

Viktor Orbán's rampage to attract more far right voters

 verfassungsblog.de/viktor-orbans-rampage-to-attract-more-far-right-voters/

The latest dangerous ideas of PM Orbán and his government to reintroduce the death penalty in Hungary, to legitimate the disclosure of immigrants through the foreseeable result of a 'national consultation', and to legalize the segregation of Roma in public education further undermine the democratic values of Article 2 of the Treaty of the European Union. This new wave of anti-rule-of-law populism is a direct consequence of the continuous decline of the governing party's popularity.

In order to secure again the two-third majority of the mandates with only 44 % of the popular votes in the 2014 parliamentary election Fidesz 'unfairly' (copyright: OSCE) changed the electoral system making it even more disproportional, and by providing voting rights to newly nationalized ethnic Hungarians living in the neighbouring countries (98 % of whom voted for them), and by abolishing the second round making it impossible for the opposition parties to unite. In two by-elections held in February and April this year Fidesz lost the undeserved qualified majority. The latest defeat to the neo-Nazi party Jobbik, the strongest opposition party, signals that the most serious political opponent to Fidesz in the 2018 election will come from even further right than Fidesz. This is the very reason Fidesz more and more fulfils the agenda of Jobbik, which they had already started before 2010 with a lot of nationalistic, anti-Roma, and anti-Semitic policies. Unfortunately there are voters out there in Hungary who buy these values hostile to those of Europe. Surveys first conducted in 2009 and repeated in 2013 about Hungary's position on the worlds' value map suggests that the country's place on the map is one that the history and cultural legacy has preordained, as a closed-minded, inward-looking society, far from the core of Western culture and close to Orthodox or (in some cases) to Latin-American culture. In terms of her position on a [map of basic cultural attitudes](#), Hungary is closer to Bulgaria, Moldova, the Ukraine, and Russia than to Slovenia or the Western European countries.

Therefore intolerance, hatred against Roma, immigrants, or the acceptance of harsh punishments, including the death penalty, despite its early abolition by the Constitutional Court were always easy tasks for populist to gain support. So, there is nothing new under the Hungarian sun with the three recent measures proposed by the Orbán government.

Death penalty

After the stabbing to death of a young women in the town of Kaposvár, Orbán told reporters that existing penalties for serious crimes such as murder were 'too soft' and something needed to be done to remedy the problem: "The death penalty question should be put on the agenda in Hungary, to make clear to criminals that Hungary will stop at nothing when it comes to protecting its citizens". If this suggestion is to be taken seriously, in Hungary there are no internal boundaries against it.

The new Fundamental Law enacted in 2012 exclusively with the votes of the governing parties – despite the recommendations of the Venice Commission of the Council of Europe – does not contain an explicit prohibition of capital punishment. The Fourth Amendment to the Fundamental Law harshly criticized by a resolution of the European Parliament in July 2013 abolished all the case law of the Constitutional Court prior to the new constitution, including a decision on the unconstitutionality of the death penalty. Of course the reintroduction would not be permissible either under the European Convention on Human Rights or the Charter of Fundamental Rights. If Hungary were to apply for membership after the reestablishment of the capital punishment it would not be accepted by the European Union, which does not mean that as a member state it can be kicked out. What the EU, as a value community, can and wants to do against a member state violating the fundamental principles remains to be seen.

Gypsy school segregation

The Chance for Children Foundation (CFCF) representing Roma children in a segregated school from a Gypsy settlement near the Nord-Eastern town of Nyíregyháza plans to appeal to the European Commission, which, they believe, will launch an infringement procedure against Hungary. The Hungarian government over the years had made no secret of its belief that segregated schools in the hand of churches are ‘the citadels of convergence’ – as Zoltán Balog, Minister of Education has put it. He imagined integration as a two-step process, the first being to put the disadvantaged Roma children into segregated schools where ‘they will catch up’, and once they achieve the requisite level of knowledge and skills they can be integrated into the mainstream population’s schools.

In the case recently decided finally by the Supreme Court of Hungary, the new Fidesz administration of North-Eastern town Nyíregyháza, after the 2010 local election first refused to provide a school bus for the children of the Gypsy settlement, then turned over the oversight of the Roma school to the Greek Catholic Church. The Church reopened the segregated school closed by the previous socialist mayor in 2007. CFCF sued in 2011 and won in two instances, until the case ended up in the Kúria (i.e. the Supreme Court of Hungary, renamed by the Fundamental Law, in order to allow to fire its president in the middle of his term^[1], and appoint his successor loyal to Fidesz) where the judgment was overturned, and the segregation was legalized. There is no further appeal within Hungary.

Anti-immigrant hatred

A few days after many hundreds of refugees have drowned in the Mediterranean, Viktor Orbán announced that ‘We need no refugees’, arguing that Europe does not need immigrants at all, and the European Union should be sealed and defended against intruders by the army, and should not overreach in its immigration and refugee policies, rather the member states should formulate its own policies and deal with its unwanted immigrants as it best sees fit. Needless to say, Jobbik warmly welcomed the PM’s statement.

What makes this anti-immigrant hatred special in Hungary, is the fact that in the country in January 2014 only 1.4% of the population consisted of foreign nationals, in 2014 only 360 political refugees received permission to stay, and it has always been just a transit point for would-be immigrants, whose final destination isn’t Hungary but countries in Western Europe. On the other hand, since Fidesz’s victory in 2010 at least half a million Hungarians emigrated to Western Europe, who now work as ‘economic immigrants’ (as Orbán called those coming from Kosovo, Syria or Iraq) mostly in the UK, Germany, and Austria.

In order to legitimize this policy against Hungary’s unwanted immigrants the government announced a ‘national consultation’. (A similar consultation was held in 2011 shortly before the enactment of the new Fundamental Law, the results of which have never been made public.) The government sends out eight million questionnaires to the voting-age population, expecting that one million will be filed and returned. As there is no legal requirement to publish them the responses will most probably be seen once more exclusively by government officials.

A dubious questionnaire

To see the demagoguery and populism behind this ‘consultation’, it is worth to quote all its twelve questions without any comments:

- 1. How important is the spread of terrorism as far as your own life is concerned?*
- 2. In your opinion could Hungary become the target of terrorism in the next few years?*
- 3. Do you agree that mistaken immigration policies contribute to the spread of terrorism?*
- 4. Did you know that economic immigrants cross the border illegally and that lately their numbers have increased twentyfold?*

5. Do you agree with the opinion that economic immigrants endanger the jobs and livelihoods of the Hungarian people?

6. In your opinion did Brussels' policies on immigration and terrorism fail?

7. Would you support the government in its effort to introduce stricter immigration regulations in opposition to Brussels?

8. Would you support a new regulation that would allow the government to place immigrants who illegally entered the country into internment camps?

9. In your opinion should those immigrants who illegally enter the country be returned to their own countries in the shortest possible time?

10. Do you agree that those economic immigrants who stay in Hungary should have to work to cover the cost of their keep?

11. Do you agree that the best means of combating immigration is to give economic assistance to the countries of origin of the immigrants?

12. Do you agree with the government that instead of allocating funds to immigration we should support Hungarian families and those children yet to be born?

The interesting question again is not only whether the European Union will find an adequate response to Hungary's new immigration, segregation, and criminal punishment policies, but what to do with a member state, which consistently violates the joint European values, and which does not want to quit, since its economy would most probably collapse without the EU's financial support. As we know there are tools available from Article 7 TEU (called the 'nuclear option' by former Commission President Barroso) to infringement procedures, and also [some new proposals](#) from the Commission's 'rule of law mechanism' proposed in March 2014 to the Council's rule of law monitoring process, published in the minutes of the December 2014 meeting of the General Affairs Council. In a speech, held in February 2015 before the European Parliament, Frans Timmermans, vice-chairman of the European Commission [said the following](#), clearly referring to Hungary, without naming it: "I will not hesitate to use the Framework if this required by the situation in a particular Member State".^[2] And there are plenty of scientific suggestions about future rule of law oversight options from [Kim Scheppele's systemic infringement action](#) to [Jan-Werner Müller's Copenhagen commission idea](#).^[3]

Although the external challenges, especially from the side of the European Union, can be instrumental to enforce the compliance of a member state with joint European values, the reestablishment of the liberal democracy in Hungary can only be a consequence of actions taken by internal actors. In this respect there is no reason for much hope, as the democratic opposition seems to be still very weak in Hungary. The only minor chance is provided by the sad fact that Jobbik seems to be the major challenge in 2018. To defeat the neo-Nazis Fidesz may need partners. Jobbik's success in the April by-election could have been avoided by the two-round election system, which existed prior to the 2013 changes. Could Hungary's democratic opposition have partnered up with the lesser evil to protect Orbán's party against Jobbik's victory? If so, what kind of conditions could they have bargained in return to help to change back the election law, which requires the two-third majority the governing party has just lost. Perhaps this would be an opportunity to force Fidesz to restore the fair election system, the independence of the judiciary and the Constitutional Court, as well as the institutional guarantees concerning the independence of the country's media regulatory agency and free registration of churches as a requirement of religious freedoms.

^[1] Since the term of András Baka, President of the Supreme Court was terminated because of his criticism of the planned new judicial system, the European Court of Human Rights ruled in its decision of 27 May 2014 that there has been a violation of Article 10 of the European Convention on Human Rights. See Case of Baka v. Hungary,

Application no. 20261/12.

[2] In April 30 Timmermans on his [Facebook](#) page also harshly criticized Orbán's ideas about the death penalty and immigration.

[3] See also Dimitry Kochenov, Carlos Closa and J.H.H. Weiler, 'Rule of Law Oversight in the European Union', European University Institute, Robert Schuman Centre for Advanced Studies, Global Governance Programme-87, 2014/25, reviewing the various proposals that have been made to remedy the situation and providing critiques.

LICENSED UNDER CC BY NC ND

SUGGESTED CITATION Halmai, Gábor: *Viktor Orbán's rampage to attract more far right voters*, *VerfBlog*, 2015/5/07, <http://verfassungsblog.de/viktor-orbans-rampage-to-attract-more-far-right-voters/>.

The latest dangerous ideas of PM Orbán and his government to reintroduce the death penalty in Hungary, to legitimate the disclosure of immigrants through the foreseeable result of a 'national consultation', and to legalize the segregation of Roma in public education further undermine the democratic values of Article 2 of the Treaty of the European Union. This new wave of anti-rule-of-law populism is a direct consequence of the continuous decline of the governing party's popularity.

In order to secure again the two-third majority of the mandates with only 44 % of the popular votes in the 2014 parliamentary election Fidesz 'unfairly' (copyright: OSCE) changed the electoral system making it even more disproportional, and by providing voting rights to newly nationalized ethnic Hungarians living in the neighbouring countries (98 % of whom voted for them), and by abolishing the second round making it impossible for the opposition parties to unite. In two by-elections held in February and April this year Fidesz lost the undeserved qualified majority. The latest defeat to the neo-Nazi party Jobbik, the strongest opposition party, signals that the most serious political opponent to Fidesz in the 2018 election will come from even further right than Fidesz. This is the very reason Fidesz more and more fulfils the agenda of Jobbik, which they had already started before 2010 with a lot of nationalistic, anti-Roma, and anti-Semitic policies. Unfortunately there are voters out there in Hungary who buy these values hostile to those of Europe. Surveys first conducted in 2009 and repeated in 2013 about Hungary's position on the worlds' value map suggests that the country's place on the map is one that the history and cultural legacy has preordained, as a closed-minded, inward-looking society, far from the core of Western culture and close to Orthodox or (in some cases) to Latin-American culture. In terms of her position on a [map of basic cultural attitudes](#), Hungary is closer to Bulgaria, Moldova, the Ukraine, and Russia than to Slovenia or the Western European countries.

Therefore intolerance, hatred against Roma, immigrants, or the acceptance of harsh punishments, including the death penalty, despite its early abolition by the Constitutional Court were always easy tasks for populist to gain support. So, there is nothing new under the Hungarian sun with the three recent measures proposed by the Orbán government.

Death penalty

After the stabbing to death of a young women in the town of Kaposvár, Orbán told reporters that existing penalties for serious crimes such as murder were 'too soft' and something needed to be done to remedy the problem: "The death penalty question should be put on the agenda in Hungary, to make clear to criminals that Hungary will stop at nothing when it comes to protecting its citizens". If this suggestion is to be taken seriously, in Hungary there are no internal boundaries against it.

The new Fundamental Law enacted in 2012 exclusively with the votes of the governing parties – despite the recommendations of the Venice Commission of the Council of Europe – does not contain an explicit prohibition of capital punishment. The Fourth Amendment to the Fundamental Law harshly criticized by a resolution of the

European Parliament in July 2013 abolished all the case law of the Constitutional Court prior to the new constitution, including a decision on the unconstitutionality of the death penalty. Of course the reintroduction would not be permissible either under the European Convention on Human Rights or the Charter of Fundamental Rights. If Hungary were to apply for membership after the reestablishment of the capital punishment it would not be accepted by the European Union, which does not mean that as a member state it can be kicked out. What the EU, as a value community, can and wants to do against a member state violating the fundamental principles remains to be seen.

Gypsy school segregation

The Chance for Children Foundation (CFCF) representing Roma children in a segregated school from a Gypsy settlement near the Nord-Eastern town of Nyíregyháza plans to appeal to the European Commission, which, they believe, will launch an infringement procedure against Hungary. The Hungarian government over the years had made no secret of its belief that segregated schools in the hand of churches are ‘the citadels of convergence’ – as Zoltán Balog, Minister of Education has put it. He imagined integration as a two-step process, the first being to put the disadvantaged Roma children into segregated schools where ‘they will catch up’, and once they achieve the requisite level of knowledge and skills they can be integrated into the mainstream population’s schools.

In the case recently decided finally by the Supreme Court of Hungary, the new Fidesz administration of North-Eastern town Nyíregyháza, after the 2010 local election first refused to provide a school bus for the children of the Gypsy settlement, then turned over the oversight of the Roma school to the Greek Catholic Church. The Church reopened the segregated school closed by the previous socialist mayor in 2007. CFCF sued in 2011 and won in two instances, until the case ended up in the Kúria (i.e. the Supreme Court of Hungary, renamed by the Fundamental Law, in order to allow to fire its president in the middle of his term^[1], and appoint his successor loyal to Fidesz) where the judgment was overturned, and the segregation was legalized. There is no further appeal within Hungary.

Anti-immigrant hatred

A few days after many hundreds of refugees have drowned in the Mediterranean, Viktor Orbán announced that ‘We need no refugees’, arguing that Europe does not need immigrants at all, and the European Union should be sealed and defended against intruders by the army, and should not overreach in its immigration and refugee policies, rather the member states should formulate its own policies and deal with its unwanted immigrants as it best sees fit. Needless to say, Jobbik warmly welcomed the PM’s statement.

What makes this anti-immigrant hatred special in Hungary, is the fact that in the country in January 2014 only 1.4% of the population consisted of foreign nationals, in 2014 only 360 political refugees received permission to stay, and it has always been just a transit point for would-be immigrants, whose final destination isn’t Hungary but countries in Western Europe. On the other hand, since Fidesz’s victory in 2010 at least half a million Hungarians emigrated to Western Europe, who now work as ‘economic immigrants’ (as Orbán called those coming from Kosovo, Syria or Iraq) mostly in the UK, Germany, and Austria.

In order to legitimize this policy against Hungary’s unwanted immigrants the government announced a ‘national consultation’. (A similar consultation was held in 2011 shortly before the enactment of the new Fundamental Law, the results of which have never been made public.) The government sends out eight million questionnaires to the voting-age population, expecting that one million will be filed and returned. As there is no legal requirement to publish them the responses will most probably be seen once more exclusively by government officials.

A dubious questionnaire

To see the demagoguery and populism behind this ‘consultation’, it is worth to quote all its twelve questions without any comments:

1. *How important is the spread of terrorism as far as your own life is concerned?*
2. *In your opinion could Hungary become the target of terrorism in the next few years?*
3. *Do you agree that mistaken immigration policies contribute to the spread of terrorism?*
4. *Did you know that economic immigrants cross the border illegally and that lately their numbers have increased twentyfold?*
5. *Do you agree with the opinion that economic immigrants endanger the jobs and livelihoods of the Hungarian people?*
6. *In your opinion did Brussels' policies on immigration and terrorism fail?*
7. *Would you support the government in its effort to introduce stricter immigration regulations in opposition to Brussels?*
8. *Would you support a new regulation that would allow the government to place immigrants who illegally entered the country into internment camps?*
9. *In your opinion should those immigrants who illegally enter the country be returned to their own countries in the shortest possible time?*
10. *Do you agree that those economic immigrants who stay in Hungary should have to work to cover the cost of their keep?*
11. *Do you agree that the best means of combating immigration is to give economic assistance to the countries of origin of the immigrants?*
12. *Do you agree with the government that instead of allocating funds to immigration we should support Hungarian families and those children yet to be born?*

The interesting question again is not only whether the European Union will find an adequate response to Hungary's new immigration, segregation, and criminal punishment policies, but what to do with a member state, which consistently violates the joint European values, and which does not want to quit, since its economy would most probably collapse without the EU's financial support. As we know there are tools available from Article 7 TEU (called the 'nuclear option' by former Commission President Barroso) to infringement procedures, and also [some new proposals](#) from the Commission's 'rule of law mechanism' proposed in March 2014 to the Council's rule of law monitoring process, published in the minutes of the December 2014 meeting of the General Affairs Council. In a speech, held in February 2015 before the European Parliament, Frans Timmermans, vice-chairman of the European Commission [said the following](#), clearly referring to Hungary, without naming it: "I will not hesitate to use the Framework if this required by the situation in a particular Member State".^[2] And there are plenty of scientific suggestions about future rule of law oversight options from [Kim Scheppele's systemic infringement action](#) to [Jan-Werner Müller's Copenhagen commission idea](#).^[3]

Although the external challenges, especially from the side of the European Union, can be instrumental to enforce the compliance of a member state with joint European values, the reestablishment of the liberal democracy in Hungary can only be a consequence of actions taken by internal actors. In this respect there is no reason for much hope, as the democratic opposition seems to be still very weak in Hungary. The only minor chance is provided by the sad fact that Jobbik seems to be the major challenge in 2018. To defeat the neo-Nazis Fidesz may need partners. Jobbik's success in the April by-election could have been avoided by the two-round election system, which existed prior to the 2013 changes. Could Hungary's democratic opposition have partnered up with the lesser evil to protect Orbán's

party against Jobbik's victory? If so, what kind of conditions could they have bargained in return to help to change back the election law, which requires the two-third majority the governing party has just lost. Perhaps this would be an opportunity to force Fidesz to restore the fair election system, the independence of the judiciary and the Constitutional Court, as well as the institutional guarantees concerning the independence of the country's media regulatory agency and free registration of churches as a requirement of religious freedoms.

[1] Since the term of András Baka, President of the Supreme Court was terminated because of his criticism of the planned new judicial system, the European Court of Human Rights ruled in its decision of 27 May 2014 that there has been a violation of Article 10 of the European Convention on Human Rights. See Case of Baka v. Hungary, Application no. 20261/12.

[2] In April 30 Timmermans on his [Facebook](#) page also harshly criticized Orbán's ideas about the death penalty and immigration.

[3] See also Dimitry Kochenov, Carlos Closa and J.H.H. Weiler, 'Rule of Law Oversight in the European Union', European University Institute, Robert Schuman Centre for Advanced Studies, Global Governance Programme-87, 2014/25, reviewing the various proposals that have been made to remedy the situation and providing critiques.

LICENSED UNDER CC BY NC ND

SUGGESTED CITATION Halmai, Gábor: *Viktor Orbán's rampage to attract more far right voters*, *VerfBlog*, 2015/5/07, <http://verfassungsblog.de/viktor-orbans-rampage-to-attract-more-far-right-voters/>.