



Orbán Claims Sweeping Majority: Implications for EU Asylum Reform

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As the polls and pundits predicted, Viktor Orbán, running on an anti-immigrant platform, secured a landslide victory in Hungary's parliamentary elections on Sunday. This will be his fourth—third consecutive—term in power. With over 96% of the ballots counted, Fidesz, in coalition with Christian Democrats, won more than 48% of all votes, coming mostly from rural areas and provincial towns. This translates to 133 of the 199 seats in the parliament, preserving the super majority of the Orbán-led coalition. Jobbik, the right-wing nationalist party, came in second with 26 seats, whereas the left-wing coalition secured merely 20 mandates.

Hungary's civil society as well as the European Union fear that Orbán's win will further cement and advance the reforms in the judiciary and media which—critics argue—have impaired liberal democracy and the rule of law in the country. The win of Fidesz, which has been in power for nearly a decade since its landslide victory in 2010, may not come as a surprise. But the EU still has not found an antidote to the growing challenge to liberal democracy and the rule of law in Central and Eastern Europe. After Sunday's election, the EU emerges once again as a divided union.

Despite the reforms of the Hungarian electoral system, which arguably benefits the ruling party Fidesz, it is safe to say that Orbán enjoys broad popular support. The 68,8% turnout was the highest since 1998. Why did the Hungarian voters appear to ignore the growing concerns across Europe and missed the chance to oust Orbán, a self-styled "illiberal democrat"¹, from power? Why does the challenge to EU values and rules and—arguably—to the very idea of liberal democracy persist in Central Europe, a region which nearly fifteen years ago was scrambling to join the EU after it had shaken off the chains of Communism, which it rejected precisely because of its dictatorial essence?

¹ H. Mahony, "Orbán wants to build 'illiberal state'", euobserver.com (July 28, 2014), <https://euobserver.com/political/125128>.

An anti-immigrant campaign poster by Fidesz can offer a clue.² Britain's Eurosceptic party UKIP used this very image in its pro-Brexit campaign; it features a mass of non-white men crossing the Croatian-Slovenian border at the height of the migrant crisis in the summer of 2015. The UKIP poster bore an anti-EU message: "Breaking point: the EU has failed us all". It is evident that the debate on the impact of migration was the main driving force behind the supporters of Brexit. In a similar vein, the Hungarian message reads: "The government's information campaign on the migration starts into its new phase. The government wants to highlight the fact that the UN's migration guidelines would allow more immigration. We think that immigration poses a serious risk, therefore it must be stopped."

The anti-immigration message was likely helped by the most recent terror attack in Hungary's neighborhood just one day before the election. On Saturday three people were killed and over 30 injured in Germany's town of Münster, where a van ploughed into pedestrians. Although the perpetrator has been identified as a German, in Hungary this most recent attack is likely to reinforce the critique to the EU's—and Germany's—policy on asylum seekers, as speculations of a Muslim background will likely continue in this debate.

Since 2015 Germany has welcomed over 1,4 million refugees from the Middle East and Northern Africa. Many of them took the so-called Balkan route which stretched across Greece, Macedonia, Serbia, Croatia, Slovenia, Hungary and Austria to reach Germany. Nearly 400,000 people crossed Hungary at the peak of the migration crisis. In order to deal with the influx of asylum seekers, and also to ease the burden of Greece and Italy, which faced a major increase in arrivals, in 2015 the Council of the EU adopted a binding decision on the refugee relocation scheme. While the majority of the member states largely obliged with the scheme and accepted their share of the burden, Hungary, Poland and Czech Republic refused to meet their quota of accepted asylum seekers, which prompted the European Commission to launch the infringement procedure against them before the European Court of Justice (ECJ) in Luxembourg.³ Hungary and Slovakia also challenged the relocation scheme, but the ECJ dismissed their complaints.⁴

Despite the failure of these countries to challenge EU asylum policy at the European Court of Justice, and despite the general compliance of other member states with this policy, EU's immigration policy triggered the rise of populist right-wing parties not only in Central and Eastern Europe. Since the end of 2017, Austria is governed by the coalition of the center-right People's Party (ÖVP) and the right-wing anti-immigrant Freedom Party (FPÖ). The foreign minister of the new government, Karin Kneissl, has already criticized Angela Merkel's „open door” policy. In Germany itself, the anti-immigrant Alternative for Germany (AfD) won over 12% in the German general election in September 2017. Poland, ruled by the conservative Law and Justice (PiS) has repeatedly stated that it would not accept the EU's mandatory refugee relocation scheme despite the ECJ's rulings. Similarly, Bulgaria has been reluctant to

² C. Abellan Matamoros, „Hungarian government rehashes UKIP anti-migrant poster in new ad“, Euronews (March 28, 2018), <http://www.euronews.com/2018/03/28/hungary-government-s-new-anti-immigration-ad-copies-ukip-s-controversial-anti-migrant-post>.

³ European Commission, „Relocation: Commission refers the Czech Republic, Hungary and Poland to the Court of Justice“, Press release (December 7, 2017), http://europa.eu/rapid/press-release_IP-17-5002_en.htm.

⁴ ECJ, „The Court dismisses the actions brought by Slovakia and Hungary against the provisional mechanism for the mandatory relocation of asylum seekers“, Press release (September 6, 2017), <https://curia.europa.eu/jcms/upload/docs/application/pdf/2017-09/cp170091en.pdf>.

re-admit asylum seekers which entered the country from Turkey and then sought asylum in Western Europe.⁵

An EU-wide policy of dealing with the numbers of asylum-seekers will remain at the top of EU's agenda amid talks over EU asylum reform bill this spring. The mandatory asylum-seeker quotas will be among the central themes during Bulgaria's six-month EU presidency which started in January 2018. By the end of the June, Bulgaria will have to use its mandate to find political consensus among the member states on the reform of the Dublin Regulation, which determines the member state responsible for processing asylum-seeker applications. The EU seeks to address „secondary movements and asylum shopping” caused by vast variations of asylum-seeker treatment and recognition rates across the member states.⁶

The issue of mandatory quotas has been on the agenda of many prior EU presidencies, but no consensus has been found. The Visegrad Four (The Czech Republic, Hungary, Poland and Slovakia) strongly opposes mandatory asylum-seeker quotas. Poland's Donald Tusk, the president of the European Council, even called the quotas "highly divisive" and "ineffective", much to the dismay of EU commissioner for migration, who called this attitude “anti-European”.⁷ Italy and Greece, which are the frontline member states directly affected by increased migration flows, push for mandatory quotas, demanding solidarity from other member states.

Germany also maintains that the mandatory relocation scheme needs to be remain part of EU asylum law. It fears that the proposed reform will increase the number of refugees settling in the country. The existing law requires an asylum-seeker to seek protection in the member state through which he or she has entered the EU. But the proposed bill includes a “family reunification” clause, which could shift the responsibility of accommodating asylum-seekers to a member state in which the asylum-seeker has family connections.⁸ This means that member states, which have already accepted a high number of refugees (over 1,4 million in Germany since 2015), are likely to experience further increase in applications for asylum.

Germany, facing opposition from other members on the mandatory quotas, urged Bulgaria to first deal with less contentious issues of the asylum law reform, before tackling the most divisive quotas issue.⁹

But Orbán's victory signals that the EU has already waited too long. We no longer speak of the rise of anti-immigration populism in Europe. The fact that Orbán secured the third consecutive term—and fourth overall—term, just as the fact that his campaign was based almost exclusively on an anti-immigrant message shows that that EU is in urgent need of not only an effective solution to the migration crisis but a viable mid- and long-term migration and asylum policy. The growing success of anti-immigrant parties across Europe shows that two

⁵ According to EU's asylum law (the so-called Dublin system), an asylum seeker's application must be administered by the member state through which the person entered the EU

⁶ European Council, “Reforming the common European asylum system”, <http://www.consilium.europa.eu/en/policies/migratory-pressures/ceas-reform/>.

⁷ N. Nielsen, “Commission attacks Tusk on 'anti-European' migrant plan”, euobserver (December 12, 2017), <https://euobserver.com/migration/140255>.

⁸ European Commission, “Towards a sustainable and fair Common European Asylum System”, Press release (May 6, 2016), http://europa.eu/rapid/press-release_IP-16-1620_en.htm/.

⁹ N. Nielsen, “Bulgaria set to delay EU talks on refugee quotas”, euobserver (January 26, 2018), <https://euobserver.com/migration/140714>.

years after the peak of the migrant crisis, the EU's inability to agree on a migration policy continues to determine the outcome of elections; it plays into the hands of the populist, anti-immigrant, anti-establishment parties and leads to the demise of social democrat and other traditional left-wing and center-right parties.

Thus, if the EU attempts to push the key issues aside and hope to find compromise on minor issues, it grossly underestimates the potency of identity politics—the common denominator regarding Brexit, the migration crisis or the rule of law crisis in Central and Eastern Europe. One could argue that the EU's inability to deal with these issues has at least in part led to the establishment of the populists in Hungary, Poland and some of their neighboring states, has had a major additional side effect. Fidesz and PiS not only carry an anti-immigrant message. They have also introduced far-reaching reforms, in particular in the realm of the judiciary and the media, which arguably target the independence of the judiciary and pose a challenge to the checks and balances inherent to liberal democracy. The reforms, which have been strongly criticized by the European Commission, the Council of Europe as well the civil society and scholars, challenge the premise that all member states respect the common values including the rule of law, on which the EU is founded.

And Hungary is far from alone in what seems to be a continued quest to challenge the values enshrined in EU law. Poland is under increasing scrutiny—and under threat of EU sanctions—for its judiciary reforms; and so is Slovakia in which investigative reporter Jan Kuciak was recently murdered, and which came under the spotlight for rejecting the EU's refugee relocation scheme. Romania seems to follow the footsteps of Hungary and Poland in impairing the independence of its judiciary.¹⁰ And let us not forget: The policy of the Orbán government to shut down Hungary as a transit country for migrants will continue to earn applause in neighboring Austria, which is profiting from this due to decreasing arrival numbers. The Austrian government would be shell-shocked to learn about a victory of multicultural liberal forces at the Hungarian elections. Hence, Orbán has friends in the West as well.

Most importantly, the enforcement of EU law, which enjoys supremacy and direct effect in the member states, is increasingly called into question across Central and Eastern Europe. Only a month ago, an Irish court, faced with a European Arrest Warrant issued by the Polish institutions, refused to extradite a Polish national suspected of drug offences on account of “systematical damage”¹¹ to the rule of law in Poland, which weakens the principle of mutual trust and sincere cooperation¹² on which the European Arrest Warrant is based. This is the first but likely not the last signal that the rule of law crisis in Hungary and Poland reaches far beyond the borders of these two Central European states, it threatens the very foundations of the European legal order.

¹⁰ R. Carp, “The Struggle for the Rule of Law in Romania as an EU Member State: The Role of the Cooperation and Verification Mechanism”, 10(1) *Utrecht Law Review* (2014), 1-16, <https://ssrn.com/abstract=2395170>.

¹¹ M. Stoddart, “Ireland refers landmark Polish extradition case to Europe's top court”, Politico.eu (March 13, 2018), <https://www.politico.eu/article/ireland-poland-extradition-case-referred-to-europe-top-court-ecj/>.

¹² Article 4(3) of the Treaty on the European Union: “Pursuant to the principle of sincere cooperation, the Union and the Member States shall, in full mutual respect, assist each other in carrying out tasks which flow from the Treaties.

The Member States shall take any appropriate measure, general or particular, to ensure fulfilment of the obligations arising out of the Treaties or resulting from the acts of the institutions of the Union.

The Member States shall facilitate the achievement of the Union's tasks and refrain from any measure which could jeopardise the attainment of the Union's objectives.”

And whatever measures the EU takes to tackle the challenges posed by Hungary and Poland, including the suspension of the voting rights based on the so-called nuclear option of Article 7 of the Treaty on the European Union, a long-term solution to the divisions in the EU must include the question of migration. Until the EU asylum law bill reflects a broad consensus over EU's future migration policy, the Union will continue battling dissenting member states on multiple fronts.