



Hungary's Referendum on EU Immigrant Quotas

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On 2 October, a referendum will be held in Hungary about whether its citizens agree to accept the EU immigrant quota system. According to opinion polls, most Hungarians will vote against the quotas. Although there is controversy about the legal consequences of the referendum, the anticipated result will strengthen politically Prime Minister Viktor Orbán's government vis-à-vis the European Commission and may influence the EU's policy with regard to the migration crisis.

Legal Controversies. In February 2016, the Hungarian government decided to hold a national referendum on the EU mandatory distribution system, or quotas, of refugees among the Member States, which, in the rhetoric of the authorities, was described as “forced resettlement of immigrants” to Hungary. The referendum question proposed by the government is: “Do you want the European Union to be able to require the resettlement of non-Hungarian citizens in the country without the Hungarian parliament's approval?” The question was approved both by the National Election Committee and—after rejecting four complaints from opposition parties—the Supreme Court of Hungary. According to Hungarian laws, the referendum will be valid and binding if turnout exceeds 50%.

However, some constitutional lawyers are sceptical of whether the referendum question conforms to the Hungarian constitution. According to them, a national referendum can only be held about a matter that falls within the functions and powers of parliament. In general, the results of a referendum that is both valid and binding imply unambiguous direction for the legislature. In this case, however, they argue the legal effects are not well-defined. Further, they say that while the government has the competence to determine the country's EU policy, the Hungarian parliament, in turn, has no legal competence to oblige the government to represent a particular position at the EU level. According to this interpretation, the results of the October referendum will have no legal effect on the Hungarian parliament, whose legislative actions in the area of asylum and immigration are secondary to those of the EU, in accordance with the provisions of the Treaty on the Functioning of the EU (TFEU) on shared competences. They also argue the result will not have any legal significance for the government either because, according to the Hungarian Constitution and the EU treaties, the government already has direct input on decisions made in the European Council and the Council of the EU on these matters.

In addition, according to some lawyers, the referendum question falsely suggests that any decision taken in the EU is binding on Hungary only if the Hungarian parliament also approves it. According to the normal interpretation, the competences conferred upon the European Council and the Council of the EU in the treaties empower those bodies to take decisions that are binding on the Member States and their citizens without further acceptance by national authorities.

Objectives. The uncertainty surrounding the referendum question seems to have been noticed by its authors. Politicians with the ruling party have sought to offer a political clarification of the question. They have suggested that the vote is not intended to challenge the decision taken by the Council of the EU on 22 September 2015, committing Hungary to accept 1,294 refugees from Italy or Greece in order to process their asylum requests. Instead, they say it was the decisions of the European Commission in May and July 2016, establishing a mechanism for the distribution of refugees between the Member States and facilitating family reunification. However, in fact, these latter points were not decisions but only proposals by the EC to reform the Common European Asylum System.

Although the Supreme Court has confirmed the referendum question, neither the government nor outside lawyers were able to clearly indicate the legal effects of the vote. Thus, it will have mostly political significance. The

government aims to take political advantage of anti-immigrant sentiments of Hungarians. Polls show 78% of Hungarian citizens are against settling refugees in the country (for comparison, the figure is 58% in Poland). Therefore, the referendum is an instrument of ruling party Fidesz to maintain its strong position.

Another objective of the referendum is to express general criticism of the solutions proposed by the EC. Hungary's authorities assert that the EC has exceeded its powers and wants to limit the competence of the Member States by making crucial decisions about the future of the EU without their participation. This is seen in the rhetoric of the prime minister and his ministers, who argue both that the Commission's policymaking is contrary to Member State interests and that Hungary did not join an authoritarian institution when it took up EU membership. The government intends to use the referendum to obtain a strong mandate and to justify its firm position against the EU. It is another reason why high turnout will be important for the government from a political point of view, especially in the context of the parliamentary elections planned for spring 2018.

Government's Campaign. The Hungarian government has been conducting an intensive campaign against the admission of refugees and migrants to the country since 2015. One element of this was holding so-called national consultations, which in fact consisted of sending a questionnaire on immigration and terrorism to all citizens entitled to vote. In addition, in May 2016, billboards appeared with messages that critics said were based on stereotypes and fear related to mass immigration. The signs seemed to try to illustrate a threat to European culture and public safety posed by immigrants.

Xenophobia has increased with the argument that many of the newcomers are economic migrants and would compete with Hungarian citizens on the labour market. Meanwhile, although the number of people applying for asylum in Hungary in 2015 amounted to almost 180,000, the status of refugee or similar has been granted to only 502 people (or 0.3%). Most of the immigrants who requested asylum in that time left Hungary before the completion of the proceedings. At the same time, since 2013 about 18,000 non-Hungarians (mainly Chinese) have obtained a stay permit or the right to settle in Hungary along with their families in exchange for the purchase of government bonds worth about €330,000. In 2016 alone, more than 500 of these permits have been granted. This means that since 2013, more "investors," along with their families, have received the legal right to stay in the country than migrants classified as refugees who should be given temporary admission to Hungary within the framework of the Council of the EU decision on relocation. This would seem to weaken the government's argument about the cultural diversity of immigrants being an obstacle to their admission. At the same time, it also demonstrates the propaganda surrounding the referendum campaign.

A month before the scheduled referendum, opinion polls predicted a turnout of about 50%, which would seem to be just under the minimum to make the vote valid and binding. In response, the government intensified its campaign to vote "no" on the question. The narrative of national identity has been added to the previously mentioned "threats"—the argument is the vote is decisive for maintaining Hungary's 1,000 years of statehood. As an ultimate reinforcement of the discourse, a financial argument has been used and is directed to the poorest in the country. The authorities have warned that if it must resettle migrants in Hungary, benefits for citizens of Roma origin would be reduced.

Regardless of the arguments, surveys from the beginning of the campaign have indicated the prevalence of opponents of the EU quota system. Opinion polls conducted in mid-September show that, among voters declaring they will participate in the referendum, 87% would vote "no," siding with the government. Those answering "yes" amount to only about 4% of the intended voters. In the last parliamentary elections in 2014, which had a turnout of 61%, higher than the current polls predict, the ruling coalition Fidesz-KDNP won 45% of votes. This shows that the opponents of the quota system are not only ruling party voters.

Conclusions. The referendum in Hungary primarily serves the interests of the government as an instrument to influence domestic policy and support its side in the parliamentary elections in 2018. Although the vote may be seen as a precedent, the legal controversy that surrounds it would make it difficult to use its results as an argument by other Member States in discussions on migration policy at the EU level. This is especially the case after the informal EC meeting in Bratislava, where EU leaders *de facto* abandoned the quota proposal. The EU heads of state or government signalled the need for compromise, perhaps through "flexible solidarity," meaning more Member State input on solving the migration crisis. The result of the Hungarian referendum could add to EU scepticism across Europe.

The Hungarian government also has hope that other Member States will hold similar referendums, especially Visegrad Group countries, which hold a common position on the mandatory quotas. Such referendums can easily become instruments of manipulation as seen in Hungary's referendum campaign, built on arguments that conflict with other actions by the government. Meanwhile, the real solution to the migration crisis can occur only at the EU level. Apart from adopting a constructive attitude in the ongoing debate on migration and asylum policy, there is a need for more initiatives that pull Member States into a common platform, such as strengthening the EU's external borders and finishing setting up the European Border and Coast Guard.