

International Conference Public Administration in a Democratic Society: Thirty Years of Democratic Transition in Europe, 3-6 October 2019, Dubrovnik, Croatia

Goranka Lalić Novak, PhD, associate professor, Department for Administrative Science, Faculty of Law, University of Zagreb, e-mail: goranka.lalic@pravo.hr

Teo Giljević, PhD, assistant professor, Department for Administrative Science, Faculty of Law, University of Zagreb, e-mail: teo.giljevic@pravo.hr

THE JANUS-FACED CHARACTER OF MIGRATION GOVERNANCE IN CEE COUNTRIES

Abstract

*The migration patterns in post-socialist Central and East Europe countries were different when compared to old EU member states. During the period after WWII until 1990, those patterns involved primarily migration to and from other CEE countries (and the Soviet Union) that were part of the Soviet bloc. In former Yugoslavia, less oppressive regime, together with a high demand for workers in the Western European countries, opened a space for rather massive labour emigration during 1960s-1970s. After the collapse of previous regimes and during a transition period in the 1990s, CEE countries experienced an increase in immigration; however, relatively small numbers of immigrants have been arriving from outside Europe. The topic of migration was marginal in public and political discourse. At the same time, under the EU accession requirements, those countries had to quickly develop migration policies and align their legislation with *acquis communautaire* on migration and border security. The migration governance was considered as an administrative issue, concentrated on the development of policy documents and legislation, as well as building administrative capacities for protection of (EU external) borders and development of asylum systems.*

The mass migrations in 2015 and 2016 have opened a new chapter regarding migration governance in CEE countries. Some of them, such as Visegrad countries, strongly opposed the EU initiatives in the area of migration and asylum which influenced their relations with EU institutions but also other member states. CEE countries have begun to consider migration only as an issue of security and matter of internal politics. As a result, public debate on refugees and migrants has hardened, very often apart from the objective reality of country's exposure to the mass migrations. In some CEE countries that led to the advocating for the halting of immigration by conservative and populist political parties, and influenced the adherence to democratic values and standards.

The paper aims to explore the relationship between the transition and Europeanization at one side and the development of migration governance on the other side in CEE countries, based on the path-dependency approach. The paper will focus on the question to what extent (post-)socialist factors influence national migration governance and policies which are at the same time governed by the EU regulatory framework. The analyses will include the overview of migration policy developments before and after the accession to the EU, building on the premises that the EU has been the main accelerator for development of migration policies in CEE countries. It will be argued whether the effectiveness of the transfer of values and norms relating to migration during the accession process has been replaced by 'national turn' after joining the EU.

THE JANUS-FACED CHARACTER OF MIGRATION GOVERNANCE IN CEE COUNTRIES

1. Introduction

Central and East European (CEE) countries¹ are not only geographically close but also share similar historical patterns of political and societal development. All of them were communist or socialist countries, and after the collapse of previous regimes have been developing political systems and institutions as well as the market economy, with a longer or shorter period of democratic and economic post-socialist transition. However, many transition scholars have documented that CEE states experienced communism/socialism and pursued economic and political reforms differently (Lindstrom, 2015, p. 2). The transformation has not only been shaped within the domestic political arena but has also been influenced by external actors, first and foremost by the EU and its conditions of membership which applicant states must comply in full, leaving little room for debating those rules (Mair & Zielonka, 2002, p. 2).

Overall, the migration patterns in post-socialist CEE countries were different when compared to western European countries and old EU member states. CEE countries were mostly emigration countries during their history, and with the collapse of the previous regime and the accession to the EU, migration patterns and governance have changed. The 2015 mass migrations have opened a new chapter regarding migration governance all over EU, with immigrations often perceived as an issue of security and matter of (primarily) internal politics, with increasing Islamophobia as a result of the fear that the increase in the number of Muslims would cause the loss of European identity. As the response to the crisis, the EU has developed a number of measures articulated around two central objectives: securing and managing its external borders while saving lives and protecting the human rights of refugees and migrants. However, the internal crises of the European project together with 2015 mass migrations have significantly influenced the further harmonisation

¹ It is assumed that this region includes eleven countries which share common characteristics: Bulgaria, Croatia, Czech Republic, Estonia, Latvia, Lithuania, Poland, Romania, Slovakia, Slovenia and Hungary.

of the migration policy within the EU, with a number of disputes between EU institutions and member states — over free movement, visa policy, the enlargement of Schengen, and over acceptance of refugees and asylum-seekers (Hampshire, 2016).

The paper aims to explore the relationship between the historical legacies and Europeanization at one side and the development of migration governance on the other side in CEE countries. The paper focuses on the question to what extent (post-)socialist factors influence national migration governance and policies which are at the same time governed by the EU regulatory framework. It provides the overview of migration policy developments in selected CEE countries before and after the accession to the EU, building on the premises that the EU has been the main accelerator for the development of migration policies (top-down Europeanisation). Also, the paper explores whether the effectiveness of the transfer of values and norms relating to migration during the accession process has been replaced by ‘national turn’ after joining the EU in the aftermath of the 2015 refugee crises. It is assumed that in a crisis Europeanisation might be changed when the salience of an issue increases and leads to high politicisation and resistances at the domestic level (Saurugger, 2014). This paper considers this argument through a comparison of four new EU member states: Hungary and Poland, two members of the Visegrad Group (V4), and Croatia and Slovenia who were both members of former Yugoslavia and therefore share a common historical background. Poland, Hungary and Slovenia are members of the Schengen area, while Croatia is a candidate country for accession to the Schengen. Hungary and Croatia are countries situated (and protecting) the EU external border.

The migration governance is considered to include the following aspects: labour migration, refugees and asylum policy, family migration and irregular migration. In terms of the EU immigration policy, migration governance follows several different aims, such as the restriction and control of immigration; the attraction of particular groups of immigrants (for instance, the highly skilled); the protection of refugees and prevention of refugees and asylum seekers movements; the integration of migrants.

The paper draws on historical institutionalism in researching development of migration governance within the Europeanisation process, as first conceptualized by Bulmer and Burch (1998) who examined the adaptation of UK Whitehall to participation in the EU. Their research

pointed to the importance of conceptual lenses in shaping responses to Europeanization, arguing that the British responses to EU membership have been embedded in domestic patterns of government, as perceived and constructed by national elites. As historical institutionalism often relies on the concepts of path dependence and critical junctures as explanatory tools for explaining institutional development and the direction of change, this paper uses these concepts for research of migration governance in CEE countries.

The paper is organized into five sections. This introduction is followed by a brief overview of key concepts used in the research: Europeanisation, path dependency and critical junctures concerning the research of migration governance. The third and fourth part provides an overview of the migration governance in analysed CEE countries over time. In the fifth part, the authors discuss the findings and conclude by identifying the areas for future research.

2. Key concepts: Europeanisation, path dependency, critical junctures and migration governance

In last two decades, the Europeanisation has emerged as an important separate research field in European studies and today it is considered to be “a distinct research agenda at the nexus of EU Studies and Public Administration” (Jensen & Kristensen, 2013, p. 13), including the bottom-up, top-down and cycle/circular approach. In terms of the countries researched within the Europeanization framework, the early researches were conducted and applied within the context of West European states. However, following the EU enlargement to the CEE countries, many scholars turned their focus to analyses of the influence of the EU on candidate countries (Radaelli, 2016). In terms of migration governance, the Europeanisation process has been vastly researched, by top-down, bottom-up and circular approaches. However, the literature on Europeanisation of migration governance in CEE countries is somewhat less developed (see for example Phuong, 2003; Nauditt, 2002; Byrne, Noll & Vedsted-Hansen, 2002; Geddes & Taylor, 2013; and works cited in this paper).

When explaining how European policies, rules and norms are affecting domestic political systems, Europeanisation scholars very often ground their research in the broad spectrum of theories that fall under the umbrella of the so-called “new institutionalism” (Vink & Graziano, 2007, p. 13).

Historical strand of institutionalism points at the temporal dynamics of change. In Europeanisation studies, scholars turn their attention to the temporal dimension of domestic adjustment processes to the EU, offering insight into the dynamics of integration: the contrasts between incrementalism and “constitutional moments”, when a major change occurs (Bulmer, 2007). The concept of path dependence is the most closely associated with historical institutionalism, and although sometimes criticized as too simple and obvious (indeed “history matters”), it could be a useful instrument in researching policy developments, such as migration policy, over time. For example, Hansen (2002) in his research of colonial immigrants to France and Britain and asylum seekers to Germany has proven that governments accepted larger migrations and naturalizations because of the path-dependent effects of their citizenship and constitutional regimes. In their analysis of migration and citizenship Law in Spain, Martin-Perez & Moreno-Fuentes (2012) have shown that, despite the large-scale immigration experienced over the last two decades, the high degree of stability of Spanish citizenship law can be connected to the historical conceptions derived from its colonial and nondemocratic past and remained clearly framed within the logic of a traditional country of emigration.

Some scholars, however, consider that path dependence would be more characteristic to stable times while critical junctures are a better explanatory tool for institutional change (Lowndes & Roberts, 2013, p. 40). For example, the 1970s oil has often been referred to as the reason for policy change in labour migration policy. As the oil prices increased, western economies experienced a severe crisis leading to high unemployment, and consequently fundamentally changed their migration policies of recruitment of foreign workers, leading to an end of the post-war pattern of guest worker systems (Castles, 1986, p. 771). On the other hand, Roos & Zaun (2016) have questioned the conclusion that the 2007 economic crisis should be considered a critical juncture for migration movements and migration policy in Europe and the U.S, stating that “the impact of external shocks should not be overrated, as they only translate into policy change when there are actors that actually use these crisis events to foster change. Hence external shocks do not induce a critical juncture per se.” (2016, p. 1586).

3. Migration governance in Hungary and Poland: from isolation to anti-immigrant attitudes

Since 1989, Poland and Hungary have been democratic countries based on the rule of law with a tripartite division of power. Both countries are ethnically homogeneous according to their 2011 census as a result of radically altered borders and population expulsions at the end of WWI and WWII. Poland's population by ethnic affiliation include Polish (96.9 per cent), Silesians (1.1 per cent), Germans (0.2 per cent), Ukrainians (0.1 per cent) and others 1.7 per cent, while 87.5 per cent of Poles identify themselves as Roman Catholic.² According to 2011 census, Hungary is inhabited mostly by Hungarians (85.6 per cent), while minorities include Romani (3 per cent), Germans (1 per cent), Slovaks (0.3 per cent), Romanians (per cent), and Croats (0.2 per cent). Almost 15 per cent of the population did not declare an ethnicity at the 2011 census.³ Although both countries do not have a large community of Muslims (approximately 30,000-50,000 in Poland and 10,000-25,000), there is an increase in xenophobic attitudes towards Muslims over the past years (Bayrakli & Hafez, 2019).

After the fall of the Berlin Wall in 1989, the EU established diplomatic relations with CEE countries. In 1993 the European Council declared that CEE countries who have desire are going to become members of the Union. Poland and Hungary applied for EU membership in 1994 and accession negotiations began in 1998. Both countries joined the EU on 1 May 2004 and entered Schengen area in December 2007.

3.1. Migration governance in Poland and Hungary during communism

In Hungary, the Communist apparatus⁴ closed down the border with the barbed-wire fence and controlled and blocked travelling and migration on the bases of regulations that were not public

² <https://stat.gov.pl/en/topics/other-studies/other-aggregated-studies/demographic-atlas-of-poland,16,1.html#>

³ <http://www.ksh.hu/nepszamlalas/?lang=en>

⁴ From 1920 to 1944, Regency ruled Hungary, with the main aim to increase the population, enlarge the number of taxpayers, and augment the military manpower of the state. In this period state tightened its emigration policy and withheld nationals from permits and passports (Kosa, 1957), which can be compared with population policy of Hungarian Government led by V. Orban who conduct nationalistic domestic politics that prioritise Hungarian and portrait itself as the defender of the nation and of European Christianity (Gyollai & Amatrudo, 2019).

(DEMIG, 2015).⁵ The 1956 Revolution opened the borders for a short period (a few weeks), and many people emigrated from Hungary (Kosa, 1957). Strict border control was reinstalled in 1957, and those who left the country were considered as illegal border crossers, but shortly after, the amnesty was granted for all returnees. By 1957 Act on Nationality emigrants were deprived of their citizenship. After the Revolution, the possibility of Hungarians to travel was gradually increased. After the WWII, Poland lost eastern Polish lands inhabited by Polish citizens and gained eastern German lands populated largely by German citizens. In 1951, Act on Polish Nationality determined citizenship primarily based on ethnicity principle.⁶ Act on Citizenship (1962) introduced *ius sanguinis* principle and it remained in effect until the end of the communism era without significant amendments (Gorny & Pudzianowska, 2010). So-called “Polish October” in 1956 slightly loosen the Government's control over the Polish society. In 1959, Act on Passports moderately opened the exit system and introduced right to a passport into the Polish legal system. In 1977, the Aliens Act extensively regulated area of migration governance, defining the conditions of entry and stay into the country and creating entry visas. The Act was in effect until the mid-1997 (DEMIG, 2015). However, the political and economic crisis in 1980 led to massive arrests and repression. As a result of 1981 Martial Act, there was a large scale emigration to Western European countries where Polish nationals sought political asylum (Szulecka, Pachocka & Sobczak-Szelc, 2018). In 1989, the Employment Act liberalized labour emigration (DEMIG, 2015). In terms of protection of refugees, the right to asylum was guaranteed by the 1952 Polish Constitution.

⁵ After WWII 200,000 Germans and 73,000 Slovaks were resettled from Hungary to their nation states, while 113,000 ethnic Hungarians were resettled in Hungary from Czechoslovakia. Only after these extensive population movements, Hungary became an ethnically homogeneous country as it is today (Hars, 2009).

⁶ Poland signed several repatriation agreements with USSR in the 1940s and 1957. Germans were expatriated based on Potsdam agreements in the post-war period by the 1946 Act on Exclusion of Persons of German Ethnicity from Polish Society. Government formed special administrative organization to verify the Polish ethnicity of those who wished to stay in Poland and adopted Act on the Polish citizens of Persons of Polish Ethnicity Inhabiting the Regained Territories and similar decree for inhabitants of Gdansk which determine citizenship on the basis of ethnicity (Gorny & Pudzianowska, 2010). The rationale behind was an idea of the homogeneous nation-state of ethnic Poles and the idea of expelling people with non-Polish ethnicity from Poland (DEMIG, 2015)

After the proclamation of the Iron Curtin until democratic changes, it was very difficult for immigrants to enter Hungary and Poland legally. Poland granted asylum only for pro-communist refugees: to over 13,000 Greek refugees arrived during the Greek Civil War (1948-1950), as well as to nearly 1,000 Chilean political refugees (1973). Also, the immigrant population included a low number of aliens, mostly citizens of communist states (often spouses of Polish citizens or students from the USSR, Bulgaria and Vietnam who decided to settle in Poland) (Szulecka, Pachocka & Sobczak-Szelc, 2018). Polish Government allowed free mobility with East Germany in 1972 and in 1979 free mobility with USSR (DEMIG, 2015). Hungary also granted international protection for pro-communist refugees (Greek and Chilean), however, the Central National Authority for Controlling Aliens (KEOKH), as a responsible body, set the issue with some informal decrees. In late 1980s, immigrants arrived from the neighbouring countries - Romania, Ukraine and Yugoslavia (Gyollai & Korkut, 2019). During 1980s small number of channelled labour immigrants from Cuba, China, Mongolia entered Hungary as trainees or as guest workers (DEMIG, 2015).

3.2. Migration governance in Hungary and Poland after 1989 and the role of EU

After democratic changes in early years of transition, migration was an important issue in Hungary followed by many changes of migration-related regulations. However, after a few years, conditions have changed, and migration governance becomes primarily administrative task. Hars (2009) identifies three phases of migration governance in Hungary after democratic changes. The first phase – the quasi migration period (1988-1992) is characterized by unexpected immigration followed by regulation which represents the foundation of the legal and institutional framework starting with a Constitutional amendment and ending before the drafting of the first Acts on Immigration and Citizenship. The second phase – shaping immigration regulations (1992-2000) is characterized by consolidation and stabilisation of the migration governance. Third phase - the (slowly) developing maturity of the migration regime (2001-) is characterized by legal and institutional harmonisation with or adjustment to the EU law (Hars, 2009). In migration governance in Poland, there were three phases after 1989: institutionalisation (1989-2001),

Europeanisation (2001-2004) and stabilization (2004-2010) (Szulecka, Pachocka & Sobczak-Szelc, 2018).

In 1989, amendment of the Hungarian Constitution introduced responsibility of the state for Hungarians who live outside Hungary (diaspora) and to foster a relationship with them (DEMIG, 2015). At the beginning of the 1990s there were more than 35,000 immigrants in Hungary, but the vast majority were Romanian citizens of Hungarian origins (30,000). Also, there were 1,000 Chinese who did not need a visa for entering Hungary and 1,000 citizens of the EU. In the statistics, immigrants were listed as others. Although Romanians were not listed as refugees, they were neither listed as immigrants, so Hars categorize them as ‘quasi-refugees’ (Hars, 2009). Amendment of Constitution in 1989 introduced the right to asylum for the first time in Hungarian history. In the same year, Hungary joined the 1951 Refugee Convention with a geographic reservation limiting its application to European refugees (DEMIG, 2015).

During the 1990s, Hungary imposed restrictions on the annual quota of immigration permits in order to boost employment of Hungarians. In the early 1990s, over 100,000 refugees come to Hungary fleeing from Croatian and Bosnian war (Gyollai & Korkut, 2019). Because of a large number of immigrants, in 1993 the new Act on the Entry, Residence and Settlement of Aliens was enacted, which in comparison to previous 1989 Act significantly limited the possibility to legally reside in Hungary (Ceccorulli et al, 2015). In 1998, Act on Asylum came into force and granted family reunification to the immediate family of recognized refugees. The Act on the Entry and Stay of Aliens Nationals (2001) consolidated the migration governance (DEMIG, 2015).

During EU-accession period, Hungary adopted national legislation on migration in order to harmonise it with EU acquis and established Immigration and Naturalisation Office, a civil-law body under the supervision of the Interior Ministry (Ceccorulli et al, 2015). 2004 amendments to the Asylum Act revoked the possibility of implementing a deportation procedure once an application has been fully processed and introduced possibility of regularisation of certain aliens who illegally resided in Hungary under condition they can provide proof of entry prior to 1 May 2003. Act II on the Entry and Stay of Third-Country Nationals from 2007 extended the scope of family members of a refugee who may be granted a visa or a residence permit on the grounds of family reunification. In 2009 the Government adopted first strategic document for migration,

Strategy of the Cooperation in the Area of Freedom, Security and Justice of the Republic of Hungary for five years' period (DEMIG, 2015). The Government announced its decision to Hungary become a resettlement country in October 2010.⁷ After 2010, the asylum policy drastically changed. Before 2010 it was rather permissive concerning obligations and optional provisions from EU acquis, while from 2010 onward it is becoming stricter and Hungary is transposing mainly the stricter rules of EU directives on asylum (Ceccorulli et al, 2017).

In 1997, Polish Constitution granted the freedoms and rights ensured by the Constitution for all people under the authority of the Polish State and provided that the exemptions from this principle regarding aliens must be specified by law. It guarantees the right to international protection (Szulecka, Pachocka & Sobczak-Szelc, 2018). In 1997 Poland enacted Aliens Act which introduced the notion of the safe third country' and safe country of origin in the refugee determination procedure. New Act introduced additional requirements from incoming aliens, including visitors and tourists. Repatriation Act (2000) created a specific entry visa for repatriates (ethnic Poles living in the area of the former USSR). Amendment of the Alien Act nullified third country safe list creating asylum application category, introduced a temporary protection status and for the first time in Poland history established Office for Repatriation and Aliens responsible for migration governance. In 2003, Act of Protection of Aliens introduced the concept of statutory temporary suspension of deportation which institutionalised tolerated status for the large numbers of rejected asylum seekers from Russia, mainly of Chechen origin and allowed detention for aliens who applied for refugee status without a valid visa or who stayed in Poland illegally (DEMIG, 2015). Amendment to the Act on Protection of Aliens in 2008 introduced subsidiary protection, while the 2011 Amendment of the same Act introduced the possibility of relocation and resettlement of aliens to Poland.⁸ In 2012, the Council of Ministers adopted the Migration policy

⁷ Hungary was part of the EU's Reallocation Project for Malta (EUREMA) project and offered places for a family from Malta in 2011 (<https://www.refworld.org/pdfid/4f9167db2.pdf>). In 2012, Hungary made its first resettlement program from Ukraine (DEMIG, 2015).

⁸ 2015 Amendments of Act of Protection of Aliens introduced provisions on the relocation to Poland of persons with international protection granted by other EU countries and the introduction of provisions of access to free of charge legal aid for asylum seekers, however shortly after newly elected Government withdrawn a decision on relocation to Poland of asylum seekers from other countries (Szulecka, Pachocka & Sobczak-Szelc, 2018).

of Poland – the current state and recommended actions, as the key national strategic policy document in the area of migration. In 2013 new Aliens Act was enacted, which introduced a permit for stay due to humanitarian reasons and revised the permit for tolerated stay (Szulecka, Pachocka & Sobczak-Szelc, 2018).

With Hungary's and Poland's accession to the EU in 2004, the emigration augmented for a decade. The peak of emigration was in 2015 with 32,800 Hungarian citizens leaving the country, while in 2017 this number decreased to 25,100. Outward migration of Hungarians is particularly high among the skilled and young population; doctors, health care professionals, engineers, technical workers. Labour shortages have already become prevalent in certain professions (Gyollai & Korkut, 2019). At the same time, the number of Hungarian citizens returning from abroad has been increasing steadily since 2014, as well as in Poland wherein 2016 migration balance was positive for the first time in democratic Poland.⁹

3.3. Migration governance in Hungary and Poland: mass migrations as a trigger for crimmigration policy

Since 2015 migrant crisis, the securitisation narrative dominates in the Hungarian Governments politics. Asylum system has been gradually dismantled by introducing a series of laws that made access to asylum very difficult and ignored agreed EU asylum policy. Hungary justified stringent control measures in its immigration and criminal policy by reason of protecting the national interest and security concerns, and its right and obligation to protect the economic, social, cultural and physical integrity of the nation. Amendments of Criminal Act in September 2015 introduced criminal offences punishable by 3 to 10 years' imprisonment for the unauthorized crossing of the border fence, damaging the border fence, and obstruction of the construction works related to the border fence.¹⁰ Amendments of the Act on Criminal Proceedings introduced a fast-track procedure

⁹ https://eacea.ec.europa.eu/national-policies/eurydice/content/population-demographic-situation-languages-and-religions-56_en

¹⁰ Expulsion is mandatory for those who were sentenced to those offences. Between 15 September 2015 and 31 March 2016, 2,353 migrants were convicted of unauthorized border crossing (Gyollai & Amatrudo, 2019).

for these offences and proclaimed a state of crisis due to mass migration during which these criminal proceedings have priority prior to all other cases (Gyollai & Amatrudo, 2019). Also, in late 2015 the Government shut down the country's largest open-door refugee reception centre in Debrecen which had an enormous effect on the Hungarian refugee system's capabilities (Juhász, Molnár & Zgut, 2017; Gyollai & Amatrudo, 2019).¹¹ In order to prevent movement of migrants and refugees throughout its territory, in the fall 2015 Hungary erected a razor-wire border fence at its borders with Serbia and Croatia.

Before the Orban Government in Hungary and PiS Government in Poland transposition of EU legislation in both countries was rather permissive concerning obligations and optional provisions from EU acquis. From 2010 in Hungary and 2015 in Poland onward, both countries are transposing mainly the stricter rules of EU directives on asylum (Ceccorulli et al, 2017; Gyollai & Amatrudo, 2019). Poland and Hungary share Eurosceptic, patriotic-conservative, pro-Catholic, and anti-immigration stances. From 2015 onwards, the official policy of Poland Government is that refugees are welcome under the condition they are not Muslims, because Muslim refugees are considered to be a security risk and threat to Government's vision of a Christian Poland (Narkowicz, 2018). As a result of the political situation, Islamophobia is on the rise in both countries, directly attacking the fundamental rights of minorities, Muslims in particular, but also the constitutional system as a whole. Amendments of Hungarian Constitution in 2018 state that alien's populations cannot be settled in the country and that all state bodies are obliged to protect Hungary's identity and Christian culture which clearly demonstrate discriminatory, anti-Muslimism stance of Hungarian state (Bayrakli & Hafez, 2019).

In Poland, nationalistic political party Law and Justice (hereinafter: PiS) won 2015 parliamentary elections and, for the first time in the history of democratic Poland, formed the Government without coalition partners. Regarding immigration, one of the goals of PiS party is to create Poland in which lives only one Poles, and not diverse nations (Jaskiernia, 2017). Therefore, the PiS Government was strongly against the EU proposal for a quota claiming that quotas are

¹¹ According to UNHCR 2012 report, "Hungary is today one of the three EU countries (besides Greece and Malta) that most systematically detain asylum seekers for irregular border entry – detention being the rule, rather than the exception." (<https://www.unhcr.org/ceu/650-ennews2012asylum-seekers-treated-like-criminals-in-hungary-html.html>).

undermining the sovereignty of EU countries, and supported more significant assistance to refugees outside the EU.¹² Similar to Hungary, Poland Government justified the policy of ‘crimmigration’¹³ on the grounds of protecting the national interest, security concerns, religious and cultural identity, economic well-being and even public health. Amendments of Protection of Aliens Act in 2016 introduced a reference to issues linked to state security in the context of the relocation of aliens. In 2016, the Government cancelled the key migration strategic policy document accepted in 2012 Migration policy of Poland (Jaskiernia, 2017; Szulecka, Pachocka & Sobczak-Szelc, 2018). Poland favours Christian refugees, for example, one private organisation scheme (agreed by the government) welcomed 50 Christian families from Syria in Poland.¹⁴

The position of Visegrad countries towards the EU migration governance has been clearly articulated in Joint Statement of the Heads of Government from the summit held in Prague in September 2015, where leaders of the V4 had declared that they would not agree to any compulsory long-term quota on redistribution of refugees.¹⁵ For the coordination of assistance to asylum seekers in regions of origin and improvement of information exchange between V4s governmental institutions responsible for migration, in 2016, V4 established coordination tool - Migratory Crisis Response Mechanisms.¹⁶

Hungarian prime-minister Viktor Orban has been the most vocal advocate of halting EU refugee quota system. In September 2016, Orban called for a referendum on the relocation scheme. Out of 43.7 per cent of voters turnout, over 90 per cent supported Orban’s position, but the referendum was declared as not valid according to the Hungarian law where turnout must be at least 50 per cent. Nevertheless, the Vice-President of Hungary's ruling party, FIDESZ, described the result as an "overwhelming victory" that demonstrated "unprecedented unity."¹⁷ In June 2017, the European

¹² In July 2015, the Polish Government confirmed its readiness to accept 2,000 refugees and in September an additional 5,000 people, but after the elections in 2015, the new Government withdrew from the declared number of asylum seekers to be accepted (Szulecka, Pachocka & Sobczak-Szelc, 2018).

¹³ Juliet Stumpf, a professor at Lew-is & Clark University Law School coined the term crimmigration meaning criminalization of immigration policies (see more Stumpf, 2006).

¹⁴ <http://www.migrationpolicycentre.eu/profile-poland/>

¹⁵ <http://www.visegradgroup.eu/calendar/2015/joint-statement-of-the-150904>

¹⁶ <http://www.visegradgroup.eu/calendar/2016/joint-statement-of-v4>

¹⁷ <https://edition.cnn.com/2016/10/02/europe/hungary-migrant-referendum/>

Commission launched infringement procedures against the Czech Republic, Hungary and Poland due to the breach of implementation of the relocation decision. In December 2017, the Commission referred those countries to the Court of Justice of the EU for non-compliance with their legal obligations on relocation. Court of Justice in its ruling confirmed the validity of the relocation scheme. In the meantime, Hungary and Poland have not relocated or resettled anyone.¹⁸ In both countries in 2018 elections campaigns, for local elections in Poland and countrywide elections in Hungary, migrants and migration were central issues of discourse (Bayrakli & Hafez, 2019).

4. Migration governance in Croatia and Slovenia: from high emigration to protection of the EU external border

Croatia and Slovenia gained independence from former Yugoslavia in 1991. The main aim of both states was constructing and promoting independent national identities as European in contrast to Yugoslavia and the Balkans. Both countries are ethnically relatively homogeneous. Slovenia population by ethnic affiliation (Population census 2002) include Slovenians (83.1 per cent), Croats (1.8 per cent), Serbians (2.0 per cent), Muslims (including Bosnians) (1.1 per cent), Hungarians (0.3 per cent), Roma (0.17 per cent), Italians (0.11 per cent) and others.¹⁹ According to the 2011 census, Croatia is inhabited mostly by Croats (90.42%), while minorities include Serbs (4.36 per cent), and 21 other ethnicities (less than 1 per cent each).²⁰ It has to be noted that Croatian and Slovenian Muslims are autochthonous Muslims mainly from Bosnia and Herzegovina, as a multi-ethnic, multireligious and multicultural country, who share with the majority population a language and even some customs. In Croatia, the existence of Muslims is recognized as a religious as well as a national factor (Krešić, 2020). In Slovenia, however, as some scholars conclude, Islam is far from “accepted”, with the existence of deeply seated prejudice, which fuels discrimination (Bajt, 2008).

¹⁸ https://europa.eu/rapid/press-release_IP-17-5002_en.htm. Hungary should have accepted 1,294 refugees and Poland 7,082 refugees.

¹⁹ https://eacea.ec.europa.eu/national-policies/eurydice/content/population-demographic-situation-languages-and-religions-77_en

²⁰ <https://www.dzs.hr/Eng/censuses/census2011/censuslogo.htm>

Slovenia's road to EU accession begun in 1997 and negotiations toward accession started in April 1998 and were completed in December 2002, with Slovenia accession to the EU on May 1, 2004. Slovenia joined the Schengen area in 2007, together with other new member states that joined the EU in 2004. Croatia had been lagging of Slovenia and other CEE states for almost an entire decade, resolving problems inherited from the Homeland War (1991-1995) and post-war period. From 2000, the accession to the EU became the main strategic foreign policy objective. In 2001 by signing the Stabilisation and Association Agreement Croatia established contractual relations with the EU, and accession negotiations with started in 2005. Croatia joined the EU on July 1, 2013. As of now, Croatia is not part of the Schengen area, but it is expected that it will join it in the coming years.

4.1. Migration governance in former Yugoslavia

Socialist Yugoslavia was predominantly an emigration country whose citizens were emigrating both for political and economic reasons. Although the socialist country, former SFRY broke away from the Soviet sphere of influence already in 1948, became a founding member of the Non-Aligned Movement in 1961, and adopted a less repressive form of the system as compared with other CEE communist states.

At the end of WW II there was a massive external migration of different categories of population: those who remained abroad as prisoners of war or forced labourers, refugees, members of defeated forces and collaborators, members of minority groups (Germans, Hungarians, Poles, Czechs, etc.), and political opponents to newly established socialist regime (Nejašmić, 1991, pp. 107-108).

Economic problems, the growing unemployment and, in some cases, disagreement with the communist political regime, together with a high demand for workers in the Western European countries, opened a space for rather massive external migration in the decades after the WW II. Until the beginning of 1960, the Yugoslav Government considered the external migration to be illegal; however, in 1962 all citizens who illegally emigrated from SFRY were granted amnesty and could legally return to the country. In the coming years, the Government concluded several bilateral agreements on the work of Yugoslav citizens abroad. Denominated as “workers on temporary work abroad”, these persons were not officially considered “emigrants”, since they were

expected to return to Yugoslavia. The main destination for economic emigration from SFRY was West Germany, and the number of emigrants from Croatia was the highest in total emigration from Yugoslavia (42.4 per cent in 1969). The external emigration reached its peak in 1973, when, according to estimations, around 830,000 Yugoslav nationals were employed in the Western European countries (Heršak, 1993, p. 282). After the oil and economic crises in 1973/74, the Western European countries started to implement immigration and recruitment restrictions, and the external migration from SFRY decreased to around 15,000 emigrants per year. From 1974, the number of returnees from abroad surpassed the number of emigrants (Heršak, 1993, pp. 283).

At the same time, Croatia and Slovenia experienced immigration from the other SFRY republics and the Southeast European countries, mainly for economic and educational reasons. In the period 1971 – 1981, around 121,000 citizens immigrated to Croatia from other Yugoslav republics, while around 73,000 persons emigrated from Croatia to other republics (Mežnarić, 1991, p. 67). Since the 1960s until 1991, Slovenia, as the most industrially developed of the Yugoslav republics, was predominantly a country of immigration for migrant workers from other republics. The largest inflow of immigrants from other republics to Slovenia took place in the 1970s and early 1980s when it amounted to 5,000 persons per year, and later decreased to 3,000 persons per year (Kogovšek, 2017, p. 21).

In terms of refugee movements, the first refugees and asylum seekers arrived during the Greek Civil War (1946-1949), and by 1952 there were over 25,000 refugees in Yugoslavia (Dimitrijević, 1965). After the outbreak of the revolution in Hungary against the Soviet authorities in 1956, more than 200,000 Hungarians sought asylum in SFRY (Hidas, 2001). Some of them were returned to Hungary, some went to the west, and fewer remained in SFRY. Former Yugoslavia also provided protection to Chilean refugees after the assassination of president Allende, to Romanians who escaped the regime of Nicolae Ceaușescu, Albanians and refugees from the war-related areas of Iraq, Iran and Lebanon (Lalić & Krešić, 2011). According to UNHCR, in 1987 there were 3,100 asylum seekers in SFRY, mostly from Romania (1,724) and Czechoslovakia (1,653), but also from Iran (80) and Iraq (37) (Berković, 1989).

In 1977, Act on Permanent and Temporary Residence was accepted on a federal level, which required aliens to register within eight days and provided for the respective fines in case of

infringement, both by an alien and by those who accommodate them. Act on Conditions for Employment Foreign Nationals (1978) introduced a work permit requirement for the employment of aliens and fines for an employer of an irregular migrant. Act on Crossing the State Border and the Movement in the Border Area (1979) introduced responsibilities for carriers to check the travel documents of their passengers and sanctions for not reporting aliens without a valid passport or permit. In 1980, Movement and Stay of Aliens Act introduced stay permits for foreigners. The right to asylum was guaranteed by the former Yugoslav federal or republics constitutions, but individual status determination procedures were never established (DEMIG, 2015).²¹

4.2. Migration governance after independence and during and after the accession to the EU

With the independence in 1991, the migration profile of Croatia and Slovenia has changed mainly due to war and massive human rights violations in the territory of former Yugoslavia. The Croatian War of Independence resulted in hundreds of thousands of people being displaced from and within Croatia. At the same time, Croatia was faced with an influx of refugees fleeing war events and human rights violations in Bosnia and Herzegovina (1992 - 1995). In 1991 and 1992, Croatia registered around 400,000 refugees from B&H. From the early 1990s to the late 1990s Slovenia also experienced a mass influx of refugees from B&H - according to the Red Cross' estimations, approximately 70,000 people entered Slovenia in 1992 (Kogovšek, 2017, p. 28). In Slovenia, the influx was perceived as a clear threat to national identity, and the question "why don't refugees go home" was often posed in the public discourse (Zavratnik Zimic, 2006, p. 347).

With the beginning of 2000, the migration profile of both states changed, with the increase of irregular migration of mainly transit character (especially in Slovenia), which included undocumented migrants from the countries in the region, but also from non-European countries. In Slovenia, the reaction in the public discourse were rather negative, describing immigrants as "the others", "the foreigners", with "different identity" and as a "threat to a national security", and resulted with the manifestation of open xenophobia toward immigrants (Zavratnik Zimic, 2006, p.

²¹ The SFRY was one of the original signatories to the UN Convention Relating to the Status of Refugees (1951) and a member of UNHCR's Executive Committee.

346). Some scholars concluded that “with its independence in the 1990s, Slovenia started constructing a new identity through cyclical moral panics” (Erjavec, 2003).

During the 2000s, the number of asylum seekers was on the rise but compared with Western countries, rather low.²² The most recent migrations in Croatia and Slovenia includes both immigration and emigration. After the accession to the EU in 2013 and the opening of the labour market, there is a rather massive emigration trend of Croatian citizens. In terms of immigration, the majority of aliens residing in both countries are nationals of successor states of the SFRY.

In 1991, Slovenia accepted the Aliens Act regulating the conditions of entry and residence of aliens in Slovenia, as a part of the so-called legislation of independence.²³ In 1992, Employment of Aliens Act laid down the conditions for employment of aliens in Slovenia, based on the work permit or a work visa to work, which also applied to Yugoslav nationals who have been residing in Slovenia but did not acquire Slovenian citizenship. In 1997, Act on Temporary Refuge formalised a separate regime for war refugees and other groups arriving in large numbers. First Asylum Act entered into force in 1999, establishing a refugee status determination procedure, rights and obligations of asylum-seekers and refugees and subsidiary protection. The Slovenian Parliament also adopted two soft law documents, Resolution on the immigration policy of the Republic of Slovenia (1999) and Resolution on the migration policy of the Republic of Slovenia (2000) which defined the economic, social and other measures and activities that Slovenia plans to adopt in the migration field (Kogovšek, 2017; DEMIG, 2015).

In the first decade after the independence, Croatia applied Movement and Stay of Aliens Act inherited from SFRY, which also contained provisions regarding refugees, but not the refugee status determination procedure, and consequently, asylum seekers were initially treated as illegal

²² The peak of asylum seekers in Slovenia was in 2000 when 13,000 persons were recorded. By the end of a decade, the number varied between 1,700 in 2000, with a sharp decrease after 2005. In Croatia, the average number of asylum seekers per year was less than 300 (Lalić Novak, 2016).

²³ One of the most criticised decisions of the Slovenian Government was that according to the new Citizenship Act, all non-Slovene permanent residents (citizens of other republics of the former SFRY) had to apply for citizenship under more lenient conditions within the six-month deadline. Those who missed the deadline or those whose application was refused, were removed from the registry of permanent residents, and consequently considered illegal immigrants, later became known as the ‘erased’ people (Kogovšek, 2017, p. 24).

aliens. First Asylum Act entered into force in 2004, covering all persons in need of international protection including temporary protection. The same year, the new Aliens Act also entered into force. Both acts were further amended in the process of harmonisation with the EU acquis. In addition, Croatian Parliament adopted two strategic documents, in 2007 Migration Policy of the Republic Croatia for the Period 2007-2008 and in 2013 Migration Policy of the Republic of Croatia for the Period 2013-2015, both as a condition in the accession process. In terms of the asylum system, some researches have shown that the strongest impact of the EU was on legislation, a much weaker on structures and practices. Certain institutions were absorbed, although without a significant modification of existing structures and logic of political behaviour. Similar to many other policies, *Europe* was used as the main reason for the legitimisation of the proposed solutions (Lalić Novak, 2016).

4.3. The policy of crises: migration governance during and after the mass migrations in 2015-2016

During mass migrations in 2015 and 2016, Croatia and Slovenia were part of the Balkan corridor, especially after Hungary decided to close its southern border with Serbia and subsequently with Croatia. Both states took a temporary humanitarian approach while providing a transfer to the borders of the neighbouring country. It is estimated that in the period between September 2015 and March 2016, more than half of million persons passed through the corridor. All countries along the route insisted they should be transit, not host countries, indeed created ‘hyper-temporary’ legal statuses to facilitate refugees' movement north. Both Slovenia and Croatia reiterated that they did not want to become a ‘hot-spot’ with a large number of migrants stacked on their territory (Sardelić, 2017, p. 3). Mass migrations invoked a decision the Slovenian Government (November 2015) to set up technical barriers and razor-wire fences at the border between Slovenia and Croatia, which is the external border of the Schengen area, but the EU inside border. The aim of the fence was greater control of the arrival of migrants and protection of the green border (Klemenčič & Verbič Koprivšek, 2017, p. 152). In 2015, Slovenia also introduced amendments to the Defence Act, passed by the Parliament in the accelerated procedure and the Constitutional Court forbade the collection of signatures for a referendum against these amendments. The amendments gave

additional powers to the army so it could help police patrol the border. In addition, in 2017 Slovenia changed its Aliens Act, introducing stricter entrance regime for individuals who would pose a threat to national security or public order and automatically expel those who had entered Slovenia irregularly, without assessing their asylum claims or the risk of them being tortured or persecuted upon return (Sardelić, 2017; Klemenčič & Verbič Koprivšek, 2017). The mass migrations have strengthened Islamophobia, targeting refugees and migrants, which supports negative feelings about Muslims who are already living in Slovenia. It is widespread also in politics, and in 2018 elections the discourse of migrant threat was used to spread fear among the population and gather political support for right-wing parties (Bayrakli & Hafez, 2019, p. 762).

After the closure of the Balkan corridor, Croatia has put additional efforts in the protection of its outside border, also due to conditions for accession to the Schengen area. In the period 2017-2019 there were many warnings and reports of international and Croatian non-governmental organisations on push-downs of refugees and migrants from Croatia coupled with limited access to international protection. According to the reports, possible asylum seekers were not given access to the asylum procedure, although some explicitly and repeatedly approached the Croatian police, expressing their wish to apply for international protection. The reports stressed that this was accompanied by violence and degrading treatment by the border police (HPC, 2019). The responsible Ministry for Interior denied all accusations and stated that access to asylum has been thoroughly respected. After refugee crisis, Islamophobia is in a rise, but to a lesser extent than in other European countries (Bayrakli & Hafez, 2019, p. 211).

It is interesting to compare the response of both countries on the EU quota regime. The Slovenian Government pledged to relocate 567 asylum seekers from Italy and Greece, and by March 2018, 253 persons were relocated to Slovenia. According to the Government's 2016 decision, 40 Syrian refugees were planned to be resettled from Turkey, and in 2018, 35 Syrian refugees were permanently resettled to Slovenia.²⁴ Croatian Government also established several decisions on relocating and resettlement of refugees, pledged to accept in total 550 persons, 150 of whom would be accepted through resettlement and 400 persons through relocation. In total, 81 persons were relocated to Croatia by the end of 2017, and 250 Syrian refugees were resettled from Turkey. In

²⁴ <https://slovenia.iom.int/activities/relocation-and-resettlement>

2019, the Government adopted another decision on to receive another 150 refugees under a resettlement scheme.²⁵

5. Discussion and conclusion

The analysis has shown that there are important differences in the early development of migration governance between analysed countries. However, during the EU accession period, the influence of the EU has been a prevailing factor in developing of migration governance based on the EU model.

In Poland and Hungary, after WWII until 1990, migration involved primarily migration to and from other CEE countries (and the USSR) that were part of the Soviet bloc. In former Yugoslavia, high demand for workers in the Western European countries opened a space for a massive labour emigration during the 1960s and 1970s, also as a result of a rather open Yugoslav policy toward work emigration. After the collapse of previous regimes and during a transformation period in the 1990s, analysed CEE countries experienced an increase in immigration; however, relatively small numbers of immigrants have been arriving from outside Europe. At the same time, under the EU accession requirements, CEE countries had to quickly develop migration policies and align their legislation with *acquis communautaire* on migration, asylum and border security. During and after the EU accession, the migration governance was considered as an administrative issue, concentrated on the development of policy documents and legislation, as well as building administrative capacities for the protection of (EU external) borders and development of asylum systems. In all four analysed countries, before refugee crisis and due to the small percentage of aliens in the society, migration and integration were not perceived as important in the political and public discourse which enabled the development of migration and integration policy in a more technocratic way. Due to considerable top-down EU pressures during the accession process, we can conclude that the EU accession has invoked convergence towards the similar model which continued once these states became full EU members. However, this path-dependant approach has been proven, once again, as characteristic of stabile times, such a rather low number of immigrants

²⁵ www.mup.hr

who are, possibly, similar to the majority population. In the situation in which the external pressure occurs, in this case, a high increase of “different” migrants and asylum seekers in the short time span, which threatens historical and cultural values and paradigms, the change of the policy will follow. The 2015 mass migrations, as a critical juncture, caused divergent views on common migration governance in CEE countries. The “national turn” can be observed in both legislation and strategic documents (new or amended legislation which introduced a stricter regime for different categories of immigrants), and in administrative actions (building fences, border restrictions and physical push-backs). Therefore, we can conclude that a sharp increase in the number of migrants presented an exogenous catalyst for the change of the policy in CEE countries. However, it has to be noted that similar changes occurred all over EU, even in the member states that are usually considered as more open to immigration, but which have accepted far more refugees and migrants than CEE countries. Following the intense debate on cross-country effects of EU policy in the aftermath of refugee crises, some scholars have concluded “perhaps the future is Europeanization in reverse gear” (Radaelli, 2016, p. 58).

Based on the analysis, we can conclude that a convergence of migration governance as an outcome of Europeanisation is questionable. Several reasons might influence the changes in migration governance and its “de-Europeanisation” in CEE countries.²⁶

First, CEE countries before accession to the EU did not have a comprehensive migration policy at the national level, and had to strictly comply with the EU model as a condition for EU membership, very often without any public discussion over the overarching principles of national policy. As candidate countries, they were not able to influence EU policy.

Second, the degree of continuity and consensus over the values that are formative for migration governance might influence its transformation. If the CEE countries did not internalise the solidarity (with refugees, but also between EU member states) as the core value of EU common migration policy, in the case of the crisis the national policy might develop in the opposite direction of EU model.

²⁶ Brekke & Staver (2018) use the term “renationalisation” in the research of the Norwegian migration policy after the refugee crises, suggesting that Europeanisation can be reversed through the return to increased national control.

Third, more resistance to EU-induced change will happen in the case when a particular model is perceived as an unsuccessful, such as in the case of EU migration policy after the 2015 mass migrations, especially in regard to EU refugee quota system.

Fourth, it has to be taken into account CEE states often have only limited administrative capacities and had to adjust their administrations to the EU requirements in a very short period. The less-developed administrative organizations, with inherited apparatus from the communist era, especially in regard to the protection of the state borders and immigration, as endogen factor, might influence the further securitisation of migration policy. If deciding between additional safeguards for the protection of the individual or more restrictive control measures ensuring increased national security, the latter would always be the preferred choice for the decision-makers in CEE countries (compare Feijen, 2008).

Fifth, the lack of immigration tradition in CEE countries and homogeny societies, together with the lack of openness of the societies as a legacy of communism and belonging to the Eastern bloc might fuel the conservative attitudes towards immigrants, especially those of Islamic background.

Sixth, the conflicting expectations of member states and EU institutions (at the same time combating and preventing irregular migrations and protecting human rights of migrants, including the right to asylum), as well as the bureaucratic approach of the EU (for example, in deciding about the refugee quotas) pose significant challenges especially for the countries at the southern external EU borders, making them both “victims and perpetrators of the controversial externalization strategies” (Trauner, 2016).

Consequently, we can conclude that the development of migration governance in CEE countries followed two directions: gradual and well-guided change with appropriate resources, under the influence of Europeanization following path dependence; unexpected, caused by critical junctures, and resulting in the rapid alternation of policy decisions.

However, this research has shown that CEE countries although usually classified in the same cluster of countries, CEE countries are not a uniform area. Poland and Hungary as V4 members strongly opposed the EU initiatives in the area of migration and asylum, which influenced their relations with EU institutions but also with other member states, and resulted with adjudication of the Court of Justice. In those countries, 2015 mass migrations led to the advocating for the halting

of immigration by conservative and populist political parties and influenced the adherence to democratic values and standards. In Croatia and Slovenia, mass migrations also caused policy changes, but to a lesser extent if compared with V4 countries. Especially in Croatia, we can observe a slightly different path of developments, with migration governance not as restrictive as in other countries. There are several possible reasons for that discrepancy: (1) the experience of the Homeland war when Croatia provided protection for several hundred thousands of refugees and internally displaced, with the experience of refuge for many Croatian citizens, might develop more solidarity with migrants; (2) well integrated Islamic community into the society which can support the integration of newcomers into the society and prevent the rise of Islamophobia; (3) more recent accession to the EU than other three countries, which might influence more stringent adherence to the EU rules and requirements and therefore Croatia might be illustrated as being in “infant phase” towards the EU, while other three countries are in “rebellion phase” (as teenagers); (4) being a candidate country and meeting the criteria for accession to the Schengen area which also might influence more thorough adherence to the EU rules; (5) historical legacies of the less oppressive regime in former Yugoslavia, which was more open toward migration compared to other CEE countries, and continuous labour emigration of Croats. Based on this arguments, we can conclude that in Croatia 2015 mass migrations did not create a critical juncture which caused a major change in the migration governance (except more stringent control of the EU external border and combat against irregular migrations, which is at the same time one of the EU migration policy main aims, but with occurrences of police violence against irregular migrants). Therefore, this change can be ascribed as a critical point which caused some policy changes, but, according to the path dependency approach, can influence further securitization of the migration governance.

Nonetheless, the findings of this study must be interpreted with caution, and a number of limitations should be borne in mind. First, the findings should be additionally checked by qualitative methods of research, such as interviews with the key stakeholders, who could give a deeper insight into the decision-making process in regard to migration governance. Second, in terms of critical junctures, temporal dimension for evaluation of policy changes is important, and therefore longitudinal research should be carried out. Third, as this study has shown, the CEE countries do not represent homogenous space, and therefore more comparative researches are

needed. At the same time, those limitations open space for future researches of migration governance in CEE countries.

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