



UNIVERSIDADE FEDERAL DE PERNAMBUCO
CENTRO DE FILOSOFIA E CIÊNCIAS HUMANAS
DEPARTAMENTO DE CIÊNCIA POLÍTICA
PROGRAMA DE PÓS-GRADUAÇÃO EM CIÊNCIA POLÍTICA

**PAPERS, PLEASE:
THE RESISTANCE OF POPULIST GOVERNMENTS TO EUROPEAN UNION'S
MIGRATION POLICIES**

LETICIA SUELY DE SOUZA

RECIFE
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Master's dissertation presented as one of the requirements for obtaining the Master's degree in Political Science by the Graduate Program in Political Science at the Federal University of Pernambuco.

Concentration Area: International Relations

ADVISOR: Prof^o. Dr. Miguel Mikelli L. A. Ribeiro

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Catálogo na Fonte
Bibliotecário: Rodrigo Leopoldino Cavalcanti I, CRB4-1855

S729p Souza, Leticia Suely de.
Papers, please : the resistance of populist governments to European Union's migration policies / Leticia Suely de Souza. – 2023.
63 f. : il. ; 30 cm.

Orientador : Miguel Mikelli Lucas Alves Ribeiro.
Dissertação (mestrado) - Universidade Federal de Pernambuco, CFCH. Programa de Pós-Graduação em Ciência Política, Recife, 2023.

Inclui referências e apêndice.

1. Ciência política. 2. Resistência. 3. Populismo. 4. Migração. 5. União Européia. 6. Hungria. I. Ribeiro, Miguel Mikelli Lucas Alves (Orientador). II. Título.

320 CDD (22.ed.)

UFPE (BCFCH2023-131)

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Aprovada em: 27/06/2023

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ACKNOWLEDGMENTS

When I decided to apply for the master program at UFPE, I thought maybe I should've waited a bit more. In general, I was afraid of the pressure and how that could possibly affect me. But I realized I had support, not only emotionally, but also academically. Here is my gratitude to you all.

First, to my partner in life, Gabriel, who reminded me constantly of my potential and never asked me what a master in political science does. I love you, and thank you for always being there for me when I needed it the most. Secondly, to my dear friends, who always supported me and my decisions, and celebrated my accomplishments, even the smallest ones.

Then, I would like to thank my advisor, who was a light for my path until here. Mikelli was always smart, kind, caring and, above all, generous. Thank you for opening my eyes beyond the obvious and for repeatedly clarifying what was or not essential, also trusting me and helping me understand that I can accomplish many things.

I also wanna thank my academic community, from my personal friends at the university, to the professors, the bureaucracy of the institution and my advisory board. I especially want to thank the Fundação de Amparo à Ciência e Tecnologia do Estado de Pernambuco (FACEPE) for my master degree scholarship, and the Programa de Pós-Graduação em Ciência Política for offering many opportunities and such an environment for production, connections and partnerships.

Having said that, I wish more people could explore better experiences than I did, being more comfortable with themselves and trusting more in their potential. If i did it, you can do it. Take your time, don't panic and thank everyone for the fish!

RESUMO

Como os governos populistas da União Europeia resistem às políticas migratórias do bloco? As principais características de líderes populistas é a ideia de que a vontade do povo está acima das elites e de grupos que se reconheçam fora das regras morais fundamentais que o povo representa; portanto, imigrantes poderiam ser vistos como um risco à estabilidade social. Além disso, atitudes populistas e sentimentos *anti-establishment* são algumas das razões para o surgimento de resistência a instituições internacionais. Dessa forma, o foco é identificar como governos populistas da UE resistem a políticas migratórias implementadas no bloco. Fluxos migratórios intensos ao redor do mundo encaram lideranças populistas, e esse movimento está ameaçado pelo potencial impacto delas, incluindo - mas não exclusivamente -, o nacionalismo, especialmente na Europa. Por isso a pesquisa dela como um processo institucional empregado por populistas sobre uma pauta contextualmente importante é essencial nas Relações Internacionais. Este trabalho exploratório propôs uma abordagem multi-método. A análise quantitativa observou o nível de populismo dos mandatos e os processos por infração (PI) iniciados pela Comissão Europeia sobre *non-compliance* a leis de migração em 17 membros, entre 2012-2019. Uma tipologia baseada nas etapas do PI classificou como os países resistem comparado com seus escores em populismo, resultando no estudo de caso de um processo húngaro desenvolvido pela análise do julgamento da CJEU, comunicados de imprensa e relatórios da UE e relatórios de instituições regionais conjuntamente com ONGs, revelando detalhes sobre o processo de resistência mais longo da base.

Palavras-chave: resistência; populismo; migração; UE; Hungria

ABSTRACT

How do populist governments in the European Union resist to its migration policies? Populist leaders' main characteristic is the understanding that the will of the people is above elites and groups outside the fundamental moral rules that the true people represent; therefore, immigrants could be seen as a risk for social stability. Moreover, populist attitudes and anti-establishment sentiments are some of the reasons for resistance to international institutions. Thus, the focus is to identify how populist governments in the EU are resisting migration policies that the bloc implements in the region. Intense migratory flows all around the world interact with populist leaderships, and this circulation is threatened by their potential impact, including - yet not exclusively - the ones rooted in nationalism, especially in Europe. That's why researching this as an institutional process engaged by populist over a contextual European issue is very important for International Relations. This exploratory work proposed a mixed-method approach. The quantitative part analyzes the terms of office's populism level and infringement procedures (IP) initiated by the European Commission about non-compliance to migration laws from 17 members, among 2012-2019. A typology based on the steps of the IPs classified how the countries have resisted compared to their populism score, resulting in the case study of a Hungarian procedure carried out by the analysis of the CJEU judgment, EU reports and press releases, and regional institutions informed by NGOs reports, revealing details of the longest resistance process on the dataset.

Keywords: resistance; populism; migration; EU; Hungary

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1 INTRODUCTION

How do populist governments in the European Union resist its migration policies? Mudde (2018) argues that populist leaders have many characteristics, but the most salient of them is the capacity to consider the will of the people as a sacred thing, keeping it above elites and outsider groups - the ones out of the fundamental norms that the true people represent. Therefore, immigrants could be seen as undesirable, and depending on other attributes of populism in place, even a risk for local stability; identity is actually one of the central reasons for resistance to international institutions, especially in Europe (Hofmann, 2018).

Thus, the focus of this thesis is to identify how populist governments in the European Union are resisting migration policies implemented in the region. Intense migratory flows in Europe from every part of the world interact with populist governments. This movementation of people, either for economic migration or under forced displacement, is threatened by the potential impact of populist leaders, especially - yet not exclusively - by the ones rooted in nativism and xenophobia (Bergmann, 2020). The connection between populism and immigration is seen by the recent developments relating to mass migration and the projections over the future of this matter and the growing presence of populists in world politics (Acemoglu and Robinson, 2019).

And examining the attitudes of non-compliance and their real consequences help comprehend the importance of immigration as an issue of sovereignty, since it would be a reaction to a bloc's legislation, and if this reaction could be a sign of resistance to the institution (Börzel and Risse, 2017). Evidently, resistance to the EU has always existed. Euroskepticism is a topic of political division and even entrenched in ideology and party's programs (Taggart, 2017).

So, to research resistance as an institutional process engaged by populist leaderships over immigration, which is also such a divisive contextual issue in Europe, is of much desire for International Relations studies, particularly because of its connection to public opinion and electoral gains. This is precisely the goal of my thesis.

To do so, a mixed method was applied. This kind of approach, which put together quantitative and qualitative methods, is central in social sciences as a scientific field, generating robustness to the results and guaranteeing a more assertive understanding of the social world (Gerring, 2004).

The general purpose was to analyze the types of resistance that populist governments apply to migration policies in the European Union. There were five steps to accomplish that: i) to identify the State leader from the European Union and classify them according to their level of populism; ii) to identify the number of infringement procedures started by the European Commission about migration policies involving those State leaders; iii) to cross these data and identify the patterns of the distribution between populism level and number of procedures; iv) to create a typology of resistance and apply it to the cases, identifying any relation to the populism levels and infringement procedures encountered; and v) to do a case study of one of the procedures, chosen based on the relationships observed, to find more details about the resistance employed.

The countries under scrutiny are Austria, Bulgaria, Croatia, Czech Republic (or Czechia), France, Germany, Greece, Hungary, Italy, Latvia, Lithuania, Netherlands, Poland, Romania, Slovakia, Sweden and the United Kingdom. The choice was based on the membership of the European Union and the availability of data. Every State will be analyzed according to the leaders in their term of office during 2012-2019.

This exploratory work proposes a quantitative descriptive analysis of the terms of office's populism level, and of the amount of infringement procedures initiated by the European Commission directed to them about non-compliance to migration laws. A descriptive typology based on the steps of the IPs was created to identify the types of resistances possible in the procedures - procedural resistance, substantive resistance and backlash -, and then a classification of the mandates was operationalized to identify how the countries have resisted, and also compare it to their populism score.

The results show that maybe populism is not the main variable, but actually might be a contextual push to the procedure. The analyses, then, pointed to one Hungarian procedure, chosen to be examined closely in a case study. Since this investigation focused on the stages of this specific procedure and the contextual situation in Hungary related to it, the search was based on document analysis of the Court of Justice of the European Union's judgment, European Union's press releases and reports, institutional reports (Global Detention Project and Asylum Information Database in conjunction with the non-governmental organization Hungarian Helsinki Committee), and news sources. The analysis revealed details about the resistance mechanisms of the longest process on the dataset.

The Hungarian infringement procedure chosen was the one titled "Failure by Hungary to comply with the judgment of the Court of Justice of the European Union of 17 December 2020 in Case C-808/18, Commission v Hungary", relating to asylum application and

international protection. The procedure was initiated in 2015. It showed that Viktor Orbán, leader in office during the infringement, used strategies such as denying non-compliance, manipulating his power by diminishing judicial independence, establishing a quasi-state of exception to amend laws, and indicating that the legal framework of the Union is incompatible to domestic laws and, therefore, should not be complied with. The infringement is still open now.

2 LITERATURE REVIEW

This chapter will develop the theory framework about populism first, then immigration and, lastly, about international institutions and resistance, mixing them along this segment. The goal is to understand how populism has been and is currently studied, and according to the consensus, what are the main characteristics of populism and their followers. The immigration section covers all the types of movements of people, and how this phenomenon is faced by leaders and intergovernmental institutions. The last part discusses how international institutions work, the role of compliance and resistance to norms and what they mean to the domestic and international frame. Every section brings details about the situation of those topics in the European Union.

2.1 POPULISM

Populism has been a strong tendency worldwide, even in democratic settings, arising from contexts of crisis and stimulating the necessity for change (Mudde, 2004; Moffit e Tormey, 2014; Acemoglu e Robinson, 2019). This stimulus can come from diverse ideals and can use different methods of expression, and such a plurality of approach makes conceptualizing populism a hard work.

There are some classifications that try to facilitate this process. Aslanidis (2017), for example, points to three types of classical tendencies to define the term. The first one is the regional tendency, which attributed spatial characteristics to populist movements, like the People's Party¹ in the US, the extreme-right in Europe and charismatic leaderships with mass mobilization in Latin America. The second tendency is the public policy one, that relates populism with certain kinds of policies, such as protectionism initiatives and redistribution. The last one is the normative tendency, which allows researchers to classify as populists all leaders with opposing pragmatic ideas, since populism is considered something essentially wrong.

Understanding these biased types of classification as unhelpful, some authors present general concepts, capturing the main characteristics of the populist thinking. Jan-Werner Müller (2016) defines populism as a moral vision of politics, centered on the common good, assuming total unification of the population's interests as an expression of identity. Others

¹The People's Party was a left wing party, very influential in the 19th century. In the early 20th century, the party ceased to exist, opening new ground for the Democratic Party to emerge. Available at: <https://ohiohistorycentral.org/w/People%27s_Party>, accessed on 20/06/2022.

show how populism was thought as a political style, discourse and/or rhetoric, based on the studies of Laclau, Mouffe, Stavrakakis and many others (Mudde, 2017; Hunger and Paxton, 2021).

A consensus on the concept of populism began to take place after the seminal work of Mudde in 2004 (Hunger and Paxton, 2021), who presented an ideational approach to populism. For him, it was an ideology of adaptable ideas reasoned on the argument that society is divided in two homogeneous and antagonic groups, “the pure people” and the “corrupt elite”, and that politics should be an expression of the general will of this pure people (Mudde, 2004; 2017; 2018).

The difference between these two groups is a moral component. Even though they may come from the same population or nationality, the corrupt elite betrayed the authentic people by not respecting their interests as they should, therefore, becoming part of a problem to these pure and just people (Mudde, 2017).

Stanley (2009) and Bergmann (2020) for example, even 11 years apart, agree to propose an idea of populism as a thin ideology, composed of nuclear ideas, but without engaging in a specific program to solve political issues. This aspect of Mudde’s concept would explain populism’s association with more complex and fulfilling ideologies, combining its idea with libertarian or authoritarian claims (Norris and Inglehart, 2019).

The use of populism as a flexible ideology allows the identification of populist leaders on the extreme-left to the extreme-right. Their values depend on the nature of the social norms established in space and time, and on the political and economic elite. However, the fundamentals are capable of determining the traces of populism among any political scope to which it assembles itself (Mudde and Kaltwasser, 2017).

According to Mudde and Kaltwasser (2017), the most essential characteristic to detect a populist is its disposition to be anti-establishment. That means being against the *status quo* sponsored by the elite. Mudde (2004) and Moffit and Tormey (2014) discuss the dichotomy between the people and the elite, explaining that the leader moves distinct forms of social, religious and ideological organization away from the honest people, setting up a reality where whoever is against him is directly against the people, since this same leader is their legitimate representative of their almost holy will. The anti-elitism is very clear, encouraging mistrust towards the institutions and other political actors (Moffit e Tormey, 2014; Mudde, 2004).

Focusing on the traces of a populist leader, Mudde and Kaltwasser (2017) identify three aspects that can be associated with populism depending on the context. The first is the

charismatic strong man, based on whatever his supporters consider to be the image of a man of action, never afraid of taking hard and firm decisions, usually assuming the role of a “violent macho”.

The second aspect would be the insider-outsider image, which can take some configurations towards being an anti-establishment: i) the outsider, a leader without any career or relationship to politics; ii) the insider-outsider, a leader that has important connections to the political elite, but was never a member of it; and iii) the insider, a leader who is already part of the political elite, but uses populist rhetoric from time to time (Mudde and Kaltwasser, 2017).

The third aspect they identify is the *Vox Populi*, shortcuts that leaders use to convince the people that he represents it truly and completely, not the corrupt elite (Mudde and Kaltwasser, 2017). These shortcuts are personality incorporations, such as the figure of a mother or ideal wife portrayed by female leaders; or the successful and honest entrepreneur, who is part of the people and earned his money by hard work; or, yet, the ethnic leader, recognizing a part of the population as the main one, the true people, being strongly excluding of other ethnic representations and foreigners.

All these aspects of populism incorporate the notion of common sense as the priorities of the people. The special interests advocated by the elite are not part of the general will of the people, and any policies that oppose this common and unified group are considered irrelevant and dividing. That is why the people can never be mixed with the others, the ones who disagree with them (Mudde, 2017).

These patterns can be seen in every part of the world. Every database relying on the ideational approach for populism nowadays report on cases from every continent (TBI Global Populism in Power, Global Populism Database, Global Populisms Project, Central and Eastern Europe Populism Dataset for Leaders, Populism in Latin America and so on)². In 2017, Hadiz and Chrysogelos hypothesized the spread of populism to be a reaction to social changes, with different elements according to the region and historical context surrounding it. This is the case for Donald Trump in the US, Viktor Orbán in Hungary, Recep Tayyip Erdoğan in Turkey, Narendra Modi in India and Jair Bolsonaro in Brazil.

As claimed by Hadiz and Chrysogelos (2017), two main causes of this reaction pop-up: i) frustration with political representation and participation; and ii) problems related to liberalism, like social marginalization and disenchantment with promises of prosperity.

² Check Appendix A for more details on the databases.

That way, they conclude that this populist wave has a connection to institutional mistrust and dissatisfaction with the power asymmetry of social structures that preserve class privileges (Hadiz and Chryssogelos, 2017).

In a similar note, Norris and Inglehart (2019) present a theoretical framework that argues how a cultural backlash is related to populism - especially what they call “authoritarian populism”. First, the demand-side, population, shows evidence of a revolution in socially liberal attitudes, deriving from generational shifts among decades, building on values and worries related to self-expression, feminism, LGBTQAP+ rights and general post-materialist issues. Besides that, education is broader, urbanization is growing and ethnic diversity becomes a reality. Then, on the supply-side, politicians take these cues and mobilize over campaign and media appeals to conserve the previous state and get back to what the real people want.

Both these theories work on the failing of globalization and liberalism as a fair explanation for how populism comes about. In Europe, specifically, there are some different theories about what issues motivate those leaders to emerge. In western countries of the region, populists have a link with four specific issues - corruption, regionalism, immigration and european integration -, which means they appropriate and politicize them as vehicles of an agenda (Taggart, 2017).

Corruption is the topic of how the political process is being destroyed by the elite. It is the clearer example of how the politicians are not following the general will, therefore, becoming unable to represent the people. However, it’s important to understand that not only the political actors are corrupt, the political institutions play another central role in this debate, largely personified by the parties (Taggart, 2017).

Regionalism is used by populists to advocate for those identities outnumbered by the majority. The focus is to diminish the central state power by establishing the institutional structures as the enemy elite, rejecting the rule of law about the autonomy of the region. Populist leaders with regionalist programmes tend to use the identity as a conductor for a wider repudiation of politics (Taggart, 2017).

On the other hand, immigration has been a big part of European politics. By populists, it is used as a rupture to national identity, a threat to the economy and welfare, and a security failure, all to defend a thesis that immigrants are the others, who try to change their society and are protected by the elite. Nativism, xenophobia and islamophobia are signs of this buildout, usually seen in the region among right-wing parties, yet not exclusively (Taggart, 2017).

Last but not least, populism also incorporates the euroskepticism, which imposes limits to European integration. The claim is that if people already see corruption and mistrust in domestic politicians, there is no possible effort to agree with a transnational institution like the European Union that has a complex and distant structure. The two main reasons for this growing sentiment is the action of turning it into a domestic issue and the crisis unfolded by the economic and euro shocks in the late 2010s (Taggart, 2017).

In central and eastern Europe, under a post-communist setting, Stanley (2017) states that populist leaders are divided into two different theories of response to globalization, the radical and the centrist populism. Radical populism divides parties as winners and losers of the transition to globalization and to the capitalist process, especially relating to the European Union. The switch to democracy was designed by political elites, and some parties would favor integration and protect the winners' interests, while the populists were expected to ask for protection in its policies of economy, to preserve cultural values and to oppose supranational influence, attending the losers and rejecting the transition (Stanley, 2017).

The other theory says there is a centrist populism. The leaders integrate parties that do not oppose the transition to democracy and globalization per se, but are always fighting against corruption and inefficiency of the elites as a trauma of the communist time. The vestiges of a past dominant system creates a sense of "us vs them" between the parties that encourage them to be anti-establishment with each other, as a political competition based on the anti-corruption mindset (Stanley, 2017).

In any form, populism is a current reality in Europe. Even so, cultural threats related to immigration are the most associated with populist values, even more than the known discourse of political parties about employment (Norris e Inglehart, 2019). Immigration is the main populist issue of the region claimed by political actors (Taggart, 2017).

2.2 IMMIGRATION

Migration is one of the main contemporary global challenges. There are many reasons motivating migration. Opportunities to work, study and research, war, persecution, economic crises, inequality, political collapse and weak institutions are some of them, promoted by political or non-political actors (Loescher, 2016; Norris and Inglehart, 2019).

There are a few distinct categories of migration: emigrants, immigrants, refugees, asylum seekers and internally displaced. Emigrant refers to someone who leaves their place of

origin; an immigrant is the person who enters a place where he or she is not native (ILO, 2011). These classifications can be attributed to voluntary movements between cities, provinces or countries, seasonal or not.

Immigrants with working and study permits are responsible for a development process, connected to their direct economic and social contribution to the host society, as well as to their country of origin through remittances and shared abilities and knowledge (Haas, 2005). Notwithstanding, there are some myths involving migrant workers.

The first myth is that only poverty and misery produces this kind of movement. The truth is that immigration depends on some level of social and economic development, training and social relations with the destination. The second myth is that welfare and liberalist policies tend to avoid emigration in developing countries. The actual fact is that liberalism and the welfare state promote development, which stimulates emigration because people will have more and better opportunities to connect to other countries (Haas, 2005).

The brain drain is connected with the next myth, which understands that it is only vile. The author's arguments show that brain gain is a good compensator, since the origin state benefits from new knowledge and innovation in the medium and long-term, and also from investments, remittances and emancipation of minority groups (Haas, 2005).

Remittances are actually the focus of two other myths. In the origin state, some say they stimulate importation and reliance on that money, bringing no real contribution to the local economy. In the host country, remittances could signal an integration failure. In reality, remittances are responsible for building entrepreneurship, improving levels of education, health and expanding social and economic capital for the people receiving the money, while indicating a proxy for success to the sender, engaging the immigrants in civil activities like politics and community duties (Haas, 2005).

Researchers and institutions like the International Labour Organization (ILO) have clarified those evidences, attributing to immigrants the benefits of innovation, new job postings, taxes revenues, entrepreneurship, fillment of low skill labor markets, etc.³ The countries of departure benefit from their leaving by acquiring lower unemployment rates and generation of more work positions.

Carens (2014) attest that whether immigrants have access to good work conditions, rights and social programs (like minimum wage, healthcare, vacation and severance), depends on a few variables, but compliance to human rights norms is one of the main ones.

³ Labour migration. International Labour Organization. Available at: <<https://www.ilo.org/global/topics/labour-migration/lang--en/index.htm>>, accessed on 23/05/2023.

Forced migration, on the contrary, describes the flow of people due to enforcement resultant of human or natural threats. Asylum seekers, refugees and internally displaced people (IDP) are examples of this dynamic. “Refugee” and “asylum” were terms that emerged in the 20th century in response to the Russian revolution and World War II.

According to the United Nations High Commission for Refugees (UNHCR), the refugee status is granted to those who flee their country due to armed conflict, threats to their human or political rights, or risk to their life. They fear persecution motivated by nationality, race, religion or association with a social or political group. And after leaving, they may encounter xenophobia and lack of basic rights (Carens, 2014).

Asylum is a trickier category. This status is given to everyone who gets permission to settle as a guarantee of safety, while the asylum-seeker is the person who has a refugee status request being processed. The tricky part is that not every country uses “asylum” in the same way; some legal systems consider them to be different from refugees, like in Latin America, while others understand the refugee status and asylee as the same thing, like in Europe⁴.

Fisher (2019) lists the durable solutions applied to the reception of refugees, aiming to promote long-term legal status and security in the host State: i) voluntary repatriation, so refugees can return to their country of origin; ii) local integration, in which they receive permanent residence and socio-economic rights; and iii) resettlement, which means legal admission into a State to refugees currently outside its territory (Fisher, 2019). Under the principle of non-refoulement, States are unable to penalize refugees for entering illegally in their territories⁵.

Internal displacement is the forced migration of victims of generalized violence, armed conflicts, human rights violations and natural disasters risking their lives - also under fear of persecution motivated by nationality, race, religion or association with a social or political group -, but without ever crossing national borders (Ferris, 2016; Loescher, 2016). Data for these people is usually split between conflict and natural hazards.

Despite their effort to flee, their vulnerability is high. The displacement may not be far enough to keep them safe from the source of danger, and they continue to be under the government’s jurisdiction, which can be a contributor to harm. There is also the situation of

⁴ For more on this discussion, see Instituto Migrações e Direitos Humanos (IMDH). Available at: <<https://www.migrante.org.br/refugiados-e-refugiadas/das-diferencas-entre-os-institutos-juridicos-do-asilo-e-do-refugio/>>, accessed on 06/01/2023; United Nations High Commission for Refugees (UNHCR). Available at: <<https://www.unhcr.org/europe.html>>, accessed on 15/12/2022.

⁵ United Nations Convention relating to the Status of Refugees (1951). Available at: <https://www.unhcr.org/1951-refugee-convention.html>>, accessed on 26/07/2021.

protracted displacement, defined as dislocation happening beyond the usual or necessary, which are specially caused by armed conflict (Loescher, 2016; Noack et al., 2020).

In this thesis, the focus of migration will be directed to any of these categories. Since EU's migration policies are directed to many types, with distinct directives about them, and are also the destiny of general immigrants and forced migration, the institution and their members can be affected and rule about them.

Given these parameters, it is possible to understand how multidimensional must be the governance for global migration. The attitudes of country leaders and the content of foreign policies towards the migration system can be explained by Betts (2011) using three main entities.

The first is interest. Domestic politics need to be taken seriously, and sometimes international institutions fail to do that. Since the State's aim is to protect itself from any losses, immigration has to align domestic interests and international appeals, which can be hard for some leaders and societies (Betts, 2011).

Power, the next entity, is meant as the position of the country in this scenario, if it is a destination or origin state. The destinations control rules and migratory policies because of their importance to the process. The case can be even more centralized if the regimes are not multilateral, which will give more influence to those countries' interests in bilateral or regional agreements, dictating who can stay or not (Betts, 2011).

Ideas are, then, one last explainer. New interests emerge from new ideas, usually more feasible in crisis moments. The migratory flow in a given time, from a given region and with a given reason can change the countries' attitude about this phenomena as, for example, the result of a cost benefit calculation (Betts, 2011).

The influence of these factors on migration policies raise questions about the projection of politicians' personal preferences. Populist ideas, for example, can advocate for restrictiveness to admission and integration of immigrants (Lutz, 2018); it can even be responsible for a growing rejection of international institutions' rulings over this issue, considered to be contingencies (Plagemann e Destradi, 2019; Posner, 2017).

Anti-immigrants attitudes are explained by 3 factors: i) instrumental concerns, like competition for jobs and social programs; ii) cultural anxieties, or fears of social change related to religion, race and cultural characteristics in general; and iii) fear of terrorism, product of specifically islamophobic rhetoric (Norris and Inglehart, 2019).

According to Bergmann (2020), the exclusion of ethical segments from the population is called nativism, and nativist populism represents an extreme opposition to foreign

minorities or their descendants, using the “us vs them” rhetoric to separate the real people from these strange groups. Some authors have conflicting views about how nativism is connected to nationalism (De Cleen, 2017; Bergmann, 2020), but the consensus is that, as previously put, populism can connect itself to different ideologies, and the exclusionary of immigrants is one of them (Mudde, 2017).

These ideologies preaching a national and unique identity, allied with the populist central appeal of a homogeneous and pure people against the others, can create tensions about immigration. The conflict is based on the distrust towards international institutions, the attempt of limiting foreigners’ access and the control about the territory under sovereignty excuses (Reis, 2004, 2006; Betts, 2009; Ewing, 2012; Ribeiro, 2019), like Le Pen in France, Andrzej Duda in Poland, Geert Wilders in the Netherlands and Donald Trump in the US.

According to the European Commission, in January 2021, 37,5 million people living in the EU were born outside of their member-states (8.4% of the population)⁶. In the EU, the governance of immigration law aims to balance the weight of the flows among all the countries.

Today, it is possible to enter Europe to stay as a highly skilled worker, a seasonal worker, an intra-corporate transfer, a student, for family reunification, an asylum seeker and as a resettlement receiver. Recently, a reform for the asylum law was initiated after the developments of the 2015 crisis, and in September 2020 a the Commission proposed a new pact on migration and asylum was established. It is only a part of the reform happening in the bloc^{7 8}.

In Europe, cultural threats related to immigration are mainly associated with populist values in the discourse of political parties. It is widespread in all countries of the region, and has examples all along the left-right spectrum, but it is noticed how many of them are right-wing and even nationalists, affected by the Syrian immigration flow (Mudde, 2017; Stanley, 2017; Taggart, 2017; Norris e Inglehart, 2019). Also, opposing supranational powers is a current issue all over the continent (Stanley, 2017; Taggart, 2017; Plagemann e Destradi, 2019).

⁶Statistics on migration to Europe. European Commission. Available at: <https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/promoting-our-european-way-of-life/statistics-migration-europe_en>, accessed on 16/11/2022.

⁷EU asylum reform. Available at: <<https://www.consilium.europa.eu/en/policies/eu-migration-policy/eu-asylum-reform/>>, accessed on 05/08/2022.

⁸EU migration and asylum policy. Available at: <<https://www.consilium.europa.eu/en/policies/eu-migration-policy/>>, accessed on 05/08/2022.

Fisher (2019) was responsible for a case study of the European Union that addressed an effort underway to discourage irregular immigration and encourage resettlement, as of 2015. Retaining refugees in Turkey and Greece had the goal of keeping immigrants in refugee centers known as “hotspots”.⁹ The French government has shown an interest in opening one such center in Libya, which lies on the route for many sub-Saharan Africans (Fisher, 2019).

2.3 INTERNATIONAL INSTITUTIONS AND RESISTANCE

Populism is dangerous to intergovernmental arrangements because of their anti-establishment features. There are two points of friction: i) populist leaders attribute corruption and lack of reliability to these institutions that supposedly take advantage of the nation; ii) pluralism is the opposite of populism, which delegitimizes the interests of other countries and the effort of international institutions to consider them (Posner, 2017). This position affects foreign policy and the application of public policies deriving from treaties and international acts.

According to Norris and Inglehart (2019), the anti-globalization, anti-cosmopolitanism and anti-cooperation sentiment leads to a rejection of the United Nations (UN), the North Atlantic Treaty Organization (NATO), the European Union and any standards established by international law or human rights regimes. They visualize it as a characteristic of authoritarian populism, but Mudde (2017) and Taggart (2017) recognize this as a trace for any type of populism to some degree, maybe varying in the justification - elitism and corruption vs. sovereignty and national identity.

The implementation of norms from international institutions depends on the level of compliance - the enforcement of rules (Rousseau, 2018) - in the States, but it is also vulnerable to the international community's monitoring (Loescher, 2016). If the evidence of irregularity is called out, there is expectation for constraint translating into conformity (Engstrom, 2010; Carraro et al., 2019).

Still, it is important to take into consideration what leaders do to resist compliance of international institutions' norms and decision-making procedures. There are many ways to do that, including questioning, rejecting, blocking or reverting the developments of a norm (Hofmann, 2018; Deitelhoff, 2020). According to Hofmann (2018), resistance can be seen

⁹ RUECKERT, Phineas. “France to Open Refugee ‘Hotspots’ in Libya to Process Asylum Requests”. Global Citizen, 2017, July 28th. Available at: <https://www.globalcitizen.org/en/content/macron-libya-refugee-hotspots/?template=next>, accessed on 26/10/2022.

simply as a lack of compliance by national authorities, or even as an attempt to change a ruling of a court.

Expanding on that, Soley and Steininger (2018) present 4 different stages of criticism: objection, contestation, resistance and backlash. This gradation of criticism against international courts, for example, begins by rhetorical complaints that don't have any imminent consequences and end with "systematic and consistent criticism as well as severe instances of non-compliance" (Soley and Steininger, 2018, p. 241), intending not to only revert a ruling or norm, but the whole institution's legitimacy.

Voeten (2019) evolves the backlash concept by considering a collection of government actions that aim to reverse the authority, and indicating types of backlash. To him, reform proposals, limited jurisdiction, threats to exit the institution or effectively exit from it are some of those types. Alter and Zürn (2020), more simply, understand that backlash aims to revert to a prior condition through a reaction movement.

In a more useful manner for this thesis, Madsen, Cebulak and Wiebusch (2018) consider resistance in a broader way, as an attempt at blocking or reversing decisions. It has two main types of developments: i) pushbacks, that occur within the system of the institutions and intent to reverse some of its developments; and ii) backlash, extraordinary resistance that challenges the authority of the institution, aiming to revert its developments, transform the system or shutting it down. Their work identifies many different practices that can indicate a resistance to international courts, and lack of cooperation in particular domains, combined with lack of engagement by national courts with international courts case-law are the most precious for my study.

The motivation to start a resistance process can be traced back to programmatic interests or legitimate concerns about the internal law integrity, economy and even national identity (Hofmann, 2018). Voeten (2019) does a classification of populist and non-populist leaders who have initiated a backlash against international courts. He concludes that the majority of cases were related to populists, and understood that although his work focuses on courts, he believes the relation between populism and resistance can be applied to any international institution, since those are counter-majoritarian from a domestic point of view (Voeten, 2019).

The diffusion of norms is drawn up as a process through which ideas, normative standards, or policies and institutions are incorporated into the members of an international institution (Börzel and Risse, 2017). There are four diffusion mechanisms in the process of EU integration, for example: i) legal coercion regarding the obligation by member States to

comply with EU law; ii) manipulating utility calculations by offering negative and positive incentives as a nudge; iii) socialization as a normative rationality or the logic of appropriateness, involving the seek to meet social expectations and learn new practices and interests; and iv) persuasion, referring to situations in which actors persuade each other about their claims (Börzel and Risse, 2017).

Nevertheless, it is important to have in mind that the adoption of rules and models into domestic structures involves an active process of interpretation and incorporation of new norms into existing institutions, and also resistance to particular rules and regulations (Börzel and Risse, 2017). As an example, the EU integration has many facets, and one of them is the differentiated feature. The differentiated integration consists in allowing the embrace of only the single market as an obligation, permitting the members to not necessarily enfold fields of Economic and Monetary Union and Justice and Home Affairs. This covers issues like the euro area, the Banking Union, the Shengen area and even some rules over immigration and asylum¹⁰.

2.3.1 Resistance in the European Union

The European Commission is the primary executive branch of the EU. It is responsible for legislative initiative, representing the organization, managing the budget, publishing advices and recommendations, and for enforcing the European legislation. Through the Commission, the EU has exclusive, shared and supporting competences about certain topics of legislation¹¹.

The exclusive competences gives the bloc total power to pass laws, the member-States can only apply them. The supporting competences established that the EU can only assist, coordinate or complement the decision of the members. The shared competencies are which both the EU and member countries are able to pass laws, but they need to be according to previous or future EU laws. Migration and home affairs are this kind of topic.

Those proposed laws are analyzed and adopted by the European Parliament and by the Council of the European Union. When approved, especially directives¹², the member countries have to embody them to the national framework, transposing the goals. This process

¹⁰Differentiated integration in the European Union. Available at: <[https://www.europarl.europa.eu/RegData/etudes/ATAG/2016/573961/EPRS_ATA\(2016\)573961_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/ATAG/2016/573961/EPRS_ATA(2016)573961_EN.pdf)>, accessed on 07/02/2023.

¹¹Areas of EU action. Available at: <https://commission.europa.eu/about-european-commission/what-european-commission-does/law/areas-eu-action_en>, accessed on 29/10/2022.

¹²Types of EU law. Available at: <https://ec.europa.eu/info/law/law-making-process/types-eu-law_pt>, accessed on 14/05/2022.

has a fixed deadline, usually 2 years. National authorities must, then, communicate to the Commission that the task is finished, since it is the institution responsible for the compliance.

When a member country does not communicate, or does not internalize the law on time, or even does not apply it correctly - by not covering all its necessary elements or interpreting erroneously its commitments -, the Commission usually contacts the government to understand what happened and, further, may launch an infringement procedure. This procedure has a few steps.

The first move is sending a letter of formal notice, requesting further information to the country concerned about how come they have not applied the legislation. A response containing detailed facts must be handed over within a specified period, usually 2 months.¹³

In case of no answer from the country, it is argued that there is a failure to fulfill its obligations under EU law. Therefore, a reasoned opinion is sent: a formal request to comply. This document explains why the Commission considers that the country is unlawful and solicits the country to inform the measures taken to comply within a specified period, usually 2 months. Some cases have additional formal notices or additional reasoned opinions. This happens when the Commission wants to add some more proof of non-compliance to the infringement procedure.¹⁴

Next step comes if the answer to the reasoned opinion is never handed, if it is not ready at the proposed deadline, or if it is unsatisfactory, which means the member did not take necessary measures to apply the legislation as the Commission considers correctly. Hence, the Commission may decide to refer the matter to the Court of Justice of the European Union (CJEU).¹⁵

The CJEU is responsible for interpreting and enforcing the law, annulling legal acts, ensuring action and sanctioning EU institutions. It is divided in two courts: i) Court of Justice, that rules over requests for preliminary decisions from national courts, certain actions for annulment and appeals, which covers the uniform application of EU law; and ii) General Court, that rules on actions brought by individuals, companies and, in some cases, EU governments, meaning that this court deals mainly with legal proceedings against the EU¹⁶.

¹³ Infringement procedure. European Commission. Available at: <https://commission.europa.eu/law/application-eu-law/role-member-states-and-commission/infringement-procedure_en>, accessed on 04/02/2023.

¹⁴ Check footnote 13.

¹⁵ Check footnote 13.

¹⁶ Court of Justice of the European Union (CJEU). Available at: <https://european-union.europa.eu/institutions-law-budget/institutions-and-bodies/institutions-and-bodies-profiles/court-justice-european-union-cjeu_en>, accessed on 22/01/2023.

If the State does not comply with the court ruling, the Commission may refer the country back to the court. This is the final step. The infringement case continues, with only one written warning, the letter of formal notice, before referring the member back to the court. If it finds that the country concerned has not complied with its judgment, it may impose a lump sum or penalty payment on it.

The processes that go further in the procedure, beyond the letter of formal notice and the reasoned opinion until the trial phase, represent member countries that fail to keep compliance with the EU law, showing resistance to its rules¹⁷. The majority of launched infringement procedures are closed after the formal notice (Koops, 2014).

The infringement procedure is the mechanism used by the European Commission to manage the implementation of norms and oversee any breaches by the communications and analysis of the transposition, employing administrative or pecuniary sanctions to the transgressors. There are other compliance mechanisms in the EU (Koops, 2014).

EU Pilot¹⁸, for example, is an online platform which Member States and Commission's services use to communicate and clarify the factual and legal background in relation to the conformity of national law with EU law, and it is used as a first step to try to resolve problems, so that, if possible, formal infringement proceedings are avoided. SOLVIT¹⁹ is a service provided by the national administration in each EU country responsible for offering legal help to EU citizens or businesses that have their rights violated by public authorities in another EU country. The Internal Market Scoreboard (IMS)²⁰ monitors how well the EU States comply with their obligations and checks the progress with regard to the internal market with reports on the implementation of directives.

The implementation of norms is vulnerable to the EU's monitoring. In infringement procedures, the attitudes of national authorities are the most important variable to track compliance (Hofmann, 2018). Nevertheless, it is important to understand that the costs of denouncing countries are different from one another.

According to Steunenberg (2010), their incentive for initiating or continuing an infringement procedure can be subjected to personal political preferences over policies

¹⁷Consolidated Version of The Treaty on The Functioning of The European Union. Official Journal of the European Union. Available at: https://eur-lex.europa.eu/resource.html?uri=cellar:41f89a28-1fc6-4c92-b1c8-03327d1b1ecc.0007.02/DOC_1&format=PDF, accessed on 17/01/2023.

¹⁸ EU Pilot. European Commission. Available at: https://single-market-scoreboard.ec.europa.eu/enforcement-tools/eu-pilot_en, accessed on 15/02/2023.

¹⁹ SOLVIT. European Commission. Available at: https://ec.europa.eu/solvit/how-solvit-works/index_en.htm, accessed on 15/02/2023.

²⁰ Internal Market Information System. European Commission. Available at: https://single-market-scoreboard.ec.europa.eu/enforcement-tools/imi_en, accessed on 15/02/2023.

(involving the court or other members in the process) or structures (processes and regulations). There are also costs related to time and reputation, and the Commission needs to reduce them to be considered a strong gatekeeper to member countries, and to properly enforce directives (Steunenberg, 2010). Chevuru (2022) considers the strategy of waiting for a change in power to start or continue an infringement procedure, in hope of a more favorable environment to the EU.

As follows, this work explores how the level of populism of European Union's leaders can be associated with the frequency of infringement procedures about migration policies. Consequently, it will be possible to analyze qualitatively the results, focusing on a case study to identify the strategies of resistance used by a member State against those legislations.

3 DATA AND METHODS

Given the linkage of populism with issues such as immigration and resistance to norms from supranational institutions, the goal of this thesis is to analyze this framework in the European Union. I'll explore how populist governments resist to the bloc's migration policies.

3.1 MIXED-METHODS

This research has an exploratory vein. It is focused on gaining knowledge from what the data shows, running analyses developed to create information about the resistance of populists to migration in the mentioned context. A mixed-method approach will be applied to the data studied in this thesis, combining quantitative and qualitative methodologies.

First, I engage in quantitative work to navigate the distribution of the EU leaders in terms of populism and the amount of infringement procedures related to migration policies. Populism is reasoned by the definition of Cas Mudde, and the infringement procedures are counted by the European Commission.

Secondly, a qualitative process will be executed to point out the resistance patterns of the leaders under analysis. Descriptive and classificatory typologies will be used to carry out this part of the research, defining types to characterize situations encountered and assigning cases to those types (Elman, 2005).

After this, a case study will be employed, focusing on a specific leader revealed by our data as an interesting occurrence (George and Bennett, 2005; Seawright and Gerring, 2008), focused on detecting the ways in which the country sets its resistance. For this part, the selected EU member was Hungary, because of the important part populism plays in the country's politics, especially regarding immigration (Norris and Inglehart, 2019; Goldstein, 2022). Even though populism does not appear to be a major characteristic to influence resistance in quantitative analysis, the qualitative one reveals more about this relationship, and I used Hungary's background on the subject to picture this reality. All the databases, documents and scripts will be available at my personal GitHub and OSF project for the thesis²¹.

²¹ Github: Dissertacao_UFPE. Available at: <https://github.com/Letisouza/Dissertacao_UFPE>; OSF: Dissertacao_UFPE. Available at: <<https://osf.io/wh2s5/>>.

3.2 VARIABLES

I begin presenting data on immigration in the European Union. The data is the international migrant stock and the refugee stock - number of people born in a country other than that in which they live -, from the UN DESA²².

Populism is measured by the Global Populism Database (GPD)²³. It codes leaders by their term of office using four types of speeches (a campaign speech, a ribbon-cutting speech, an international speech, and a famous speech) to classify their level of populism from 0 (non-populist) to 2 (extremely populist) by the mean calculated from the speeches' grades. To simplify the project's classification and to specify these categories to at the decimal stretch, leaders from 0 to 0.5 are considered as non-populist, and as populist any leader above this cohort.

The infringement procedures (IP) dataset²⁴ lists every case initiated by the European Commission, making available the exact date of every step of the process, the policy area and a brief description of the violation. To select the migration infringements, there is not a policy area directed to this topic. Therefore, the selection includes "*Employment, social affairs and equal opportunities*", "*Home affairs*", "*Justice, freedom and security*", e "*Justice, fundamental rights and citizenship*", which are the areas linked to migration. This approach could lead me to many irrelevant procedures, which required a manual filter case by case to check if they actually were related to migration policies.

Resistance is considered any lack of cooperation in particular domains or lack of engagement with international courts case-law (Madsen, Cebulak and Wiebusch, 2018). From the four steps of infringement procedures (formal notice, reasoned opinion, referral to court and eventually second referral to court), I create a typology of resistance and classify all the countries. From this, the case study to identify the details of this resistance is developed using the documents from the court decision about the infringement procedures and reports from research institutions, official institutions and NGOs, and media news about the context of the case.

²²United Nations Department of Economic and Social Affairs. Available at: <<https://www.un.org/development/desa/pd/content/international-migrant-stock>>, accessed on 21/11/2022.

²³Global Populism Database, version 2. Available at: <<https://dataverse.harvard.edu/dataset.xhtml?persistentId=doi:10.7910/DVN/LFTQEZ>>, accessed on 02/05/2022.

²⁴Infringement Decisions. Available at: <https://ec.europa.eu/atwork/applying-eu-law/infringements-proceedings/infringement_decisions/?lang_code=en>, accessed on 20/04/2022.

Belgium, Cyprus, Denmark, Luxembourg, Malta and Portugal do not have data available in the GPD set, so they were cut off of the analysis. The intent is to select a case based on infringements that could advance to an indication to the CJEU²⁵, but the court only has cases starting from 2012. Because of the restrictions of the COVID-19 pandemic, I will consider the infringement initiated until 2019. Thus, these countries without any record in the GPD set between these years were excluded as well: Slovenia, Spain, Estonia, Finland and Ireland.

Member States' leaders with coded terms on GPD ending before 2019, but reelected or kept in office during that year, were included in the research. Countries with president and prime-minister coded were subject to keep only one office in the dataset, preferably the one covering the entire period analyzed.

Hence, the focus will be on 17 countries, between 2012 and 2019: Austria, Bulgaria, Croatia, Czech Republic, France, Germany, Greece, Netherlands, Hungary, Italy, Latvia, Lithuania, Poland, Romania, Slovakia, Sweden and the United Kingdom. The final set has terms during this time period, their level of populism and the quantity of infringement procedures in every term.

²⁵ Case-Law. Court of Justice of the European Union. Available at: https://curia.europa.eu/jcms/jcms/P_106311/en/, accessed on 13/05/2022.

4 RESULTS AND DISCUSSION

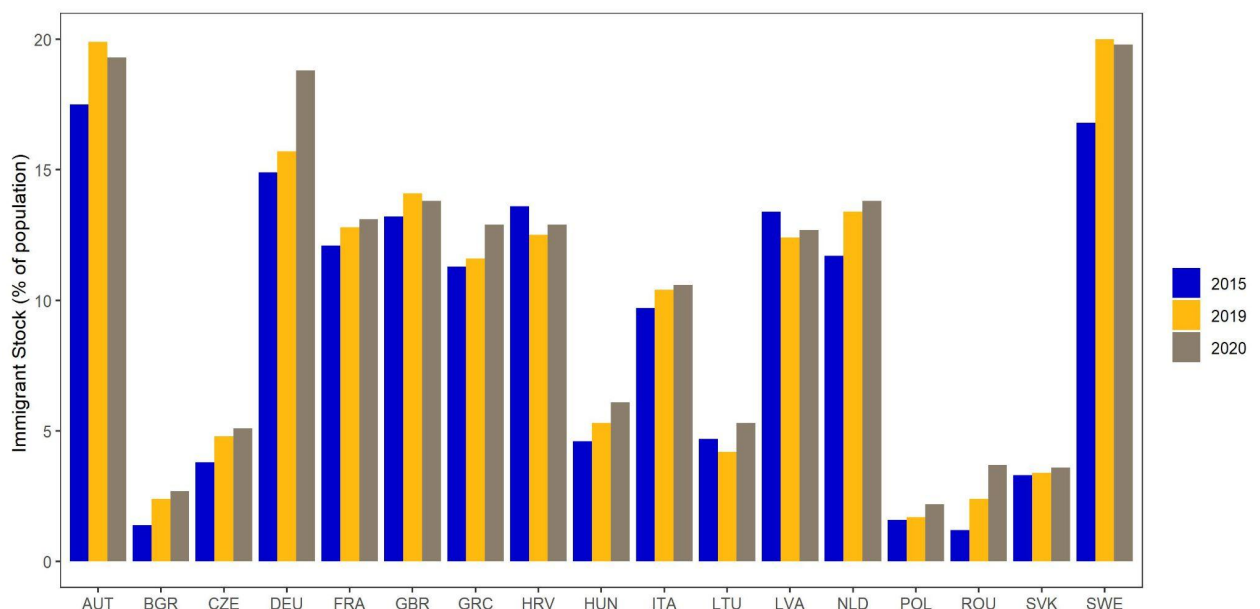
4.1 QUANTITATIVE ANALYSIS

The following analysis is a general view of the data about immigration in the EU over time and the distribution of populist leaders over the amount of IPs about migration policies. This part of the work is purely descriptive, with no robust statistical analysis in part because of the exploratory nature of the research, but also because it is not a large-n study. In total, there are 17 countries and 39 cases - that is, terms. All the graphs were produced by the author using R v 4.2.1 and RStudio v 2022.12.0+353, and their colors were chosen thinking of color-blind persons.

4.1.1 Immigration in the European Union

The UN DESA data gathers information from a few years and lets them out as a total up to the release year to present a picture of the situation. This first graph indicates the amount of international migrants as a percentage of the total population in the country in 2015 (blue), then 2019 (yellow) and 2020 (gray). Unfortunately, the oldest data available is from 2015.

Graph 1: Immigration Stock as a % of the Population per Country



Source: The author (2023).

The graph 1 shows how patterned the numbers are. In general, every year was bigger than the last. The only exceptions are Lithuania, Latvia and Croatia, who had more

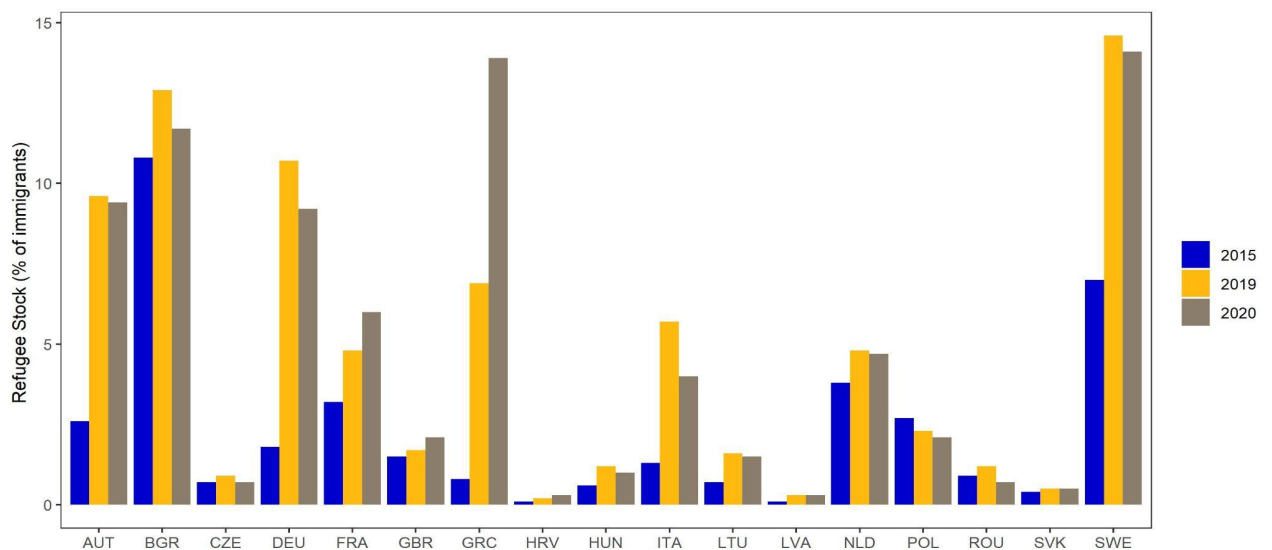
immigrants in 2015 than in 2019; and for Austria, UK and Sweden, who had more in 2019 than in 2020. Croatia and Latvia had an even more interesting case, for both had more immigrants in 2015 than in any other year analyzed.

The countries with the greatest immigrant levels were Sweden, Austria and Germany. The lower levels were in Romania, Poland and Bulgaria. The highest percentage of the population was in Sweden 2019 (20%), and the lowest was in Romania 2015 (1.2%).

From 2015 to 2019, the country with the highest growth was Sweden, with a 3.2 percentage points difference, and the one with the lowest shrinking for that time was Croatia, 1.1 percentage points difference. From 2019 to 2020, the growth was 3.1 percentage points in Germany, and Austria reduced 0.6 percentage points.

Bulgaria, Czech Republic, Hungary, Lithuania, Poland, Romania and Slovakia never crossed the 10% line on the graph during the whole time period. Austria, Germany, France, UK, Greece, Croatia, Italy (except for 2015), Latvia, Netherlands, and Sweden had between 10% to 20% of the population formed by immigrants.

Graph 2: Refugee Stock as a % of Immigrants per Country



Source: The author (2023).

Now, we turn to the refugee data. This data is a percentage of total immigrants. The refugee stock has its pattern clearly affected by the refugee crisis initiated in 2015. The 2019 data, which covers this period, had the highest percentage of the three. Austria, Bulgaria, Czech Republic, Germany, Hungary, Italy, Lithuania, Netherlands, Romania and Sweden follow this finding.

France, UK, Greece and Croatia had bigger numbers in 2020. Romania and Poland were the only countries with a 2015 percentage bigger than 2020. Interestingly enough, the latter actually had data for 2015 being the highest of all the other years coded.

The countries with the greatest refugee levels were Sweden, Bulgaria and Greece. The lower levels were in Latvia, Croatia and Slovakia. The highest percentage of refugees in the total of immigrants was in Sweden 2019 (14.6%), and the lowest was in Latvia and Croatia 2015 (0.1%).

From 2015 to 2019, the country with the highest growth was Germany, with a 8.9 percentage points difference - possibly because of its norms permitting the entrance of Syrian refugees -, and the only country with a shrinking for that time was Poland, 0.4 percentage points difference. From 2019 to 2020, the growth was 7 percentage points in Greece, and Italy reduced 1.7 percentage points.

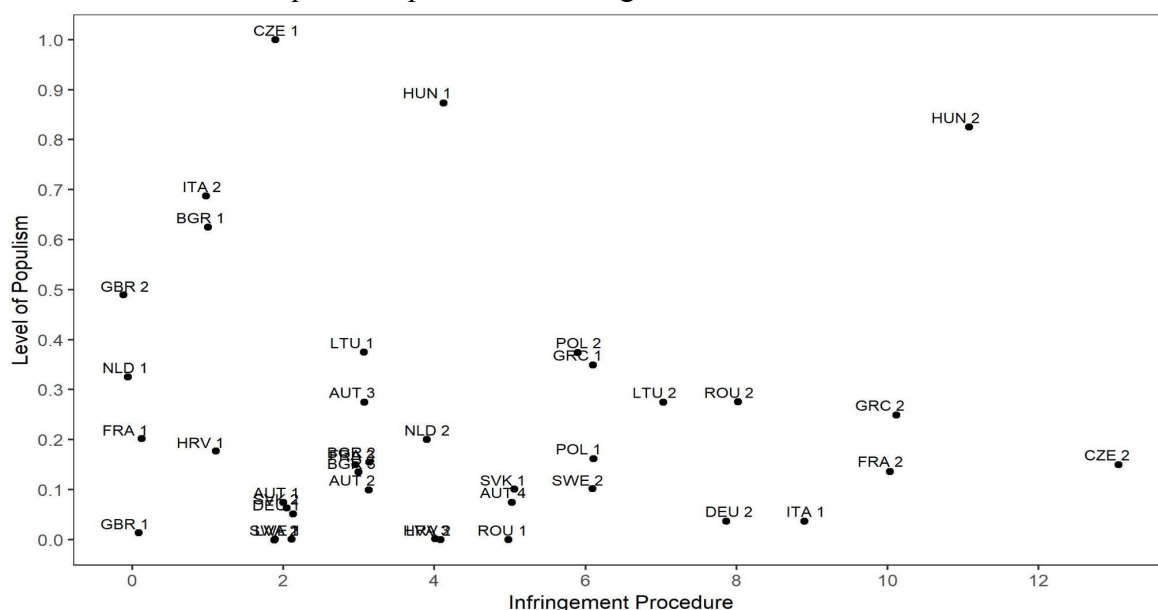
Bulgaria, Germany, Greece and Sweden were the only countries to cross the 10% line on the graph during the whole time period. Austria, France, and Italy got above the 5% line. Czech Republic, UK, Croatia, Hungary, Lithuania, Latvia, Netherlands, Poland, Romania and Slovakia didn't even get to 5% of the immigrant population.

Even though it seems to have the same attention, it's interesting the difference between the reception of refugees in Greece and Italy, and also how many refugees actually access Austria, Bulgaria and Sweden these last 7 years, besides other countries like Germany and France, that are known for this issue.

4.1.2 Populism and infringement procedures

The information of this section is focused on the terms of the countries' leaders during 2012-2019. The GPD informs the level of populism in every term, while the infringement procedures translate how many processes concerning migration policies were initiated by the European Commission involving that specific term. In total, there were 39 terms in the dataset, and their order is coded related to the time period for that country, not to the leader herself. So the first term for France, for example, is the first term coded for the State, not for the specific chief in office.

Graph 3 - Populism Vs Infringement Procedures



Source: The author (2023).

This descriptive distribution shows the majority of countries and terms have a common level of populism. That is, most of them are on the non-populist level, and only four countries are above the 0.5 threshold, hence considered populist. These are Bulgaria's first term (Boyko Borisov), Italy's second term (Giuseppe Conte), Hungary's both terms coded (Viktor Orbán) and Czech Republic first term (Vaclav Klaus). They scored 0.625, 0.687, 0.825, 0.875 and 1, respectively. Croatia's second term (Andrej Plenkovic), Latvia's all three terms (Valdis Dombrovskis, Laimdota Straujuma and Maris Kucinskis), Romania's first term (Traian Basescu) and Sweden's first term (Fredrik Reinfeldt) all rank 0.000 on the populism level.

Furthermore, the amount of infringement procedures vary among populists and non-populists. Both UK's terms (David Cameron and Theresa May), France's first term (Nicolas Sarkozy) and Netherlands' first term (Mark Rutte) had zero infringements registered, while the second terms of these four countries registered the highest quantities of the dataset: France (Francois Hollande) and Greece (Alexis Tspiras) scored 10, Hungary (Viktor Orbán) scored 11 and Czech Republic (Milos Zeman) scored 13²⁶.

As we can see, non-populist countries are spread in relation to infringements, most registering fewer procedures. An interesting case is Milos Zeman from the Czech Republic, who was the only leader who got this many procedures attached to him, but has a low level of populist. Following this logic, Vaclav Klaus also from the Czech Republic has the highest

²⁶ It is possible that the violations happened in the previous government, but the Commission only notified the problem in the next one.

score of populism, but only 2 procedures. In this particular case, it could be related to the time period covered, since his term started in 2008 and ended in 2013, giving us only two years to analyze.

Besides that, most of our populist terms are connected to low levels of infringements, except for Hungary. Governing from 2010 until now, Orbán has a steady relation to infringements procedures about migration. His first term has a slightly higher level of populism than his second - 0.875 to 0.825 -, and we only cover 2 years from the first term. That gives an amount of 4 procedures during this period, and eleven during the second one. The country has the second highest level of populism and the second highest number of infringement procedures, losing only to the Czech Republic.

Hungary is certainly a consistent outlier, not only for the difference from the other EU members about those two variables and how they can be related, but also because it has the regularity of being under one leader during the whole period of analysis.

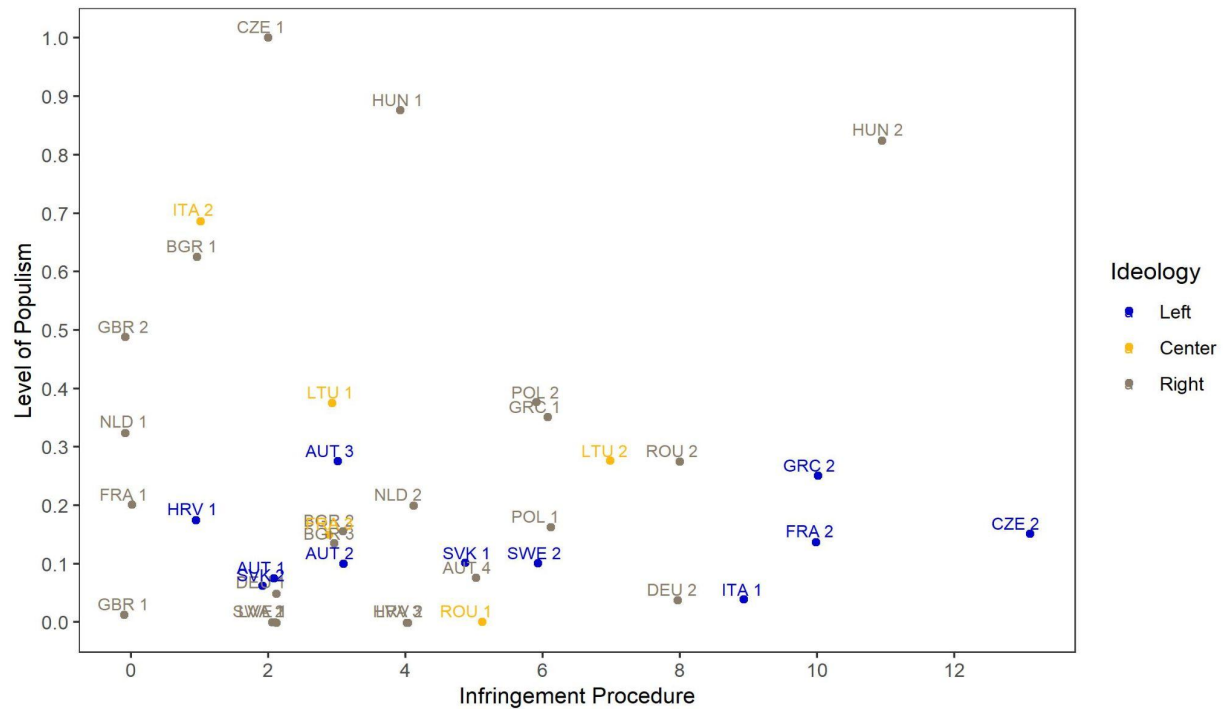
The aim of the thesis is neither to define a robust relationship between populism and infringement procedures about migration policies, nor to look deeper between the many types of populism. Still, it is not hard to see that there is no line that could be drawn on the distribution we see in graph 3, and this could be better explored by focusing on the particularities of populism in the region and over the immigration issue. In Hungary, for example, Viktor Orbán is moved by populism in his decision making about social issues and themes such as immigration and the rule of law in the country (Goldstein, 2022). Therefore, contextually, populism may play an important role to define the propensity of resisting norms of such nature.

4.1.3 Ideology

This section is a quick pause on my discussion to explore one of the many possible ideology interferences on the EU's migration legislation. This relationship between populism and left-right wings is one of the main discussions about how populists behave (Mudde, 2017; Stanley, 2017; Taggart, 2017; Lutz, 2018; Norris e Inglehart, 2019; Shehaj, Shin, and Inglehart, 2019; Svolik et al, 2023). The graphs below use the variables I already presented, adding only two more, both on ideology: the left-right scale from GPD, measuring the leader, and the variable from the Chapel Hill Expert Survey (CHES), that codes parties from extreme-left to extreme-right (0-10).

Graph 4 is exactly equal to graph 3, but now we can see the ideology of the leaders running that term. Most of the leaders coded are on the right side of the spectrum, but we can note the presence of center and left parties as well. The five center leaders are Romania's Traian Basescu (first term), Lithuania's Dalia Grybauskaitė (first and second term), France's Emmanuel Macron (third term) and Italy's Giuseppe Conte (second term).

Graph 4 - Populism Vs Infringement Procedures Vs Ideology



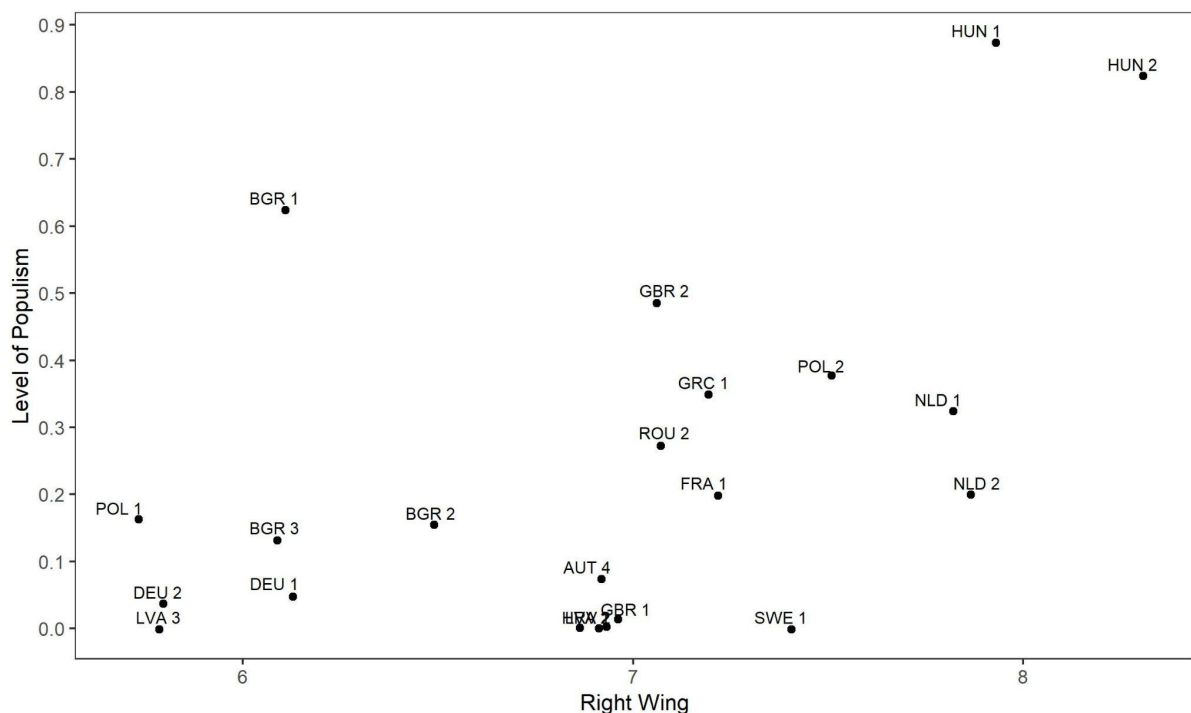
Source: The author (2023).

The four populist countries (above 0.5 on populism level) are majoritarially right wing, except for Giuseppe Conte in Italy. Meanwhile, the four countries with the highest numbers of infringement procedures are left wing leaders, except for Viktor Orbán in Hungary. Even though right leaders have a stronger relation to populism and immigration in Europe, it is interesting to see how this might not be the same for non-compliance to the rules in terms of procedures by the Commission, since left leaders have the most individual accounts of processes. For example, only right wing leaders have zero procedures.

Therefore, how can we see the right and extreme-right in Europe in action over this so-called essential issue for them? This took me to investigate this data with the CHES classification of right. Because the variable codes extreme-left to extreme-right, and I only want to get the right parties, the right wing axis starts on 5.7 and ends on 10. Lithuania's both terms, Italy's Giuseppe Conte (second term) and Czechia's Vaclav Klaus (first term) were excluded in the following analysis for those leaders were independent.

The graph below shows that most leaders coded are on the extreme path, being closer and closer to 10. None of them actually hit this threshold. The countries with zero levels of populism vary on the right levels. Croatia's second term (Andrej Plenkovic), Latvia's first and second terms (Valdis Dombrovskis, Laimdota Straujuma) score 6.9 on the right scale, while Latvia's third (Maris Kucinskis) scores 5.8, and Sweden's first term (Fredrik Reinfeldt), 7.4. Only The Fidesz, Hungarian party of Orbán, gets 8.3 for his second term on this scale, the highest score. In general, only Hungary is on the major level of populism and right wing, appearing as the top of an invisible line with an ascending trajectory.

Graph 5 - Populism Vs Right Wing

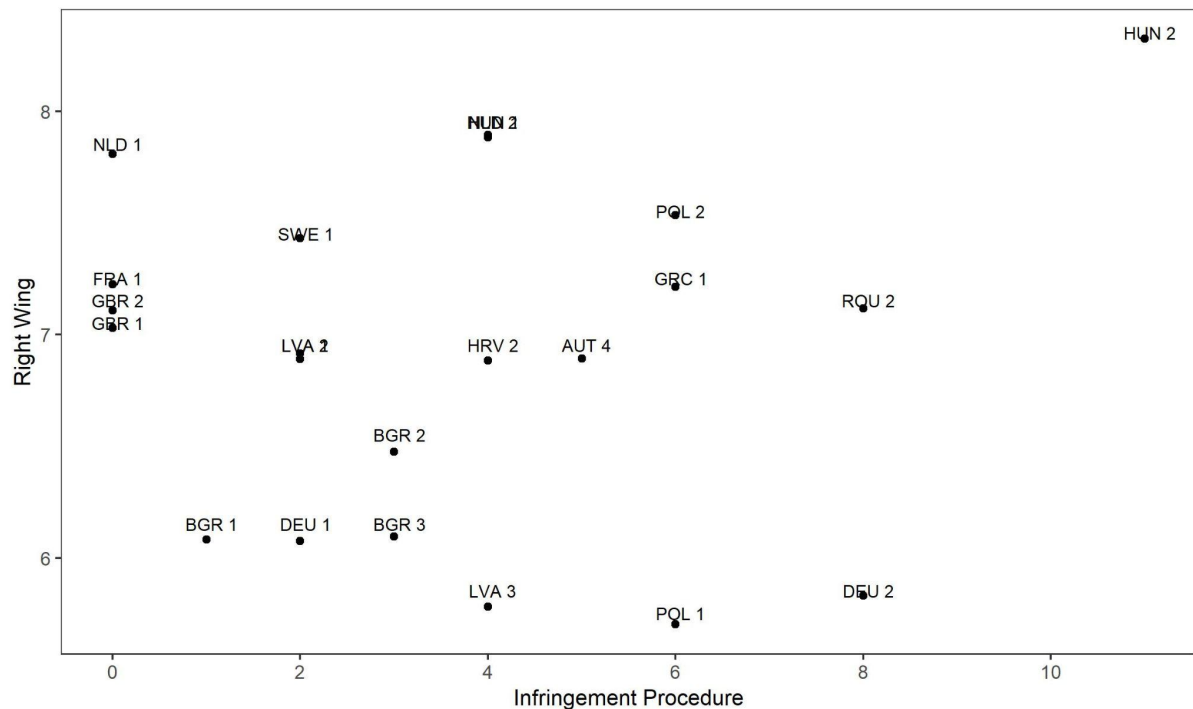


Source: The author (2023).

Now, I look at the right wing movement around the infringement procedures about migration policies, and the distribution is considerably close to what is found on the populism vs infringement procedures graph. There is much more variability than graph 5 in terms of placement, but it is still possible to draw an ascending line.

The leaders with zero infringements have some of the highest scores on the right scale: UK's terms (David Cameron and Theresa May) gets 7 and 7.1, respectively; France's first term (Nicolas Sarkozy) is 7.2 and Netherlands' first term (Mark Rutte) is 7.8. Again, Hungary is on the top of the graph in both axes; The Fidesz scoring 8.3 for his second term is also the highest on procedures (11).

Graph 6 - Infringement Procedures Vs Right Wing



Source: The author (2023).

This part of the thesis was only to glance at the relation of right wing ideologies on the data I've covered until now. Since the goal is not to jump into righteous populism, authoritarian populism, nationalist/nativism populism or any other variance, but populism as a flexible ideology, I try not to explore this path much.

As Mudde (2017) points out, it is also important to understand and study populism and its combination to the many possible options observed and available. So it is in order to address this feature of this ideology, but the challenge here is actually to cover this general and pure classification of populism in Europe with the immigration and resistance issue that has gained space among right politicians, but that can still be used by the left and center.

4.2 QUALITATIVE ANALYSIS: TYPOLOGY AND CASE STUDY

Now, I turn to the qualitative side of this research. After exploring the data quantitatively and gathering some information about the salient cases, it is time for a more deeper look at the information about the resistance patterns through infringement procedures and the content of the documents involved in these processes. Since the quantitative analysis did not reveal much, a qualitative eye might show a few more details about how populism could, contextually, relate to resistance. I continue to examine the same 17 countries and 39

term cases. I begin with descriptive and classificatory typologies about the resistance process, which aligned with the previous analysis, will culminate in the case study.

4.2.1 Resistance typology

Resistance, as described by Madsen, Cebulak and Wiebusch (2018), is a broader attempt to challenge a decision or policy. Many practices indicate a resistance to international organization. Regarding courts, for example, lack of engagement by national courts with international courts case-law or lack of cooperation in particular domains are very common in cases of infringement procedures.

As mentioned before, the infringement procedure is formed of four basic institutional steps: letter of formal notice, reasoned opinion, referral to court and, if needed, another referral to court preceded by only a new letter of formal notice. Using these formal stages as measures for how far this resistance go in this process, associated with the literature chosen to define resistance and its developments, I structured the following descriptive typology:

Table 1 - Typology of Resistance Levels

Procedural Resistance	Reunites stages 1 (letter of formal notice) and 2 (reasoned opinion). They are used as alerts to deadlines or irregularities. The letter of formal notice is sent when the member does not address compliance by the established period. The reasoned opinion is sent when the country does not reply satisfactorily to the letter, listing what is not up to date.
Substantive Resistance	Represent stage 3, referral to court. If the member country refuses to comply after the first two steps, it means a dispute about the understanding of the non-compliance statement about a rule.
Backlash	Represent stage 4, another referral to court. The member already received a ruling by the court, but still does not follow its decisions, insisting on non-compliance. The State is again referred to court, vulnerable to pecuniary penalties. This shows a denial to comply with the ordering of the tribunal, now challenging the content of the rules and the authority of the institution in the theme.

Source: The author (2023).

Using the levels described above, I arranged the amount of procedures coded for each term and their level of populism. This way, it is possible to identify any connection between these variables, now with a more objective glance at the types of resistance employed by these governments. This next table shows exactly this classification typology.

Table 2 - Classification of Cases into Resistance Levels

Populism	No infringement procedures	Procedural Resistance	Substantive Resistance	Backlash
0-0.5 non-populist	GBR1, GBR2 NLD1 FRA1	SWE1 (2), SWE2 (6) ROU1 (5), ROU2 (8) SVK1 (4), SVK2 (2) POL1 (5), POL2 (5) NDL2 (4) LTU1 (3), LTU2 (7) LVA1 (2), LVA2 (2) LVA3 (4) ITA1 (8) GRC1 (6), GRC2 (10) DEU1 (2), DEU2 (8) FRA2 (10), FRA3 (3) CZE2 (11) HRV1 (1), HRV2 (4) BGR2 (3), BGR3 (3) AUT1 (2), AUT2 (3) AUT3 (3), AUT4 (4)	SVK1 (1) POL1 (1), POL2 (1) ITA1 (1) CZE2 (2) AUT4 (1)	
0.51-2 populist		ITA2 (1) HUN1(4), HUN2 (7) CZE1 (1) BGR1 (1)	HUN2 (3) CZE1 (1)	HUN2 (1)

() Number of infringement procedures.

Source: The author (2023).

The table 2 assigns country terms to their level of populism and their level of resistance for all the infringement procedures cases about migration policy found. Every country is represented by their alpha-3 code followed by a number that means the order of terms during the time period; between parenthesis, is the amount of procedures.

Therefore, it is possible for the same country and term to be coded into different resistance types, since it could have different levels for different procedures during the same term. It is the case for Italy, Austria, Slovakia, Czechia, Poland and Hungary, which have the same terms being assigned to multiple resistance types for different processes.

There are cases spread throughout the table. As mentioned before, UK's first and second terms, Netherlands's first term and France's first term had no infringement procedures during 2012-2019. Most of the cases are attributed to the Procedural Resistance level; this is true for the populist and non-populist terms. This indicates that the majority of procedures were finished or were still in the first two stages of the infringement procedures when I gathered those informations. It is an expected behavior, since most of the procedures end still in the initial steps (Koops, 2014).

A smaller group is directed to the Substantive Resistance. Those countries had court referrals, which indicates a disagreement about the non-compliance claims relating to a law. Looking at the non-populist, only 20% of the total terms in this group were taken to this level, while among the populist, this percentage was 40%. As this data shows, populist could be more willing to go further on resistance than non-populists.

Regarding the last type, Backlash, the only found case is Hungary's second term, about a single process. This case is about a populist leader, Viktor Orbán, who has had an infringement procedure designated to court once, did not follow the ruling and was once again pointed to trial.

During the analysis of this thesis, Hungary was an outstanding case. Its level of populism and of infringement procedures is the second biggest on the dataset, and now we can see it is the only country, among populists and non-populists, to go as far as possible based on our classification of resistance in this kind of process. All these evidences led to the choice of Hungary as our case to study deeper.

The next section will carry out an examination of this particular procedure registered in the table, titled "Failure by Hungary to comply with the judgment of the Court of Justice of the European Union of 17 December 2020 in Case C-808/18, Commission v Hungary".

4.2.2 Hungary

Hungary was the case selected for case study. After considering all the variables important to this work, the member State shows itself to be of much relevance, due to its levels of populism, infringement procedures and resistance. The data presents two terms for this country, both from Viktor Orbán.

The prime minister has ruled the country since 2010, reelected for the fourth term in a row in 2022, and had been in office before, from 1998 to 2002. His party is the Fidesz, which is considered one of the most important far right political organizations in Europe. Orbán is

known for his illiberal ideologies and policies. During his time as prime-minister, he has restricted civil liberties, freedom of speech and even centralized executive power (Norris and Inglehart, 2019).

His reputation with immigration is also full of friction since the 2002 election (Stanley, 2017). This amounts to his fences policies at the border with some European countries to prevent refugees from entering Hungarian territory and his anti-immigrant discourse, deriving from the nationalist sentiments about a past “Greater Hungary” (irredentism) and xenophobia that dates back to the 20th century (Norris and Inglehart, 2019; Goldstein, 2022). He “has called refugees and migrants from the Middle East, Asia and Africa a threat to ‘Christian’ Europe.”²⁷

The relationship between Orbán’s character and resistance to the CJEU or the European Commission might be related to how populism is a major aspect of its political life (Galston, 2018; Norris and Inglehart, 2019; Goldstein, 2022). The constitutional reform that took place in Hungary was based on a populist style that eliminated balance between powers and compromised the quality of democratic institutions, allied with sentiments of nationalism, christianism as a standard and anti-pluralism against immigrants (Foa and Mounk, 2017; Galston, 2018). This is why addressing contextual structures might be of value for this thesis.

During this study, I found 15 infringement procedures that blame Hungary for not complying with immigration policies. Eleven of them are Procedural Resistances, while three are Substantive. There is still one that indicates a Backlash, the only one in the European Union group analyzed between 2012 and 2019. It is time to start investigating what actions of non-compliance took Hungary to embark on a resistance path against the European Commission, and the Backlash case might be the perfect one to do so.

The infringement procedure is named “Failure by Hungary to comply with the judgment of the Court of Justice of the European Union of 17 December 2020 in Case C-808/18, Commission v Hungary”. In general, it relates to non-compliance on legislation about application for international protection and asylum. The whole process started in December 2015, and went through a letter of formal notice, an additional letter of formal notice, a reasoned opinion, a referral to court, another letter of formal notice and the second referral to court in November 2021. Until now, the second judgment has not been released, and the case has not been closed.

²⁷ SIVIERO, Tommi. “Concerns Raised over EU-Funded Migrant ‘Detention’ Centre in Bosnia. BalkanInsight”. Balkaninsight, 2023, March 21st. Available at: <https://balkaninsight.com/2023/03/21/concerns-raised-over-eu-funded-migrant-detention-centre-in-bosnia/>, accessed on 20/04/23.

This analysis of resistance patterns and the information gathered about the situation in Hungary are based on the documents of the judgment regarding the first referral to the court, press releases, key decisions and reports emitted by the European Commission, reports from the Global Detention Project (GDP) and from the Asylum Information Database (AIDA), based on the European Council on Refugees and Exiles (ECRE), informed by the national NGO Hungarian Helsinki Committee, and a few news sources about the case itself and the situation of people affected during the period.

In 2015, Hungary received a large and unusual number of asylum applications. This stimulated an amendment to the Hungarian asylum act in August, adopting a list of “safe countries”, which were used to determine if the person was accepted or not based on whether that person passed by or was a national of those countries on her way to Hungary: “On that basis, Government Decree 191/2015 established such a list, designating countries such as Serbia as safe and leading all applications of asylum seekers coming through Serbia to be declared inadmissible.” (AIDA’s Country Report: Hungary, p. 11, 2015)

In September, another decree was installed. “A quasi-state of exception introduced into Hungarian law [...], entitled as the ‘state of crisis due to mass migration’” (AIDA’s Country Report: Hungary, p. 11, 2017), induced many changes in the law. Transit zones were created in September and October after the country closed its borders, and they were basically centers made out of containers at the Serbian border (Röske and Tompa) and at the Croatian border (Letenye and Beremend). Refugees were detained there. Another amendment restricted access to protection by only allowing application for asylum at transit zones²⁸.

In December, the Commission sent a letter of formal notice, expressing its worries about the laws amended, especially regarding no automatic suspension of decisions in case of appeals, disrespect to non-refoulement rule, lack of access to basic rights to illegal immigrants and judicial revision without judicial independence:

Firstly, regarding the asylum procedures, the Commission is concerned that there is no possibility to refer to new facts and circumstances [...]. Secondly, regarding rights to translation and interpretation [...]. Thirdly, on the fundamental right to an effective remedy and to a fair trial under Article 47 of the Charter of Fundamental Rights of the EU [...]. (European Commission - Press release, 2015).

Hungary replied “asserting that its legislation was compatible with EU law” (Judgment of the Court - case C-808/18, p. 22, 2020).

²⁸ “Access to the territory and push backs - Hungary”. AIDA, 2023, April 19th. Available at: <https://asylumineurope.org/reports/country/hungary/asylum-procedure/access-procedure-and-registration/access-to-territory-and-push-backs/>, accessed on 25/05/2023.

In March 2016, a huge number of people were kept outside the transit zones between Hungary and Serbia, due to “lists [...] managed by a so-called community leader or list manager who is chosen by the people waiting at the given place and who communicates both with the Serbian and Hungarian authorities.” (AIDA’s Country Report: Hungary, p. 11, 2016). From this list, 5 people per day were admitted in the transit zones. The detention for asylum seekers were based in Kiskunhalas, Nyírbátor and Békéscsaba, while the accommodation centers Nagyfa and Bicske were closed.

A few other changes in the law eliminated any support for integration; from April that year, asylum seekers were not eligible for pocket money anymore.

As a result of legislative changes in April and June 2016, all forms of integration support were eliminated. Since the entry into effect of Decrees 113/2016 and 62/2016 and the June 2016 amendment to the Asylum Act, beneficiaries of international protection are no longer eligible to any state support such as housing support, additional assistance and others. (AIDA’s Country Report: Hungary, p. 12, 2016).

In July, police were asked to evict any asylum seeker apprehended within 8 km of the Serbian-Hungarian or Croatian-Hungarian border to the external side of the border fence, not allowing them to submit for asylum.

Amendments to the Asylum Act and the State Border Act which entered into force on 5 July 2016, already allowed the Hungarian police to automatically return asylum seekers apprehended within 8 kilometres of the Serbian-Hungarian or Croatian-Hungarian border, without giving them a possibility to submit an application for international protection. (ECRE, p. 5, 2017)

Even though the Supreme Court decided Serbia was not one of the “safe countries” anymore, the majority of applicants coming from there were denied.

In March 2017, another change in asylum act defined that illegal immigrants were to be expelled to the Serbian border. All the asylum applications now were supposed to happen at the Serbian border, lodged in person, the applicants should stay as detainees in transit zones until the application was processed, and there was a new 3 days deadline to file an appeal to decisions:

All asylum seekers, including unaccompanied asylum-seeking children over 14 years of age and other vulnerable persons, are automatically detained in the transit zones for the whole duration of the asylum procedure, without any legal basis for detention or judicial remedies. (AIDA’s Country Report: Hungary, p. 12, 2017).

Another camp for refugees, Körmend, was closed in May, and the access of asylum seekers to supplies was limited and reduced. Also, “[a]sylum seekers no longer have access to the labour market.”(AIDA’s Country Report: Hungary, p. 12, 2017).

In that same month, the Commission moved the infringement procedure to an additional letter of formal notice: “In addition, the letter outlines new incompatibilities of the Hungarian asylum law, as recently modified by the amendments of 2017” (European Commission - Press release, 2017, 1), which added the new amendments to Hungarian law in three specific directives²⁹ areas: asylum procedures - reduced time for appeals, restrictions on applying for asylum and lack of attention to the individual needs of occupants of centers -; return of illegal third nationals - expulsion of immigrants and refugees who crossed the Serbian border illegally and irregularity on the return decisions -; and reception conditions - systematic detention of asylum seekers and no general respect for basic rules on reception; and the Charter of Fundamental Rights.

In October 2017, authorities stopped cooperating with human rights institutions that monitored the detention centers and transit zones. The government announced that, by 2019, it would shut down the Asylum, Migration and Integration Funding (AMIF).

Hungary finished its reply to the new letter of formal notice in November: “While declaring that its legislation was compatible with EU law, that Member State nevertheless amended it in certain specific respects.” (Judgment of the Court - case C-808/18, p. 22, 2020).

Yet, in December 2017, the Commission sent a reasoned opinion. After replying to the additional formal notice, the institution decided the irregularities were enough to keep the procedures, keeping all four legislations under infringements as before, only less specific articles:

Following the analysis of the reply provided by the Hungarian authorities, and in view of the new legislation adopted by the Hungarian Parliament in October, the Commission will no longer pursue four out of the eleven issues identified in the complementary letter of formal notice. The reply provided by the Hungarian authorities, however, was still found to be unsatisfactory as it failed to address the majority of the concerns. The Commission still considers that the Hungarian legislation does not comply with EU law, in particular Directive 2013/32/EU on Asylum Procedures, Directive 2008/115/EC on Return, Directive 2013/33/EU on Reception Conditions and several provisions of the Charter of Fundamental Rights. (European Commission - Press Release, 2017, 2)

²⁹ Directive 2013/32/EU, Directive 2008/115/E. Directive 2013/33/EU and Charter of Fundamental Rights.

Hungary, then, “replied to the Commission’s reasoned opinion, restating its view that its legislation was in conformity with EU law.” (Judgment of the Court - case C-808/18, p. 23, 2020).

The situation was escalating institutionally. According to the ECRE report at the time,

Hungary’s legal framework, including alarming recent changes, puts rights at risk due to (1) the lack of access to asylum procedure (2) the application of “safe third country” concept to Dublin returnees (3) the expansion of summary returns policy (4) inadequate reception conditions and automatic use of detention, and (5) increased risks of destitution. (ECRE, p. 2, 2017).

In January 2018, only one person was allowed in at the transit zones. Because of the delicate situation in Hungary,

37 Courts in 15 States bound by the Dublin Regulation have stopped transfers of applicants for international protection under the Dublin Regulation because of the lack of effective protection in Hungary against their arbitrary detention or refoulement. (ECRE, p. 7, 2017).

Since June, all support programs financed by the government have stopped receiving the money. In July, the asylum act was amended again, now with more restrictions to admission: besides the safe countries rule, now Hungary would have to be the first country of asylum. Decisions based on this were not available for suspensive effect, which allows for an appeal.

Still in July, the Commission decided to refer Hungary to the Court of Justice:

The Commission referred Hungary to the Court of Justice over its 2017 asylum and return legislation. The Commission considers that the Hungarian legislation does not comply with the Asylum Procedures Directive, the Reception Conditions Directive, the Return Directive and with several provisions of the Charter of Fundamental Rights. (Monitoring the application of European Union law 2018 Annual Report, p. 29, 2019)

From this referral until the verdict, two and half years passed, enough time for more developments on the asylum situation in the country.

Reception centers were empty. “Still very few asylum seekers reside in open reception centres. By the end of 2018, only 3 persons were accommodated at the open reception centres.” (AIDA’s Country Report: Hungary, p. 12, 2018). Free accommodations were only granted by NGOs and religious institutions. “All asylum seekers applying for asylum after July 2018 have received inadmissible decisions, except for the former Prime Minister of North Macedonia who was granted refugee status.” (AIDA’s Country Report: Hungary, p. 12, 2018).

In 2019, the detentions of asylum seekers continued - the detention centers were still in the transit zones, Röszke and Tompa being the most important ones -, as well as the expulsion of all illegal immigrants to the Serbian border - with no right to application for asylum -, and the transit zones as the only places to start the procedure for asylum. According to the UN News, in May of that year “Spokesperson, Ravina Shamdasani, [...] said once Hungarian authorities begin proceedings to expel ‘rejected’ applicants, they stop being given food.”³⁰

In July, the Asylum and Immigration Office (AIO) was replaced by the National Directorate-General for Aliens Policing, “[t]he Directorate continues to be under the supervision of the Ministry of Interior and having its own budget, but operating as a law enforcement body under the Police Act.” (AIDA’s Country Report: Hungary, p. 11, 2019). Refugees and people under international protection kept not having assistance through the integration process, which subjected them to xenophobia, violence and homelessness.

In May 2020,

European Court of Justice (ECJ), in a case involving the detention of two Iranian and two Afghan nationals, ruled that the individuals should be released [...]. The case, which was brought by the crusading NGO the Hungarian Helsinki Society (HHC) on behalf of the detainees, spurred the country to close its transit zones. (GDP: Country Report Immigration Detention in Hungary: Transit Zone or Twilight Zone?, 2020).

Gergely Gulyas, Prime Minister Viktor Orban's chief of staff said that “[t]he Hungarian government disagrees with the ruling, we consider it a risk with regard to European security, but as an EU member state, we will adhere to all court rulings”³¹. Then, the application process for asylum was relocated to the embassy in Kyiv (Ukraine) or in Belgrade (Serbia).

Nevertheless, the detention centers were still operating without the proper conditions for specific necessities of the detainees or the legal provisions required. Less applications for asylum were addressed, “[...] the HHC noticed an increase in status withdrawals based on national security reasons, concerning not only beneficiaries of international protection but also third-country nationals residing otherwise lawfully in Hungary.” (AIDA’s Country Report: Hungary, p. 12, 2020).

³⁰ “Migrants, asylum seekers detained in Hungary ‘deliberately deprived of food’: UN human rights office”. UN News, 2019, May 3rd. Available at: <<https://news.un.org/en/story/2019/05/1037811>>, accessed on 20/04/23.

³¹ “Hungary to close transit zone camps for asylum-seekers.” Deutsche Welle, 2021, May 21st.. Available at: <<https://www.dw.com/en/hungary-to-close-transit-zone-camps-for-asylum-seekers/a-53524417>>, accessed on 13/02/23.

During the trial, Hungary affirmed that, since 2015, the country was under a crisis situation, in hope of excusing itself from the allegations, and “[...] such a crisis situation may be declared, *inter alia*, if it is justified by national requirements relating to law and order and internal security.” (Judgment of the Court - case C-808/18, p. 25, 2020). The judgment of the court case was set in December 2020, made over five complaints. The first one was about the access to the international protection procedure, specifically in requiring that asylum applications be lodged in person and exclusively in transit zones. The second and third covered detention of applicants for international protection, considering the application of a special procedure as a general rule, during which rights and safeguards applicable were not observed; and the requirement that a detention procedure be applied to all asylum applicants in the facilities of transit zones throughout the duration of the asylum legal process.

The fourth complaint was about the removal of illegally staying third-country nationals to the other side of the border, without observing the procedures and safeguards disposed by the law. And the fifth and final accusation was regarding the right to remain in the territory, since there was an alleged failure to adopt provisions from the general rule of automatic suspensory effect of appeals by applicants for international protection. Hungary was considered guilty in most of the complaints, except for 2 aspects of the fifth complaint focusing on the irregular transpositions of specific laws to national code, which were unfounded by the court.

Yet, the conclusion of the case was that “[...]Hungary has failed to fulfill its obligations under Article 5, Article 6(1), Article 12(1) and Article 13(1) of Directive 2008/115, Article 6, Article 24(3), Article 43 and Article 46(5) of Directive 2013/32, and Articles 8, 9 and 11 of Directive 2013/33” (Judgment of the Court - case C-808/18, p. 25, 2020): i) for limiting application for protection by only allowing it to happen at transit zones and by administrative arrangements to minimize the amount of procedures; ii) for establishing a systematic detention of applicants at the transit zones; iii) for allowing the removal of all illegal third countries nationals in the territory; and iv) for not giving proper conditions, when inside Hungary, for the applicants waiting the permission to stay.

Even after being found guilty, “[...] pushbacks continue to take place, as the Government refuses to implement these judgments.” (AIDA’s Country Report: Hungary, p.

14, 2021). “Hungary said the ruling was moot as it had already closed the transit zones in concern.”³²

In 2021, the state of crisis due to mass immigration was still in force, and “[...]police are still authorized to carry out pushbacks across the border fence of irregularly staying migrants (including those who wish to seek asylum in Hungary) from any part of the country, without any legal procedure or opportunity to challenge this measure.” (AIDA’s Country Report: Hungary, p. 13, 2021). The Government decree 570/2020. (XII. 9.) established the possibility of turning out people in cases of “violation of epidemic rules or when expulsion is ordered based on the risk to national security or public order.” (AIDA’s Country Report: Hungary, p. 11, 2020).

The judicial proceedings for asylum applications were not trustworthy, many being rejected. National courts contested those decisions,

[...]Finding that the lack of the most basic procedural guarantees, such as the disclosure of the reasoning behind the rejection decision, constitutes such a serious violation of procedural requirements that the asylum authority must conduct a new procedure at the end of which it must provide detailed justification of its decision. (AIDA’s Country Report: Hungary, p. 13, 2021).

But authorities deny any modifications.

In June of that year, the Commission understood that “[...]Hungary has not taken the necessary measures to comply with the judgment, in particular as regards the infringement of the relevant provisions of the Asylum Procedures, Reception Conditions, and Return Directives.” (European Commission, 2021). The institution, then, sent a second letter of formal notice, continuing the same infringement procedure started in 2015.

Therefore, in November 2021, the Commission decided to refer Hungary to court again, the final step taken until now to this case. The country “[...]had not addressed several aspects of it [judgment], such as ensuring effective access to the asylum procedure and clarifying the conditions of the right to remain on the territory, in the event of an appeal in the asylum procedure.” (Monitoring the application of European Union law 2021 Annual Report, p. 25, 2022).

Even after closing the transit zones, the member “[...]maintains that the implementation of the judgment pertaining to access to international protection and removal

³² EMMOTT, Robin; DUNAI, Marton. “Top EU court finds Hungary guilty of breaking asylum rules.” Reuters, 2020, December 17th. Available at: <https://www.reuters.com/article/eu-immigration-court-hungary-idUKKBN28R1DP>, accessed on 20/04/23.

of non-EU nationals who do not have the right to remain in the EU would be contrary to the Hungarian Fundamental Law (Constitution).” (European Commission - Press Release, 2021).

In 2022, a new amendment considered impossible to concede international protection to people who have committed any crimes in their country of origin. Regarding the Russia vs Ukraine war, the border is open for ukrainians and they have many rights guaranteed, yet, they are not receiving any support from the government: “[...]refugees from Ukraine face several difficulties regarding their rights enforcement. Access to state shelter, meals and financial aid is also hindered. To date, financial aid has not been granted to anyone.” (European Commission - Press Release, 2021).

From all the trajectory described above, I could identify the strategies used by Hungary to continue not complying with the communications addressed during the infringement procedure and the court’s ruling. The resistance actions directed to the legal procedures from the Commission were mixed with little compliances, such as fixing details of the national laws, although not enough to drop any of the three important accusations

The main resistance strategies were related to an attempt to reverse the decisions of sending initiating the IP, such as denying nonconformity or implementing only partially the changes required by the institutions; and actions aimed at challenging the legitimacy of EU norms, as when the country chose not to implement modifications, pleaded innocent by justifying the changes in the rules with a decree of “state of crisis due to mass migration”, and when it denied adjusting the laws claiming conflict between laws.

Following the chain of events, these strategies were: first, to deny the irregularity of the laws; second, to fix only a few aspects of the national law, which did not affect the central themes of accusation; third, to justify that the current rules were established under a decree of state of crisis, which required the actions taken; fourth, to implement only partially the necessary changes appointed by the ruling of the court; and fifth, to deny adequating the laws claiming the institution (EU) had conflicting rules with the national constitution. The table 3 below summarizes this results in a more structured way:

Table 3 - Resistance goals by strategy

Resistance Goals	Strategy
Reverse decisions	Deny irregularity
Reverse decisions	Parcial compliance

Challenging authority	Justification by national context
Challenging authority	Resist court ruling
Challenging authority	Claim inadequacy with the constitution

Source: The author (2023).

As described before, all these strategies are included in the types of resistance to international courts, such as lack of cooperation in particular domains and the lack of engagement by national courts with international courts case-law (Madsen, Cebulak and Wiebusch, 2018). The judicial independence value is completely corrupted in the Supreme Court, a work developed by Orbán to increase his power over the decision making (Norris and Inglehart, 2019), and the other level of domestic courts are not taken into credit, as witnessed by the AIDA's report (2021).

Initially, the member country establishes pushbacks against the Commission, implementing the procedural resistance regarding the rules unlawfully applied through amendments to the asylum act, and then substantive resistance, by justifying that the rules were not under non-compliance. Then, as a backlash, the country continues to implement unlawful rules established before, announces new domestic norms that deepens the non-compliance and states that the changes required would not be aligned with the national legislation, and therefore, would not comply, challenging the legitimacy of the institution as a holder of the EU's law and even challenging the legitimacy of the law itself as a better tool to implement the civil, regional and international rights and guarantees of the affected. The state of crisis due to mass migration was renewed in February 2023 and kept in force³³.

These findings are aligned with the theory of populism being connected to resistance. Populists like Orbán are anti-establishment, anti-elitists and anti-pluralists (Mudde, 2004; Moffit e Tormey, 2014; Mudde and Kaltwasser, 2017; Posner, 2017), which lead to engagement in a path of mistrust at international institutions because of how they see sovereignty and the will of the people (Reis, 2004; Ewing, 2012; Mudde, 2017; Taggart, 2017; Ribeiro, 2019).

Since the implementation of norms depends on the level of compliance (Loescher, 2016), the motivation to resist them is connected to programmatic interests or domestic

³³“Parliamentary committee approves state of emergency extension”. About Hungary: International Communications Office of the Cabinet Office of the Prime Minister, 2023, February 28th. Available at: <<https://abouthungary.hu/news-in-brief/parliamentary-committee-approves-state-of-emergency-extension>>, accessed on 11/03/2023.

concerns (Hofmann, 2018). Leaders do resist supranational laws by blocking or reversing decisions, or even challenging the authority of the institution (Madsen, Cebulak and Wiebusch (2018).

This pattern of behavior against those institutions is easily found in populist characteristics because of its basic ideas. When involving migration policies, the results witnessed are restrictiveness to admission and integration, as well as rejection of norms (Plagemann e Destradi, 2019; Posner, 2017; Lutz, 2018).

5 LIMITATIONS

The main limitations of this research are related to the availability of data. The GPD database doesn't have a classification of populism to every EU country, nor to all the terms during the time period chosen. This decreased the member states included in the initial descriptive analysis. Yet, 17 out of 28 members - until 2019 - are considered.

The temporal threshold itself is established by difficulties. As stated before, the CJEU only has cases from 2012 to current year in their website, which induced the research to consider infringements starting from that year, since there could be referrals to court. Similarly, COVID-19 created a series of changes on the migratory scope from 2020, which led to the choice of only gathering infringements starting from 2012 to 2019.

During the selection of infringement procedures, the issue areas that help classify and organize them did not have a direct topic that would fit migration. They were chosen by observing how the court would make this classification aligned with my own understanding of which issues available could incorporate the area of interest. Despite the work of identifying patterns in those categories to get the laws primarily related to migration, it is possible that some legislations were not included for having migration as a secondary issue in their wording.

The institutional procedure also has communications that are not available to analyze, such as the letters of formal notice and the official documents used to address the country their infringements. Therefore, I decided to rely on documents of third parties and news, except for the judgment file.

Especially on the quantitative part, I displayed a simple distribution because of the quantity of cases. Since there are only 39 events, accounting for terms of office, doing a more robust analysis, like running a correlation, would not be a very clever idea, since 39 is not a reasonable quantity of cases to do so.

Lastly, the qualitative part of this work is sensitive in some ways. To choose the case, I relied on some data description analysis and then on the typology; in the first part, Hungary was an outlier that suggested what the theory expects, not a typical case. For the second part, the country was also not the typical case, but assumed the position of the only member State to achieve the last type of our classification on resistance. Thus, it's clear that I chose the case by the outlier rule that could give more insights about what I was interested in, having quantitative and qualitative importance in the context. There could be more interesting cases around, but I leave that to future research.

There is also a linguistic limitation; in a few situations, I had to rely on Hungarian documents to check facts about names of institutions or classifications of some legal material, and it is possible that some minor mistakes were made in the translations of this information. To avoid that, I mainly use EU materials and reports from NGOs and associations written in English and Portuguese.

6 CONCLUSION

The goal of this thesis was to identify how populist governments in the European Union are resisting migration policies implemented in the region. The base theory involved the definition of populism as a thin-ideology about the will of the people and how this will could overcome the elite and any other group different from the pure people. Populism is an ideology of moldable ideas rooted on the understanding that society is divided in two antagonistic groups, the corrupted elite and the homogeneous, pure and moral people, and that politics should be an expression of the general will of this people (Mudde, 2004; 2017; 2018).

From that, I explained how immigration is a salient issue for populists because of their basic values about the homogeneity of the people and how the elite could be favoring those “strange” groups (Norris e Inglehart, 2019). Besides that, there is the case when other ideologies, like nationalism, could align with populism to generate even more negative reaction over this group (De Cleen, 2017; Bergmann, 2020); Regionally, Europe is an interesting place to investigate the developments of the migration flow, since 37,5 million people living in the EU were born outside of their member-states in 2021. The threats to immigrants in the region are mainly from populist leaders and parties in their discourse, spread in all countries along the left-right spectrum (Mudde, 2017; Stanley, 2017; Taggart, 2017; Norris e Inglehart, 2019).

Another problem noticed is the trend of opposing supranational powers all over the continent (Stanley, 2017; Taggart, 2017; Plagemann e Destradi, 2019). Because of the anti-establishment features of populism, international institutions are under risk. Populists attribute corruption and lack of reliability to these institutions, and reject any attempt of legitimate pluralism from them (Posner, 2017). However, the implementation of norms depends on the level of compliance and on the international community’s monitoring (Loescher, 2016), and the motivation to resist them can be connected to programmatic interests or concerns about internal integrity, economy and eventually national identity (Hofmann, 2018). What leaders do to resist compliance is explained more generally by Madsen, Cebulak and Wiebusch (2018) as attempts at blocking or reversing decisions, from within the system of the institutions to reverse some of its developments, or challenging the authority of the institution, aiming to revert its developments, transform the system or shutting it down.

The influence of these aspects and populist characteristics on migration policies, then, can result on movements for restrictiveness to admission and integration of immigrants (Lutz,

2018), and also on a growing rejection of international institutions' rulings over this issue, (Plagemann e Destradi, 2019; Posner, 2017).

Thus, this work explored how the level of populism of European Union's leaders could be associated with the frequency of infringement procedures about migration policies initiated in their term. As seen, the relationship between populism and the number of infringement procedures is not very clear, neither is the relationship of right wing parties and number of procedures, but there is really a pattern of right wing parties and populism in Europe. Still, Hungary was the only case to comply with the theory in the quantitative analysis, made on the purpose to investigate more circumstantial features of populism onto resistance.

Later, the work presented a typology of resistance and classified the procedures according to the types created. During the classification, Hungary was the only country to get to the final level of resistance. After both analyses, then, Hungary was selected for the case study. Focusing on the infringement procedure appointed by the classification of resistance, I studied the case "Failure by Hungary to comply with the judgment of the Court of Justice of the European Union of 17 December 2020 in Case C-808/18, *Commission v Hungary*", which was considered an example of backlash, the only one in the database.

The resistance patterns were displayed from the judgment of the first referral to court, press releases and reports by the European Commission, annual reports from the Global Detention Project and from the institutional database Asylum Information Database from the European Council on Refugees and Exiles, with inputs from the NGO Hungarian Helsinki Committee, and some news sources.

This case is still open and running. It started in 2015 regarding infringements on the asylum procedures, return and reception conditions directives. Viktor Orbán, leader since 2010 till now, started implementing new laws and amending old ones in the country, which were responsible to limit the rights of asylum seekers and refugees entering illegally in the territory.

The changes that led to the infringement procedure were the implementation of a list of safe countries, the decree of a "state of crisis due to mass migration" in the country, restricting the application for asylum only at the transit zones, changing the rule for automatic suspensive effects of decisions during appeals, disrespecting the non-refoulement norms, detention for asylum seekers applying to stay, eliminating any financial or bureaucratic support for integration, evicting any asylum seeker apprehended outside the border fence and prohibiting their submission for asylum, closing refugees camps and reception centers,

reducing the asylum seekers' access to supplies, impeding them to work, defunding government programs towards asylum seekers and refugees and replacing them for a law enforcement institution, including the rule of Hungary as the first country of asylum to accept submissions, not giving proper conditions for specific necessities of the detainees or legal provisions, decorating the return of people due to pandemic rules violations or risk to public order, implementing a not trustworthy judicial proceedings for asylum applications and denying contestations about it from national courts, and defining the impossibility of granting international protection to past criminals in their origin country.

In the end, the identified resistance strategies directed to the legal procedures from the Commission were mixed with little compliances. Yet, the main resistance tactics were related to an attempt to reverse the decisions of initiating the IP, such as denying irregularities and implementing only partially the changes appointed by the institutions; and actions aimed at challenging the authority of the EU norms, as when the country chose not to implement modifications to its legislation, pleaded innocent by justifying the changes in the rules were established under a decree of "state of crisis due to mass migration", and when it denied adequating the laws claiming the EU had conflicting rules with their constitution.

Hungary operated a backlash against the CJEU, and the new developments of this case are still on the corner, since the next judgment for the second referral to court wasn't settled yet. This time, the country will deal with pecuniary sanctions, and maybe will restore its original laws before 2015, or keep on having this behavior towards the institution, since Orbán continues to be the prime-minister, with more and more power every year.

The state of crisis due to mass migration was renewed in February 2023, and can keep on serving as an excuse for the decisions of redacting laws by its populist leadership, continuing this pattern of attacking the EU e its rulers, especially on the issue of immigration. Even though the flow of people is not so high in Hungary, there are many elements of nativism and xenophobia included in the discourse against immigrants. As the only case found with such a level of populism, in different analyses portrayed, and with the extreme type of resistance, it is safe to say these findings can contribute to the knowledge of how populist politicians act on the issue.

REFERENCES

- ACEMOGLU, Daron; e ROBINSON, James A. **The Narrow Corridor**. Penguin Press, 2019.
- ALTER, Karen J.; ZÜRN, Michael. **Conceptualising backlash politics: Introduction to a special issue on backlash politics in comparison**. The British Journal of Politics and International Relations, v. 22, n. 4, 2020.
- ASLANIDIS, Paris. **Avoiding bias in the study of populism**. Chinese Political Science Review, v. 2, n. 3, p. 266-287, 2017.
- Asylum Information Database. **Country Report: Hungary**. European Council on Refugees and Exiles, 2015.
- Asylum Information Database. **Country Report: Hungary**. European Council on Refugees and Exiles, 2016.
- Asylum Information Database. **Country Report: Hungary**. European Council on Refugees and Exiles, 2017.
- Asylum Information Database. **Country Report: Hungary**. European Council on Refugees and Exiles, 2018.
- Asylum Information Database. **Country Report: Hungary**. European Council on Refugees and Exiles, 2019.
- Asylum Information Database. **Country Report: Hungary**. European Council on Refugees and Exiles, 2020.
- Asylum Information Database. **Country Report: Hungary**. European Council on Refugees and Exiles, 2021.
- BERGMANN, Eirikur. **Understanding Nativist Populism**. In: Neo-Nationalism. Palgrave Macmillan, Cham, 2020.
- BETTS, Alexander. **Sovereignty and the State System**. In: Forced Migration and Global Politics, Wiley-Blackwell, 2009.
- BETTS, Alexander. **Global Migration Governance**. Oxford Scholarship Online, 2011.
- BÖRZEL, Tanja A.; RISSE, Thomas. **From Europeanization to diffusion**. In: Domestic Politics and Norm Diffusion in International Relations. Routledge, 2017.
- CARENS, J. H. **An overview of the ethics of immigration**. Critical Review of International Social and Political Philosophy, v. 17, 2014.
- CARRARO, Valentina; CONZELMANN, Thomas; JORGEN, Hortense. **Fears of Peers? Explaining peer and public shaming in global governance**. Cooperation and Conflict, v. 54, n.3, 2019.

CHERUVU, Sivaram. **When does the European Commission Pursue Noncompliance?** European Union Politics, vol. 23, n. 3, 2022.

DE CLEEN, Benjamin. **Populism and Nationalism.** In: The Oxford Handbook of Populism. Oxford University Press, 2017.

DEITELHOFF, Nicole. **What's in a name? Contestation and backlash against international norms and institutions.** The British Journal of Politics and International Relations, v. 22, n. 4, 2020.

ELMAN, Colin. **Explanatory Typologies in Qualitative Studies of International Politics.** International Organization, v. 59, 2005.

ENGSTROM, Par. **Human Rights: Effectiveness of International and Regional Mechanisms.** International Studies, 2010.

European Commission (2015, December 10th). **Commission opens infringement procedure against Hungary concerning its asylum law** [Press Release]. Available at: <https://ec.europa.eu/commission/presscorner/detail/en/IP_15_6228>, accessed on 31/01/2023.

European Commission (1) (2017, May 17th). **Commission follows up on infringement procedure against Hungary concerning its asylum law** [Press Release]. Available at: <https://ec.europa.eu/commission/presscorner/detail/en/IP_17_1285>, accessed on 31/01/2023.

European Commission (2021, November 12th). **Migration: Commission refers HUNGARY to the Court of Justice of the European Union over its failure to comply with Court judgment** [Press Release]. Available at: <https://ec.europa.eu/commission/presscorner/detail/en/ip_21_5801>, accessed on 31/01/2023.

European Commission (2) (2017, December 7th). **Migration: Commission steps up infringement against Hungary concerning its asylum law** [Press Release]. Available at: <https://ec.europa.eu/commission/presscorner/detail/en/IP_17_5023>, accessed on 31/01/2023.

European Commission. **Monitoring the application of European Union law: 2018 Annual Report,** 2019. Available at: <https://commission.europa.eu/publications/2018-commission-report-monitoring-application-eu-law_en>, accessed on 28/01/2023.

European Commission. **Monitoring the application of European Union law: 2021 Annual Report,** 2022. Available at:

<https://commission.europa.eu/publications/2021-annual-report-monitoring-application-eu-law_en>, accessed on 28/01/2023.

European Commission (2021, June 9th). **June infringements package: key decisions.** Available at: <https://ec.europa.eu/commission/presscorner/detail/en/inf_21_2743>, accessed on 31/01/2023.

European Council on Refugees and Exiles. **Asylum in Hungary: Damaged Beyond Repair?**, 2017.

EWING, Keith. **Human Rights.** In: The Oxford Handbook of Legal Studies. Oxford University Press, 2012.

FISHER, Betsy L. **Doors to Safety: Exit West, Refugee Resettlement, and the Right to Asylum.** Michigan Law Review, v. 117, n. 6, 2019.

FERRIS, Elizabeth. **International Responsibility, Protection and Displacement: Exploring the Connections between R2P, Refugees and Internally Displaced Persons.** Global Responsibility to Protect 8, 2016.

FOA, Roberto S.; MOUNK, Yascha. **The signs of deconsolidation.** Journal of Democracy, v. 28, n. 1, 2017.

GALSTON, William A. **The Populist Challenge to Liberal Democracy.** Journal of Democracy, v. 29, n. 2, 2018.

GERRING, John. **What Is a Case Study and What Is It Good for?** The American Political Science Review, v. 98, n. 2, 2004.

GEORGE, Alexander L.; BENNETT, Andrew. **Case Studies and Theory Development in the Social Sciences.** MIT Press, 2005.

Global Detention Project. **Immigration Detention in Hungary: Transit Zone or Twilight Zone?**. 2020. Available at: <<https://www.globaldetentionproject.org/immigration-detention-in-hungary-transit-zone-or-twilight-zone>>, accessed on 15/04/2023.

GOLDSTEIN, Ariel. **Derechas radicales en Hungría y Polonia: entre el pasado y el presente.** Revista Agenda Política, v. 10, n. 1, 2022.

HAAS, H. **International migration, remittances and development: myths and facts.** Third World Quarterly, v. 28, 2005.

HADIZ, Vedi R.; CHRYSSOGELOS, Angelos. **Populism in world politics: A comparative cross-regional perspective.** International Political Science Review, v. 38, n. 4, 2017.

HOFMANN, Andreas. **Resistance against the Court of Justice of the European Union.** International Journal of Law in Context, v. 14, 2018.

HUNGER, Sophia; PAXTON, Fred. **What's in a buzzword? A systematic review of the state of populism research in political science.** Political Science Research and Methods, 2021.

International Organization for Migration (IOM). **Glossary on Migration.** International Migration Law, n. 25, 2011.

KOOPS, C. E. **Contemplating compliance: European compliance mechanisms in international perspective**[Thesis, Universiteit van Amsterdam], 2014.

LOESCHER, Gil. **Refugees And Internally Displaced Persons.** In: The Oxford Handbook of International Organizations. Oxford University Press, 2016.

LUTZ, Philipp. **Variation in policy success: radical right populism and migration policy.** West European Politics, 2018.

LUXEMBURGO. Court of Justice of the European Union. Action C-808/18. Failure of a Member State to fulfil obligations – Area of freedom, security and justice – Policies on border checks, asylum and immigration – Directives 2008/115/EC, 2013/32/EU and 2013/33/EU – Procedure for granting international protection – Effective access – Border procedure – Procedural safeguards – Compulsory placement in transit zones – Detention – Return of illegally staying third-country nationals – Appeals brought against administrative decisions rejecting the application for international protection – Right to remain in the territory. Rapporteur: C. Lycourgos, 2020, December 17th.

MADSEN, Mikael R.; CEBULAK, Pola; WIEBUSCH, Micha. **Backlash against international courts: explaining the forms and patterns of resistance to international courts.** International Journal of Law in Context, vol. 14, 2018.

MOFFITT, Benjamin; TORMEY, Simon. **Rethinking populism: Politics, mediatization and political style.** Political studies, v. 62, n. 2, p. 381-397, 2014.

MUDDE, Cas. **The Populist Zeitgeist.** Government and Opposition, v. 39, n. 4, 2004.

MUDDE, Cas. **Populism: An Ideational Approach.** In: The Oxford Handbook of Populism. Oxford University Press, 2017.

MUDDE, Cas. "How populism became the concept that defines our age." The Guardian., 2018. Available at: <https://www.theguardian.com/commentisfree/2018/nov/22/populism-concept-defines-our-age>, accessed on 27/08/2020.

MUDDE, Cas; KALTWASSER, Cristóbal R. **Populism: A very short introduction.** Oxford University Press, 2017.

MÜLLER, Jan-Werner. **What is populism?** University of Pennsylvania Press, 2016.

- NOACK, Marion; WAGNER, Martin; JAKOBS, Carolien. **Governing protracted displacement: what access to solutions for forcibly displaced people**. TRAFIG Policy Brief, v. 1, 2020.
- NORRIS, Pippa.; INGLEHART, Ronald. **Immigration**. In: Cultural Backlash: Trump, Brexit, and Authoritarian Populism. Cambridge University Press, 2019.
- PLAGEMANN, Johannes; DESTRADE, Sandra. **Populism and Foreign Policy: The Case of India**. Foreign Policy Analysis, 2019.
- POSNER, Eric A. **Liberal Internationalism and the Populist Backlash**. Arizona State Law Journal, 2017.
- REIS, Rossana. **Os Direitos Humanos e a Política Internacional**. Revista de Sociologia e Política, n. 27, 2006.
- REIS, Rossana. **Soberania, Direitos Humanos e Migrações Internacionais**. Revista Brasileira de Ciências Sociais, v. 19, n. 55, 2004.
- RIBEIRO, Mikelli M. L. A. **Soberania e responsabilidade internacional humanitária: avaliando o processo de ajuste normativo no âmbito da ONU**. Revista Brasileira de Ciência Política, n. 30, 2019.
- ROUSSEAU, Elise. **Power, Mechanisms, and Denunciations: Understanding Compliance with Human Rights in International Relations**. Political Studies Review, v. 1, n. 13, 2018.
- SEAWRIGHT, Jason; GERRING, John. **Case Selection Techniques in Case Study Research A Menu of Qualitative and Quantitative Options**. Political Research Quarterly, v. 61, n. 2, 2008.
- SHEHAJ, Albana; SHIN, Adrian J.; INGLEHART, Ronald. **Immigration and right-wing populism: An origin story**. Party Politics, v. 1, n. 12, 2019.
- SOLEY, Ximena; STEININGER, Silvia. **Parting ways or lashing back? Withdrawals, backlash and the Inter-American Court of Human Rights**. International Journal of Law in Context, v. 14, 2018.
- STANLEY, Ben. **The thin ideology of populism**. Journal of political ideologies, v. 13, n. 1, 2008.
- STANLEY, Ben. **Populism in Central and Eastern Europe**. In: The Oxford Handbook of Populism. Oxford University Press, 2017.
- STEUNENBERG, Bernard. **Is big brother watching? Commission oversight of the national implementation of EU directives**. European Union Politics, vol. 11, n. 3, 2010.
- SVOLIK, Milan W.; AVRAMOVSKA, Elena; LUTZ, Johanna; MILAČIĆ, Filip. **In Europe, Democracy Erodes from the Right**. Journal of Democracy, v. 34, n. 1, 2023.

TAGGART, Paul. **Populism in Western Europe.** In: The Oxford Handbook of Populism. Oxford University Press, 2017.

VOETEN, Erik. **Populism and Backlashes against International Courts.** American Political Science Association, 2019.

APPENDIX A - DATABASES ON POPULISM

TBI Global Populism in Power - From the Tony Blair Institute for Global Change, it tracks the evolution of populism from 1990 to 2019. The dataset focuses on populist parties and leaders that attained executive office within democratic countries, including those who reached the presidency or prime ministership (or the equivalent executive office). It classifies populism as cultural, socio-economic or anti-establishment.

Available at:
<<https://www.institute.global/insights/geopolitics-and-security/high-tide-populism-power-1990-2020>>.

Global Populism Database - Measures the level of populist discourse in the speeches of chief executives (presidents and prime ministers) from 74 countries, from 2000 and 2022. Each leader has a campaign speech, a ribbon-cutting speech, an international speech, and a famous speech coded manually by one or two coders, scoring their level of populism from 0 to 2.

Available at:
<<https://dataverse.harvard.edu/dataset.xhtml?persistentId=doi:10.7910/DVN/LFTQEZ>>.

Global Populisms Project - From the Freeman Spogli Institute for International Studies, at Stanford, the project has four themes: the diversity of populisms, the context of party competition, the role of immigration, and the role of international linkages in fomenting populism. It focuses in the historical processes that underlie populist politics, through an analysis of both domestic and international factors, and deploying a variety of methods.

Available at: <<https://fsi.stanford.edu/global-populisms>>.

Central and Eastern Europe Populism Dataset for Leaders - From the Central European University, it measures the level of populist discourse in campaign, a ribboncutting speech, an international speech and a famous speech of chief executives in Central and Eastern Europe, Central Asia, and select Western European countries. Covers 28 countries, from 1992 and 2013. It uses a three-point scale in which 0 is no clear reference to the “will of the people”; 1

is some clear reference to the “will of the people,” but lacking consistency; and 2 is most elements of populism are present.

Available at: <<https://populism.byu.edu/2013-central-and-eastern-europe-populism>>.

Populism in Latin America - From the article Friend or Foe? Testing the Influence of Populism on Democratic Quality in Latin America, by Robert A. Huber and Christian H. Schimpf, the dataset includes populist in 18 Latin American countries, from 1995 to 2009, defined as populist or not based on the work of Grigore Pop-Eleches (2009) updating the Michael Coppedge’s (1997) expert survey on Latin American political parties.

Available at: <<https://populism.byu.edu/data-section/2016-populism-in-latin-america>>;

<<https://journals.sagepub.com/doi/pdf/10.1177/0010414011407469>>;

<<https://link.springer.com/article/10.1007/s11558-009-9058-5>>;

<<https://journals.sagepub.com/doi/10.1177/0010414097030002002>>.