

BAYA AMOURI*

The Impacts of Cultural, Religious, and Ethical Factors on Legal Regulations Related to Migration (Special Focus on the Visegrád Group)

Introduction

The world is on the move as never before. International migrants, defined as someone who changes his or her country of usual residence, irrespective of the reason for migration or legal status, numbered more than 272 million in 2019, an increase of 51 million since 2010.¹

Paradoxically, while the modern international migration legislation is filled with promoters of free trade, foreign investment, and more general forms of economic liberalization, there are increasingly anti-immigration attitudes and opposition to international immigration, particularly, to illegal immigration and asylum due to different reasons.

What explains variation in individuals' opposition to specific types of immigration? While scholars have consistently shown economic concerns to be strong predictors of the immigration opposition in general, findings from the research on attitudes towards immigration prove that cultural, religious, and ethical factors can explain this opposition.² Indeed, knowing about the cultural, religious, and ethical reasons behind the public opposition to international migration, has a major importance. Thus, the opponents of immigration often argue that the presence of immigrants may distort the national identity of the native population.³

At the height of Europe's migrant crisis, opposition to international migration and the call to restrict the migration policy has become a visible feature in many countries, including the Visegrád group, which is a cultural and political alliance of four central European states – Hungary, Poland, the Czech Republic, and Slovakia. The opposition

* PhD Student, Doctoral School of Law and Political Sciences, University of Szeged.

¹ *International Migrant Stock 2019*. UN Department of Economic and Social Affairs, 2019. 1-2.

² BRUNNER, Beatrice – KUHN, Andreas: Immigration, Cultural Distance and Natives' Attitudes Towards Immigrants. Institute for the Study of Labor. *IZA DP* No. 8409 (2014) 1-7.

³ FACCHINI, Giovanni – AYDA, Anna Maria – GUISSO, Luigi – SCHULTZ, Christian: From Individual Attitudes Towards Migrants to Migration Policy Outcomes: Theory and Evidence. Policy Research, Center for Economic Studies. *CEIS info Group* Vol. 23, No. 56 (2008) 661-667.

ranges from calls for various migration reforms to proposals to completely restrict immigration to one's nation; these often also include measures to combat migration.

This paper is an attempt to understand the cultural, and religious reasons that affect the V4 legal regulations related to migration. Indeed, while the impact of religious, cultural, and historical factors on the legal regulations related to migration varies more or less between the V4 countries at the national level, the group speaks with one voice when it comes to the actual and future migration policy of the EU.

Because they have more or less shared cultural background, intellectual values, and common roots in diverse religious traditions, which they wish to preserve and strengthen, the V4 group insists on the importance of controlling and managing migration. According to the group, it is primordial to restrict the unrestrained nature of migration and its related negative manifestations, in particular, illegal immigration. Also, the V4 group emphasized the importance of cooperation on migration and asylum with third countries.

Internationally, the narrow interpretation of some of the international instruments related to migration, mainly the 1951 Convention and its 1967 protocol relating to the Status of Refugees, might expose the V4 group to criticism.⁴ Cultural and language reasons may influence the group's interpretation of some international instruments related to migration. Broadly, in international law, the role of treaties, contracts, multilateral agreements are rather hard to interpret concerning the different cultural, religious, and historical contexts.

The debate about immigration policy and national culture and identity have flourished in recent year

Few political and social issues cause as much controversy as immigration. One of the most prominent concerns among anti-immigration campaigners is the idea that immigration breaks down the host society's cultural traditions and harms its cultural identity.⁵ Admittedly, there is an extensive literature on natives' attitudes toward immigration, but there is a paucity of literature on immigration and cultural identity.⁶ Natives' attitudes toward immigrants and immigration policy are important factors in the context of reception of immigrants since they contribute to a "warm or chilly welcome", which shapes immigrant and ethnic identities and inter-group relations.⁷

An analysis of the literature on immigration attitudes indicates that many of the authors seem focused on the issue.⁸ Immigration attitudes show little evidence of being strongly linked to personal economic circumstances. Empirical research confirms that there

⁴ NAGY Boldizsár: *Sharing the Responsibility or Shifting the Focus? The Responses of the EU and the Visegrad Countries to the Post-2015 Arrival of Migrants and Refugees*. Central European University (CEU), Budapest, 2017. 8-14.

⁵ MESOUDI, Alex: Correction: Migration, acculturation, and the maintenance of between-group cultural variation. *PLoS One*.13(10): e0205573 (2019) 3-8. <https://doi.org/10.1371/journal.pone.0216316> (13. 11. 2019.)

⁶ PRINZ, Aloys: Migration, Cultural Identity and Diasporas an Identity Economics Approach. *IZA Journal of Development and Migration* Vol. 10, Issue 1 (2019) 2.

⁷ FUSSELL, Elizabeth: Warmth of the Welcome: Attitudes toward Immigrants and Immigration Policy. *Annual review of sociology*. Vol. 40 (2014) 479-480.

⁸ HAINMUELLER, Jens – HOPKINS, Daniel J.: Public Attitudes Toward Immigration. *Annual Review of Political Science* Vol. 17 (2014); GADARIAN, Shana K. – ALBERTSON, Bethany L.: Anxiety, Immigration, and the Search for Information. *Political Psychology* Vol. 35 (2014); DENNISON, James – DRAŽANOVÁ, Lenka: Public attitudes on migration: rethinking how people perceive migration an analysis of existing opinion polls in the Euro-Mediterranean region. *Observatory of Public Attitudes to Migration* (2018).

is weak support for the theory saying that negative attitudes to immigration are that people feel threatened economically by immigrants.⁹ Instead, perceived threats to one's national identity can clarify a lot more about why people worry about the impact of immigration.¹⁰

According to the Pew Research Centre survey of 27 nations conducted in the spring of 2018, people around the world show little appetite for more migration – both into and out of their countries.¹¹ For a purpose of illustration, majorities in Greece (82%), Hungary (72%), and Italy (71%) say fewer immigrants or no immigrants at all should be allowed to move to their countries. The respondents were unenthusiastic about high levels of immigration and typically overestimate the actual number of immigrants living in their country.¹² In recent years, the European public has questioned the effect of immigration on culture and national identity. For the most part, public is opposed to the high levels of immigration and the changes in the character of neighbourhoods driven by it.¹³

The opponents of immigration often argue that the presence of immigrants may distort the national identity of the native population. That means that the native population opposes immigration because they fear they may lose their sense of belonging to their nation, as represented by distinctive traditions, culture, and language.

Some concerns regarding immigration can be perceived in culture. Immigrants or refugees bring their culture with them. The immigrants think, their norms, practices, customs, and values may shape and influence the native country's culture. Immigrants expand culture by introducing new ideas and customs. According to the immigration and demography studies, immigration is the principal cause of cultural mobility.¹⁴ Indeed, cultural issues are a significant factor in the response of each country to international migration.

As David Coleman observes European populations are becoming much more diversified in their languages, ethnic groups, and religion. According to the author, if recent trends continue, the self-identity and even the physical appearance of Europe's people will be changed.¹⁵

Some concerns regarding immigration can be perceived in religion. International migration could change the religious landscapes of the host country. One would assume that having such a diversity of religious beliefs could threaten the religion of the host country. Religion has been a prominent topic in debates about immigration and ethnic diversity in Europe over the past fifteen years. Public opinion surveys in Europe show increasing fear and opposition to immigrant Muslims, who are perceived as a threat to national identity, domestic security, and the social fabric.¹⁶ Some scholars argue that the public opposition

⁹ HAINMUELLER – HOPKINS, 2014. 225.

¹⁰ SANDELIND, Clara: *National identity plays a key role in determining whether people view immigration as a threat*. The London School of Economics and Political Science, 2015.

¹¹ CONNOR, Phillip – KROGSTAD, Jens Manuel: *Many worldwide oppose more migration – both into and out of their countries*. Prew Research Center, 2019. <https://www.pewresearch.org/fact-tank/>(15. 11. 2019.)

¹² Id.

¹³ SIDES, John – CITRIN, Jack: European Opinion about Immigration: The Role of Identities, Interests, and Information. *British Journal of Political Science* Vol. 37, No. 3 (2007) 477-478.

¹⁴ EVKURAN, Mehmet: Migration, Cultural Interaction and Multiculturalism in Global World. *Journal of Social Sciences Institute of Hitit University* Issue 1 (2014) 8.

¹⁵ COLEMAN, David: Migration and its consequences in 21st century Europe. *Vienna Yearbook of Population Research* Vol. 7 (2009) 1-2.

¹⁶ BICHARA, Khader: *Muslims in Europe: The Construction of a "Problem"*. *OpenMind* (2016) <https://www.bbvaopenmind.com/en/articles/muslims-in-europe-the-construction-of-a-problem/> (15. 10. 2019.)

can explain the political opposition to immigration while others admit that elite discourse shapes mass opinion and action on migration policy and as a consequence the legal regulations related to migration.¹⁷

Reality on the ground: The impacts of cultural and religious factors on the V4' legal regulations related to migration

The European migrant crisis creates in the EU an issue which links various policy problems, from fears of terrorism to economic welfare, border control, matters of identity, culture, and religion. This multifaceted issue affects different member countries in various ways, and responses also vary considerably.

The opposition against asylum seekers and refugees is considerably high in the Visegrád countries. But while the V4 group was widely criticized from all sides for their lack of solidarity, little effort has been made to truly understand why people in those are restricting their migration policy particularly when it comes to admitting asylum seekers to their territory.

Indeed, the V4 governments' politics can be categorized in the context of securitization and protection of national identity with regards to both its policies and rhetoric.

As will be demonstrated below, national identity, cultural, religious, and constitutional components are regularly used to justify and shape migration policy and political decision-making in the V4 countries.

The case of Hungary

The idea of an official Hungarian national identity has been a major factor in the recent debate around immigration in Hungary. In this context, Zsolt Németh, the Hungarian head of parliament's foreign affairs committee, said that Hungary's national identity and sovereignty are "not just parts of its history" but "crucial preconditions" for the nation's survival.¹⁸

For several reasons, including cultural and religious, the Hungarian government was against the open immigration policies especially in the areas of irregular migration, borders, and asylum.

The Hungarian Prime Minister Viktor Orbán first mentioned his plans of regulating migration into Hungary clearly in the wake of Charlie Hebdo attacks, after which the government launched a coordinated securitization campaign to protect not only the national security but also the cultural identity.¹⁹ Thus, the concept of securitization, which was first brought into the agenda of security studies by the so-called Copenhagen School of Security Studies, is the process when a securitizing actor uses the rhetoric of an existential threat on an issue, and thereby takes it out of the realm of normal politics into the realm of

¹⁷ BADER, Ted – VALENTINO, Nicholas A. – SUHAY, Elizabeth: What Triggers Public Opposition to Immigration? Anxiety, Group Cues, and Immigration Threat. *American Journal of Political Science* Vol. 52, No. 4 (2008) 959-960.

¹⁸ *Hungary's national identity and sovereignty are "crucial preconditions" for the nation's survival. About Hungary.* (2017) <http://abouthungary.hu/news-in-brief/hungarys-national-identity-and-sovereignty-are-crucial-preconditions-for-the-nations-survival/>(09. 11. 2019.)

¹⁹ SZALAI, András – GÓBL, Gabriella: *Securitizing Migration in Contemporary Hungary*. Center for EU Enlargement Studies, 2015. 2.

emergency politics, where any appropriate measure can be taken to curb the threat.²⁰ Cultural threat posed by immigrants or refugees beyond its current conceptualization as symbolic, collective-level threats to Hungarian security and culture identity. Hungary was opposed to welcome “minorities with different cultural characteristics and backgrounds [...] [in order to] keep Hungary as Hungary”.²¹

Furthermore, the uncontrolled influx of foreigners and asylum seekers puts national traditions, including religion in peril, especially that most of “migrant grew up in a different environment and represent a completely different culture and religion”.²² Migration could be seen as a threat to Europe’s Christian roots. Since 2012, Hungary’s constitution has officially recognized “the role of Christianity in preserving nationhood”. Article VII (1) of the Hungarian constitution’s wording leaves no doubt that people with other religious beliefs are tolerated.²³

However, in practical terms, Christian values, or a particular interpretation of them, could serve as a basis for the call to some of the migration regulations restrictions mostly in the matter of irregular migration, border management, and asylum policy.²⁴

Cultural and religious factors shaped some legal regulations related to asylum policy. And it’s important to mention that the asylum policy restrictions started before the European migrant crisis. It was back in 2013 that the Hungarian government passed new asylum law amendments, which introduced the detention of asylum seekers for up to six months, making judicial control of decisions regarding unlawful asylum practically impossible.²⁵

Following the European migrant crisis, the Hungarian authorities have applied a series of measures and adopted a package of law to protect and preserve European and Hungarian identity.²⁶ Probably the most visible step of these measures has been the build of a border fence along its southern border with Serbia, intending to ensure border security by preventing illegal immigrants from entering and enabling the option to enter through official checkpoints and claim asylum in Hungary in accordance with international and European law.²⁷

While Hungary “insisted that building the fence is legally within its rights” and that it is compulsory to help it meet a serious migration challenge like combating the illegal

²⁰ FARNY, Elisabeth: *Implications of the Securitisation of Migration*. E- International Relations Student (2016) <https://www.e-ir.info/2016/01/27/the-eus-promotion-of-gender-equality-in-egypt-towards-a-new-str> (09. 11. 2019.)

²¹ GIGITASHVILI, Givi – SIDŁO, Katarzyna W.: Merchants of Fear. Discursive Securitization of the Refugee Crisis in the Visegrad Group Countries. *Euromesco Policy brief* No. 89 (2019) 3-4.

²² KARNITSCHNIG, Matthew: *Orbán says migrants threaten ‘Christian’ Europe*. Politico Pro (2015) <https://www.politico.eu/article/orban-migrants-threaten-christian-europe-identity-refugees-asylum-crisis/> (09. 11. 2019.)

²³ English translation of the consolidated version of the Fundamental Law of Hungary. Ministry of Justice, 2017. 9.

²⁴ KOVÁCS, Zoltán: *The Hungarians have given us an obligated mandate to stop migration and to protect sovereignty and Christianity*. Website of the Hungarian Government, 2019.

²⁵ *Hungary as a country of asylum. Observations on the situation of asylum-seekers and refugees in Hungary*. UN High Commissioner for Refugees (UNHCR), 2012. 10.

²⁶ BLAŽEK, Jan: *Resistance to the securitization of migration in Hungary: the MIGSZOL network as a case of radical cosmopolitanism*. Visegrad Fund, visegradexperts. EU (2015) <http://www.visegradexperts.eu/data> (17. 11. 2019.)

²⁷ UN Human Right office of the High commissioner (OHCHR): *Hungary violating international law in response to migration crisis: Zeid*. 2015.

immigration,²⁸ some agencies and non-governmental organizations “have castigated the country for tightening its asylum policies” because those seeking asylum can only do so in two border zones and under a recent law introduced in 2016.²⁹

Furthermore, under the provision of Article 8 of the new constitution of 2012, the Hungarian government initiated a referendum in response to the EU’s proposal for a resettlement scheme to relocate persons in clear need of international protection among the EU states.³⁰ According to the proposal, persons in need of international protection would be resettled depending on the countries’ population sizes, GDPs, asylum applications and unemployment rates. The referendum was held in Hungary on 2 October 2016.

On the ballot was a simple question “Do you want the European Union to be entitled to prescribe the mandatory settlement of non-Hungarian citizens in Hungary without the consent of the National Assembly?”³¹ Almost all Hungarians who voted in the referendum rejected the European Union’s refugee quotas. The referendum result reflects the Hungarian willing to preserve their cultural, religious, and linguistic heritage.

Also, in 2018 the Hungarian Parliament approved an anti-migration package of laws that criminalize the act of helping undocumented migrants. The new law called “Stop Soros” creates a new category of crime, called “promoting and supporting illegal migration” essentially, banning individuals and organizations from providing any kind of assistance to undocumented immigrants and asylum claimants.³² Moreover, the legislation narrows the scope for action by non-governmental organizations, making their workers liable for jail terms for helping migrants to seek asylum when they are not entitled to it.

The case of Poland

In the migration matter, there appear to be similarities with Hungary’s position on the impact of the unlimited and uncontrolled immigration on national culture and identity. During the European migrant crisis, Poland experienced an increase in the anti-immigrant attitudes on the part of the native. Poll finds that a majority of Poles expressed an anti-immigration attitude towards immigrants, more specifically toward asylum seekers from the Middle East and Africa because the culture and religion of people from these regions differ vastly from those of their Polish counterparts.³³

However, given the fact that Poland has traditionally been an emigration country and Polish diaspora is spread all over the world, one could assume that Poles would be more

²⁸ BILEFSKY, Dan: *Hungary’s Plan to Build Fence to Deter Migrants Is Criticized*. The New York Times, 2015. <https://www.nytimes.com/2015/06/19/world/europe/hungarys-plan-to-build-fence-to-deter-migrants-is-criticized.html> (17. 11. 2019.)

²⁹ SANDFORD, Alasdair: *Hungary completes a new anti-migrant border fence with Serbia*. Euronews (2017). <https://www.euronews.com/2017/04/28/hungary-completes-new-anti-migrant-border-fence-with-serbia> (17. 11. 2019.)

³⁰ *Refugee Crisis: European Commission takes decisive action*. Press release, European Commission, Strasbourg 2015. https://ec.europa.eu/commission/presscorner/detail/en/IP_15_5596 (17. 11. 2019.)

³¹ GESSLER, Theresa: The 2016 Referendum in Hungary. *East European Quarterly* Vol. 45, No. 1-2 (2017) 85-97.

³² KINGSLEY, Patrick: *Hungary Criminalizes Aiding Illegal Immigrants*. New York Times (2018) <https://www.nytimes.com/2018/06/20/world/europe/hungary-stop-soros-law.html> (09. 11. 2019.)

³³ MORATH, Annika: *Poland for the Polish? Taking a Closer Look at the Polish Rejection of Refugees*. Heinrich Böll Stiftung, Brussels, 2017. <https://eu.boell.org/en/2017/06/14/poland-polish-taking-closer-look-polish-rejection-refugees> (10. 11. 2019.)

welcoming towards migrants and refugees.³⁴ In reality, this has not been the case. Therefore, it is critical to understand the factors behind the attitudes change and consequently the migration policy changes in Poland.

The influx of asylum seekers and refugees has created a high amount of insecurity and the fear of identity loss. As a reaction, Polish people “cling to their traditions and values even more strongly in an attempt to reaffirm their identity” and create a feeling of stability and security.³⁵

Jan Cienski observes another cause for the anti-immigration attitude towards the asylum seekers and refugees, which is the special character of Polish national identity that has to be understood in the context of Poland’s history. The author claims that due to its geographical position between Germany and Russia, the Polish territorial and political sovereignty has thus often been violated during its more than thousand-year-old history.³⁶

For this reason, the European migrant crisis was accompanied by the need to strengthen the protection of the Polish internal sovereignty.

Furthermore, some of the anti-immigration arguments can be summed up under the heading of religious fear. In Poland, national identity is strongly connected to Catholicism which, is seen as one of the main pillars of Polish national identity. Many people believe that the perceived ‘otherness’ of immigrants in general and refugees in particular from the Middle East and Africa poses a big challenge to their successful integration.³⁷

It must be said that the European migrant crisis in 2015 coincided with the Polish parliamentary electoral campaign. Indeed, the migration policy was introduced on the political agenda by some political parties as an issue of security “both national and cultural, direct and symbolic”.³⁸ Following the Hungarian government path, the new elected government, which was formed at the end of 2015, included immigration and asylum issues in their political program as a key element of national security.³⁹ Since then, and to protect the national values and cultural identity, Polish authorities began to systematically introduce mechanisms to reduce the adverse effects caused by irregular immigration and asylum.

Apart from developing a strong securitization narrative about the processes of forced migration, the government has also implemented new securitization practices and incorporated a national security discourse in their assessment and responses to asylum seekers at the Polish border.⁴⁰

In 2016, the Polish government adopted a so-called Polish new anti-terrorism law, in accordance with which every foreigner in Poland can be put under surveillance without a

³⁴ PACYGA, Dominic A.: *Polish Diaspora*. In: Ember Carol R. –Ember Melvin–Skoggard Ian (eds.): *Encyclopedia of Diasporas. Immigrant and Refugee Cultures Around the World*. Springer, New York, 2005. 254.

³⁵ CIENSKI, Jan: *Why Poland doesn't want refugees an ethnically homogenous nation battles EU efforts to distribute asylum*. POLITICO PRO. <https://www.politico.eu/article/politics-nationalism-and-religion-explain-why-poland-doesnt-want-refugees/> (10. 11. 2019.)

³⁶ Id.

³⁷ PEĐZIWIATR, Konrad: *Islamophobia in Poland. National Report 2015*. In: Bayraklı Enes- Hafez Farid (eds.): *European Islamophobia Report 2015*. SETA, Istanbul, 2016. 14-16.

³⁸ KLAUS, Witold: *Security First: New Right-Wing Government in Poland and its Policy Towards Immigrants and Refugees*. *Surveillance & Society* Vol. 15. No. 3/4 (2017) 523.

³⁹ BOYLE, Catherine: *Poland election: Migrant crisis affecting EU politics*. Europe News, CNBC, 2015. <https://www.cnbc.com/2015/10/26/poland-election-migrant-crisis-affecting-eu-politics.html> (10. 11. 2019.)

⁴⁰ PEĐZIWIATR, Konard: *Migration policy and politics in Poland*. Centre of Migration Research, University of Warsaw, Warsaw 2019. <https://www.respondmigration.com/blog-1/migration-policy-politics-poland> (10. 11. 2019.)

court order, for essentially an indefinite period of time.⁴¹ It also allows the Internal Security Agency, the police, and the Border Guard the right to take fingerprints, facial images and even biological material (DNA) from foreigners in the case that there are doubts concerning their identity.⁴²

Also, the new approach to migration policy has been represented by the draft of an amendment to asylum law that introduces border asylum procedures, including the option to detain people during border procedures and accelerated procedures, deprivation of the possibility to appeal against a negative decision in the border procedures, and denial of the chance for a court appeal.⁴³

In 2019, a draft entitled “Polish migration policy” was prepared by the Ministry of the Interior and Administration to overhaul the country’s migration system.⁴⁴ The new document “ambitiously” intends to contribute to building the “Polish model of active migration policy”.

The document focuses mostly on how the migration measures should be in a way that they do “not jeopardize the security of the state”.⁴⁵ Also, the document claims that the assimilation of immigrants should be the ultimate goal of its integration policy and that “assimilationist elements should dominate in the integration programmes”. Besides, the document defines assimilation as “a state, in which an integrated foreigner understands and acknowledges values upheld in Poland-including ideological and religious values- accepts them as his/her own and rejects values that would threaten social cohesion and general security in Poland”.

The document clearly has shown that the cultural and religious factors shaped the “Polish model of active migration policy”.⁴⁶

Migration policy restrictions are likely to increase in Poland because the parties forming the previous government will rule in Poland for another four years with a comfortable majority in the Sejm, the lower house of the Polish parliament.⁴⁷

The case of Czech Republic

Without going into too much detail, the Czech Republic’s national identity has been shaped by several events that have happened in the past and has had a significant influence on the country’s national identity. Indeed, the Czechs emphasize their relationship with their

⁴¹ FRELAK, Justyna Segeš: *Migration climate, discourse, and politics in Poland*. In: Migration politics and policies in Central Europe, GLOBSEC Policy Institute, 2017. 22-23.

⁴² *Polish new Anti-terrorism Law – targeting foreigners?* Panoptikon Foundation. Warsaw, 2016. http://citizenobservatory.pl/wp-content/uploads/2016/05/FP_Polish-new-antiterrorism-law_28-04-2016.pdf (10. 11. 2019.)

⁴³ BIALAS, Jacek: *Poland: Draft amendment to the law on protection of foreigners – another step to seal Europe’s border*, OP-ed by Polish Helsinki Committee. European Council on Refugees and Exiles, 2017. <https://www.ecre.org/poland-draft-amendment-to-the-law-on-protection-of-foreigners-another-step-to-seal-europes-border-op-ed-by-polish-helsinki-committee/> (10. 11. 2019.)

⁴⁴ PEĐZIWIATR, Konard: *The new Polish migration policy-false start*. Open Democracy, 2019. <https://www.open-democracy.net/en/can-europe-make-it/the-new-polish-migration-policy-false-start/> (10. 11. 2019.)

⁴⁵ Id.

⁴⁶ CIOBANU, Claudia: *New Polish Migration Policy Seen Enshrining Xenophobia*. Balkan Insight, 2019. <https://balkaninsight.com/2019/08/13/new-polish-migration-policy-seen-enshrining-xenophobia/> (10. 11. 2019.)

⁴⁷ Final results of Parliamentary Election in Poland on October 13th, Statista (2019). <https://www.statista.com/statistics/1059101/poland-parliamentary-election-results/> (10. 11. 2019.)

homeland as being important to their national identity.⁴⁸ For this reason, defensive nationalism has been a defining feature of the modern history of the Czechs.⁴⁹

The European migrant crisis raised the importance of debates about immigration and the future of the Czech Republic. Part of the Czech media, politicians, and ordinary citizens met it with fear attitudes towards asylum seekers and refugees.⁵⁰ Although the Czech Republic has experienced relatively low levels of immigration, negative attitudes toward the issue were high. This is because the country's history, its relatively limited experience of immigration, and the strong anti-immigration and anti-Muslim signals sent by political leaders have had powerful effects on public attitudes. The Czech Republic stood, particularly against the immigration from Muslim countries and linked it to security threats.⁵¹

It would appear that the interaction of several historical, cultural, political, and religious factors has created this anti-immigration attitude reaction. Indeed, the main root of Czech hesitation regarding refugee crisis is a fear of being different. The Czechs seem to be "scared of anything new: different culture, people and religion."⁵²

Based on its legal basis and the fear of losing its ability to control the borders and sovereignty, the government of the Czech Republic refused to take part in the refugee relocation plan which, was launched by the EU. Or, to be more precise, the government has accepted 12 of the more than 2,000 asylum-seekers it was designated.⁵³

When it comes to the migration issue, it is clear that the Czech Republic is moving towards a more restrictive migration policy.

Indeed, the 1999 Act No. 326/1999 Coll. on the Residence of Foreign Nationals which is the Czech Republic's central piece of immigration legislation was amended more than 50 times since its adoption. The act regulates the conditions of entry and exit for non-citizens, including provisions on immigration detention and conditions of residence. It also defines the responsibilities of the police, the Interior Ministry, and the Ministry of Foreign Affairs. The 2015 amendment to the Asylum Act, expanded the list of grounds justifying the detention of asylum seekers. The applicants for international protection can be detained for up to 180 days asylum which is a breach of the EU norms.⁵⁴

Like Hungary and Poland, the Czech Republic prioritizes the protection of the country's security, national identity, and culture while adopting measures to reduce migration, particularly the illegal one. In this context, the Czech prime minister Andrej Babiš insisted on his country's right to determine its immigration policy. Thus, the priority should be given to combat illegal immigration and reduce asylum applications. According

⁴⁸ BUDDEN, Heather: Management Implications of a Czech National Identity in the European Union. *International Business & Economics Research Journal (IBER)* Vol 8, No. 2 (2009) 64-66.

⁴⁹ ČULÍK, Jan: Why is the Czech Republic So Hostile to Muslims and Refugees. *Semantic scholar* (2017) 2-4.

⁵⁰ BROŽOVÁ, Kristýna – JURACKOVÁ, Adéla – PACOVSKÁ, Anna: *The wages of fear attitudes towards refugees and migrants in the Czech Republic*. Foundation Institute of Public Affairs/Fundacja Instytut Spraw Publicznych, Warsaw, 2018. 6-11. https://www.britishcouncil.pl/sites/default/files/czech_pop.pdf (11. 11. 2019.)

⁵¹ JANICEK, Kaerel: *Europe's far-right leader's campaign in Prague for EU vote*. AP NEWS (2019) <https://apnews.com/cba307d731ce4d1c8e217248f25deb24> (11. 11. 2019.)

⁵² BAKEEVA, Kristina: *Czech attitudes to the refugee crisis*. Prague College, 2018. <https://www.praguecollege.cz/blog/czech-attitudes-to-the-refugee-crisis> (11. 11. 2019.)

⁵³ *Czech Republic 2017/2018*. The Amnesty International Report 2017/18. 2018. <https://www.amnesty.org/en/countries/europe-and-central-asia/czech-republic/report-czech-republic/> (11. 11. 2019.)

⁵⁴ *Global detention project: Immigration Detention in the Czech Republic*. 2018. <https://www.globaldetentionproject.org/countries/europe/czech-republic> (11. 11. 2019.)

to the Czech prime minister, the illegal migrants must return home because “They have their culture, and [Czechs] have [their own] culture,” and “They have their values, but [Czechs] want to keep [their] values.”⁵⁵

The case of Slovakia

Over the past three centuries, the territory of Slovakia has witnessed more significant emigration waves rather than immigration. In 1993, when Slovakia became an independent State, the immigrant population was small. In 2000, a Slovak Governmental document considered that “The extent of international migration in Slovakia is negligible”.⁵⁶

Later on, Slovakia’s accession to the European Union in 2004 and to the Schengen Area in 2007 accelerated migration movements.⁵⁷

Until 2015, there has not been a consistent debate on migration and asylum in Slovak Republic. As a result, it wasn’t considered a crucial topic.⁵⁸ However, despite being located too far east of the main migrant route through Europe to attract any influx, the Slovak National Council rejected the system of the relocation of asylum seekers within the EU. To be a bit more specific, Slovakia agreed to admit 200 Christian asylum seekers but refused to accept Muslims asylum seekers. Slovak Ministry of Interior Affairs explained this decision by the absence of Muslim places of worship in Slovakia which will allegedly complicate the refugees’ integration in Slovak society.⁵⁹

Moreover, in 2016, the Slovak parliament passed, an amendment to the law on churches.⁶⁰ The amendment introduced stricter conditions for the registration of churches or religious societies. The new legislation mandates that religious groups seeking government recognition must provide evidence of having 50,000 adult members, an increase from the previous 20,000-member requirement that had been in place since 2007. According to its authors, the amendment would prevent the speculative registration of false churches and religious societies to receive money from the state.⁶¹ As a result, Slovakia, which has a population of only 5,4 million people, has today the strictest registration requirements for religious groups in the European Union and there is almost no possibility for religions such as Buddhism, Hinduism, and Islam to register.⁶² Probably, this restriction

⁵⁵ WINTOUR, Patrick: *Migrants to Europe ‘need to go home’, says Czech prime minister*. The Guardian (2018) <https://www.theguardian.com/world/2018/oct/25/europe-migrants> (11. 11. 2019.)

⁵⁶ *Migration Trends in Selected Applicant Countries Volume V – Slovakia An Acceleration of Challenges for Society*. International Organization for Migration. 2004. 7-9.

⁵⁷ *European Migrations: Dynamics, Drivers, and the Role of Policies*. Publications Office of the European Union, Luxembourg, 2018. 13-21.

⁵⁸ GALANSKÁ, Nina – BOŠEJOVÁ, Zuza: *The wages of fear attitudes towards refugees and migrants in Slovakia*. Foundation Institute of Public Affairs, Warsaw, 2018. 5-6.

⁵⁹ HOLEHOUSE, Matthew – HUGGLER, Justin: *Slovakia refuses to accept Muslim migrants*. The Telegraph. 2015. <https://www.telegraph.co.uk/news/worldnews/europe/slovakia/11811998/Slovakia-refuses-to-accept-Muslim-migrants.html> (11. 11. 2019.)

⁶⁰ Act No. 308/1991 Coll. on the freedom of belief and the position of churches and religious societies of the Slovak Republic.

⁶¹ ONDRASEK, Lubomir Martin: *Slovakia’s New Religious Registration Law is a Step in the Wrong Direction*. Providence (2017). <https://providencemag.com/2017/03/slovakias-new-religious-registration-law-step-wrong> (11. 11. 2019.)

⁶² HAVELKOVÁ, Mária: *The Amendment of the Religious Registration Law and Its Impact on Freedom of Religion in the Slovak Republic*. *Public Governance, Administration and Finances Law Review* Vol. 3. No. 2 (2018) 37-41.

based on religious factors could be the reason for future restrictions to some regulations related to migration policy.

Although the number of asylum seekers in Slovakia remained low, many representatives of parliamentary parties and citizens describe refugees or migrants as a threat. According to the Slovak government, it is important to protect the country from the threat of “a compact Muslim community” and to preserve “Slovakia’s national identity”.⁶³ Also, the Slovak public discourse on migration has evoked fears and debates that mostly focus on potential risks. According to the Eurobarometer survey in autumn 2018, as many as 81% of Slovak citizens hold more or less negative feelings on immigration from non-EU countries.⁶⁴ Understandably, Slovaks are cautious about people from other cultures.

The Visegrád group’s legal framework that governs migration is a combination of international, EU, and national laws. Increasingly and due to cultural, religious, and ethical factors, the new immigration policy of this coalition tends to be more restrictive to better manage migration in the medium and long term in the areas of irregular migration, borders, asylum and legal migration. During the European migrant crisis, new restrictions, especially in the laws on granting international protection to asylum seekers, are implemented. However, the position of the V4 group regarding illegal migrants, asylum seekers, and refugees must not be confused with its position regarding legal immigration.

Visegrád group’s vision to the migration legal issues at the international level

Historical, religious, and cultural factors shape not only the V4 legal regulation related to migration but also the group’s vision to the migration issues at the international level.

The international normative framework on international migration includes instruments pertaining to the human rights of migrants and the rights of migrant workers, and the protection of refugees as well as instruments designed to combat migrant smuggling and human trafficking.⁶⁵

These instruments have been ratified in varying degrees by the member of the Visegrád group.⁶⁶ However, for many reasons that will not be explained in this paper, the V4

⁶³ CUPRIK, Roman: *Asylum seekers avoid Slovakia*. The Slovak Spectator (2017). <https://spectator.sme.sk/c/20579285/asylum-seekers-avoid-slovakia.html> (11. 11. 2019.)

⁶⁴ LETAVAJOVÁ, Silvia – DIVINSKÝ, Boris: *Migration and development in Slovakia*. Caritas Slovakia, Kapitulská 18, Bratislava, 2019. 5-6.

⁶⁵ United Nations Department of Economic and Social Affairs/Population Division. International Migration Report 2013. 19.

⁶⁶ The V4 countries are part of the 1951 Convention(1951) and its 1967 protocol relating to the Status of Refugees(1967), the International Covenant on Civil and Political Rights(1966), the International Covenant on Social, Economic and Cultural Rights (1966), the Convention for the Protection of Human Rights and Fundamental Freedoms (1950), the Convention on the Rights of a Child(1989), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment(1984), Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (2002) and the Convention on the Rights of Persons with Disabilities (2006). Also, at the European level, the V4 countries are part of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (1987), Council of Europe Convention on Action against Trafficking in Human Beings (2014), and the Council of Europe Convention on preventing and combating violence against women and domestic violence (2014).

countries are not part of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.⁶⁷

The problem is that while the Convention is a universal humanitarian treaty, designed to offer universal protection, the interpretation of the treaty differs from country to country, and even within countries.⁶⁸ In the matter of immigration in general and the international protection as a controversial topic of actual importance in particular, the interpretation of some clause or legal terms in the international instrument may cause an issue.⁶⁹ In this context, Professor Alison Dundes Renteln observes that, to some extent, they may be cultural characteristics associated with nation-states that give rise to divergent interpretations of international law.⁷⁰

Taking as an example the 1951 Convention and its 1967 protocol relating to the Status of Refugees, which are the central elements in the international regime of international protection, the legal interpretation of the convention may involve distinct meanings. The result is that a refugee in Canada may not be a refugee in the United States, and vice versa. Seeking asylum, in the words of the European Council on Refugees and Exiles, becomes a ‘dangerous lottery’.⁷¹

Concerning the different cultural, religious, ethical contexts, some terms like a “refugee”, “persecution” and “protection” may raise issues when it comes to their interpretation. And it would seem that the V4 countries who consider cases of asylum do not stick to the letter of the Convention definition but work with a wider understanding of who can be a refugee. Professor Phil Cole observes that the Geneva Convention related to the Status of Refugees, as it stands allows states to interpret who is a refugee more or less broadly, and while they may apply the broad understanding to asylum seekers from one region, they may well apply a much stricter understanding to asylum seekers from another region.⁷²

Also, the difference of languages has an impact when it comes to the interpretation of some legal terms in the international instruments. Except for the Czech and Slovak that understand each other, every country of the V4 group is defined by its unique language, which is spoken nowhere else or among minority groups in neighboring countries of the region.

Furthermore, the V4 group supported the policy of externalization of the outsourcing of migration policies to third countries. On July 19th, 2017, the Visegrád countries issued a Joint Statement on Migration that clarified their position regarding asylum seeking. The V4 countries believe that making asylum determinations must be outside of Europe “the precondition of any efficient strategy related to mixed migratory flows is to distinguish between genuine asylum seekers and economic migrants. The necessary assessments have

⁶⁷ PLAETEVOT, René – SIDOTI, Marika: *Ratification of the UN Migrant Workers Convention in the European Union*. Survey on the Positions of Governments and Civil Society Actors, 2010. 48.

⁶⁸ MAFTEI, Jana – VARVARA, Coman: Interpretation of Treaties. *Acta Universitatis Danubius Juridica*. 8.8 (2012) 16-17.

⁶⁹ MANDAL, Ruma: *Protection Mechanisms Outside of 1951 Convention “Complementary Protection”*. UNHCR Department of International Protection. PPLA/2005/02 (2005). 28. <https://www.unhcr.org/435df0aa2.pdf> (19. 11. 2019.)

⁷⁰ RENTELN, Alison Dundes: Cultural Bias in International Law. *Proceedings of the ASIL Annual Meeting* Vol. 92 (1998) 232-233.

⁷¹ Id.

⁷² COLE, Phil: *What’s Wrong with the Refugee Convention? EU international relations*. 2015. <https://www.e-ir.info/2015/11/06/whats-wrong-with-the-refugee-convention/>(13. 11. 2019.)

to be completed outside the territory of the EU in administrative centres protected and supplied with the assistance and contribution of the EU and its Member States”.⁷³

In the same vein, the V4 group perceives that distinguishing between asylum seekers and “economic migrants” is important. Hungarian Prime Minister Viktor Orbán, for example, has claimed that the ‘overwhelming majority’ of migrants in Europe are not refugees but are merely seeking a better life.⁷⁴ Robert Fico, his Slovak counterpart, said up to 95% are economic migrants. The distinction matters, for under the 1951 Refugee Convention and a string of EU laws, European countries must offer refuge or other types of protection to asylum-seekers who can demonstrate that they are fleeing war or persecution. So, “if Messrs Orbán and Fico are right, Europe’s migration crisis amounts largely to a problem of border management and repatriation; not relocation, integration and the rest of it. Are they?”⁷⁵

Moreover, the group focus on the root causes of migration. According to the Visegrád group approach to deal with asylum “at the roots” it is necessary to move the asylum process outside of EU territory. There are several problems with this approach, but also an area of possible compromise. Indeed, the notion of completing assessments of people’s asylum claims outside EU territory exist.⁷⁶ Countries do this all the time, often aided by government officials or NGOs within a country to identify people that can be transferred to another country to get protection. However, the issue comes when this is posed as the only way of granting asylum.⁷⁷

In combination with their attempts to enforcer border security, Visegrád group have increasingly emphasised cooperation with third countries. Today, in EU there are similar calls for bilateral and EU-supported initiatives to return migrants and asylum seekers for processing in Tunisia, Morocco, and Turkey. According to the European Council, Europe would create the platforms “in close cooperation with relevant third countries”, as well as the United Nations High Commissioner for Refugees (UNHCR) and the International Organization for Migration. It added that “such platforms should operate distinguishing individual situations [to give applicants a fair hearing], in full respect of international law and without creating a pull factor”. While the deal is successful at reducing the number of irregular arrivals to the EU, it fails at its legal and ethical obligation to protect refugees.⁷⁸

Theoretically, the EU cooperation on migration and asylum with third countries is important. However, not only the practical implementation is hard, but also the expected results are difficult to attain. More precisely, maintaining a balance between national security, cultural and religious identity on the one hand, and refugees’ rights, on the other hand, is challenging.⁷⁹ For illustration, the EU-Turkey was successful at reducing the

⁷³ *Sympathy for the Visegrád Group? A look at the V4’s migration proposals*, *Migration Voter*. 2017. <https://migrationvoter.com/2017/07/26/sympathy-for-the-visegrad-four-a-look-at-the-v4s-migrationproposals/> (13. 11. 2019.)

⁷⁴ NOVAK, Benjamin: *Orbán: Tens millions of migrants poised to invade Europe*. *The Budapest Beacon*. 2015. <https://budapestbeacon.com/orban-tens-million-migrants-poised-to-invade-europe/> (19. 11. 2019.)

⁷⁵ *How many migrants to Europe are refugees?* *The Economist*, 2015. <https://www.economist.com/the-economist-explains/2015/09/07/how-many-migrants-to-europe-are-refugees> (13. 11. 2019.)

⁷⁶ Id.

⁷⁷ Id.

⁷⁸ FINE, Shoshana: *All at sea: Europe’s crisis of solidarity on*. Council on Foreign Relations, 2019. 9-10.

⁷⁹ UN. *Speakers Seek Balance Between National Security, Migrant, Refugee Human Rights, as Sixth Committee Takes up Expulsion of Aliens*. Meetings coverage and press releases (2017). <https://www.un.org/press/en/2017/gal3550.doc.htm> (13. 11. 2019.)

number of irregular arrivals to the EU, but the question is whether Turkey constitutes a safe third country for asylum seekers and refugees.⁸⁰

Moreover, the EU cooperation on migration and asylum with third countries is sometimes hard to apply especially that countries like Tunisia don't have yet any asylum law. The asylum law was drafted, but still not submitted to the parliament.⁸¹ For Morocco, three draft bills regarding immigration, asylum, and trafficking have been elaborated to replace the immigration law of 2003 but have not been adopted so far. This amendment aims to increase the respecting the human rights and humanitarian needs of migrants.⁸²

Conclusion

Probably the most important finding of this paper is the way that the cultural and religious reasons are important factors in understanding some legal regulations, rights, and limitations linked to the legal regulations related to migration in the Visegrád group. Thus, the group's migration approach cannot be ignored. The regional coalition has responded to the European Migrant crisis by an unexpectedly consistent position. The group increasingly cooperate on migration issues and speak as a bloc. However, when studying the position of the V4 group in the context of the European migrant crisis, it is therefore necessary to follow it on two levels. The first level is represented by individual V4 members the Czech Republic, Hungary, Poland, and Slovakia. The second is the V4 group's policy as a regional organization that compounds the interests of the four countries and reacts to EU policy. While there are points of difference between the four countries, this paper focused mainly on similarities. The V4 countries identified their shared interests and goals at the beginning of the crisis that stems from their geographical and cultural proximity. A heavy emphasis in all four countries is placed on cultural and often religious symbols and state sovereignty. A sovereign state, according to the conclusions of the V4 group, has the right to its own definition of solidarity and establishment of rules for the acceptance or rejection of migrants or refugees. Except in Slovakia, new restrictions and amendments related basically to the asylum and refugee law have been implemented.

At the international level, the V4 group supported the policy of externalization of the outsourcing of migration policies to third countries. Also, according to the group, it is crucial to divide people seeking asylum from economic migrants.

⁸⁰ MCEWEN, Michelle: Refugee Resettlement in Crisis: The Failure of the EU-Turkey Deal and the Case for Burden-Sharing. *Swarthmore International Relations Journal* Issue 2 (2017) 20-21.

⁸¹ BOISSAC, Véronique Planes – ANDRE, Mathieu – GUILLET, Sara – SAMMAKIA, Nejla: *Study on Migration and Asylum in Maghreb Countries Inadequate Legal and Administrative Frameworks Cannot Guarantee the Protection of Migrants, Refugees, and Asylum Seekers*. Euro-Mediterranean Human Rights Network, 2010. 14.

⁸² JACOBS, Anna: *Morocco's Migration Policy: Understanding the Contradiction between Policy and Reality* <https://mipa.institute/6872> (20. 11. 2019.)

BAYA AMOURI

The Impacts of Cultural, Religious, and Ethical Factors
on Legal Regulations Related to Migration
(Special Focus on the Visegrád Group)

(Summary)

Few issues provoke controversy like immigration, in part because it touches on so many questions as demographics, politics, national security, ethic, culture, and even religion. That's why it's important to go beyond the rhetoric and get to the facts and realities of international migration. Firstly, the paper will show how debates about immigration policy and national culture and identity have flourished in recent years. It will manifest how the cultural and religious difference between native and immigrants appears crucial in explaining the natives' anti-immigrant attitudes towards immigration. Secondly, the paper will demonstrate how religious and cultural factors impacted the V4 countries' legal regulations related to migration and their compliance with international obligations under international treaties. The paper finds that due to religious and cultural factors, there are increasing calls to restrict legal regulations related to migration in the V4 countries. Each country of the V4 group will be examined independently. Finally, the paper will reveal that the cultural, religious, and historical factors shape the Visegrád group's vision to legal issues in international migration at the international level.