobilization of citizens and civil actors by creating an atmosphere of “ambiguity”. In our analysis, we first discuss the Constitution of 2011, which provides the driving force of the regime, and next using the example of the migration crisis show how this atmosphere of ambiguity is created. We argue that although there is no physical violence present, opponents of the regime are disheartened to act because of the general atmosphere relying on the logic of constitutional othering, dividing the world into its enemies and friends and shifting from the rule of law to ruling by law. While the regime’s gaudy campaigns against immigrants, NGOs, Central European University, the EU or George Soros are omnipresent, we aim to go deeper and highlight the mechanism through which the regime manages to discourage citizens from voicing their discontent.

Keywords Constitutional othering; mobilization; subjective risks; ambiguity; Hungary

Introduction

Hungary after 1989 was long considered the forerunner of successful democratization. After 2011, with the adoption of the Fundamental Law (2011) it is again a forerunner, this time of de-democratization and illiberalism within one of the member states of the EU. In this article, we explain the mechanisms through which Hungary's illiberal regime constrains citizens' mobilization in an EU member state where inclusive constitutional values (e.g. protection of human rights, equality and human dignity), i.e. core values of the European Union, are increasingly eroded¹. This erosion, however, took place in a way that institutions remained in place, and there are elections, which may create the impression that Hungary still conforms to basic norms proclaimed by the EU.

One of the fundamental questions for mobilization studies is how state authorities demobilize activists², and what holds people back from participating in protests³. In a seminal study Boykoff has developed an immensely useful taxonomy of the subtler ways through which authorities can repress dissent⁴. One of the mechanism he identifies is *intimidation*, the mechanism we argue plays a crucial role in the way Hungary's illiberal regime governs via – what we call – *ambiguity* and *othering* to intimidate citizens and deter their activism.⁵

The fact, that Hungary's example is spreading to other Central-Eastern European (CEE) countries suggests that although we offer a single case study – using the migration crisis as the background story – it talks to a general audience being puzzled about processes of “de-democratization” we are witnessing in Europe. The Polish turn of events⁶ shows that the Hungarian way might become a recipe to follow for other CEE Member States and perhaps for other Member States, too⁷.

Writing about Hungary, we do not discuss failures of the EU's refugee policy and legislation – failures we are aware of. However, we highlight that the Hungarian constitutional system diverges from the inclusive nature of the EU's legal system, and although populist-exclusivist elements of

political rhetoric are also present elsewhere in Europe, they have not become part of constitutional law and have not transformed the political system, **that is, other EU Member States did not completely redefine the “rules of the game” by adopting a new constitution or modifying all important laws to favour the regime**⁸. This is crucial, because the Fundamental Law (the Hungarian Constitution of 2011) is not only a frame, but it is the driving force and the normative basis of the functioning of the illiberal system. Not only does the Fundamental Law outline abstract moral principles, but these moral principles are actually manifest in the political system, in the actions of politicians, bureaucrats and citizens, which the regime comprehensively refers to as the System of National Cooperation (NER). What makes the Hungarian case unique in the EU is that in Hungary political propaganda and legislative measures cannot be separated⁹.

After introducing the Fundamental Law and the principles upon which the regime is built - dividing the world into friends and enemies, centralizing power and disrespecting autonomous institutions and divergent voices (Majtényi 2015a) - we will explain how the regime hinders citizens' mobilization by creating conditions under which it is difficult to foresee and evaluate risks of participation in political protests or in any act that challenges the regime. We argue that creating ambiguities concerning the implications of one's actions is part and parcel of the illiberal regime's operation; in fact, it is partly by such ambiguities that citizens are kept passive as it raises the risks associated with protest activities. In the second part of the paper, we use the refugee crisis to illustrate this situation with concrete examples. However, it is important to underline the status of our case: the aim of using the migration crisis as an example is to highlight how the illiberal regime governs and how the Fundamental Law translates into governmental practice, rather than to offer a detailed account of the various stages of the migration crisis, with the government introducing one campaign after the other, leading to the Stop Soros campaign beginning in the Winter of 2017.¹⁰ Also, it is important to underline that focusing on the migration crisis we do not ask why citizens did not protest at that time (as

we actually argue they did by helping refugees), but try to capture the governmental technologies that the illiberal regime relies on to hinder and discourages mobilization.

The flow of refugees reaching Hungary in the summer of 2015 called for mobilization based on solidarity and the dignity of all human beings. Yet, as we will also point out, civil actors' gestures of solidarity increasingly developed into symbols of resistance against the illiberal regime. This followed logically from the government's policy that showed no concern for, but actually flouted, asylum-seekers' human rights, similarly to the way they disregard the rights of certain Hungarian citizens (e.g. those of the Roma minority). As a result, acts in support of asylum seekers created a type of sociality in symbolic terms – built on solidarity and bottom-up self-organization – that was anti-thetical to the logic of the Hungarian Fundamental Law.

The key concept we rely on in our analysis is the perceived – or subjective risk – of participation. Today citizens in Western democracies do not think they are in any danger if they express discontent with their politicians. This normalization of protest activity, however, has prompted the question why even in established democracies people are still frequently reluctant to act in order to voice their grievances. Researchers focusing on this issue have started to study the costs of participation (including costs for the individuals involved: being present, sacrificing one's free time, travelling to the spot of the protest; and costs for organizers: maintaining a network, reaching possible participants, etc.). While this approach is suitable for the study of established democracies, we have problems adapting it for analyzing Hungary, as our survey has found that one of the major constraints for Hungarian citizens' participation is the fear of repercussions¹¹. Hence, we believe that the issue of risks must be integrated into the study of mobilization in Hungary, similarly to studies of civil society's activities in Russia¹².

McAdam clearly pointed out as early as in the 80s that it is very important to distinguish between the costs and risks of participation, with the latter being associated with perceived danger¹³.

"While the act of signing a petition is always low cost, the risk of doing so may, in certain contexts — during the height of McCarthy-ism, for example — be quite high."¹⁴ When writing about risks the literature predominantly refers to physical repression, which is not surprising when scholars study demonstrations in a non-democratic context. To give an example, Opp¹⁵ (1994) analyzed mass demonstrations against the communist regime in East Germany in 1989, while in their recent study Ayanian and Tausch¹⁶ write about activists in Egypt in 2013. In the case of such authoritarian regimes, such violent reaction from the authorities as police attacks are hardly surprising. Davenport defines state repression as the "...actual or threatened use of physical sanctions against an individual or organization, [...] for the purpose of imposing a cost on the target as well as deterring specific activities..."¹⁷ meaning, for example, political surveillance, illegal detention or torture¹⁸.

In Hungary, however, authorities are unlikely to take such actions, as the Hungarian government prefers "soft" techniques of state repression. In our 2014 survey noted above, we tested Hungarians' perceptions about the general risk of participation in demonstrations and found that more than one third (35.6%) of our respondents had serious fears of retribution in their workplace, and more than one fifth (21.1%) had serious fears of friends' condemnation if they were to participate in a demonstration..¹⁹ This means that Hungarians are highly prone to regard protest as fraught with risks. The aim of our study is to elucidate how the regime creates this high level of subjective risk of political participation among Hungarian citizens by othering and by an atmosphere of ambiguity. Doing so, we must emphasize that the objective and subjective dimensions of risk should be analytically and empirically distinguished²⁰ because the question is not whether a regime actually penalizes resistance, but if citizens believe that it could do so at its will, a question intimately linked up with trust in the rule of law.

The subjective dimension of risk is defined as the personal evaluation/expectation of the future cost of an activity – for example, the individual's expectation about the likelihood that the

police would attack demonstrators during the protest. Contrary to this, the objective dimension of risk refers to such well-defined consequences as penalties stipulated by law for the illegal pasting of posters²¹. The point we make is that this differentiation may hold in a state where the *rule of law* applies, but the differentiation is much more difficult if the state *rules by law*, i.e. the government rewrites laws according to its daily political needs (occasionally in ways that violate human rights). In the latter case, citizens never have objective knowledge of the consequences their actions would entail, which we contend is the situation in Hungary. Thus, the issue we highlight is that risks are frequently tainted by ambiguity, and it is the ambiguity the regime creates about the actual consequences of one's actions that may become a powerful tool of soft repression hindering mobilization. Our point is therefore that it is impossible to understand mobilization and its meaning either for the polity in general or for participants without scrutinizing the context of ambiguity and the perceived risks it creates for citizens' participation.

Constitutional atmosphere and the context it creates for mobilization

In 2010, the FIDESZ-KDNP²² coalition won the general election with an over two thirds majority and in 2011, the governing FIDESZ-KDNP party alliance adopted a new constitution called the Fundamental Law, which entered into force on 1 January 2012, superseding the previous constitution (Constitution of 1989).

The Fundamental Law was the first constitution adopted in a member state after the Lisbon Treaty, thus it was probably partly a reaction to the attempted EU constitution's emphasis on an inclusive value system; the failures of former Hungarian governments (1990 to 2010) to implement effective social and inclusion policies and the subsequent general de-legitimization of social-liberal leadership and the decade long austerity measures²³. The Fundamental Law dropped the unachieved

egalitarian aims of the former constitutional system and shifted towards an anti-egalitarian and ethnic concept of the nation as a source of power.²⁴

Its preamble (the National Avowal) provides a set of values, such as fidelity, belonging to the Hungarian ethnic nation and to the Christian Church, whereby it divides the political community and offers a *one-sided* value preference infringing the interests of those who do not belong to Christianity or to the ethnic nation, or refuse to vow fidelity to the will of the majority. In fact, it could be argued that the Fundamental Law is permeated by a Schmittean logic²⁵ because it divides the people into *us* and *them* (meaning the differentiation both between worthy and unworthy members of the community, and between friends and enemies). For the latter, it creates an unequal status, which makes the Fundamental Law diverge in many ways from the constitutional standards of liberal democracies²⁶ by tilting towards values the purported majority allegedly subscribes to. Contrasting the Fundamental Law with Jacobean ideals shows strong similarities in thinking, with the latter suggesting that *“the state represents the people’s will, and the existence of plural institutions and social forces only fragments that will.”*²⁷ In the Hungarian Constitutional regulation, this “general will” – or people’s will – appears as the ethnic nation’s will, creating the basis for Hungary’s legal order to be rooted in the “will of the nation”, with the nation being rooted in shared ethnicity²⁸.

One of the main problems with this construction – beyond its references to the ethnic nation as a source of power – is that it tends to mix up the nation’s will with that of the government, implying that anyone in minority cannot be right by definition and presumably is an enemy who turns against the will of the nation. This opens the way for right-wing populist politics that nobody and nothing – not even an independent state or civil institutions – should stand in the way of the government, and the government is justified to rely on illiberal forms of governance and to turn against these agents in the name of the national interest.²⁹ This utmost confidence of being in possession of the “one truth” coupled with the ethnic nation’s will translates into intolerance of difference and cre-

ates a lack of solidarity with those whose life style is different from the standards of the majority. By defining a preferred way of life for citizens, the Fundamental Law narrows down their choices and guides them towards the moral conviction and way of life the legislator deems worthy.³⁰ This has the corollary that the Fundamental Law also defines those of lesser value for not sharing the purported values and norms of the majority. The exclusive value preference of the Fundamental Law, combined with the emphasis on rights being tied to obligations and responsibilities, creates an especially unfavourable situation for minorities because they may be frequently unfit, hindered or, because of their convictions, unwilling to meet these responsibilities and obligations.

For instance, as part of the right to work, Article XII of the Fundamental Law stipulates the obligation to work according to one's abilities and possibilities. Article XIX of the Constitution limits the rights of the unemployed by granting entitlements for social aid only if the jobless person experiences "*unemployment for reasons outside of his or her control.*" Furthermore, Paragraph 3 of the same Article states that "*[T]he nature and extent of social measures may be determined in an Act in accordance with the usefulness to the community of the beneficiary's activity.*" "*Usefulness to the community*" in these provisions is telling if we remember that many of the unemployed are of the Roma community – the largest minority in Hungary – living not only under unfavourable social conditions, but also being the subject of widespread prejudices. Under these conditions, as terms such as "*useful for the community*" and an event "*outside of one's control*" are to be decided by the majority, potentially reinforcing rather than countering prejudices, and offering justifications for turning prejudices into actual policies³¹.

Another characteristic of the exclusive value preference of the Constitution is putting the majority's "cultural values" above the protection of human rights, that also shows how the will of "the nation" overwrites liberal individualism. A pertinent example is the way the legislator punishes homelessness³². According to the Fundamental Law, the rights of homeless people may be restricted by

law in order to protect “*public order, public security, public health and cultural values.*” As Udvarhelyi points out, Hungary is probably “*the only country in the world where the possibility of penalizing homelessness is encoded in the constitution itself.*”³³ Restricting fundamental rights in order to protect “*cultural values*” is in itself problematic because it violates human dignity, which stands at the pinnacle of human rights protection. Furthermore, this example of constitutional othering offers a clear indication of the kind of political community the Fundamental Law and its creators envision.³⁴

This spirit of the Constitution is also reflected in the lawmakers’ general attitude to the legal system. That is, the government does not respect *the rule of law*³⁵, meaning that it adopts and amends law according to its daily political needs³⁶, the needs of “the majority”, “the ethnic nation”. While on the level of ideology this suggests that whatever the government does is identical with the “will of the nation”, on the level of practical politics it turns the legal system into an instrument of the ruling government’s daily political machinations and the machinery of arbitrary decisions taken by those in power.³⁷ This implies that it is frequently unclear how far the government would go in pursuing its goals and when, if needed, it would turn against its opponents, which as we will explain in detail, creates a powerful obstacle to public protest. To make matters worse, although the government has made efforts to formally maintain the democratic system, in substance it has hollowed it out to minimize opportunities for voicing dissent or disagreement. A pertinent example is that despite its majority in Parliament, the government tries to avoid all forms of debate on future laws. In practical terms, the government no longer draws up and submits bills to Parliament applying the normal procedure, as in that case the government would be obliged by law to initiate social consultation, inviting interested civil society groups and opposition parties to the preparation of the draft. Instead, it relies on individual MPs to propose bills, because in this case consultations do not need to take place³⁸. This “tricky way” of circumventing public consultations is especially absurd in the case of cardinal acts and constitutional amendments, which have frequently been submitted in such a manner.

During the refugee the refugee crisis the government also radically transformed the asylum law, going against the principles of the rule of law, namely against legal certainty and international and European human rights and refugee law standards. At the time of the refugee crisis, only between July and September 2015, it amended 19 acts and 19 government regulations at 473 points³⁹, with the judicial review of asylum procedures reduced to a mere formality. Furthermore, these legislative changes have opened possibilities of arbitrary decisions against citizens (as well), for instance, when the new legislation authorized the police to enter private homes without a warrant “to ensure the implementation of measures against epidemics”⁴⁰. The police were also entitled by “the crisis situation caused by mass immigration” to enter the refugees’ suspected shelter without warrant.⁴¹

What does this all add up to? We argue that this spirit of the Fundamental Law – and subsequent legislations like the asylum law, – turn politics into a constant search for those who do not fit the national standards, those who try to undermine it, who are presented as opponents, perhaps even as enemies of the nation. Furthermore, by its creative use of legal procedures it conveys the message that the government could freely exploit any situation to its liking, regarding the law as something the legislator could use instrumentally, creating an ambiguous situation concerning one’s actions as the rules could be changes at the governments liking on a whim. We believe this is crucial, because only through understanding this general context can we understand the subtle way the government hinders mobilization and the reasons for citizens’ fear of repercussions if they act against the regime.

Risk and ambiguity of mobilization during the migration crisis

In this section, we are not offering a detailed account of the migration crisis in Hungary. We simply aim to show how the constitutional atmosphere (constitutional othering and rule by law) discussed above helps us to contextualize mobilization during the migration crisis and allows us to highlight

the significance that an atmosphere of ambiguity may have for the mobilization of civil actors, NGOs and citizens concerned.

Before discussing the example of the migration crisis, it is important to highlight that in Hungary in no way did the “migration crisis” depend on the number of refugees or on its rapid increase: firstly, because the government’s anti-immigration campaign predated flows of refugees; secondly because even when refugees came in large numbers, their majority never planned to stay in Hungary; and thirdly because for quite some time newly arrived people were allowed to trespass the country more or less freely. Thus, already before the number of asylum seekers suddenly increased in the summer of 2015, the Hungarian government had begun to politicize migration and started to promote a “clash of civilizations” narrative identifying “migrants”/refugees first as threats to Hungary’s culture and a danger to Hungarian workers whose jobs they were supposedly taking, and later as potential terrorists threatening Europe⁴². While foremost this was a tool for the government to buttress its power by finding a new enemy to fight, it is reasonable to argue that it also carried the message to its potential opponents that the government could find further “enemy others” at will and thereby anybody could be turned into the “next enemy”⁴³.

This way of framing immigrants fitted the government’s habit of finding ever-newer enemies, including even the EU. Prime Minister Viktor Orbán proclaimed already in 2012 that “Hungary will not be a colony!”, accusing the EU of imperialism and comparing the EU to the Soviet Union,⁴⁴ while also attacking civil society’s organizations, many of which are supported by George Soros. The reasoning was:

*These organizations are kept for millions of dollars, what these organizations do – all they have to do – in exchange for American money, is to attack the Hungarian government, attack Fidesz, and attack the Prime Minister of Hungary on all possible forums.*⁴⁵

It is important to note that this quote comes from 2013, long before the attack on Central European University (CEU)⁴⁶ or the anti-George Soros posters covering the streets of Hungary. Among the first enemies the government picked were the left, the IMF (already in 2011-2012), the Norwegian NGO Fund and civil organizations (in 2014),⁴⁷ and it was only in 2015 that the government's attention turned to refugees, although at that time their numbers were still relatively small.

In the spring of 2015, the government littered the country with anti-refugee billboards,⁴⁸ making it evident that the migrants would be the new enemies identified by the government.⁴⁹ By the summer of 2015, the number of refugees had increased significantly with refugees coming predominantly from Syria and Afghanistan, leading to thousands gathering in Budapest's main train station⁵⁰. As the Hungarian government left no doubt that it recognized no responsibilities for them, it was for civil society to show solidarity. New grassroots civil society organizations emerged to help refugees and fulfil duties that should have been performed by the state⁵¹. New Facebook groups were created⁵² to coordinate cooking, the distribution of various supplies and to meet the refugees' needs, including handing out information leaflets. While at the beginning, help concentrated on cities, later as refugees were stopped at the border, supporters (naturally fewer in number) also moved to the borders where their help was needed. For example, they were very active at Röszke, where refugees were made to stay in a cornfield without any infrastructure⁵³, and it was on the insistence of civil activists and medical experts that local authorities understood that something had to be done, otherwise people sleeping rough would die in the cold September nights of 2015.⁵⁴

Without going into more detail – as other authors have offered thorough accounts of these events⁵⁵ – what is crucial is that the environment surrounding activists was permeated by legal ambiguity. For example, the founders of Facebook groups sometimes collected money on their personal bank account, which was illegal according to Hungarian tax rules. Volunteers were preparing hot meals and handing them out at train stations, which would normally require licenses.

Others invited refugees to stay in their homes, lent them their mobile phones or drove them in their cars. While the former ones were minor issues, the latter two ways of help were of great significance as they may be categorized as smuggling, therefore are crimes punishable with up to several years in prison. Yet, it was hard to decide what would be deemed illegal. On certain occasions, it was the state itself that moved refugees across Hungary⁵⁶; so strictly speaking the state was participating in human smuggling. Consequently, for example the activist Szilárd Kalmár justified his actions by saying, “*Yes, I admit I am smuggling people, but so does Viktor Orbán by bussing 6000 refugees to Austria without papers and registration.*”⁵⁷ One civil organization activist told us that when they asked the police to help them get a sick refugee-baby to hospital, the police were ready to do so, nevertheless they were told to be careful not to be stopped by other police cars because they might be accused of smuggling.⁵⁸ The ambiguity of the situation was further aggravated, for example, by the Head of the Catholic Church claiming that: “*The Church would become a smuggler if it accepted refugees.*”⁵⁹ Also, investigating citizens’ attitudes towards refugees in a small village near the border, sociologist Feischmidt was told that when the school teacher of the village drove two refugee women with small kids in her car, she was stopped by the police and charged with smuggling⁶⁰.

Thus, the fear was not unfounded, although whether the government would actually charge someone with smuggling – and when – was something no one knew with any certainty. As the government was increasingly harsher in its anti-immigrant rhetoric, more radical steps against civil actors could not be excluded. In fact, they had reason to expect governmental attacks against them to intensify – and subjectively to assess risks of protests activities to have increased – which also had the corollary that many who were otherwise willing to help refugees were reluctant to, because they did not intend to mingle with civil actors (as we will explain).

What gives further reason to thinking that, indeed, this scenario of charging activists with smuggling could not be excluded is that after the crisis, the German tabloid *Bild* published an article

claiming that Viktor Orbán had been threatening Austrian Chancellor Werner Faymann that unless Austrian citizens stopped bussing refugees to Austria, he would charge them with smuggling.⁶¹ Thus, if the government was ready to charge Austrians with smuggling, it would certainly not have had reservations about doing the same to Hungarians.

What is important is that although charges of smuggling were hardly ever raised, given the general atmosphere, the subjective risk that citizens sensed was high, as they were never sure whether the government would decide to take this step. As we argued earlier in the section discussing the Fundamental Law and the government's instrumental use of law making, one could reasonably assume that nothing would stop the government from these accusations if it deemed they fitted its political interest. That is, in a situation where the authorities interpret laws freely and seek one enemy after the other, ordinary people are prone to evaluate the subjective costs and risks of their participation as extremely high. This is partly because of the ambiguities (i.e. they do not see the law as protecting them against arbitrary decisions), partly because the law is always rewritten at governmental will, and also because they might always think that they would be the next "other" that the government would turn against. We contend that these subjective expectations deriving from an ambiguous atmosphere lead to less intense participation or passivity.

Furthermore, it is important to underline, that due to the constitutional othering the subjective fear of consequences hindered the participation of political activists as well as of citizens also because it was not necessarily the actors themselves who defined their actions as political. That is acts of resistance to the regime became difficult to separate from acts of solidarity with the refugees and their hungry children crying at the train station. Asking people revealed that many participated merely to show their solidarity⁶². This became clear especially after the first few weeks when activists finally had time to rest and discuss questions of institutionalization and further objectives. Disagreement between members came to the fore, as many were not regarding themselves as

participants in a protest movement,⁶³ or had no political objective.⁶⁴ Nevertheless, it was not necessarily the actors themselves who identified the meaning of their actions. Due to the general political environment, even if they had no political motivation, others would often read certain motives into their acts. Why? Because in a system that was showing no (or very limited) solidarity with the homeless, the handicapped or the Roma, what could have been more outrageous than solidarity with foreign refugees? Thus, the crisis carried an enormous symbolic significance by touching upon the core constitutive notions the regime has built its rule and its vision of Hungary on, where from the perspective of the System of National Cooperation, activists supported the most unlikely group of “others”, i.e. refugees of a different creed. **This is crucial, because it explains why participation in acts of solidarity also were seen threatening by many not merely because of the state’s repression, but also because of stigmatization. By its policy of othering the government had deepened cleavages in Hungarian society, thus activists had to face not only possible state repression, but – perhaps more important – the condemnation of their friends. In the interviews conducted by Tóth and Kertész activists tell about their experience of being deleted by their friends on Facebook,⁶⁵ being in line with our finding in our survey of 2014 that activism is partly hindered by the fear of disapproval of one’s friends.**

Furthermore, by pointing this out we can explain why at certain occasions, for example in 2014, citizens actively protested the government’s plan to introduce an internet tax. Whereas the issue of migration divided society, the introduction of the internet-tax did not, thus participants could hardly fear to be condemned and regarded un-patriotic, contrary to the migration crisis that was securitized and was framed as an existential issue by the government threatening the community⁶⁶.

Under such conditions simply handing out sandwiches to hungry refugee children could be interpreted as a political act against the regime. Why is it important whether an action has political or

non-political, altruistic motivations? Because if an action is interpreted as political, it involves a different set of costs and risks than if it was interpreted as altruistic. In an ambiguous legal situation, where the political system is based on an exclusive logic, a political action may call high subjective probabilities of sanctions and retributions. As attacks against civil society had been going on at least since 2013, it was reasonable to worry about being associated with civil society, which was likely to become the regime's next enemy "other" to turn against.

It is difficult to tell whether creating this atmosphere of ambiguity has been a conscious governmental strategy. Was smuggling insinuated only to discourage participation, or was it actually meant as a serious threat? In either case, this atmosphere has had a negative impact on citizens' willingness to participate, resulting in reluctance not only to take part in political protests, but also in any civil activity, as people never know if their acts would ultimately be interpreted as taking a political stance.⁶⁷

In 2017 and 2018, we are witnessing a further escalation of the politicization of the issue of migration. Orbán and other prominent government officials keep repeating the claim, phrased in militaristic terms, that connects terrorism, migrants and asylum seekers, NGOs, and CEU with national self-defence. As Bernáth and Messing point out, mentioning terrorism in a connection with different groups of the society, is criminalizing the members of these groups and it is clearly alienating.⁶⁸ The governmental propaganda speaks about a "Soros network" that seeks to undermine the cultural integrity of Hungary through supporting asylum seekers by linking "economic migrants" to the threat of terrorism. The quote below is a perfect example of the way the government weaves NGOs, George Soros and the migrant issue into a sort of conspiracy against the nation. Prime Minister Viktor Orbán said in one of his speeches in February 2017:

We are not talking about non-governmental organizations fighting to promote an important cause, but about paid activists from international organizations and their

*branch offices in Hungary. [...] This is the transnational empire of George Soros, with its international heavy artillery and huge sums of money. [...] the organizations of George Soros are working tirelessly to bring hundreds of thousands of migrants into Europe.*⁶⁹

As stated earlier, in the Hungarian illiberal system, political propaganda and legislative measures cannot be separated. If the illiberal character of the government should be defended, it might seem natural in the spirit of the constitution to fight critical “disloyal” forces internally (most importantly NGOs and academic institutions, such as CEU). The 2017 amendments to the law on “national” higher education targeting Central European University (and keeping CEU in uncertainty whether it can stay in Hungary at the time of writing this article)⁷⁰, laws against NGOs⁷¹ or the Seventh Amendment⁷² of the Fundamental Law fit the logic of searching for enemies threatening the ethnic nation. They are just the next steps in the propaganda that started during the migration campaign, even though the rhetoric and the legislation has become more threatening.

We increasingly see in daily events that, if it deems necessary, the government turns against critics of its policies. Thus, the subjective risks citizens feel are hardly unfounded. We can mention, for example, **the case of the “Liget Protector” civil disobedience movement arbitrarily fined for their activities**⁷³; or a participant voicing his grievances at a demonstration (in 2016 in the city of Pécs) being fired from his workplace where he worked as a cook in a primary school;⁷⁴ or the police has seizing the computers of students demonstrating in 2018 against the poor performance of the education system.⁷⁵ We do not know how authorities pick their victims, and it is possible that perhaps the cook was dismissed for a different reason. Yet, what is crucial is that these stories appear in the papers, and in the system defined by the Fundamental Law and instrumental law-making, readers find their fears confirmed. As a result, they think twice before they challenge the regime or participate in protests.

Conclusion

In our article we have scrutinized the way Hungary's illiberal regime discourages citizens to mobilize. Our starting point was a survey we conducted in 2014. This survey revealed that one reason for Hungarian citizens' reluctance to mobilize was their fear of negative consequences. Our aim was to offer an explanation of why citizens associate a high level of subjective risks with protest activities although so far the regime has not relied on violent forms of repression.

We have argued that in order to explain why citizens are deterred from mobilization, first it is necessary to understand the nature of Hungary's political regime, because opportunities for mobilization are dependent on the general legal and political environment. In the case of Hungary, we have suggested that the best approach for capturing this is by scrutinizing the way the Fundamental Law envisions politics, the political community and the citizens' role within. Thus, we have analysed the Fundamental Law, showing the manner in which it emphasizes the primacy of the ethnic nation that forms the "will" of the nation, ignoring minority opinions or opinions violating the majority's purported standards, thereby creating the conditions where "othering" and picking enemies of the nation are the standard way to operate the regime. This general "will" of the ethnic nation is supposed to be realized within the System of National Cooperation with all acting in harmony in a centralized manner, where civil society is to become an integral part of the structure, meaning that only those civil actors – and citizens' initiatives – are regarded legitimate that conform to the guidance of the government – with others identified as its enemies.

Furthermore, we have highlighted that although the regime does not rely on violent means of oppression, by its instrumental twisting and application of the law – which we captured by saying that instead of realizing the rule of the law the government actually rules by laws – governmental practices create an atmosphere of ambiguity where opponents are unaware of the dangers they face if

they choose to act against the regime. They might be unpunished, but might be – e.g. in the case of the refugee crisis – accused of smuggling, which could be punished by several years' imprisonment.

The two points we have argued are (1) the regime's continuous identification of enemies to fight against (meaning othering) and (2) the ambiguity it maintains concerning the implications of people's actions and possible retributions, by which the regime hinders citizens' mobilization. As a result of this ambiguity, citizens associate any protest activity with a high level of subjective risk.

At this point, we explained that under these conditions, citizens and civil groups offer of help to refugees could easily be seen as political acts against the regime (and volunteers helping refugees could be easily portrayed as opponents of the regime – even if they had no such intention) rather than as acts of solidarity. From the perspective of the System of National Cooperation, by helping refugees of a different religion, civil activists supported the most unlikely group of people. For a system that was showing no (or very limited) solidarity with its own minorities (e.g. the homeless, the handicapped, or the Roma), nothing could be more outrageous than solidarity with refugees. Thus, the refugee crisis carried an enormous symbolic significance by touching upon the core constitutive notions upon which the regime has built its rule and its vision of Hungary, as symbolically embodied in the Fundamental Law. It is by understanding this that we can grasp why the refugee crisis and campaigns against George Soros – purportedly planning to settle millions of immigrants to Hungary according to the Hungarian government propaganda – became crucial for the regime years after the refugee crisis to keep the campaign alive and to maintain the propaganda of being under attack, even though refugees were hardly arriving in Hungary.

Although in our paper we focus on Hungary, we believe our study is of general significance by highlighting how a regime may rely on soft oppression to discourage discontented citizens to raise their voice and to act against the regime. Although by highlighting constitutional othering, governance by ambiguity and subjective risks of mobilization we cannot get to a full diagnosis of the

regime, these are important features to understand how Hungary' constitutional system works and why it is reasonable to argue that the country has deviated from the EU's inclusive constitutive values.

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Notes

Batory, “Populist in government?”, Bozóki, “Occupy the state.”

² see a review in Boykoff, “Limiting dissent.”

³ See among others: Ayanian and Tausch, “How risk perception shapes.”; Deng and O’Brian, “Relational repression in China.”; Klandermans, Toorn and Stekelenburg, “Embeddedness and identity.”; Shriver, “Risk and recruitment.”

⁴ Boykoff, “Limiting dissent”, 284.

⁵

. One of the greatest challenges that mobilization scholars face is the paradox of the repression-mobilization nexus (Tilly, “Repression, mobilization”), according to which at certain times repression and violence leads to passivity while at others increases activism – suggesting that there is no law like rules between repression and activism. This, however, should not discourage us from the study of the subtle mechanism of repression even if we cannot predict with certainty when a society bursts out in anger.

⁶ Radkiewicz, “The Axological Clash.”

⁷ Bozóki and Hegedűs, “An externally constrained hybrid regime.”, 11.

⁸ Batory, , “Populist in government?”, 288.

⁹ Körtvélyesi and Majtényi, “Game of Values.”

¹⁰. The Hungarian government introduced an anti-immigration media and billboard campaign targeting George Soros (Hungarian born US philanthropist, who supports civil society), filling the country with billboards saying that: “Soros wants to settle millions from Africa and the Middle East (into Europe)!” With one such campaign following the other by now the sheer number of different post-2015 propaganda campaigns is so overwhelming that Hungarians can't even separate them apart. It logically followed from the government constant search for the enemy that the 2018 election campaign of the governing parties was based on the arguments that Soros instructed the opposition parties to make

Hungary an immigrants' country.

¹¹ MTA-ELTE-Periparto Research Centre: "Válság és Innováció" (2014). MTA-TK-KDK. DOI: [10.17203/KDK384](https://doi.org/10.17203/KDK384)
Peripato 2014

¹² van der Vet and Lyytikäinen, "Violence and human rights."

¹³ McAdam, "Recruitment to high-risk activism."

¹⁴ Ibid., 67.

¹⁵ Opp, "Repression and revolutionary action."

¹⁶ Ayanian and Tausch, "How risk perception shapes."

¹⁷ Davenport, "State repression and political.", 2.

¹⁸ Davenport and Inman, "The state of state repression."

¹⁹. Two of the authors participated in the research project entitled Crises and Social Innovation 2014, organized by the Peripato Research Group. The survey was representative of the Hungarian adult population (sample size: 1000 respondents). It was sponsored by the Hungarian Academy of Sciences and conducted by Ipsos Hungary on 11-23 May 2014. The fact that the survey was taken before the migration crisis, coupled with the increasing radicalization of Hungarian politics, only reinforces the validity of our findings.

²⁰ Wiltfang and McAdam, "The costs and risks."

²¹ Ibid., 990.

²². FIDESZ is the Hungarian Civic Alliance; KDNP is the Christian Democratic People's Party.

²³ Gagyí, "Hungary's 'Lex CEU'."

²⁴. For details, see Bánkúti et al., "Amicus Brief"; ; Körtvélyesi, "From 'We the People'"; Kovács, "Equality: the missing link.", ; Majtényi, "The Nation's Will."

²⁵ Schmitt, "*The Concept of the Political.*"

²⁶ Miklósi, "Demokrácia: liberális, alkotmányos."

²⁷ Safran, "Pluralism and Multiculturalism", 439.

²⁸ Majtényi, “The Nation’s Will.”

²⁹. An example we could cite here is that Article U(1) read in conjunction with the Preamble can serve to identify political opponents betraying the nation. This Article states that the Hungarian Socialist Workers’ Party (the former state party) “and its legal predecessors [...] were criminal organizations [...] betraying the nation”.

³⁰ Gyórfi, “Jogok az új alkotmánykonceptióban.”

³¹ Szikra, “Democracy and welfare.”

³² Missetics, “The Criminalisation of Homelessness.”

³³ Udvarhelyi, “If we don't push homeless”, 816.

³⁴ Bánkuti et al., “Amicus Brief”, 53.

³⁵ Scheppele, “The rule of law.”

³⁶ Sonnevend, Jakab, and Csink, “The Constitution”, 46.

³⁷. To take an example of the arbitrary use of power, Article 27 (4) of the Fundamental Law authorized the President of the National Council of Justice to transfer any case to a court other than the one territorially competent. Some cases appearing to have been politically motivated have been subject to transferal. Upon pressure by the EU and international organizations (e.g. the Council of Europe) the Fifth Amendment eliminated the possibility of case transferal.

³⁸ Bánkuti et al., “Amicus Brief”, 3.

³⁹ Tóth, “A hazájukat elhagyni kényszerülők.”

⁴⁰ Nagy B., “Hungarian asylum Law”, 1049.

⁴¹. Ormsby, “The Refugee Crisis”, 1210. - As Ormsby emphasizes, state legislation on refugee deterrence may potentially have significant implications on the fundamental rights of the state’s own citizens. (Ormsby, “The Refugee Crisis, 1202.)

⁴² Thorleifsson, “Disposable strangers”

⁴³. Using pictures of enemies for building political popularity is not unique, as it is present in the whole CEE region (Geró et al., "Understanding Enemy Images").

⁴⁴. Hungary will not be a colony! Viktor Orbán's speech on 15 March 2012.
http://www.miniszterelnok.hu/beszed/nem_leszunk_gyarmat

⁴⁵. Péter Hoppál, the spokesperson of the governing Fidesz party, at a press conference on 17 August 2013. Documents for Side Event – Going Liberal: the Rule of Law and NGOs in Hungary.

<http://www.osce.org/odihr/124145?download=true>

http://index.hu/belfold/2014/07/07/megjarta_hoppal_peter_amikor_lealcivilezte_a_helsinki_bizottsagot/

⁴⁶. CEU is a high ranking American private university accredited in the United States and Hungary. The University founded by György Soros in 1991 with the aim to “help facilitate the transition from dictatorship to democracy in Central and Eastern Europe and the former Soviet Union.”

<https://www.ceu.edu/about/history>

⁴⁷. About using enemy images in Hungary, see: Kopper et al., "Creating Suspicion and Vigilance".

⁴⁸. The country was filled with billboards in Hungarian saying that “If you come to Hungary, you must not take the jobs of the Hungarians!”; or “If you come to Hungary, you must respect our laws!” or “If you come to Hungary, you must respect our culture!”

⁴⁹ Nagy B., "Hungarian asylum Law", 1054. - For further analysis of the billboard campaign, see Nagy Zs., "Repertoires of Contention"

⁵⁰ Kallius, Monterescu and Rajaram, “Immobilizing mobility”

⁵¹ Bernát, Kertész and Tóth, “Solidarity Reloaded”

⁵². [MigSzol Szeged](#) was formed on 26 June 2015 during the refugee crisis. (Its predecessor, Migszol Csoport was established in Budapest in 2012, and their name was the inspiration for the separate Szeged group in 2015.) This was soon followed by the formation of the Let's Help the Refugees Together group (with about 10 000 members). A day later the [Migration Aid Facebook group](#) (with

about 36 000 members) was created. Later, other Facebook groups were set up, e.g. Budapest-Bamako created with the intention to seek international help.

⁵³ Köves, "Menekültügy – humanitárius", 77.

⁵⁴. Oral communication of one of the founders of the Let's Help the Refugees Together! Facebook group and human rights activist Luca László.

⁵⁵. For this, see László, "The illegal kitchen spoon"; Köves, "Menekültügy – humanitárius".

⁵⁶ Kallius, "Rupture and Continuity."

⁵⁷. <http://24.hu/belfold/2016/01/13/embercsempesz-vagyok-orban-viktor-is-az/> (checked: 08.10.2017)

⁵⁸. Oral communication of one founders of the Let's Help the Refugees Together Group Facebook group and human rights activist Nóra Köves.

⁵⁹. "says Cardinal Péter Erdő" <https://refugeecrisisinhungary.wordpress.com/2015/09/03/the-church-would-become-a-smuggler-if-it-accepted-refugees-says-cardinal-peter-erdo/>

⁶⁰ Feischmidt, "Manipulált félelmek", 14).

⁶¹. http://hvg.hu/itthon/20160601_menekultek_Orban_nemetek_osztrakok

<http://www.atv.hu/belfold/20160602-bild-igy-verte-at-Orban-az-osztrak-es-a-nemet-kancellart>

⁶² Tóth and Kertész, "Beyond the Humanitarian Miracle."

⁶³. Oral communication of one founders of the Let's Help the Refugees Together Group Facebook Group and human rights activist Luca László.

⁶⁴. It has been found that the majority of helpers in all three motivational structures identified themselves as volunteers, denied the importance of their political motivations, and considered aid work as the most important aspect of their activity. (Tóth and Kertész, "Beyond the Humanitarian Miracle.", 119)

⁶⁵.Tóth and Kertész, "Beyond the Humanitarian Miracle.", 302.

⁶⁶ Szalai and Góbl, "Securitizing Migration."

⁶⁷. While this issue could affect all participants, it has raised an extremely serious dilemma for human rights NGOs, given their peculiar situation. On the one hand, they were committed to helping refugees, yet, to be able to do their job, they have frequently been dependent on the government's goodwill. During the crisis their dilemma was whether to fervently protest against the regime, as in return authorities could have limited their access to refugee-camps or detention centers, which would have undermined their ability to report on violations of norms at these places, which was their primary mandate. - Oral communication of human rights NGO expert Attila Szabó.

⁶⁸ Bernáth and Messing, "Bedarálva", 10.

⁶⁹. Prime Minister Viktor Orbán's State of the Nation Address, <http://www.miniszterelnok.hu/prime-minister-viktor-Orbans-state-of-the-nation-address-2/>

⁷⁰. See Amendment of Act CCIV of 2011 on National Higher Education.

⁷¹. Act LXXVI of 2017 on the Transparency of Organizations Financed from Abroad, adopted on 13 June 2017, or the Stop Soros in 2018, which contains provisions against NGOs and persons who support illegal migration using foreign money.

⁷². The Seventh Amendment restricted the right to assembly with reference to the respect for others' private and family life, and created new administrative courts (expectedly less independent from the government) to judge in these cases.

⁷³. The police also restricted the rights of the free assembly; imposed fines and did not protect them from the violent and unlawful acts of security guards. See to this http://ataszjelenti.blog.hu/2017/01/12/a_ligetvedok_vedelme

⁷⁴.

http://hvg.hu/itthon/20171221_Szombaton_felszolalt_egy_pecsi_tuntetesen_keddre_kirugtak_az_allasabol

⁷⁵. <https://24.hu/szorakozas/2018/01/25/rendorok-foglaltak-le-rekasi-karoly-es-detar-eniko-fianak-szamitogepet/>