

SCHOLARLY ARTICLE

# Corporate Human Rights Responsibility in Illiberal Regimes: The Example of the Ukrainian Refugee Crisis in Hungary

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## Abstract

Following the first-ever rule of law conditionality procedure in September 2022, a resolution was adopted by the European Parliament which declared that Hungary could no longer be considered a full democracy, as it had turned into a ‘hybrid regime of electoral autocracy’. Against this background, this article explains the business and human rights (BHR) gap in Hungary and presents its consequences for the Ukrainian refugee crisis. We first provide a general overview of the role of business in the development and consolidation of the Orbán regime over the past 13 years, highlighting how businesses are both agents and victims of legal and political developments. The paper distinguishes four types of ‘business’: multinational and foreign companies that are direct beneficiaries of the regime; local companies that are direct beneficiaries of the regime; multinational companies that are targets of restrictive and repressive populist rhetoric and economic policies; and the ‘rest’, the remainder that try to avoid becoming targets of oligarchic takeovers. The article also documents how the state and other stakeholders are failing to meet their commitments under the United Nations Guiding Principles on Business and Human Rights (UNGPs). The next part of the article assesses how companies are responding to the refugee crisis caused by the war in Ukraine, Hungary’s neighbour. If the government does not adopt Pillar I and Pillar III of the UNGPs, what room for manoeuvre do companies have? The focus here is on how companies, domestic and foreign, multinational enterprises (MNEs) and small and medium enterprises (SMEs), engage in humanitarian (and human rights) crisis management.

**Keywords:** Hungary; Illiberal regime; Refugee crisis; Russian aggression against Ukraine; Types of businesses

## 1. Introduction

Hungary is a medium-developed Central and Eastern European (CEE) country with an European Union (EU)-dependent fragile economy, which has had an illiberal constitutional regime since the mid-2010s. Hungary’s economy has been growing steadily in recent years due to the regional economic climate, with a GDP growth rate of 5.2% in 2019.<sup>1</sup> The COVID crisis in 2020, followed by Russian aggression and a full-scale

<sup>1</sup> Hungarian Central Statistical Office, ‘Hungary, 2019’, available at: <https://www.ksh.hu/docs/hun/xftp/idoszaki/mo/hungary2019.pdf> (accessed 31 January 2024).

war, however, has hit the economy hard. With the highest inflation rate in Europe in 2022 and 2023, the European Commission assessed that Hungary's economy is characterized by a high level of external debt, low productivity, and a weak business environment. In the past decade, Hungary has pursued illiberal economic policies, emphasizing state intervention and protectionism. It is widely documented that the last decade, since Viktor Orbán became Prime Minister in 2010 and was re-elected three times with a two-thirds majority, has been characterized by a general constitutional decline and a crisis of the rule of law in Hungary.<sup>2</sup> The government has implemented several measures to support domestic businesses, including tax cuts, subsidies and preferential treatment for Hungarian companies in public procurement. Furthermore, it has also taken steps to increase its control over key sectors of the economy, such as energy and media, and to change the business model in the health, sports, academic and cultural sectors. Critics argue that these policies have undermined competition and have led to a concentration of economic power in the hands of a few politically connected individuals (cronies). The international Business and Human Rights (BHR) agenda is also not backed up by concrete government policies.<sup>3</sup> The government has taken advantage of a decade of global economic prosperity, but has not bothered to implement the 'Protect, Respect, Remedy' framework in a comprehensive and systematic way.<sup>4</sup> Against this background, the article examines the management of the refugee crisis during the first 18 months of the war in Ukraine, highlighting the challenges and constraints faced by the captive business sector in the absence of clear BHR policies.

The assessment aims to fill a research gap by examining the impact of the war in Ukraine on Hungary, especially with regard to the (economic) integration of refugees fleeing the war, using a constitutional law methodology with a specific focus on BHR.

The article draws on the work of János Kornai, one of Hungary's most internationally recognized economists, who examines the various spheres of society: political institutions, the rule of law and the interaction between the state and the market, as well as the world of ideology (education, science and the arts), and describes the impact

<sup>2</sup> See, for example, András L Pap, *Democratic Decline in Hungary: Law and Society in an Illiberal Democracy* (New York: Routledge, 2017); Nóra Chronowski, *Human Rights in a Multilevel Constitutional Area: Global, European and Hungarian Challenges* (Paris: L'Harmattan, 2018); Tímea Drinóczi and Agnieszka Bień-Kacała, *Illiberal Constitutionalism in Poland and Hungary: The Deterioration of Democracy, Misuse of Human Rights and Abuse of the Rule of Law* (New York: Routledge, 2021); Fruzsina Gárdos-Orosz, 'The Reference to Constitutional Traditions in Populist Constitutionalism – The Case of Hungary' (2021) 61:1 *Hungarian Journal of Legal Studies* 23; Márton Varju and Nóra Chronowski, 'Constitutional Backsliding in Hungary' (2015) 6:3 *Tijdschrift voor Constitutioneel Recht* 296.

<sup>3</sup> For further information on the relatively under-developed BHR policy in the CEE region, see Ian Higham, 'Conditionality in International Organization Accession Processes: Spreading Business and Human Rights Norms in Central and Eastern Europe?' (2024) 9:1 *Business and Human Rights Journal*. More generally, see for example Florian Wettstein, *Multinational Corporations and Global Justice* (Stanford: Stanford University Press, 2009); Radu Mares (ed.), *The UN Guiding Principles on Business and Human Rights: Foundations and Implementation* (Leiden-Boston: Martinus Nijhoff Publishers, 2012); John G Ruggie, *Just Business: Multinational Corporations and Human Rights* (New York-London: Norton, 2013).

<sup>4</sup> 'The UN Working Group on Business and Human Rights (...) is developing an information note to examine links between corporate political engagement practices and responsible business conduct. Specifically, the information note will explore how to encourage responsible political engagement, how to prevent what constitutes undue political influence by businesses – sometimes termed "corporate capture" – and how such activities may undermine and be inconsistent with the corporate responsibility to respect human rights set out by the UN Guiding Principles on Business and Human Rights (...)' Unfortunately, there are no data (inputs received) from Hungary in the report. See The Working Group on Business and Human Rights, 'Ensuring business respect for human rights in the political and regulatory sphere and preventing "corporate capture"', A/77/201 (29 March 2022).

of the U-turn on these spheres and on people's lives.<sup>5</sup> We also draw on the extensive general BHR literature.<sup>6</sup>

The first part of the article shows how stakeholders fail to meet commitments under the UNGPs framework. By developing a fourfold typology, we begin by exploring the role of businesses in the development and solidification of the self-identified illiberal Orbán regime over the past 13 years, and highlight how they are simultaneously agents and victims of the legal and political developments.

In the second part we assess how businesses reacted to the refugee crisis caused by the war against Ukraine, Hungary's neighbour, which is host to an ethnic Hungarian Diaspora. Corporate involvement in supporting refugees from Ukraine is crucially influenced by Hungary's illiberal economic governance and constitutional environment. The focus here is on corporate, mainly SME, engagement in humanitarian (and human rights-related) crisis management. We argue that their guiding motivation is mostly charity, at best corporate social responsibility combined with solidarity, but not conscious or publicly proclaimed 'corporate responsibility to respect' human rights in the sense of UNGP Pillar II.

In sum, the article shows how the economic difficulties caused by the COVID-19 pandemic and the economic crisis caused by Russia's aggression against Ukraine accentuates the Hungarian systematic failures in the field of BHR.

## II. Background: The State of Business and Human Rights in Hungary

In September 2022, in the first ever rule of law conditionality procedure, a resolution adopted by the European Parliament declared that Hungary could no longer be considered a full democracy, as it had become a 'hybrid regime of electoral autocracy'.<sup>7</sup> This 'hybridity' has many components. From a business and human rights perspective, Hungary is characterized by strong state control over business (with particularities in certain sectors<sup>8</sup>), limited transparency of state-owned enterprises, repressive tax policies against certain multinational companies, and the intimidation of human rights defenders.<sup>9</sup> We begin by explaining how our analysis typifies businesses under the Hungarian regime, which is specific compared with other hybrid and illiberal states because it is embedded in a highly integrated European economy, as a member state of the European Union. We also highlight constitutional issues and the position of human rights defenders as key actors in the management of the refugee crisis and as important collaborators with the business sector. The analysis in the first part, thus, puts into context the cases examined in the second

<sup>5</sup> János Kornai, 'Hungary's U-Turn' (2015) 10:1 *Capitalism and Society* 279–329.

<sup>6</sup> See, for example, Klaus M Leisinger, 'Business and Human Rights' in Marco Keiner (ed.), *The Future of Sustainability* (Dordrecht: Springer, 2006) 117–151; Richard Falk, 'Interpreting the Interaction of Global Markets and Human Rights' in Alison Brysk (ed.), *Globalization and Human Rights* (Berkeley, Los Angeles and London: University of California Press, 2002); Marion Weschka, 'Human Rights and Multinational Enterprises: How Can Multinational Enterprises be Held Responsible for Human Rights Violations Committed Abroad?' (2006) 66 *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht* 625–661; Sarah Joseph, *Corporations and Transnational Human Rights Litigation* (Oxford and Portland: Hart, 2004); Janet Dine, *Companies, International Trade and Human Rights* (Cambridge: Cambridge University Press, 2007).

<sup>7</sup> European Parliament resolution of 15 September 2022 on the proposal for a Council decision determining, pursuant to Article 7(1) of the Treaty on European Union, the existence of a clear risk of a serious breach by Hungary of the values on which the Union is founded (2018/0902R(NLE)).

<sup>8</sup> Sára Hungler and Zsuzsa Árendás, 'The Level Playing Field of Hungarian Social Partners before and during COVID-19 Pandemic: Case Studies from the Automotive Industry' (2021) 7:3 *Intersections: East European Journal of Society and Politics* 201–222.

<sup>9</sup> Christopher A Hartwell and Timothy M Devinney, 'A Responsibility to Whom? Populism and its Effects on Corporate Social Responsibility' (2024) 63:2 *Business & Society* 300.

part of the paper, and helps to understand the business sector's response to the war in Ukraine and the resulting refugee crisis.

### **Businesses Under Illiberal Governance**

In any state – whether a democracy or another (hybrid, illiberal) regime type – the business actors are very different, depending on (1) the means of access to capital; (2) local, national, and international production systems and access to product markets; (3) the relationship between politics and business; and (4) the ownership structure (segmented capitalism).<sup>10</sup> Rather than providing a comprehensive analysis of the Hungarian business sector, we present a typology of firms that takes into account the above-mentioned characteristics. From an analytical point of view, there are (at least) four types of 'businesses' in the Hungarian hybrid illiberal regime:

- (1) Multinational and foreign companies that are direct beneficiaries (and operators) of the regime;
- (2) Local companies that are direct beneficiaries (and operators) of the regime;
- (3) (Mostly) multinational companies that are targets of populist rhetoric and economic policies; and
- (4) The 'rest', namely, companies trying to navigate the regime and avoid becoming targets for oligarchic take-overs. This distinction is important not only because the different types create a distinct 'path dependency' for BHR activism, but also because it sheds light on the specificity and uniqueness of Hungarian illiberalism.

Despite apparent similarities, the Polish and other non-European illiberal regimes are arguably different from Hungary in that the latter is financed by the market, through EU funds and the massive involvement of multinational corporations, which receive significant state subsidies. What is peculiar to Hungary is the level of corruption and the way it is channelled to government-linked companies that underpin the political regime.

One of the unique features of the Hungarian case is that (at least until the post-war crisis in Ukraine) it has been a relative economic success, largely financed by the EU and multinationals. Whilst populist government rhetoric usually views multinationals as scapegoats and imposes restrictive taxes on some, the government offers generous tax cuts and direct incentives to others. As will be shown, some multinational and foreign companies, notably the German car industry, are being offered lucrative terms. The regime is also determined to build a strong, pro-government middle class, mostly by steering market regulation in its favour. The engine for this is the opaque procurement system for distributing EU funds. Oligarchs and trusted companies also take over unreliable local and multinational market shares. Companies are thus agents of state capture and indirect government take-overs. In this climate of intimidation and insecurity, companies (even strong multinationals) will think twice about supporting, even symbolically, human rights and democratic causes and issues that contradict or simply do not match government policy or rhetoric. In the following section, we will present some publicly documented facts and data to support the above.

<sup>10</sup> Csaba Makó and Miklós Illéssy, 'Segmented Capitalism in Hungary: Diverging or Converging Development Paths?' in Violaine Delteil and Vassil Kirov (eds.), *Labour and Social Transformation in Central and Eastern Europe: Europeanization and Beyond* (Abingdon: Routledge, 2017) 77–97.

### *Oppressive Legislation Against Certain (Multinational) Enterprises*

Economics Professor László Csaba explains how the regime's self-proclaimed 'unorthodox' economic policy mix includes 'ad-hoc regulatory interventionism, nationalization followed sometimes by privatization to friends, marginalizing foreign ownership in banking, energy sector and trade, and super lax monetary policy'.<sup>11</sup> Similarly, Sebők and Simons<sup>12</sup> show how Hungary's deviation from the orthodox-neoliberal convention is best characterized by a form of illiberal economic nationalism. This works through a disenchanting, post-crisis critical and counter-hegemonic rhetoric of global capitalism, and also involves the initial nationalization and then re-privatization of the given assets into the hands of regime-friendly capitalists. The illiberal and captured Hungarian state has encroached on a wide spectrum of economic life; in the subsequent section, we show some examples.

In order to regain autonomy and assure long-term political survival within a liberal EU context, Orbán explicitly stated his aim to increase domestic ownership in banking to over 50%. This drove the re-nationalization of the financial sector with resentment towards neoliberal banking practices through a grand strategy of reconstructing Hungarian capitalism. As part of these efforts, the government launched wide-scale mortgage rescue programs,<sup>13</sup> directly intervening with banking policies. Besides securing popular support, controlling finance also allowed the government to control large swathes of the media as state-guaranteed or private loans were secured to take over the second biggest commercial TV channel (TV2) and scores of newspapers and magazines were integrated into an Orbán-controlled foundation.<sup>14</sup> Some measures, such as special taxes on the internet in 2014<sup>15</sup> or Sunday closures in 2016 were withdrawn,<sup>16</sup> while others, like special taxes on multinational retail and supermarket corporations endured. Widely documented policies included the restructuring of the pharmacy and the tobacco-sales market<sup>17</sup> in 2010<sup>18</sup> and 2012,

<sup>11</sup> Laszlo Csaba, 'Unorthodoxy in Hungary: An Illiberal Success Story?' (2022) 34:1 *Post-Communist Economies* 1–14.

<sup>12</sup> Miklós Sebők and Jasper Simons, 'How Orbán Won? Neoliberal Disenchantment and the Grand Strategy of Financial Nationalism to Reconstruct Capitalism and Regain Autonomy' (2022) 20:4 *Socio-Economic Review* 1625–1651.

<sup>13</sup> See, for example, Adrienne Csizmady and József Hegedüs, 'Hungarian Mortgage Rescue Programs 2009–2016', Narodowy Bank Polski Working Paper No. 243, vol 1 (2016), <https://core.ac.uk/download/pdf/148786375.pdf> (accessed 13 July 2022); Bálint Magyar, *Post-Communist Mafia State* (Budapest: Central European University Press, 2016). See also Éva Voszka, 'Nationalisation in Hungary in the Post-Crisis Years: A Specific Twist on a European Trend?' (2018) 70:8 *Europe-Asia Studies* 1281–1302.

<sup>14</sup> Sebők and Simons, *note* 12.

<sup>15</sup> Chris Harris, 'All you need to know about Hungary's internet tax', *Euronews* (29 October 2014), <https://www.euronews.com/2014/10/29/all-you-need-to-know-about-hungarys-internet-tax> (accessed 13 July 2022).

<sup>16</sup> Annamaria Kunert, 'Hungary: Ban on Sunday opening in the retail sector repealed', *Eurofound* (23 May 2017), <https://www.eurofound.europa.eu/publications/article/2017/hungary-ban-on-sunday-opening-in-the-retail-sector-repealed> (accessed 13 July 2022).

<sup>17</sup> Under the law, only people licensed by the state are allowed to sell cigarettes and tobacco products and one person cannot own more than five tobacco shops, but the reality is different. A loophole allows businesses with government connections to be involved in as many tobacco shops as they want, as limited partners, allowing them to pocket the profits. Babett Oroszi, 'Tobacco Barons in Hungary: Loophole allows businessmen to reap the profits of close to a hundred tobacco shops', *Átlátszó* (5 April 2018), <https://english.atlatszo.hu/2018/04/05/tobacco-barons-in-hungary-loophole-allows-businessmen-to-reap-the-profits-of-close-to-a-hundred-tobacco-shops/> (accessed 13 July 2022). Also see Mihály Laki, 'Restructuring and Re-regulation of the Hungarian Tobacco Market' (2015) 6:2 *Corvinus Journal of Sociology and Social Policy* 39–71.

<sup>18</sup> The law required pharmacists to become the majority shareholders of the pharmacies they work in and at the same time prevented investors from holding shares in more than four pharmacies, which blocked the expansion of pharmacy chains in the market. Sarantis Michalopoulos, 'Commission silent over Hungary's pharmacy ownership law', *Euractiv* (21 March 2017), <https://www.euractiv.com/section/health-consumers/news/commission-silent-over-hungarys-pharmacy-ownership-law> (accessed 13 July 2022).

respectively, or the nationalization of private pension funds in 2010.<sup>19</sup> Under the 2012 ‘Plaza Ban-legislation’, owners of retail buildings and shopping malls with a gross floor area of over 400 square meters faced new permitting procedures and higher costs. The openly stated purpose of the law was to ‘prevent the spread of shopping malls’.<sup>20</sup>

More recently, following the emergence of the Ukraine war-induced economic crisis and in response to galloping inflation, the government froze gas prices (requiring gas stations to sell their fuel below market price) and capped the prices of basic goods like flour, sugar, oil and chicken.<sup>21</sup>

Economics Professor Zoltán Ádám documents how Orbán levied industry-specific taxes on banking, energy provision, telecommunication, and retail trade. Besides raising budgetary revenues, these taxes incentivized large foreign companies to either leave the Hungarian market, or to bend to the government’s increasingly direct economic control, which manifested in the nationalization of banks, utility companies to be then re-privatized to friendly businesses: ‘The government (...) managed to restructure (...) food processing, construction, tourism, and passenger transportation. A controlling share in the market-leader national oil company was acquired, while the government’s controlling role in electricity production and provision was strengthened through nationalized power stations and utility companies’.<sup>22</sup>

The government had already introduced a special legal order because of the pandemic in 2020, and the Russian-Ukrainian war – with the amendment of the Fundamental Law of Hungary – led to the introduction of a new state of war emergency. This gave the government an exceptional mandate to govern by decree, effectively eclipsing parliamentary control.

### *Beneficiaries and Operators of the Regime*

German automotive companies provide direct employment to almost 50,000 employees, generating about 2.5% of Hungary’s gross domestic product (GDP), according to the

<sup>19</sup> The government ended mandatory payments into private pension funds and nationalized most of the money they contained. This effectively allowed the government to take \$12 billion in private pension assets. Reuters, ‘Hungarian savers say government is stealing their pensions’, <https://www.reuters.com/article/hungary-pensions-idUSL6N0TG2MP20141127> (accessed 13 July 2022).

<sup>20</sup> E Kamocsay-Berta, ‘Stricter Regulations for Shopping Centers in Hungary’, *CEE Legal Matters* (28 September 2018), <https://ceelegalmatters.com/hungary/9354-stricter-regulations-for-shopping-centers-in-hungary> (accessed 13 July 2022).

<sup>21</sup> Dorottya Szikra and Mitchell A Orenstein, ‘Why Orbán Won Again’, *Project Syndicate* (5 April 2022), <https://www.project-syndicate.org/commentary/orban-victory-in-hungary-reflects-popular-economic-policies-by-dorottya-szikra-and-mitchell-a-orenstein-2022-04?barrier=accesspaylog> (accessed 13 July 2022). Also see Reuters, ‘Orban extends price curbs as inflation soars ahead of election’, <https://www.reuters.com/world/europe/orban-extends-price-curbs-inflation-soars-ahead-election-2022-01-12/> (accessed 13 July 2022). Also, in June 2022 a government decree was issued on ‘extra profit’ surtaxes on the net turnover of credit institutions and financial enterprises, on producers of petroleum products on the price difference between a specific world market price and the purchase price of crude oil originating from Russia multiplied by the quantity of barrels of crude oil purchased in Russia in the actual month, and on certain renewable power plants on certain profits. In addition, a 0.3% financial transaction tax (capped at HUF 10,000 per purchase transaction) was instituted for the purchase by certain investment companies and credit institutions along a new contribution charged on air transportation activities. KPMG, ‘Hungary: New “extra profit” surtaxes, financial transaction taxes, and other miscellaneous tax increases’, <https://home.kpmg/us/en/home/insights/2022/06/tmf-hungary-extra-profit-surtaxes-financial-transaction-taxes-tax-increases.html> (accessed 13 July 2022). Also see Bence Gaál, ‘Ryanair calls Hungary’s windfall tax “idiotic”’, *Budapest Business Journal* (15 June 2022), <https://bbj.hu/business/industry/transport/ryanair-calls-hungarys-windfall-tax-idiotic> (accessed 13 July 2022).

<sup>22</sup> Zoltán Ádám, ‘Explaining Orbán: A Political Transaction Cost Theory of Authoritarian Populism’ (2019) 66:6 *Problems of Post-Communism* 385–401.



Hungarian Investment Promotion Agency (HIPA).<sup>23</sup> The automotive sector is Hungary's largest recipient of foreign direct investment. Between 2010 and 2019, the production value of the Hungarian automotive industry rose by 165%, thanks mostly to the expansion of German-owned companies.<sup>24</sup> According to data collected by the Hungarian Central Statistical Office, car manufacturing accounts for 4.5% of Hungary's GDP, and suppliers working for large car manufacturers account for another 5–8%. This means that every eighth to tenth forint produced in Hungary has a connection to the German-dominated car industry.<sup>25</sup> Thus, car factories provide 2.6% of Hungarian jobs and their suppliers another 3–5%, according to civil society organization (CSO) data.<sup>26</sup> Another advantage of 'Orbanomics' is that Hungary now has the lowest corporate tax rate in Europe, and German companies can expect higher subsidies and grants than in Germany.<sup>27</sup>

In fact, it has been argued that the reason why the new constitution (adopted by Orbán's parliamentary supermajority in 2011) lacks a provision concerning 'equal pay for equal work' – despite the fact that it was included in the previous constitution – was to allow regional differences to favour wage-policies set forth by these strategically crucial factories.<sup>28</sup> In addition, Orbán's party also defends the interests of German car manufacturers in the European Council, and has also sought to strengthen the position of German defence investors in Hungary, especially since the full-scale war in Ukraine.<sup>29</sup>

In response, German companies have not hidden their gratitude. For example, Audi bankrolled an arena, close to their plant, as part of its 'corporate social responsibility' efforts. Orbán has been building such arenas all over Hungary as *panem et circenses*, or 'bread and circuses', are a key element of his approach to governing.<sup>30</sup>

As Shehadi points out, 'it is hard to reconcile such investments with corporate claims for ESG responsibility (...) Transparency International's Hungarian head claims that the "multinationals in Hungary do not seem to serve as any kind of check to the government in any respect for the rule of law and anti-corruption"'.<sup>31</sup>

For example, 'Magyar Hang', one of the few remaining newspapers critical of the government, claims that in vain had it demonstrated to 'have an ideal audience for German automotives, the paper has no chance of attracting advertising from the German

<sup>23</sup> Sebastian Shehadi, 'How German automotive investment in Hungary exposes the dark reality of globalisation', *Investmentmonitor* (8 October 2021), <https://www.investmentmonitor.ai/features/german-automotive-investment-hungary-orban/?cf-view> (accessed 27 June 2022).

<sup>24</sup> Ibid.

<sup>25</sup> Szabolcs Panyi, 'How Orbán played Germany, Europe's great power', *Direkt36* (18 September 2020), <https://www.direkt36.hu/en/a-magyar-nemet-kapcsolatok-rejtett-tortenete/> (accessed 27 June 2022).

<sup>26</sup> Ibid.

<sup>27</sup> Shehadi, note 23, "Orbanomics" also features the lowest corporate taxes in Europe. (...) in 2019 alone, German companies (across all sectors) received €122m in subsidies and grants from Orbán's government – while Hungarian companies got €72m. Audi has been given four times as much support in proportion to jobs created in Hungary versus those in Germany (the more jobs created by large foreign companies in Hungary, the higher the rewards), while BMW is getting a total of €361m for a new plant. (...) There are studies that suggest that the German automobile industry can get much more in subsidies here in Hungary than you would get in Germany (...) but these (...) are mostly untransparent'.

<sup>28</sup> See András L. Pap, János Fiala-Butora and Anna Śledzińska-Simon, "Intimate Citizenship" and Illiberalism: Lessons from Hungary, Poland and Slovakia' (2018) 3 *European Anti-Discrimination Law Review* 40–68; Lídia Balogh, 'Az egyenjogúság értéke vagy a „gender-ideológia” fenyegetése? A nemek közötti egyenlőség elve és a protestantizmus: viták és narratívák' (2014) 4 *Állam- és Jogtudomány* 3–25.

<sup>29</sup> Shehadi, note 23.

<sup>30</sup> Thorsten Benner, 'The German Car Industry Has to Stop Allowing Itself to Be Used by Viktor Orbán', *Süddeutsche Zeitung* (5 April 2018), <https://www.gppi.net/2018/04/05/the-german-car-industry-has-to-stop-allowing-itself-to-be-used-by-viktor-orban> (accessed 12 July 2022).

<sup>31</sup> Shehadi, note 23.

car industry due to the informal power exercised by the government'.<sup>32</sup> The editor reports how a car industry representative admitted that 'they can't advertise (...) because they don't want to risk the state subsidy given to their factory'.<sup>33</sup> Similarly, in 2015, German-owned retail chain Aldi took a then government critical daily 'Magyar Nemzet' off the shelves of its shops and started selling the newly created pro-government 'Magyar Idők' instead.<sup>34</sup> Corporate unwillingness to risk losing subsidies results in less funding available – through advert payments or donations – to the non-regime media outlets and other voices of the free society. Their visibility is also restricted when retail chains are not willing to sell such products and thereby they actually restrict people's right to information. These companies thus engage in progressive self-censorship in order not to lose preferential treatment and subsidies, often in blatant contradiction to their published and cherished policies.<sup>35</sup>

Critics have pointed out how Germany's self-proclaimed long-term economic policy of 'Wandel durch Annäherung' (promote change – democracy and human rights – through closer cooperation) and of 'Wandel durch Handel' (promote change through trade) by internationalizing the value chains of German goods has been destroyed.<sup>36</sup>

According to Csaba, "strategic partnerships" signed by the government with big multinationals like Coca Cola or Deutsche Telekom (...) formalise mutual commitment to long-term co-operation, in exchange for lavish tax returns or investment subsidies. The size of the latter is mostly unknown, but in rare cases when those became available to the public, tax breaks or subsidies amount to 15% to 25% of the total investment costs'.<sup>37</sup> Csaba adds that this is often complemented by other protective measures, securing profits and markets by warding off new entries.<sup>38</sup>

The regime's economic encouragement is, of course, not limited to foreign and multinational companies. One of Orbán's closest advisors, András Láncki, openly claimed in 2015 that '[w]hat some call corruption is essentially the main policy of Fidesz' (Orbán's party); 'By that I mean the government has set goals like forming a layer of domestic businessmen, building Pillars of a strong Hungary in rural areas or in industry'.<sup>39</sup> The party's economic doctrine includes a revolt against international capital and liberal values and nurturing a supportive national moneyed class. Pressure was certainly put on many foreign companies in sectors such as telecommunications, media, retail or banking, where domestic companies could take over their spot (unlike in the case of the German car industry).<sup>40</sup>

<sup>32</sup> Shehadi, *ibid.*

<sup>33</sup> Panyi, *note* 25.

<sup>34</sup> *Ibid.*

<sup>35</sup> See, for example, ALDI NORD's statement: <https://www.aldi-nord.de/unternehmen/verantwortung/menschen/human-rights.html> (accessed 30 January 2024).

<sup>36</sup> Shehadi, *note* 23.

<sup>37</sup> Csaba, *note* 11, 5.

<sup>38</sup> Csaba, *note* 11, 5. For more, see István Benczes, 'From Goulash Communism to Goulash Populism: The Unwanted Legacy of Hungarian Reform Socialism' (2016) 28:2 *Post-Communist Economies* 146–166; János Kornai, 'Hungary's U-turn' (2015) 37:3 *Society and Economy* 279–329; Ivan Szelényi and Tamás Csillag, 'Drifting from Liberal Democracy: Traditionalist/Neoconservative Ideology of Managed Illiberal Democratic Capitalism in Post-Communist Europe' (2015) 1:1 *Intersections – East European Journal of Society and Politics* 1–31; Voszka, *note* 13, 1281–1302; Iván Szelényi and Péter Mihályi, *Varieties of Post-Communist Capitalism: A Comparative Analysis of Russia, Eastern Europe and China* (Leiden and Boston: Brill, 2019).

<sup>39</sup> Márton Dunai, 'How Viktor Orbán will tap Europe's taxpayers and bankroll his friends and family', *Reuters* (15 March 2018), [https://www.reuters.com/investigates/special-report/hungary-orban-balaton/%20\\_](https://www.reuters.com/investigates/special-report/hungary-orban-balaton/%20_) (accessed 30 April 2022).

<sup>40</sup> Benner, *note* 30.



This model has been widely documented and in essence, there is no chance to drive the business and human rights agenda through public procurement as it is captured by the political regime.<sup>41</sup>

The regime's symbolic and iconic figure is the prime minister's ally, Lőrinc Mészáros, who used to run a small gas installation enterprise and then served as mayor of the village where the Orbán family house is located. Now Mészáros is the richest Hungarian who has ever lived, and 'his interests span well over 100 companies in seven major industries from construction and real estate to energy, media, banking, finance, tourism, sports, and agriculture'.<sup>42</sup> His wealth in 2022 amounted to \$1.1 B.<sup>43</sup>

As a former member of the Hungarian and the European parliament comments,

'The past decade has seen Orbán's oligarchs buy immense stakes in construction, agriculture and tourism, areas that receive huge EU funding. They aggressively acquired hundreds of Hungarian companies in these spheres. It was a land grab. (...) Ten business elites closest to Fidesz have won public procurement contracts worth nearly \$8bn since Orbán assumed power in 2010.'<sup>44</sup>

Businesses are, thus, simultaneously agents and victims of the regime. For example, the crack-down on independent media has been orchestrated via corporate takeovers, forcing (through repressive taxes), or making (via lucrative offers) national or multinational owners hand over their companies to pro-government businessmen.<sup>45</sup>

Having looked at the economic philosophy and reality of 'Orbanomics' through a few examples, it is worth considering how it is embedded in the constitutional and human rights regulatory environment.

### *Constitutional and BHR Environment*

Hungary, as a Central-European EU Member State, should be committed to the UN Business and Human Rights agenda, but this commitment has been half-hearted to date. The Hungarian government has not adopted a National Action Plan<sup>46</sup> on the basis of the

<sup>41</sup> 'Orbán's government is the entity that distributes the EU funds, and there is no proper oversight from an independent body ... many industries, like construction, are monopolised by the government's cronies and oligarchs (...) it is estimated that the ten business elites closest to Fidesz have won public procurement contracts worth nearly \$8bn since Orbán assumed power in 2010 (...) In fact, the financial success of these elites is so guaranteed, that when one of them buys a company, traders scramble to buy its stocks.' Sebastian Shehadi, 'How Hungary's elite made a fortune from the EU', *New Statesman* (23 March 2021), <https://www.newstatesman.com/world/2021/03/how-hungarys-elite-made-fortune-eu> (accessed 25 May 2022).

<sup>42</sup> Dunai, note 39.

<sup>43</sup> <https://www.forbes.com/profile/lorinc-meszaros/?sh=6477e5d54868>, <https://hungarytoday.hu/forbes-2022-richest-people-billionaires-list-hungarians-sandor-csanyi-lorincs-meszaros-hungary/> (accessed 22 May 2022).

<sup>44</sup> Shehadi, note 41.

<sup>45</sup> For detailed documentaries, see Krisztián Simon and Tibor Rác, 'The shutdown of Népszabadság: Orbán comes one step closer to compete media dominance', *Heinrich Böll Stiftung* (17 October 2016), <https://www.boell.de/en/2016/10/17/shutdown-nepszabadsag-orban-comes-one-step-closer-complete-media-dominance> (accessed 22 May 2022); Barbara Surk, 'Hungary's biggest opposition newspaper shut down', *Politico* (8 October 2016), <https://www.politico.eu/article/hungarys-biggest-opposition-newspaper-suspended/> (accessed 22 May 2022); András Pethő, 'Inside Viktor Orbán's war for Index, Hungary's most influential news website', *Direkt 36* (18 March 2022), <https://www.direkt36.hu/en/az-index-ostromanak-szinfalak-mogotti-tortenete/> (accessed 22 May 2022).

<sup>46</sup> Claire Methven O'Brien et al, 'National Action Plans: Current Status and Future Prospects for a New Business and Human Rights Governance Tool' (2015) 1:1 *Business and Human Rights Journal* 117–126; Humberto Cantú Rivera,

UNGPs,<sup>47</sup> and the Hungarian responses to the survey of the Business & Human Rights Resource Centre were also non-committal in character in 2014.<sup>48</sup>

It is worth mentioning that Hungary participates in the OECD Guidelines for MNEs<sup>49</sup> and has established a National Contact Point (NCP),<sup>50</sup> which has a website that is accessible in both English and Hungarian and contains the details of the complaint procedure.<sup>51</sup> However, it is not sufficiently informative and there is no database on Hungarian cases of complaints (perhaps due to the lack of recourse for the complaints mechanism). Similarly, according to OECD Watch, the anonymity of complaints is not clear under national legislation, procedural rules favour confidentiality over transparency, there is no indication that the government has applied or would be committed to sanction abusive complaints, and the government has not made any efforts to increase trust in the complaints procedure. The NCP operates within a ministerial framework that does not guarantee that conflict of interest is excluded.<sup>52</sup> Although it seems that the OECD NCP exists in Hungary, it does not work effectively.

In the last 12 years, it has been unclear in the governmental structure which ministry or ministries are responsible for BHR issues. Following the 2022 elections, economic governance is shared between at least six ministries in the new (and fifth) government formed by Viktor Orbán,<sup>53</sup> which makes it difficult to cooperate with stakeholders in the BHR field.

<sup>47</sup> 'National Action Plans on Business and Human Rights: Progress or Mirage?' (2019) 4:2 *Business and Human Rights Journal* 213–237. According to the NAPs on the BHR portal, until July 2022 only Lithuania, Poland and the Czech Republic had adopted National Action Plan. Ukraine is developing its NAP, while Serbia is contributing to a non-state initiative in the Central-Eastern European Region. See National Action Plans on Business and Human Rights, 'Home', <https://globalnaps.org/> (accessed 14 July 2022).

<sup>48</sup> The Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework, were developed by the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises. The Human Rights Council endorsed the Guiding Principles in its resolution 17/4 of 16 June 2011. Human Rights Council, 'Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework', A/HRC/17/31 (21 March 2011).

<sup>49</sup> The questionnaire of the BHR Resource Centre in 2014 aimed to assess government policies on business and human rights. The questions in the survey related to how individual governments were implementing the UNGPs. Available at Business and Human Rights Resource Centre, 'Questionnaire', [https://qtrial2014.az1.qualtrics.com/jfe/form/SV\\_8pHZ3vjdp2Hmomx?Q\\_JFE=qdg](https://qtrial2014.az1.qualtrics.com/jfe/form/SV_8pHZ3vjdp2Hmomx?Q_JFE=qdg) and Business and Human Rights Resource Centre, 'KORMÁNY KÉRDŐÍV: INTÉZKEDÉSEK AZ ÜZLET ÉS EMBERI JOGOK TERÉN', [https://media.business-humanrights.org/media/documents/files/Government\\_survey\\_-\\_Business\\_and\\_Human\\_Rights\\_-\\_Hungary\\_-\\_Magyar.docx](https://media.business-humanrights.org/media/documents/files/Government_survey_-_Business_and_Human_Rights_-_Hungary_-_Magyar.docx) (accessed 14 July 2022).

<sup>50</sup> See OECD, *OECD Guidelines for Multinational Enterprises* (Paris: OECD, 2011).

<sup>51</sup> See Government Decree 245/2017 of 29 August (Hungary).

<sup>52</sup> The Hungarian OECD NCP website is available at: OECD Guidelines for Multinational Enterprises, 'Hungarian National Contact Point', <https://oecdmnkp.hu/> (accessed 1 October 2022).

<sup>53</sup> For further information, see the observations of OECD Watch about the Hungarian NCP at OECD Watch, 'NCP Hungary', <https://www.oecdwatch.org/ncp/ncp-hungary/> (accessed 1 October 2022). The NCP has not closed any cases since 2011, and only one process was reported from Hungary in 2007, see OECD, *Annual Report on the OECD Guidelines for Multinational Enterprises 2007* (Paris: OECD, 2007).

<sup>54</sup> See Act II of 2022 on the Ministries of Hungary, § 1 The Ministries of Hungary are: (a) *Ministry of Agriculture*, (b) *Ministry of the Interior*, (c) *Ministry of Construction and Investment*, (d) *Ministry of Defence*, (e) *Ministry of Justice*, (f) *Ministry of Culture and Innovation*, (g) *Ministry of Foreign Affairs and Trade*, (h) *Cabinet Office of the Prime Minister*, (i) *Prime Minister's Office*, (j) *Ministry of Finance*, and (k) *Ministry of Technology and Industry*. (In autumn 2022, a new Ministry of Energy was created in place of the Ministry of Technology and Industry.) The six ministries in italics are clearly involved in economic governance, but the Ministry of Defence is also responsible for defence investment, or the Ministry of the Interior can be mentioned because it is also responsible for education, health, law enforcement development, and asylum. There are no separate ministries for environment, education, health and labour.

Arguably, there is a strong connection between general constitutional rights protection and the erosion of the ‘state responsibility to protect’ in an illiberal governmental system, in relation to BHR issues.

Hungary’s democratic U-turn had been widely discussed in legal and political science literature. The regime has mostly been described as representative of a relatively new form of authoritarianism, coined as a ‘hybrid’, or an ‘elective autocracy’.<sup>54</sup> It relies on both competitive elections and ‘abusive constitutionalism’,<sup>55</sup> which involves the use of traditional constitutional instruments actually demolishing it. ‘Hegemonic preservation’, ‘authoritarian enclaves’ and ‘bionic appointments’ are terms used to describe the regime. Renáta Uitz – a well-known Hungarian comparative constitutional lawyer – explains how hybrid regimes rely on a trifecta of plebiscitary mobilization, ‘ruling by cheating’, and abusive constitutional borrowing from the global constitutional canon for the purposes of illiberal constitutional normalization.<sup>56</sup> Illiberal constitutional learning strategically draws on the ideas, language and design of constitutions, but actually hijacks the vocabulary and imagination of constitutional democracy.<sup>57</sup>

An example of this illiberal turn came after the 2015 European refugee crisis, when the Orbán government defined Hungary as a bulwark against migration and refugees, not only rhetorically, but also in action. A razor-fence was erected on the southern border of Hungary, as well a ‘legal fence’ to keep away refugees. The newly created transit zones raised a number of compliance issues, and CJEU and ECtHR judgments accentuated that Hungary had violated international and European human rights norms of refugees.<sup>58</sup>

Hungarian constitutional backsliding – with all its symptoms, such as the cemented model of limited constitutional review, the broken constitutional continuity, the restrictions of transparency perpetuated by the practice of over-ruling the Constitutional Court’s decisions,<sup>59</sup> and the negligence of EU and ECtHR standards<sup>60</sup> – led to the elimination of the guarantees that would be essential to the successful adoption and implementation of the UNGPs. This illiberal exercise of power undermines the chance of multi-stakeholder collaboration to promote the development of norms and practices related to BHR.

The Hungarian government’s response to BHR challenges illustrate the limited impact of the UNGPs in illiberal states.<sup>61</sup> If the UN BHR agenda is not a priority in government

<sup>54</sup> In its resolution of 15 September 2022 on the proposal for a Council decision determining, pursuant to Article 7 (1) of the Treaty on European Union, the existence of a clear risk of a serious breach by Hungary of the values on which the Union is founded (2018/0902R(NLE)), the European Parliament stated ‘that the lack of decisive EU action has contributed to a breakdown in democracy, the rule of law and fundamental rights in Hungary, turning the country into a hybrid regime of electoral autocracy’.

<sup>55</sup> David Landau and Rosalind Dixon, ‘Abusive Judicial Review: Courts Against Democracy’ (2019) 53 *University of California Davis Law Review* 1313–1387.

<sup>56</sup> Renáta Uitz, ‘On Constitutional Transition out of Hybrid Regimes’, *VerfBlog* (15 December 2021), <https://verfassungsblog.de/on-constitutional-transition-out-of-hybrid-regimes/> (accessed 29 June 2022).

<sup>57</sup> András Sajó, *Ruling by Cheating: Governance in Illiberal Democracy* (Cambridge: Cambridge University Press, 2021).

<sup>58</sup> See, e.g., CJEU, C-808/18 *Commission v Hungary* (17 December 2020) ECLI:EU:C:2020:1029 (second transit zone case, push back practice); ECtHR, *Shahzad v Hungary* (Appl. No. 12625/17) (Judgment of 8 July 2021).

<sup>59</sup> Nóra Chronowski et al, ‘The Hungarian Constitutional Court and the Abusive Constitutionalism’, MTA Law Working Papers 2022/7, <https://jog.tk.hu/mtalwp/the-hungarian-constitutional-court-and-the-abusive-constitutionalism?download=pdf> (accessed 1 July 2022).

<sup>60</sup> András Jakab and Eszter Bodnár, ‘The Rule of Law, democracy, and human rights in Hungary – Tendencies from 1989 until 2019’ in Tímea Drinóczi and Agnieszka Bien-Kacala (eds.), *Rule of Law, Common Values, and Illiberal Constitutionalism – Poland and Hungary within the European Union* (New York: Routledge, 2021) 105–118.

<sup>61</sup> See Istvan Janos Toth and Miklos Hajdu, ‘Cronyism in Hungary. Empirical analysis of public tenders 2010–2016’, CRCB Working Paper 2018, available at [https://www.crcb.eu/wp-content/uploads/2019/01/jjt\\_mh\\_paper\\_180917\\_.pdf](https://www.crcb.eu/wp-content/uploads/2019/01/jjt_mh_paper_180917_.pdf) (accessed 1 October 2022); Istvan Janos Toth and Miklos Hajdu, ‘Cronyism in the Orbán regime: An Empirical Analysis of

policy and social partnerships are weak, the government can mask restrictive human rights measures and austerity tools as an evolution in business human rights protection,<sup>62</sup> even if they have negative impacts. This raises the following question, which is particularly relevant in an illiberal state: to what extent can local companies take on the responsibility to respect human rights under Pillar II of the UNGPs, given the state supremacy of Pillar I and the differences between national approaches and supranational market expectations?

### *Oppressive Legislation on Human Rights Defenders*

The protection of human rights defenders is also an important factor in the implementation of the UNGP's BHR principles. This is relevant in the Hungarian hybrid regime because civil society organizations, especially rights defenders, are important for the protection of the rights of migrant workers and, where applicable, refugees. However, instead of support and protection,<sup>63</sup> the last decade has brought the intimidation of human rights defenders. For example, in June 2020, the Court of Justice of the European Union declared that the Putin-type Act LXXVI of 2017 on the Transparency of Organizations Supported from Abroad – which stigmatized certain CSOs by referring to them as 'foreign-funded organizations' – violated EU law. The subsequently adopted new law also authorized the State Audit Office to conduct targeted checks on dozens of NGOs, scrutinizing their accounting and cash management policies.<sup>64</sup> Furthermore, government agencies were reportedly instructed not to cooperate with human rights defender NGOs, *inter alia*, under a new privacy law, they can refuse to provide information, and can levy excessive charges for public data requests.<sup>65</sup> This is a problem from the viewpoint of the first Pillar of the UNGPs, as the restrictions make it very difficult to obtain data of public interest from state-owned or partly state-owned companies, and on transactions with domestic or EU public money.

NGOs defending the rights of refugees are special targets of the government. For example, Act XLI of 2018 imposes a special tax on migration-related activities and financing.

This was accentuated by an amendment to the Hungarian Penal Code in 2018, which criminalized activities typically carried out by human rights NGOs to assist asylum seekers. In its decision 3/2019, the Hungarian Constitutional Court (all members of which are

Public Tenders 2005–2021', in M Csanádi et al (eds.), *Dynamics of an Authoritarian System: Hungary 2010–2021* (Budapest, Vienna, New York: CEU Press, 2022) 230–274.

<sup>62</sup> Consider an example from the point of the UNGPs 'Remedy' pillar: in December 2019, the Hungarian Parliament by Act CXXVII of 2019 amended the Act CLI of 2011 on Constitutional Court. The new regulation opened the possibility for public authorities to submit constitutional complaints, not only for the protection of their fundamental rights, but also in case of alleged violations of their constitutional competences. The Hungarian Fair Competition Authority (FCA) lodged a constitutional complaint alleging a breach of due process, in which a court has defended individual rights, while the FCA has argued in favour of its own decision to restrict the freedom to conduct business. Fortunately, the Constitutional Court dismissed the Competition Authority's complaint, Constitutional Court Order 3539/2021 (22 November 2021).

<sup>63</sup> See Office of the High Commissioner for Human Rights, 'Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms', A/RES/53/144 (8 March 1999), known as the 'Declaration on Human Rights Defenders'.

<sup>64</sup> Hungarian Helsinki Committee, 'A look into Hungary's LexNGO2021 on its first anniversary', <https://helsinki.hu/en/information-note-on-hungarys-lex-ngo-2021/> (accessed 30 June 2022).

<sup>65</sup> See FreedomInfo.org, 'Hungarian NGOs Call FOI Changes as Unconstitutional', *FreedomInfo.org* (3 July 2013), [www.freedominfo.org/2013/07/hungarian-ngos-call-foi-changes-as-unconstitutional](https://www.freedominfo.org/2013/07/hungarian-ngos-call-foi-changes-as-unconstitutional) (accessed 18 June 2022).

nominated and elected by the ruling supermajority in the Parliament) ruled that the criminalization of ‘facilitating illegal immigration’ does not violate the Fundamental Law.<sup>66</sup>

The stigmatization of and threat to independent NGOs makes companies more cautious. As seen above, for example, multinational companies will be reluctant to advertise in independent press products and will also be less willing to support ‘pariah’ NGOs in order to protect their investments and business interests in Hungary.

### *In Sum: UNGPs Pillars I and III Failures*

In Hungary, the UNGPs have faced challenges due to the country’s political environment. From a human rights perspective, the government has been criticized for restricting civil liberties, limiting media freedom, and undermining the independence of the judiciary. This limits the ability of individuals and organizations to effectively hold companies accountable for human rights abuses and makes it more difficult for companies to operate in a human rights-respecting manner. It should be recalled that the EU’s rule of law conditionality procedure against Hungary was initiated, *inter alia*, because of high levels of corruption, a lack of transparency in public procurement, weaknesses in audit and control requirements and risks to the independence of the judiciary.<sup>67</sup>

In addition, Hungary has a weak civil society and a limited regulatory framework, which make it difficult to implement the UNGPs effectively. Government efforts to restrict the work of NGOs and limit their sources of funding have also contributed to this problem.

The UNGPs do not impose affirmative obligations on companies to actively address human rights abuses by illiberal forces. However, there are obligations for companies to consider their human rights responsibilities when they are directly or indirectly responsible for, contribute to, or are directly associated with adverse human rights impacts. This arguably applies at least to multinational corporations that benefit from illiberal government policies, especially if that benefit is in return for political support either in the illiberal state itself or where the parent company is based. These ‘contributing’ and ‘actively associated’ MNEs should therefore be subject to more rigorous scrutiny of their indirect responsibility for human rights abuses in illiberal contexts. Local companies hoping to survive illiberal capture cannot reasonably be expected to take an activist approach to BHR issues that fall under the auspices of such illiberal encroachment. However, MNEs, even if they are victims of such developments, could be expected to ‘name and shame’ these attacks as they are also ‘associated with adverse human rights impacts’, and should at least identify the fourth, local beneficiary type of company for the cooperation of others, for example.

After a general characterization of the illiberal economic and constitutional environment, the article goes on to narrow the focus. In an illiberal system that is partially constrained from the outside (by EU and NATO membership), the government still maintains significant room for manoeuvre on migration and refugee policy. Against this backdrop, we assess the business-relevant factors of the government’s refugee policy and then examine the reactions of different types of companies to the refugee crisis that followed the outbreak of war in Ukraine. On the other hand, we will assess which normative requirements in an illiberal constitutional context could promote BHR standards, in particular the pursuit of Pillar II of the UNGPs, in the context of Russia’s war against Ukraine.

<sup>66</sup> Para [43] of Constitutional Court Decision 3/2019 (Hungary). The Constitutional Court added that ‘the relevant provision shall not extend to the altruistic conducts not related to the prohibited aim specified in the statutory definition, provided that they perform the obligation of helping the vulnerable and the poor’.

<sup>67</sup> European Commission, Proposal for a Council implementing decision on measures for the protection of the Union budget against breaches of the principles of the rule of law in Hungary, (EU) 2022/0295, COM (2022) 485 final.



### III. The Business and Human Rights Implications of the Government's (Mostly) Anti-Refugee Policies

#### *Government Policies Relevant to Businesses in the Refugee Crisis*

The previous section showed the exposure of businesses to government encroachment and politics. This is the point of reference for assessing business engagement in aiding refugees. Why is refugee protection relevant from a BHR perspective? Pillar II of the UNGPs requires companies to respect all human rights in their operations and to assess the adverse impact of their activities on human rights. Those fleeing war zones and seeking asylum in a country intend to integrate as soon as possible and enter the labour market. This integration can be encouraged by companies through their own means and, better still, supported by public legal regulators. In this section, we first consider how government attitudes towards refugees and migration can influence business behaviour. We then look at examples related to the Ukrainian refugee crisis, in line with our business typology presented above, and outline possible business strategies for more conscious use of the UNGPs.

In order to understand the current situation, we need to jump back to the previous, 2015 refugee crisis. As mentioned above, the government launched a powerful anti-immigrant/refugee political campaign and practically refused to provide services to asylum seekers and irregular immigrants, leaving them to their own devices and the occasional help of volunteers, who acted against government policies.<sup>68</sup>

A significant body of literature<sup>69</sup> discusses the surprisingly intensive civic engagement that followed, but commentary and documentation of for-profit activities is scarce. There were offers, which we can attest to from our personal experience as volunteers, but companies arguably preferred to remain anonymous to avoid openly going against government policy. As Svensson and colleagues show, business donations and practical support remained limited and low-profile, and was often given on the condition of anonymity.<sup>70</sup> It is likely that companies were afraid to openly oppose the government's anti-refugee policy, as doing so would have affected their subsidies, benefits and public procurement results. There is no indication that business enterprises in Hungary were aware or took into account the requirements of heightened human rights due diligence, despite operating in proximity to an international conflict (even though it was not taking place on state territory, its effects were direct), or guidance set forth by international soft law instruments such as the 2009 International Committee of the Red Cross Interpretive

<sup>68</sup> See András Kováts and Alessandro Mazzola, 'The Reception of Refugees and the Reactions of the Local Population in Hungary' in Andrea Rea et al (eds.), *The Refugee Reception Crisis: Polarized Opinions and Mobilizations* (Brussels: Editions de l'Université de Bruxelles, 2019) 95–110.

<sup>69</sup> See, for example, Bori Simonovits, 'The public perception of the migration crisis from the Hungarian point of view: evidence from the field' in Birgit Glorius and Jeroen Doomernik (eds.), *Geographies of Asylum in Europe and the Role of European Localities* (Cham: Springer, 2020) 155–76; András Kende et al, 'The Politicized Motivations of Volunteers in the Refugee Crisis: Intergroup Helping as the Means to Achieve Social Change' (2017) 5:1 *Journal of Social and Political Psychology* 260–281; Celine Cantat and Margit Feischmidt, 'Conclusion: Civil Involvement in Refugee Protection – Reconfiguring Humanitarianism and Solidarity in Europe' in Margit Feischmidt, Ludger Pries and Celine Cantat (eds.), *Refugee Protection and Civil Society in Europe* (London: Palgrave Macmillan, 2019) 379–399.

<sup>70</sup> Sara Svensson, Andrew Cartwright and Peter Balogh, 'Solidarity at the Border: The Organization of Spontaneous Support for Transiting Refugees in Two Hungarian Towns in the Summer of 2015', *Solidus Working Paper Series* 2017/1, <https://core.ac.uk/download/pdf/95159918.pdf> (accessed 14 July 2022); Feischmidt and Zakariás also report that not all entrepreneurs were intimidated: Margit Feischmidt and Ildiko Zakariás, 'Politics of Care and Compassion: Civic Help for Refugees and its Political Implications in Hungary – A Mixed-Methods Approach' in Margit Feischmidt, Ludger Pries and Celine Cantat (eds.), *Refugee Protection and Civil Society in Europe* (London: Palgrave Macmillan, 2019) 76–77.



Guidance on the Notion of Direct Participation in Hostilities under International Humanitarian Law,<sup>71</sup> the UNDP Heightened Human Rights Due Diligence for Business in Conflict-Affected Contexts Guide,<sup>72</sup> or the Report of the Working Group on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises on Business, Human Rights and Conflict-affected Regions: Towards Heightened Action.<sup>73</sup>

The 2022 Ukrainian war-crisis found Hungarian businesses in a different situation. First, the government's political strategy, albeit complex and challenging, was inconsistent. While Hungary is formally on 'Ukraine's side' in the war, the government is often a hesitant partner in supporting sanctions against Russia and maximizes efforts not to distance itself from Russia.<sup>74</sup> On the other hand, as Zoltán Kovács, Secretary of State for International Communication and International Spokesman stated in a press release: 'the situation of a large group of predominantly Afghan and Syrian young men arriving from the distant Middle East on the Hungary-Serbia border is significantly different from women and children escaping danger in neighbouring Ukraine (...)'.<sup>75</sup> This new attitude was reflected in the government's approach, which provided a range of social, medical, educational and transport services to those fleeing Ukraine. For example, on the day Russian aggression began against Ukraine, the Hungarian Government adopted a special decree providing exemptions from the Act on Asylum. Under Government Decree 56/2022 of 24 February (which is not in force anymore due to a common EU decision), Ukrainian citizens coming from the territory of Ukraine and third country nationals legally residing in Ukraine were entitled to get identity and travel documents for one exit and return to the territory of Hungary, along with a residence and work permit under the rules applicable to third country nationals, were allowed in a reception centre, and were eligible for health care and subsistence support. They also can apply for refugee status in Hungary. Later the Orbán government also agreed with EU Council Implementing Decision (EU) 2022/382 of 4 March 2022, which established the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of Directive 2001/55/EC, and introduced temporary protection. Furthermore, the state pays an allowance to employers if a Ukrainian employee has worked for the company for at least 90 days, arrived in Hungary after the outbreak of the war, and applied for or received asylum.<sup>76</sup> While some kind of policy and law-making is what we would expect from the state under Pillar I to ensure respect for the human rights of refugees, the above measures were meant to be more of a support to employers.

<sup>71</sup> International Committee of the Red Cross, *Interpretive Guidance on the Notion of Direct Participation in Hostilities under International Humanitarian Law* (Geneva: ICRC, 2020).

<sup>72</sup> United Nations Development Programme, *Heightened Human Rights Due Diligence for Business in Conflict-Affected Contexts: A Guide* (New York: UNDP, 2022).

<sup>73</sup> Office of the High Commissioner for Human Rights, 'Report on business, human rights and conflict-affected regions: towards heightened action', A/75/212 (21 July 2020).

<sup>74</sup> See, for example, David M Herszenhorn, Jacopo Barigazzi and Barbara Moenz, 'After Orbán pipes up, Hungary skips Russian oil ban', *Politico* (31 May 2022), <https://www.politico.eu/article/orban-hungary-eu-oil-ban-exempt-euco> (accessed 22 June 2022).

<sup>75</sup> Embassy of Hungary, 'The Important Difference Between Ukrainian Refugees and Illegal Migrants', *Scoop* (23 May 2022), <https://www.scoop.co.nz/stories/WO2205/S00295/the-important-difference-between-ukrainian-refugees-and-illegal-migrants.htm> (accessed 22 June 2022).

<sup>76</sup> 'The maximum amount of that sum is currently HUF 30 thousand (EUR 77.75) per employee per month if they arrived before the war. If they came after the start of the Russian aggression, that amount increases to HUF 60 thousand (EUR 154) per month per employee. Furthermore, each child living with the employee receives HUF 12 thousand (EUR 31.1) per month.' See John Woods, 'Hungary simplified the employment of Ukrainian refugees', *Daily News Hungary* (15 May 2022), <https://dailynewshungary.com/hungary-simplified-the-ukrainian-refugees-employment/> (accessed 10 July 2022).

The new approach, however, has sent a clear signal to the business community – that helping refugees will be accepted by the government and will not result in any reprisals/refusal of bids, etc.

At the same time, the threat abuse for migrant (and refugee) workers has increased. It is worth pointing out that while the Orbán government's asylum policies have been increasingly restrictive since 2015, they have encouraged labour migration from non-EU countries due to labour shortages. Already before the outbreak of full-scale war against Ukraine, a large number of Ukrainian workers – 60,000 to 70,000 – were already working, especially in the construction sector. However, the outbreak of the war led to a decrease in the number of male workers from Ukraine, as many returned to fight for their country, while the number of women with young children fleeing the war increased. This increased the risks posed by recruitment agencies to migrant workers, refugees and beneficiaries of temporary protection.<sup>77</sup> Even before the war, there were a number of Ukrainian-Hungarian 'labour brokers'. These Ukrainian-Hungarian recruitment agencies jeopardize workers' rights through exploitation, wage theft, and poor working conditions. These agencies often bring workers from Ukraine to Hungary to work in sectors such as agriculture, construction and manufacturing, where there is a high demand for labour.<sup>78</sup> The first type (government crony business) is most common in these sectors. A form of wage theft may occur to workers being paid in cash, who are not provided with pay slips or other forms of documentation, making it difficult to prove the hours worked. This practice tends to take place in both small companies that are at the end of the subcontracting chain, as well as first-tier companies that have won public tenders. Additionally, workers brought to Hungary through these agencies are subjected to inadequate housing, a lack of access to healthcare, and dangerous working environments. Workers mostly lack access to basic labour protections, the right to form a union and negotiate fair wages and working conditions.<sup>79</sup> These risks are heightened by the refugee crisis created by the war.

Simultaneously, companies using agencies have not changed their approach and have not applied more scrutiny towards workforce agencies. While on the one hand they were providing *ad hoc* support to refugees, even if on anonymous basis, their policies in terms of recruitment – which relied on the abuse of workers, including refugees – did not change. This reflects the fact that help to refugees was an *ad hoc*/morally spurred action, but one which did not result in a more strategic approach to human rights in the company's own operations. There was no overt commitment from companies to the second Pillar of the BHR UNGPs, and their reactions were more related to philanthropy, solidarity, and CSR.<sup>80</sup>

But even this philanthropic, *ad hoc* assistance to refugees was not so obvious. Just like in 2015, 'faith-based organizations and civil society actors stepped in and organized the welcome and basic services for the hundreds of thousands of people'.<sup>81</sup> Meanwhile, the

<sup>77</sup> Chris Forde, Robert MacKenzie, Zyama Ciupijus and Gabriella Alberti, 'Understanding the Connections between Temporary Employment Agencies and Migration' (2015) 31:4 *International Journal of Comparative Labour Law and Industrial Relations* 357–370; Rutvica Andrijašević and Devi Sacchetto, 'Disappearing Workers: Foxconn in Europe and the Changing Role of Temporary Work Agencies' (2017) 31:1 *Work, Employment and Society* 54–70.

<sup>78</sup> cf. with the observations of the European Union Agency for Fundamental Rights, *Protecting Migrant Workers from Exploitation in the EU: Workers' Perspectives* (Vienna: EU FRA, 2022) 34–37.

<sup>79</sup> Ibid.

<sup>80</sup> See also Anita Ramasastry, 'Corporate Social Responsibility Versus Business and Human Rights: Bridging the Gap Between Responsibility and Accountability' (2015) 14:2 *Journal of Human Rights* 237–259; Anita Ramasastry, 'Corporate Social Responsibility Versus Business and Human Rights: Bridging the Gap Between Responsibility and Accountability', University of Washington School of Law Research Paper No. 2015-39, [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2705675](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2705675) (accessed 2 October 2022).

<sup>81</sup> Hungarian Helsinki Committee, 'Solidarity prevails: the reception of Ukrainian refugees in Hungary', <https://helsinki.hu/en/solidarity-prevails-the-reception-of-ukrainian-refugees-in-hungary/> (accessed 5 May 2022).

government stepped in only ‘weeks into the war’ when it ‘(...) started to take a role in coordinating the multiple actors providing humanitarian assistance’.<sup>82</sup> Hence, also in 2022, civic, non-profit activism dominated. Despite a more positive government response, businesses were/are still cautious to engage openly in donations and other forms of aid for refugees, and if they do, they prefer to remain anonymous.

### *Responsibilities of the Enterprises under UNGPs Pillar II – Practices and Potential Strategies in a State-Controlled, Illiberal Economy*

If a hybrid illiberal regime – such as Hungary – neglects the requirements of Pillars I and III of the UNGPs in the business world, it is still up to companies to fulfil their obligations under Pillars II and III. Here, human rights due diligence concerning refugee workers and business operations in conflict-affected areas comes into play. The latter is relevant in terms of the risks posed to companies’ human rights commitments, given that Russia is a belligerent aggressor; e.g., some multinational companies have withdrawn from or suspended their activities in Russia, some business activities are subject to economic sanctions, and business relations with Russian companies or subsidy activities should be scrutinized. In this section, we present and evaluate practices by the four types of companies (cronies, beneficiary MNEs, targeted MNEs and the ‘rest’) we introduced above, in relation to the refugee crisis in Hungary, and also outline possible strategies for them to better comply with the UNGPs.

(1) *Domestic crony companies* – such as OTP or Vodafone or Yettel – typically follow the government’s policy in relation to the war in Ukraine, and it is not typical for them to suspend their business activities in Russia.

For example, OTP, the largest Hungarian bank (lead by Hungary’s second richest man, ranked 2,190 on the *Forbes* list, with a net worth of \$1.3 billion in 2022)<sup>83</sup> has been added to the list of ‘war supporters’ in Ukraine (along with Austria’s Raiffeisen) because of its subsidiary in Russia.<sup>84</sup> The bank announced that it is ‘constantly considering whether further changes are needed regarding OTP Group’s presence in Russia’.<sup>85</sup> Also, it made open commitments to aid Ukraine ‘with the support of millions of euros, material donations, the collection of more than 1.5 million euros worth of humanitarian donations among our employees and clients, and the accommodation and care of 160 refugees’.<sup>86</sup> Telecommunications companies (Vodafone and Yettel<sup>87</sup>) are offering free sim cards and

<sup>82</sup> Ibid.

<sup>83</sup> Hungary Today, ‘Two Hungarians on List of Richest People in the World’, <https://hungarytoday.hu/forbes-2022-richest-people-billionaires-list-hungarians-sandor-csanyi-lorincs-meszaros-hungary/> (accessed 4 July 2022).

<sup>84</sup> HVG.HU, ‘Mi is az az ukrán feketelista, amire az OTP felkerült, és ennek milyen következménye lehet?’ (23 May 2023), [https://hvg.hu/360/20230523\\_OTP\\_ukrajna\\_feketelista\\_szijarto](https://hvg.hu/360/20230523_OTP_ukrajna_feketelista_szijarto) (accessed 28 May 2023).

<sup>85</sup> [https://www.otpbank.hu/portál/hu/Hirek/Az\\_OTP\\_Csoport\\_támogatja\\_ukrajnai\\_bankját](https://www.otpbank.hu/portál/hu/Hirek/Az_OTP_Csoport_támogatja_ukrajnai_bankját) (accessed 28 June 2022).

<sup>86</sup> OTP Bank, ‘Az OTP Csoport támogatja ukrainai bankját’, [https://www.otpbank.hu/portál/hu/Hirek/Az\\_OTP\\_Csoport\\_támogatja\\_ukrajnai\\_bankját](https://www.otpbank.hu/portál/hu/Hirek/Az_OTP_Csoport_támogatja_ukrajnai_bankját) (accessed 28 June 2022). OTP Bank Russia had an after-tax profit of HUF 37.6 billion and OTP Bank Ukraine 39 billion in 2021, each accounting for close to 8% of OTP’s group-level earnings. The total assets of the Russian business reached HUF 800 bln at the end of December, with 983.6 bln respectively for the Ukrainian. MTI ECONews, ‘Ukraine Crisis: OTP Mulls “Possible Withdrawal” from Russian Market Ukraine Crisis’, *Budapest Business Journal* (18 March 2022), <https://bbj.hu/politics/foreign-affairs/ukraine-crisis/ukraine-crisis-otp-mulls-possible-withdrawal-from-russian-market> (accessed 4 May 2022).

<sup>87</sup> Yettel also reported that it provides paid time off for its volunteers who join humanitarian organizations to help alleviate the war crisis. On the day chosen for volunteer participation, the company’s staff will be involved in information distribution and orientation, food distribution, packing and unpacking tasks at locations designated by the Hungarian Red Cross and the Hungarian Reformed Charity Service, and volunteers joining the vehicle will also be able to carry out transport tasks during March.

roaming services, and support war-crisis related volunteering initiatives.<sup>88</sup> These are good examples which show that companies are not approaching BHR in a strategic way, as an element of how they carry out their business activity and make profit, but rather that they treat it as a charitable activity.

However, these companies also have to follow EU policy in the European single market, of which the Hungarian government is a partner, and this includes the EU mandatory due diligence legislation in the long run. They can also, as part of their corporate social responsibility, support the undertakings of crony - i.e. government-supported - NGOs, such as the civil actions of Hungarian Interchurch Aid, Jesuit Refugee Service Hungary, and Hungarian Charity Service of the Order of Malta, which aid the poorest refugees near the Hungarian-Ukrainian border.

(2–3) *Beneficiary and targeted MNEs* – let us look at some examples of how foreign-owned and multinational companies have reacted to Ukrainian refugees in 2022.

Even in the absence of a state BHR framework, solidarity was shown in the case of ISD Dunafer, a company that was in a state of bankruptcy at the end of 2021, but which employed 4,500 workers at the time. It can be classified as a foreign-owned crony company, with a very sensitive ownership background. In a nutshell, one of Hungary's largest companies, the operator of the Dunaújváros ironworks, was sold by the Hungarian state to the Ukrainian-Swiss Donbass-Duferco Consortium in 2004, and was taken over by the Cypriot-registered offshore company Steelhold Limited in 2007.<sup>89</sup> The majority shareholder of this company became the Russian state-owned foreign trade bank Vnesheconombank, which has been on the EU sanctions list since 23 February 2022.<sup>90</sup> Despite its clear Russian ownership and numerous legal disputes between individuals linked to the former Ukrainian owner of the steelworks,<sup>91</sup> the company offered in March 2022 immediate employment and support to 100 people fleeing the crisis in Ukraine to Hungary.

Amongst the independent MNEs, we can also mention TESCO, which also offered job opportunities to Ukrainian refugees.<sup>92</sup>

<sup>88</sup> Vodafone Hungary, 'Facebook Post', Facebook (11 March 2022), <https://www.facebook.com/vodafoneh.../posts/5251312331545490> (accessed 5 May 2022); Yettel, SIM kártya 5 GB internettel és 50 perc belföldi hang hívással Magyarországon területén <https://www.yettel.hu/segitunk...> (accessed 5 May 2022).

<sup>89</sup> Vég Márton, 'Hirtelen fogalma sincs a kormányának, hogy kié a Dunafer, pedig most adtak el az utolsó állami részvényeket', 444 (30 September 2022), <https://444.hu/2022/09/30/hirtelen-fogalma-sincs-a-kormanyanak-hogy-kie-a-dunaferr-pedig-most-adtak-el-az-utolso-allami-reszvenyeket> (accessed 4 October 2022).

<sup>90</sup> Council Regulation (EU) No. 269/2014 of 17 March 2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (EUR-Lex, 'Consolidated text: Council Regulation (EU) no 269/2014 of 17 March 2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine', <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02014R0269-20220916> (accessed 4 October 2022)). According to the Regulation VEB.RF (a.k.a. Vnesheconombank; VEB) is a major financial development institution whose Chairman is directly appointed by the President of the Russian Federation, Vladimir Putin, and takes instructions directly from him. VEB.RF generates an important source of revenue for the Russian Government and manages its state pension funds. VEB.RF plays an active role in the diversification of the defence sector of the Russian Federation and has projects with defence industry companies, including Rostec, which provide support to actions which undermine and threaten the territorial integrity, sovereignty, and independence of Ukraine.

<sup>91</sup> The controversial and tense ownership issue was resolved in 2023: after several years of uncertainty, it was decided in mid-July that Liberty Steel Central Europe Ltd, the Hungarian subsidiary of a British-Indian company of the same name, would buy Dunafer for €55 million.

<sup>92</sup> Tesco, in cooperation with the Ecumenical Relief Organisation, is inviting applications from people who have fled Ukraine and plan to stay in Hungary for the medium to long term. The supermarket chain is initially looking to employ around 400 people, but depending on seasonal demand, it may double this later in the year. The company is looking for applicants for its head office in Budaörs and its Tesco Business Services centre in Budapest, as well as for its stores in the capital and along the border, and its logistics centres in Gyál and Herceghalom. Tesco will assist candidates with the formal paperwork required for employment and will help cover the costs of this. Budapest

There are other examples of charity, solidarity and CSR where companies and NGOs are actively working together to help refugees from Ukraine, but this is not a conscious application of the UNGPs. For example, there is a Facebook group<sup>93</sup> with a huge number of members listing a variety of offers from companies and for-profit organizations. These include the Budapest Bar Association, with a continuous and efficient pro bono service,<sup>94</sup> and free services offered by FINNAIR, WIZZAIR and Flixbus to certain destinations. Airbnb.org participates in offering free accommodation in several hotels and hostels.<sup>95</sup> What stands out are initiatives that aim to raise refugee awareness of their rights on the labour market, and thus contribute to the prevention of negative human rights impacts. For example, there is a website on the employment of Ukrainian refugees in Hungary, which provides instructions on the simplified employment procedure and language courses available, as well as information on the Hungarian labour market.<sup>96</sup> However, the case of Migration Aid's Learning Without Borders<sup>97</sup> is exemplary, not only because of the complex school program offered to 7- to 16-year-old refugees, but also because the name of OBI, the German DIY retailer that provided the venue, does not appear anywhere on the site or in the digital sphere. The reason for this may be that it is still not advantageous for a company to openly support a 'pariah' NGO in Hungary, and instead it is better to stay anonymous.

In terms of Pillar II strategies, multinational and foreign companies, whether supported or targeted by the regime, can also apply their domestic due diligence rules in the case of refugee workers, over and above Hungarian local rules, provided they have such legislation.

The growing number of attempts at extraterritorial enforcement, and the intense dialogue that has developed on the UN Framework, have already encouraged many states to reinforce companies' human rights due diligence obligations through legislation. Examples include the French law on the duty of care of parent companies and subcontractors (2017),<sup>98</sup> the German law on supply chain due diligence (Lieferkettensorgfaltspflichtengesetz) – which was adopted in 2021 and entered into force on 1 January 2023 – and the Norwegian law ensuring human rights and human rights transparency in employment. Similar efforts were undertaken in Switzerland, where the issue of due diligence legislation was put on the agenda in 2020, without success.<sup>99</sup> All of these laws will give further impetus to binding measures to promote respect for human

Business Journal, 'Ukraine Crisis: Tesco's Business Unaffected, Backs Humanitarian Aid' (7 March 2022), <https://bjj.hu/business/industry/retail/ukraine-crisis-tescos-business-unaffected-backs-humanitarian-aid> (accessed 31 January 2024).

<sup>93</sup> Segítségnyújtás MOST – Menekültek Online Segítő Társasága, 'Facebook Page', <https://www.facebook.com/segitsegnyujtasMOST> (accessed 4 July 2022) and [https://mostinfohungary.online/?fbclid=IwAR2Mtk-JeDgPpDB6zh\\_l86UHRISGOHMKtn-4NB7qp-ibZqs3lqtpYB1FVzA](https://mostinfohungary.online/?fbclid=IwAR2Mtk-JeDgPpDB6zh_l86UHRISGOHMKtn-4NB7qp-ibZqs3lqtpYB1FVzA) (accessed 7 July 2023).

<sup>94</sup> Linking Help UA Support, <https://ua.support/hungary/> (accessed 30 December 2022).

<sup>95</sup> See Hostel World, <https://hwhelp.hostelworldgroup.com/hc/en-us/articles/4488993376018-Ukraine> (accessed 4 May 2022); the most notable of the over 20 participating establishments are Vitae Hostel, Danubius Hotel Hungaria, Emerald Hotel & Suites, Hotel Moments Budapest, Hotel Vision Budapest, Hotel Parlament Budapest and Hotel Palazzo Zichy, which are regularly supported by the state's Tourism Agency.

<sup>96</sup> Visit Ukraine, 'Employment of Ukrainian Refugees in Hungary', <https://visitukraine.today/blog/309/employment-of-ukrainian-refugees-in-hungary> (accessed 10 July 2022). However, it is not a Hungarian initiative. It is operated by Visit World LLC., in cooperation with Ukrainian state offices. Visit World, 'Service Platform for Tourists, Migrants, Expats', <https://visitworld.today/> (accessed 20 December 2023).

<sup>97</sup> MIGAID, 'Learning Without Borders (LWB)', <https://migrationaid.org/lwb/> (accessed 4 July 2022).

<sup>98</sup> Loi no. 2017-399 du 27 Mars 2017 relative au devoir de vigilance des sociétés mères et des entreprises donneuses d'ordre (France); Sandra Cossart, Jérôme Chaplier and Tiphaine Beau de Lomenie, 'The French Law on Duty of Care: A Historic Step Towards Making Globalization Work for All' (2017) 2:2 *Business and Human Rights Journal* 317–323.

<sup>99</sup> Nicolas Bueno and Christine Kaufmann, 'The Swiss Human Rights Due Diligence Legislation: Between Law and Politics' (2021) 6:3 *Business and Human Rights Journal* 542–549.



rights in business, including future EU legislation.<sup>100</sup> Until mandatory due diligence legislation is widely adopted, companies can respond to the refugee crisis voluntarily, for example by funding non-crony NGOs or by improving the way they scrutinize the agencies through which they employ Ukrainians. MNEs (whether they are the beneficiaries of the Hungarian political regime or in its grip) should also follow their parent company's policy regarding the cessation of business activities in Russia.

(4) *'The Rest'* – independent SMEs can be involved in pro bono activities for refugees, whether it be legal services, schooling for children or even part-time work for parents. These companies can rely on the results of independent research to better understand how to help refugees and what their needs are.<sup>101</sup> Here we share the good practices of a micro-enterprise, which provides legal services specifically to support refugees from Ukraine. *OPL gunnercooke*,<sup>102</sup> the Budapest branch of the UK law firm, set up a pro bono legal initiative which includes a drop-in clinic in cooperation with *OLive (Open Learning Initiative)*, a Central European University (CEU)-affiliated project. The team developed comprehensive Q&A material concerning the most important topics for Ukrainian refugees. This information is regularly updated based on the most frequently asked questions and feedback. The most common issues include application for protected status, rights under the protected status, travel outside of Hungary, creation and termination of employment, social security and the health care system, as well as education in Hungary. However, such initial concerns are increasingly being replaced by more integral legal problems such as the use of a vehicle with Ukrainian registration plates in Hungary, the establishment of a Hungarian company and tax issues related to working in Hungary (e.g., as a Ukrainian tax resident that is working remotely from Hungary for a Ukrainian employer). In sum, help is often less legal and more practical and often needs to be done quickly; for example, someone needs urgent medical help, children need temporary supervision, people need to be linked to the right organizations to find accommodation, or a worrying false message pops up and they need to be reassured.

Based on the needs of the refugees, businesses independent of the regime (which refer to an increasingly small circle, mostly small and micro businesses) can seek access to non-governmental organizations (such as the Helsinki Committee Hungary or Menedék Egyesület/Shelter Association or the Transcarpathian Dragon Supply Community/Kárpátaljai Sárkányellátó).<sup>103</sup>

In the case of such independent small and micro enterprises, it would also be useful to address the recommendations of Pillar II of the UNGPs when assessing their own compliance and integrity.<sup>104</sup> They can voluntarily scrutinize their partners with regard to their relations with Russian companies or offer work and services to refugees from Ukraine.

Although hundreds of thousands of people were involved in helping refugees flee war in the Middle East in 2015, the current (2022) scale of the movement is significantly higher than

<sup>100</sup> European Commission, Proposal for a Directive of the European Parliament and of the Council on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937, COM/2022/71 final.

<sup>101</sup> Zakariás Ildikó et al, 'Solidarity with Ukrainian refugees in Hungary: practices and attitudes based on a population survey', Research Report, Center for Social Sciences, Budapest, Institute of Minority Studies, [https://kisebbssegkutato.tk.hu/uploads/files/KUTATASI\\_BESZAMOLO\\_OSSZEFOGLALO.pdf](https://kisebbssegkutato.tk.hu/uploads/files/KUTATASI_BESZAMOLO_OSSZEFOGLALO.pdf) (accessed 1 February 2023).

<sup>102</sup> OPL gunnercooke, 'Home', <https://www.opl.hu/> (accessed 7 July 2022).

<sup>103</sup> Kárpátaljai Sárkányellátó, 'Facebook Page', <https://www.facebook.com/karpataljai.sarkanyellato/> (accessed 22 December 2023). It is an entirely civilian initiative that supports Ukrainian units in which Ukrainian soldiers from Transcarpathia fight by providing all the equipment, except for weapons, that the soldiers request and that is useful at the frontline.

<sup>104</sup> "Compliance for integrity" is increasingly being chosen as the slogan for compliance. HR Portál, 'Integritásmenedzsment a cég-turbó', <https://www.hrportal.hu/hr/integritas-menedzsment-a-ceg-turbo-20220916.html> (accessed 15 August 2023).



the 3% turnout recorded seven years ago. Approximately 70% of the population reportedly believe that Hungary has an obligation to accept refugees fleeing the war in Ukraine. In addition to humanitarianism, the arrival of refugees is seen as an economic benefit for the labour market. According to Eurobarometer, the majority of the population (56%) supports economic sanctions (which the Orbán government also decided to impose until December 2023), while 89% of Hungarians support humanitarian aid and 86% support aid for refugees.<sup>105</sup> These data can convince all four types of businesses in Hungary that it is worth respecting the rights of refugees and helping them integrate into the labour market.

#### IV. Conclusion

To explain the constitutional environment of the Hungarian economy in a BHR context, in particular the impact of the war in Ukraine, this article distinguishes between the different positions in which businesses operate in Hungary's hybrid illiberal regime, namely, as direct beneficiaries and operators, targets, and those who simply want to survive and stay in business. However, the country's captured state and economic model calls for all companies that openly support human rights issues to exhibit caution. The overall assessment of the Hungarian case is as follows: the economy is largely controlled by the ruling party, with many consequences for business behaviour and has resulted in the non-implementation of the UNGPs. In addition, Western companies are eager to receive subsidies in exchange for disregarding their own commitments to responsible business. In this way, not only is the state failing in its duty to protect, but it is also trapping (or rather seducing) companies into quietly abandoning their responsibility to respect.

Regarding the 2022 refugee crisis, despite the lack of a BHR legal environment and supportive government communication, companies are open to helping those fleeing the war in Ukraine on the basis of solidarity. The constitutional environment, which can be defined as a state-led market economy, allows companies to provide direct support (fundraising) to refugees or to support their integration in Hungary by employing them with minimal state aid. However, there are differences in the attitudes of pro-government companies, multinationals and independent small and micro enterprises. The independent sector's involvement in the refugee crisis is based on solidarity and not on the implementation of the UNGPs. This is tolerated rather than strongly supported by the illiberal government, where there is no systemic approach to BHR. All in all, there are currently more measures in place to support labour market integration than during the 2015 refugee crisis. However, it is particularly dangerous for the first Pillar of the UNGPs when the state does not take a clear position against an aggressor or when its communication on joint EU sanctions – which it formally supports – is contradictory. This attitude of the state has an impact on companies, which are not only reluctant to take the second Pillar of the UNGPs as a starting point but are also likely to refrain from solidarity actions.

This article shows the interdependence of constitutional and democratic decline: a crisis of the rule of law, with the capture of illiberal economic actors, also leads to a crisis of BHR. The proliferation of continental turbulence – war, economic and migration crises – further complicates the situation in Hungary.

The novelty and added value of this article to the BHR literature lies in its contribution to understanding different and nuanced BHR responsibilities of different types of firms in a country with a government like Hungary's. We have also made the normative claim that, even if we accept that the room for manoeuvre of local companies is limited by the threat of

<sup>105</sup> European Commission, *Public Opinion in the European Union: First Results, Fieldwork: January–February 2023* (Brussels: European Commission, 2023).

illiberal economic capture, at least multinational companies that benefit from the government should apply more rigorous scrutiny of their indirect responsibility for illiberalism-related human rights abuses, as mandated and indeed required by BHR obligations.

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