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RESEARCH ARTICLE

Fighting gender equality under the pandemic. The case of Polish and Hungarian anti-gender equality and anti-LGBTQ+ policies under the COVID-19 crisis

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ABSTRACT:

The COVID-19 pandemic created a public health, economic and social crisis that had to be handled by states capable of holding tight such societal processes. During this period, right-wing politicians have initiated discourses and policies that portray enemies not related to the virus but to various minorities and oppressed social groups, including women and sexual minorities, and offered exclusionary policies as 'remedies' against these imaginary threats. This paper compares such anti-gender and anti-LGBTQ+ policies in Poland and Hungary under the COVID-19 pandemic and asks: How have right-wing populist leaders in Poland and Hungary utilised the crisis to issue anti-gender equality and anti-LGBTQ+ legislation? What are the main commonalities and differences between the adopted policies and the reactions? In answering these questions, we argue that the governments of two East-Central European EU-member states, Poland and Hungary, with severely weakened democratic institutions, utilised the momentum of the crisis to restrict women's rights and the rights of sexual minorities, playing on gendered nationalist sentiments of the protection of the nation.

KEYWORDS: COVID-19, gender equality, Hungary, LQBTQ+, Poland

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1. Introduction

Crisis situations call for protection. The COVID-19 pandemic created a public health, economic and social crisis that had to be handled by states capable of holding tight such societal processes. The government's responses to the pandemic often violated democratic standards (Edgell, Lachapelle, Lührmann, and Maerz 2021; Caduff 2020). This is particularly true for illiberal and populist leaders who tried to extend their power grip in times of limited opportunity for resistance. Right-wing politicians, including Donald Trump in the US, Jair Bolsonaro in Brazil, as well as the Polish and Hungarian political leaders Jarosław Kaczyński and Viktor Orbán, initiated discourses and policies that portray enemies not related to the virus but to supranational elite groups (like the European Union) or minorities and oppressed social groups. This explorative study compares anti-gender and anti-LGBTQ+ policies in Poland and Hungary during Covid-19. Our paper contributes to understanding how illiberal leaders used the pandemic as a critical momentum to initiate ideologically controversial policies related to gender and sexuality. We argue that they did so to strengthen their ideological and symbolic power during the crisis. Legislation that they managed to implement regarding restricting the rights of women and sexual minorities proved to be long-lasting, well beyond the period of the pandemic. In addition, we refer to the protests against the strict measures that were often pacified with violent and illegal measures. However, our focus is on the illiberal regimes treating the COVID-19 crisis as a window of opportunity for introducing these measures, aligned with the ruling parties' ideological positions that would be difficult to install in a non-crisis situation.

Hungary and Poland serve as perfect cases for the analysis because they share a communist and post-communist development related to gender and sexuality politics (Szelewa and Szikra 2022). The rule of Fidesz (Fidesz – Magyar Polgári Szövetség) in Hungary since 2010 and the Law and Justice (Prawo i Sprawiedliwość, PiS) in Poland between 2015 and 2023 are considered as the two most spectacular cases of steep democratic backsliding within the EU (V-Dem 2020). Besides the similar right-wing populist ideological content of anti-gender policies, we point out significant differences between the two cases, including the number of measures and the policy sub-fields concerned.

Our research questions are: How have right-wing populist leaders in Poland and Hungary utilised the crisis to issue anti-gender equality and anti-LGBTQ+ legislation? What are the main commonalities and differences between the adopted policies and the reactions? By answering these questions, our paper contributes to understanding a broader puzzle of how crises fuel exclusionary gendered discourses and policies, especially under increasingly authoritarian rule. We argue that the governments of Poland and Hungary, with severely weakened democratic institutions, utilised the momentum of the crisis to restrict women's rights and the rights of sexual minorities, playing on gendered nationalist sentiments of the protection of the nation. In a broader sense, the case of intensifying antiegalitarian gender politics under the conditions of crisis represents a window of opportunity for introducing potentially contested policies that are nevertheless in line with the ideologies represented by the semi-authoritarian rulers.

We confirm the findings of Hajnal, Jeziorska, and Kovács (2021) in that the pre-pandemic political and institutional structure allowed the Hungarian government to push through anti-gender equality policies without obstacles. In contrast, some veto players and widespread civil society resistance hindered (but could not halt) their swift implementation in Poland. In these two countries, narrowing women's and LGBTQ+ rights was part and parcel of further weakening formerly existing institutions of democracy (Forester and O'Brien 2020; Agius, Rosamond, and Kinnvall 2020). In addition, gendered nationalist ideas, including the protection of the traditional family via various benefits and loans, have been at the centre of the politics of Fidesz in Hungary

and Law and Justice in Poland already before the pandemic (Lendvai-Bainton and Szelewa 2021; Szikra 2019). As opposed to these traditionalist politics and policies, also labelled as "benevolent sexism" (Mudde 2019), gendered politics turned hostile during the pandemic. The nearly complete ban on abortion in Poland and the outright attack against the LGBTQ+ community in Hungary, while long on the agendas of these parties, represent two strong cases of how the pandemic provided a window of opportunity for two increasingly authoritarian leaders to push through exclusionary gendered policy reforms. These developments took place in a situation of daring need for state protection and limited opportunities for civil society to organise under the curfew.

This paper critically analyses restrictive measures related to women, gender equality and the rights of sexual minorities in Poland and Hungary between March 2020 and July 2021. This explorative study follows an abductive logic of inquiry with a relative openness of the research process (Yanov 2014), in this case, centred around the concepts of gendering illiberal democracies. While recognising similarities between the two cases, we also point to the important differences. The Hungarian government emphasised anti-LGBTQ+ legislation, while Polish leaders focused on abortion law. The ontological insecurity of the population was addressed by the Hungarian government with the "protection" of families and children, while in Poland, protectionist narratives and policies centred on life from the moment of conception. Our argument underpins scholarly literature that highlights the importance of ideology in legitimising illiberal, authoritarian politics in the past decades (Bartha, Boda, and Szikra 2020; Csillag and Szelényi 2015; Lendvai and Szelewa 2021; Szikra 2019). We show how traditionalist ideology played out in highly gendered forms under the pandemic and materialised in identity and body politics, which are increasingly important for the Polish and Hungarian governments to strengthen their ideology.

This paper is organised as follows: first, we briefly discuss the effects of the current crisis on anti-gender equality politics and policy measures during the pandemic; second, we analyse policy changes related to gender equality and LGBTQ+ rights in Poland and Hungary under the pandemic; and third, we present a comparative discussion and conclusions.

2. Gender, democracy and the pandemics

Similar to other right-wing populist leaders around the world, the Fidesz and PiS governments already before the pandemic, rejected the notion of gender or gender equality, presenting it as the example of a liberal project and, hence as alien and elitist (Korolczuk and Graff 2018; Szelewa 2021). In the context of East-Central European post-communist transformation, these anti-gender campaigns against the use of the term "gender" are interpreted as a form of anti-colonialism, as well as resistance towards globalisation, individualisation, and neoliberal commodification (Korolczuk and Graff 2018) or a symbolic glue (Kováts and Põim 2015). In Poland, the rejection of the framework of gender equality triggered campaigns orchestrated by the Catholic civil society organisations "defending" the "ordinary people" against "depravation" (Szelewa 2021). In Hungary, the Orbán-led government resigned from the concept of "gender mainstreaming" and replaced it with "family mainstreaming", subsequently removing gender studies as a university subject (Juhász 2018). Both governments have also been ambivalent towards the recognition of LGBTQ+ rights codified prior to their accession to the EU but implemented only half-heartedly. Notably, these governments promoted the traditional family not only discursively but also by boosting family policy benefits, tax credits and services (Mudde 2019; Szikra 2019). Discursive governance centred on "gender ideology" thus appeared hand in hand with generous family-centred redistributive policies that have arguably improved the well-being of many, including women.

We argue that these tendencies, to varying extents, have been present since the mid-2010s in Poland and Hungary, but legislation attacking women's bodily integrity and the rights of sexual minorities accelerated and intensified during the pandemic. Analysing populist governments' responses to the pandemic in the Czech Republic and Slovakia, Buštíková and Baboš argue that "technocratic populism" politicised expertise "to gain legitimacy and [hence] instrumentalises governance" (Guasti and Bustikova 2020, 497). Other scholars highlight that the popular acceptance of unusual measures and the use of alternative institutional channels have strengthened pro-authoritarian attitudes (Roccato et al. 2020). Related to the Hungarian case, Bene and Boda (2021) highlight that Orbán simply adopted his earlier populist communication (strong Hungarian nation vs hostile liberal elites and their protégés) to the pandemic situation. Comparing Hungarian and Polish expansion of illiberal politics, Hajnal et al. (2021) find the importance of the antecedent conditions that led to significant institutional changes in Hungary but not in Poland. They also pinpoint that utilising the window of opportunity of restrictions on mass gatherings, both governments adopted so-called Trojan measures that centre around highly controversial issues that would "normally trigger potentially politically damaging protests" (Hajnal et al. 2021, 622). Patriarchal relations in private and public spheres have been on the rise during the pandemic, contributing to the weakening of democratic institutions. In addition to male domination in expert fields (Smith 2020), politics has been dominated by men and masculinist rhetoric, especially under populist rule. Agius, Rosamond and Kinnvall (2020) analyse how the situation with the COVID-19 pandemic, which, for many societies, represented a case of ontological insecurity to be alleviated by stable anchors and fictional narratives, was often marked by the features of toxic masculinity. Such discourses and practices discriminate against "women's knowledge and position in the society" (Agius et al. 2020, 449). In contrast to masculine protectionism, best expressed by Donald Trump's slogan "Make America Great Again", female leaders aimed at the citizens feeling "protected and cared for", giving such examples as New Zealand's Prime Minister Jacinda Ardern or Angela Merkel's emphasis on affection in her explanation of social distancing (Johnson and Williams 2020, 944). The populist leaders also facilitated exclusionary policy responses. Romanis and Parsons (2020) stress that the pandemic made it difficult for many women to access abortion. The regressive moves ranged from labelling abortion as "non-essential" in eleven states in the US, "not recommending" the abortion clinics in Slovakia, to introducing "the most regressive regulation" in Poland (Romanis and Parsons 2020, 483).

Feminist scholars have theorised the interlocking systems of domination and inequality (racism, sexism, neoliberal capitalism) that aggravated during the pandemic as the "continuum of violence", stressing how the COVID-19 pandemic exposed anti-democratic practices (Forester and O'Brien 2020). In particular, the authors show how the "militaristic responses" additionally fed into the rhetoric of patriotism and "battle-ready" strategies, often to mask the unpreparedness and chaos in reacting to the pandemic on many levels. Taking a gendered account of the handling of the pandemic, we make use of the feminist argument claiming that we have been witnessing a form of "masculine protectionism" in the two countries under the recent global public health and economic crisis. Such politics materialised, not least in accelerated and intensified policies and public policies violating the bodily integrity of women and LGBTQ+ persons within the undemocratic institutional setting. We argue that these interventions were part of what Forrester and O'Brien call the "continuum of violence", that is, mutually reinforcing and engendered forms of violence that range from the domestic to the local, national, and even global levels. In our cases, state systemic violence normalised by the pre-pandemic demise of democratic institutions gained further ground during the pandemic under emergency measures. We point to the continuum rather than the incidence of violence since "the continuum of violence shows us how structures of violence that dramatically limit people's lives and potential produce a continuity

of effects, not episodic cases" (Forester and O'Brien 2020, 1152). Thus, we regard policies analysed in this article as gendered manifestations of Trojan measures utilising the momentum of the pandemic (Hajnal et al. 2021) that are part and parcel of increasingly militarised patriarchal images and a continuum of state violence under the illiberal rule of Hungary and Poland.

3. The Analysis

In methodological terms, we are using a structured, comparative case study method, with a qualitative document analysis tracing policy development under the COVID-19 pandemic in Hungary and Poland. To trace operational changes, we look at the legal sources and analyse the content of the policy documents surrounding legislation and/or enactment of a particular legal act. To understand the timing and justification of these changes, we also look into the official "communicative" discourse, i.e. the official statements provided by main stakeholders via the official government's communication channels, such as the central administration and central judiciary's websites. We complement this material with information from the leading media outlets in each country, as we need to include information on protests and counter-discourses and illustrate the struggle (or the lack thereof) against various exclusionary policies exercised by these two governments. Our main timeframe is March 2020 to July 2021, however, we place these developments in the context of (at least) the whole duration of the political domination of Orbán in Hungary and Kaczyński in Poland, making references to earlier points in time to illustrate important continuities.

We focus on these two cases as they both represent the countries politically dominated by the right-wing populist parties that have already pre-pandemic introduced undemocratic elements to the governance mode, and hence, often called "illiberal" or "neo-authoritarian" (Buzogány and Varga 2018; Lendvai-Bainton and Szelewa 2021). These two countries were prime examples of how illiberal rule expanded under the pandemic (Hajnal et al. 2021). The emergency measures in Hungary included the authorisation of the government to rule by decree with no time limits, and these measures stayed in place even after the pandemic was over, making this country a particular case of pandemic backsliding.

Regarding gender equality, both governments have repeatedly rejected the version of gender equality policies, such as those proposed by the EU. The two cases are structured in the same way, focusing first on the issues related to women's rights and reproductive policies and then on anti-LGBTQ+ laws and measures. We witnessed fewer legislative acts in Poland than in Hungary, but with more fierce intrusion into women's lives in Poland; hence, the following subsections vary to illustrate the difference in the thematic focus of the anti-equality measures and discourses in the two countries.

3.1. The Hungarian case

Compared to fellow East-Central European countries, the Hungarian government adopted very few social policy measures to tackle increasing inequalities and poverty during the COVID-19 pandemic (Aidukaite, Saxonberg, Szelewa, and Szikra 2021). Most notably, it did not issue any policies to protect the most vulnerable social groups, including the growing number of unemployed, the homeless, and women with increased caring responsibilities. Orbán, initially, like Bolsonaro and Trump, refused to wear masks and keep distance even at international events. Alongside the announcement of the state of emergency, the cabinet militarised the discourse about the pandemic and also health policies themselves. A unique measure in Europe and a sign of

state violence was that hospitals, as well as several hundred businesses, became ruled by the military. And while Orbán did not question related expertise, the daily announcements of the public health committee displayed high-ranking military officers. Government communication was also filled with metaphors of war and a fight against the virus alongside other liberal enemies of the nation (Bene and Boda 2021). Attacks against gender equality, violent exclusionary discourse and policies against LGBTQ+ people fit into the militarised, masculine image of the rulers during the pandemic.

While gender equality never featured high on the agenda of any of the Hungarian governments, a pronounced institutional backsliding started in 2010, when the right-wing conservative Fidesz party led by Viktor Orbán came to power (Krizsán and Sebestyén 2019). Although formally in place since the previous Socialist government adopted it in 2010, the Orbán-government blocked the implementation of the Hungarian National Strategy for the Promotion of Gender Equality 2010-2021 (Juhász 2018). Overall, the institutions of gender equality, including those on the ministerial level, became radically downsized and put under the supervision of the Ministry (former Secretary of State) of Family Affairs. More generally, Fidesz and its minor coalition partner, the Christian Democratic Party (KDNP), intended to replace gender mainstreaming with family mainstreaming already back in 2011 under the cabinet's first EU presidency period and has worked on forming an alliance with other East-Central European countries on the EU level, especially since 2020 (Zalán 2020).

In terms of policy-making and intensified discursive attacks, the explicit anti-gender equality campaigns started in 2017. Once the "migration crisis" ceased to be a hot topic, the government placed "gender ideology" at the centre of its adversarial communication. Policy changes followed suit in 2018, when the government withdrew the accreditation of the MA in Gender Studies (Decree No. 188/2018 (X. 12.), thus ending the related program at Eötvös Loránd University of Sciences in Budapest. Not much later, the Central European University and its Gender Department, also targeted by the campaign, had to leave the country (Barát 2019). In this period, civil society actors working in human rights and gender equality fields were attacked and accused of fraud. At the same time, major donors, like the Open Society Foundation and the EEA and Norway Grant, were also forced to cease operations in the country (Szikra, Fejős, Neményi, and Vajda 2020).

Anti-gender equality campaigns strikingly intensified during this period, between March 2020 and July 2021. Related measures were ideologically necessary for the Fidesz cabinet and targeted primarily the LGBTQ+ community. Overall, similar to the Polish PiS government, the terms "gender" and "gender equality" have become non-acceptable for the cabinet on the grounds of allegedly promoting sexual practices that were not in line with "normality", that is heterosexual relationships and the ideal of the traditional family, consisting of a mother, a father and child(ren) (Grzebalska and Pető 2018; Kováts and Pető 2017).

Besides being against the ideal of the traditional heterosexual family, promoted by various means by the Orbán-cabinet, anti-gender equality measures were framed in terms of the safety and protection of children. We witnessed three waves of anti-equality policy measures during the first one-and-a-half years of the pandemic. The first one was right at the time of the announcement of the state of the emergency, another one half a year later, in autumn 2020, and a third one in the summer of 2021. Six policy changes will be discussed below. We distinguished two types of anti-equality measures: the first related to women's rights, like the rejection of the Istanbul Convention, and the second one related to sexuality and identity politics. This latter category comprised numerous reforms, including the ban on the legal recognition of trans-people, the modification of the Fundamental Law to define motherhood and fatherhood, the ban on the adoption of children by non-heterosexual persons, the related ceasing of the Equal Treatment Authority in Hungary, and finally the ban on providing sex education and presenting homosexuality for young persons under the age of 18. The case

of the Equal Treatment Authority is at the same time also related to inequalities between women and men and discrimination against women.

Attack against women's bodily autonomy and rights. Rejecting the Istanbul Convention

On 5 May 2020, the Hungarian Parliament rejected the ratification of the Istanbul Convention (2/2020. (V. 5.) OGY). The bill was submitted by the Christian Democrats (KDNP), Fidesz's minor coalition partner, on 4 May. It was adopted by the parliamentarian super majority on the following day amid the COVID-19-related emergency. The Orbán-led government signed the Convention in 2014; at that time, several government members confirmed that they would ratify it. Still, the government has postponed its ratification. Since 2017, alongside the more general attack by the government on "gender ideology", the Istanbul Convention was repeatedly mentioned as being harmful and serving the interest of foreign intruders (Kováts 2020). The governing party argued that while it agrees with the substance of the treaty, all legal guarantees to protect women from domestic violence are already contained in Hungarian law. The cabinet also claimed that the measure promoted "destructive gender ideologies" and refused to use the term "gender" in the treaty. Finally, the treaty supported "illegal migration" and notably rejected the obligation to receive refugees persecuted over sexual orientation or gender. There was no public outrage concerning the bill. Still, the two prominent civil society actors dealing with domestic violence and patriarchal relations issued an open letter demonstrating their opposition to the withdrawal.

Notwithstanding the rejection of the ratification of the Istanbul convention and the "war on gender", the Orbán-cabinet made various concrete policy steps for the protection of women and children from violence. First, domestic violence (as "partnership violence") was included in the new Penal Code of 2012. The government also set up a new hotline for women in danger, and several protected houses were open. Meanwhile, a media campaign to raise awareness about domestic violence was also launched. Thus, it seems that the Orbán-cabinet wanted to demonstrate its ability to fight violence against women without the Istanbul convention. In terms of cooperation with various stakeholders, Judit Varga, newly appointed Minister for Justice, in her open letter to the demonstrators on Women's Day, 8 March 2020, offered cooperation to civil society actors dealing with domestic violence. This one was the last rally before the state of emergency was announced, and it emphasised domestic violence and the necessity to ratify the Istanbul Convention. Varga's gesture was a rare instance of the Orbán-cabinet opening up to non-government-friendly civil society groups and actors in a policy area (Szikra et. al. 2020). As the second female member of the cabinet, Varga later played a strikingly contradictory role in gender issues. While she consulted progressive civil society groups on the theme of domestic violence, she was assigned a lead role in the later anti-gender equality propaganda and homophobic slogans.

Anti-LGBTQ+ legislation

Ban on trans-identity

Timed right after the state of emergency rules were first declared in Hungary on 30 March 2020, a draft bill was handed into the Parliament to end the legal recognition of trans-people. The bill, submitted on 31 March 2020, stipulated that gender should be defined as "biological sex based on primary sex characteristics and chromosomes". People's "sex at birth" would be recorded in the Hungarian civil registry (as has been the case

earlier as well) and changing anyone's legally recognised gender later on became impossible. The act (XXX. 2020. on Changes of Certain Administrative Laws and Free Donation of Property), of which this policy change has been one paragraph of (§33), is an "omnibus" legislation, typical to illiberal procedures, dealing with other issues neither related to coronavirus nor to different matters of gender. The act has been considered to be a significant attack on the everyday lives of transgender people as their identification in any official situation (e.g. in banks or at crossing borders) became problematic. As expressed by one of the leaders of the Hungarian LGBTQ+ community's leading organisation, "[s]uch a measure would force trans people to live with documents that do not match their true identity and their appearance ... That exposes them to potential discrimination in employment, housing, access to goods and services, and official procedures" (Euroactiv 2020). Previously, it was possible to change one's identity in their ID cards, although these procedures have been administratively halted in recent years. According to Amnesty International, the law was not to be applied retrospectively. However, it remained unclear whether it applied to persons in transition (Amnesty International 2020).

Adopting this legislation right at the moment of the first measures to fight the COVID-19 pandemic shows powerfully the government's intention to rapidly move forward on issues that have long been important for the cabinet on ideological grounds. The state of emergency provided an opportunity for Fidesz and its allies to adopt controversial measures that would have otherwise stirred more public and media attention. While civil society actors expressed their outrage, no demonstration was held during the emergency situation. The Council of Europe's Commissioner for Human Rights expressed that the bill was in contravention of human rights standards and the case law of the European Court of Human Rights, which did not influence the government, neither did the request of human rights and LGBTQ+ organisations to the Commissioner for the constitutional review of the bill.

Change of the Fundamental Law and ceasing the Equal Treatment Authority

Another wave of anti-LGBTQ+ legislation was adopted in the autumn of 2020, right at the beginning of the curfew related to the second wave of the pandemic. These legislative acts passed within a couple of days in November 2020, can be considered as a policy package serving the ban on non-heterosexual and non-married couples' or individuals' right to adopt children. A prelude to the November acts was that in October, the government issued a decree allowing single persons and unmarried couples (hetero- and homosexual alike) to adopt a child only in case there would be no married couples in the country to adopt the child. On 9 November, Judit Varga, Minister for Justice, handed a set of bills into the Parliament. The first dealt with the ceasing of the Equal Treatment Authority. This institution provided a legal remedy in cases of discrimination based on gender, sexual orientation, ethnicity, age, disability, etc. (Act CXXV 2003 on Equal Treatment). The authority, which has for 15 years been the primary guardian of anti-discrimination in Hungary, had a straightforward procedure for scrutinising and sanctioning discrimination of any institution or employer, including the state itself. Thus, this authority was a key veto player that could act against the state's attack on gender- and sex-related rights. While this independent body has been weakened gradually since the mid-2000s, it still provided an easily accessible legal remedy to individuals. According to the new legislation (Act CXXVII. 2020) adopted speedily on 10 November, in effect from January 2021, the authority's activities were merged with the institution of the Ombudsman, which has limited rights to handle fewer individual cases and no clearly defined related procedure. The Ombudsman, appointed by Fidesz, has not been active in gender equality issues, nor did he raise his voice about the above-described legal acts. While no demonstrations took place, civil society

organisations dealing with disabled persons, human rights, and LGBTQ+ rights expressed their outrage, including a joint open letter from eighteen of them.

Having side-lined the main authority that could hinder the implementation of restrictions on adoption, the government turned to set off another veto point, the still remaining articles of Fundamental Law of 2011 that may have allowed for a future possibility of acknowledging non-heterosexual marriages and adoption. Thus, on the same day as the Equal Treatment Authority was ceased, the Parliament amended the Constitution's L(1) paragraph with the blatant declaration that "the mother is a woman, and the father is a man". In contrast with Poland, the Hungarian Fidesz has had a two-thirds majority in Parliament for the third time since 2010, allowing this party to unilaterally adopt a new constitution in 2011 and amend it several times – the November 2020 amendment being the ninth. This declaration, reasoned by Judit Varga, Minister for Justice, by the protection of children's healthy upbringing, was made to allow only heterosexual couples to adopt children. The third and final step in this direction was made by yet another bill on 9 November, modifying the Child Protection Act of 1997, ordering institutions of child protection to appoint married couples to adoption and single persons only in exceptional circumstances. According to §101(6), the Minister for Family Affairs has the right to decide upon the competencies of non-married individuals to adopt a child. The act refers to the amended Constitution stating that Hungary defends "the right of children to identify with their birth gender and ensures their upbringing based on our nation's constitutional identity and values based on our Christian culture" (Fundamental Law XVI(1)).

The above legislative package effectively banned the possibility of non-married couples, single persons, cohabiting heterosexual or homosexual couples to adopt children in a standard procedure. Yet again, the other female minister was put in the spotlight by the anti-LGBTQ+ law: Katalin Novák, Minister for Family Affairs (former Secretary of State), has the right to decide whether a non-married individual is suitable to adopt a child. While the far right celebrated the changes, civil society groups and experts expressed their concerns not only related to discrimination on marital status and sexual orientation but also concerning children currently residing in state care whose opportunities to be adopted by loving parent(s) have severely diminished.

An outright attack on the LGBTQ+ community: The ban on images

On 15 June 2021, the Parliament enacted Hungary's most severe anti-LGBTQ+ legislation since the fall of communism. The act (LXXIX/2021) was part of a bill comprising strict punishment of paedophilia, extended with anti-LGBTQ+ paragraphs just a few days before its enactment. In the name of "child protection", the legislation blurs boundaries between paedophilia on the one hand and non-heterosexual orientation and identity on the other. Most importantly, the legislation forbids content that features any portrayal of sexuality "as an end in itself" and any "deviation from the identity corresponding to one's sex assigned at birth, sex reassignment, or promotion of homosexuality". Accordingly, all books, media content, advertisements, etc., including those portraying any of the above, are banned. Furthermore, sex education at schools can only be carried out with the permission of the Ministry of Human Resources, again featuring Minister Katalin Novák as a key person in implementation.

The new legislation was inspired by a similar Russian law from 2013.[1] Both acts are designed to be part of "child protection". According to commentators, however, the Hungarian one more severely violates the rights

[1] The Russian legislation: https://rg.ru/2013/06/30/deti-site-dok.html (retrived August 2, 2021).

of non-heterosexuals as the Russian law does not connect homosexuality to paedophilia.[2] Furthermore, while the Russian legislation refers to the portrayal of "non-traditional" sexuality, the Hungarian law explicitly names homosexuality and trans- and intersexuality which children under 18 are not even supposed to be informed about. Also, Russian legislation does not prescribe the registration of sex educators. This was not the first instance that the Orbán-led government borrowed ideas from Putin's Russia. It was also the case with legislation against civil society actors. What was new, however, was that the Hungarian government would more severely limit human rights than Russia – a country with outright authoritarian rule outside of the EU.

As the bill was revealed on 8 June and passed quickly on 15 June, the opposition and civil society had very little time to react. Still, as opposed to the earlier legislation, a demonstration of significant size was held the day before the enactment. Following sharp criticism of European Prime Ministers, the European Commission launched two infringement procedures against the Hungarian state for violating the rights to freedom of expression and information and for breaching the Unfair Commercial Practices Directive (Eder and Darmanin 2021; Inotai, Ciobanu, and Gosling 2021). In this case, besides further restricting the human rights of LGBTQ+ communities, the aim of the government was also to divert attention from issues that posed a threat to their legitimacy.

In the forthcoming month, Orbán announced a national referendum for the "protection of children" with five questions, all in relation to the above legislation. These include questions like "Do you support minors being shown, without any restriction, media content of a sexual nature that is capable of influencing their development?" Orbán announced the referendum allegedly as a reaction to the attack coming from the EU to demonstrate the unity of Hungarians for the legislation. But in fact, the announcement coincided with a large-scale spyware scandal that spurred media in the same days (Simon 2021).

Overall, anti-LGBTQ+ legislation was timed to moments of controversial decisions related to the pandemic or scandals possibly undermining the popularity of Fidesz. The government pinpointed divisive topics that would unite its core electorate and attract far right-wing voters. The sympathy of the far right is all the more important for the Orbán-cabinet, as the Jobbik Party (formerly to the right of Fidesz, but since 2018 more moderate) has just been building up an alliance with the left and liberal forces for the 2022 elections. Identity politics related to sexuality and gender posed an obstacle for the coalition between the (former) far-right and the left-liberal forces. All the 'Trojan' legislative acts analysed above strengthened Fidesz's ideological power and dismantled that of the opposition. The lack of visible discontent was due to Fidesz's previously existing illiberal rule that effectively dismantled women's civil society organisations (Gerő, Fejős, Kerényi, and Szikra 2023). Meanwhile, not only did Fidesz have a two-thirds constitutional majority in Parliament, but it also could now rule by decrees – a situation that still existed in 2023.

3.2. The Polish Case

The right-wing PiS party formed two consecutive governments in Poland in 2015 and 2019. Unlike Fidesz in Hungary, this party had no supermajority in Parliament. A pro-Catholic, nationalist and familialist discourse started to dominate the political agenda as PiS formed a coalition with small right-wing parties. Although gender equality was hardly ever a priority for the previous governments, once PiS started to dominate the

[2] See the comment of a historian specialised on the post-Soviet region, András Rácz: https://www.facebook.com/andras.racz.526/posts/497564391521589 (retrived August 2, 2021).

political scene in Poland, it introduced several reforms emphasising women's roles as mothers and carers. These changes included lowering the retirement age from 67 to 60 (to free women's "caring capital") or the introduction of a universal and generous child benefits program while not balancing the development of cash transfers by investing adequately in care services and, hence, effectively strengthening the country's familialist orientation (Szelewa 2017). Already in 2016, the government forbade selling emergency contraception over the counter and withdrew from co-financing in vitro treatments in the name of protection of life from the moment of conception, and in line with the Catholic Church's and conservative NGOs' recommendations. In addition, even before 2015, the Catholic Church, conservative NGOs and Law and Justice politicians engaged in the campaign against the use of the category of "gender" or "gender mainstreaming" in favour of only using the category of biological sex. "Gender", in this understanding, became the symbol of diminishing the "natural order", a transnational project aimed at the destruction of the family and harmful (especially) to women and children. Demonstrations in defence of the rights of LGBTQ+ persons became frequent, but at the same time, violence against the participants of equality parades became regular (Godzisz 2021). However, perhaps the most salient attack on human rights was the repeated (and failed until 2020) attempts to introduce an abortion ban.

With some policies already in place but without significant success in allowing for an abortion ban, the government entered the phase of the pandemic. The period between March 2020 and July 2021 was marked by the three waves of the pandemic, the political struggle around the Presidential elections that took place in the summer of 2020 and the massive protest against introducing an almost complete abortion ban in the fall of 2020. From the perspective of gender equality and reproductive justice, the period of the pandemic meant a decline in women's rights and a further departure from the recognition of diversity and inclusion, especially when it comes to the rights of LGBTQ+ persons. To illustrate the salience of the abortion issue, we mainly focus on the events linked to the abortion ban and the protests in Poland, but we will also briefly discuss the situation in relation to LGBTQ+ rights.

The first case of COVID-19 in Poland was confirmed at the beginning of March 2020, and in comparison with other parts of Europe, Poland noted smaller numbers of cases and deaths (Aidukaite et al. 2021). Emergency social policy measures included unemployment protection and additional care allowances for parents with unforeseen childcare responsibilities, unlike Hungary, where none of such measures were implemented (Godzisz 2021). Although none of the PiS leaders demonstrated non-wearing a mask, measures against the pandemic involved engaging so-called Territorial Defence Forces, which added to the militarisation of the context for policy-making that was present in Polish politics even before the pandemic (Grzebalska 2021).

Attacks against women's bodily autonomy and rights

Abortion law

Just as the policies in support of carers seem to, at least to some extent, respond to possible gender inequalities in care, overall, gender equality was on the decline during the pandemic, especially with regard to women's reproductive rights. Abortion became less accessible already before the new legislation due to the lockdown restrictions that prevented travel to clinics abroad, where legal abortion is available. However, even though Polish abortion law was already strict, PiS took the opportunity of the pandemic to ban access to abortion nearly completely.

To understand the policy change in 2020 (in force since January 2021), we need to briefly discuss some prior developments. Until January 2021, legal abortion in Poland was possible in three specific situations: 1) if the pregnancy constituted a threat to the life or health of the mother, 2) in case of severe and irreversible damage to the foetus, and 3) if the pregnancy was a result of a criminal act (rape, incest). The law remained practically unchanged; however, since the early 1990s, the issue of abortion was constantly brought to the agenda by feminist organisations and mobilised Polish women for protests.

After PiS won the elections and formed a government in 2015, Catholic lay organisations repeatedly initiated bills removing all the above exceptional circumstances in an attempt to introduce a complete abortion ban in Poland.[3] The first wave of these attempts took place in 2016 after a bill prepared by a right-wing legal think-tank, Ordo Iuris – Institute for Legal Culture, was submitted to the Sejm (upper chamber of Parliament). The bill mobilised mass protests (Black Protest) under the umbrella organisation All Poland Women's Strike (Women's Strike). In response, PiS decided to send the bill to a Parliamentary Committee, which in practice often means it is "frozen" and not taken on to Parliamentary proceedings. Although anti-choice organisations resubmitted the bill, banning abortion "only" in case of foetus malformation, Sejm again decided to send it to a Parliamentary Committee in 2018.

After failing to use the Parliament, anti-choice organisations and politicians tried an alternative channel. A group of (mainly) Law and Justice MPs submitted a motion to the Constitutional Tribunal in November 2019, again targeting one of the three circumstances of legal abortion, i.e., foetus malformation (Constitutional Tribunal 2020). According to official statistics published by the Ministry of Health, this particular circumstance was the reason for around 95%-97% of legal abortions in Poland (1,074 out of 1,100 cases in 2019). The text of the motion concentrated on the incompatibility of legal abortion in case of foetal malformation with the Polish Constitution, arguing that the previous law was "legalising eugenic practices in relation to an unborn child, thereby refusing to respect and protect human dignity" (Constitutional Tribunal 2020).

It took eleven months before the Tribunal made its final decision in October 2020. By this time, the Tribunal was already heavily politicised. Just at the beginning of Law and Justice's first term in office (November 2015), the democratic system with its constitutional checks and balances was undermined when the newly elected Parliament side-lined the role of the Constitutional Tribunal. Important changes came in November 2019 when, three days after the MPs submitted the motion claiming the abortion law's incompatibility with the Constitution, two former Law and Justice politicians were elected as new Tribunal judges (22 November 2019). Appointing members loyal to PiS was crucial for eventually changing the abortion law.

In the meantime, but already during the pandemic, the Sejm, for the third time, sent the bill banning abortion to the Parliamentary Committee in April 2020 delaying the process, which outraged the same anti-choice organisations that submitted the original bill, i.e., Ordo Iuris and the initiative "Stop Abortion" (Szczesniak 2020). Before the debate took place in Sejm, the Women's Strike that organised Black Protests earlier mobilised again under the conditions of a lockdown and applied strategies to cope with the restrictions on public gatherings. The ultimate "freezing" (although not rejecting) of the bill on 22 April 2021 was perceived as satisfactory, and the anti-choice organisations felt defeated.

After six months, the issue of the abortion ban resurfaced, this time in the Constitutional Tribunal, where the decision about the 2019 motion was scheduled to take place on 22 October 2020. In anticipation of the ruling, the Attorney General, PiS coalition partner's leading politician Zbigniew Ziobro, supported the motion

[3] Such legislative procedure is possible in Poland and if the initiators collect at least 100,000 signatures, the bill needs to be proceeded, and needs to be put to the vote at least once.

as a party in the official proceedings with elaborate justifications.[4] On 22 October 2020, the Tribunal decided that the motion submitted by the MPs presented sufficient justification to declare abortion in case of foetus malformation unconstitutional. Significantly, these developments almost coincided with the second wave of the pandemic that was extremely difficult in Poland, starting in September and peaking in November 2020, when the weekly average number of daily infections increased from around a thousand to over 25 thousand.

Despite the number of COVID-19 cases radically increasing, street protests took place almost immediately – the organisers of the protest mobilised already existing resources, channels of communication (e.g. social media accounts), and visual identity – this time also with the use of a red thunder as the most important symbol of the protests. On 27 October 2020, Women's Strike already presented a complete list of women's rights: they demanded access to legal abortion, sex education at schools, improved access to contraception, the end of the financing of the Catholic Church from the state budget, ceasing of religious instruction in schools, depoliticising of the Constitutional Tribunal, and finally, the resignation of the government (Czarnacka 2020).

The new wave of protests was characterised by the mobilisation of young people – it was estimated that every third of young people actively participated (Szołucha 2020). The protests also took place in Churches, as, for the first time, the protesters went inside the Church buildings and interrupted prayers. Various rallies took place in 500 towns and cities nationwide, while the biggest one was organised in Warsaw on 31 October 2020, attracting around 100,000 protesters. According to some commentators, this was the biggest wave of protests in Poland since 1989 (Sutowski et al. 2020). The Public Opinion Research Centre conducted a survey, according to which 8% of respondents declared active participation in the protests. In comparison, 63% of people expressed positive opinions about it (CBOS 2020). Thus, despite the second wave of the pandemic, nearly two million Poles participated in the protests overall.

Practically all these rallies took place illegally and in the form of spontaneous protests, as by the end of October 2020, consecutive government decrees banned spontaneous assemblies. However, registered gatherings with less than 150 participants were allowed, and participants were required to wear a mask and keep a distance of two meters (Szołucha 2020). On 9 October 2020, a condition was added that assemblies must be at least 100 meters apart. Police and military gendarmerie were mobilised right at the time as the Tribunal was making a decision. During the first days of the protests, 278 persons were arrested, while 711 were noted for not sticking to the public health and sanitary measures linked to the pandemic. Police started to be more violent when the gatherings were no longer attracting so many protesters, with the regular use of pepper spray (Nowak 2020). Police violence continued after the second phase of the protest took place in reaction to Jaroslaw Kaczynski's speech in the Parliament on 18 November 2020, when he "compared protesters and supporters to Nazis" (Szelag and Skrzypek 2023, 79) and generally put into question the capacity of the opposition parties' MPs to protest as democratic representatives of part of the population. The police force again used the gas spray, and there were 499 people detained on that day only (Szelag and Skrzypek 2023). Police continued to apply violent and often illegal methods (such as the illegal raiding of the Warsaw University of Technology chasing the protesters) despite the peaceful character of the protests (Szelag and Skrzypek 2023). This contributed to a decrease in the frequency and attendance of the protests on the one hand and the use of alternatives, largely by 'moving' the protest online and using social network sites, on the other.

Even though mobilisation was phased out in December 2020, there was still some hope that the ruling would not have legal power as long as it was not published in the Official Journal of Law. However, the Tribunal's

[4] Attorney General's opinion attached to the motion K 1/20 submitted to Constitutional Tribunal.

ruling was finally published in the Official Journal of Law on 27 January 2021, and since then, abortion on the grounds of foetal anomaly is no longer legal.

There are clearly negative consequences of this policy change. As noted by the Federation for Women and Family Planning, apart from preventing access to abortion due to foetal defects in public hospitals, the ruling caused a "chilling effect" on the remaining, still legal, abortion grounds: doctors, fearing criminal liability, refuse to perform an abortion even in a situation where the health or life of a pregnant woman is at risk (Chrzczonowicz 2021). The ruling also intensified the criminalising of abortion: doctors are more afraid of accusations related to performing statutory abortions as the prosecutors in some places gained the courage to initiate unjustified, politically motivated criminal proceedings regarding abortion. In addition, according to the Federation, many women are worried about their health and safety, are afraid of getting pregnant, and do not trust public health care. The percentage of women using prenatal tests and completing diagnostics has decreased while patients diagnosed with foetal anomaly and their families are in a very difficult mental condition (Chrzczonowicz 2021).

Istanbul convention

Polish Parliament has ratified the Istanbul Convention in 2015. After PiS won elections in the same year, a bill was prepared by conservative NGOs and Ordo Iuris entitled "Yes to the family, no to gender" that, when adopted, would mean Poland withdrawing from the Convention. Although on 31 March 2020, the Sejm sent the bill to the Parliamentary Committee (which indicates it could share the fate of the other eventually rejected bills), in July 2020, Prime Minister Mateusz Morawiecki sent a motion to the Constitutional Tribunal to review the Convention's compliance with the Constitution. According to Morawiecki, this document does not allow the state to be impartial with regard to its outlook on citizens' beliefs.

There have been multiple small protests organised against the bill. For feminists, rejecting the Convention meant allowing the incidence of violence justified by "family privacy". Hence, Women on Strike was also addressing the issue of violence and the possibility of rejecting Istanbul Convention during the series of anti-government protests in October-November 2020, at the same time again addressing the influence of the Catholic Church in one symbolic act: On 8 November, the steel Christian cross on the Great Giewont peak in the Tatra Mountains, one of the most important material symbols for Polish Catholics, was briefly covered by a banner displaying the red lightning (symbol of the protests) together with the text "Domestic violence is not a tradition" (Mateusiak 2020).

In 2021 Ordo Iuris also prepared a draft of the "Convention of the Rights of the Family" (Ordo Iuris 2021) that was reportedly distributed by the Polish Ministry of Justice among other East-Central European governments, with the suggestion that this new document could replace the Istanbul Convention (Ciobanu 2021a). Although the Ministry rejected direct support for the new "convention", the leaked official materials published by BalkanInsight suggested otherwise (Ciobanu 2021b). In the end, the ratification was not withdrawn, and the Istanbul Convention remains in place.

LGBTQ+ rights

While the change of abortion law was the most important factor in the decline of gender equality in Poland, the situation of sexual minorities, non-binary and trans-gender persons became increasingly difficult during the pandemic. Still, in comparison with Hungary, no serious legal changes were adopted. Rejection of the

concept of gender had consequences on how PiS and its leaders approached the issue of alternative gender identities and sexual orientation, i.e. rejecting equal rights for same-sex couples or persons with non-binary and transgender identities.

However, at least until the time of writing, such an approach has not resulted in concrete policy change at a central level. At the same time, the already suppressed rights of LGBTQ+ persons in Poland were not improved. Same-sex couples still do not have the right to legal recognition or marriage, the latter being defined as a union between a man and a woman in the Polish Constitution, similar to the Hungarian one. At the local level, the anti-LGBTQ+ discourse led to the adoption of the series of resolutions by municipalities to introduce so-called "LGBT-free zones". These declarations confirmed the localities' affirmation of heterosexual families and rejection of any education about or promotion of the rights of LGBTQ+ persons. In 2019 and early 2020, a hundred municipalities, including five voivodeships, adopted such resolutions, encompassing about a third of the country. These actions are symbolic but continue to represent the case of institutionalisation of discriminatory and exclusionary discourses and practices. In August 2020, the EU denied funding from six such towns in a rare instance of imposing financial sanctions related to equal treatment (Farsides 2020).

Moreover, parallel to the bills banning abortion that were repeatedly submitted to the Parliament, a bill labelled "Stop LGBT" was also submitted by the same Catholic organisations and supported by Ordo Iuris. The bill intended to prohibit questioning marriage as a relationship between a man and a woman and promoting any form of legalising same-sex union. Similar to the Hungarian acts, a ban on adopting children by non-heterosexual couples, as well as promoting other sexual orientations than heterosexuality, was proposed. Submitted in November 2020, the bill was rejected by the Speaker of the Sejm in January 2021, which was due to mistakes in the submission process. However, as in the case of similar bills, its authors were again collecting the signatures necessary for resubmitting the proposal. In addition, Zbigniew Ziobro (the then Attorney General and the Minister of Justice) prepared a bill explicitly banning the adoption of children by same-sex couples (Sulowski 2020). None of those initiatives were successful, eventually.

Finally, we should also mention that the so-called "gender wars" and campaigns were also addressed in the education system pre-pandemic (Lendvai-Bainton and Szelewa 2021). The Polish Minister of Education issued plans similar to the recent Hungarian reforms to introduce changes in the primary education system to "increase parents' autonomy" as well as to strengthen the competencies of the central administration's representatives in each region to "prevent various organisations from entering the schools" and "to protect the children and youth against indoctrination" (Gov.pl 2021). In practice, the Ministry's intention was to exercise control over additional sexuality education in classes, as well as LGBTQ+-friendly education provided by sex educators or NGOs, precisely like the act passed in Hungary.

4. Discussion and conclusions

This paper critically analysed anti-gender equality policy measures during the COVID-19 pandemic in Hungary and Poland. We argued that the governments of PiS and Fidesz reacted to the ontological insecurity of the population with protective masculinity that presents a strong male protector fighting the invisible enemy. While often criticised for their failures in providing actual (health and social) protection against COVID-19 and its consequences, Kaczyński and Orbán, similar to their right-wing populist counterparts all over the world, offered gendered nationalism as a narrative anchor to citizens in need of emotional resources and to "pin down unknown anxieties". In this narrative, the traditional patriarchal family has to be protected, and women are encouraged or even (in Poland) forced to fulfil their motherly obligations to the nation. At the same time, all

actors and ideas that oppose these narratives must be eliminated. Thus, throughout the first and second wave of the pandemic, these leaders accelerated governmental discourses and policies aimed against gender equality.

We argue that the Polish and Hungarian governments went beyond what Mudde (2019) has labelled "benevolent sexism" and turned to overtly anti-women and anti-LGBTQ+ actions during the COVID-19 pandemic. We contend that misogynous legislation related to domestic violence and abortion rights, as well as anti-LGBTQ+ legislation presented in this article, do not stand on their own as individual cases but rather are illustrative to the "continuum of violence". As our case studies have shown, these practices prevent women and LGBTQ+ communities from controlling their bodies and lives because of gendered violence. More broadly, our cases contributed to the understanding of how COVID-19 exposed masculinist exclusionary practices that operate to "exclude or marginalise all those who are feminised, whether women or men" (Runyan and Peterson 2013, as quoted by Agius et al. 2020, 449).

Besides the similar ideological character of these discourses and policies, we noted important differences between the two countries. First and foremost, while the Polish government concentrated on the abortion ban, the Hungarian one did not take on this issue. Reasons for this difference lay in the Catholic Church's traditional emphasis on the abortion issue in Poland, which can be contrasted with historically embedded reproductive rights in Hungary with the weaker influence of the Church. The historically grounded salience of the issue of abortion in Poland explains some of the differences in social protest against these measures, with the large-scale protest in Poland and weaker mobilisation in Hungary. Being a strong opposition force under communism, the Church gained political influence after the fall of the old regime, which resulted, among others, in restricting the right to legal abortion in 1993. The issue of abortion, ironically, "gave birth" to a feminist movement in Poland, which had significant consequences for regular mobilisation around reproductive rights (Fuszara 1991; Narkowicz and Korolczuk 2019). This situation contrasts with Hungary, where no such single, uniting issue emerged on the agenda of women's rights. Women's movement has been more scattered in this country than in Poland, with rare successful actions organised mainly over welfare rights (Korolczuk and Fábián 2017). Between 2010 and 2020, Fidesz also substantially weakened feminist civil society while strengthening its allied right-wing conservative groups who legitimised the government's anti-gender policies (Krizsán and Roggeband 2018; Gerő et. al. 2023).

Another difference we observed was the higher number and easier adoption of anti-gender equality legislation in Hungary. In Poland, legislation related to abortion and curtailing the rights of LGBTQ+ communities took longer time as various veto players could slow down the process. Once the government decided upon a bill in Hungary, it was swiftly passed through Parliament. This is explained by the two-thirds majority of the Orbán cabinet, its longer rule, and deeper penetration into democratic institutions and civil society compared to Poland. While important veto players still existed in Poland during the pandemic and provided constraints against the swift adoption of anti-gender equality legislation, the last remnants of such institutions, like the Equal Treatment Authority, were eliminated by Fidesz under the special emergency rule. The two governments, at the same time, seem to be learning from each other: anti-LGBTQ+ bills in Poland related to adoption and the portrayal of same-sex couples (not even discussed by Sejm) very much resemble those adopted swiftly, without consultation with any of the stakeholders in Hungary. While these two countries pushed forth exclusionary and violent legislation in their own countries, they also actively campaign with anti-gender equality agendas on the level of the EU, thus showing how chains of violent actions on various levels of governance are interrelated. The pandemic turned out to be a critical juncture in that policy changes adopted in that decisive period stayed with us and had lasting effects. In Hungary, the state of emergency has remained in place ever since and proved to be an important step in the direction of an outright autocracy. The anti-LGBTQ+ legislation was put into practice, hindering cultural events, adoption practices, sex education and

many other fields that have a devastating impact on LGBTQ+ communities (Takács et. al. 2022). In Poland, the change of government in 2023 could allow for the reversal of the abortion ban, but this seems to be hindered by institutional constraints.

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