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The Expansion of State Authority Over the Neighbouring States Through Informal Migration Controls: The Case of Hungary's Control over Serbia

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Abstract: Our preliminary fieldwork shows that there is large scale agreement between the migration and border authorities of Hungary and Serbia on the names of asylum seekers before they are allowed into to the Hungarian transit zones and apply for international protection in Hungary. The list, proposed by the Serbian Commissariat for Refugees (SCR) and approved by the Hungarian border authorities, is communicated through the use of community leaders from the Serbian reception centre. Hungary's motive behind keeping its cooperation with Serbia informal is to conceal the existence of cooperation between both states and to avoid legal challenges in the Court of Justice of the EU (CJEU) and the European Court of Human Rights (ECtHR). Therefore, the paper argues that the informalisation of migration management constitutes a significant challenge for the authority of the *Geneva Convention Relating to the Status of Refugees 1951* (hereinafter referred as the Refugee Convention). The paper further argues that Hungary's informal cooperation with Serbia is a form of expansion of the Hungarian state authority under the principle of extraterritorial jurisdiction of a state. Therefore, despite informal nature of Hungary's migration cooperation with Serbia, the responsibility for violations of asylum seekers rights in Serbia and their exclusion from international protection continues to engage Hungary for the reason of having effective control on the migration management in Serbia.

Keywords: Asylum Seekers, Exclusion, Informalisation of Migration, International protection, State responsibility, wrongful Act.

(A) INTRODUCTION

The principle of non-refoulement enshrined in Article 33 of the Refugee Convention has not been expressly recognised in the European Union (EU) treaty law. In the EU law, the principle of non-refoulement has been recognised through the judgement of the ECtHR in the case of *Hirsi Jamaa and Others v. Italy*.[1] The ECtHR construed Article 3 of the ECHR to include a prohibition on returning asylum seekers to territories where their lives and freedom could be threatened on account of race, religion, nationality, or membership of a particular social group. The Court held that Italy could not evade its responsibility arising from Article 3 of the ECHR by relying on the obligations arising from the bilateral agreement with Libya even if there was an express provision for the return of irregular migrants. In the EU Law, prohibition on returning asylum seekers to inhuman and degrading treatment is recognised under Article 4 of the *Charter of the Fundamental Rights of the European Union 2001* (CFREU).

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[1] ECtHR, *Hirsi Jamaa and Others v Italy*, Application no. 27765/09, European Court of Human Rights, 23 February 2012.

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To break free from the obligations arising from the EU and international human rights law, the EU Frontier Member States facing exceptional irregular arrivals leaned towards extraterritorial migration and asylum controls. To this end, the frontier Member States used development assistance, trade incentives and other returns to export their agendas of the securitisation of migration to third countries.[2] Thereof, the expansion of state authority through bilateral externalisation agreements became the most preferred security approach of the EU frontier Member States. These externalisation agreements are widely available, but their practices are more challenging to determine. There are yet also informal practices that are built around such existing agreements — or sometimes in the absence of agreements.[3] These informal migration controls not only undermine human security but also weaken the significance of the Refugee Convention and the EU Law. This makes us a question how come an EU Member State, which has made a solemn declaration to respect the Union laws and the human rights derived therein, can cause grave human rights violation extraterritorially?

Our paper looks at migration management in Hungary and Serbia to reflect on how Hungary expands its state authority beyond its territorial limits to exercise control over the management of asylum in Serbia. During our field visits to Szeged and other small towns at Hungary – Serbia border, as well as the Vojvodina province of Northern Serbia, we came across extensive involvement of Hungary in the management of irregular migration in Serbia. Hungary exercises informal control over the management of refugee camps in Serbia and informally imposes a profile of people to gain access to the Hungarian transit zones from Serbia and therefore seek asylum in Hungary. Given the informal nature of Hungary's cooperation with Serbia, the paper examines two interrelated questions; i.e. how does a state informally expand its authority over the neighbouring state to restrict irregular migration, and what is the future of international refugee protection given the informalisation of the securitisation of migration. The paper is divided into two parts. Part one analyses Hungarian practices of exercising state authority over neighbouring Serbia and to what extent Hungary can succeed in avoiding accountability for human rights violation using informal security mechanism. Part two examines the future of multilateral treaties of refugee protection considering the expansion of state authority through bilateral treaties.

(B) MIGRATION MANAGEMENT AT THE HUNGARIAN TRANSIT ZONES

Existing scholarship shows Hungary's ever-increasing emphasis on the securitisation of migration to control irregular arrivals in the country.[4] Hungary's increased emphasis on the securitisation of migration

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[2] A. Knoll and P. Veron, 'Migration and the next Long-Term Budget: Key Choices for External Action', *Ecdpm discussion paper* No 230, p. 4, accessed 12 November 2019.

[3] For example, Memorandum of Understanding on Cooperation in the Fields of Development, the Fight against Illegal Immigration, Human Trafficking and Fuel Smuggling and on Reinforcing the Security of Borders between the State of Libya and the Italian Republic (entered into force 2 February 2017).

[4] C. Cantat, 'Governing Migrants and Refugees in Hungary: Politics of Spectacle, Negligence and Solidarity in a Securitising State' in S. Hinger and R. Schweitzer (eds), *Politics of (Dis)Integration*, Springer International Publishing (2019) 183-199; D. Gyollai and A. Amatrudo, 'Controlling Irregular Migration: International Human Rights Standards and the Hungarian Legal Framework', 16(4) *European Journal of Criminology* (2019) 432-451 [doi:10.1177/1477370818772776]; B. Nagy, 'Hungarian Asylum Law and Policy in 2015–2016: Securitization Instead of Loyal Cooperation', 17(6) *German Law Journal*,

is linked to the unprecedented arrival of asylum seekers, along with the latest wave of irregular arrivals in the EU.[5] 2015 was the year of the refugee crisis for the EU as nearly 1.2 million asylum seekers arrived in the EU.[6] Out of these 1.2 million first time asylum applicants, nearly 174,400 asylum seekers applied for asylum in Hungary alone, second highest after Germany which received 441,800 asylum seekers.[7] Following these arrivals, the Hungarian populist government of Viktor Orbán started a massive anti-migration campaign and held the EU responsible for endangering security and identity of the Hungarian as well as European people.[8] The Orbán's government constructed irregular migration as a foreign invasion on its border and consequently took series of security measures to restrict irregular arrivals from entering in the country, in disregard of the obligations arising from the EU Law.[9]

Since 2015, the Hungarian government has repeatedly amended law *LXXX on Asylum 2007* to provide effective mechanisms to restrict irregular arrivals in the country. The Government Decree promulgated in 2015 has expanded the list of safe third country of origin (STCO) and safe third country (STC) to exclude asylum seekers originating or transiting from the US States that do not have death plenty, the Member States of the EU, the Member States of the European Economic Area, the EU candidate states, Switzerland, Bosnia-Herzegovina, Kosovo, Canada, Australia, and New Zealand.[10] Among the EU candidate states, initially, Turkey was not on the list of STCs, but later it was also included in the list.[11]

Additionally, by the end of 2015, Hungary built a barbed-wire fence on the Serbian and Croatian borders to stop cross border infiltration.[12] Along with the border fences, Hungary has established two transit zones which are on the Hungarian soil but open towards Serbia. Theses Transit zones consist of a series of containers covered by wire fence all round and guarded by the Hungarian armed forces. Every day, limited numbers of asylum seekers are admitted in the transit zone to process their asylum applications. Practically asylum seekers admitted in the transit zones remain detained in the transit zones for an indefinite period. Those admitted in the transit zones have the only option of leaving towards Serbia with consequences of their asylum application being terminated. Following the establishment of the transit zone, during the first three quarters of 2016, Hungary admitted only 20-30 asylum seekers on a daily quota basis, to register their asylum claims. The daily quota dropped from 20-30 to; 10 by the end of 2016, 5

(2016) 1033-1081, accessed 13 November 2019; J.W. Scott, 'Hungarian Border Politics as an Anti-Politics of the European Union', *Geopolitics* (2018) 1-20 [doi:10.1080/14650045.2018.1548438]; C. Thorleifsson, 'Disposable Strangers: Far-Right Securitisation of Forced Migration in Hungary', 25(3) *Social Anthropology*, (2017) 318-334 [doi:10.1111/1469-8676.12420].

5 Thorleifsson, *supra* n. 4, at 318.

6 M. Ceccorulli, 'Back to Schengen: The Collective Securitisation of the EU Free-Border Area', 42(2) *West European Politics* (2019) 302-332, at 302 [doi:10.1080/01402382.2018.1510196]; E. Quinn, 'The Refugee and Migrant Crisis: Europe's Challenge', 105(419) *Studies: An Irish Quarterly Review* (2016) 275-285, at 277.

7 Quinn, *supra* n. 6, at 277 and 278.

8 Cantat, *supra* n. 4, at 186 and 187.

9 *Ibid.*

10 Hungary: *Government Decree 191/2015 (VII.21) on national designation of safe countries of origin and safe third countries,* (adopted 21 July 2015, entered into force 1 April 2016), § 1 and 2.

11 European Council on Refugees and Exiles (ECRE), 'Country Report: Hungary', (2018) 1-133, at 17 and 18 (accessed 7 November 2019).

12 *Ibid.,* at 17.

in 2017, and 1 in 2018.[13] The daily quota system has forced hundreds of asylum seekers, including Syrians, to wait on the Serbian side in the open air without any food provisions. Consequently, asylum seekers started to move towards Croatia to seek asylum there.

Despite the alarming report of the United Nations Working Group on Arbitrary Detention categorising Hungary's policy of holding asylum seekers in the transit zones, a deprivation of liberty under international law;[14] the judgement of the Grand Chamber shows that the Court has granted Hungary a wide margin of appreciation of its right to control borders. However, despite this little relive, the infringement proceedings initiated by the EC, the judgement of the ECtHR holding Hungary responsible for violation of Art 3 of the ECHR, and flagrant criticism of international organisations has forced Hungary to look for other ways. Considering the stance of the ECtHR in the cases of *Hirsi and Jamma v Italy* and *Ilias and Ahmed v Hungary*, Hungary intended to adopt such security practices, the responsibility for which could not be attributed to Hungary. Therefore, Hungary externalised its securitisation policy through bilateral cooperation with neighbouring Serbia to informally control irregular arrivals extraterritorially.

Accordingly, Hungary adopted a policy of selective admission in the transit zones, to avoid the contradiction of the EU and international law. To pursue the policy of selective admission in the transit zones, Hungary needed the cooperation of Serbia. However, any formal bilateral cooperation with Serbia was likely to bring more human rights challenges against Hungary for the reason of having effective control migration management in Serbia.[15] Therefore, Hungary opted to exercise informal control over irregular arrivals at the Hungarian transit zones through informal cooperation with Serbia. Accordingly, Hungary's securitisation policy transformed to a whole new level of informalisation.

(C) INFORMALISATION OF MIGRATION CONTROL AT HUNGARY-SERBIA BORDER

Since autumn 2016, the SCR has stopped asylum seekers from approaching the Hungarian transit zones to claim protection. The SCR started to accommodate asylum seekers in temporary reception centres under the management of the Commissariat.[16] Asylum seekers entering the temporary reception centres are asked whether they want to enter the Serbian or the Hungarian asylum system. Those wishing to enter Hungary are placed on the waiting list prepared by the SCR.[17] The list is handed over to community leaders, chosen by the Serbian commissariat from the reception centre. The community leaders communicate the list to Hungarian authorities at the transit centres.[18] Since the start of the above process, only community leaders are allowed to stay in the pre-transit zones. At the Röszke transit zone, community leaders are

13 *Ibid.*

14 European Council on Refugees and Exiles, *supra* n. 11, at 23.

15 ECtHR, *Alskeni and others v the UK*, Application no. 55721/07, 7 July 2011, para 136.

16 D. Gyollai, 'Hungary - Country Report: Legal and Policy Framework of Migration Governance', (2018) 1-77, at 31(accessed 10 November 2019).

17 European Council on Refugees and Exiles, 'Country Report: Hungary', *supra* n. 11, at 18.

18 *Ibid.*

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accommodated in a heated tent, while at the Tompa transit zone, community leaders reside in an abandoned duty-free shop.[19] The Hungarian authorities provide food to the community leaders.

There are no permanent community leaders because of a short stay of asylum seekers in the reception centres. The SCR chooses community leader randomly from the asylum seekers entering in the reception centres.[20] Once the Hungarian authorities receive the list from the community leader, they review the list and decide on the names of people to be admitted in the transit zones. The revised list is handed back to the community leader, who then communicates the list to the SCR. Once the Serbian Commissariat receives the approved list from the Hungarian authorities, the Commissariat informs the people accepted for admission in the transit zones.[21] Those approved for admission in Hungarian transit zones are brought to the pre-transit zone a day before their admission. During the entire process, there is no direct communication between the Hungarian and Serbian authorities.[22]

Since March 2018, Hungary has stopped admitting asylum seekers from the Serbian reception centres, except the Subotica reception centre. The Subotica reception centre has the capacity of accommodating a maximum of 60 people at a time.[23] According to the SCR, the criteria for acceptance in the Subotica reception centre are the time of arrival and the extent of vulnerability. Therefore, the numbers of asylum seekers wishing to enter in the Subotica reception centres has increased while the centre's capacity to accommodate asylum seekers remains limited. Therefore, significant malpractices have been taking place to admit asylum seekers in the reception centre. During our visit to the centre, we noticed significant similarities between the profiles of the asylum seekers in the centre and the Hungarian recognition profile. We noticed that Afghan families formed the majority of asylum seekers accepted in the centre. It was also surprising that despite the amendment in the Asylum Act, which provided ground for the Hungarian authorities to declare an asylum application inadmissible for the reason of staying or travelling through Serbia,[24] asylum seekers were still eager to enter the Subotica reception centre for admission in the Hungarian transit zones.

According to the staff members of the SCR at the Subotica reception centre, most of the asylum seekers staying at the centre see Hungary as a transit state for the onward journey towards Western European states. Therefore, they negotiate with the Hungarian police for their admission in the Hungarian transit zones.[25] The profiles of the asylum seekers accepted in Subotica reception centre, and the practice of asylum seekers' negotiation with the Hungarian police raised our concern about the presence of malpractices at the Hungarian-Serbian transit route. When we inquired different asylum seekers at the reception centre and staff member of the SCR, we came to know that some asylum seekers

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19 *Ibid.*

20 *Ibid.*

21 *Ibid.*

22 *Ibid.*

23 U. Korkut and D. Gyollai, 'A Visit to Hungarian-Serbian Border to See the Subotica Reception Centre for Refugees' *RESPOND*, Published on 22 December 2018, accessed 29 October 2019.

24 Hungary: *Act LXXX on Asylum* (adopted on 5 July 2007, entered into force 1 January 2008) Art. 51(4).

25 Undisclosed interview with employees of the Serbian Commissariat for Refugees at Subotica Reception Centre, June 2018.

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paid 1000 euros to move their names on the top of the list for admission in the Hungarian transit zones. Further, the Hungarian police officials were more likely to negotiate with asylum seekers who want to transit through Hungary and willing to pay. We also heard the story of a single father accompanying a child, who paid 3000 Euros for admission in Hungary and within a week he managed to reach Germany.[26] Hence, Hungary's informal border security practices, in addition to extraordinary human rights abuses, are also corrupting the asylum system of the EU and Serbia. This situation has created a new smuggling network in the backyard of the EU.

(D) ATTRIBUTING RESPONSIBILITY FOR HUMAN RIGHTS VIOLATIONS THROUGH INFORMAL CONTROL

Asylum seekers' access to international protection based on the list violates Article 6(4) of the Asylum Procedures Directive (APD).[27] The Article reads as the Member States shall ensure that a person, who has made an application for international protection, has an effective opportunity to lodge it as soon as possible.[28] The practice of accepting asylum application only at the border transit zones, through the list profiling asylum seekers in the Serbian Subotica reception centre is against the Common Standards of the APD. Article 43(1) of the APD allows the Member States to establish transit zones at the external borders.[29] However, Hungary only allows asylum applications to be submitted within such transit zones where access is granted to a limited number of people after a prolonged delay.[30] Additionally, access to international protection based on the list violates Article 21 of the CFREU and Article 14 of the ECHR.[31] The Articles prohibit discrimination based on any ground such as sex, race, colour, ethnic or social origin, religion, or nationality.

Furthermore, limited access to international protection at the Hungarian transit zones also undermines the right to apply for asylum guaranteed under Article 18 of the *CFREU*.[32] The United Nations High Commissioner for Refugees (UNHCR) has reported massive push backs from Serbia.[33] According to UNHCR, asylum seekers entering Serbia are briefly deprived of their liberty, searched, and threatened, often with the use of force, to go back to North Macedonia.[34] Therefore, asylum seekers exclusion from Hungary is highly likely to cause indirect refoulement of asylum seekers, prohibited under

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[26] *Ibid.*

[27] Council of the European Union, *Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withholding international protection,* (OJ L. 180/60, 29.6.2013, p. 60-95).

[28] *Ibid.*, Art. 6(4).

[29] *Ibid.*, Art. 43(1).

[30] European Commission, *Migration and Asylum: Commission Takes Further Steps in Infringement Procedures against Hungary (accessed 27 October 2019).*

[31] Council of the European Union, *Charter of the Fundamental Rights of the European Union,* 26 October 2012, 2012/C 326/02, Art. 21; Council of Europe, *European Convention for the Protection of Human Rights and Fundamental Freedoms,* as amended by Protocols Nos. 11 and 14, 4 November 1950, ETS 5, Art. 14.

[32] Council of the European Union, *Charter of the Fundamental Rights of the European Union, supra* n. 31, Art. 18.

[33] European Council on Refugees and Exiles (ECRE), 'Country Report: Serbia', 1-82, at 16 (accessed 29 October 2019).

[34] *Ibid.*

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Article 33 of the Refugee Convention,[35] Article 4 of the CFREU,[36] and Article 3 of ECHR[37]. However, it remains unclear as to what extent Hungary could be held responsible for informal exclusionary practices.

By restricting irregular arrivals at the Hungarian transit zones through informal security cooperation with Serbia, Hungary has tried to establish that it no longer detains asylum seekers in the transit zones. Additionally, by approving the list, Hungary authorises access to transit zones to only those asylum seekers, who are highly likely to be recognised as refugees. Therefore, Hungary no longer expels asylum seekers from its transit zones as well. Accordingly, with the assistance of the SCR, Hungary has ensured that there are no more human rights challenges for arbitrary detention, inhuman and degrading treatment, and refoulement of asylum seekers. Therefore, this secret cooperation has helped Hungary to dissolve grounds of infringement proceeding triggered by the EC against Hungary.[38] To attribute responsibility to Hungary for extraterritorial violation of human rights, we must establish Hungary's effective control of on the migration management in Serbia, particularly at the Subotica reception centre. Therefore, we have to see to what extent a state can be held responsible for the acts of another state. Nevertheless, before attributing responsibility to Hungary of the acts of the SCR, we have to establish the existence of effective control of Hungary on the migration management in Serbia. In the present case, since communication between both states is done through the community leaders; therefore, we have to determine to what extent both cooperating states can be held responsible for the acts of the community leaders.

According to International Law Commission's *Articles on Responsibility of States for Internationally Wrongful Acts 2001* (ARSIWA), a contracting state is responsible for extraterritorial violations of human rights, when a state directs and controls another state in the commission of an internationally wrongful act.[39] Therefore, to hold Hungry responsible, it must be established that Hungary enjoys effective control over migration management at the Subotica reception centre. In the case of Hungary-Serbia cooperation, smooth running of operations regarding the preparation of the list by the SCR and the tacit approval of the list by the Hungarian authorities shows that actions of both states are alien for a common outcome. Therefore, the conduct of the community leaders is of the utmost importance here. Article 8 of the ARSIWA states that the conduct of a person or group of persons shall be considered an act of a state under international law if the person or group of persons is acting on the instruction of, under the direction or control of, that state in carrying out the conduct.[40]

In the present case, there exists a special factual relationship between the conduct of the community leaders and the collaborating states. By handing over the list of asylum seekers proposed for admission in the Hungarian transit zones, the Serbian Commissariat passes explicit instruction of delivering the list to the Hungarian authorities at the transit zones. Similarly, after examination of the proposed list, handing

35 UN General Assembly, *Convention Relating to the Status of Refugees* (adopted on 28 July 1951, entered into force 22 April 1954), UNTS, vol. 189, p. 137, Art. 33.

36 Council of the European Union, *Charter of the Fundamental Rights of the European Union, supra* n. 31, Art 4.

37 Council of the European Union, *Charter of the Fundamental Rights of the European Union, supra* n. 31, Art. 3.

38 Undisclosed interviews with human rights activists in Belgrade, June 2018.

39 International Law Commission, *Articles on Responsibility of the States for Internationally Wrongful Acts* November 2001, Supplement No 10 (A/56/10), chp. IV.E.1, Art. 17.

40 *Ibid.*, Art. 8.

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over the approved list by the Hungarian authority for delivery to the SCR shows that the conduct of the community leaders has a specific factual relationship with the authorities of both states. Hence, the role of the community leaders correlates to the acts of volunteers, missionaries, or agents working without official capacity commissioned to carry outs specific tasks domestically or overseas. International law wildly attributes responsibility to the state for the conduct of its agents if there exists a specific factual relationship of the agent with the state concerned.[41]

By providing accommodation and food to the community leaders in the transit zones during their stay at the transit zones to perform the service of communicating the list, Hungary had a factual relationship with the community leaders, which entitle Hungary to control the conduct of the community leaders. In the case of *Cyprus v. Turkey*, the Commission on Human Right, the former body of the ECtHR held that Turkey had effective control on the conduct of private individuals, who violated the rights of Greek and Turkish Cypriots in Northern Cyprus.[42] The Commission relied on the principle of connivance to attribute responsibility to Turkey for extraterritorial human rights violation at the hands of private parties. State responsibility for the acts of its agents, missionaries, or volunteers has also been recognised in international law in the case of Lehigh Valley, where Germany was held to have effective control on the sabotage activities carried out by private parties in the United States of America.[43]

Furthermore, according to Article 16 of DARSWA 2001, there could be situations where a state voluntarily or for some other reasons, aids or assists another state by facilitating the commission of a wrongful act.[44] In such a situation, the assistance of the assisting state is not to be confused with the responsibility of the acting state; the assisting state will be responsible for its part of the internationally wrongful act.[45] Hence, by applying the rule of connivance and considering both states factual control over the conduct of the community leaders, it could be induced that there exists formal cooperation between both states. Thus, it could be argued that Hungary enjoys effective control over the management of the Subotica reception centre and control of irregular migration in Serbia. Therefore, Hungary could be held responsible for violation of Articles 3, 14 of the ECHR, Article 4 of the Protocol 4 of the ECHR, and Article 4, 18, 19 and 21 of the CFREU.

(E) AUTHORITY OF THE EU LAW IN THE PRESENCE OF INFORMAL BILATERAL COOPERATION

The idea of unified Europe as a peace project to overcome nationalist forces in the continent and bring peace and prosperity for people of the continent is considered to be the founding narrative of the EU.[46]

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41 *Ibid.* S. Fleming, 'Moral Agents and Legal Persons: The Ethics and the Law of State Responsibility' 9(3) *International Theory* (2017) 466-489, at 466 and 467 [doi: 10.1017/S1752971917000100]; A.F. Lang, 'Crime and Punishment: Holding States Accountable' 21(2) *Ethics and international affairs* (2007) 239-257, at, 239 [doi:10.1111/j.1747-7093.2007.00072].

42 ECtHR, *Cyprus v Turkey,* Application no. 25781/94, 10 May 2001.

43 *Lehigh Vally Railroad Company and Others (United States) v Germany,* 16 October 1930 VOLUME VIII pp. 84-101.

44 ARSIWA, Art.16.

45 *Ibid.*

46 I. Horga and M. Brie, 'European Identity the Context of Wider Europe' in D. Pantea (ed), *The Image of the Others in the European Intercultural Dialogue* (LAP LAMBERT Academic Publishing 2017) 293-311, at 294.

However, due to the unprecedented arrival of asylum seekers, Europe has seen a rapid rise in support of nationalist parties, which are critical of the EU addressing the migration crisis inadequately.[47] Intensified fears about the increasing numbers of refugees and asylum seekers in the European states have increased the vote bank of the populist parties. These parties have been harbouring anti-migration sentiments by depicting existential threat to national security and identity. At the same time, these nationalist parties are also critical of the EU for undermining the Member States´ sovereignty and capacity of governing their societies effectively.[48]

The rhetoric of the nationalist parties in the frontier Member States facing immense irregular arrivals has worked so well that the nationalist parties have managed to form governments in Hungary, Italy, and Poland. The Hungarian government of the Fidesz nationalist party sees the EU and its common standards established under the Common European Asylum System (CEAS) the main cause of the problem. The CEAS provides a set of Directives and a Regulation, providing common standards to be implemented by the Member States while dealing with asylum applications of third-country nationals. However, instead of following the CEAS, the practice of some of the Eastern European Member States to implement national measures has become an integration problem for the EU for non-compliance of the EU Law.[49]

The literature on the securitisation of migration in the Mediterranean shows that the EU, itself, supports informalisation of securitisation of migration by allowing the Member States to disregard the Union's fundamental values of human dignity, the rule of law, solidarity, and equality, with regard to asylum seekers.[50] The EU-Turkey Migration Statement is the example of informalisation of migration, where the EU hide behind the individual capacity of the Heads of Member States to conceal the involvement of the Council of the EU to hide legally binding nature of the agreement with Turkey.[51] This Act of the EU severely undermined the significance of the EU Law by providing a window for informal securitisation measures to bypass the Union's human rights standards and accountability in both supranational European Courts. This informal approach of the EU has also been replicated by Italy, with the support of the EU, to shift the responsibility of migration management to Libya's Government of National Accord (GNA).[52]

Above discussion shows that the authority and significance of the ECHR, CFREU, and founding treaties of the EU has been seriously undermined the EU institutions itself. The EU's only problem with Hungary is that Hungary has opted for outright control of migration in clear contrast of the EU Law; while,

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47 K. Archick, 'The European Union: Current Challenges and Future Prospects', *Congressional Research Services* (2016) 1-27, at 5 and 6 (accessed 5 November 2019).

48 *Ibid.* T. A. Borzel, ' From EU Governance of Crisis to Crisis of EU Governance: Regulatory Failure, Redistributive Conflict and Eurosceptic Publics', 54(s1) *Journal of Common Market Studies* (2016) 8-31, at 9 [doi: 10111/jcms.12431].

49 Borzel, *supra* n. 48, at 22.

50 M. Mancin, 'Italy's New Migration Control Policy: Stemming the Flow of Migration from Libya without Regard for Their Human Rights', 27(1) *The Italian Yearbook of International Law* (2018) 259-281, at 263 [doi: 10.1163/22116133-02701015]; L.B. Adam, ' The EU -Turkey Deal One Year On: A Delicate Balancing Act', 52(4) *International Spectator* (2017) 44-58, at 44 [doi: 10.1080/03932729.2017.1370569 44].

51 CJEU, judgement of 28 February 2018, *NF, NG, NM v. European Council,* T-192/16, T-193/16, T-257/16, ECLI:EU:T:2017:128.

52 Mancin, *supra* n. 50, at 265.

the EU prefers it to be done through technical approaches to avoid the impression of undermining the EU Law. In either case, the authority and significance of the EU Law have been severely compromised. In the Hungarian case, even if Hungary reverts to the EU practices, informalisation of migration will continue to have severe implications for the EU Law. However, at the same time, the implications of informalisation are not limited to refugees and asylum seekers; the fact that the EU Law can be subjugated creates severe concerns about the integration of the EU as more and more Member States will look for informal practices to bypass the EU Law.

(F) CONCLUSION

Control of irregular migration and asylum through informal migration cooperation with third countries has become the contemporary practice of expanding state authority in the EU. The informalisation of migration and asylum cooperation allows Hungary to pursue its securitisation agenda in Serbia without attracting responsibility, for asylum seekers exclusion from international protection for the reason of cooperating with Serbia. Hungary's policy of restricting asylum seekers access to the Hungarian transit zones, with the informal assistance of Serbia, is the extreme form of informalisation as the authorities of both states communicate through private persons. This policy of Hungary undermines the authority of the EU and international law. However, under the EU and international law, both Hungary and Serbia have effective control on community leader's activity of communicating between the authorities of both states. Therefore, a link establishing cooperation between both states can found by exploring international jurisprudence on the state's responsibility for the acts of a private person. Under the principle of extraterritorial jurisdiction for the acts of a private person, agent, or missionary Hungary attracts the responsible for asylum seekers exclusion from international protection for the reason of controlling, directing, and approving the activities of the SCR. Therefore, the process of informalisation can only be stopped if both the CJEU and the ECtHR are willing to play a proactive role by expanding their jurisdiction to informal activities of the Member States beyond the territorial limits of the EU; otherwise, the prospects of the supremacy of the EU and international treaty law look really diminish.

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