Limits and Potentials of Direct Democracy in Hungary

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1. Introduction

In recent years there is an ongoing debate whether democracy is in crisis or not (Merkel 2015). However, the notion of ‘crisis’ can be questioned. As Schmitter points out, democracy is under constant pressure to adopt to new circumstances, but he also insists that “[d]emocracy will definitely survive, but only by changing (Schmitter 2015, 32f.).” Whereas the different challenges in different spheres of democracy (partial regimes), do not add up to a crisis about to deconsolidate well established democracies (Merkel 2014, 23), the situation in Central Eastern Europe seems more serious. Coman and Tomini bluntly state that democracy in the region is in a crisis, which generally can be characterised by abuses of power, attempts to break the constraints of checks and balances and to centralise executive power (Coman/Tomini 2014, 855). This tendency goes hand in hand with the intensification of nationalist and populist politics (Ágh 2015, 6). Even within this trend Hungary seems to represent a special case: “The case of Hungary remains the most puzzling. While it was set as a model of democratic consolidation in the EU’s post-communist space, it also experienced the most severe challenges to democratic institutions that have taken place in the region since the end of communism (Herman 2016, 258).” This tendency is also reflected in several most commonly used democracy rankings.¹ Summing up in the words of Ágh: The ‘chaotic democracy’, which existed in Hungary until 2010, degraded into a Potemkin façade democracy and went even further down to an electoral autocracy after the elections of 2014 (Ágh 2015, 17f.).

Hungary’s new democratic system established after 1989 was influenced by the negotiated transition. Fearing that the State party could prevail in free elections, the opposition side insisted on institutional guarantees for securing democratic transition, therefore strong power-sharing elements like a mixed-member electoral system, a strong Constitutional Court (CC), the requirement of a 2/3 majority for constitutional changes and important acts (cardinal laws) etc. were included in the new constitutional system. However, the party system evolved in the direction of a two-party system and the competition between the two main party blocks became more intense and divisive, and

Körössényi, Tóth and Török (2003) concluded that after almost two decades the institutions of consensus democracy, like the parliament, the CC, the independent National Bank and interest groups became weaker against the executive. In 2010 the Fidesz Party (Fidesz – Magyar Polgári Szövetség; Fidesz – Hungarian Civic Alliance) and its ally the Christian Democratic People’s Party (Keresztény Demokrata Néppárt – KDNP) won a landslide victory in the elections, giving them a 2/3 majority in the parliament. Because of the near collapse of the former ruling parties, the former two-party system became a dominant-party system. The majority enabled the Fidesz-led government to pass a new constitution (Fundamental Law, FL), without being dependent on the support of any opposition party. The FL was criticised for undermining the rule of law, the separation of powers, and thereby also democracy itself (Schepele 2013), however Orbán argued that with the electoral victory of 2010 his government got a mandate to complete the transition and to lay the foundations of a consolidated democratic system. He describes this new system his government is building with the term “illiberal democracy” (Orbán 2014). On the institutional level the majoritarian elements of the system have been reinforced against the consensual ones. Checks and balances have been weakened, independent institutions like the CC, the National Bank etc. were filled with loyal party supporters, the position of the executive and especially of the prime minister were strengthened, and also the electoral law became more majoritarian and more disproportionate. The Fidesz-led government is very conscious of its power and willing to utilise it without compromising in order to reform the society according to its own vision. According to Antal Hungarian Politics can be characterised by strong populist tendencies: “Before 2010 the populist forces were opposition parties and the post-2010 period is the era of governing populism in Hungary (Antal 2017, 5).” While the populist forces tend to monopolise political representation by excluding certain groups from politics, this variety of populism leads to repoliticisation of all the segments of Hungarian society (Antal 2017, 6).

Under such circumstances the room for manoeuvre of the opposition parties is narrowly limited. The parliamentary way for pursuing their agenda is barred due to the current majority structure. Because the governing parties are also dominant in the media, the opposition has to turn to alternative means of politics. As Hungary disposes of instruments of direct democracy since 1989, the use of referendums could be an appropriate tool for opposition parties. One would assume that the frequency of use of referendums has accelerated since 2010, but quite the contrary is true. Between 2010 and 2017 only one referendum was held which moreover was initiated by the government.

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2 While the Fidesz-KDNP coalition won 53 % of the list votes in 2010, giving them 68 % of the seats in parliament, they won 45 % of the list votes and obtained a 2/3 majority again in 2014.
The aim of this paper is to explore potentials and limits of direct democracy in Hungary, by answering the question what determines the use of direct-democratic instruments, and why the opposition does not more often resort to this instrument.

Starting with the assumption that modern polities exhibit a fundamentally representative foundation of political power, direct democracy is seen as complementary institutional device, which performs specific functions for the (representative) system (Marxer/Pállinger 2007). In this understanding direct democracy is a dependent variable of the type of democracy. When the latter changes, the functions and usage of direct democracy will change accordingly. Once the status of direct democracy as a part of the representative system has been cleared, it’s potential can be assessed. Hereby, the basic idea is, that the potential of direct democracy depends on the institutionally defined space of possibilities and the political practise. By strongly emphasising the practise, this approach somewhat differs Altman’s who calculates the potential of direct democracy on a strictly institutional basis, which combines the institutional openness and consequentiality of mechanisms of direct democracy (Altman 2015, 8f.).

The initial question will be answered in four steps. First, the status and functions of direct democracy within the political system will be clarified on a theoretical level. This section provides the theoretical framework for the following analysis. Second, the conceptual evolution of the Hungarian system and the instruments of direct democracy will be presented. As Hungary was democratising direct democracy was newly incorporated in the country’s political repertory. So, it had to be adjusted to and fine-tuned to the representative system. This process was completed by and large by 1997. The next step was 2012, when the new FL came into force, which brought about the breakthrough of majoritarian democracy. Direct democracy being the dependent variable, we can expect that the changes in the type of democracy will be reflected in the adjustment of the conception of direct-democracy and the instruments as well. Third, the Hungarian practice of direct democracy will be examined. The reconstruction of the individual referendums allows to identify the interplay between the strategies of the political actors and the institutional framework, and will answer the question of the limits and potentials of Hungarian direct democracy under the conditions of illiberal democracy. Fourth and finally, the findings will be summarised and the conclusions will be drawn.
2. Direct and Representative Democracy

Direct democracy can be defined as “a legal arrangement which gives citizens the right to be directly involved in the political decision-making process (IDEA 2008).” This means specifically that citizens are allowed to raise issues on the political agenda or decide some factual issues by vote, without the mediation of a parliamentary actor.

Although the usage of direct democratic instruments quadrupled during the 20th century, they have not supplanted representative instruments anywhere, but only complemented them (Altman 2011). In order to ensure the smooth functioning of the political system, the direct-democratic instruments have to be well designed and optimally attuned to the representative system. Rules of procedure and participation are meant to set out which issue areas can be subject to initiative and referendum, determine formal admission criteria, specify who may launch an initiative, regulate relations with representative institutions, and determine how the decision are taken and enacted. They also specify bodies which may be required to carry out checks and balances and deal with complaints and appeals. The function of these rules is to ensure the formal compatibility of the direct-democratic instruments with the political process and the legal system (Marxer/Pällinger 2007). Contrary to the commonly held belief that direct democracy weakens party rule per se, Hornig has demonstrated that political parties have in general adjusted their strategies, using direct democracy as a tool in the political competition. Thus direct democracy is on the average not an instrument of breaking the dominance of the political parties, but rather tends to reproduce their relative strength (Hornig 2011, 323).

Direct-democratic instruments can display contradictory effects according to their design. Smith proposes a typology which differentiates direct-democratic instruments according the degree of control exercised by political authorities upon the whole procedure and their effects on the position of the government. According to Smith there is a continuum between the poles from “controlled” to “uncontrolled”. The outcome of the referendum may be supportive or detrimental to government’s positions (pro- or anti-hegemonic) (Smith 1976, 6).

Direct-democratic instruments may be further differentiated according to Jung regarding the competence to trigger the procedure, the competence to define the subject of the referendum question, the character of decision (decisive or approving), and the procedural rules (counting rules, existence of quorums etc.) (Jung 2001, 90). Instruments that are triggered by a political majority and decided by a simple majority of votes tend to have majoritarian effects, whereas instruments triggered by a political minority and decided by qualified majorities (i.e. qualified quorums) tend to display consensual effects.
According to Morel governments initiate referendums 1) to strengthen their position, 2) to solve intra-party or intra-coalition disputes, 3) to push through legislative projects against the resistance of the majority, 4) in order to preempt topics from being used in the election campaign and 5) for the legitimisation of important political questions (Morel, 2007, 1054). Opposition parties on the other side initiate referendums 1) to push through legislative projects against the resistance of the majority, 2) to enhance their chances in the next elections, 3) to delay unwanted government initiatives and 4) to take on an issue (Vospernik 2014, 130). In this context one also has to mention that governing as well as opposition parties can use referendums for the mobilisation of their supporters. Based on these findings Vospernik takes – like Jung – the analysis a step further linking direct democracy to the consensus – majoritarian typology of Lijphart (Vospernik 2014). For him the main differentiating factor regarding direct-democratic instruments is the authorship (who can trigger a direct-democratic procedure?) and their effectiveness (does the referendum lead to the result the author expected?). Taking only decisive referendums into account, he distinguishes between governmental, oppositional and obligatory processes of direct democracy which can be effective or not. Thus the impact of the direct-democratic instrument is dependent on the interrelation of authorship and effectiveness (Vospernik 2014, 117-136). Government-initiated referendums are consensus-oriented, when ineffective, i.e. when the government loses. They are majoritarian, when they are effective, i.e. when the government wins. Opposition-initiated referendums are consensus-oriented, when effective, which means that the opposition wins the referendum or the following election. They are majoritarian if they are ineffective, which means that opposition parties permanently loose referendums. Finally, obligatory referendums display consensual effects, when opposition parties are included in the decision-making process or if the government decides single-handedly and is beaten. However, if the government wins a referendum that it has triggered without including the opposition the obligatory referendum displays majoritarian effects (Vospernik 2014, 136). Based on this arguments Vospernik postulates that on the one hand governmental direct democracy has an affinity for majoritarian democracy and that an intense oppositional direct democracy is not compatible with majoritarian democracy, therefore direct-democratic instruments are only used rarely in majoritarian democracies. On the other hand oppositional direct democracy has an affinity for consensus democracy. But in the case of one-party cabinets the use of direct democracy tends to be strongly oppositional (Vospernik 2014, 669ff.)

Furthermore, one has to consider that the effects of direct democracy also depend on the frequency of use of the given instruments and their attunement with the representative procedures. It is clear that direct democracy has its most profound effects in countries in which these instruments are applied as a routine procedure and form an integral part of the political System (Marxer/Pällinger 2009, 40ff.).
The variables of Smith about the degree of control (controlled – uncontrolled) and outcome (pro- and anti-hegemonic) correspond to Vospernik’s variables of authorship (government – opposition) and effectiveness (effective and ineffective), therefore they will be used synonymously in the following analysis. In line with the above considerations the Hungarian practice will be examined according the triad authorship – effectiveness – impact.

3. The Hungarian Conception of Direct Democracy

As it is the case with many other Central- and Eastern-European countries, direct democratic instruments were introduced into the country’s political repertory during the transition from state-socialism to democracy. 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 (Pällinger 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 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 the new 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 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.
The new wording makes it clear that the use of direct democracy should be restricted to exceptional cases; the representative mode of exercising power should be the norm. 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). 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 52/1997 (XI. 14) 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 is a political obligation – which has always been met to date – but can’t be enforced legally. Secondly, the process of popular law-making (popular initiative) and the process of parliamentary/representative law-making are completely separated. The whole procedure – in the case of a successful referendum – “is under the influence of the interested citizens” (Ruling 52/1997 (XI. 14,) of the CC). 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 is permitted neither 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, Hungary is not able to realise the deliberative potential of direct democracy.

3.1 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. 1 FL). The first is a full scale popular initiative that 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 were typologically unchanged. However, the old “proper” agenda initiative, which existed in the old constitutional setting, was abolished.
Full-scale popular initiative (Art. 8, Sect. 1 FL): 200,000 eligible voters can initiate a so-called “national referendum”. 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). In Hungarian legal terminology this instrument is called “compulsory referendum.” It is compulsory because a sufficient number of signatures have to be collected so that the parliament must schedule a referendum (cf. Komáromi 2015, 80). Now, there is a 50% + 1 participation threshold, whereas between 1997 and 2012 there was a 25% + 1 approval quorum. The new provisions represent a return to the original rules, which were in force between 1989 and 1997 (Komáromi 2014, 6). The triggering of this instrument is not controlled and its effects can be either pro- or anti-hegemonic. Typically this instrument would be used by oppositional parties either to push their agenda through against the will of the government or to veto governmental propositions.

Popular agenda initiative with a possible referendum (Art. 8, Sect. 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 to be regarded as binding or only as consultative (Act 1949/XX, section 28/C [4]). Hungarian legal terminology does not 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. The abovementioned participation threshold is also applied to this instrument. Because the triggering depends on the parliaments discretion this instrument can be classified as controlled. It is very unlikely that the governing majority would call for a referendum if the proposition is put forward by opposition groups. However, it is conceivable that the governing majority might call for a referendum which is initiated by its supporters, but was not able to gather the necessary 200,000 signatures for the full-scale initiative. This provision opens up a possibility for the governing elite of arena switching in order to mobilise their supporters. However, there is risk by applying this instrument, because its effects cannot be controlled in advance and they may be either pro- or anti-hegemonic.

Plebiscite (Art. 8, Sect. 1, FL): Based on its own consideration, the parliament can schedule a “national referendum” upon the initiative of the president or the government. 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). Under the old constitutional regulations, a vote of one-third of the members of parliament were also entitled to initiate a plebiscite (Act 1949/CC, Sect. 28/C [4]). This instrument is controlled, but also fraught with risk.
According to the majoritarian logic of Hungarian parliamentarianism, this instrument is government-controlled, however, there is also a risk, because it is not possible to control its effects in advance, which may either be pro- or anti-hegemonic.

At first glance, the subject matter of the initiatives (“any matter falling within the functions and powers of the National Assembly”) seems to be quite comprehensive. However, in the next section, the FL constricts 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, in central 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 no longer 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 former 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 international treaties that are not yet valid. Therefore, internal preparatory steps may also be submitted for referendum (cf. Komáromi 2014, 6). Furthermore, electoral acts are also excluded, and validity requirements have become more restrictive.

3.2 Procedures

The current system of direct democracy evolved through an interplay of legislative acts and rulings of the CC. The first major steps 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 properly establish 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 the collection of signatures for inadmissible initiatives, which was possible under the old Act on Referendum and Popular Initiative (Act XVII/1989).

The present Act on Referendum and Popular Initiative (Act 2013/CCXXXVIII is 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 does not 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]). Seemingly logical in theory, these provisions became very problematical in practice (see below).

Furthermore, the new act has somewhat modified the time limits and also allows the initiators to withdraw the proposal before the submission of the signatures (Act XXXVI/2013, Para. 20). The
The popular initiative process starts with 20 to 30 initiators submitting a specimen of the signature sheet to the NEC for validation. 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 constitutional exemption clauses and with other formal prescriptions. Initiators are entitled to submit a complaint against NEC’s decision and any other of its decisions during the referendum process before the Kúria.

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 must 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. 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 of 70 to 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 also has to pass a bill which implements the content of the popular decision 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]).

The current procedures are not very “user friendly”, they are very detailed and offer numerous points for legal, administrative and political interventions, thereby rendering the process non-transparent.

4. The Hungarian Practice of Direct Democracy

4.1 Transition-related initiatives and referendums in 1989/90

The first two nation-wide referendums 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”. Two opposition parties, the Alliance of Free Democrats (Szabad Demokraták Szövetsége – SZDSZ) and Fidesz, wished for more radical changes. They aimed at dismantling the Hungarian Socialist Party’s (Magyar Szocialista Párt – MSZP) instruments of power in order to assure complete transition. Furthermore, they also wanted the state party to render an account of its belongings.

Finally, they asked to postpone the presidential elections until after the general elections. These two parties started a successful collection of signatures. Therefore, the parliament was obliged to call a referendum (Decision 25/1989 of the National Assembly). 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.

The referendum campaign helped the SZDSZ and Fidesz to raise their popularity vis-à-vis the socialists and also vis-à-vis the more moderate opposition groups. The referendum was held on November 29, 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 of 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 referendum, which was held on July 29 1990, failed, because of the low turn-out. With these two ballots, the immediate phase of transition was concluded and the phase of democratic consolidation began.

4.2 The Process of European Integration

The referendum on NATO accession in 1997 was initiated by the parliament (Decision 86/1997 of the National Assembly). The referendum on EU accession in 2003 was prescribed by the constitution (Act 1949/XX section 79). Both of these referendums were government-led and effective. In both cases the political elite could be sure of garnering popular support. These foreign-policy related referendums were highly symbolic, and served the purpose of legitimising Hungary’s western integration.

4.3 Referendums in a Consolidated Democracy

The 2004 ballots were triggered by popular initiatives; they were searching to achieve narrowly defined, concrete goals. The extra-parliamentary, oppositional MP (Munkáspárt—Worker’s Party) began the 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, which provided for the privatisation in health care, unconstitutional, but the popular vote had to be held nevertheless (Decision 82/2004 of the National Assembly). However, due to these legal struggles it only could be scheduled for December 5, 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 December 5, 2004 (Decision 46/2004 of the National Assembly). The settlement of the relationship between Hungarians living in Hungary and those living abroad has always been a delicate issue for every government, carrying much symbolic weight. In general, the conservative parties have a more supportive stance toward the consideration of ethnic Hungarians abroad for citizenship 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 Party, 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. As in the other question, voters’ decisions were more influenced by individual attitudes and assessments than by ideological, party positions (Karácsony 2009).

4.4 Deconsolidation and the Struggle for power

Hungary’s political life has become increasingly polarized during the second half of the last decade. The MSZP was able to win the general elections of 2002 and 2006. Both sides made promises during the election campaign of 2006 that 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 back 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 given by Prime Minister Ferenc Gyurcsány and delivered in May to the members of the socialist parliamentary group, was leaked to the media and became 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. The president even asked Gyurcsány indirectly to step down on the evening of the regional elections on October 1, 2006. The next day Prime Minister Gyurcsány announced that he would ask for a vote of confidence against himself. Opposition leader Viktor 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 October 6, the parliament expressed its confidence in the Prime Minister. This led to new protests until October 23, 2006. Thanks to its solid parliamentary majority, the government could not be forced to step down. Recognizing the futility of its endeavours, the opposition nevertheless sought to retain its momentum. It was in this situation that the idea to overthrow the government by referendum came up. Opposition leader Orbán declared on October 23, 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 Party aimed at directing the protests into constitutional channels and at sustaining the pressure on the government.

October 24, 2006 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; the rest were rejected (Szoboszlai 2009, 254). The CC approved the NEC’s ruling concerning two questions and instructed the NEC to reassess the other questions. The proponents deposited one question without modification, one question was modified, and they also submitted a new question concerning the abolition of daily hospital fees for in-patient care. The NEC rejected all three questions in March/April 2007. The CC, however, sent back all three questions to the NEC for re-evaluation. The core conflict between the CC and the NEC was how to interpret the list of excluded issues in the constitution. The CC issued a communiqué in which it declared that not only its rulings, but also its considerations, were binding. This was an unprecedented act that concretely meant that the court instructed the NEC, without being authorized to do so, to follow the court’s more referendum-friendly interpretation. On June 25, 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 National Assembly), and the referendum was scheduled for March 9, 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; 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.

4.5 Colonialization of Direct Democracy

Prevented referendums

The referendum struggles 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 was finally 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 took aim against the government’s plans to allow private investment in the health care sector. The parliament decided on June 9, 2008 to call a referendum (Decision 76/2008 of the National Assembly). 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 that 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 November 19 (Decision 118/2008 of the National Assembly).

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 accompanied by an official invoice. This initiative, directed against politician’s privileges, was very popular. She was able to gather approximately 600,000 signatures. On April 17, 2009 the parliament had to call for referendum (Decision 28/2009 of the National Assembly). It was clear that such a proposal would have a direct influence on the MPs’ financial situation. Therefore, the parliament, displaying a rare show of unanimity, decided on June 29 to modify the law on the MPs’ 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 July 15, 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 National Assembly).

The last example of a prevented referendum concerns the question of shop opening hours.3 In autumn 2014 the government decided to introduce a tax on data traffic (internet tax). This lead to major protests against the government. The government withdrew the proposal, but the small coalition partner, KDNP, seized on the temporary weakness of Fidesz to extort the big coalition

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3 There was also an important example of a prevented referendum in 2017 which will not be discussed here, because it was related to the municipal level (Budapest), whereas this paper only deals with the national level. The new civic organisation Momentum and some other supporting organisations were able to collect the necessary signatures to call for a referendum on the question whether Budapest shall withdraw its application for the organisation of the 2024 Olympic Games. The application was withdrawn by the authorities without calling a referendum. They blamed the proponents of the referendum for having jeopardised the Hungarian application by destroying the necessary national unity.
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 that could serve as common platform for the opposition. Ultimately, these attempts proved 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 proposal began at the moment the Kúria’s decision was put online 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 in pre-empting 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 had to make 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 is not necessary to go into the details, but these examples are just illustrative of the situation.

This “game” went on from spring 2015 until February 23, 2016, when MP István Nyakó, acting as a private person, was prevented by some bald strongmen, which were standing and shuffling around him, from submitting his proposal. Instead, the strongmen helped an old lady, Erdősi 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 in front of the office building of the NEO. Furthermore, it validated the question, although it should have been dismissed on formal grounds, because it did not comply with the requirement of unambiguity. This was widely seen as a political decision by the NEC. The Kúria annulled the NEC’s decision to validate the question of Erdősi Lászlóné on April 6 because she was only able to submit first through the help of the strongmen. Thus István Nyakó’s question had to be considered as having been correctly submitted and therefore valid (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 quickly and revoked the ban on Sunday sales on April 12, 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 June 5, 2016, 328 questions were submitted to the NEC for validation. 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 rejected on grounds of ambiguity (62%), formal errors (48%), bona fides/proper use (16%) and competence of the parliament (12%) (Farkas 2016, 111). 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. The no-ambiguity-rule is interpreted in an especially narrow sense. Second, the opposition is disunited and not is able organise effective anti-government campaigns.

Since 2010 the governing parties have been 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, 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 six 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), 5) questions regarding “immigration and terrorism” (2015) and 6) seeking the citizen’s support regarding controversial questions with the EU “Stop Brussels” (2017). 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 as populist measures of propaganda.

Against the background of the growing numbers of migrants, the question of migration got at the top of the Hungarian political agenda even before the migrant crisis reached its peak in August 2015.
Reacting to the European Commission’s idea on migrant relocation, Jobbik’s (Jobbik Magyarországért Mozgalom—Jobbik, the Movement for a Better Hungary) leader Gábor Vona requested on 15 May 2015 in an interview on N1 TV a referendum against the migrant quota in case that idea should be adopted by the EU (Jobbik 15.5.2016). The party started to collect signatures for a referendum on the question “Do you agree that the citizens of foreign country’s should not be allowed to be settled in Hungary neither by quota nor by readmission” (Jobbik 23.11.2015). This attempt must be seen as a political action, which aimed at mobilising the party’s supporters, because the referendum proposal was never submitted. It anyway would have fallen under the forbidden topics clause of the FL, because it aimed at the modification of international treaties (Art. 8, Sect. 3, Lit. d FL).

Consequently, Jobbik proposed a bill for changing the FL allowing referendums on international obligations if they affect Hungary’s immigration policy (Bill T/9256), which was not put on the Parliament’s agenda.

Meanwhile, the governing parties started signature collection of their own for a petition against the quota on 4 November 2015. Fidesz parliamentary group leader, Lajos Kósa, stated that such a quota “regarding the settlement for illegal migrants” was senseless and would raise terrorist threat and the crime rate, would contradict international agreements and would not provide a solution against “the modern invasion” (Magyar Nemzet Online 4.11.2015). This signature collection was continued even after the Government announced the referendum.

On 17 February 2016 a private citizen, József Csabai, submitted a referendum proposal to the NEC on following question: “Do you agree, that Hungary should not implement the EU’s decision on relocating the refugees according the quota” (Nemzeti Választási Bizottság 20.10.2016). By submitting his proposal he would have prevented other proposals to be submitted, which in turn would have posed a major problem for the Government, which planned to submit its own proposal. On request of the Minister of the Prime Minister's Cabinet Office, Antal Rogán, Csabay withdrew his proposal on 24 February, therby opening the path for the Government’s own proposal (Szalai 24.2.2016). On the same day Prime Minister Viktor Orbán announced that the Government would submit a referendum proposal whether to accept mandatory EU quotas for relocating migrants with the concrete question “Do you want the European Union to be entitled to prescribe the mandatory settlement of non-Hungarian citizens in Hungary without the consent of the National Assembly?” The NEC validated this proposal on 29 February 2016 (Decision 14/2016 of the NEC).

This decision was legally challenged on 1 March, but the Kúria confirmed on 3 May the decision of the NEC (Decision IV.37.222/2016/9 of the Kúria), stating that the proposal met all the legal requirements. According to the Kúria the proposed referendum does neither aim at changing the accession treaty nor at applying additional conditions at the implementation of decisions of EU
organs by Hungary. This decision was severely criticised by four renowned civic organisations, which claimed that the referendum question did not meet the constitutional standards, because it did not fall within the functions and powers of the National Assembly and was moreover not unambiguous (Magyar Helsinki Bizottság 4.3.2016).

Following the Kúria’s decision the Parliament decided on 10 May 2016 to order a referendum (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.

Due to the legal situation three types of outcomes are possible for Hungarian referendums. Either the “yes” or “no” votes win or the referendum is invalid. These framework conditions determines the possible campaign strategies for the political actors. Because of the wording of the referendum question the Government – and also Jobbik – had to campaign in favour of a “no” vote. For the Government the optimum outcome would be a majority of “no” votes and a participation rate of more than 50 % of all eligible voters. Since it was clear from the onset that a vast majority of the voters opposed the relocation quota the opponents of the referendum were in a difficult situation, because also their supporters were not in favour of the quota (Ipsos 11.8.2016). Therefore, they theoretically should support the Government’s proposal, but considering the extreme polarisation of Hungarian politics, this was not a viable option. That’s why, the optimum outcome for them would be an invalid referendum. In order to achieve this result they either had to call for a boycott of the referendum or for casting invalid votes. This logic determined the course of the campaign and the arguments which the actors put forward.

After a lengthy campaign the ballot took place on 2 October 2016. After the closing of the polling stations it soon became clear that the necessary participation threshold was not reached (hvg.hu 2.10.2016). There were 8’272’625 eligible voters, but only 3’646’334 did cast a vote. 3’418’387 voters (41.32 %) casted a valid vote. Although 3’362’224 (98.36 %) voters voted against the quota, and only 56’163 (1.64 %) were in favour of it, the referendum was not valid. There was also quite a high number 224’668 (6.16 %) of invalid votes.

The parties assessed the result according to their previous position. The MSZP called the referendum an “expensive opinion survey” and DK (Demokratikus Koalició – Democratic Coalition) spoke of “Orbán’s defeat”. The three small opposition parties, which had campaigned for the boycott, called the boycott “successful.” Jobbik concluded that Orbán “shot himself in the foot, thereby weakening Hungary’s position. LMP (Lehet Más a Politika – Politics Can Be Different) stressed also that the
invalid referendum has weakened the Government’s position. Finally, the Liberals pointed out that Hungary was the real “looser of the referendum” (Magyar Nemzet Online 2.10.2016).

Would the referendum have been conclusive and valid, there would be no possibility to change the constitution, but under these circumstances, the Government seized the chance to initiate a constitutional amendment. Not disposing of a two-thirds majority the Government was trying – ultimately unsuccessfully – to reach an agreement with opposition parties. Afterwards, the governing parties are using their defeat to denounce the opposition (especially Jobbik) of being unpatriotic and jeopardising Hungary’s security.

5. Conclusions

Since 1989 seven national ballots have been held in Hungary, through which 13 questions have been decided. Ten referendums were initiated by opposition forces. In three cases they were invalid because of the participation threshold. They had no strong impact on politics. If at all, they tended to strengthen government. However, referendums were effective in seven cases, meaning that they could realise oppositional policy proposals. When governing coalitions lost referendums, they also were beaten in the following elections. These seven cases were decided on two national ballots (1989 and 2008). They occur too rarely to have lasting impact on the everyday process of politics, meaning that they represent an exceptional tool. However, in case of success they are a powerful countervailing instrument. Opposition referendums are effective if power relations have changed within the legislative term, confirming the new power relations. The two foreign policy related referendums were initiated by the government or foreseen by the constitution. They were not contested and helped to legitimise the country’s new foreign policy orientation. In this sense they worked in a consensus-oriented manner. The government-initiated plebiscite was ineffective, because it was invalid due to low participation. However, those people who participated, supported overwhelmingly the government. The plebiscite mobilised the supporters of the government as well as of the opposition. Through the mobilisation it amplified the political confrontation and reproduced the existing power relations. In theory, it should have weakened the government, but it managed to reverse the perception by a skilful communication after the ballot, and thus the opposition was not able to profit from the government’s “defeat”. The dominance of the governing parties in the public media also greatly contributed to this outcome.

Regarding procedure, it can be maintained that the process sequence is very formalistic and contains many possible points for judicial, administrative and political intervention. Authorities are not supportive of citizens wanting to initiate a referendum. Between 2009 and 2015 there were no
national referendums, mostly because the NEC functions as a very effective gate-keeper, which fends off more than 95 % of the referendum proposals. The government also acts as “gate-keeper of the last resort” by preventing and pre-empting referendums it considers potentially dangerous.

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, political parties (the ruling parties, especially) have reacted to this situation. Nowadays, direct democracy is primarily used (and controlled) by the (ruling) political elite as a tool to mobilise their supporters and for gaining additional legitimation/empowerment (Rahat 2009, 102) in domestic politics as well as in foreign affairs. Furthermore, it is not clear if the NEC and the Kúria really act completely impartially. However, it is clear that Hungarian authorities are not supportive to civic groups and opposition parties regarding the use of direct-democratic instruments.

Regarding direct democracy two tendencies can be detected: First, because of the marked prevalence of the representative system, direct democracy is continuously pushed back. In this sense direct democracy is “colonialised” by the representative system and the (governing) political elite.

Second, the reinforcement of the majoritarian traits since 2010 has altered the quality of the system. It now can be seen as an illiberal democracy. This seems to support Antal’s thesis on role of elite populism and illiberal democracy (Antal 2017, 6). The governing elite tends to depict all its proposals as being the sole embodiment of the national interest, thereby excluding alternate proposals. Furthermore, being true populists, the Hungarian governing elite has a voluntaristic conception of politics, which disregards the role of representative democracy, due procedures and rule of law (if it’s not in the interest of the government). So, the alleged recourse on popular will is not genuine, because the governing elite tries to define the national interest exclusively and to monopolise political representation, thereby preventing genuine (re-)politicisation. This means that genuine direct democracy is replaced by pseudo instruments like the National Consultations which are completely controlled by government, giving no room for genuine bottom up dialogue.

Thus the starting question can be answered as follows: Hungarian opposition does not use referendums because in the first phase the representative system had condoned the scope of direct democracy by rendering its use more complicated. In the second phase since 2010 the government has gone further and is trying to pre-empt the oppositional use of direct democracy. 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. However, it is exactly the element of uncertainty which direct democracy introduces into the political system with the possibility of uncontrolled and
anti-hegemonic decisions, which may open a window of opportunity for exerting a stronger control on the governing elite by the society and opposition parties.

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