

A world map with a red square highlighting Hungary in Central Europe. A horizontal line extends from the square across the map.

Q&A: Trending Issues on Migration

The EU Quota Ruling

What are the Reasons for the Hungarian Government's Reaction?

TAMÁS BOROS

Budapest 2017

- When, after a journey through the Balkans, hundreds of thousands of migrants arrived at Hungary's southern border in the fall of 2015, the Hungarian government had already been conducting a communications campaign for months, warning citizens of the "pernicious" effect of immigration. One of the elements of this communications salvo, which is still ongoing today, was the legal challenge to the refugee quota at the European Court of Justice. However, until the next election Viktor Orbán has a more important objective than the prevention of the quota: He intends to maintain the appearance of a fight. Every minute when the Prime Minister is in the media talking about migrants serves to sustain his power.

What is the Background to the Decision?

One response from the EU Council of Ministers to the refugee crisis was Decision 2015/1601, which was passed on September 22nd 2015. This offered relief from the crisis to Italy and Greece by relocating asylum-seekers to other EU member states. According to the decision, Hungary needs to adjudicate on requests and absorb 1294 asylum-seekers. The member of the Hungarian government present at the EU session voted against the decision, after which Hungary, along with Slovakia, declared that they would challenge the decision at the European Court of Justice (ECJ). To initiate proceedings, Fidesz passed a law in the Hungarian Assembly, the justification for which declared that “in defense of Hungary and Europe,” the “mandatory relocation quota [has to be rejected], because it is pointless and dangerous; it would increase crime, spread terror, and endanger our culture.” The legal basis for the rejection was identified as the principle of subsidiarity – that individual member states have the right to decide whom they let in and live together with. As such, Hungary attacked not the content of the decision, but whether the Council even has the adjudicate on such matters. The ECJ, however, decided on 6 September 2017 to reject the Hungarian-Slovakian petition, stating that Article 73 paragraph (3) of the Treaty on the Functioning of the European Union (TFEU) provided a sufficient legal foundation for the quota decision, as this was necessary to treat the crisis situation in Greece and Italy with temporary measures.

However, the Orbán administration tried to prevent the quota's taking effect not just with a petition but with five separate legal measures:

- 1) The above-mentioned law. Parliamentary legislation is, however, lower in the legal hierarchy than the EU decision. Consequently, it cannot override the quota.
- 2) Challenging the decision at the ECJ. This petition was rejected. Prime Minister Viktor Orbán finally acknowledged the decision, but stated that

Hungary will nonetheless refuse to accept quota refugees.

3) Holding a referendum in October 2016, in which Hungarians had to answer the following question: “Do you want the European Union to have the power to decree the mandatory relocation of non-Hungarian citizens to Hungary without the approval of the National Assembly?” As the opposition called for boycott, 98% of the voters, 3.4 million people voted ‘no’ and thus supported the government's standpoint. The plebiscite was invalid though, because less than 50% of eligible voters participated.

4) The so-called Seventh Constitutional Amendment, in which Fidesz intended to supplement the Fundamental Law (the Constitution of Hungary) with a provision stating that “alien peoples cannot be re-settled in Hungary.” However, Fidesz was unable to secure the necessary two-thirds majority in Parliament.

5) The Commissioner for Fundamental Rights in Hungary turned to the Constitutional Court to inquire whether the EU quota is unconstitutional, considering the prohibition of collective expulsion enshrined in the Fundamental Law. The Orbán administration hopes that if unconstitutionality is detected by the Constitutional Court, it may use this finding to proscribe the relocation of refugees into Hungary.

Thus, it is clear that though the government failed in four of its legal efforts, the fifth – the Constitutional Court gambit – may yet aid Viktor Orbán. Because membership of the court was increased by the Orbán administration to 15 judges, and filled with Fidesz sympathizers, the decision will likely favor the government.

Why does the Orbán Administration Need the Quota Fight?

In terms of gaining votes and increasing support, the Orbán government's anti-refugee policy was one of the most successful political innovations of recent years. Thanks to the government's pub-

licity campaign, 66% of Hungarians believe that refugees pose the greatest threat to the country (though only a few dozen refugees at most now appear daily at the Hungarian border), and a similar ratio of electors would forbid refugees' entry into the country altogether. Hungary found itself at the vanguard of anti-migrant countries, and Viktor Orbán increased his popularity both at home and in Europe by championing the anti-migrant sentiment.

It is important, however, to separate Viktor Orbán's migration-related ideology, policies, and communications. On an ideological level, the Hungarian Prime Minister asserts that Central European countries, because they had no colonies and were excluded during communism from the post-World War II formation of multicultural societies, are culturally homogeneous. His view is that this homogeneity is a comparative advantage: it has a "nation-building" character, while also increasing cohesion and security. According to Viktor Orbán, "Hungary does not wish to become a country of immigrants", and it does not desire to surrender its "cultural homogeneity". The Prime Minister's position is that the country's severe demographic problems must be resolved by having more children and not through immigration. The migrants, according to Orbán's contention, are also dangerous for Europe, as migration leads to the continent's "Islamization" and the "spread of terrorism." These views supplement the aforementioned principle of sovereignty, according to which nation states may only make consensual decisions in questions related to migration. Hungary, as a sovereign state, must therefore resist supranational EU efforts on this issue.

The Orbán government's policy position is that the refugee crisis can be solved primarily by protecting EU borders. This was the reason why a fence was built along Hungary's southern border, why billions of forints were spent on border protection, and why Viktor Orbán demanded EU funds to cover these expenses. One of the government's anti-quota arguments was that it is pointless to discuss the distribution of migrants until the EU is able to limit the number of arrivals, which can be achieved via border control. The Hungarian

government has often claimed that it is impossible to separate refugees from illegal migrants, and, as such, the correct solution is to keep people at home (in Africa or the Middle East). When it comes to the problem of migrants, the Hungarian government's position is limited to the security and defense dimensions and remains almost completely unconcerned with humanitarian or human rights considerations.

Finally, it is worth also discussing the Orbán government's communications strategy separately, as it places the issue of the refugee quota, and the topic of migration in general, into the framework of fear. In governmental communications, migrants and refugees appeared strictly as a mass threatening European and Hungarian citizens. "Murder", "robbery", "rape", "terrorism": pro-Fidesz's media, which owns the vast majority of Hungarian outlets, associated the migrants with these terms almost exclusively. "Operation Fear" was rounded out with a billboard campaign paid for with several million euros of public funds. These elements together generated such visceral rejection and fear in Hungarians who have never met refugees, migrants, or people of a different culture/skin color, that no meaningful dialogue could be had in the country. This corresponded to Fidesz's intentions. As long as a single question, in which 65-70% of the population agrees with Viktor Orbán, dominates the political agenda, the governing party cannot be beaten in the elections.

However, together with their anti-migrant rhetoric, the government and especially the pro-government media are very vocal in their criticism of Brussels too. One can hardly find a single positive statement concerning the European Union from Fidesz politicians, even when the topic they are speaking about is not related to the refugee crisis. This anti-EU approach may have undermined the credibility of EU institutions among Fidesz voters (but not necessarily in other segments of society), so supporters of Orbán easily question the independence of the ECJ and consider it a hostile, politically motivated body.

What Happens After the Quota Decision?

“The real fight is just about to start,” cabinet members declared at press conferences following the quota decision, indicating that Fidesz will continue to push against the quota, migrants, and EU institutions in its rhetoric. “Nothing comes of the EU Court of Justice’s decision,” several ministers stated, drawing attention to a legal interpretation according to which Hungary will not admit anyone despite the ECJ’s lawful decision.

The two quotes above highlight that the Orbán government intends to continue its struggle both in the field of communications and law.

In the legal realm, one way to do this is for the Constitutional Court to hold the quota to be unconstitutional, while another is to subject Hungary to a drawn-out infringement procedure. In the latter scenario, the government will more likely pay hefty fines than allow entry to anyone. The administration made its anti-quota position such an important part of its identity that it would even accept a financially irrational solution to maintain it. This might be the road to a resolution between the parties: Hungary may contribute beyond its means to the management of the issue of migration (financially or otherwise) without the application of the quota in the country.

A radio interview with Prime Minister Viktor Orbán broadcast right after the ECJ ruling also shows the continuation of the legal battle between Hungary and the EU. In the interview, the Prime Minister did admit that Hungary would accept the decision of the Court, however, the government won’t take in any ‘quota migrant’. Paradoxical as it might sound, this is a real option for Orbán: he accepts that the EU acted lawfully in this question, but he rejects the execution of the Council decision. Of course, an infringement procedure against Hungary would follow in that case, but in any event Orbán wins himself another two or three years. And perhaps by 2019–2020 there will not be any migrants in the quota system to be relocated...

However, until the next election Viktor Orbán has a more important objective than the prevention

of the quota: He intends to maintain the appearance of a fight. Every minute when the Prime Minister is in the media talking about migrants serves to sustain his power. Each minute in which he can pretend that he is “protecting his country” from the European Union, from “Angela Merkel’s Willkommenskultur,” and from George Soros’ “migration plan,” increases Fidesz’s popularity and takes space away from the opposition. Consequently, Viktor Orbán’s aim will not be the timely resolution of the quota question but to brawl as much as possible with his real and imagined foes until the April 2018 elections.

About the author:

Tamás Boros is political analyst and co-director of Policy Solutions.

Imprint

Friedrich-Ebert-Stiftung
Regional Project "Flight, Migration, Integration in Europe"
Issued by Regional Project: „Flight, Migration, Integration in Europe"

H-1056 Budapest, Fővám tér 2-3, Hungary
Tel.: +36-1-461-60-11
Fax: +36-1-461-60-18
E-Mail: fesbp@fesbp.hu

www.fesbp.hu/migration

Responsible:
Timo Rinke

Commercial use of all media published by the Friedrich-Ebert-Stiftung (FES) is not permitted without the written consent of the FES.

Friedrich-Ebert-Stiftung – its mission in Hungary

The Friedrich-Ebert-Stiftung (FES) is committed to the fundamental values of social democracy: we stand by the principles of freedom, justice, solidarity, peace and cooperation. As an "advocate of social democracy" we wish to contribute to the development of democracy, the rule of law and social justice in political and public life, as well as to an understanding between the people of a common Europe. Our partners representing political life, trade unions, the media and civil society are equally committed to these core values.

Regional Project "Flight, migration, integration in Europe"

The Friedrich-Ebert-Stiftung's project „Flight, Migration, Integration in Europe" was established in March 2017 with the purpose to support the development of a common European Migration and Asylum Policy. Conferences, publications and research articles will be used to support the project. The main aims of the project are:

- Monitoring national discourses on flight, migration and integration and contributing to mutual understanding among the European countries.
- Exchanging experiences concerning integration and sharing best practices in the field of integration policies.
- Developing ideas and recommendations for a Common European Migration and Asylum Policy, as well as contributing to a rapprochement of the divergent approaches towards migration policy within Europe.

The views expressed in this publication are not necessarily those of the Friedrich-Ebert-Stiftung or of the organisation for which the author works.