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*Public Consultations As a Tool of Immigration Policy in Hungary**

ABSTRACT

The aim of this study is to answer the question about the role of public consultations in the immigration policy of the Hungarian government in the 21st century. Under the constitution of 2011, the procedure has gained completely different legislative character in relation to the legal principles adapted in the years 1989–2010. In particular, the subject of our interest are two examples of national consultations. Both were controversially used for political purposes by the ruling Fidesz – Hungarian Civic Alliance party. The first will be “the national consultation on immigration and terrorism” conducted between April and July 2015, the second – a questionable, “national referendum on migrant quotas”, organized on October 2, 2016.

Key words: public consultations, direct democracy, referendum in Hungary

INTRODUCTION

By perceiving public consultations as a way of engaging citizens in decision-making and, thus, as a form of at least indirect governance in the state, it is important to remember that this is a coordinated and rule-based procedure. The conviction that 1) consultations should be conducted in the spirit of civil dialogue and mutual understanding; 2) information about their purposes, rules or progression must be publicly available; and 3) anyone interested in the topic can express their own opinion and receive answers to their doubts within a reasonable time, are the standards of a democratic state of law.

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However, not every authority using this tool tries to remember that public consultations should be conducted both on the basis of clear rules, and that their organizers, though entitled to express their views, should organize the procedure for the public interest and general good in a broader sense [Makowski 2014: 1–4]. For this reason, public consultations are used by the governing as a tool for creating a state's internal policy or even a form of party activity conducted for public money.

The purpose of this paper is to attempt to answer the question of the scope of public consultation in exercising of power in Hungary in the 21st century. As it turns out, the legislative and political changes that took place in this country in 2010–2011 have significantly influenced the way and frequency of using this procedure, and not necessarily with a positive effect on the Hungarian society.

In particular, the subject of our analysis will be two examples of controversial use of consultations by the ruling party *Fidesz – Magyar Polgári Szövetség* in the context of the migration crisis in Europe between 2015 and 2016.

The first will be “national consultations on immigration and terrorism”, held between April and July 2015. The second, a controversial referendum on mandatory migration quotas, which was carried out on October 2, 2016, which, due to its problematic subject and no less debatable implementation, is commonly regarded as a form of consultations or a referendum of support for the government of Viktor Orbán.

CONSULTATION AND DIRECT DEMOCRACY

By 2011, in the Hungarian political and legal system, the public consultations were closely linked to the issue of direct democracy. The first legislative solutions established in the Hungarian People's Republic (1949–1989) already indicated this relationship. The Communist Constitution of 1949 in the Article 20 provided the Presidential Council, the collegial head of state, with the right to submit a question of national importance to the vote by way of a national “plebiscite”.

Additionally, Article 35 of the Local Councils Act of 1971 introduced the possibility to consult important social problems through direct “rural assemblies” [The Constitution of the People's Republic of Hungary 1949: Article 20; The Law on Local Council 1971: Article 35]. Although such provisions, as most communist legislation, were just a facade and were never applied in practice, the very idea of the consultative character of direct democracy was maintained after the 1989 system transformation.

During this period, it was expressed by quite liberal legislation regarding the use of referendums at both national and local level, and the introduction of a legislative instrument that was purely consultative. At that time the referendum procedure adopted two forms: a mandatory form, implicitly summoned by the parliament at the initiative of at least 200,000 citizens, and an optional form, organized at the initiative of the president of the republic, the government or 100,000 citizens in which the National Assembly (*Országgyűlés*) decided whether to apply it or not.

The legislative initiative was launched at the request of at least 50,000 citizens, and as already mentioned above, its decision had only an advisory dimension on the decision of the Hungarian parliament [Pallinger 2012: 113–133; Pallinger 2016]. This was maintained until 2011, when the Fidesz ruling party, by introducing a new constitution, significantly reduced the possibility of using direct democracy tools. Under the new law, not only the legislative initiative was abolished and the scope of the cases excluded from the referendum procedure was widened, but the close link between these procedures and the consultations was severed, introducing the latter as a separate tool for the dialogue of the government with the public.

The sources of these changes were strictly political and linked to the activities of the Fidesz party in the years 2004–2009, when, as an opposition group, it fought vigorously against the leftist party of the Hungarian Socialist Party (*Magyar Szocialista Párt*). The nationwide referendum procedure used twice in that period¹ was drawn into political rivalry, and the questions about, among others, the reform of the public health system or the postulate of abolishing contributions in higher education were just an excuse for the public criticism of Prime Minister Ferenc Gyurcsány.

The success of one of these referendums, in 2008, made a dramatic impact on Fidesz's victory in subsequent elections, demonstrating the social potential of this form of direct democracy. At the same time, at the turn of 2004/2005, Fidesz also proposed a new program perspective, the key element of which was to be the so-called “National consultations” – a series of round-trip meetings with voters in smaller cities, whose main task was the political elicitation of the more passive Hungarian provinces [Kiss, Mihályffy 2010: 149]. The popularity of these activities also influenced Viktor Orbán's subsequent election success.

The experiences of the first decade of the 21st century have been reflected in both new legislation and political practice after the Fidesz party came to power. A pronounced example of this is the controversial public debate on the constitution in 2011, in which the national referendum was dropped in favor of non-binding national consultations [Priebus 2016: 119–120].

This last solution was legally established by the government a year earlier as a tool to mobilize civic attitudes in the society and to replace in practice the limited or abolished direct democracy procedures. The consultations provided citizens with the opportunity to express their views on specific topics through a nationwide questionnaire survey. The governmental administration was responsible for drawing up the results of these surveys, as well as for the selection of issues debated throughout the procedure.

Even before the constitutional debate of 2011 this tool raised serious objections from the opposition, which criticized the consultations for many things: the lack of

¹ The first one – the Hungarian dual citizenship referendum – was held on 5 December 2004 but it failed due to a voter turnout of 37.5%. The second one – the referendum on revoking some medical and tuition fees – was held in Hungary on 9 March 2008 and official results showed that the necessary votes were achieved, with a turnout of over 50%.

possibility for the public to raise issues that could be consulted or lack of any external control over the reliability and objectivity of the survey results. As a consequence, national consultations have been called “pro-government political manipulation organized for taxpayers’ money”.

Regardless of this, the government of Viktor Orbán in 2010–2016 decided to conduct national consultations five times instead of the national referendum procedure. They were held on the following issues: 1) pensions for which only persons entitled to this benefit could present their views (2010); 2) the principles of the new constitution (2011); 3) social issues (2012); 4) economic issues (2012); 5) immigration and terrorism (2015) [Pallinger 2016].

NATIONAL CONSULTATIONS ON IMMIGRATION AND TERRORISM

Due to the migration crisis increasing from the beginning of 2015 and the growing number of people apprehended in Hungary after illegally crossing its borders, the government of Viktor Orbán announced on 24 April 2015 the launch of national consultations on immigration and terrorism. During the following 40 days, every adult citizen of Hungary received a questionnaire via postal service and was asked to answer 12 questions.

An integral part of the questionnaire was the preamble in which Orbán asked citizens to express their views on “a new type of threat that must be stopped at source”, a threat which the European Union is not in itself capable of dealing with [*Nemzeti Konzultáció a bevándorlásról és a terrorizmusról* 2015]. Government spokesman Zoltán Kovács, speaking on behalf of the Prime Minister, made it clear that the results of the polls, delivered to Budapest by July 1, 2015, will help the government to formulate a decisive action plan against illegal immigrants that would be in line with national interests and the will of the society [*National Consultation on Immigration to Begin* 2015].

Consultations provoked huge emotions from the very moment they were announced. Particularly negative attitude towards them was presented by the Hungarian political opposition as well as by human rights organizations. The first accused the government of self-promotion for public money, especially since the cost of printing and distributing 8 million questionnaires exceeded EUR 3.1 million [*National Consultation... 2015*]. For others, scandalous seemed connecting the issue of immigrants with the problem of terrorism, which suggested a causal link between the two. In addition, almost all questionnaire questions were criticized, characterized as non-objective and propagandistic. The controversial questions were:

1. There are different opinions in relation to the increasing acts of terrorism. How much the problem of spreading terrorism is important in your life? (see acts of violence in France, the alarming initiatives of ISIS).

2. Do you believe that in the next few years Hungary may be the target of terrorist activities?
3. There are those who believe that the spread of terrorism is due to the wrong management of the phenomenon of immigration by Brussels. Do you share this point of view?
4. Did you know that economic immigrants cross the Hungarian border illegally, and that the number of immigrants in Hungary has increased twenty-fold lately?
5. There are various opinions about the issue of immigration. Some believe that economic migrants endanger the workplaces and livelihoods of Hungarians. Do you agree with this?
6. According to some, the Brussels-based policy on immigration and terrorism has failed, and therefore we need a new approach to these issues. Do you agree?
7. Would you support the Hungarian government in implementing more rigorous immigration regulations compared to Brussels' leniency policy?
8. Would you support the Hungarian government in its efforts to introduce more stringent regulations under which immigrants illegally crossing the Hungarian border would be detained?
9. Do you agree that migrants illegally crossing the Hungarian border should be returned to their home countries in the shortest possible time?
10. Do you agree with the idea that economic immigrants should themselves cover the costs of their stay in Hungary?
11. Do you agree with the view that the best way to combat immigration is for the Member States of the European Union to help develop the countries from which migrants have arrived?
12. Do you agree with the position of the Hungarian government that support [of the administration] should focus on Hungarian families and children rather than on immigration? [*Nemzeti Konzultáció...* 2015].

Regardless of the fact that only one eighth of all the questionnaires were delivered back to the Central Office of Administrative and Electronic Public Benefits (*Belügyminisztérium Nyilvántartások Vezetéséért Felelős Helyettes Államtitkárság*), Zoltán Kovács at a press conference on 28 July 2015 announced the huge success of the consultation in which “the vast majority” of the society participated [Keszthelyi 2015]. It is easy to guess that the answers to questions formulated in such a manner were overwhelmingly in line with the vision of the authorities.

As many as 92.9% of surveyed citizens believed that the government should support Hungarian families at the expense of the immigrants. 87.9% of respondents said they were for the detention of illegal immigrants, and 82.7% supported the idea of charging refugees for their stay in Hungary. At the same time, 97% of respondents admitted that they experienced an increase in the number of immigrants in the country, and 72.7% additionally voiced their concern that their influx would be a threat to the Hungarian labor market. Interestingly, only 39.9% of citizens commented that it was a serious probability of a terrorist attack in the country,

with twice as many admitting that the spread of terrorism directly affects their lives [Keszthelyi 2015].

Kovács expressed the conviction of the whole government that such unambiguous survey results and their number (making the project “the second most numerous in terms of given answers public consultation in Hungarian history”) give the Budapest authorities a strong mandate to create an internal policy aimed at stopping the influx of illegal immigrants to the country. This position was even more disputable since the remaining 7 million citizens who did not decide to complete the survey were identified by the government spokesman as a “negligible” factor. As it turned out, without even waiting for the official results of the consultation, the authorities decided to use this mandate, announcing on July 17, 2015 the decision to completely close the green border with Serbia and to build a 175-kilometer long temporary fence [Keszthelyi 2015].

THE CONTROVERSIAL REFERENDUM

Six months later, in response to the European Union’s decision to impose on Member States a mandatory quota system for accommodating refugees, Prime Minister Viktor Orbán expressed the government’s unequivocal opposition to the problem and proposed a referendum in the country in which citizens would answer the following question: “Do you want the European Union to have the possibility of obliging Hungary, without the parliament’s consent, to compulsorily resettle non-Hungarian citizens to the country?”

The Budapest authorities repeatedly stressed that the purpose of the vote was not to undermine the idea of solidarity and working together to resolve the migration crisis, but the European Commission’s refugee-sharing mechanism, which obliged Hungary to accept 1,300 people. Regardless of the fact that the controversial proposal of Brussels remained only in the sphere of plans from which the European Commission finally withdrew in September 2016, the entire referendum procedure was carried out on October 2, 2016, and had, according to the government representatives, only “advisory” character [Józwiak 2016: 1–2; Traynor 2016].

The referendum divided the Hungarian society. The public debate on the matter quickly went beyond substantive issues, leading to a crush between the arguments about the need to engage in humanitarian aid with the fears of the increase of the Islamic terrorism threat. In addition, the rivalry between pro- and anti-governmental political groups in Hungary was further compounded². The latter openly criticized

² Against the idea of the referendum were the following political parties: Hungarian Socialist Party (*Magyar Szocialista Párt*), Together – Party for a New Era (*Együtt – A Korszakváltók Pártja*) and Democratic Coalition (*Demokratikus Koalíció*). The Hungarian Liberal Party, on the other hand, persuaded to take part in the referendum and answered affirmative to the referendum question against the position of the Orbán’s government.

the referendum vote for its propagandistic character, and that the PM's actions were mainly focused on "using the anti-immigrant sentiments of Hungarian society" and "upholding the strong position of the ruling Fidesz party" [*Positions, Oppositions and Point of Views of Hungarian Parties about Quota Referendum, Voting and Ruling Fidesz Party* 2016].

The voices of the political opposition were accompanied by the constitutionalists questioning the compatibility of the problem with the Hungarian constitutional law. Because shaping the EU's state policy is the exclusive competence of the government in Budapest, it could not be the subject of a referendum procedure, reserved in Article 8 of the 2011 Constitution, only to "matters within the [National] Assembly's duties and powers". As a consequence, the opinion of the public expressed in such a referendum could in no way be of any legal or binding character to the government of Orbán, constituting only a form of nationwide consultation on the public support for the actions undertaken by the Hungarian authorities [Józwiak 2016: 1–2].

The allegations made by the opposition that the whole undertaking was merely a prelude to the next parliamentary elections have in some ways been confirmed by the controversial "information campaign" of the government, conducted during most of 2016. It was intended to encourage the Hungarians to participate in the referendum as well as to give a negative answer to the posed question. According to official data, the government campaign cost about EUR 16 million.

The huge financial and personal investment involved in convincing the public that it was the national obligation to vote has made the country flooded with posters, billboards, leaflets, and press releases, in which the government has made people aware of "important" issues related to the influx of refugees to Europe: "Did you know that 1.5 million illegal immigrants came to Europe in 2015?"; "Did you know that the phenomenon of harassment of women has increased in Europe since the onset of the immigration crisis?"; "Did you know that terrorist attacks in Paris were carried out by immigrants?"; "Did you know that since the onset of the immigration crisis in Europe, more than 300 people have died as a result of terrorist attacks?" [Thorpe 2016; Gall 2017].

Unilateral opinions on the migration crisis in Europe, as well as related selective facts and figures, were also presented in an 18-page color information brochure printed in more than 4 million copies and distributed throughout the country. The controversial presentation of refugees as a factor responsible for the rise of crime and terrorist threat has provoked an outcry among the representatives of Human Rights Watch and Amnesty International organizations [Dalhuisen 2016; Gall 2016].

Already at the moment of announcing the referendum question, the outcome of the whole procedure seemed to be settled. The omnipresent "information" campaign of the government was conducted on a much larger scale than the actions taken by all opposition groups together. Opinion poll conducted by Publicis Research three times – in the middle of August 2016, in mid-September 2016, and one week before the vote – showed that respectively 67%, 61% and 64% of Hungarian citizens planned

to answer the question in national referendum in accordance with the stance taken by the ruling party Fidesz [*Kvótanépszavazás: a többség szerint felesleges* 2016; *Kvótanépszavazás: csökkenő részvételi szándék – pártok támogatottsága: növekvő aktivitás* 2016; *Kvótanépszavazás: növekvő idegenellenesség, változatlan részvételi szándék* 2016].

Finally, 3.4 million Hungarian voters headed for the ballot boxes – only 41.32% of all eligible voters, which officially determined the non-binding character of the whole undertaking. However, as many as 98.36% of them opposed the proposals of the EU quota system, thus, expressing support for Viktor Orbán's immigration policy [*Preliminary results of the election. National referendum October 2, 2016*].

Considering the vast amounts of financial and human resources involved by the Hungarian government to disseminate the idea of a national referendum as the last resort to the uncontrolled influx of immigrants from the Middle East, the whole project ended with a lap for Prime Minister Orbán. While the government representatives publicized the results of the referendum as the “high success”, the low turnout has shown less public support for government action, while, at the same time, shadowing the consultative usefulness of the whole venture. This has forced Orbán to address the problem of low voter turnout in his speech. He stated that “although the binding referendum is always better than non-binding”, the extremely high level of “no” votes gives him a strong mandate to go to Belgium and “assure Brussels that the Hungarians cannot be forced to live with people, whom they do not want” [Kingsley 2016].

CONCLUSIONS

The practice of applying national consultations and a nationwide referendum after 2010 clearly indicates the significant qualitative change that has taken place in the Hungarian government's relationship to the phenomenon of broadly understood direct democracy. Decades-long close link between these procedures has been more or less deliberately broken down into two competitive legislative regimes that guarantee public participation in the exercise of power. The political pragmatism of the Fidesz party has made the place of the referendum and the legislative initiative more and more frequently taken by controversial national consultations.

Substantive and methodological oversight of the consultations guarantees the ruling party full control of the whole process and significant predictability of the outcome. Unfortunately, it adversely affects the credibility of the procedure, creating conditions for over-interpretation of democratic principles and the use of public consultations in the political struggle. The procedure carried out in 2015 in the context of the growing migration crisis is the best example. As it turns out, a similar position is presented by the government coalition towards less used referendum procedure.

The only example of this form of direct democracy applied on a nationwide scale after 2011 clearly indicates the instrumentality and politicization of its activities.

Contrary to the opinion of the constitutionalists, the decision to publicly vote on the ultimately meaningless EU Commission's decision on mandatory migration quotas clearly confirms the consultative nature of the whole project and its political purpose.

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