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**THE RISE OF ILLIBERALISM IN EUROPE
AND ITS EFFECTS ON MIGRATION POLICIES IN THE
EUROPEAN UNION**

Dissertation to obtain a Master's Degree in Law,
Specialization in International and European Law

Dissertation supervised by Professor Nausica Palazzo
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June 2024

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Maria João Pais Andrade

“Even 51 per cent of a nation can establish a totalitarian and dictatorial regime, suppress minorities, and still remain democratic”.

- Erik von Kuehnelt-Leddihn, 1952

Para a minha mãe

Acknowledgments

First and foremost, to my supervisor Professor Nausica for all her patience and understanding in this arduous process, despite all the highs and lows. Your assistance was fundamental and, for that, I'm truly grateful.

To my father and sister, who have supported me and given me strength throughout my entire personal and academic life, through thick and thin, even in the face of adversity. I can't thank you enough for everything you have done for me.

To my grandmother and remaining family, who have stayed by my side, always.

To my friends, whose support was essential to get me through this process. From Oliveira do Hospital to Coimbra, to Roma, to Lisboa, to Maastricht, to Jordan, to all the cities and countries in between, I have met people who showed me that love and friendship can be found anywhere.

A special thanks to Inês, Bárbara, Francisca, Pedro, Mariana, and Miguel who always took time out of their busy lives to help me, even if just to hear me complain.

Lastly, to my mother: my role model and the reason I am who I am today. I miss you every day and I hope you are proud of me, wherever you are.

Citation Method

The citation style followed in this Dissertation is the Chicago Manual of Style 17th Edition (full note).

Throughout this dissertation, all quotes and relevant references are identified in the footnotes and, henceforth, listed in the Bibliography, in alphabetical order. The citations and bibliography were automatically inserted using the Zotero software, though manual modifications were used whenever deemed necessary.

The language used in this Dissertation is English (United States), though citations may vary in the English language version.

List of Abbreviations

1951 Convention	1951 Convention Relating to the Status of Refugees
1967 Protocol	1967 Protocol Relating to the Status of Refugees
CEAS	Common European Asylum System
CSO	Civil Society Organization
ECHR	European Court of Human Rights
ECJ	European Court of Justice
EU	European Union
FdI	Fratelli d' Italia (Brothers of Italy)
FI	Forza Italia
IOM	International Organization for Migration
MEPs	Members in the European Parliament
NGO	Non-Governmental Organization
SAR	Search and Rescue
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
UN	United Nations
UNHCR	United Nations Refugee Agency

Declaration

It is stated that the body of the present Dissertation, consisting of the Introduction, 3 Chapters, and the Conclusion, occupies a total of 133 587 characters including spaces and footnotes.

Abstract

Over the last decades, Europe has witnessed a decline in liberal democracy and an upsurge of authoritarian regimes and populist parties adopting illiberal ideals. With them, generally, arose a profound anti-immigration discourse and Eurosceptic ideas. This research aims to identify and comprehend the intricate interplay between illiberalism and migration policies, by assessing, through a comprehensive analysis of factors such as the de-Europeanization of migration policies and the emergence of culture wars, divergences in illiberal responses to migration and their consequences for regional cooperation and solidarity. Moreover, it analyzes national responses to EU migration policy, with a focus on the case studies of Hungary and Italy. By dissecting the policy approaches of these nations, the study highlights the diverse strategies adopted by Member States in navigating the tensions between national interests and EU norms, offering insights into the complex dynamics shaping migration governance at the national level. Furthermore, the study evaluates the responses and legal actions of the European Union in addressing the challenges posed by illiberal democracies' migration policies and the opposition and potential future of illiberalism in Europe. By shedding light on these dynamics, the goal is to provide valuable insights into the future of European integration and the preservation of democratic norms in an increasingly diverse and interconnected world.

Keywords: illiberalism; democracy, populism; EU; migration policies; culture wars; Hungary; Italy

Resumo

Ao longo das últimas décadas, a Europa tem testemunhado um declínio na democracia liberal e um aumento dos regimes autoritários e partidos populistas que adotam ideais não liberais. Com eles, no geral, surgiu um profundo discurso anti-imigração e ideias eurocéticas. Esta pesquisa tem como objetivo identificar e compreender a complexa interação entre o iliberalismo e as políticas migratórias, apreciando, através de uma análise compreensiva de fatores como a des-Europeização das políticas migratórias e o surgimento de guerras culturais, divergências nas respostas iliberais à migração e às consequências para a cooperação e solidariedade regional. Posteriormente, analisa as respostas nacionais às políticas de migração da UE, focando-se nos casos de estudo da Hungria e da Itália. Ao examinar as abordagens políticas desses estados-membros, o estudo destaca as diversas estratégias adotadas pelos Estados-membros para navegar as tensões entre os interesses nacionais e as normas da UE, dando a conhecer a dinâmica complexa que molda as políticas migratórias a nível nacional. Além disso, o estudo avalia as respostas e ações legais da União Europeia para enfrentar os desafios colocados pelas políticas migratórias das democracias iliberais e a oposição e potencial futuro do iliberalismo na Europa. O objetivo de dar a conhecer estas dinâmicas é facultar informações sobre o futuro da integração europeia e a preservação das normas democráticas num mundo cada vez mais diversificado e interconectado.

Palavras-Chave: iliberalismo, democracia, populismo, UE, políticas migratórias; guerras culturais; Hungria; Itália

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INTRODUCTION

In 2015, Europe witnessed an unprecedented surge of refugees and asylum seekers arriving at its borders. This influx was reported as a result of various conflicts in the Middle East and was labelled as the “refugee crisis” in Europe. In that year alone, a record number of over 1.2 million first-time asylum seekers applied for international protection in EU Member States (Eurostat, 2016). Since then, the influx of migrants reaching the European Union’s borders has not slowed down, reaching record numbers in 2023¹.

As the predictions for 2024 are of an increase in migration, this continues to be a divisive topic in the EU. Despite the imperative ingrained in international refugee law to offer asylum and safety to those who seek it, refugees have encountered growing resentment upon arrival in several Member States, as countries like France, Germany, Italy, Spain, Belgium, the Netherlands, Hungary, Poland or Finland decided to put aside EU’s common policies in migration and adopt their own measures to prevent the entrance of those who strive for asylum, raising fences and imposing border control measures ². These actions end up contradicting the spirit of the union, the rule of law and human rights that the European Union was founded under and prides itself on maintaining. These movements could be explained by the increasing influence of the xenophobic and anti-immigrant discourse of the far-right populist movements and the already established so-called “illiberal democracies” in Europe.

Within the European context, Hungary and Italy pose compelling case studies, each representing unique trajectories of democratic erosion and consolidation of illiberal governance. While Hungary stands as an already established illiberal democracy, Italy presents a different situation, suggesting a move towards illiberalism within its democratic system in the political situation of the last few years.

¹ 286,838 arrivals and almost 4000 people dead or missing in the process, as reported by the International Organization for Migration’s Displacement Tracking Matrix (IOM’s Global Data Institute, 2024)

² Joanna Gill and Lin Taylor, ‘Fortress Europe: Where Will the Migration Flashpoints Be in 2024?’, *Context* (blog), 22 December 2023, <https://www.context.news/socioeconomic-inclusion/fortress-europe-where-will-the-migration-flashpoints-be-in-2024>.

Introduction

Thus, this dissertation aims to explore, understand and define illiberalism and wishes to answer the following research question: *“How does illiberalism affect national and European Union migration policies: what are the threats posed to asylum law and legal reforms in the EU and how can the EU respond?”*

To do so, the research will focus on the cases of Hungary and Italy as case studies while exploring the policies adopted regarding migration in both these countries, within the broader context of the European Union’s procedures and their effectiveness. Specifically, it aims to analyze the effects of these policies on the political framework of the EU and their implications for sovereignty and democracy within the Union as a whole. Through an interdisciplinary approach, this study ultimately seeks to elucidate the relationship between sovereignty, and democracy in illiberal democracies, while highlighting potential threats to migration and asylum law in Europe.

In the first chapter, the goal is to obtain a clear understanding of what illiberalism is, its implications, and the challenges posed by illiberal practices to the foundational principles of democracy and governance. Firstly, I will provide a comprehensive definition of illiberalism, where I will explore its origins, manifestations, and key characteristics. I will focus particularly on the notion of democratic backsliding, as well as define the interconnection of illiberalism and populism. Alongside legal and rule of law concerns, I will discuss additional defining features of illiberal regimes, such as the Euroscepticism it normally generates.

The second chapter will delve into the complexities surrounding European migration policies within the context of illiberal democracies. Starting with an introduction to EU asylum law and the relevant EU migration policies, then it will focus on two major challenges: the notion of culture wars within the illiberal mindset, particularly in the case of migration and the de-Europeanization of migration policies in some Member States. First, I will start by assessing how cultural tensions intersect with migration policies in illiberal democracies, while discussing the role of identity politics, nationalism, and xenophobia in shaping public discourse and policy responses. Then, I will address the erosion of EU norms and principles within the migration policies and explore how these nations deviate from EU standards, aiming to understand the factors compelling the departure from European ideals.

In the third chapter, the theoretical framework discussed in the previous chapter will be illustrated through the analysis of countries characterized by an illiberal approach, specifically Hungary and Italy as case studies in the investigation of attitudes adopted by illiberal Member States in response to EU migration policies. In the first moment, I will provide an in-depth analysis of both Hungary's and Italy's illiberal tendencies and how they interconnect. Secondly, I will analyze Hungary's migration policy and its divergence from EU directives, the implications for EU-Hungary relations, and the broader implications for regional stability. Subsequently, I will focus on Italy's response to EU migration policies, highlighting its unique challenges and strategies. Lastly, I will try to evaluate the European Union's responses to the challenges posed by illiberal democracies' migration policies, with a focus on legal actions and the threats to the rule of law. Here, I will assess the EU's legal and institutional responses to deviations from liberal democratic norms within Member States' migration policies. Finally, I will mention the opposition occurrences and the signs of resistance by civil society and political opponents.

CHAPTER 1: DEFINING ILLIBERALISM

In recent years, there has been a global rise in what has been titled “illiberal democracies” or illiberal regimes. Governments of countries like Hungary, Poland or Italy have become an area of increasing political concern, analysis and media scrutiny as their leaders tend to progressively move away from political liberalism, limiting constitutional provisions and rejecting aspects of liberal democracies founded under the rule of law and human rights.

This chapter will start by outlining the definition of illiberalism, under the precedent of Laruelle’s classification that “illiberalism should be looked at as a (thin) ideology, with an intrinsically *ex-negativo* relation to liberalism”³. With that in mind, I will define illiberalism, focusing on its origins, manifestations, and key features. I will also define some relevant terms to the following research, such as its connection to populism, democratic backsliding and Euroscepticism as a characteristic of illiberal ideals.

1.1. Illiberalism as a Concept

While the concept of illiberalism has been an emerging topic in political and sociological science, its definition has been discussed by several scholars throughout the years. Some have labeled “illiberal” uniquely as a regime type, falling under the authoritarianism umbrella, rather than democracy ⁴. In a preliminary phase, regimes that did not base themselves on the primacy of individual liberty and that would not recognize the supremacy of rights, limited government and the rule of law were labeled as “illiberal regimes” ⁵.

Authors García-Holgado & Pérez-Liñán⁶ have defined illiberal regimes as a hybrid form of government resulting from a process of erosion of individual rights and undermining

³ Marlene Laruelle, ‘Illiberalism: A Conceptual Introduction’, *East European Politics* 38, no. 2 (3 April 2022): 303–27, <https://doi.org/10.1080/21599165.2022.2037079>.

⁴ Laruelle.

⁵ Nenad Dimitrijevic, ‘Illiberal Regime Types’, in *Routledge Handbook of Illiberalism*, by Andrés Sajó, Renáta Uitz, and Stephen Holmes, 1st ed. (New York: Routledge, 2021), 121–41, <https://doi.org/10.4324/9780367260569-11>.

⁶ Benjamín García-Holgado and Aníbal Pérez-Liñán, ‘The Weaknesses of Illiberal Regimes’, in *Routledge Handbook of Illiberalism (Andrés Sajó, Renáta Uitz and Stephen Holmes)*, 2021, pp 925-938.

of an autonomous civil society under preexisting civil and political rights, in a process they called “illiberalization”. Along with the label of a hybrid regime, the possibly most important designation amongst contemporary illiberal regime types was authoritarianism. For Dimitrijevic⁷, authoritarianism is a regime based on the monopolization of power by a single person or group, which rejects formal limits of power and responsibility and restricts individual liberties.

However, some researchers have found this categorization lacking, leading to the development of a new line of research, where the adjective “illiberal” became “illiberalism”, a noun⁸. According to Routledge’s Handbook of Illiberalism editors Stephen Holmes, András Sajó, and Renata Uitz, illiberalism refers to a set of social, political, cultural, legal, and mental phenomena associated with the diminishing of individual liberty as an everyday experience⁹. For the authors, liberalism is not an ideology or a regime, but it is the result of political, social and economic practices that improperly concentrate powers in the executive branch, or of limitations on social diversity and political pluralism.

With this in mind, Laruelle¹⁰ defines illiberalism as a (thin) ideology, with an intrinsically *ex-negativo* relation to liberalism. The author defines it as a new ideological universal that “represents a backlash against today’s liberalism, on all its fronts – political, economic, cultural, social, and geopolitical – in the name of democratic principles and by winning popular support”. Consequently, by presenting itself as a direct contradiction of liberalism, it raises the question of what exactly liberalism is and what it entails.

Conversely, it is important to highlight that despite its intrinsic relationship with liberalism, illiberalism is not everything that is “non-liberal”¹¹. According to Laruelle, regimes such as China or Saudi Arabia do not qualify as “illiberal”, despite not being liberal. For the author, illiberalism falls under the category of “post liberalism”, as countries need to have experienced some form of liberalism before being considered

⁷ Dimitrijevic, ‘Illiberal Regime Types’.

⁸ Laruelle, ‘Illiberalism’.

⁹ András Sajó, Renáta Uitz, and Stephen Holmes, *Routledge Handbook of Illiberalism*, 1st ed. (New York: Routledge, 2021), <https://doi.org/10.4324/9780367260569>.

¹⁰ Laruelle, ‘Illiberalism’.

¹¹ Laruelle.

illiberal, which is the case of both post-communist Eastern European and Western European countries.

The definition of liberalism has evolved throughout the years. The etymology of the word is traced down to the Latin “*Liber*”, meaning free, and it emerged in the late seventeenth and eighteenth centuries. Originally, liberalism was the doctrine centered towards the individual and the protection of individual rights (such as life, liberty, and property)¹². In this vision, the government is required to protect those rights, however, it can also threaten them, therefore a constitution and the rule of law are needed to limit the government’s action.¹³ Based on this, throughout the last centuries, democracy has always been linked to the notion of liberalism.

1.2. Illiberal Democracy

Despite democracy always being linked to liberalism, throughout the 20th century, the two are not inseparable concepts¹⁴. This detachment gained importance in the current debate on illiberal democracy. For Plattner¹⁵, these concepts answer different questions. According to the author, *democracy* is the answer to the question of who rules, leaving the sovereignty to the people, who choose their representatives in free and fair elections, whereas *liberalism* is the prescription of the ruler’s limits to their power, which are designed to protect the rights of individuals, demand the rule of law, and are usually defined in a constitution.

According to Zakaria¹⁶, western liberal democracies are defined as “political systems marked by free and fair elections, the rule of law, separation of powers and the protection of liberties of speech, assembly, religion, and property”. These freedoms can also be labelled as constitutional liberalism and are, according to the author, theoretically different from democracy.

¹² Marc F. Plattner, ‘From Liberalism to Liberal Democracy’, *Journal of Democracy* 10, no. 3 (July 1999): 121–34, <https://doi.org/10.1353/jod.1999.0053>.

¹³ Plattner.

¹⁴ Marc F. Plattner, ‘Illiberal Democracy and the Struggle on the Right’, *Journal of Democracy* 30, no. 1 (2019): 5–19, <https://doi.org/10.1353/jod.2019.0000>.

¹⁵ Plattner.

¹⁶ Fared Zakaria, ‘The Rise of Illiberal Democracy’, *Foreign Affairs* 76, no. 6 (1997): 22, <https://doi.org/10.2307/20048274>.

The term “illiberal democracy” was first coined by Fareed Zakaria, in 1997, in a “Foreign Affairs” article, where Zakaria voiced his concerns about the rapid rise of “illiberal democracies”. He described “illiberal democracies” as democratically elected regimes that routinely ignored constitutional limits on their power and deprived citizens of basic rights and freedoms¹⁷. By this time, Zakaria had already expressed concern for the inadequacy of democracy without constitutional liberalism, as it would, in his words, convey erosion of liberties, abuse of power and deterioration of individual rights. He also stated the great danger of the rise of this trend as it would end up discrediting liberal democracies¹⁸. In this context, the term was understood as a deviation from the norms our society and the international community should follow¹⁹.

The term was then brought to the public (and the political eye) when Viktor Orbán, Hungary’s Prime Minister, appropriated the term in his Băile Tuşnad (Romania) speech, in 2014. At that point, the arguably most influential figure in today’s European right, Viktor Orbán aspired to implement an illiberal democracy in Hungary²⁰. In this now very famous speech, Orbán took what was before a negative concept and transformed it into a positive idea he wanted to implement: “an illiberal nation state within the EU”. In this speech, Orbán argued that:

*“The new state that we are building is an illiberal state, a non-liberal state. It does not deny foundational values of liberalism, as freedom, (...) But it does not make this ideology a central element of state organization but applies a specific, national, particular approach in its stead.”*²¹

In this speech, Orbán cited Russia and Turkey as examples of “successful nations.” Like Putin, Orbán defines liberalism in a way that suits his agenda, in an effort to denigrate it to their followers, manipulating and encouraging their prejudices and fears²².

¹⁷ Zakaria.

¹⁸ Zakaria.

¹⁹ Laruelle, ‘Illiberalism’.

²⁰ Plattner, ‘Illiberal Democracy and the Struggle on the Right’.

²¹ Viktor Orbán, ‘Speech at Băile Tuşnad (Tusnádfürdő)’, <https://budapestbeacon.com/full-text-of-viktor-orbans-speech-at-baile-tusnad-tusnadfurdo-of-26-july-2014/>.

²² Helena Rosenblatt, ‘The History of Illiberalism’, in *Routledge Handbook of Illiberalism*, by András Sajó, Renáta Uitz, and Stephen Holmes, 1st ed. (New York: Routledge, 2021), 16–32, <https://doi.org/10.4324/9780367260569-3>.

1.2.1. Democratic Backsliding

Many illiberal forces today ascend to power through legitimate elections and democratic processes. Once in government, they manipulate the mechanisms of democratic institutions to entrench their authority, all while invoking popular support to justify their actions in defending the nation against perceived foreign or domestic threats ²³. This decline in democracy is normally referred to as democratic backsliding.

Authors Sitter & Bakke define democratic backsliding as “a process of deliberate, intended actions on the part of a democratically elected government, designed to gradually undermine the fundamental rules of the game in an existing democracy”²⁴. In this context, democratic backsliding is seen as a process that halts or reverses democratization. Its central features include a decline in the rule of law and democratic practices, as well as concentration of political, economic and social power and the hollowing out of democratic institutions. This backsliding must be analyzed as a gradual process, that is in its very nature fluid, it is not defined by an end goal ²⁵.

Polyakova et al²⁶ defined that illiberal leaders and political parties exploit their societies to their own advantage, by establishing an “illiberal toolkit”. This toolkit involves constant efforts to deteriorate democratic institutions, particularly judicial oversight; a pluralistic political system and independent media. To limit judicial oversight, illiberal forces manipulate constitutional referendums and amendments to influence the appointment of judges to higher courts, thereby reducing the effectiveness of political opposition, while abusing state resources to remove political challengers and, finally, they weaken independent press and demonize civil society groups, such as NGOs, to strengthen the media landscape.

²³ Alina Polyakova et al., ‘The Anatomy of Illiberal States: Assessing And Responding To Democratic Decline In Turkey And Central Europe’, 2019.

²⁴ Nick Sitter and Elisabeth Bakke, ‘Democratic Backsliding in the European Union’, in *Oxford Research Encyclopedia of Politics*, by Nick Sitter and Elisabeth Bakke (Oxford University Press, 2019), <https://doi.org/10.1093/acrefore/9780190228637.013.1476>.

²⁵ Sitter and Bakke.

²⁶ Polyakova et al., ‘The Anatomy Of Illiberal States: Assessing And Responding To Democratic Decline In Turkey And Central Europe’.

The subtle complexity of the challenges lies in the fact that each individual action that causes the backsliding of democratic institutions does not seem to pose an immediate threat to democracy on its own. The true structure of the illiberal state only becomes evident once all the actions are examined together.

1.3. Populism and Illiberalism

Illiberalism is often discussed within the concept of populism. Populist movements tend to, once having obtained power, shift in an illiberal direction²⁷. Although not inherently against democracy, populism is a set of ideas that support a form of illiberal democracy²⁸.

Throughout the last decades, it has been shown that the rise of populism in the European Union is the main challenge to liberal democracy²⁹. Over the years, an increasing number of illiberal regimes have emerged in several countries; as the mainstream political establishment started drifting toward populist positions and *de facto* illiberal positions³⁰, in topics such as asylum and humanitarian policies and minority rights.

The definition of populism, according to Mudde & Kaltwasser is “*a thin-centred ideology that considers society to be ultimately separated into two homogeneous and antagonistic camps, “the pure people” versus “the corrupt elite,” and which argues that politics should be an expression of the general will of the people*”³¹. As the generally accepted classification, the author’s vision is that populism supports popular sovereignty and majority rule while opposing minority rights and pluralism. Populist leaders and movements tend to capitalize on discontent with globalization, immigration, and economic inequality to advance their illiberal agendas. By criticizing the poor results of

²⁷ Sajó, Uitz, and Holmes, *Routledge Handbook of Illiberalism*.

²⁸ Cas Mudde and Cristóbal Rovira Kaltwasser, *Populism: A Very Short Introduction* (Oxford University Press, 2017), <https://doi.org/10.1093/acrade/9780190234874.001.0001>.

²⁹ Bojan Bugarcic, ‘Populism, Liberal Democracy, and the Rule of Law in Central and Eastern Europe’, *Communist and Post-Communist Studies* 41, no. 2 (1 June 2008): 191–203, <https://doi.org/10.1016/j.postcomstud.2008.03.006>.

³⁰ Sajó, Uitz, and Holmes, *Routledge Handbook of Illiberalism*.

³¹ Mudde and Kaltwasser, *Populism*.

the democratic regime, they present a campaign to modify the democratic procedures, as a solution³².

In this context, we focus on right-wing manifestations of populism, as the outcome of this relation is frequently argued to be a destructive position towards liberal democracy³³. According to Merkel and Scholl³⁴, right-wing parties “threaten the liberal elements of democracy in particular and want to substitute the rule of law-based liberal democracies with a crude majoritarian concept of democracy where the concept of the sovereignty of the people trumps the rule of law and minority rights”.

1.4. Causes and Characteristics of Illiberalism and Right-Wing Populism

In the European context, populism forms a counterreaction to a distinctive liberal project of democracy that emerged after World War II³⁵. By considering Europe over the last four decades, authors Merkel and Scholl³⁶ have recognized three waves of illiberal movements arising, from radical right-wing populist opposition to traditional democratic policies and politics.

The first wave, emerging in the 1970s, saw campaigns against high-tax welfare states, inefficient bureaucracies and government spending. At this time, came a shift towards “welfare chauvinism”, a concept introduced to make sense of this growing electorate that combines anti-immigration stances with pro-welfare policies³⁷. The definition of welfare chauvinism introduced by Kitschelt & McGann³⁸ follows that “the welfare state [...] is a system of social protection for those who belong to the ethnically defined community and who have contributed to it”. Welfare chauvinism reports a tension between immigration

³² Mudde and Kaltwasser.

³³ Paul Blokker, ‘Populism and Illiberalism’, in *Routledge Handbook of Illiberalism*, by András Sajó, Renáta Uitz, and Stephen Holmes, 1st ed. (New York: Routledge, 2021), 261–79, <https://doi.org/10.4324/9780367260569-21>.

³⁴ Wolfgang Merkel and Felix Scholl, ‘Illiberalism, Populism and Democracy in East and West’, *Politologický Časopis - Czech Journal of Political Science*, no. 1 (1 February 2018), <https://doi.org/10.5817/PC2018-1-28>.

³⁵ Blokker, ‘Populism and Illiberalism’.

³⁶ Merkel and Scholl, ‘Illiberalism, Populism and Democracy in East and West’.

³⁷ Herbert Kitschelt and Anthony J. McGann, *The Radical Right in Western Europe: A Comparative Analysis* (University of Michigan Press, 1997).

³⁸ Kitschelt and McGann.

and the welfare state, as it paints the image of immigrants as “free riders”, who do not deserve to benefit from welfare benefits. To this day, given the recent migration trends in Europe and the concerns expressed by some that asylum seekers impose a significant burden on the welfare system, this tension is still present in some illiberal, right-wing parties ³⁹.

The second wave came with another critical issue of right-wing populist parties in Europe. In the 1990s, opposition to European integration emerged as a pivotal issue for right-wing populist parties in Western Europe, as they highlighted and exploited perceived democratic shortcomings within the EU, argued a betrayal of the people by EU’s “corrupt institutions”, and demanded sovereignty to the people instead of to supranational institutions⁴⁰. Here, scholars distinguish between the concept of “hard Euroscepticism” and “soft Euroscepticism”. The first can be defined as an opposition to the “project of European integration as embodied in the EU”, i.e. support for an outright exit from the EU, while the second, more moderate, can be defined as the opposition to the EU’s current or future planned trajectory ⁴¹.

The term “Euroscepticism” broadly condenses “a range of critical positions on European integration, as well as outright opposition” ⁴². Here, once again, there’s a link to the sentiments towards immigrants. As stated by authors Stockemer, Niemann, Unger and Speyer⁴³, ethnic threat theories (i.e. the fear that immigrants dilute the national culture and lifestyle) trigger Euroscepticism, since the EU stands for free movement and diversity. In the current European context, as the overarching political context of the EU

³⁹ Boris Heizmann, Alexander Jedinger, and Anja Perry, ‘Welfare Chauvinism, Economic Insecurity and the Asylum Seeker “Crisis”’, *Societies* 8, no. 3 (10 September 2018): 83, <https://doi.org/10.3390/soc8030083>.

⁴⁰ Merkel and Scholl, ‘Illiberalism, Populism and Democracy in East and West’.

⁴¹ Merkel and Scholl; Cas Mudde, ‘The Comparative Study of Party-Based Euroscepticism: The Sussex versus the North Carolina School’, *East European Politics* 28, no. 2 (June 2012): 193–202, <https://doi.org/10.1080/21599165.2012.669735>.

⁴² Paul Taggart and Aleks Szczerbiak, ‘Contemporary Euroscepticism in the Party Systems of the European Union Candidate States of Central and Eastern Europe’, *European Journal of Political Research* 43, no. 1 (January 2004): 1–27, <https://doi.org/10.1111/j.1475-6765.2004.00143.x>.

⁴³ Daniel Stockemer et al., ‘The “Refugee Crisis,” Immigration Attitudes, and Euroscepticism’, *International Migration Review* 54, no. 3 (September 2020): 883–912, <https://doi.org/10.1177/0197918319879926>.

ends up shaping much of the national politics, virtually all populist actors within the EU are Eurosceptic ⁴⁴.

Then came the third wave, marked by a “general opposition to liberalism and multiculturalism”. Right-wing parties took an gradually authoritarian standpoint on sociocultural issues, such as immigration, the criminal justice system and minority rights, promoting “law-and-order” policies to fight crime, restrictions on immigration and opposition to minority rights, such as gay marriage ⁴⁵. Here, once again, immigration took the spot as the major catalyst for their polling accomplishments. Migration was seen as a threat to the European welfare states, national homogeneity and societal peace ⁴⁶.

By defining the phases of the emergence of illiberalism in Europe so far, some characteristics of these ideals have already been outlined. Illiberalism comes across essentially as a rejection of certain liberal principles, viewing them as contentious and incompatible with its own beliefs. Some of the staples of illiberalism are intolerance, fear of difference, the cult of force, discipline and moral authority while rejecting rational discourse⁴⁷. Though these characteristics are not exhaustive, they can be found as the basis of several right-wing populist parties’ narratives and ideologies.

⁴⁴ Mudde and Kaltwasser, *Populism*.

⁴⁵ Merkel and Scholl, ‘Illiberalism, Populism and Democracy in East and West’.

⁴⁶ Merkel and Scholl.

⁴⁷ Sajó, Uitz, and Holmes, *Routledge Handbook of Illiberalism*.

CHAPTER 2: CHALLENGES TO EUROPEAN MIGRATION POLICIES IN ILLIBERAL DEMOCRACIES

The emergence of illiberal states within the European Union presents a challenge to the very foundations of the EU, as it challenges the core values on which the EU was founded, as stated in the Treaty on European Union⁴⁸ and the EU Charter of Fundamental Rights. Some of the aims of the creation of a European Union were to promote justice, human rights and freedom, protection and security within its internal borders while regulating asylum and immigration at the external borders⁴⁹.

In this chapter, I will provide an overview of the EU's approach to migration and explore the idea of culture wars in illiberalism and its intersection with migration policies within contemporary democracies. This analysis aims to provide insights into how cultural narratives influence political decision-making and public attitudes towards migration and shed light on how the culture war discourse contributes to the de-Europeanization of migration policies, as national governments increasingly prioritize domestic cultural narratives over European Union directives.

2.1. The European Union's Migration Policies

To this day, migration stands as one of the most pressing challenges facing the European Union in the 21st century. With the rise of globalization, geopolitical instability, and humanitarian crises, managing migration flows has become a paramount concern for EU Member States. In response to these challenges, the European Union has developed a comprehensive framework of migration policies aimed at promoting cooperation, solidarity, and effective management of migration. Such policies encompass a framework of laws and regulations governing the reception processes of undocumented migrants, their identification, and the protocols for asylum approval, as well as addressing the escalating influx of asylum seekers, unauthorized immigrants, and the institutional infrastructure dedicated to managing migration.

⁴⁸ Article 2 TEU

⁴⁹ European Union, 'Aims and Values', 2024, https://european-union.europa.eu/principles-countries-history/principles-and-values/aims-and-values_en.

Within the EU, known for its open borders and freedom of movement, Member States are expected to uphold shared fundamental values and adopt a unified stance to ensure robust safeguards for both refugees and migrants.

2.1.1. Brief Introduction to International and European Asylum Law

As aforementioned, the reality of migration is not a new concept. Throughout history, people from all over the world have been moving to other countries, for many different reasons, but mostly to find better opportunities and a better life. Although there is no internationally accepted definition of the term under international law, the IOM defines a “migrant” as “*a person who moves away from his or her place of usual residence, whether within a country or across an international border, temporarily or permanently, and for a variety of reasons*”⁵⁰.

In the case of Europe, the influx of refugees arriving at its borders has increased after the 20th Century, in the aftermath of several events factors, such as the fall of the Ottoman and Russian Empires, both World Wars and ensuing civil wars, the rise of totalitarian regimes and the Soviet Union. Nowadays, the biggest occurrences contributing to the massive influx of migrants are conflicts, such as the ones ongoing in the Middle East and Africa, climate change and income inequalities.

The nineteenth century has been called the “century of exiles”, as it marked the development of the phenomenon of political migration in Europe⁵¹. The foundations of European asylum policy can then be traced down to this century, in the aftermath of World War I. After World War One, in 1921, thousands of Russian refugees were adrift in Europe⁵². Within the broader context of Russian, Armenian, Assyrian and Turkish refugees, refugee status was established by the League of Nations⁵³.

⁵⁰ International Organization for Migration, *Glossary on Migration*, IML Series 34, 2019, <https://www.iom.int/who-migrant-0>.

⁵¹ Humbert, ‘Refugees in Europe’, *Encyclopédie d’histoire Numérique de l’Europe [Online]*, 22 June 2020, <https://ehne.fr/en/encyclopedia/themes/wars-and-memories/movement-in-times-war/refugees-in-europe>.

⁵² Guy S. Goodwin-Gill, ‘International Refugee Law: Where It Comes From, and Where It’s Going...’, *International Journal of Legal Information* 45, no. 1 (March 2017): 24–27, <https://doi.org/10.1017/jli.2017.11>.

⁵³ Humbert, ‘Refugees in Europe’.

Subsequently, the Second World War arose, which led to unprecedented population movements. As a response to the necessity to deal with this phenomenon, the United Nations, in 1948, included the right to seek asylum in the Universal Declaration of Human Rights⁵⁴, which was then reinforced in 1951 with the ratification of the Convention Related to the Status of Refugees. In this European context of mass displacement, the 1951 Convention would define the term “refugee” as any person who “*owing to well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.*”⁵⁵. Until the adoption of a protocol in 1967, the 1951 Convention solely applied to events that had occurred prior to 1951, in Europe. This was changed with the 1967 Protocol relating to the Status of Refugees⁵⁶. This amendment, the only one that the 1951 Convention has been subjected to, removed geographic and temporal limits, consequently giving it universal coverage. Although they were created in a Cold War context, making them poorly adapt to current realities⁵⁷, both the 1951 Convention and the 1967 Protocol to the Convention, represent, to this day, the backbones of international refugee law, as we know it, as they epitomize the “modern and legal embodiment of the ancient and universal tradition of providing sanctuary to those at risk”⁵⁸.

In the context of asylum law, it is important to establish the principle of *non-refoulement* as it represents one of the foundations of international asylum law. Enshrined in Article 33 of the 1951 Convention Relating to the Status of Refugees⁵⁹, it is a core principle of

⁵⁴ Article 14(1): “Everyone has the right to seek and to enjoy in other countries asylum from persecution.” UN General Assembly, ‘Universal Declaration of Human Rights’, 217 A (III) § (1948), <https://www.refworld.org/docid/3ae6b3712c.html>.

⁵⁵ UN General Assembly, ‘1951 Convention Relating to the Status of Refugees’, United Nations, Treaty Series, vol. 189, p. 137 § (1951), <https://www.refworld.org/docid/3be01b964.html>.

⁵⁶ ‘Protocol Relating to the Status of Refugees’, United Nations, Treaty Series, 606, p. 267 § (1967), <https://www.refworld.org/legal/agreements/unga/1967/en/41400>.

⁵⁷ Humbert, ‘Refugees in Europe’.

⁵⁸ Volker Türk and Frances Nicholson, ‘Refugee Protection in International Law: An Overall Perspective’, in *Refugee Protection in International Law: UNHCR’s Global Consultations on International Protection* (Cambridge, UK ; New York: Cambridge University Press, 2003), 3–45.

⁵⁹ **“Prohibition of Expulsion or Return (“Refoulement”):** *No Contracting State shall expel or return (“refouler”) a refugee in any manner whatsoever to the frontiers of territories where his*

customary international law that prohibits States from transferring or removing individuals to a country when there are substantial grounds for believing that the person would be at risk of irreparable harm upon return⁶⁰. The principle of *non-refoulement* has attained the status of a *Jus Cogen* norm which means that it is a peremptory norm of international law from which derogation is permitted⁶¹, as established in the Article 53 of the Vienna Convention on the Law of Treaties (1969)⁶².

Finally, it is essential to mention another important legal diploma in European Asylum Law, Regulation n° 604/2013 of the European Parliament and of the Council of 26 June 2013, commonly known as the Dublin III Regulation⁶³. The first Dublin Convention, signed in 1990, first came into force in 1997, and it was then replaced by Council Regulation No 343/2003 (Dublin II regulation). This latter convention was then replaced by the Dublin III Regulation, the third version, which is currently in force. The Dublin Regulation assesses which Member State is responsible for an asylum application, following a hierarchical order criterion: family considerations; recent possession of visa or residence permit in a Member State and whether the applicant has entered the EU regularly or irregularly⁶⁴. As the 2015 crisis exposed the weaknesses of the Dublin

life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion”.

⁶⁰ OHCHR, ‘The Principle of Non-Refoulement under International Human Rights Law’, 2024, <https://www.ohchr.org/sites/default/files/Documents/Issues/Migration/GlobalCompactMigration/ThePrincipleNon-RefoulementUnderInternationalHumanRightsLaw.pdf>.

⁶¹ J. Allain, ‘The Jus Cogens Nature of Non-Refoulement’, *International Journal of Refugee Law* 13, no. 4 (1 October 2001): 533–58, <https://doi.org/10.1093/ijrl/13.4.533>.

⁶² **“Treaties conflicting with a peremptory norm of general international law (“jus cogens”):** (...) *For the purposes of the present Convention, a peremptory norm of general international law is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character.*”; United Nations, ‘Vienna Convention on the Law of Treaties’, 1155 United Nations, Treaty Series § (1969), https://legal.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf.

⁶³ European Union: Council of the European Union, ‘Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 Establishing the Criteria and Mechanisms for Determining the Member State Responsible for Examining an Application for International Protection Lodged in One of the Member States by a Third-Country National or a Stateless Person (Recast)’, Pub. L. No. OJ L. 180/31-180/59, (EU)No 604/2013 (2013), <https://eur-lex.europa.eu/legal-content/en/ALL/?uri=celex%3A32013R0604>.

⁶⁴ ‘Country Responsible for Asylum Application (Dublin Regulation) - European Commission’, https://home-affairs.ec.europa.eu/policies/migration-and-asylum/common-european-asylum-system/country-responsible-asylum-application-dublin-regulation_en.

system, the European Commission proposed, in 2016, a revision of the Dublin Regulation (the so-called Dublin IV)⁶⁵. This proposal intended to improve the system's efficiency and effectiveness in determining a single Member State responsible for examining applications for international protection. It also sought to ensure a fair distribution of responsibilities among Member States by introducing a corrective allocation mechanism and to discourage abuses and prevent secondary movements of applicants within the EU.⁶⁶ Though the negotiations were adopted in 2017, the Member States were unable to agree on a common approach and negotiations stalled. Nevertheless, in 2020, the Commission proposed to replace the Dublin III Regulation with a new Regulation on Asylum and Migration Management⁶⁷. This Regulation is established based on the principle of solidarity and fair sharing of responsibility, introducing a solidarity mechanism for situations of migratory pressure, as it aims to complement the CEAS⁶⁸

As the Cold War came to an end, tensions of an inter-ethnic nature, often exploited by populist politicians, have erupted into conflict, e.g. in the former Yugoslavia or Afghanistan, resulting in millions of people displaced⁶⁹. To this day, longstanding refugee situations result from conflicts that trace back to the Cold War, failed States, or States where central governments only control parts of the territory⁷⁰. The displacements resulting from all these situations end up posing problems for host States, especially for those who have been providing asylum to large communities, running for decades⁷¹. We must acknowledge the challenges to asylum policies to this day. The necessity of establishing burden-sharing mechanisms to relieve the countries that welcome a bigger number of asylum seekers, such as Italy or Greece; the security concerns resulting from terrorism threats in a post-9/11 world; the growth of irregular migration, smuggling and

⁶⁵ European Commission, 'Proposal for a Regulation of the European Parliament and of the Council Establishing the Criteria and Mechanisms for Determining the Member State Responsible for Examining an Application for International Protection Lodged in One of the Member States by a Third-Country National or a Stateless Person (Recast)' (2016), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52016PC0270>.

⁶⁶ European Commission.

⁶⁷ European Commission, 'Country Responsible for Asylum Application (Dublin Regulation) - European Commission'.

⁶⁸ {Citation}

⁶⁹ Türk and Nicholson, 'Refugee Protection in International Law: An Overall Perspective'.

⁷⁰ Türk and Nicholson.

⁷¹ Türk and Nicholson.

human trafficking or the ever-growing xenophobia and intolerance towards foreigners⁷², pose themselves as the main threats to a unified and harmonized asylum law in the EU.

In conclusion, one can argue that the basis of the European Union's asylum policy is to offer appropriate status to any person requiring international protection in any Member State and ensure compliance with the principle of *non-refoulement*⁷³. Regulated by Article 67(2), 78 and 80 of the TFEU⁷⁴ and Article 18 of the EU Charter for Fundamental Rights⁷⁵, the EU Migration Policy includes policies on legal migration, irregular migrations, border visas, the Common European Asylum System, and the external dimension⁷⁶, aiming to establish a European approach to the challenges of migration in the era of globalization.

2.1.2. Common European Asylum System (CEAS)

For more than 20 years, the European Union has been building the foundations for a common, comprehensive migration policy. Since the Treaty of Amsterdam, in 1999, the EU Member States have committed to establishing a system of common asylum, initiating the Europeanization of migration policies. Founded by the Maastricht Treaty, the European Union aimed, in a first approach, to improve European economic and political integration. In the Maastricht Treaty, which entered into force in 1993, were laid down

⁷² Türk and Nicholson.

⁷³ European Parliament, 'EU Asylum Policy Factsheet' (2023), <https://www.europarl.europa.eu/factsheets/en/sheet/151/asylum-policy>.

⁷⁴ European Union, 'Consolidated Version of the Treaty on the Functioning of the European Union, 2008/C 115/01' (2007), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12012E%2FTXT>.

⁷⁵ Article 18: "The right to asylum shall be guaranteed with due respect for the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and in accordance with the Treaty on European Union and the Treaty on the Functioning of the European Union" 'EU Charter of Fundamental Rights, 2012/C 326/02' (2012), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:12012P/TXT>.

⁷⁶ European Commission, 'Towards a Comprehensive European Migration Policy: 20 Years of EU Action', 4 March 2015, https://ec.europa.eu/commission/presscorner/detail/en/MEMO_15_4544.

the 3 main pillars for the Union: The European communities, a common foreign and security policy and cooperation on justice and home affairs⁷⁷.

Since the Tampere Declaration, adopted by the European Council in October 1999, the EU has been committed to establishing a functional and uniform asylum system⁷⁸. In this context, to maintain the EU as an open borders zone and to guarantee the uniform application of standards related to the treatment of asylum seekers and the protection of refugees, the EU established a Common European Asylum System (CEAS). The ambition behind the creation of the Common European Asylum System was, as the name implies, to craft a common system shared between all Member States, articulating several international diplomas and harmonizing national political and legal norms.

By establishing the CEAS, the EU reinforced the idea of the “European project”. The CEAS aimed to establish a uniform asylum process and standards across EU Member States, a fair and efficient system for processing asylum applications, guaranteeing the dignity of treatment and high standards. In 2020, the EU proposed to reform the system based on three main pillars: “efficient asylum and return procedures; solidarity and a fair share of responsibility and strengthened partnerships with third countries”⁷⁹.

The CEAS is a legal and policy framework developed to assure uniform and harmonized standards for people seeking international protection in the EU. The emphasis of the CEAS is on a shared responsibility to process applicants for international protection while ensuring fair treatment and similar procedures in the examination of cases, notwithstanding the country where the application is lodged⁸⁰. Governed by the European Union Agency for Asylum, the CEAS is ruled by five legislative instruments: the Asylum

⁷⁷ EUR-Lex, ‘Treaty of Maastricht on European Union’, 2018, <https://eur-lex.europa.eu/EN/legal-content/summary/treaty-of-maastricht-on-european-union.html>.

⁷⁸ Jouni Häkli, Gintarė Kudžmaitė, and Kirsi Pauliina Kallio, ‘Devaluing Personhood: The Framing of Migrants in the EU’s New Pact on Migration and Asylum’, *Transactions of the Institute of British Geographers* n/a, no. n/a (13 February 2024), <https://doi.org/10.1111/tran.12676>.

⁷⁹ European Commission, ‘Common European Asylum System’, 2020, https://home-affairs.ec.europa.eu/policies/migration-and-asylum/common-european-asylum-system_en.

⁸⁰ ‘2.1 The Common European Asylum System and Current Issues’, European Union Agency for Asylum, <https://euaa.europa.eu/asylum-report-2020/21-common-european-asylum-system-and-current-issues>.

Procedures Directive, the Reception Conditions Directive, the Qualification Directive (Directive 2011/95/EU), the Dublin Regulation and the EURODAC Regulation ⁸¹.

The 2015 European refugee crisis has exposed the restrictions and limitations inherent to the CEAS, leading to turmoil within the EU asylum system. Already in the pre-crisis years 2009-2013, the “refugee burden” was unevenly distributed among EU countries, and the CEAS policies only exacerbated this imbalance, due to, among other reasons, the Dublin Regulation norm which prevents an asylum applicant from applying to more than one EU country, normally staying in the country of first entry⁸². This resulted in a concentration of asylum applicants in countries such as Italy, Greece, Malta and Cyprus, as they are situated along the external border of the EU. This reality was greatly aggravated by the 2015 crisis, resulting in a Communication from the European Commission entitled “Towards A Reform of The Common European Asylum System and Enhancing Legal Avenues to Europe”⁸³, which presented financial, legal and operational measures to better enforce the CEAS rules, in an effort to counteract the weaknesses of the system. This resulted in more than 7 years of apprehensive and divisive negotiations and resulted in the introduction of the New Pact on Migration and Asylum, in 2020.

2.1.3. The New Pact on Migration and Asylum

The already existing weaknesses in the European asylum system were dramatically exposed and exacerbated by the 2015-2016 migration crisis. This triggered an excessive amount of asylum seekers arriving in some European countries, causing an overflow of some countries’ capacity of receiving asylum seekers, especially the southern European countries bordering the Mediterranean, like Spain, Greece, and Italy. At the same time, the mass amount of people seeking refuge in Europe brought a climate of insecurity amongst Europeans.

In 2020, a New Pact on Migration and Asylum was introduced by the European Commission, aiming to offer a fresh start to address the impact of migration on European

⁸¹ European Commission, ‘Common European Asylum System’.

⁸² Tim Hatton, ‘European Asylum Policy before and after the Migration Crisis’, *IZA World of Labor*, 2020, <https://doi.org/10.15185/izawol.480>.

⁸³ European Commission, ‘Towards a Comprehensive European Migration Policy: 20 Years of EU Action’.

society, economy and culture⁸⁴. This New Pact on Migration and Asylum stands as a set of regulations and policies aiming to create a fairer, more efficient and more sustainable migration and asylum process for the EU. It proposes a common approach to migration and asylum, sustained on solidarity, responsibility and respect for human rights⁸⁵. The aim is to achieve improved and faster procedures throughout the asylum and migration systems and set principles of responsibility sharing⁸⁶. Addressing the public, in a press statement regarding the New Pact, the European Commission's President, Ursula von der Leyen (2020), stressed the need for a new approach, disregarding the old system, and underlined the need for a "predictable and reliable migration management system".

The five key proposals of this Pact are Screening Regulation, Eurodac Regulation, Asylum Procedures Regulation, Asylum Migration Management Regulation and Crisis and Force majeure Regulation⁸⁷. Regarding the Screening Regulation, the goals are, thus, to create uniform rules to increase security within the Schengen area, by identifying non-EU nationals upon their arrival at EU borders; then, it aims to develop a common database to detect unauthorized movements, making asylum procedures more effective; establishing solidarity mechanisms amongst Member States to balance the current system, by responsibility sharing amongst countries, and, finally, to ensure that the EU is prepared to face future situations of crisis⁸⁸.

Before the political agreement, the Pact provided several aftermaths: a Recommendation on an EU mechanism for preparedness and management of crises related to migration, which developed a forecasting system to prompt the identification of migration situations and allow effective preparation and response; a Recommendation on cooperation on search and rescue and guidance on non-criminalization of search and rescue, which aims to improve cooperation among Member States in managing vessels involved in Search and Rescue (SAR) operations, intending to prevent the criminalization of SAR; the

⁸⁴ European Commission, 'Communication from the Commission on a New Pact on Migration and Asylum', 23 September 2020.

⁸⁵ European Commission, 'What Is the New Pact on Migration and Asylum of the EU?', 20 December 2023, https://home-affairs.ec.europa.eu/policies/migration-and-asylum/new-pact-migration-and-asylum_en.

⁸⁶ European Commission, 'Communication from the Commission on a New Pact on Migration and Asylum'.

⁸⁷ European Commission, 'What Is the New Pact on Migration and Asylum of the EU?'

⁸⁸ European Commission.

replacement of the European Asylum Support Office with The European Union Agency for Asylum (EUAA), bringing more tools to support Member States' asylum and reception practices; the appointment of the EU Return Coordinator aspiring to establish an effective and common European return system and improve coordination between the EU and Member States, and finally, the Voluntary Solidarity Mechanism, to support Member States under pressure, by pledging to relocate some of their asylum seekers⁸⁹

In December 2023, the EU reached an agreement on the reform, reflecting the commitment of the Member States to manage migration, aiming to move to long-term and sustainable solutions regarding the management of migration. The long-sought agreement is seen as a breakthrough in the reform of the EU asylum and migration system, as the core political elements of the five key regulations aim to overhaul the EU's framework on asylum and migration⁹⁰.

Nonetheless, despite the promises of a crucial reform to the European migration system that would alter all the wrongdoings and limitations of the past, the New Pact did not come without criticism. The 2023 agreement has been criticized by human rights groups and political parties, going as far as labeling it as “historically bad”⁹¹. In an open letter signed by multiple human rights groups, regarding the adoption of the New Pact, it was stated that *“If adopted in its current format, it will normalize the arbitrary use of immigration detention, including for children and families, increase racial profiling, use ‘crisis’ procedures to enable pushbacks and return individuals to so-called ‘safe third countries’ where they are at risk of violence, torture, and arbitrary imprisonment”*⁹².

⁸⁹ European Commission, ‘Communication from the Commission on a New Pact on Migration and Asylum’.

⁹⁰ Council of the EU - Press Release, ‘The Council and the European Parliament Reach Breakthrough in Reform of EU Asylum and Migration System’, <https://www.consilium.europa.eu/en/press/press-releases/2023/12/20/the-council-and-the-european-parliament-reach-breakthrough-in-reform-of-eu-asylum-and-migration-system/>.

⁹¹ ReliefWeb, ‘Historically Bad: New EU Pact on Migration and Asylum Normalises Rights Violations and Endangers Children - World’, 20 December 2023, <https://reliefweb.int/report/world/historically-bad-new-eu-pact-migration-and-asylum-normalises-rights-violations-and-endangers-children>.

⁹² Aljazeera, ‘EU Reaches Agreement to Overhaul Migration System, Tighten Asylum Rules’, 20 December 2023, <https://www.aljazeera.com/news/2023/12/20/european-union-reaches-agreement-on-reforming-migration-rules>.

As of February 2024, the EU Member States have approved the agreement, which is now waiting to be approved ⁹³. The question that remains is whether this Pact will keep the European Union's promises of an overhaul of the migration system for the better, improving the way governments deal with the migration challenge by making it more effective and increasing the solidarity between Member States ⁹⁴ or if it will meet the forecast of NGO's that it will restrain and decrease significantly the rights of migrants, asylum seekers and refugees, despite the triumphant rhetoric employed by the EU ⁹⁵.

2.1.4. Criticism and Human Rights Violations

While the policies abovementioned reflect the EU's ongoing efforts to address migration challenges, uphold fundamental rights, and promote cooperation both within the EU and with external partners, there has been a lot of criticism surrounding some EU actions regarding migration. Even amidst historical decisions for common asylum policies, debates and polemics persist surrounding issues such as human rights and the treatment of asylum seekers at European borders. The most relevant controversies in this discussion would be Frontex and the EU-Turkey Deal.

Established in 2004, Frontex, or the European Border and Coast Guard Agency, plays a crucial role in coordinating border management efforts among Member States. As the EU border management force it rapidly became one of the most controversial EU agencies, as reports regarding the agency's role in human rights violations and "pushbacks", an expulsion tactic of people crossing a border started to erupt. Despite this, Frontex is still operating in most Member States ⁹⁶.

⁹³ European Council and Council of the EU, 'Migration and Asylum Pact', 12 February 2024, <https://www.consilium.europa.eu/en/policies/eu-migration-policy/eu-migration-asylum-reform-pact/>.

⁹⁴ Council of the EU, 'The Council and the European Parliament Reach Breakthrough in Reform of EU Asylum and Migration System', 20 December 2023, <https://www.consilium.europa.eu/en/press/press-releases/2023/12/20/the-council-and-the-european-parliament-reach-breakthrough-in-reform-of-eu-asylum-and-migration-system/>.

⁹⁵ Human Rights Watch, 'EU's Migration Pact Is a Disaster for Migrants and Asylum Seekers', 21 December 2023, <https://www.hrw.org/news/2023/12/21/eus-migration-pact-disaster-migrants-and-asylum-seekers>.

⁹⁶ Tiara Sahar Ataii, 'Can Frontex's New Chief Reform the Controversial Agency?', *The New Arab*, 8 February 2023, <https://www.newarab.com/analysis/can-frontexs-new-chief-reform-controversial-agency>.

The EU-Turkey Deal is part of the external policy of the EU. This agreement, reached in 2016 between the European Council and Turkey, aimed to stop irregular migration flows that come via Turkey to the EU. The agreement entailed providing financial assistance to Turkey in exchange for preventing migrants and refugees from crossing into Europe. Despite being subject to significant criticism regarding human rights and the treatment of migrants, its implementation is still undergoing ⁹⁷.

2.2. Culture Wars: Migration as a Battleground

2.2.1. Understanding Culture Wars

The notion of culture wars first originated from US American politics referring to political conflicts between conservatives and liberals over social and minority rights, reproductive rights, migration, and racism. The term itself was coined by the sociologist James Davison Hunter, in 1991, who defined it as “political and social hostility rooted in different systems of moral understanding”⁹⁸. For Hunter, the culture war was being fought by polarized elites over the control of media, law, electoral politics, and education by mass media representation of arguments presented by vocal minorities on both sides of the battle line ⁹⁹.

In the late 2000s, these polarizing struggles over social norms emerged in Europe. Cultural confrontations arose regarding migration, multiculturalism, and liberal reforms of sexual and reproductive rights ¹⁰⁰. Discourses arose on “traditional values” and the defense of a traditionalist understanding of family, as heterosexual, married, with kids ¹⁰¹. Topics such as sexual education, gender-based violence reproductive rights, and gay marriage began to be challenged by ultra-conservative and pro-family agendas. Then, in

⁹⁷Rescue.org, ‘What Is the EU-Turkey Deal?’, 16 March 2023, <https://www.rescue.org/eu/article/what-eu-turkey-deal>.

⁹⁸ JD Hunter, *Culture Wars: The Struggle to Define America* (Basic Books, 1991).

⁹⁹ Hunter.

¹⁰⁰ Zora Hesová, ‘Three Types of Culture Wars and the Populist Strategies in Central Europe’, *Politologický Časopis - Czech Journal of Political Science*, 2021.

¹⁰¹ Kristina Stöckl, ‘The European Culture Wars’, *Centre for East European and International Studies (ZOiS)* (blog), 3 April 2019, <https://www.zois-berlin.de/en/publications/zois-spotlight/archiv-2019/the-european-culture-wars>.

2015, with the so-called “migration crisis”, came the backlash against immigration, European asylum policies and Islam.

As defined by Hesová, culture wars could be analyzed as “a political tool in a populist repertoire, or a tactic used to culturalize political conflict in a struggle for symbolical and political hegemony”. For the author, culture wars have helped divide and mobilize the public, trying to replace political and cultural elites¹⁰². Even in countries that are not governed by illiberal or populist parties, this type of discourse dominates the public debate, with mass demonstrations and national referendums over migration and Islam, same-sex marriages, abortion, or the Istanbul Convention¹⁰³. These “culture wars” over social norms and national ideals have become global, flooding the public and the media, in electoral campaigns, formed governments and even, more recently, during the Covid-19 pandemic.

The author¹⁰⁴ also defines three principal battlefields in which culture wars lay: politics of memory, politics of morality and politics of identity. In recent years, and more predominant in post-communist countries, revisionist groups, nationalist movements and populist parties have (re-)appropriated several commemorations and historic events, enhancing the national past of their country, in a quest to “emancipate” national narratives from the European memory frame¹⁰⁵ and to gain political profit over historical narratives.

Morality politics normally pursue a confrontation between socially progressive reforms and those conservative “traditions” and norms that they see as being “threatened”. Here, “Christian values” gain prominence: the rejection of same-sex marriage, abortion, and LGBTQ+ rights. Lastly, it also became a way to oppose Muslim migration, by portraying Islam as the enemy. Finally, the intention behind identity politics is to create a barrier between “us and them”. Populist and illiberal governments tend to use the rhetoric of labels, paralleling between the government and the opposition, and between the majority

¹⁰² Hesová, ‘Three Types of Culture Wars and the Populist Strategies in Central Europe’.

¹⁰³ Council of Europe Convention on preventing and combating violence against women and domestic violence (2011)

¹⁰⁴ Hesová, ‘Three Types of Culture Wars and the Populist Strategies in Central Europe’.

¹⁰⁵ Hesová.

and any minority and here this narrative takes a civilizationalist perspective, based on larger cultural and religious differences ¹⁰⁶.

Finally, some of the reasons behind the political and public support of these socially conservative and populist claims could be tracked down as a reaction to the “cultural revolution” of the 1990s, the post-communist legacy (in the Eastern Europe case), and an already growing exhaustion and skepticism towards the EU, as it was regarded as a secularizing and liberalizing actor ¹⁰⁷.

For Stöckl, this conservative, pro-family agenda was attractive to right-populist parties in Europe, as it gave them “the opportunity to defend national legal sovereignty against supranational regulation”. By contradicting the EU or European Court of Human Rights (ECHR) decisions, under the pretext of safeguarding “traditional values”, illiberal actors turn it into a campaign against the EU ¹⁰⁸.

2.2.2 Culture Wars Impact on Migration Policies

Since the 2015 migration crisis, anti-migration and anti-Islam narratives have become central in populist oratory. Due to migrants being predominantly from Muslim countries¹⁰⁹, Islam was used as a scapegoat to resist common European migration and asylum policies and to establish their sovereignty ¹¹⁰ As introduced in the abovementioned paragraph, one of the main reasons behind this is the politics of identity that define culture wars. Under this premise, the media, governments, and populist parties started targeting Islam over the idea of incompatibility with European values and customs.

The nationalist discourse that encourages pride in the nation, masks an effort to draw clear boundaries between those who belong to it and those who do not. National belonging became the ground on which questions about multiculturalism and diversity played out

¹⁰⁶ Hesová.

¹⁰⁷ Stöckl, ‘The European Culture Wars’.

¹⁰⁸ Stöckl.

¹⁰⁹ Between 2010-2016, an estimated 53% of all migrants to Europe were Muslim Pew Research Center, ‘Europe’s Growing Muslim Population’, November 2017, <https://www.pewresearch.org/religion/2017/11/29/europes-growing-muslim-population/>.

¹¹⁰ Hesová, ‘Three Types of Culture Wars and the Populist Strategies in Central Europe’.

in¹¹¹. These ideals encourage the public expression of Islamophobia and xenophobia and a rejection of migration, by creating fear and mistrust in the population. The populist rhetoric is strengthened by the fears of the population, and it fuels these ideals by continuing to paint migrants as dangerous and their costumes as incompatible with European identity. They engage in fearmongering by encouraging the tale of migrants as the enemy, feeding the narrative of “us versus them”, where the threat scenario of a “Muslim invasion” perpetrated by “illegal migrants” is spread by the governments, by sharing erroneous reports, strawman fallacies and spreading rumors ¹¹².

As Rita Chin writes, over the last years, illiberal parties actively championed policies against immigrants or foreigners in order to protect national values and interests¹¹³ Figures like Enoch Powell, in Britain, or Jean-Marie LePen, in France, had long claimed the right to national self-preservation, refusing diversity and claiming a threat to the distinctive culture of each of their societies by immigrants. What makes the illiberal political parties of the 21st century distinct is the way the politics of diversity have changed. With their gain of electoral traction, they are no longer afraid to hide their xenophobia, anti-immigration policies and nationalist agendas. The rejection of globalization and closer borders policies has taken center stage in many Member States politics, normalizing illiberal politics and conservative stances on immigration ¹¹⁴.

Overall, culture wars play a significant role in shaping policy responses to migration, and influencing decisions regarding border controls, asylum procedures, and integration measures. By engaging in the narratives presented, portraying migrants as a source of insecurity or cultural dilution, national policymakers may advocate for increased border security measures, such as reinforced physical barriers or enhanced surveillance technology. For example, in countries where culture wars have heightened concerns about national sovereignty and identity, there is an increase in political pressure to prioritize border enforcement as a means of asserting control over migration flows. As of 2024,

¹¹¹ Rita Chin, ‘Illiberalism and the Multicultural Backlash’, in *Routledge Handbook of Illiberalism* (András Sajó, Renáta Uitz and Stephen Holmes), 2021, pp 280-298.

¹¹² Ruth Wodak, ‘Entering the “Post-Shame Era”’: The Rise of Illiberal Democracy, Populism and Neo-Authoritarianism in EUrope’, *Global Discourse* 9, no. 1 (January 2019): 195–213, <https://doi.org/10.1332/204378919X15470487645420>.

¹¹³ Chin, ‘Illiberalism and the Multicultural Backlash’.

¹¹⁴ Chin.

countries like Austria, France, Germany, Italy, Hungary, Poland, Slovakia, Slovenia, Sweden and Norway have introduced tighter border control, citing pressures on the asylum reception systems, the war in Ukraine and the increase in arrivals by migrants¹¹⁵.

Concerning asylum procedures and integration measures, since cultural narratives shape the public perceptions of asylum seekers and refugees, there is also an influence on policy responses to their protection needs. Here, policymakers are more inclined to adopt restrictive asylum policies, such as narrowing the eligibility criteria or implementing policies that prioritize the exclusion of asylum seekers perceived as incompatible with dominant cultural norms. Regarding integration, there's a tendency to implement integration programs that promote cultural assimilation and discourage the expression of minority identities or cultural practices perceived as incompatible with mainstream values. Countries continue to pass harsher immigration bills, restricting asylum seekers' rights. For example, in late 2023, France approved a new legislation, with the support of national far-right parties, implementing limits to residency permits, delaying migrants' access to welfare benefits or introducing migration quotas to acquire nationality¹¹⁶.

In conclusion, the tactics employed in culture wars are the construction of a perceived threatening hegemony, provocative challenges, discursive undermining, as well as the blurring of accepted notions and the overtaking of sources of cultural production and institutional influence. Populist actors systematically utilize culture wars as a political strategy, leveraging cultural codes to divide and mobilize the public while seeking to replace existing political and cultural elites¹¹⁷. By doing so, they create an increasing parting between EU policies and national policies.

2.3. De-Europeanization of Migration Policies

With the implementation of the CEAS, as previously discussed, migration policies have followed an increasing tendency towards "Europeanization". In this context, the definition of Europeanization, as gathered by Moumoutzis, is the process of incorporating

¹¹⁵ Reuters, 'European Countries Tighten Borders', 11 January 2024, <https://www.reuters.com/world/europe/european-countries-tighten-borders-2023-11-24/>.

¹¹⁶ Aljazeera, 'France Passes Tough Immigration Bill amid Macron Party Rebellion', 20 December 2023, https://www.aljazeera.com/news/2023/12/20/france-passes-tough-immigration-bill-amid-macron-party-rebellion?traffic_source=KeepReading.

¹¹⁷ Hesová, 'Three Types of Culture Wars and the Populist Strategies in Central Europe'.

political structures and public policies, procedures, policy paradigms, styles, beliefs, and norms that are first defined in the EU policy processes into national and domestic frameworks¹¹⁸. In the context of migration policies, the CEAS introduced a new prototype to be followed by Member States.

Nevertheless, over the last few years, there have been signs of a reversal in this trend. The development and execution of migration policy are marked by disagreements between Member States and the EU institutions: while Member States continue to participate in the ongoing process of legal, political, and socioeconomic integration, there are policy areas where Member States have begun collaborating independently of EU institutions, opting to exclude supranational bodies from decision-making and retain control over their jurisdiction, such as on migration and asylum matters.

According to Müller, Pomorska, and Tonra¹¹⁹, the process of de-Europeanization conveys to situations “where EU foreign policy-making runs against the grain of certain Member States’ declared values and interests; where Member States are less willing to engage in collective foreign-policy-making at the EU-level, prioritizing other multilateral frameworks or (unilateral) national actions; and where the results of that policy-making are, on occasion, explicitly undermined by Member State practice”. For the authors, there are three elements to de-Europeanization. First, the reconstruction of professional roles in exclusively/predominantly national terms; then, the repudiation (implicit or explicit) of well-defined and established foundational EU foreign policy norms; and ultimately, the consequential structural disintegration of collective policy-making institutions¹²⁰.

The influence of the identity politics discourse of illiberal actors in their political statements and speeches demonstrates the difference between their politics and those of the democratic EU and mainstream political parties. Populist radical right parties have a

¹¹⁸ Kyriakos Mousmoutzis, ‘Still Fashionable Yet Useless? Addressing Problems with Research on the Europeanization of Foreign Policy: ADDRESSING PROBLEMS WITH RESEARCH ON THE EUROPEANIZATION OF FOREIGN POLICY’, *JCMS: Journal of Common Market Studies* 49, no. 3 (May 2011): 607–29, <https://doi.org/10.1111/j.1468-5965.2010.02146.x>.

¹¹⁹ Patrick Müller, Karolina Pomorska, and Ben Tonra, ‘The Domestic Challenge to EU Foreign Policymaking: From Europeanization to de-Europeanization?’, *Journal of European Integration* 43, no. 5 (4 July 2021): 519–34, <https://doi.org/10.1080/07036337.2021.1927015>.

¹²⁰ Müller, Pomorska, and Tonra.

strong influence at a national level, holding important executive positions in countries like Hungary, Austria or Italy. Being in the government gives them the capacity to eventually block key consensual decisions in the European Council or the Council of the EU¹²¹. According to the author, this could mean the beginning of an illiberal Europeanization era, as a theoretical development that contests an idealized reading of EU foreign policy. By reproducing anti-migration rhetoric, the emphasis is on restricting migration in their foreign policy agendas, while weakening human rights ¹²².

One of the clearer examples of Member States adopting individual measures in migration policies is related to restrictive measures to prevent illegal migration, such as border control and burden-sharing of the refugee crisis. All over Europe, countries started to introduce border controls and refuse the relocation of refugees located in other Member States. Although these policies are prerogatives of the Member States, their adoption weakens the efforts to guarantee a common European asylum system. Moreover, the consequences of de-Europeanization are far-reaching, impacting not only migrants but also the cohesion and effectiveness of the European Union as a whole. Fragmentation and discord within migration policies risk undermining the principles of unity and solidarity upon which the EU was founded, while also exacerbating disparities and tensions among Member States.

It has become evident that the once-prevailing trend towards European integration in migration governance is undergoing a significant shift. This shift is marked by the resurgence of national interests and the erosion of collective approaches, leading to a fragmentation of policy frameworks across the European Union Member States. These dynamics have fueled the reassertion of sovereignty and the pursuit of unilateral strategies, often at the expense of solidarity and cooperation among Member States. Consequently, the harmonization of migration policies envisioned by EU treaties and agreements is increasingly challenged, leading to a patchwork of divergent approaches and policy outcomes.

¹²¹ Adrià Rivera Escartin, 'Populist Challenges to EU Foreign Policy in the Southern Neighbourhood: An Informal and Illiberal Europeanization?', *Journal of European Public Policy* 27, no. 8 (2 August 2020): 1195–1214, <https://doi.org/10.1080/13501763.2020.1712459>.

¹²² Rivera Escartin.

Ultimately, the trajectory of migration policies in Europe will be shaped by the ability of policymakers to reconcile divergent interests and forge a common vision for the future. Only through collective action and a reaffirmation of the values that underpin European integration can the challenges of de-Europeanization be effectively addressed, ensuring a more cohesive, equitable, and sustainable approach to migration governance in the years.

CHAPTER 3: RESPONSES TO EU MIGRATION POLICY: NATIONAL CONTESTATIONS, REFORMS AND PROSPECTS

In recent years, migration has emerged as a pivotal issue shaping the political landscape of Europe, prompting varied and often polarized responses from Member States. Due to the ever-growing migratory flows, intensified by conflicts, instability, and socioeconomic disparities, the EU has sought to formulate a cohesive and collaborative approach to address the challenges of migration and asylum. However, the implementation of EU migration policies has encountered resistance from certain Member States, particularly those governed by leaders adopting illiberal ideologies.

Building upon the foundations laid by the preceding chapters, which examined the rise of illiberal politics in Europe and its implications for democratic governance, it is now time to focus on the national responses of two Member States, Hungary and Italy, to the EU's migration policies. The choice of these two countries could be explained by, in the case of the (self) proclaimed “illiberal democracy” of Orbán’s Hungary, the already established anti-immigrant stance, characterized by the construction of border fences, the enactment of restrictive asylum laws, and vocal opposition to EU refugee resettlement quotas. Meanwhile, as Italy grapples with its own influx of migrants crossing the Mediterranean, this country has witnessed the rise of populist and nationalist forces advocating for tighter border controls and the prioritization of national interests over EU solidarity.

Against this backdrop, this chapter seeks to dissect the national responses of Hungary and Italy to EU migration policies, analyzing the reasons and implications of their approaches. By examining the rhetoric, policies, and actions of these two case studies, the aim is to shed light on the broader dynamics of illiberalism within the EU and its impact on migration governance. It also attempts to evaluate the European Union's responses to the challenges posed by illiberal democracies' migration policies, legal actions, and the potential pathways forward, by exploring the effectiveness of EU mechanisms in upholding core principles, the challenges encountered in addressing illiberal tendencies, and the opportunities for enhancing solidarity and cooperation within the European Union.

3.1. Illiberalism in Europe: The Cases of Hungary and Italy

Despite the fall of the Berlin Wall, in 1989, being acclaimed as a triumph of liberal democracy, the decade that succeeded it saw a rise in rightwing populist and nationalist parties defying liberal democratic norms¹²³. The presence of ring-wing populist parties amongst the EU's Member States has been increasing since the early 2010s. Following the 2008 financial crisis, the struggles of Western democracies became more evident, which resulted in a weakening of the "liberal consensus" that prevailed until then ¹²⁴. By 2014, in his already mentioned Băile Tuşnad speech, Orbán defined and endorsed the idea of establishing an illiberal democracy in Hungary.

Nowadays, right-wing parties are present in almost every EU country, either being the ruling party in Hungary and Italy or, until recently, in Poland; or they represent the opposition, gaining significant relevance in elections, gathering an increasing number of votes in elections and opinion polls throughout the years. Parties like *Vox* in Spain, *Chega* in Portugal, *Alternative für Deutschland* in Germany, *Rassemblement National* (previously known as Front National) in France and *Partij voor de Vrijheid* (Party for Freedom or PVV) in the Netherlands, have been gaining weight in Member States' politics, bringing to the forefront its illiberal discourse, supporting Eurosceptic and anti-immigration narratives, under the pretext of concern about globalization and dilution of national identities ¹²⁵.

3.1.1. The Hungarian Illiberal Democracy

In February 2019, in the Freedom House ranking, Hungary was demoted to "Partially Free", the first EU member state to ever lose its ranking. This downgrade was justified with the "sustained attacks on the country's democratic institutions by Prime Minister Viktor Orbán's Fidesz party, which has used its parliamentary supermajority to impose restrictions on or assert control over the opposition, the media, religious groups,

¹²³ Rosenblatt, 'The History of Illiberalism'.

¹²⁴ Plattner, 'Illiberal Democracy and the Struggle on the Right'.

¹²⁵ BBC News, 'Europe and Right-Wing Nationalism: A Country-by-Country Guide', *BBC News*, 13 November 2019, sec. Europe, <https://www.bbc.com/news/world-europe-36130006>.

academia, NGOs, the courts, asylum seekers, and the private sector since 2010”¹²⁶. As of today, it maintains this score and status.

Since the government’s election in 2010, Hungarian democracy has been going through a decreasing process. When Orbán gave the famous speech, in 2014, in which he described his political goals as an illiberal democracy, he introduced Russia, Turkey and China as examples to follow¹²⁷. For Bíró-Nagy, Orbán’s definition of illiberal democracy is most likely based on certain economic and political objectives, such as aiming to eliminate checks on executive powers and limiting opportunities for opposition¹²⁸. Under the guise of protecting the Hungarian nation from the depravations of liberalism, Orbán has effectively weakened parliamentary oversight of executive power, dismantled liberal principles and protections such as the rule of law, freedom of the press, and judicial independence, and employed emergency measures to restrain human rights¹²⁹.

Orbán’s politics are also a prime example of culture wars and their impact on the illiberal governance model. In a 2019 speech, he described his long political trajectory as a series of achievements¹³⁰. Orbán explained it by saying: *“Then after 2010 we needed to build this new national system step-by-step, achieving success while at the same time maintaining and regenerating mass support. (...) we’ve had to repel attacks which have sought to question the international acceptance of the national system we’ve developed.”*¹³¹. His Fidesz Party had ‘blocked George Soros’s candidates’, prevented ‘ideological guerrillas’, engaged in ‘struggle within the institutions’, and returned ‘attacks launched’ by the European Commission and courts. His stated aim was to “reject migration, to

¹²⁶ Freedom House, ‘Hungary: Freedom in the World 2019 Country Report’, Freedom House, 2019, <https://freedomhouse.org/country/hungary/freedom-world/2019>.

¹²⁷ Orbán, ‘Speech at Băile Tuşnad (Tusnádfürdő)’.

¹²⁸ András Bíró-Nagy, ‘Illiberal Democracy in Hungary: The Social Background and Practical Steps of Building an Illiberal State’, in *Illiberal Democracies in the EU: The Visegrad Group and the Risk of Disintegration, 2017, Págs. 31-44* (Illiberal democracies in the EU: the Visegrad Group and the risk of disintegration, Fundación CIDOB, 2017), 31–44, <https://dialnet.unirioja.es/servlet/articulo?codigo=8138536>.

¹²⁹ Rosenblatt, ‘The History of Illiberalism’.

¹³⁰ Hesová, ‘Three Types of Culture Wars and the Populist Strategies in Central Europe’.

¹³¹ Viktor Orbán, ‘Prime Minister Viktor Orbán’s Speech at the 30th Bálványos Summer Open University and Student Camp’, <https://2015-2022.miniszterelnok.hu/prime-minister-viktor-orbans-speech-at-the-30th-balvanyos-summer-open-university-and-student-camp/>.

protect families, to defend Christian culture, to announce a programme of national unification and nation-building, and to create an order of Christian freedom”¹³².

As outlined by Orbán himself, the reshaping of Hungary according to Fidesz’s ideals began with the passing of the country’s new Fundamental Law in 2012. According to Bíró-Nagy, the Fundamental Law, accepted without consultation with opposition parties and civil organizations, set a vision of a Christian-conservative political community¹³³. Then, Fidesz underwent a process of limiting constitutional review, by altering its wide scope of jurisdiction, replacing judges with pro-party ones and enacting laws that accepted the constitutionality of previously unconstitutional laws. With the figure of the President also being a pro-party ally and a two-thirds majority in the parliament, Fidesz has completely overpowered the sovereignty bodies of the Nation. Fidesz representatives have also taken functions in most political organs, such as the chief prosecutor and the State Audit Office, as well as the party’s control over the figure of the Ombudsman and the judiciary¹³⁴. Lastly, a biased and overly pro-government media developed, limiting freedom of expression. At the same time, Fidesz continues to demonize the opposition and civil society organizations¹³⁵.

Regarding Hungary’s position in the European Union, a lot has been said and predicted in the long battle of “Orbán versus the EU”. Orbán has adopted a strategy of disparaging the EU’s image, painting an image of demographic and ideological loss for those who happen to have opposing views on matters related to the EU’s liberal democracy, such as human rights or immigration, to use the dissatisfaction of conservatives regarding social and cultural policies in his advantage¹³⁶. Although arguable, the position of many is that Orbán does not wish to leave the Union and its economic benefits. His goal would be to take over mainstream Europe and reshape its future direction¹³⁷, by exploiting the EU’s crisis to his advantage.

¹³² Orbán; Hesová, ‘Three Types of Culture Wars and the Populist Strategies in Central Europe’.

¹³³ Bíró-Nagy, ‘Illiberal Democracy in Hungary’.

¹³⁴ Bíró-Nagy.

¹³⁵ Bíró-Nagy.

¹³⁶ Plattner, ‘Illiberal Democracy and the Struggle on the Right’.

¹³⁷ Plattner.

Here, once again, his greatest asset is the anti-immigration sentiment spread across Europe. Since the rise of migrants and asylum seekers arriving at European borders provoked right-wing views and rallied supporters across the EU, Orbán's tactic proved itself to be fruitful in creating a new generation of populist leaders following his lead ¹³⁸.

In conclusion, despite being elected democratically, Orbán's government has been in power for over 10 years, setting politics that diminish democratic institutions and restructuring fundamentally the democratic system, such as the judiciary and media sectors, allowing the implementation of radical changes without public opposition ¹³⁹.

3.1.2. Illiberal Tendencies in Italy

More recently, in October 2022, Giorgia Meloni was appointed as Italy's first woman prime minister, leading the most right-wing and Eurosceptic government since World War Two¹⁴⁰. After Meloni's party, "Fratelli d'Italia" (Brothers of Italy) swept the victory of the elections in the month prior, a coalition government was formed between FdI and Silvio Berlusconi's "Forza Italia" and Matteo Salvini's "Lega" ¹⁴¹.

Despite the vast media coverage of FdI's neofascist heritage, this outcome came with no surprise, considered to be the culmination of a process that was already predicted in the Italian political climate. Since 2013, the Italian electorate shifted between the Democratic Party, the Movimento 5 Stelle (Five Star Movement; M5S), la Lega and now FdI, showing instability and ideological differences. However, a link between the leaders of these parties can be deduced, from the engagement in populist rhetoric and policies to the promise of a change ¹⁴². Apart from that, deeper factors should not be overlooked, more

¹³⁸ Plattner.

¹³⁹ Bíró-Nagy, 'Illiberal Democracy in Hungary'.

¹⁴⁰ BBC News, 'Giorgia Meloni: Italy's Far-Right Wins Election and Vows to Govern for All', 25 September 2022, <https://www.bbc.com/news/world-europe-63029909>.

¹⁴¹ Angelo Amante and Keith Weir, 'Meloni Takes Charge as PM as Italy Swings to the Right', *Reuters* (blog), 21 October 2022, <https://www.reuters.com/world/europe/italys-meloni-meets-president-set-become-prime-minister-2022-10-21/>.

¹⁴² Dario Mazzola, 'Why Meloni's Victory in the Italian Election Was No Surprise', *The Loop* (blog), 8 November 2022, <https://theloop.ecpr.eu/why-melonis-victory-in-the-italian-election-was-no-surprise/>.

precisely the supranational populist wave that has washed over the European Union since 2015¹⁴³.

Italy has been in political turmoil for the last few years, establishing a populist Eurosceptic government since the 2018 elections¹⁴⁴. Nonetheless, the election of this government came to many as a threat to the European Union's unity, as its ideologies aligned with those of illiberal democracies established already in Europe, such as Hungary. The FdI's party ideology was based on a combination of nationalism, sovereignty, authoritarianism and Euroscepticism¹⁴⁵. However, over the first year as Prime Minister, Meloni abandoned her initial anti-Europeanism, despite still aligning with Eurosceptic visions, positioning herself between Europeanism and sovereignty¹⁴⁶.

3.1.3. Comparative Analysis

While it is clear that Hungary represents a more advanced stage of illiberal democracy, Italy is still navigating the complexities of democratic governance amidst shifting political landscapes. However, the trajectory of both countries stresses the importance of vigilance and proactive measures to safeguard liberal democratic values within Europe. In 2023, both countries presented attacks on the rule of law, democratic institutions and human rights.

Once again, Hungary is at a deeper level of illiberalism, due to years of government and policies. Nonetheless, Italy is following in its illiberal footsteps. Like Orbán, Meloni

¹⁴³ Anthony J. Constantini, 'Understanding Europe's Shift to the Right', *POLITICO* (blog), 30 September 2022, <https://www.politico.eu/article/understanding-europes-shift-to-the-right/>.

¹⁴⁴ Nicolò Conti, Danilo Di Mauro, and Vincenzo Memoli, 'Euroscepticism and Populism in Italy Among Party Elites and the Public', *Quaderni Dell'Osservatorio Elettorale QOE - IJES*, 22 April 2022, <https://doi.org/10.36253/qoe-11552>.

¹⁴⁵ Alessia Donà, 'The Rise of the Radical Right in Italy: The Case of Fratelli d'Italia', *Journal of Modern Italian Studies* 27, no. 5 (20 October 2022): 775–94, <https://doi.org/10.1080/1354571X.2022.2113216>.

¹⁴⁶ Euronews, 'Giorgia Meloni: One Year at the Helm of Italy's Most Right-Wing Government since 1946', euronews, 22 October 2023, <https://www.euronews.com/2023/10/22/giorgia-meloni-one-year-at-the-helm-of-italys-most-right-wing-government-since-1946>.

engaged in culture wars discourse, as she maintained the theory of “great replacement”, pledging to defend Italy’s Christian identity by setting boundaries on immigration ¹⁴⁷.

Italy has shown an undermining of LGBTQ+ rights, inadequate state responses to gender-based violence and reports of discrimination and intolerance, including the use of racist political discourse by politicians¹⁴⁸. In the 2023 Rule of Law Report, the European Commission has also noted the narrowing of civic space and an increase in lawsuits against journalists¹⁴⁹. Meanwhile, Hungary has continued to misuse its powers to overrule judicial decisions and restrict rights, has maintained the discrimination and vilification of LGBTQ+ people, continued to attack independent journalists and media outlets, by creating obstacles and, even, violating the right to freedom of expression¹⁵⁰, and attacking civil society organizations ¹⁵¹.

3.2. The Reality of Migration Politics

In addition to the aforementioned illiberal practices, and as we have gathered throughout the previous chapters, the topic of migration remains a central point of contention within the framework of illiberal and right-wing populist narratives, where policies are often shaped by cultural wars and fearmongering tactics, perpetuating a cycle of division and exclusion. Hungary and Italy’s politics are no exception to this trend, adopting measures heavily influenced by illiberal perceptions.

3.2.1. Hungary’s Anti-Immigration Policies

The rise of illiberalism in Hungary over the last decade has deeply transformed the political and social climate of the country. In power since 2010, Orbán and his radical right Fidesz party have continuously adopted policies and measures to weaken the rule of

¹⁴⁷ John Crace, ‘The Guardian View on Italy’s Election: A Victory for Illiberalism’, 26 September 2022, <https://www.theguardian.com/commentisfree/2022/sep/26/the-guardian-view-on-italys-election-a-victory-for-illiberalism>.

¹⁴⁸ Human Rights Watch, ‘Italy: Events of 2023’, in *World Report 2024*, 2024, <https://www.hrw.org/world-report/2024/country-chapters/italy>.

¹⁴⁹ European Commission, ‘2023 Rule of Law Report Country Chapter on the Rule of Law Situation in Italy’, 2023.

¹⁵⁰ Case of *Index.hu Zrt v. Hungary* (no. 77940/17), No. 77940/17 (ECtHR 2023).

¹⁵¹ Human Rights Watch, ‘Hungary: Events of 2023’, in *World Report 2024*, 2024, <https://www.hrw.org/world-report/2024/country-chapters/hungary>.

law, undermining democracy and weakening civil rights, by adopting a new constitution, several amendments to it as well as several laws that preoccupy the EU and human rights organizations¹⁵². As previously presented, it was Orbán who, in a 2014 speech, admitted his intentions to build an “illiberal state”, that while not rejecting the principles of liberalism, would instead include a “different, special, national approach” to them¹⁵³. In this speech, the Hungarian Prime Minister categorized the EU as an obstacle to the construction of the “illiberal state”, though he said it would not make it impossible.

Migration flows to and through Hungary have hastened these advances. Only in the summer of 2015, amidst the migration crisis in Europe, more than 390,000 asylum seekers, mostly Muslim, crossed Hungarian borders. According to Eurostat’s statistical data, Hungary was the Member State with the highest number of first-time applicants¹⁵⁴.

While normalizing the adoption of an illiberal regime, the Hungarian government passed various anti-migration laws, as they successfully politicized and securitized this moment¹⁵⁵. As Segarra points out, the Hungarian case is a curious one, as it provides the opportunity to observe the transformation of a small and relatively well-working reception system into a system almost works almost exclusively with containment and detention policies, all in less than 10 years¹⁵⁶.

In 2012, in an Observation of the Situation on the situation of asylum seekers and refugees in Hungary¹⁵⁷, the UNHCR raised concerns regarding the reception system in the country, categorizing it as mostly camp-based since 2010, with the adoption of a policy of extensive detention of asylum-seekers who entered or stayed unlawfully. The UNHCR

¹⁵² Lydia Gall, ‘Dispatches: The End of Liberal Democracy in Hungary?’, *Human Rights Watch* (blog), 29 July 2014, <https://www.hrw.org/news/2014/07/29/dispatches-end-liberal-democracy-hungary>.

¹⁵³ Orbán, ‘Speech at Băile Tuşnad (Tusnádfürdő)’.

¹⁵⁴ ‘Record Number of over 1.2 Million First Time Asylum Seekers Registered in 2015’, 4 March 2016, <https://ec.europa.eu/eurostat/documents/2995521/7203832/3-04032016-AP-EN.pdf/790eba01-381c-4163-bcd2-a54959b99ed6>.

¹⁵⁵ Helena Segarra, ‘Dismantling the Reception of Asylum Seekers: Hungary’s Illiberal Asylum Policies and EU Responses’, *East European Politics* 40, no. 1 (20 March 2023): 43–63, <https://doi.org/10.1080/21599165.2023.2180732>.

¹⁵⁶ Segarra.

¹⁵⁷ UNHCR, ‘Hungary as a Country of Asylum. Observations on the Situation of Asylum-Seekers and Refugees in Hungary’, Refworld, 24 April 2012, <https://www.refworld.org/reference/countryrep/unhcr/2012/en/85733>.

raised serious apprehension regarding this asylum detention policy, categorizing it against International and European standards. This practice of detaining asylum seekers was subject to rulings of the ECHR, such as the case *Lokpo and Toure v. Hungary*,¹⁵⁸ where the Court held that the Hungarian government violated the migrant's right to liberty and security¹⁵⁹.

Another instance where a supranational Court ruled against the Hungarian government is in Case C-821/19 of the ECJ¹⁶⁰. This sentencing pertains to the controversial so-called "Stop Soros" Law, which prevented people from applying for asylum if there was no risk to their life and freedom, and outlawed individuals and organizations from helping illegal migrants claim asylum¹⁶¹. After a European Commission referral to the Court, in an infringement proceeding, the Court ruled that the Hungarian law violated EU law and that the country "failed to fulfil its obligations"¹⁶². However, despite acknowledging the ECJ's ruling, the Hungarian government insisted that they wouldn't change their approach to immigration, claiming once again their ideal that "migration to Europe must be stopped and Europe's future must be based on families"¹⁶³.

As of 2023, access to asylum procedures in Hungary remained virtually impossible, following a new 2020 law preventing asylum seekers from lodging protection claims in the country¹⁶⁴. Furthermore, unlawful pushbacks to Serbia continue to happen at Hungarian borders¹⁶⁵. The strong illiberal stance of the Hungarian government and the legal ambiguities of European regulations have created a scenario of almost powerlessness of the EU towards Hungary's compliance. Accordingly, it is not only

¹⁵⁸ *Lokpo and Toure v. Hungary*, No. 10816/10 (ECtHR 20 September 2011).

¹⁵⁹ Article 7 of the European Convention on Human Rights

¹⁶⁰ Case C-821/19, Judgment of the Court (Grand Chamber) of 16 November 2021 (n.d.).

¹⁶¹ POLITICO, 'Hungarian Law Criminalizing Asylum Seeker Help Breaches EU Law, Top Court Rules', POLITICO, 16 November 2021, <https://www.politico.eu/article/eu-top-court-rules-hungary-breached-eu-law-over-treatment-of-asylum-seekers/>.

¹⁶² POLITICO.

¹⁶³ Zoltán Kovács, 'Hungary's Position on Migration Remains Unchanged', Hungary's position on migration remains unchanged, 16 November 2021, <https://abouthungary.hu/blog/hungary-s-position-on-migration-remains-unchanged>.

¹⁶⁴ Human Rights Watch, 'Hungary'.

¹⁶⁵ ECRE, 'Balkan Route: Arrivals to EU Up – Pushbacks and Violations Continue, ECtHR Rulings Against Hungary and Croatia', 2023, <https://ecre.org/balkan-route-arrivals-to-eu-up-pushbacks-and-violations-continue-ecthr-rulings-against-hungary-and-croatia/>.

asylum seekers' rights that are comprised but also the fundamental rights of all Hungarian citizens¹⁶⁶.

3.2.2. Italy at the Forefront: Migration Challenges in Italy

Since the beginning of the migration crisis in Europe, Italy has continuously been one of the most affected countries. The country's location at the southern border of Europe, next to the Mediterranean and in extremely close vicinity to the northern coast of Africa results in a "perfect" position to receive the wave of migrants coming from the sea. Since 2013, over a million migrants have entered Italy, with more than 28,000 people dying or going missing in the process¹⁶⁷. Over the last decade, numerous waves of migrants have reached the country, as a consequence of wars, and economic and political crises in, mostly, African and Middle Eastern countries. As of 2023, a new peak of migrants arrived in Italy, an increase of almost 50% from past years' numbers. Italian government data reported that almost 160,000 migrants had reached Italian shores and land borders since the beginning of the year, a vast influx that, once again, could be explained by the rise in economic and political instability in the Middle East.

With the election of the right-wing, nationalist coalition in 2022, serious concerns were raised in Italy regarding abusive migration policies. In the Human Rights Watch Report referring to the year 2022¹⁶⁸, Human Rights Watch denounced the abusive policies and practices affecting migrants and asylum seekers, other than those coming from Ukraine. While Ukrainians were granted temporary protection, enrolled in Italian schools, and placed in accommodation programs, asylum seekers and refugees of other nationalities were not met with the same conditions, as they were prevented from lodging claims for asylum, leaving hundreds homeless.

The Italian government also continued to fund Libya's migration controls, under an agreement on migration cooperation, which was renovated. By doing so, the Italian

¹⁶⁶ Segarra, 'Dismantling the Reception of Asylum Seekers'.

¹⁶⁷ InfoMigrants, 'One Million Migrants Have Entered Italy since 2013', 3 October 2023, https://www.infomigrants.net/en/post/52278/one-million-migrants-have-entered-italy-since-2013?fbclid=IwAR3CMDQ-jGg9pSWo_VmIh-B6ykTulU0bNHUjQundOWAKisBtt8abu_RebSY.

¹⁶⁸ Human Rights Watch, 'Italy: Events of 2022', in *World Report 2023*, 2023, <https://www.hrw.org/world-report/2023/country-chapters/italy>.

government supported Libya's interception of boats and forceful return of migration to a country where they are exposed to a risk of crimes against humanity¹⁶⁹. Finally, in August 2022, in Joined Cases C-14/21 and C-15/21, the ECJ ruled that Italian authorities can only detain migrant rescue vessels if there is a clear risk to safety¹⁷⁰. This decision emanated as Italian authorities often held NGO ships in port, only allowing some to disembark, although after some delay.

As of 2023, Italian policies keep following the anti-migration illiberal movement. The Human Rights Watch Report¹⁷¹ continues to report the government's efforts to deter migration, by obstructing NGO rescue groups, continuing to cooperate with rights-abusing countries and practicing regressive asylum practices. As peak numbers of migrants, including unaccompanied children, reached Italy by sea, the government continues to fail to ensure adequate facilities and swift transfers to mainland Italy, once again severely overcrowding the Lampedusa Island reception center.

The government keeps obstructing rescues in the Mediterranean Sea. A government decree, converted into law, imposes new requirements to search and rescue organizations, breaching multiple international and EU migration laws¹⁷². Despite this, other policies adopted by Italy involve laws regarding the disembarking of migrant ships, resulting in less time and resources for rescue operations, and laws that difficult the acquisition of special protection and increase the scope for detentions, amongst other changes undermining migrants and asylum rights¹⁷³.

Italy also intensified cooperation with other countries, without regard for human rights, such as Tunisia and renewed its cooperation with Libya. Lastly, in the past November,

¹⁶⁹ Report of the UN Independent Fact-Finding Mission on Libya OHCHR, 'Libya: Urgent Action Needed to Remedy Deteriorating Human Rights Situation, UN Fact-Finding Mission Warns in Final Report', OHCHR, 2023, <https://www.ohchr.org/en/press-releases/2023/03/libya-urgent-action-needed-remedy-deteriorating-human-rights-situation-un>.; Human Rights Watch, 'Italy', 2023.

¹⁷⁰ Joined Cases C-14/21 and C-15/21: Judgment of the Court (Grand Chamber) of 1 August 2022 *Sea Watch eV v Ministero delle Infrastrutture e dei Trasporti (C-14/21 and C-15/21)*, *Capitaneria di Porto di Palermo (C-14/21)*, *Capitaneria di Porto di Porto Empedocle (C-15/21)* (ECJ 2021).

¹⁷¹ Human Rights Watch, 'Italy', 2024.

¹⁷² HRW News, 'Italy's Anti-Rescue Decree Risks Increasing Deaths at Sea', 9 January 2023, <https://www.hrw.org/news/2023/01/09/italys-anti-rescue-decree-risks-increasing-deaths-sea>.

¹⁷³ Human Rights Watch, 'Italy', 2024, 202.

Meloni announced Italy's intentions to build centers in Albania to host migrants arriving by sea to Italian shores, intending to host up to 36,000 migrants per year¹⁷⁴. The idea would be to create facilities outside the European Union, though operating under Italian jurisdiction, therefore covered by EU's asylum rules. Nonetheless, the proposal faces bureaucratic barriers and court challenges, as an expert in immigration law, Maurizio Veglio, states in a communication to Reuters: "This is extremely repressive towards foreign nationals who have a kind of lower-category status on personal freedom because they are not European Union citizens"¹⁷⁵.

Throughout the adoption of all these measures, several complaints have been filed against the country, with the ECHR even condemning Italy for arbitrary detentions and inhuman conditions of unaccompanied children¹⁷⁶.

3.2.3. Conclusion

After this analysis, it becomes evident that both Hungary and Italy exhibit distinct yet concerning trends in their migration policies within the context of their respective democratic systems. Hungary, under the leadership of Viktor Orbán since 2010, has established itself as a full-blown illiberal democracy over the past decade. On the other hand, Italy's trajectory presents a picture of democratic backsliding. While not yet at the same depths of illiberalism as Hungary, Italy has been undergoing a process of democratic erosion for a while, culminating in a far-right populist coalition government, that represents the process of backsliding and worsens the decline.

Hungary and Italy have both shown a disregard for the principle of non-refoulement in their border management practices, such as Hungary's involvement in pushback practices or Italy's handling of rescue ships.

Regarding Hungary's migration policies, Orbán's administration has pursued the implementation of strict migration policies for years. These policies, often criticized for

¹⁷⁴ Angelo Amante, 'Italy to Build Sea Migrant Reception Centres in Albania', *Reuters*, 6 November 2023, <https://www.reuters.com/world/europe/italy-build-sea-migrant-reception-centres-albania-2023-11-06/>.

¹⁷⁵ Amante.

¹⁷⁶ *A.t. and Others v. Italy* (Application no. 47287/17), No. 47287/17 (ECtHR 23 November 2023).

their lack of humanitarian consideration, have prioritized border control and national sovereignty at the expense of human rights and international cooperation. Hungary's stance on migration exemplifies a deliberate departure from liberal democratic values, posing significant challenges not only to its own citizens' freedoms but also to the broader European project's principles of solidarity and human dignity.

Italy's migration policies, while not as explicitly restrictive as Hungary's, have exhibited tendencies towards detention and tightening control. Under various administrations, Italy has grappled with numerous migration flows, often resorting to measures that prioritize border security and national interests over humanitarian considerations. This shift reflects broader societal anxieties and political dynamics within Italy, including the rise of populist and nationalist sentiments, which have influenced policy agendas and contributed to the erosion of democratic norms.

In conclusion, these countries have shown a lack of acceptance of the EU's policies and international asylum law principles by acting on their own accord and bypassing the standards set by the common asylum system. Consequently, by consistently violating the rule of law in their drift towards illiberalism, these Member States continue to show a departure from the EU's founding principles. In this context, the European Union and its Member States must remain committed to upholding the rule of law, human rights, and democratic principles, both within their own borders and beyond, to ensure a future rooted in inclusivity, solidarity, and respect for fundamental freedoms.

3.3. The European Union's Response

To this day, the surge of national populist movements of authoritarian tendency is a pan-European phenomenon. Over the last decades, several EU Member States have experienced a decline in democracy. In most cases, this phenomenon has been accompanied by a progressive detachment from the political, administrative, and normative influence of the EU, as well as a growing contestation over the EU and its policies¹⁷⁷. Characterized by a rejection of traditional liberal values such as individual

¹⁷⁷ Luca Tomini and Seda Gürkan, 'Contesting the EU, Contesting Democracy and Rule of Law in Europe. Conceptual Suggestions for Future Research', in *Illiberal Trends and Anti-EU Politics in East Central Europe*, ed. Astrid Lorenz and Lisa H. Anders, Palgrave Studies in European

rights, the rule of law, and pluralism, the illiberal tendencies taking root in various European countries challenge the post-World War II consensus on democratic governance.

3.3.1. Rule of Law Concerns

The EU has shown that it is not immune to the developments of recent years. These developments, combined with the multiple crises that hit the Union, from the financial crisis to the refugee crisis, Brexit, and the COVID-19 pandemic, have sparked debates about the continent's political trajectory and the future of liberal democracy. At a supranational level, the EU has taken steps to address the challenges posed by illiberalism.

The EU's legal and institutional have started to develop responses to the deviations from liberal democratic norms within Member States' migration policies. The shift towards authoritarianism in certain European Member States presents the EU with the challenge of addressing the rise of illiberal democracy within its borders. This development threatens the rule of law and the free press, the pillars of liberal democracy in the EU, and poses a risk to the fundamental principles upon which the European Union is built.¹⁷⁸ However, some EU interventions in some Member States or candidates' domestic affairs, to defend democracy and the rule of law were met with new contestation, once again altering these countries' relationships with the EU¹⁷⁹.

Right-wing and populist parties have begun to challenge the liberal elements of democracies, emerging as coalitions, in governments and/or gaining parliamentary representation. Though the strongest example of illiberal governance is still Hungary, right-wing parties and coalitions are in parliamentary majorities and ruling governments

Union Politics (Cham: Springer International Publishing, 2021), 285–300, https://doi.org/10.1007/978-3-030-54674-8_12.

¹⁷⁸ Jacques Rupnik, 'Illiberal Democracy and Hybrid Regimes in East-Central Europe.', in *"Illiberal Democracies" in Europe: An Authoritarian Response to the Crisis of Illiberalism*, Katerina Kolozova, Niccolò Milanese (Eds). (The Institute for European, Russian, and Eurasian Studies, 2023), pp 9-16.

¹⁷⁹ Tomini and Gürkan, 'Contesting the EU, Contesting Democracy and Rule of Law in Europe. Conceptual Suggestions for Future Research'.

in countries such as Italy, France, the Netherlands, Germany, Scandinavian countries, and Greece¹⁸⁰.

The rule of law represents the backbone of every modern constitutional democracy, representing one of the founding principles of the EU, as it stems from the common constitutional traditions of all the Member States.¹⁸¹ As foreseen by Article 2 of the TEU¹⁸², the EU was “*founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.*”. In addition, it is laid down by the Copenhagen Criteria¹⁸³ that candidate countries must achieve, among other things, stability of institutions, guaranteeing democracy, the rule of law, human rights, and respect for and protection of minorities. This precondition for EU membership is also present in Article 49 TEU¹⁸⁴, as well as the rule of law being one of the three pillars of the Council of Europe, along with democracy and human rights¹⁸⁵.

Nonetheless, notwithstanding the effort to maintain the characteristics of liberal democracy that have defined it and the values in which it was founded, the EU has seen its rule of law challenged by Member States. Throughout the last decades, some EU

¹⁸⁰ POLITICO, ‘Europe Swings Right — and Reshapes the EU’, 30 June 2023, <https://www.politico.eu/article/far-right-giorgia-meloni-europe-swings-right-and-reshapes-the-eu/>.

¹⁸¹ European Commission, ‘Communication from The Commission to The European Parliament and The Council: A New Eu Framework to Strengthen the Rule of Law’, 11 March 2014, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A52014DC0158>.

¹⁸² European Union, ‘Consolidated Version of the Treaty on European Union, 2008/C 115/01’ (2007), https://eur-lex.europa.eu/resource.html?uri=cellar:2bf140bf-a3f8-4ab2-b506-fd71826e6da6.0023.02/DOC_1&format=PDF.

¹⁸³ Copenhagen Criteria European Council, ‘Accession Criteria (Copenhagen Criteria) - EUR-Lex’ (1993), <https://eur-lex.europa.eu/EN/legal-content/glossary/accession-criteria-copenhagen-criteria.html>, or Accession criteria, are the essential conditions all candidate countries must satisfy to become a member state.

¹⁸⁴ “*Any European State which respects the values referred to in Article 2 and is committed to promoting them may apply to become a member of the Union. The European Parliament and national Parliaments shall be notified of this application (...)*”

¹⁸⁵ European Commission, ‘Communication from The Commission to The European Parliament and The Council: A New Eu Framework to Strengthen the Rule of Law’.

Member States have challenged the rule of law in their countries, such as Poland or Hungary. Nevertheless, the, probably, biggest example is Hungarian's obstructionist strategy, which has been a constant in the EU.

By twisting and turning the rule of law, ensues a transformation of the state into an illiberal democracy, though it continues to provide some legitimacy to the regime¹⁸⁶. According to authors Sajó and Tuovinen, these cases are presented as a mixture of abused rule of law and rule law: the rule of law is simultaneously followed and breached. There are two parts to the process: "The first is a legally compliant change, the second is a replacement by a process that while on its face acceptable, works in the government's favour, or at least does not hinder it, ultimately – step by step – undoing the checks and balances of the constitutional system"¹⁸⁷.

In the case of Hungary, the rule of law has been slowly forsaken by the Hungarian government throughout the last decades, despite the infringement procedures. Sajó and Tuovinen categorize the Fidesz government as the starkest example of the abovementioned process: the Fundamental Law has been modified seven times in seven years, formally within the parameters of the rule of law, however, the amendments have been contrary to counter Constitutional Court's rulings and were not consensual, thus being both within rule of law and disrupting it¹⁸⁸. This creates a problem for the EU since Hungary (and other Member States following in its footsteps) is part of the decision-making process of the EU, hence its illiberal system and rule of law violations end up affecting all the EU citizens.

3.3.2. Counter-Act Mechanisms

The general agreement between scholars continues to be that the EU neglects to fight the rise of illiberal movements within its Member States. Nevertheless, despite the criticism it has endured throughout the years for the way it has been tackling the illiberal turn of some Member States, specifically in the case of Hungary, the EU continues to introduce

¹⁸⁶ András Sajó and Juha Tuovinen, 'The Rule of Law and Legitimacy in Emerging Illiberal Democracies', *Osteuropa Recht* 64, no. 4 (2018): 506–29, <https://doi.org/10.5771/0030-6444-2018-4-506>.

¹⁸⁷ Sajó and Tuovinen.

¹⁸⁸ Sajó and Tuovinen.

measures to counteract the efforts of these countries to reshape European politics in their favor.

To counteract the influence of these “illiberal principles” on the other Member States, the European Commission introduced the Rule of Law Framework (2014), a framework aiming to strengthen the Rule of Law within the European Union. In the words of the Commission, “*the framework seeks to resolve future threats to the rule of law in Member States before the conditions for activating the mechanisms foreseen in Article 7 TEU would be met. It is therefore meant to fill a gap. It is not an alternative to but rather precedes and complements Article 7 TEU mechanisms. It is also without prejudice to the Commission's powers to address specific situations falling within the scope of EU law by means of infringement procedures under Article 258 of the Treaty on the Functioning of the European Union (TFEU)*”¹⁸⁹. This framework presented itself as an instrument to address and resolve situations when there is a systemic threat to the rule of law before the conditions for the activation of the mechanism of Article 7 TEU are met, i.e. it is not an alternative but rather precedes and complements Article 7 TEU mechanisms¹⁹⁰.

Article 7 of the TEU¹⁹¹ establishes the procedures for dealing with breaches of the democratic values set in Article 2. This article, deemed as the “nuclear option”, gives the power of suspension of a member state’s voting rights in the Council. The article states that a majority of four-fifths of the Council’s members must vote positively, thus giving the possibility for Member States to punish one another. Unsurprisingly, despite being triggered before, Member States avoid voting to determine whether there is a “clear risk of a serious breach” of the EU’s common values ¹⁹².

¹⁸⁹ European Commission, ‘Communication from The Commission to The European Parliament and The Council: A New Eu Framework to Strengthen the Rule of Law’.

¹⁹⁰ European Commission.

¹⁹¹ “On a reasoned proposal by one third of the Member States, by the European Parliament or by the European Commission, the Council, acting by a majority of four fifths of its members after obtaining the consent of the European Parliament, may determine that there is a clear risk of a serious breach by a Member State of the values referred to in Article 2. Before making such a determination, the Council shall hear the Member State in question and may address recommendations to it, acting in accordance with the same procedure.” European Union, Consolidated version of the Treaty on the Functioning of the European Union, 2008/C 115/01.

¹⁹² European Parliament, ‘Rule of Law in Hungary and Poland: Plenary Debate and Resolution | 02-05-2022 | News | European Parliament’, 2 May 2022,

Recently, since 2021, the European Parliament introduced Regulation 2020/2092 of the European Parliament and of the Council of 16 December 2020 on a General Regime of Conditionality for the Protection of the Union Budget, henceforth, the Conditionality Regulation¹⁹³, which allows the EU to take measures such as suspension of fund payments or financial corrections, in case of rule of law breaches. In this case, the recipients and beneficiaries of Union funds should continue to receive their payments, directly by the Member States concerned¹⁹⁴. This regulation acts as a measure to monitor Member States' compliance with the rule of law principles, by cutting funds to those who don't.

The European Parliament's lawmakers established as one of their main priorities for the future to "strengthen democratic oversight and fundamental rights"¹⁹⁵. At the same time, as an effort to counteract the backsliding of democracy and to guarantee free media, academia and civil society and open debate without foreign and/or domestic interferences, the European Commission has put forward the European Democracy Action Plan (2020) and after, the Defense of Democracy Package (2023), to complement and deepen its action. The establishment of such mechanisms highlights the EU's determination to safeguard democratic norms and protect fundamental rights. Moreover, initiatives aimed at promoting media pluralism, strengthening civil society, and countering disinformation are being pursued to bolster democratic resilience and foster a culture of democratic citizenship. Henceforward, one can hope that the EU will be able to maintain the constitutional values of democracy and the rule of law in all the Member States while guaranteeing the maintenance of its integrity and liberal values.

Ultimately, it is important to note that the European Union has withheld funds from Hungary due to its rule of law abuses, under the aforementioned Conditionality Regulation (2021). As Members of the European Parliament have expressed strong concerns over the further erosion of democracy, rule of law and fundamental rights in

<https://www.europarl.europa.eu/news/en/agenda/briefing/2022-05-02/6/rule-of-law-in-hungary-and-poland-plenary-debate-and-resolution>.

¹⁹³ European Commission, 'Rule of Law Conditionality Regulation', 2021, https://commission.europa.eu/strategy-and-policy/eu-budget/protection-eu-budget/rule-law-conditionality-regulation_en.

¹⁹⁴ European Commission.

¹⁹⁵ European Parliament News, 'Parliament's Priorities and Achievements', 20 December 2023, <https://www.europarl.europa.eu/news/en/press-room/press-tool-kit/1/democracy-in-action-parliament-s-priorities-and-achievements>.

Hungary¹⁹⁶, In December 2022, the European Commission decided to hold back all of the EU cohesion funds for Hungary, amounting to 22 billion euros, until its government met the conditions on judiciary independence, academic freedoms, LGBTQI rights and the asylum system¹⁹⁷. The EU institutions had already previously decided to freeze 6.3 billion euros of Hungarian funds under requirements for the Hungarian government to fulfill other conditions linked to judiciary and corruption prevention¹⁹⁸. Conversely, in December 2023, the European Commission decided to unblock part of the frozen EU cohesion funds, as some legal changes have been made to strengthen the independence of the judiciary¹⁹⁹. This controversial decision was met with backlash from the European Parliament, sparking contestation about the Commission's management of the rule of law and the timing of the decision²⁰⁰. The decision came one day before an EU summit to discuss new aid to Ukraine, which had been threatened to be blocked by Orbán, which resulted in Commission President Ursula von der Leyen being accused of caving to blackmail²⁰¹. Due to the contradictions in these decisions and the verdict on whether Hungary is respecting the rule of law, the European Parliament has voted to take the Commission to court for breaching its obligations²⁰². It remains to be seen what the developments of this case will be and the effects it will have vis-à-vis the treatment of rule of law breaches in the Member States.

One of the decisive developments in the determination of the future of migration is the level of international cooperation and European integration in several different policy

¹⁹⁶ European Parliament, 'The Hungarian Government Threatens EU Values, Institutions, and Funds, MEPs Say', 18 January 2024, <https://www.europarl.europa.eu/news/en/press-room/20240112IPR16780/the-hungarian-government-threatens-eu-values-institutions-and-funds-meps-say>.

¹⁹⁷ Kate Abnett and Jan Strupczewski, 'EU Holds Back All of Hungary's Cohesion Funds over Rights Concerns', *Reuters*, 22 December 2022, sec. Europe, <https://www.reuters.com/world/europe/eu-holds-back-all-hungarys-cohesion-funds-over-rights-concerns-2022-12-22/>.

¹⁹⁸ Abnett and Strupczewski.

¹⁹⁹ POLITICO, 'Commission Unblocks €10.2B for Hungary as EU Tries to Sway Viktor Orbán on Ukraine', POLITICO, 13 December 2023, <https://www.politico.eu/article/commission-unblocks-e10-2-billion-for-hungary-as-eu-tries-to-sway-viktor-orban-on-ukraine/>.

²⁰⁰ POLITICO, 'Brussels vs. Brussels: EU Parliament to Sue Commission over Hungary Cash', POLITICO, 12 March 2024, <https://www.politico.eu/article/parliament-sues-commission-over-unfreezing-of-hungary-funds/>.

²⁰¹ POLITICO.

²⁰² POLITICO.

areas, such as environment or human rights, hence making the migration policies adopted a decisive development in the shaping of the future of migration in Europe. In conclusion, the EU must continue to adopt measures to counteract the rise of the illiberal threat in the Member States and find ways to ensure the promotion of the principles on which it was founded, such as the rule of law, democracy, and equality.

3.4. Future Direction: Signs of Resistance

While it is true that the emergence of illiberal forces in Europe has been rising in the last decades, with the support of right-wing populist parties expanding in elections and political demonstrations, it is also noticeable that pockets of resistance have begun to form all over the continent. From civil society organizations and independent media outlets to opposition parties, citizens are pushing back against attempts to undermine their democratic freedoms. Grassroots movements advocating for human rights, gender equality, and environmental sustainability start to mobilize citizens and gather support for democratic values, revealing opposition to the cultural wars discourse that belittles and vilifies migrants and other minorities.

3.4.1. Civil Society

Civil Society Organizations (CSOs) that advocate and promote civic engagement, and human rights and participate in policymaking are victims of harassment and credibility questions in some countries, due to populist political forces²⁰³. NGOs and cultural institutions that do not share the government's values are ostracized in illiberal regimes, falling victim to persecution with tools of law, from fiscal audit to criminalization²⁰⁴.

Nonetheless, they have responded by increasing awareness-raising campaigns, promoting civic education, and critical thinking and incentivizing people to be active in their own governance. At the same time, the European Parliament and the European Commission also prioritized critical thinking and media literacy campaigns, to recognize and stop fake

²⁰³ European Economic and Social Committee, Tina Divjak, and Goran Forbici, *The Future Evolution of Civil Society in the European Union by 2030* (LU: Publications Office of the European Union, 2018), <https://data.europa.eu/doi/10.2864/390387>.

²⁰⁴ Sajó and Tuovinen, 'The Rule of Law and Legitimacy in Emerging Illiberal Democracies'.

news²⁰⁵. Regarding civil resistance against populist and illiberal figures, a pattern has emerged in Europe. This pattern is categorized by nonviolent demonstrations aiming to express collective frustration over illiberal attitudes and electoral gains²⁰⁶. In countries such as Hungary, and Italy, mass protests have erupted in response to restrictions on social rights and human rights violations, as well as corruption scandals and the rise of far-right politics, signaling a growing demand for accountability and transparency.

As Viktor Orbán's government restricts freedom and criminalizes those who do not align with its views, thousands of people resort to protesting. From marches against anti-LGBT measures²⁰⁷ to students demanding education reforms and the repeal of legislation that limits teachers' rights²⁰⁸, to Antifascist protests against the far-right²⁰⁹, the citizens keep showing their disapproval of the country's politics. The same happens in Italy and other countries in which citizens have seen their liberties being limited. It is noteworthy, though, that pro-rightwing demonstrations normally occur in parallel with anti-rightwing demonstrations²¹⁰.

3.4.2. Political Opponents

For political opponents of illiberal regimes, the biggest challenge is to build effective resistance to the "illiberalization" of democracy, without turning into illiberal actors themselves. To avoid this trap, authors²¹¹ define that an effective strategy would have to be legal, nonviolent, and inclusive. Legal as it allows opponents to denounce the regimes'

²⁰⁵ European Economic and Social Committee, Divjak, and Forbici, *The Future Evolution of Civil Society in the European Union by 2030*.

²⁰⁶ Janjira Sombatpoonsiri, 'Rethinking Civil Resistance in the Face of Rightwing Populism: A Theoretical Inquiry', *Journal of Peacebuilding & Development* 13, no. 3 (December 2018): 7–22, <https://doi.org/10.1080/15423166.2018.1496028>.

²⁰⁷ Reuters, 'Budapest Pride March Draws Thousands In Protest Against Government's Anti-LGBT Moves', 15 July 2023, <https://www.rferl.org/a/hungary-budapest-pride-protest-lgbt-restrictions/32505029.html>.

²⁰⁸ Associated Press, 'Students Call for Education Reform in Hungary Protest March', 16 March 2023, <https://ny1.com/nyc/all-boroughs/ap-top-news/2023/03/15/students-call-for-education-reform-in-hungary-protest-march>.

²⁰⁹ Associated Press, 'Antifascists Gather in Hungary to Oppose Annual Far-Right Event as Italian Activist Remains Jailed', 10 February 2024, <https://abcnews.go.com/International/wireStory/antifascists-gather-hungary-oppose-annual-event-italian-activist-107127348>.

²¹⁰ Sombatpoonsiri, 'Rethinking Civil Resistance in the Face of Rightwing Populism'.

²¹¹ García-Holgado and Pérez-Liñán, 'The Weaknesses of Illiberal Regimes'.

breaches of democracy and law; nonviolence to preserve the moral integrity of the movement; and inclusivity to accommodate the divert of opposition camps, whose only common characteristics are their loathing of the illiberal rule²¹². Nevertheless, the authors propose that when the opponents delay the illiberal process, illiberal leaders fail to impose a hybrid regime and eventually could be defeated within the parameters of democratic rule.

As of 2024, it appears that some countries are doing exactly that. In the October 2023 elections in Poland, the democratic opposition won enough parliamentary seats to oust the authoritarian Law and Justice (PiS) party that ruled in the majority since 2015²¹³. The new government, made up of a coalition of three major political forces, has promised a full restoration of the democratic order²¹⁴. The party has already made quite some progress in the fight against the illiberal ideals and restoration of the rule of law in Poland. By the end of 2023, the Sejm²¹⁵ had already passed an important resolution on the National Council of the Judiciary, which was under political control as one of the subjects of PiS's reforms of the justice system.²¹⁶ With this new regulation, the impartiality of the body will likely be restored. At the same time, another resolution has passed on the need to restore the impartiality of state media (Ciobanu, 2024). Despite this ray of hope, it is still early to assess the political future of Poland regarding other topics, like abortion and other social rights, as well as try to predict if any other country will follow in its footsteps. Still, should progressive parties effectively rally the electorate, the 2024 elections could mark a shift in the illiberal tendencies all over Europe.

On the opposite end, at the time of the conclusion of this dissertation, the Portuguese far-right populist party, Chega, achieved historical results in the March elections. Achieving

²¹² García-Holgado and Pérez-Liñán.

²¹³ Sona Muzikarova, 'Europe's Chance to Finish off Illiberal Democracy', *The Strategist* (blog), 22 November 2023, <https://www.aspistrategist.org.au/europes-chance-to-finish-off-illiberal-democracy/>.

²¹⁴ Claudia Ciobanu, 'Poland in 2024: Democrats Return to Power; Early Signs Show Delivering Will Be a Battle', *Reporting Democracy* (blog), 17 January 2024, <https://balkaninsight.com/2024/01/17/poland-in-2024-democrats-return-to-power-early-signs-show-delivering-will-be-a-battle/>.

²¹⁵ Poland's Parliament

²¹⁶ Ciobanu, 'Poland in 2024: Democrats Return to Power; Early Signs Show Delivering Will Be a Battle'.

more than 1 million votes, the party has elected almost 50 Members of the Parliament, perfectly illustrating the rise of these ideals in yet another EU Member State. As the number of far-right Parliament Members quadrupled in the last 2 years, it remains to be seen how this will affect Portuguese politics and how it will evolve within the context of the EU and the context of migration.

The outcome of this change in several countries, with some embracing ever-increasing extremist views, while others start to drift apart from these ideologies, will depend on a multitude of factors, such as the resilience of democratic institutions, the efficacy of international cooperation, and the commitment of citizens to defend liberal values. In conclusion, we can only hope that, while the specter of illiberalism continues to loom large over Europe, the emergence of resistance, both political and civil society, offers hope for a more democratic and inclusive future. By remaining vigilant, mobilizing collective action, and reaffirming commitment to democratic principles, the hope is that the European Union and Member States can continue to fight towards a future where democracy, freedom, justice, and equality prevail.

CONCLUSION

As Europe navigates the uncertainties of the 21st century, understanding the future directions of illiberalism is essential for safeguarding the principles of liberal democracy and upholding the values upon which the European project was founded. At the same time, the topic of migration policies in the European Union continues to be a nuanced and complex matter which underscores the ongoing challenge of navigating their intersection with the politics of Member States. The intricate nature of migration policies and the rise of illiberal ideologies highlight the need for careful and nuanced approaches to address these issues effectively.

In conclusion, this dissertation strove to provide a multifaceted understanding of the implications and challenges posed by illiberal practices within the European Union, with a particular focus on migration policies, through an examination of the concept of illiberalism, its manifestations, and the interplay between illiberal practices and democratic principles. Through the analysis of illiberalism, its causes and subsequent rise in Europe and the consequences of illiberal discourse in EU migration policies, it can be concluded that illiberal democracies and populist rhetoric pose a threat to migration and asylum policymaking in the European Union.

The first chapter laid the groundwork for this dissertation by defining the core elements of illiberalism. Truly, the origins and characteristics of illiberalism are intertwined, as one is a consequence of the other: by adopting certain types of illiberal thoughts and narratives, populist leaders generate waves of support for them, which end up defining generations to this day. As seen in this dissertation, the current trend in illiberalism is the negation of multiculturalism. The process of becoming an illiberal democracy involves a gradual process of democratic decline.

Subsequently, chapter two explored the cultural dimensions of migration policies and the de-Europeanization of such policies in certain Member States. Foremost, the European Union's framework concerning migration and asylum was laid down, establishing the migration policies that the EU has been following throughout the last decades. Subsequently, an introduction to culture wars and the common narratives that are used to create fear and insecurities toward immigrants and multicultural societies. By shedding light on the role of identity politics, nationalism, and xenophobia in shaping public

discourse and policy responses, the aim was to gain insight into how these types of narratives lead to a de-Europeanization of migration and an erosion of the liberal and democratic EU norms.

For chapter three, the goal was to assess, in particular, the theoretical framework set in the last two chapters. Starting by analyzing both Hungary's and Italy's illiberal tendencies and politics, the conclusion is that Italy, while being a much newer government, is following the footsteps of Orbán's Hungary. Then, through an in-depth analysis of their migration policies, we concluded the implications of these divergences for both Member States and their respective relations with the EU.

Lastly, still within chapter three, the purpose moved towards evaluating the European Union's responses to the challenges posed by illiberal democracies' migration policies. By assessing the EU's legal and institutional responses, the conclusion is that the EU is committed to liberal democracy. However, the actions of some Member States go against the values set in Article 2 (TEU). Thus, European institutions must adopt policies and amend laws that counter-act the advances of illiberal politics within the EU. Lastly, the analysis of the opposition and signs of resistance from civil society and political opponents gave some insights into potential ways forward and how to fight back.

By grappling with these questions, the goal of this thesis was to provide insights into the complex interplay between democracy and illiberalism in Europe and to offer reflections on potential pathways forward. As we navigate this critical juncture in European politics, with the European elections of 2024 approaching and the threat of a rise in extremist views within the EU intensifies, understanding the responses of illiberal countries to the EU and its policies is essential for grasping the challenges and opportunities facing the European project in the years to come.

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