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Exclusive vs. Inclusive Social Populism? A Comparative Legal Analysis of Welfare Policies in Hungary and Poland Under Populist Regimes

Keywords: Poland, Hungary, the rule of law, populism, social rights, socio-economic framework

Słowa kluczowe: Polska, Węgry, rządy prawa, prawa socjalne

Abstract

This article critically examines the main features of respective socio-economic legal frameworks to determine whether they constitute the specificity of Polish and Hungarian populism. The principle of equality serves as a theoretical framework for the assessment of both types of social design. Based on this legal criterion, differences in the social visions of both countries emerge, unveiling the perspective of an exclusive and inclusive social design. However, the conclusion appears that it is not the social-economic model itself that determines the specificity of populism in both countries but its juxtaposition with cultural arguments. Polish and Hungarian populisms are thus defined primarily by social frameworks and secondary by the rhetoric's cultural component. The combination of social issues with those of cultural kind forms the substantive background of populism in its Polish and Hungarian editions.

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Streszczenie**Ekskluzywny a inkluzyjny populizm socjalny? Porównawcza analiza prawna polskiego i węgierskiego systemu socjalnego pod rządami populistów**

Niniejszy artykuł poddaje krytycznej analizie główne cechy poszczególnych społeczno-ekonomicznych ram prawnych polskiego i węgierskiego populizmu, w celu ustalenia, czy są one czynnikami świadczącymi o specyfice tych systemów. Zasada równości służy jako schemat teoretyczny przy ocenie obu wizji socjalnych. W oparciu o to kryterium, przy ocenie obu modeli socjalnych pojawiają się zasadnicze różnice, odsłaniając tym samym perspektywę ekskluzywnego i inkluzyjnego systemu polityki socjalnej. Kolejną zasadniczą konkluzją, jest fakt, że to nie tylko model socjalno-ekonomiczny decyduje o specyfice populizmu w obu krajach, ale jego zręczne zestawienie z argumentami natury kulturowej. Polski i węgierski populizm należy więc definiować przy uwzględnieniu w pierwszej kolejności ram socjalnych, a po wtóre przez pryzmat elementu kulturowego leżącego u podstaw populistycznej retoryki obu krajów. Połączenie kwestii socjalnych z kulturowymi tworzy więc zasadnicze tło populizmu w jego polskim i węgierskim wydaniu.

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I. Introduction

The confusion around the current state of affairs in Hungary and Poland does not seem to be diminishing. Both countries' descent into autocracy has become a reality in plain view of the entire European Union. Institutional checks and balances are illusory, and power is now centralized in the hands of the two governing parties' leaders. Although in the international debate, the situation sadly serves as an excellent example of how rapidly populist politics can destroy a consistently (re)built democracy, national support for the governments in power has maintained relative stability.

In the course of international deliberation concerning the European rule of law impasse, the cases of Poland and Hungary have often been juxtaposed for comparison. Indeed, it is true that the pattern of the populists' actions was very similar, aimed at rendering the same 'targets' powerless and im-

plemented by the same means². The most obvious example to present here would certainly be how both governments attacked the courts and judicial independence, undermined their authority, and, above all, dismantled the constitutional courts³.

Against this backdrop, what remains puzzling is the question of what has driven and is currently prompting populist success. Scholars investigating the causes of populism in Europe mainly identify two groups of factors that might have had the greatest influence on citizens' willingness to choose populist candidates. The first group includes social and economic issues⁴, while the second group mentions cultural factors⁵. Supporters of the theory emphasizing the importance of socio-economic factors rely on populist electoral programmes rich in social promises. Opponents, on the other hand, point out that in countries such as Poland and Hungary, prior to the populist governments, the economic situation was stable (excluding stages of economic crises) and economic development was constantly at a high level so that people's standard of living was generally getting better, proving that socio-economic arguments are not the decisive factor⁶. Moving on to the cultural arguments, their potential has been underestimated in the context of Central and Eastern European (CEE) populism. Some researchers have been smuggling such theses into their work, mentioning the populist will to strengthen the antagonisms within society and their aversion to immigrants. However, cultural factors have an immeasurable power to mobilize society to oppose an undefined enemy. Some scholars claim that cultural arguments win the majority of populist supporters⁷.

² T. Drinóczi, A. Bień-Kacała, *Illiberal Constitutionalism: The Case of Hungary and Poland*, "German Law Journal" 2019, No. 20, p. 1142.

³ W. Sadurski, *Poland's Constitutional Breakdown*, Oxford University Press 2019, p. 58 et seq.

⁴ Throughout the article, depending on the context, the group of social and economic factors will also be referred to as: socio-economic factors, social factors, economic factors. They should all be perceived as belonging to one group.

⁵ P. Norris, R. Inglehart, *Cultural Backlash. Trump, Brexit, and Authoritarian Populism*, Cambridge University Press 2019, p. 164.

⁶ W. Sadurski, op.cit., p. 169.

⁷ M. Gdula, *Dobra Zmiana w Miastku. Neoautorytaryzm w Polskiej Polityce z Perspektywy Małego Miasta*, "Krytyka Polityczna" 2017; P. Norris, R. Inglehart, op.cit.

While both groups of factors contain elements of undeniable truth, assigning one superiority over the other does not seem to be the most important issue. Greater relevance should be given to analyzing the current, constant support for populists. In this context, social policies are undoubtedly an extremely important criterion. The Hungarian and Polish ruling parties have not only made electoral promises to introduce family allowance or provide the elderly with social aid but have also managed to implement these policies. A legal assessment of the role of this social framework should be the starting point for research on the success of populists and for restoring confidence in other political actors, which must (re)establish a liberal counterweight to the current deadlock.

Bearing that outline in mind, the main intent of the article should become evident. The aim is to examine the main features of respective socio-economic legal frameworks⁸ to determine whether they constitute the specificity of Polish and Hungarian populism⁹. The main argument for this legal analysis will be the premise concerning the existence of different socio-economic legal schemes in the populist context, as shown in Poland and Hungary's example. A complementary argument would be that these differences in the approach towards welfare are overcome by the shared engagement in rhetoric concerning cultural factors, such as migration, forming another important feature of Polish and Hungarian social populism. These two countries are especially prone to comparative research of this kind due to both their unique, differently designed social frameworks and the significance of cultural arguments appearing in their national context. Thus, the legal and institutional developments under populist governments make them sufficiently similar¹⁰, while the social design – diverse enough to lend themselves to a comparative study, serving to gain understating of the phenomenon of populism in CEE¹¹.

⁸ Socio-economic legal frameworks, social design, socio-economic scheme, as used in this article, refer to all social services and monetary support provided by Polish and Hungarian governments to individuals, according to their social status.

⁹ The linkages between social rights and democratic crisis in Hungary and Poland have been noticed by many legal scholars, see for example C. Kilpatrick, *Constitutions, social rights and sovereign debt states in Europe: a challenging new area of constitutional inquiry*, "EUI Working Papers" 2015.

¹⁰ T. Drinóczy, A. Bień-Kacała, op.cit., p. 1142.

¹¹ G. Dannemann, *Comparative Law: Study of Similarities or Differences?*, [in:] *The Oxford Handbook of Comparative Law*, eds. M. Reimann, R. Zimmermann, Oxford University Press 2019, p. 413.

The principle of equality as interpreted by the European Court of Human Rights will serve as a theoretical framework for the assessment of both types of social design, reflecting the well-known divide between the first generation of human rights as corresponding to the principle of liberty and the second generation as referring to the principle of equality¹². Based on this legal criterion, differences in the social visions of both countries emerge, unveiling the perspective of an exclusive and inclusive social design. As will be demonstrated in the following parts of the article, the Polish model is far more inclusive and, at the same time, populist *sensu stricto*. However, the conclusion appears that it is not the social policy model itself that determines the specificity of populism in both countries but its juxtaposition with cultural arguments. Polish and Hungarian populist designs are thus defined primarily by (differently applied) social frameworks and secondary by the importance it attaches to responding to various cultural issues. In the research, the weight of cultural aspects will be analyzed by referring to the examples of identity politics present in Hungarian and Polish populist rhetoric and scrutinizing attitudes towards the migration crisis.

As far as the structure of this study is concerned, during the first two sections, it is aimed to provide an insight into particular social policies adopted in Hungary and Poland. Based on the mechanism of distribution of particular social programmes analyzed regarding the principle of equality, the subsequent section formulates an argument as to inclusive and exclusive forms of Polish and Hungarian welfare. The article's fourth section seeks to present the importance of various cultural arguments invoked by populists in Poland and Hungary. Relevant argumentation is based on the concept of identity politics, proving its adoption by populists in the CEE context. The subsequent part is devoted to analyzing an issue combining both the arguments of social and cultural origin, which is the case concerning migration. Based on that, the conclusion emerges that socio-economic schemes are the deciding factor for populism in Poland and Hungary. However, within the framework of the principle of equality, they may be formed differently. That is precisely where the cultural issues intervene, constituting a factor that brings

¹² D. Davis, *Socio-Economic Rights*, [in:] *The Oxford Handbook of Comparative Constitutional Law*, eds. M. Rosenfeld, A. Sajó, Oxford University Press 2012, p. 1023.

the Polish and Hungarian populist vision together. In the concluding part of this article, the main arguments supporting the thesis as to the decisive role of the socio-economic policies for the present shape of Polish and Hungarian populist regimes are presented in essence.

II. Polish Welfare in the Times of Populism

In order to ascertain the extent to which various social and cultural incentives shape the support for populist regimes, it is necessary to investigate their presence in the respective national borders. Out of the two groups of issues, the socio-economic arguments will be handled first. This short commentary will be worth looking at the most significant of the changes introduced by the populists in Poland. These concern the sphere of social assistance, housing, and fiscal policy.

One of the main promises made by the populist government, dating back to 2015, was to introduce a social allowance in the form of a direct subsidy of PLN 500 (approx. EUR 120) for families with children. The family allowance, called the 500+ programme, turned out to be a great success. Although it led to significant expenses from the state budget, the positive social response encouraged the government to extend the scope of the allowance. While initially 500+ was provided to families with at least two children, after amendments were introduced in 2019, it is now granted for the first child without further reservations. Against this backdrop, there are many objections as to the current shape of the programme. One is the lack of an income limit beyond which the money would not be granted¹³. At the moment, even very wealthy families can apply for the 500+. The Act does not differentiate between any social groups. One of the main objectives behind the programme's introduction was to increase birth rates, which was not achieved. The study¹⁴ shows that the programme also had negative impacts, such as on women's professional activity. According to the research, the parental benefit pushed 100,000

¹³ I. Magda et al., *Rodzina 500+. Ocena programu i propozycje zmian*, Forum Obywatelskiego Rozwoju 2019, p. 3.

¹⁴ The only professional research concerning the outcomes of the 500+ programme carried out by far.

women out of the labor market (especially those from small towns and low incomes and poor educational backgrounds). If a family has two or more children, the allowance often exceeds the mother's income, constituting an argument for quitting the poorly paid work. The quality of life of many Polish families has indeed improved. However, it is not clear that 500+ can take credit for this. It is assumed that the programme was one of the main factors contributing to reducing extreme poverty in families with children, but the decrease in 'spending poverty'¹⁵ was much smaller than had been foreseen.

Another social group that the Polish government wanted to gain the favor of was elderly. The government proposed elderly-friendly programmes aimed at solving the two most intractable issues. The response to the low pensions was the payment of a so-called 13th pension, meaning one additional pension per year, of an amount determined in advance and equal for all without considering the amounts of pensions received each month¹⁶. Another social programme aimed at seniors was the introduction of free medicines. The amendment to the Act on publicly funded healthcare services provided for the reimbursement of medicinal products indicated in the regulation of the Minister of Health equally to all persons over 75 years of age. Although the list does not include all sorts of medicine, and many of them still have to be paid for, the programme met with the approval of the elderly and fulfilled the political commitment towards this social group.

However, Polish authorities did not confine themselves to these solutions. Apart from the groups of elderly and most economically disadvantaged, they wanted to gain the support of young people. Although the economic situation in Poland has been steadily improving in recent years, and consequently salaries have also been rising, entering the labor market, where experience remains the most valuable asset, is not easy for the youngest people directly after graduation. Therefore, in 2019, the government decided to introduce a tax allowance for such people, providing for an exemption from personal income tax for people up to the age of 26. The tax relief covers income from work contracts and contracts of a civil nature up to PLN 85 528 (EUR 19.100) in the tax year.

¹⁵ The situation when the amount to be spent by the family does not exceed the subsistence minimum.

¹⁶ In 2019 the amount of the 13th pension was PLN 888 (approx. EUR 200).

As already mentioned, attention has been focused only on the most important and emblematic social reforms introduced by the Polish government. In addition, since the beginning of its government in 2015, the ruling majority has, among other things, raised the minimum wage, lowered the retirement age¹⁷, and initiated the building of social housing. The distribution of social programmes by applying the principle of equality in its most fundamental sense has increased the sense of factual equality within society. The social framework in Poland is constructed to cover the wide social groups, including (but not limited to) the most marginalized ones.

III. The Hungarian-Style Welfare Means Workfare

After describing the Polish social framework, we can now move on to a similar overview of the Hungarian policies. Before Fidesz came to power in 2010, but practically since the transformation from the socialist to the market economy, Hungary has always had quite a generous social system¹⁸, largely realizing the principle of solidarity. It led to the conviction among the public that the poor had been over-subsidized, creating a myth of widespread welfare dependency, which needed to be abolished. Thus, when in 2014 the Hungarian Prime Minister Viktor Orbán announced his intent to create a workfare society instead of pursuing the idea of a welfare state, the suggestion was widely accepted.

Hungary commenced its shift towards a different type of social policy, namely the workfare type of system. The government promised to take radical steps to make the long-term unemployed engage in job-seeking¹⁹ and take up work activity instead of continuing to be passive social welfare recipients, and so it did. The ‘Pathway to Work Programme’ was introduced, which tied the eligibility for any social benefits to compulsory public labor. Participation is not dependent on the person’s education or profession. A public worker’s

¹⁷ CJEU judgment of November 5, 2019, C-192/18, *European Commission v. Poland*, on the lowering of the retirement age of the Polish Supreme Court judges.

¹⁸ A. Sajó, *How the rule of law killed Hungarian welfare reform*, “East European Constitutional Review” 1996, No. 1, p. 33.

¹⁹ F. Albert, *In-work Poverty in Hungary*, European Social Policy Network 2019.

wages amount to approx. 70% of the minimum wage. Such a solution created an easy way for employers to use their workers as sources of cheap manpower. Studies show that the ‘Pathway to Work Programme’ did not prove effective in combatting unemployment. It failed to reintegrate people into the primary labor market while absorbing funds from other, possibly more efficient tools, and it led to the stigmatization of the unemployed, depriving them of basic employees’ rights.

When it comes to the fiscal policy, a flat personal income tax was introduced in 2011, and the minimum wage, which had not previously been subject to taxation, became taxed with a 16% tax rate (since 2016, the flat tax rate has been 15%). The tax refund for the low-wage earners was gradually decreased and finally utterly abolished from the system. Consideration needs to be given that wages in Hungary are still low compared to the EU average²⁰. It is often the case that the wage one can decently earn is only slightly higher than the rate of the unemployment benefit. The social group of ‘in-work poor’ finds itself in a particularly hard situation but does not receive substantial help from the state²¹, for example, in the form of tax allowances.

Instead of eradicating social inequalities, the welfare policies of Orbán’s government redistributed the sources from the poor towards the wealthier part of society. The 38% tax rate for the highest income was replaced with a new flat rate, turning the wealthiest into the biggest beneficiaries of the new laws²². While for the poorest, the legislation introduced a new economic burden, it improved the situation of the better-off. The only feature allowing a deduction from personal income tax is the family tax allowance introduced in 2011, directed towards families with children, which is especially aimed at supporting those with at least three children.

The same social strategy applies to the state’s family assistance policies. In 2019 the ‘Family Protection Action Plan’ was introduced, providing various benefits for middle and especially upper-middle-class families²³. The housing programme called CSOK offers several years of an average salary in Hunga-

²⁰ OECD, *Average wages*, 2020, <https://data.oecd.org/earnwage/average-wages.htm> (12.03.2021).

²¹ F. Albert, *op.cit.*, p. 17.

²² B. Magyar, *Post-communist Mafia State. The Case of Hungary*, CEU Press 2016, p. 159.

²³ G. Györi, *Hungarian Politics in 2019*, Friedrich Ebert Stiftung 2020, p. 17.

ry to families with at least three children to support the construction of new houses. The scheme has recently been amended with the possibility of investment in the secondary housing market. Another social policy named 'Waiting for the Baby' offers a zero-interest loan up to HUF 10 million (approx. EUR 30.000), which can be claimed by any married couple as long as the mother-to-be is over 18 and under 40. Moreover, when a third child arrives (within three years of the second), the total debt is entirely forgiven, thus turning the loan into another grant.

This text cannot overlook the most recent change made by the Hungarian government in social law, namely the introduction of the criminalization of homelessness. The Seventh Amendment of Fundamental Law of 2018 provided explicitly that: 'Using a public space as a habitual dwelling shall be prohibited'. Consequently, the Hungarian Misdemeanor Act introduced the regulatory offense of habitual dwelling in public space, authorizing police officers to order homeless people into shelters and arrest them if they disobey and keep on sleeping rough, after being ordered three times in 90 days. This state of affairs was sealed by the constitutional court, which in June 2019 ruled that punishment for homelessness is consistent with the constitution²⁴. The justices found that the questioned provision did not criminalize homelessness as a status, but rather the individual's active refusal to cooperate with the state to benefit from the available social assistance. The criminalization of homelessness remains questionable from the viewpoint of the ECHR's standard of human dignity protection. As far as the principle of equality is concerned, it is worth noting that while concerning other social programmes, the traditional, inclusive understanding of equality was abandoned in order to differentiate the situations of similar individuals. In this case, such actions have not been undertaken.

IV. Inclusive vs. Exclusive Populist Welfares

After investigating various social frameworks adopted in Poland and Hungary, we can move on to the substance of this article being a comparative legal analysis of social design. In consistency with the previous sections, the principle of

²⁴ The Constitutional Court of Hungary decision of June 4, 2019, No. 19/2019 (VI. 18.).

equality should serve as a theoretical framework for this scrutiny. It should be noted that the choice of the principle of equality as a theoretical benchmark for comparing social design in Poland and Hungary was not accidental. In legal scholarship, equality not only informs the very idea of law as a general norm²⁵ but constitutes the ‘starting point of all liberties’. It informs all human rights²⁶. It should be recalled that the principle of equality and the related prohibition of discrimination are among the guiding principles governing the European legal order. At the level of the European Union, the relevance of these provisions is reflected in their inclusion in the Charter of Fundamental Rights (Title 3), whereas the Council of Europe’s legal standard has codified them in the text of the European Convention on Human Rights (Art. 14). The principle of equality is also a fundamental constitutional value among the European national legal systems, including Poland²⁷ and Hungary²⁸.

Both Hungary and Poland undoubtedly have experienced a noteworthy shift in their welfare policy. However, significant differences between their approaches to public assistance can be discerned. Unlike the current Polish model, Hungarian social legislation has its exclusive side and finds itself in a period rather than limiting the previously adopted privileges. An explanation for this discrepancy between the two countries pursuing otherwise analogical political aims can be found in their different pathways in the transition period. The social policy measures taken following the shift in regimes in Hungary were not austere neoliberal policies. As was mentioned before, the state retained a generous social benefit system to compensate for the unemployment resulting from the change in economic regimes. The government offered an early exit from the labor market in the form of early retirement and disability pensions and introduced a system of assistance benefits. The subsequent politics were rather focused around the dismantling of these privileges and heading towards punitive workfare. It needs to be borne in mind that the transitional situation in Poland was quite the opposite²⁹, with the imple-

²⁵ S. Baer, *Equality*, [in:] *The Oxford Handbook of Comparative Constitutional Law*, eds. M. Rosenfeld, A. Sajó, Oxford University Press 2012, p. 985.

²⁶ *Ibidem*, p. 985.

²⁷ Art. 32 of the Constitution of Republic of Poland.

²⁸ Art. 15 of the Fundamental Law of Hungary.

²⁹ W. Sadurski, *Rights before Courts*, Springer 2014, p. 263.

mentation of the most stringent economic policies. While the austerity measures contributed to Poland's transformation into a democracy, many people were left behind by the system until the populist government offered solutions to their problems in the form of social transfers³⁰. In that sense, it is evident that the social policies of Hungary and Poland would strive towards different kinds of alterations concerning their welfare schemes.

Following the analysis of the most important social programmes introduced in Poland, one can easily notice the method governing the distribution of public aid. Both in the case of 500+, 13th pensions and free medicines for the elderly, they included, without exception, all subjects belonging to a particular social group defined by broad criteria (the elderly, the poor, people on the social margins, families). Noticeably, individuals being subject to welfare schemes in Poland were not selected based on sophisticated and detailed criteria. The subjective scope of social policies can therefore be described as very broad. On the contrary, in the case of Hungary, the benefits were granted to specific social groups, distinguished from the larger parts of society by applying additional limiting criteria. For example, financial assistance for families was not given to all families with children (as is the case in Poland) but to families with at least three children. Following the same pattern, the unemployment benefits are conditional upon participating in the described compulsory public labor. Other legislative changes, such as the constitutional amendment providing for the admissibility of criminalization of homelessness, were even explicitly aimed at excluding specific groups from the possibility to apply for social assistance.

From the perspective of the principle of equality, Polish solutions are based on simple distribution, which does not create further distinctions among similar individuals, and selects target groups based on a relevant characteristic defined very broadly. In this sense, the Polish vision of redistribution granting everybody equally and not following their actual needs can be described as predominantly inclusive³¹ and, thus, *stricte* populist, as it concerns everyone without exception. On the other hand, the Hungarian solutions provide

³⁰ P. Blokker, *Varieties of populist constitutionalism: The transnational dimension*, "German Law Journal" 2019, No. 20, p. 343.

³¹ C. Mudde, C.R. Kaltwasser, *Exclusionary vs. Inclusionary Populism: Comparing Contemporary Europe and Latin America*, "Government and Opposition" 2013, No. 2, p. 147.

for social aid based on a strong differentiation among the groups, which, at first sight, seem to be relevantly similar. Hungarian law differentiates the situation of such individuals based on narrow criteria, such as the number of children, or by creating additional requirements for the groups to be privileged. Thus, the social assistance in Hungary is allocated using an equality criterion formulated in an exclusive, restrictive way³².

However, the assumption made at the outset of this article as to the specific social dimension of populism in its Polish and Hungarian editions does not result solely from the mentioned approach both countries have taken to implementing social assistance. It would be difficult to come to such a conclusion also because, as shown, both countries' visions remain divergent in this respect. On the other hand, a factor that applies to both countries and, in the view of the author, remains decisive for the uniqueness of populism in Poland and Hungary is an addition of cultural element 'on top' of the socio-economic discourse. This argument will be elaborated on in the next part of the article.

V. A Fight Against the Unknown – Identity Politics in Hungary and Poland

Having outlined the two differing socio-economic dimensions of Hungarian and Polish politics, we can now analyze the role of cultural factors as arguments that, next to the social schemes, strengthen support for populists. Many arguments support the thesis that the shift in power happened not only under socio-economic reasons but Francis Fukuyama's understanding of identity politics seems to be the source of the most accurate claims³³. He noticed that while many scholars assume that human beings are motivated by what we label 'preferences' or 'utilities', meaning material goods, they forget about *thymos*, the part of the human soul that desires recognition by others, or *megalothymia*, recognition as superior. He finds that a great part of what we conventionally take to be economic motivation driven by material needs or desires is, in fact, a thymotic desire for recognition of one's dignity or status.

³² P. Blokker, op.cit., p. 343, where the author describes the inclusive and exclusive sides of populism, mentioning the role of redistributive justice.

³³ The concept is developed *in extenso* by the author in his last book, F. Fukuyama, *Identity. Contemporary Identity Politics and the Struggle for Recognition*, Profile Books 2019.

According to Fukuyama, this strive for identity cannot be associated with economic aspirations because rights to social recognition based on race, ethnicity, or gender cannot be traded for other goods or abridged in any way³⁴.

A sociological study examining the reasons for the emergence of populism in Poland³⁵ confirms the veracity of these theses in the CEE context. Gdula's study was prompted by the presumption that the existing explanations, highlighting, above all, the socio-economic background of the right-wing turn in politics, seemed insufficient and did not contribute to a comprehensive understanding of the Polish condition. In-depth interviews, used as the primary methodology in this research, have shown that support for the government is strongly associated with the belief in the corrupt nature of previous political elites, as well as with pursuing a concrete vision of community (to a great extent built around engagement in institutional changes) which the party offers its proponents³⁶. Of crucial importance are the cultural issues of religion in public life, abortion, and elements of EU integration relevant to the issues of cultural autonomy, state sovereignty, and the defense of traditional and family-related values. The overall assessment was that cultural arguments prevailed over economic ones among the people supporting populists in Poland³⁷. The same cultural arguments can be transposed into the Hungarian context, where the main element of politics is the narrative referring to national identity.

The primary significance of the socio-economic issues in the CEE context described in the previous sections does not exclude the truthfulness of the theses presented by Fukuyama, according to whom material issues are irrelevant as far as identity politics is concerned³⁸. In Poland, the recognition of the marginalized is two-dimensional. Attention was given to people by putting their struggles at the forefront of the daily debate (cultural dimension), but concrete legal measures have been undertaken to address these issues (socio-economic dimension). Identity politics has been a contrib-

³⁴ Ibidem, p. 122.

³⁵ M. Gdula, op.cit.

³⁶ Ibidem, p. 3.

³⁷ R. Markowski, *Creating Authoritarian Clientelism: Poland After 2015*, "Hague J Rule Law" 2019, No. 1, p. 111.

³⁸ F. Fukuyama, op.cit., p. 122.

utor to the socio-economic debate initiated by populists in CEE countries. It constituted a cultural component added 'on top' of the socio-economic framework provided by populist governments. However, the significance of the cultural argument should be seen as inferior concerning the relevance of socio-economic issues.

VI. A European Bone of Contention – The Migrant Crisis

Carrying on with the argumentation concerning the gravity of cultural issues in the CEE populism context, the focus will now be shifted to the cultural argument of primary weight. The issue of migration deserves particular attention, as concerning both the social and cultural issues. A short glimpse at European migration laws allows the conclusion that both Hungary and Poland have been very active regarding this issue and that their standpoint as adversaries towards common European arrangements has been very much alike. In 2015, Europe had to face up to what has been called the largest refugee crisis in Europe since the end of the Second World War. Member States had to find a way out of this situation and opted for solidarity with the refugees. A temporary distribution scheme was invented for persons in clear need of international protection to ensure fair and balanced participation of all Member States in this common effort³⁹. From the beginning, Poland and Hungary were among the countries that did not agree to any binding solutions⁴⁰. The EU relocation plan failed for several reasons, but in the case of Poland and Hungary, it was undoubtedly a cultural matter since there could not be any justification in assuming that there were social or economic factors hindering their resettlement. Poland and Hungary remain the only countries that have not relocated a single person⁴¹.

As a result of counteractions taken by Poland and Hungary at that time, aimed at bypassing the obligations imposed by the EU, the initiation of proceedings for the potential infringement of EU law became a necessity. On April 2, 2020, the Court of Justice of the European Union issued

³⁹ European Commission, *Relocation: EU Solidarity between Member States*, 2017, p. 4.

⁴⁰ P. Norris, R. Inglehart, *op.cit.*, p. 185.

⁴¹ European Commission, *Relocation: EU Solidarity between Member States*, 2017.

a ruling⁴² stating that by refusing to comply with the temporary mechanism for the resettlement of applicants for international protection, Poland and Hungary have failed to fulfill their obligations under EU law. The Court observed that, under the relocation decisions, national security and public order were to be considered throughout the relocation procedure until the actual transfer of the applicant for international protection⁴³. Therefore, to rely on the mentioned grounds, those authorities had to put forward, following a case-by-case investigation, on consistent, objective, and specific evidence that provides grounds for suspecting that the applicant in question represents an actual or potential danger⁴⁴. As they did not provide such argumentation, the Court rejected their arguments. As one might have expected, the ruling did not gain much attention among the public in Hungary and Poland, nor has it provoked any reflection. The populist rhetoric remains fundamentally contrary to the EU vision and is still widely present in national political debates.

Another expression of an anti-immigrant sentiment occurred in 2018 when Hungary adopted the so-called ‘Stop Soros’ legislation criminalizing activities in support of asylum applications and further restricting the right to request asylum. One of the package elements was the criminalization of ‘facilitating illegal immigration’, which extended the already existing criminal code prohibitions to all types of organizational activities not directly related to illegal immigration. As a result of the unsatisfactory dialogue aimed at revoking the laws, the European Commission has referred the case to the Court of Justice of the European Union. In a judgment of June 18, 2020, the Hungarian law was found incompatible with EU law⁴⁵. The Court stated that imposing obligations of registration and publication on certain civil society organizations receiving support from abroad, along with the possibility of applying penalties to organizations that do not comply with those obligations, is incompatible with EU law. In this way, Hungary had introduced discriminatory and unjust

⁴² CJEU judgment of April 2, 2020, in joined cases C-715/17, C-718/17, C-719/17, *Commission v. Poland*.

⁴³ *Ibidem*, para. 149.

⁴⁴ *Ibidem*, para. 160.

⁴⁵ CJEU judgment of June 18, 2020 in case C-78/18, *Commission v. Hungary*.

tified restrictions concerning the organizations in question and the persons granting them such support⁴⁶.

The migration law of both countries remains restrictive, leaving them closed to massive population movements currently taking place in Europe. Populist governments want to maintain this *status quo* even despite the legal consequences they have had to face up until now⁴⁷. The issue of migration is crucial to populists as it allows them to manifest their stance as being to hinder the negative social and economic consequences and emphasize the seriousness of cultural threats that an inflow of persons could have⁴⁸.

VII. Conclusion

The populist welfare programmes and their implementation among the societies of Hungary and Poland have been widely addressed. The principle of equality served as a framework for comparative analysis of these social schemes. The employment of this theoretical pattern enabled us to discover that the distribution method of public aid is different in both countries. Through the divergent application of the principle of equality, both countries developed two different models of populist welfare, one of which is inclusive and the other exclusive. A further important conclusion that emerged from this reasoning was finding a *sensu stricto* more populist nature of the Polish social distribution model, granting privileges to broad social groups without applying sophisticated criteria of differentiation between their social status. Another subject worth attention was to consider whether any factor makes the social framing in its Polish and Hungarian populist variations similar after all. As argued throughout the article, such an element, which is substantially present in both countries, can be found in addressing cultural issues. Cultural statements most often appear as separate arguments coaxed by the populists. However, their relevance becomes most noticeable in close connec-

⁴⁶ Ibidem, para. 143.

⁴⁷ W. Sadurski, *Populism and Human Rights in Poland*, [in:] *Human Rights in Poland in a Time of Populism. Challenges and Responses*, ed. G. Neuman, Cambridge University Press 2020, p. 60.

⁴⁸ A. Sajó, *op.cit.*, p. 192.

tion to social issues, as is the case concerning migration. Out of all the specified issues, the problem of migration is the most diverse one, being a feature where both the cultural and socio-economic struggles meet. The consistent and robust anti-immigration rhetoric underpinned by corresponding legal measures is undoubtedly an extremely important argument that fuels the entire group of cultural issues.

Based on the mentioned conclusions, it is possible to draw a definite shape of the assumptions made at the beginning of the article regarding the socio-economic frameworks forming the main feature of populism in Poland and Hungary. It was demonstrated that it is not the social policy model itself that determines the specificity of populism in both countries but its juxtaposition with cultural arguments. Polish and Hungarian populist design is thus to be defined primarily by social frameworks and secondary by the cultural component underpinning the rhetoric (which includes socio-economic discourse as well). Precisely this interplay between the factors of different nature proves to be the distinguishing feature of Polish and Hungarian populist design, making it so hard to respond to. The combination of social issues with those of cultural kind forms the substantive background of populism in its Polish and Hungarian editions. The divergences in the framing of socio-economic policy become insignificant, as the common cultural element unites both visions shaping the specificity of 'social populism'.

Populists in CEE countries have well understood that responding to the socio-economic needs of the citizens cannot by itself win the public trust. Scholars underline that in societies where xenophobia, nationalism, and conspiracy theories appear⁴⁹, regaining credibility by adherence to economic and social topics does not necessarily guarantee a win at the elections⁵⁰. Building a political discourse on arguments based on economic and cultural issues, characteristic for the governments of both countries, is undoubtedly an extremely effective measure. At the same time, it is difficult for other parties to respond competently. CEE needs a solid liberal alternative to confront populist regimes. So far, no such initiative has emerged in Poland or Hungary. The fact that the rule of law and socio-economic rights are inter-

⁴⁹ P. Norris, R. Inglehart, *op.cit.*, p. 187.

⁵⁰ A. Bíró-Nagy, G. Laki, *It's about credibility, not values. Social democratic values in Hungary*, Friedrich Ebert Stiftung 2018, p. 3.

twined, inter-related, and undividable⁵¹ has become common knowledge. However, as long as the importance of the combination of socio-cultural and cultural arguments, whose involvement proves the uniqueness of populist rhetoric, will not be discerned by the wider public, the populist deadlock will remain unbreakable.

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⁵¹ J. Černič, *The European Court of Human Rights, Rule of Law and Socio-Economic Rights in Times of Crises*, "Hague J Rule Law" 2016, No. 8, p. 228.

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