

# **The Uses of Direct Democracy in Hungary**

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## 1. Introduction

Hungary's political system is grounded on the idea of representative democracy. The country has a long tradition of parliamentarism. As it is the case with many other Central- and Eastern-European countries, direct democratic instruments were introduced into the country's political repertoire during the transition from state-socialism to democracy during the "Third wave" (Huntington 1993, 16). It was the party state's parliament which, seeking to enhance the decaying communist system's legitimacy, introduced a bill on referendums and popular initiatives in June 1989, even before the constitutional amendments introducing democracy were enacted in October 1989 and the first free elections were held in March/April 1990 (Pállinger 2012, 113).

Direct democracy, however, is quite alien to Hungarian political traditions and practices. Since their introduction direct democratic instruments caused a problem regarding their adjustment to the predominant representative democracy. The original act on referendum and popular initiative (Act XVII/1989) was not entirely in line with the new democratic institutional setting, and the 50 % participation threshold questioned its practicability. The integration of direct democratic elements into the representative system made numerous clarifications necessary. Therefore, the Constitutional Court (CC) grew into the position of a major actor in shaping Hungarian direct democracy. It helped to clarify procedural ambiguities and its fundamental decisions became guiding principles for the parliamentary law-making.

In 1997 the parliament amended the constitution and the act on referendum and popular initiative, thereby lowering the approval threshold to 25 % and clarifying some procedural questions. In April 2011 the parliament adopted a new constitution (=Fundamental Law [FL]), which restored the 50 % participation threshold, abolished the agenda initiative and the parliament's competence to initiate a nationwide referendum. Finally, the parliament enacted a new act on referendum and popular initiative (Act CCXXXVIII/2013), which implemented the new basic law's provisions and brought further procedural clarification.

The landslide victory of the Fidesz<sup>1</sup> and its ally the KDNP<sup>2</sup> in 2010, which led to a two-thirds majority in parliament, made the enactment of a new constitution possible. The FL was regarded by the winning parties as the completion of Hungary's transition to democracy. Among many other provisions the electoral system was reformed. The size of the parliament

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<sup>1</sup> Fidesz = Fidesz – Magyar Polgári Szövetség (Fidesz – Hungarian Civic Alliance)

<sup>2</sup> KDNP = Kereszténydemokrata Néppárt (Christian Democratic People's Party)

was practically reduced by half from 376 to 199. Although the mixed electoral system was retained, it was altered profoundly: 106 MPs are elected in single constituencies according to the first-past-the-post-system, instead of a two-rounds-voting-system. 93 MPs are elected from a national-list. The electoral reforms reinforced the majoritarian traits of the political system. Because of the two-thirds majority the opposition's room for manoeuvre is curtailed in a political sense. The ruling parties have also hedged their positions institutionally, by installing followers in important administrative and judicial positions. Furthermore, they have also curtailed the CCs independence and competences as well as brought into line the public media. Hungary's opposition and many foreign observers, however, considered the constitutional changes as problematic regarding the quality of the country's democracy (Ágh 2015). Fidesz and KDNP were able to defend their two-thirds majority in 2014, thus consolidating the new constitutional system. Democracy measurements like Freedom House, Bertelsmann Transformation Index, Nations in Transit clearly show a massive decrease in democracy quality. Nation in Transit even classifies Hungary as "Semi-Consolidated Democracy" (NIT 2016, 21).

It is against this background, that the functions of direct democracy and their changes between 1989 and 2008 have to be assessed. In this period six nation-wide referendums on 13 questions were held in Hungary. Since then – under the new provisions – no referendum was held to date. However, between 1 January 2012 and 5 June 2016 328 initiatives were submitted for validation, but in the end only 15 were able to pass this hurdle, but none of those initiatives has collected the necessary signatures yet (Farkas 2016, 23). The paper will proceed as follows: First an overview on the legal framework and the instruments of direct democracy in Hungary will be given, then the development of the practice of direct democracy will be examined. Finally, the system of Hungarian direct democracy will be evaluated and the conclusions will be presented.

## 2. Legal Framework

### 2.1 The Hungarian Conception of Direct Democracy

The Hungarian FL stipulates the principle of popular sovereignty (Art. B, Sect. 2 FL), which "shall be exercised by the people through elected representatives or, in exceptional cases, directly" (Art. B, Sect. 2 FL). This represents a slight shift in comparison with the old constitutional provision, in which representative and direct democracy were on equal footing:

“supreme power is vested in the people, who exercise their sovereign rights directly and through elected representatives” (Act 1949/XX, Sect. 2). The new wording makes it clear that the use of direct democracy should be restricted to exceptional cases, whereas the representative mode of exercising the power should represent the normal case. In accordance with this principle the National Assembly (parliament) is the supreme organ of popular representation (Art. 1, Sect. 1) and possesses the legislative monopoly and budgetary sovereignty (Art. 1, Sect. 2, Lit. a-c FL). These principles are echoed in the new referendum and popular initiative act (Act 2013/CCXXXVIII). Direct citizen involvement is only an exceptional possibility, however, if a citizens’ initiative leads to a successful referendum, the direct exercise of power supersedes the representative. In this case, the parliament falls – according the Constitutional Court – into a purely executive role and has to execute the “popular will” by legislating corresponding measures (Ruling III/1998 of the CC). This conception has two problematic aspects: Firstly, there seems to be a contradiction between the principles of the parliament’s legislative monopoly and the binding character of a successful referendum. This tension is somewhat relaxed in practical terms: Popular votes can only decide factual questions, whereas it is the Parliament’s duty – as it has the monopoly to do so – to enact the corresponding bills. It’s a political obligation – which was always met to date – but can’t be enforced legally (through a ruling of the CC for example). Secondly, the process of popular law-making (popular initiative) and the process of parliamentary/representative law-making are completely separated. The whole procedure – in case of a successful referendum – “is under the influence of the interested citizens” (Ruling III/1998 of the CC). As we will see below, the strict procedural separation prevents a dialogue between the representatives and the civil sphere. The parliament only takes a formal decision on conducting the ballot, by which it schedules the referendum and provides the necessary funding. However, a substantive discussion on the referendum question doesn’t take place. Furthermore, the parliament does neither make a recommendation for the attention of the citizens nor is it allowed to make a counter-proposal. Because of these fundamental decisions on the conceptual level Hungarian is not able to realise the deliberative potential of direct democracy.

## 2.2 Instruments

As Article 8, Section 2 FL states: “National referendums may be held about any matter falling within the functions and powers of the National Assembly.” The constitution provides for

three types of referendums (Art. 8, Sect.). The first is a full scale popular initiative which leads to a referendum. The second is a kind of an agenda initiative, by which the parliament can decide, whether a referendum should be held or not. The third one is plebiscite, which can be initiated either by the government or the president. The constitutional changes of 2011 did not basically alter the instruments of direct democracy. The three above mentioned kinds of referendum typologically unchanged. However, the old “proper” agenda initiative, which existed in the old constitutional setting, was abolished.<sup>3</sup>

1. **Full-scale popular initiative** (Art. 8, Sect. 1, Lit. 1 FL):

200,000 eligible voters can initiate a so-called “national referendum” (országos népszavazás). This kind of referendum aims at deciding a political question or expressing an opinion. The result of a successfully held national referendum is binding for the Parliament (Art. 8, Sect. 4 FL). Contrary to the international usage (which would be “optional referendum”) this instrument is called in Hungarian legal terminology “compulsory referendum.” It is compulsory, because a sufficient number of signatures have been collected so that the parliament has to schedule a referendum (cf. Komáromi 2015, 80).

2. **Popular agenda initiative with a possible referendum** (Art. 8, Sect. 1, Lit. 1 FL):

Based on its own consideration, the Parliament can schedule a “national referendum” upon the initiative by 100,000 eligible voters. This kind of referendum aims at deciding a political question or expressing an opinion. If the referendum is successful the results are binding for the parliament (Art. 8, Sect. 4 FL). In the old constitutional setting the Parliament had to decide in advance – before scheduling the referendum – if the results of a successfully held national referendum were regarded as binding or only as consultative (Act 1949/XX, section 28/C [4]). Hungarian legal terminology doesn’t differentiate between popular agenda initiative with a possible referendum and the plebiscite, both are called “facultative referendum.” They are facultative, because it is the parliament’s own discretionary decision to call for such a referendum.

3. **Plebiscite** (Art. 8, Sect. 1, Lit. 1)

Based on its own consideration, the Parliament can schedule a “national referendum” (országos népszavazás) upon the initiative of the president or the government. This

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<sup>3</sup> According Section 28/D of the old constitution 50,000 eligible voters were able to ask the Parliament to place a subject under its jurisdiction on the agenda. The Parliament was obliged to debate the subject defined by the this kind of initiative. The main goal of this instrument was the involvement of citizens in the representative decision-making process. However, the agenda initiative did not affect the Parliaments’ freedom of decision. It was purely consultative. In Hungarian legal terminology called this agenda initiative “national popular initiative” (cf. Komáromi 2015, 80).

kind of referendum aims at deciding a political question or expressing an opinion. If the referendum is successful the results are binding for the parliament (Art. 8, Sect. 4 FL). Under the old constitutional regulations also one-third of the members of parliament were entitled to initiate a plebiscite (Act 1949/CC, Sect. 28/C [4]).

On the first sight, the subject matter of the initiatives (“any matter falling within the functions and powers of the National Assembly”) seems to be quite comprehensive. However, the FL constricts in a next step the scope of possible subjects, by stating that national referendums may not be held on following subjects (Art. 8, Sect. 3 FL):

- a) “any matter aimed at the amendment of the Fundamental Law;
- b) the contents of the Acts on the central budget, the implementation of the central budget, intcentral taxes, duties, contributions, customs duties or the central conditions for local taxes;
- c) the contents of the Acts on the elections of Members of the National Assembly, local government representatives and mayors, or Members of the European Parliament;
- d) any obligation arising from international treaties;
- e) personal matters and matters concerning the establishment of organisations within the competence of the National Assembly;
- f) the dissolution of the National Assembly;
- g) the dissolution of a representative body;
- h) the declaration of a state of war, state of national crisis or state of emergency, furthermore on the declaration or extension of a state of preventive defence;
- i) any matter related to participation in military operations;
- j) the granting of general pardons.”

The FL and act on referendum and popular initiative have to some extent contributed to the clarification of some open questions. It is clear, that a referendum can be held only on a subject that falls in the competence of the parliament. However, the delineation of this provision is unclear, especially when the parliament delegates some of its competences to the government. The latest jurisprudence seems to interpret this provision very restrictively, meaning that delegated questions are not open for referendum anymore (Komáromi 2014, 5). The ban on constitutional initiatives has been made explicit and absolute. This question was not regulated in the old constitution. The CC, ruled that the constitution could not be changed by popular initiative, however, it was possible that the parliament itself could decide to put single constitutional changes or even a whole new constitution to confirmatory popular vote

(Ruling XXV/1998 (VII. 7.) of the CC). Finally, there is also a slight semantic difference regarding the formulation of the ban of referendums on international treaties. The FL says “any obligation arising from international treaties,” whereas the old constitution was more comprehensive by saying “obligations set forth in valid international treaties and on contents of laws prescribing such obligations” (Act 1949/XX, Sect. 28/C, Lit. c). Supposedly, both formulations are intended to mean the same thing. However, the new formulation could be interpreted to exempt also international treaties, which are not valid yet, therefore internal preparatory steps may also be submitted to referendum (cf. Komáromi 2014, 6). Furthermore, electoral acts are also excluded, and also validity requirements have become more restrictive. Now, there is a 50 % + 1 participation threshold, whereas between 1997 and 2012 there was a 25 % approval quorum. The new provisions represent a return to the original rules, which were in force between 1989 and 1997 (Komáromi 2014, 6).

### 2.3 Procedures

The current system of direct democracy evolved through an interplay of legislative acts and rulings of the CC. A first major step were the constitutional changes of 1997 (Act 1997/XCVIII) and the ensuing act on referendum and popular initiative (Act 1998/III). These steps helped to establish properly the role of the National Election Commission (NEC) and redesigned the procedures regarding citizens’ initiatives. By introducing a preliminary admissibility check before signature gathering the whole process became more rational. This preliminary check helps to avoid that signatures are collected for inadmissible initiatives, which was possible under the old referendum and initiative act (Act XVII/1989).

The present act on referendum and popular initiative (Act 2013/CCXXXVIII), which was enacted after the FL, made a major attempt to unify the material regulation for all direct democratic instruments into one single act (European citizens’ initiative, nationwide and local referendum), however, some procedural regulations stayed in the act on electoral procedure (Act XXXVI/2013). The new act on referendum and popular initiative makes an attempt to reduce the number of “unserious” initiatives by firstly introducing the requirement that 20 citizens have to support with their signature the initiative proposal, before only one person’s signature was required. Secondly, the president of the National Electoral Office (NEO) examines if the proposal is compliant with the legal prerequisites. If the proposal doesn’t meet the requirements, it will be rejected within five days and will not be transferred to the NEC.

There is no appeal against this decision, but the unaltered proposal may be submitted again and must be put on the agenda of the NEC (cf. Komáromi 2014, 7f.).

Another important point, that had to be clarified was the treatment of concurring initiatives, by stating that in case of initiatives dealing with the same subject, the priority is given to the one which was submitted first, the processes has been made unambiguous, avoiding contradicting legislative demands on the parliament (Act XXXVI/2013, Para. 38 [1] and [3]). Seeming logical in theory these provisions became very problematical in practice (see below).

Furthermore, the new act has partially set new time limits and also allows the initiators to withdraw the proposal before the submission of the signatures (Act XXXVI/2013, Para. 20). The president and the government are also allowed to withdraw their proposal “until the day when the holding of the referendum is ordered” (Act XXXVI/2013, Para. 26).

Finally, the system of legal remedy has been reformed. Appeals against decisions of the NEC regarding the validation of initiatives have to be addressed to the Kúria (=administrative court) instead of the CC (Act XXXVI/2013, Para. 29) and the Kúria has to decide the question within 90 days,<sup>4</sup> whereas the CC was not bound by any time restrictions in this field. It is also new that the Kúria may alter the NEC’s decision in its stead. Before the only possibility was to order the NEC to re-decide the question, which in the past could lead to continuous iterations (Act XXXVI/2013, Para. 29). There is still a possibility of appeal to the CC against the parliament’s decision to order a referendum. The CC will only conduct an inquiry if circumstances have changed fundamentally between the validation of the initiative and the ordering of the referendum by the parliament (Komáromi 2014, 9)

The popular initiative process starts with 20 to 30 initiators submitting a specimen of the signature sheet to the NEC for validation.<sup>5</sup> This sheet must contain the exact question to be put on ballot. The NEO carries out the preliminary assessment. The NEC denies validation if the question does not meet the legal requirements (Act XXXVI/2013, Para. 10 [1]). This means, that the question has to be answerable without ambiguity and has to belong into the competence of the Parliament. Furthermore, the question has to comply with the abovementioned constitutional exemption clauses and with other formal prescriptions.

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<sup>4</sup> There is an exception to the 90-days-rule: Review requests against the resolutions of the NEC to reject the initiative in some special cases (“offences”) have to be decided within thirty days (cf. Komáromi 2016, 8).

<sup>5</sup> Referendum questions initiated by the president or the government also have to be validated by the NEC the procedure corresponds to the procedure of the popular initiative.

Initiators, are entitled to submit a complaint against NEC's decision and any other of its decisions during the referendum process before the Kúria.

Before commencing the collection of signatures the initiators have to notify the data protection register of the processing of data (Act XXXVI/2013, Para. 2 [2]). If the question is validated, the NEO provides the necessary number of official signature sheets. The proponents have 120 days to collect the necessary signatures (Act XXXVI/2013, Para. 19 [1]). The NEC has to validate the collected signatures and the observation of the statutory periods within 60 days. Following this, the NEC has to inform the Speaker of the House on the result of the validation. If the proposition meets the legal requirements, i.e. the initiators have gathered at least 100'000 or 200'000 or more signatures the Parliament has to put the question on the agenda within 30 days. In the case of initiative with an optional referendum. The parliament must take a formal decision on conducting the ballot. If 200'000 or more valid signatures are collected, the parliament has no discretionary competences and has to schedule the referendum and provide the necessary funds. If there are between 100'000 and 199'999 valid signatures the parliament can decide whether a referendum will be held or not.<sup>6</sup> The parliament's decision is published in the official bulletin and the President is informed by the Speaker of the House (Act XXXVI/2013, Para. 27 [2]). Following this, the President has 15 days to call for the national ballot within a period between 70 and 90 days. The referendum is valid if more than 50 % of the voters have participated and more than half of them are in favour of the proposition (Art. 8, Para. 4 FL). The results of the referendum are binding for the Parliament. Finally, the provisions of the referendum have to be enacted by the Parliament within 180 days (Act XXXVI/2013, Para. 31 [1]), which means that the Parliament has to pass a bill which implements the content of the popular decision also formally. Furthermore, the outcome of the referendum is binding for the parliament for three years, meaning that there is a ban on legislating on the same matter (Act XXXVI/2013, Para. 31 [2]).

### 3. The Hungarian Practice of Direct Democracy

Since 1989 six national ballots have been held in Hungary, in which twelve questions have been decided. In the following, a short overview will be given in chronological order. The first group of referendums in 1990/89 were transition-related. The second group of referendums 1997 and 2003 were related to the process of European integration. Then, after

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<sup>6</sup> It is possible to file a complaint against the decision of the parliament at the CC, which has to decide the question within 30 days.

the EU accession Hungary seemed to sail in the calm waters of a consolidated democracy. In this period there were two referendums. But this calm turned out to be delusional. From 2006 on until the landslide victory of Fidesz in 2010 the conflicts intensified and the referendums of 2008 were instrumental in the struggle for power. Since 2008 there were no nation-wide ballots. The political elite seems to be successful in preventing popular initiatives. This is either achieved by manipulation or by substituting “genuine” direct democracy by pseudo-democratic instruments like National Consultations. The plebiscite on migrant quota, which will be held on 2 October 2016 is the culmination to date of the new trajectory of Hungarian democracy.

### 3.1 Transition-related initiatives and referendums in 1989/90<sup>7</sup>

The first two nation-wide ballots ever held in Hungary were related to the democratic transition. The ruling socialists reached an agreement with the members of the opposition at the round-table negotiations in September 1989. This agreement laid the foundations for the new democracy. It had to be implemented by the Parliament, which did so by passing the so called “pillar laws,” in order to pave a constitutional and peaceful way for the democratic transition. Two opposition parties, SzDSz<sup>8</sup> and Fidesz, wished more radical changes. They aimed at dismantling the MSZP’s<sup>9</sup> instruments of power<sup>10</sup> in order to assure peaceful transition. Furthermore, they also wanted the state party to render an account on its belongings. Finally, they also asked to postpone the presidential elections after the general elections. These two parties began to collect signatures in order to enforce a referendum on the above mentioned questions, and they succeeded in mobilising mass support and gathering the necessary signatures. Therefore, the Parliament was obliged to call a referendum (Decision 25/1989 of the Parliament). The MSZP was ready to discuss the first two questions, and, in fact, the Parliament implemented the requested measures at the beginning of November 1989, rendering these initiatives unnecessary. But there were no legal means to withdraw the obsolete proposals. The presidential elections and the disclosure of the MSZP’s accounts, however, remained a stumbling block.

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<sup>7</sup> The overview on referendum practice between 1989 and 2009 is based upon Pállinger (2012).

<sup>8</sup> SZDSZ = Szabad Demokraták Szövetsége (Alliance of Free Democrats).

<sup>9</sup> MSZP = Magyar Szocialista Párt (Hungarian Socialist Party).

<sup>10</sup> The Opposition parties wanted to end the state party’s presence at workplaces and also demanded the dissolution of the “Worker’s Guard.”

The referendum campaign helped the SZDSZ and the Fidesz to raise their popularity vis-à-vis the socialists and also vis-à-vis the more moderate opposition groups. The breach of the primordial agreement made clear that the radical opposition was pursuing a long-term strategy to enhance its standing with regard to the coming general elections. This, in turn, deepened the rift between the political actors; they started to distrust each other. The referendum was held on 29 November 1989. The socialists were defeated with a minimal margin regarding the most important question (presidential election). This frustrated their attempts at retaining at least some of their power (cf. Babus 1990).

After the general elections in the spring of 1990 the former opposition came into power and the MSZP was marginalized. They in turn tried, to strengthen their position and called for a referendum on the question whether the President should be elected directly by the citizens. They succeeded in gathering the necessary signatures and the Parliament had to schedule the ballot (Decision 56/1990 of the National Assembly). The MSZP wanted the ballot to take place at the same date as the election of the local self-government bodies in September 1990, which would have ensured that the participation level would meet the threshold. Since the proposal was quite popular, the two biggest parties feared to be defeated. Therefore, they scheduled the ballot in the midst of the summer vacations. It came not as a big surprise that the referendum failed on 29 July 1990, because of the low participation. With these two ballots, the immediate phase of transition was concluded and the phase of democratic consolidation began.

### 3.2 The Process of European Integration

The referendum on NATO accession in 1997 was initiated by the Parliament (Decision 86/1997 of the Parliament). The referendum on EU accession in 2003, was prescribed by the constitution (Act 1949/XX section 79). Using Smith's (1976) terminology, both of these referendums were controlled by the government and had pro-hegemonic results. Considering the traditionally low level of political participation in Hungary (Tardos 2009), the Parliament even changed the "rules of the game" for the 1997 referendum by lowering the participation threshold (Act 1997/XCVIII) in order to guarantee the positive outcome (Dieringer 2009). The Parliament also changed the constitution in 2002 (Act 2002/LXI) in order to make a popular vote on EU-accession possible (Arató 2004). In both cases the political elite could be sure of the popular support. These foreign-policy related referendums were rather symbolic and they served the purpose of legitimising Hungary's western integration.

### 3.3 Referendums in a Consolidated Democracy

The 2004 ballots are an example triggered by popular initiatives and were searching to achieve narrowly defined, concrete goals. The extra-parliamentary, oppositional MP<sup>11</sup> started a successful collection of signatures for initiating a referendum in the autumn 2003, which aimed at cancelling privatisation in health care. In December 2003 the CC declared the concerned law unconstitutional, but the popular vote had to be held nevertheless (Decision 82/2004 of the Parliament). However, due to these legal struggles it only could be scheduled for 5 December 2004. Due to this a rift within the big parties and the saliency of the other referendum the campaign was not very disruptive. Opinion surveys show that the citizens' decisions were motivated by individual attitudes and assessments rather than by party-based ideological positions (Karácsony 2009).

Meanwhile in the spring of 2004, the World Federation of Hungarians started a successful collection of signatures for a referendum which aimed at granting, under certain conditions, Hungarian citizenship to ethnic Hungarians living abroad. The referendum was also scheduled for 5 December 2004 (Decision 46/2004 of the Parliament). The question took up the Hungarian national trauma of Trianon: After the World War I Hungary had lost great parts of its territory and about one-third of its population. Substantive parts of ethnic Hungarians are living outside the "mother-country". The settlement of the relation between the Hungarians living in Hungary and the ones living abroad has always been a delicate question for every government, with many symbolic references. In general, the conservative parties have a more supportive stance towards this question than the liberal and left-wing parties. Knowing the symbolic value of this question, the governing MSZP kept a relatively low profile during the referendum campaign. The conservative Fidesz, however, was very supportive of the proposition. This campaign was much more ideologically charged and intense than the other. Even organisations of Hungarians living abroad interfered in the discussion. Like in the other question, voters' decisions were more influenced by individual attitudes and assessments than by ideological, party positions (Karácsony 2009).

The two questions, apparently, were not able to mobilise the masses as both referendums failed because of the participation threshold. The situation calmed down after the ballot. Parties did not want to push the question of health care privatization, the topic was too risky for each side. The question of granting citizenship to ethnic Hungarians living abroad, however, remained on the political agenda. This topic became the focal point of newly

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<sup>11</sup> MP = Munkáspárt (Workers' Party).

emerging organisations on the extreme-right and was only resolved after the general elections 2010, when the ruling MSZP was ousted from government by the Fidesz.

#### 3.4. Deconsolidation and the Struggle for power

Hungary's political life has become more and more polarized during the second half of the last decade. The MSZP was able to win the elections of 2002 and 2006. Both sides made promises during the election campaign of 2006, which were impossible to keep. After the election, it became clear that the country's financial situation was worse than anyone had expected. The government was forced to cut down state spending. It tried to combine retrenchment with economic and administrative modernisation. National health care and tertiary education stood, among others, at the top of the government's reform agenda. The reform measures that were announced from June 2006 onwards rapidly eroded the government's popularity. During the campaign for the regional elections in autumn a non-public speech of Prime Minister Ferenc Gyurcsány delivered in May to the members of the socialist Parliamentary group, was leaked to the media and made publicly known in September 2006. The Prime Minister admitted that in order to win the elections his government had lied to the public about the state of the country during the last one and a half years (Szoboszlai 2009). The reaction was immediate and strong. The conservatives and the extreme right started protests and riots at Parliament's Square. Even the President asked Gyurcsány indirectly to step down at the evening of the regional elections on 1 October 2006. The next day Prime Minister Gyurcsány announced that he will ask for a vote of confidence against himself. Opposition leader Victor Orbán dismissed this proposal the same day and issued an ultimatum to the socialist Parliamentary group to dismiss Gyurcsány and to start negotiations with the opposition about the instalment of an expert cabinet within the next three days. If these demands were not met, he threatened, the opposition would call for mass demonstrations. On 6 October the Parliament expressed its confidence in the Prime Minister. This led to new protests until 23 October 2006.

Due to the solid parliamentary majority, the government did not step down. Recognizing the futility of its endeavours, the opposition nevertheless sought to retain the momentum. In this situation the idea to overthrow the government by referendum came up. Opposition leader Orbán declared on 23 October 2006 that a referendum against the government's austerity

measures would be “the last remaining democratic instrument” to oust the government (Bartafai et al. 2009). With recourse to referendum the Fidesz aimed at directing the protests into constitutional channels and at sustaining the pressure on the government.

On 24 October 2006 the Fidesz together with their allies, the KDNP, deposited seven referendum proposals at the NEC for validation. The proposed questions were carefully chosen. They covered a wide range of interest groups that were affected by the government’s austerity measures. The NEC validated three questions (2, 4, 6), the rest were rejected (Szoboszlai 2009, 254). The Constitutional CC approved the NEC’s ruling concerning two questions (5, 7) and instructed the NEC to reassess the other questions. The proponents deposited one question without modification (1), one question was modified (2), and also a new question concerning abolition of daily hospital fees in in-patient care (8). The NEC rejected all three questions in March/April 2007. The court, however, sent back all three questions to the NEC for re-evaluation. The core conflict laid between the court and the NEC in the question how to interpret the list of excluded issues in the constitution. The court issued a communiqué in which it declared that not only its rulings, but also its considerations were binding. This was an unprecedented act which concretely meant that the court instructed, without being authorized to do so, the NEC to follow the court’s more referendum friendly interpretation. In On 25 June 2007 the NEC complied with the CC’s guidelines and validated the three questions, but upheld its opinion that three questions would fall under the forbidden topics (Ruling 154/2007 of the National Election Committee).

The opposition parties had no problems collecting the necessary signatures. Consequently, the Parliament took the necessary decisions (Decisions 109-111/2007 of the Parliament), and the referendum was scheduled for 9 March 2008. Against the background of the very unpopular austerity measures the public opinion was very favourable for the three referendums. The government tried to defend its measures rationally, but the opposition could appeal to the people’s self-interest, and they also tried to make the referendum a judgement on the government’s policies (Karácsony 2009). It was thus no wonder that the opposition could celebrate a triumph at the ballot box. All three fees were abolished immediately after the referendum. But there were also indirect consequences: The governing coalition fell apart, and the MSZP had to form a minority government. The referendum also helped the opposition to retain momentum until the next general elections in 2010, in which they gained a landslide victory.

### 3.5 Colonialization of Direct Democracy

During the referendum campaign of 2008 the parties, and to a lesser degree also civic movements, re-discovered the referendum as a political tool. Both government and opposition submitted deposited dozens of referendum questions at the NEC (Szoboszlai 2009). The referendum threat became part of the political “game.” Ultimately, this weapon has not been used, because its constant use would have diminished its influence, and also because it is a very costly instrument. Furthermore, it could also contribute to weaken the political parties’ power cartel, a risk they, evidently, were not willing to accept.

#### Prevented referendums

The referendum struggle between 2006 and 2008 encouraged other groups to try to launch a referendum. Only two of these initiatives met all the formal criteria. They were scheduled for ballot, but the ballot finally was prevented by the elite’s manoeuvres. Mr and Ms Albert, a Hungarian couple, initiated a referendum for preserving the unitary health insurance system. This initiative also aimed against the government’s plans to allow private investment in the health -care sector. The Parliament decided on 9 June 2008 to call a referendum (Decision 76/2008 of the Parliament). However, the Parliament had already cancelled the health-care reforms in May. The Parliament was thus not obliged to call for referendum because the subject matter of the referendum had ceased to exist. The Parliament did not, however, want to take the blame for an action which would have potentially contradicted the people’s will. Some private persons appealed to the CC which annulled the Parliament’s decision and instructed it to re-decide the case (Ruling 130/2008 of the Constitutional Court). Therefore, the Parliament had to cancel the referendum on 19 November (Decision 118/2008 of the Parliament).

In the context of the abolition of fees referendum campaign, Mrs. Mária Seres made an initiative according to which MP’s expenses would only be refunded if proved by an official invoice. This initiative, directed against politician’s privileges, was very popular. She was able to gather approximately 600’000 signatures. On 17 April 2009 the Parliament had to call for referendum (Decision 28/2009 of the Parliament). It was clear that such a proposal would influence very directly the MPs financial situation. Therefore, the Parliament, displaying a rare show of unanimity, decided on 29 June to modify the law on the MP’s expenses (Act 2009/LXV). These modifications went formally in the same direction as the initiative, but

were merely semantic with regard to the substance. Most of the expenses were transformed into regular wage elements and the amount of payments stayed roughly the same. Some private persons appealed to the CC against the Parliament's decision to call a referendum. On 15 July 2009 the CC annulled the Parliament's decision and instructed it to re-decide the case, because the subject-matter of the referendum had substantially changed (Ruling 82/2009 of the CC). Following this the Parliament cancelled the referendum (Decision 72/2009 of the Parliament).

The last example of a prevented referendum concerns the question of shop opening hours. In autumn 2014 the government decided to introduce a tax on data traffic (internet tax). This led to major protests against the government. The government withdrew the proposal, but the small coalition partner KDNP seized the opportunity of the temporary weakness of Fidesz to extort the big coalition partner to impose a ban on Sunday sales (Act 2014/CII). This measure was very unpopular and incited different opposition groups to formulate popular initiatives to lift the ban. In this context civil groups and opposition parties attempted to find a number of possible initiative proposals, which could serve as common platform for the opposition. Ultimately these attempts turned out to be unsuccessful, but it also became clear that the question of the ban on Sunday sales had a great potential. In the following months a strange race between supporters and opponents of the ban took place. The supporters of the ban took advantage of the ban on concurring initiatives (Act XXXVI/2013, Para. 38), during the Kúria's proceedings it was not possible to submit a new question for validation during 90 days. They started to submit apparently inadmissible proposals thereby blocking the opponent's initiative. Due to the formalistic practice of the NEC, this approach proved very successful.

The possibility of submission of the question became open at the moment, the Kúria's decision was put on-line on its homepage. From this moment on it was possible to submit new proposals personally at the NEO's office and their chronological order was determined by a time clock. Persons and organisations supporting the ban were successful to pre-empt opponents sometimes by seconds. Supposedly, there was also foul-play going on. Representatives of the MSZP were waiting in front of the NEO's office, permanently checking Kúria's website, when suddenly they had to step aside from the door because some suppliers made a delivery. Just in this moment a person slipped into the office building and was able to submit a proposal before the MSZP, thereby blocking the topic again. It's not necessary to go into the details, these examples are just illustrative of the situation.

This “game” went on from spring 2015 until 23 February 2016, when MP István Nyakó, acting as a private person, was prevented by some bald strongmen, which were standing and shuffling around him, to submit his proposal. Instead the strongmen helped an old lady, Erdösi Lászlóné, (the wife of a former Fidesz deputy mayor) to submit her proposal first. These tumultuous scenes were made public in the (social) media and stirred a storm of indignation. The NEC validated her proposal (Decision 16/2016 of the NEC) with the majority of members delegated by the governing parties. It saw no problem in the fact that Mr. Nyakó was impeded by strongmen<sup>12</sup> in front of the office building of the NEO. Furthermore, it validated the question, although it should have been dismissed on formal grounds, because the it didn't comply with the requirement of unambiguity.<sup>13</sup> This was widely seen as a political decision by the NEC. The Kúria annuled on April 6 the NEC's decision to validate the question of Erdösi Lászlóné, because she was only able to submit first, because of the help of the strongmen. Thus the question of István Nyakó had to be considered as been correctly submitted and was therefore validated (Decision III.37.223/2016/2 of the Kúria). This decision opened the possibility for signature collection on a topic that was very popular. The government reacted fast and revoked the ban on Sunday sales on 12 April 2016 (Act 2016/XXIII), thereby preventing a potentially successful and therefore threatening campaign by the opposition. Another result was, that the act on referendum and popular initiative was later modified, reforming the impracticable prescriptions on concurring proposals (Act 2016/XLVIII).

#### Further developments

Between 2008 and 2016 no referendum was held. From 2010 on the governing parties had a two-thirds majority in parliament, which allowed them to enact a new constitution and profoundly alter the political system. The opposition was not able to halt the governing parties. In such a situation initiatives could have been an instrument to influence the government's policy, but – as mentioned above – no successful initiative was launched. However, between 2012 and 5 June 2016 328 question have been submitted for validation to the NEC. 79 % of these questions were proposed by private persons, 16 % by parties and 5 % by other organisations. Only 15 were validated, 313 were rejected. Most of the questions were

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<sup>12</sup> It later turned out, that these man are connected to a vice president of Fidesz and is also the owner of a major league football club. The strongmen are associated to the football club.

<sup>13</sup> „Do you agree, that retail shops – in accordance with the act on banning Sunday sales in the retail sector (Act 2014/CII) – should stay closed on Sunday?”

rejected on grounds of ambiguity (62 %), formal errors (48 %), bona fides/proper use (16 %) and competence of the parliament (12 %) (Farkas 2016, 111).<sup>14</sup> Two things can be stated: First, that the NEC's (and also the CC's) reasoning is very formalistic and has a negative attitude towards popular participation. Especially the no-ambiguity-rule is interpreted in a very narrow sense. Second, the opposition is disunited and not is able organise effective anti-government campaigns.

Since 2010 the governing parties are permanently campaigning. They are seeking to mobilize support in their favour. In 2010 they created a new instrument the so called National Consultation (Csink 2015). Basically, the citizens are invited to express their opinion via a questionnaire on a topic chosen by the government. The answers are evaluated by the administration and made public. To date there have been five National Consultations on 1) questions regarding pensions, in which only retired persons were consulted (2010), 2) guiding principles of the new constitution (2011), 3) social questions, 4) economic questions (2012) and 5) questions regarding "immigration and terrorism" (2015). These consultations are highly controversial: The questions are manipulative and it is not clear, how the questionnaires are analysed. Furthermore, the costs of the National Consultations have to be paid for by the taxpayers. Whereas the governing parties stress their will to take into account people's opinions, the opposition criticises the National Consultation of being populist measures of propaganda.

On 24 February 2016 Prime Minister Viktor Orbán announced that the government will initiate a referendum on whether to accept mandatory EU quotas for relocating migrants. The concrete question will be: „Do you want the European Union to prescribe the settlement of non-Hungarian citizens into Hungary without the approval of the Hungarian Parliament?“ (NEC 2016). The NEC validated the proposal 29 February 2016 (Decision 14/2016 of the NEC). The validation was problematic because it was seemingly in conflict with the FL prescriptions on the national referendum. First, it is not clear if decisions made in the European Council or the Council of the European Union fall in the competence of the government or the parliament (Art. 8, Section 2 FL). Second, if the decision Council of the European Union is valid it could fall under the ban of initiatives in the field of international treaties (Art. 8, Sect. 3, Lit. d FL). Third, it is unclear which quota are concerned (the already decided or the future ones, therefore the non-ambiguity-clause might be violated (Act

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<sup>14</sup> Most questions were rejected with more than one justification, that's why the sum ads up to more than 100 % (Farkas 2016, 24).

XXXVI/2013, Para. 10 [1]). Notwithstanding, these concerns the Kúria confirmed the decision of the NEC (Decision IV.37.222/2016/9 of the Kúria), stating that the proposal met all the legal requirements. In the opinion of the author, this decision changed the existing practise to interpret the no-ambiguity-clause very narrowly. The parliament decided to order a referendum on 10 May 2016 (Decision H/10611 of the National Assembly). Both, the decision of the Kúria and of the parliament were challenged at CC, but the court dismissed the appeals (Decision 3130/2016. (VI. 29) and Decision 12/2016. (VI. 22.) of the CC). Therefore, the President scheduled on 5 July a nation-wide referendum for 2 October 2016. The government already started a so called information campaign. This campaign is very biased, it serves to strengthen Orbán's position within the EU, to deflect from political problems (corruption, health care etc.) and to generate public support for the government.

#### 4. Conclusions

Hungary's experiences with direct democracy date back to 1989. In the last 27 years the importance and the practice of direct democracy have changed. The experiences in the transition period were ambivalent. Although the first referendum has helped to dismantle the socialist regime completely, it was also the beginning of the conflict between the democratic forces, which lasts until to date. The second referendum was a clear sign, that there was a consensus within the political elite to condone direct democracy. The third and fourth referendum aimed at confirming the country's new foreign political orientation. Although they legitimized the new orientation, they were only valid because the threshold had been lowered. The fifth referendum was invalid because of the low voter turnout. The situation changed in 2008, when the sixth referendum campaign was used as an instrument in the struggle for power. The concrete questions were not significant. Direct democracy was used to pressure the government, because the opposition had no other means against the parliamentary majority of the government. The seventh referendum will be plebiscite to strengthen the government internally and externally. There would be no need to call for this plebiscite, but the government uses this instrument on the one hand in a populist way to gather support and to deflect from internal problems. On the other hand this plebiscite is also used as tool in a foreign political two-level game in order to gain more leverage for the bargaining process within the EU.

Thus, it can be stated that Hungarian direct democratic instruments are somewhat difficult to classify. They may either be pro- or anti-hegemonic. The full-scale popular initiative is – on a

theoretical level – not-controlled, whereas the popular agenda initiative and the plebiscite are controlled by the elite (Smith 1976). These instruments may be used either to promote or to control decisions (Uleri 1996, 10f.)

Therefore, the function of the referendum within the Hungarian political system is somewhat unclear. It is by no mean insignificant – important decisions have been decided by referendum, but it struggles with two major conceptional flaws. Hungary’s political system is simultaneously extremely majoritarian (these tendency has been reinforced with the new FL) and predominantly representative. This constellation prevents the development of a political space, in which questions can be discussed without reference to party politics. Furthermore, the government consciously pursues politics based on a friend-enemy scheme, in order to polarize society. In such an environment referendum campaigns may become disruptive. Finally, the dominance of the representative principle in Hungarian politics induces the political elite to try to condone direct democracy. It is illustrative, that the state doesn’t provide any support for citizens wishing to initiate referendum. The conceptional and practical flaws lead to a situation in which the interaction of the representative system with direct democracy is very limited.

It is difficult to fit in direct democratic instruments, which are anti-hegemonic and are not controlled by government, into a predominantly representative and extremely majoritarian system. In a way (especially the ruling) parties have reacted to this situation. Nowadays, direct democracy is primarily used (and controlled) by the (ruling) political elite as a tool to mobilise its supporters and gaining additional legitimation/empowerment (Rahat 2009, 102) in domestic politics as well as in foreign affairs. The current state of affairs facilitates the colonialization of direct democracy by the representative system and the political elite. Therefore, it can be concluded that the potential of direct democracy in Hungary is very limited. In extreme cases it can function as a safety valve, but under “normal” circumstances it is controlled by the political elite and its deliberative potential is not realised at all.

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