



**DONAU  
INSTITUT**  
ZENTRUM FÜR  
DEMOKRATIEFORSCHUNG

# Andrássy Working Papers zur Demokratieforschung

Zoltán Tibor Pállinger

## Direct democracy in an increasingly illiberal setting: the case of Hungary

Andrássy Working Papers zur Demokratieforschung  
Nr. 5 / 2017  
ISSN 2498-9177



**DONAU\_**  
**INSTITUT**  
ZENTRUM FÜR  
DEMOKRATIEFORSCHUNG

# **Andrássy Working Papers zur Demokratieforschung**

Zoltán Tibor Pállinger

## **Direct democracy in an increasingly illiberal setting: the case of Hungary**

Andrássy Working Papers zur Demokratieforschung Nr. 5

2017

ISSN 2498-9177

Zoltán Tibor Pállinger  
Direct democracy in an increasingly illiberal setting: the case of Hungary  
Andrássy Working Papers zur Demokratieforschung Nr. 5  
2017  
ISSN 2498-9177

Edited by the Centre of Democracy Studies of the Danube Institute of Andrassy University  
Budapest.

This series presents ongoing research in a preliminary form. The authors bear the entire responsibility for papers in this series. The views expressed therein are the authors', and may not reflect the official position of the institute. The copyright for all papers appearing in the series remains with the authors.

Author's address and affiliation:

Name of the Author  
Centre for Democracy Studies  
Pollack Mihály tér 3.  
H-1088 Budapest  
E-Mail: [zedem@andrassyuni.hu](mailto:zedem@andrassyuni.hu)

© By the author

## Abstract

Since 1989 six nation-wide referendums have been held in Hungary. Since the importance and the practice of direct democracy have changed and the function of direct democracy remained unclear. It is by no means insignificant, but it struggles with two major conceptual flaws: Hungary's political system is extremely majoritarian 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. Finally, the dominance of the representative principle induces the political elite to try to condone direct democracy. The conceptual and practical flaws limit the interaction between the representative and direct-democratic system. The aim of this paper is to explain the use of referendums in Hungary and why the opposition does not more often resort to this instrument. It also wants to contribute on a theoretical level to the clarification of the role of direct democracy within a representative political system. In terms of methodology this paper represents a theory-led cross-section through Hungary's democratic history.

## Table of contents

1.	Introduction.....	5
2.	Direct and Representative Democracy.....	7
3.	The Legislation on Direct Democracy in Hungary .....	9
4.	Instruments .....	10
5.	The Hungarian Practice of Direct Democracy .....	13
5.1	Transition-related initiatives and referendums in 1989/90 .....	13
5.2	The Process of European Integration .....	14
5.3	Referendums in a Consolidated Democracy.....	14
5.4	Deconsolidation and the Struggle for power.....	15
5.5	The Colonialization of Direct Democracy .....	16
6.	Conclusions .....	20

## 1. Introduction

There is an ongoing debate whether democracy is in crisis (Merkel 2015), but the notion of 'crisis' can be questioned. As Schmitter points out, democracy is under constant pressure to adapt to new circumstances and argues that "[d]emocracy will definitely survive, but only by changing" (Schmitter 2015, 32f.). Whereas the different challenges in different spheres of democracy, do not add up the deconsolidation of established democracies (Merkel 2014), the situation in Central Eastern Europe appears to be more nuanced. Coman and Tomini (2014) 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. This tendency goes hand in hand with the intensification of nationalist and populist politics (Ágh 2015). 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)." These trends are also reflected in several democracy rankings.<sup>1</sup> Summing up, 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).

The democratic system established after 1989 was influenced by the negotiated transition. Fearing that the State party could prevail in free elections, the opposition 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 for important acts 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. Körösi et al. (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-

---

<sup>1</sup> Cf. Freedom House 2017a, 2017b; Bertelsmann Foundation 2016

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 (Scheppele 2013), however Orbán argued that the electoral victory of 2010 gave his government a mandate to complete the transition and to lay the foundations of a consolidated democratic system. He describes this new system 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).

In such a situation the room for manoeuvre of the opposition is limited. The parliamentary way for pursuing its agenda is barred. Because the governing parties are also dominant in the media, the opposition has to turn to alternatives: under such circumstances the use of referendums could be an appropriate tool. 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. It is therefore the aim of this paper to explain the use of referendums in Hungary and why the opposition does not more often resort to this instrument. It also wants to contribute on a theoretical level to the clarification of the role of direct democracy within a representative political system. In terms of methodology this paper represents a theory-led cross-section through Hungary’s democratic history.

## 2. Direct and Representative Democracy

Direct democracy can be defined as an institutional arrangement by which citizens have the right to decide factual issues themselves, meaning that they are allowed to raise issues on the political agenda or decide some factual issues by vote, without the mediation of the parliament. Thereby, three types of direct-democratic instruments can be discerned. Instruments triggered by government authorities, mandatory referendums and citizens' initiatives (Schiller 2016). The use of direct democratic instruments has quadrupled during the 20th century. This increase can be attributed to the third wave of democratisation, the process of European integration and to growing discontent with the functioning of representative democracy (Marxer/Pállinger 2007). Therefore, direct democracy is often seen as appropriate tool to counter the "democratic malaise" (Newton 2012, 3). However, the increasing use of direct-democratic instruments has not supplanted representative democracy anywhere, but only complemented it (Altman 2011). Contrary to the assumption that direct democracy weakens party rule per se, Hornig has demonstrated that political parties have generally 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).

The functions and effects of direct-democratic instruments cannot be determined a priori, they depend on their design and their attunement to the representative system: On the one hand they have to be formally compatible with the representative process and the legal system, but on the other hand they also have to conform to the functional logic of the political system (Marxer/Pállinger 2007). The possibility of the use of direct-democratic instruments can enhance the regime's legitimacy (Ghergina 2017). By refining the possibilities preference articulation, by furthering accountability and elite control, and by enhancing participation, which in turn strengthens citizens' capabilities and knowledge, direct-democracy can contribute to the improvement of democracy's quality (Newton 2012).

Direct democracy can display contradictory effects. 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).



Direct-democratic instruments may be further differentiated 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). 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 tend to display consensual effects.

Governments initiate referendums to strengthen their position, to solve intra-party or intra-coalition disputes, to push through legislative projects against the resistance of the majority, in order to preempt topics from being used in the election campaign and for the legitimisation of important political questions (Morel, 2007). Opposition parties on the other side initiate referendums to push through legislative projects against the resistance of the majority, to enhance their chances in the next elections, to delay unwanted government initiatives and to take on an issue (Vospernik 2014). 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 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 and their effectiveness. 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). 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 lose 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). Based on these 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 (Vospersnik 2014).<sup>2</sup> Furthermore, one has to consider that the impact of direct democracy also depends on the frequency of its use, having the 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/Pállinger 2009).

Modern polities exhibit a fundamentally representative foundation of political power, direct democracy thus can be seen as complementary institutional device, which performs specific functions for the (representative) system. In such an 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 correspondingly. According to Vospersnik's thesis the Hungarian political system – being predominantly representative and majoritarian – should not make intense use of direct-democratic procedures, therefore also their impact should be limited. Taking into account the reinforcement of the majoritarian traits of the Hungarian political system during the last few years, a further weakening of direct-democratic decision-making should be observable.

### **3. The Legislation on Direct Democracy in Hungary**

Direct democracy was introduced in Hungary during the democratic transition. Seeking to enhance the decaying communist system's legitimacy, the party state's parliament introduced a bill on referendums and popular initiatives (Act XVII/1989) 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).

Direct democracy, however, is alien to Hungarian political traditions and it caused since its introduction a problem regarding its adjustment to the predominant representative system. Therefore, in a first phase the CC grew into the position of a major actor in shaping Hungarian direct democracy by clarifying procedural ambiguities. Its fundamental decisions became guiding principles for the parliamentary law-making.

In 1997 the National Assembly (parliament) amended the constitution (Act 1997/XCVIII) and the act on referendum and popular initiative (Act 1998/III), thereby lowering the approval threshold from 50%

---

<sup>2</sup> The variables of Smith about the degree of control (controlled – uncontrolled) and outcome (pro- and anti-hegemonic) correspond to Vospersnik's variables of authorship (government – opposition) and effectiveness (effective and ineffective), therefore they will be used synonymously in the following analysis.

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 (Art. B, Sect. 2 FL) 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 parliament is the supreme organ of popular representation (Art. 1, Sect. 1 FL) and possesses the legislative monopoly and budgetary sovereignty (Art. 1, Sect. 2, Lit. a-c FL). However, if a citizens' initiative leads to a successful referendum, the direct exercise of power supersedes the representative. In this case, the parliament 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 to enact the corresponding bills. It is a political obligation which can't be enforced legally. Secondly, the process of popular law-making 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 and providing 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.

#### **4. 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 constitutional changes of 2011 did not basically alter the instruments of direct democracy. The three kinds of referendums were typologically unchanged. However, the old "proper" agenda initiative, which existed in the old constitutional setting, was abolished.

**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). 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). 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 (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]). The abovementioned participation threshold is also applied to this instrument. Because the triggering depends on the parliament’s 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, one-third of the members of parliament were also entitled to initiate a plebiscite (Act 1949/CC, Sect. 28/C [4]). 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 (Art. 8, Sect. 3 FL). The FL and act on referendum and popular initiative have, to some extent, contributed to the clarification of some open questions. Most importantly the ban on constitutional initiatives, which was not regulated in the former constitution, has been made explicit and absolute.

## Procedures

The current procedures evolved through an interplay of legislative acts and rulings of the CC. The first major steps were the constitutional changes of 1997 and the ensuing Act on Referendum and Popular Initiative. These steps helped to properly establish the role of the National Election Commission (NEC) and redesigned the procedures regarding citizens’ initiatives.

The present act on referendum and popular initiative is an attempt to reduce the number of “unserious” initiatives by firstly introducing the requirement that at least 20 citizens have to support with their signature the initiative proposal. Secondly, the president of the National Electoral Office (NEO) has the right to examine preliminarily the proposal’s compliance with the legal prerequisites and he has the right to reject it within five days. 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). Furthermore, the treatment of concurring initiatives has been clarified: in case of initiatives dealing with the same subject, the priority is given to the one which was submitted first. The process has been made unambiguous, avoiding contradicting legislative demands on the parliament.

Seemingly logical in theory, these provisions became very problematical in practice (see below). The time limits were also modified and the initiators have the right to withdraw the proposal before the submission of the signatures. Finally, also the system of legal remedy has been reformed. Appeals against decisions of the NEC have to be addressed to the Kúria (administrative court) instead of the CC. Also new is 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. There is still in some exceptional cases the possibility of appeal to the CC (Komáromi 2014)

The popular initiative process starts with initiators submitting a specimen of the signature sheet to the NEC for validation. The NEO carries out the preliminary assessment. The NEC denies validation if the question does not meet the legal requirements. After the validation the proponents have 120 days to collect the necessary signatures. Afterwards the NEC has to validate the collected signatures. If the

proposition meets the legal requirements the parliament has to put the question on the agenda within 30 days. In the case of the popular agenda initiative or the plebiscite, 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. After the parliament's decision 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. In case of a successful referendum the parliament has to pass a bill which implements the content of the popular decision. 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.

## 5. The Hungarian Practice of Direct Democracy

### 5.1 Transition-related initiatives and referendums in 1989/90

The first two nation-wide referendums ever held were related to the democratic transition. The Hungarian Socialist Party's (Magyar Szocialista Párt – MSZP) reached an agreement with the opposition in September 1989, which laid the foundations for the new democracy and had to be implemented by the parliament. Two opposition parties, the Alliance of Free Democrats (Szabad Demokraták Szövetsége – SZDSZ) and Fidesz, wished for more radical changes. They aimed at dismantling the instruments of power of the MSZP and also wanted the state party to render an account of its belongings. They also asked to postpone the presidential elections until after the general elections. After a successful collection of signatures, the parliament was obliged to call a referendum. The MSZP was ready to discuss some of the questions, and, in fact, the parliament implemented some of the requested measures, rendering two of the 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 radical opposition to raise its popularity vis-à-vis the other parties. In the referendum on November 29, 1989 the MSZP was defeated on all four questions. This frustrated its attempts at retaining at least some of its power (cf. Babus 1990).

After the general elections in 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. 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.

## 5.2 The Process of European Integration

The referendum on NATO accession in 1997 was initiated by the parliament and the referendum on EU accession in 2003 was prescribed by the constitution. Both of these referendums were government-led and effective. These foreign-policy related referendums were highly symbolic, and served the purpose of legitimising Hungary's western integration. However, considering the traditionally low level of political participation in Hungary (Tardos 2009), the parliament even had to change the "rules of the game" for the 1997 referendum by lowering the participation threshold in order to guarantee a positive outcome. It also had to change the constitution in 2002 (Act 2002/LXI) in order to make a popular vote on EU-accession possible.

## 5.3 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 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. However, due to the legal struggles it only could be scheduled for December 5, 2004. Due to this 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 Hungarian citizenship to ethnic Hungarians living abroad. The referendum was also scheduled for December 5, 2004. 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 for these issues than the liberal and left-wing parties. Knowing the symbolic value of this question, the governing MSZP kept a relatively low profile, whereas the conservative Fidesz Party was supportive of the proposition. This campaign was more ideologically charged and intense than the other. Nevertheless, as in the other question, voters' decisions were more influenced by individual

attitudes and assessments than by ideological, party positions (Karácsony 2009). Both referendums were invalid due to low voter turnout.

#### **5.4 Deconsolidation and the Struggle for power**

Hungarian politics 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. After the election of 2006, it became clear that the country's financial situation was worse than expected. The government was forced to cut back state spending. National health care and tertiary education stood, among others, at the top of the government's reform agenda. The measures that were announced from June 2006 onwards, rapidly eroded the government's popularity. During the campaign for the regional elections in autumn of 2006 a non-public speech given by The Prime Minister Ferenc Gyurcsány in May to the members of the socialist parliamentary group, was leaked to the media and became publicly known in September. The Prime Minister admitted that his government had lied to the public about the state of the country during the last one and a half years (Szoboszlai 2009). The conservatives and the extreme right started protests and riots at Parliament's Square. The president even asked Prime Minister Ferenc Gyurcsány indirectly to step down on the evening of the regional elections on October 1, 2006. The next day Gyurcsány announced that he would ask for a vote of confidence against himself. Opposition leader Orbán dismissed this proposal 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. 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, and came up with the idea to overthrow the government by referendum. 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.

On October 24, 2006 the conservative opposition deposited seven referendum proposals at the NEC for validation, which were carefully chosen and covered a wide range of interest groups that were affected by the government's austerity measures. After a lengthy legal struggle, at which core lay a conflict between the CC and the NEC on how to interpret the list of excluded issues in the constitution,



the NEC approved on June 25, 2007 three questions (the rest and some other questions which were raised during the legal struggle were rejected) (Szoboszlai 2009).

The austerity measures were very unpopular, therefore the opposition had no problems collecting the necessary signatures and the parliament had to schedule a referendum for March 9, 2008. The opposition successfully turned the referendum in a judgement on the government's policies (Karácsony 2009). After the opposition's triumph at the ballot box, all the three fees were abolished. But there were also indirect consequences: the governing coalition fell apart, and the MSZP had to form a minority government. Thus, the referendum helped the opposition to retain momentum until the next general elections in 2010, in which they gained a landslide victory.

## 5.5 The Colonialization of Direct Democracy

The referendum struggles between 2006 and 2008 encouraged other groups to launch referendums. 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 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 although it had already cancelled the reforms in May. Therefore, it was not obliged to call for referendum, because the subject matter of the referendum had ceased to exist. It 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. Therefore, the parliament had to cancel the referendum on November 19.

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. On April 17, 2009 the parliament had to call for referendum. It was clear that such a proposal would have a direct influence on the MPs' financial situation. Therefore, the parliament decided on June 29 to modify the law on the MPs' expenses. 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. 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. Following this, the parliament cancelled the referendum.

The next example of a prevented referendum concerns the question of shop opening hours. In autumn 2014 the government decided to introduce an internet tax, which led to major protests. The government withdrew the proposal, but the small coalition partner, KDNP, seized on the temporary weakness of Fidesz to extort the big coalition partner to impose a ban on Sunday sales. 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 a 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: 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. This "game" went on from spring 2015 until February 23, 2016, when MP István Nyakó, acting as a private person, was prevented by some strongmen, which were standing and shuffling around him, from submitting his proposal. Instead, the strongmen helped an old lady (the wife of a former Fidesz deputy mayor) to submit her proposal first. These tumultuous scenes were made public and stirred a storm of indignation. The NEC validated her proposal with the majority of members delegated by the governing parties. It saw no problem in the fact that Mr. Nyakó was impeded by strongmen. 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 the old lady 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. 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, 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.

The final example of a prevented referendum occurred in autumn 2017.<sup>3</sup> Former MP Gábor Vágó from the oppositional Politics Can Be Different (Lehet Más a Politika – LMP) submitted on April 10, 2017 a referendum proposal “do you agree that corruption crimes shall be time-barred at the earliest after 12 years?” to the NEC, which declined its validation on May 2, 2017. This decision, however, was overruled by the Kúria on September 5, 2017. Therefore, signature gathering could have started, but the parliament prevented a referendum by amending the penal code accordingly on September 19, 2017.

Between 2009 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 no successful initiative was launched. However, between 2012 and June 5, 2016, 328 questions were submitted to the NEC for validation. 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).<sup>4</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. The no-ambiguity-rule is interpreted in an especially narrow sense. Second, the opposition is disunited and is not able to organise effective anti-government campaigns.

By campaigning permanently since 2010, the governing parties 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 seven 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), 6) seeking the citizen’s support regarding controversial questions with the EU “Stop Brussels” (2017) and 7) mobilising support against an European migrant quota (the so called “Soros plan”). These

---

<sup>3</sup> 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. A civic organisation was 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. Not wanting to risk a potential defeat at the ballot box the authorities withdrew the application without calling a referendum.

<sup>4</sup> Most questions were rejected with more than one justification, which is why the sum totals more than 100%.

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 (Jobbik Magyarországért Mozgalom—Jobbik, the Movement for a Better Hungary) requested in May 2015 a referendum against the migrant quota in case that idea should be adopted by the EU (Jobbik 15.5.2016) and started to collect signatures (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. Consequentially, Jobbik proposed a bill for changing the FL allowing referendums on international obligations if they affect Hungary's immigration policy, 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 in November. This signature collection was continued even after the government announced the referendum. However, in February 2016 a private citizen submitted a referendum proposal to the NEC against the EU's quota (Nemzeti Választási Bizottság 20.10.2016). By submitting his proposal, he would have prevented the government, which also planned to submit its own proposal, from doing so. On request of a government official the private citizen withdrew his proposal, thereby opening the path for the government's own proposal (Szalai 24.2.2016).

On 24 February the prime minister 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, but the decision was legally challenged. However, the Kúria confirmed on 3 May the decision of the NEC, stating that the proposal met all the legal requirements. According to the Kúria the proposed referendum did 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 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). The parliament decided on 10 May to order a referendum. Both, the decision of the Kúria and of the parliament were challenged at CC, but the court dismissed the appeals and the president scheduled a nation-wide referendum for 2 October 2016.

In Hungary three outcomes are possible for referendums. Either the “yes” or “no” votes win or the referendum is invalid. These framework conditions determine 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 polarisation of Hungarian politics, this was not a viable option. That’s why, the optimum outcome for them would be an invalid referendum. Therefore, 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.

In spite of the long and intense campaign only 41.32 % of the voters casted a valid vote, therefore, the referendum was not valid (hvg.hu 2.10.2016).<sup>5</sup> All parties assessed the result according to their previous position. Would the referendum have been conclusive and valid, there would have been 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 tried – ultimately unsuccessfully – to reach an agreement with opposition parties. Afterwards, the governing parties were using their defeat to denounce the opposition of being unpatriotic and jeopardising Hungary’s security.

## 6. Conclusions

In accordance with the theoretical expectations the scope of direct democracy in Hungary was limited from the beginning. The application of the new instruments was gradually fine-tuned through an interplay between judiciary and legislative actions. During the first and second decade of the existence of direct democracy in each period six referendums were held. Successful referendums were

---

<sup>5</sup> 98.36 % of the participating voters voted against the quota.

held in order to legitimise the country's Western integration and occurred also during political crises. Since 2009 only one government initiated referendum was held, but numerous referendum proposals were fended off by the NEC and prevented/pre-empted by the government.

Because of the prevalence of the representative system, direct democracy is continuously pushed back. Political parties adapted the use of the direct-democratic instruments to the system's logic. Nowadays, direct democracy is primarily used (and controlled) by the political elite as a tool to mobilise their supporters. In this sense direct democracy is "colonialised" by the representative system and the political elite. The reinforcement of the majoritarian traits since 2010 has also altered the quality of the system. This seems to support Antal's thesis on the 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. 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, genuine direct democracy is replaced by pseudo instruments like the National Consultations which are completely controlled by the government, giving no room for genuine dialogue.

The separation of the citizens' and the parliamentary law-making, impedes political learning through deliberation. Referendums occur too rarely to foster accountability. The curtailing of direct democracy through the constitutional changes and the establishment of a strong system of gate-keeping has limited its potential for enhancing participation and refining interest articulation further. However, with the possibility of uncontrolled and anti-hegemonic decisions an element of uncertainty still exists within the political system, which may open a window of opportunity for exerting a stronger control on the governing elite. Thus, direct democracy can – in exceptional cases – function as a safety valve, but under "normal" circumstances it is rigorously controlled by the political elite.

## References

- Ágh, Attila: De-Europeanization and De-Democratization Trends in ECE: From Potemkin Democracy to the Elected Autocracy in Hungary. *Journal of Comparative Politics*, vol. 8, no. 2, 2015, 4-26.
- Antal, Attila: The Political Theories, Preconditions and Dangers of the Governing Populism in Hungary. *Politologicky Casopis*, Vol. 24, No. 1, 2017, 5-20.
- Babus Endre: Népszavazás – 1989. In: Kurtán, Sándor/Sándor, Péter/Vass, László (eds.): *Magyarország Politikai Évkönyve 1989-ről*. Budapest, AULA Kiadó, 1990, 209-215.
- Bartafai, István László/Fischer, Maté/Schindler/Péter; Vince: Tizenkét hónap krónikája. In: Sándor, Péter/Vass, László (eds.): *Magyarország Politikai Évkönyve 2008-ről*. Budapest, DKMKA, 2009, supplementary DVD.
- Bertelsmann Foundation: Bertelsmann Transformation Index (BTI), <https://www.bti-project.org/en/index/> (retrieved: 07.05.2017).
- Csink, Lóránt/Kovacs, Júlia T.: National Consultation in a Constitutional Aspect: Direct Democracy or Political Marketing? Mimeo 2015.
- Farkas, Bálint: Direkte Demokratie in Ungarn: Warum scheitern Volksinitiativen? Mimeo, Andrassy Universität Budapest, 2016.
- Freedom House: Freedom in the World 2017a, [https://freedomhouse.org/sites/default/files/NIT2017\\_booklet\\_FINAL\\_o.pdf](https://freedomhouse.org/sites/default/files/NIT2017_booklet_FINAL_o.pdf) (retrieved: 07.05.2017).
- Freedom House: Nations in Transit 2017b, [https://freedomhouse.org/sites/default/files/NIT2017\\_booklet\\_FINAL\\_o.pdf](https://freedomhouse.org/sites/default/files/NIT2017_booklet_FINAL_o.pdf) (retrieved: 07.05.2017).
- Ghergina, Sergiu: Direct democracy and subjective regime legitimacy in Europe. *Democratization*, vol. 24, no. 4, 2017, 613-631.
- Herman, Lise Esther: Re-evaluating the post-communist success story: party elite loyalty, citizen mobilization and the erosion of Hungarian democracy. *European Political Science Review*, vol. 8, no. 2, 2016, 251-284
- Hornig, Eike-Christian: Die Parteidominanz direkte Demokratie in Westeuropa. Baden-Baden, Nomos, 2011.
- Ipsos (11.8.2016): Migrációs kérdésben Magyarország a legnegatívabbak között, <http://ipsos.hu/hu/news/migracios-kerdesben-magyarorszag-legnegativabbak-kozott> (retrieved:16.10.2016).

Jobbik (15.5.2015): Vona az N1 TV-ben: Népszavazás dönthessen a bevándorlási kvótáról!, <https://jobbik.hu/hireink/vona-az-n1-tv-ben-nepszavazas-donthessen-bevandorlasi-kvotarol> (retrieved: 07.05.2017).

Jobbik (23.11.2015): Aláírásgyűjtés a bevándorlás és korrupció ellen, <https://jobbik.hu/hireink/alairasgyujtes-bevandorlas-es-korrupcio-ellen> (retrieved: 07.05.2017).

Jung, Sabine: *Die Logik direkter Demokratie*. Wiesbaden, Westdeutscher Verlag, 2001.

Karácsony, Gergely: A népszavazási döntések motivációi Magyarországon. In: Enyedi, Zsolt (ed.): *A Népakarat dilemmái. Népszavazások Magyarországon*. Budapest, Századvég Kiadó, 2009, 197-225.

Komáromi, László: A népszavazásra vonatkozó szabályozás változásai az Alaptörvényben és az új népszavazási törvényben. *MTA Law Working Papers*, 35/2014.

Komáromi, László: Az országos népszavazás és az Alkotmánybíróság. *Reflexiók az elmúlt negyedszázad gyakorlatára. Alkotmánybírósági Szemle*, no. 2, 2015, 78-87.

Körösényi, András et al: *A magyar politikai rendszer*. Budapest, Osziris Kiadó, 2003.

Magyar Helsinki Bizottság (4.3.2016): <http://www.helsinki.hu/nepszavazasra-alkalmatlan-kerdesrol-nepszavazunk/> (retrieved: 16.10.2016).

Marxer, Wilfried/Pállinger Zoltán Tibor: Stabilising or destabilising? Direct-democratic instruments in different political systems. In: Setälä Maija/Schiller, Theo (eds.): *Referendums and Representative Democracy. Responsiveness, Accountability and Deliberation*. London/New York, Routledge, 2009, 34-55.

Marxer, Wilfried/Pállinger, Zoltán Tibor: System Contexts and System Effects of Direct Democracy – Direct Democracy in Liechtenstein and Switerland Compared. In: Pállinger, Zoltán Tibor et al. (eds.): *Direct Democracy in Europe. Developments and Prospects*. Wiesbaden, VS Verlag, 2007, 12-29.

Merkel, Wolfgang: Is there a Crisis of Democracy? *Democratic Theory*, Vol. 1, No. 2, 2014, 11-25.

Merkel, Wolfgang: Nur schöner Schein? *Demokratische Innovationen in Theorie und Praxis. OBS-Arbeitsheft* 80, 2015.

Morel, Laurence: The Rise of 'Politically Obligatory' Referendums: The 2005 French Referendum in Comparative Perspective. *West European Politics*, vol. 30, no. 5, 1041-1067.

Nemzeti Választási Bizottság (NEC): <http://valasztas.hu/en/ref2016/index.html> (retrieved on 20 July 2016).

Nemzeti Választási Bizottság (20.10.2016): A Nemzeti Választási Bizottsághoz 2016-ban benyújtott országos népszavazási kezdeményezések, [http://valasztas.hu/hu/nvb/734/734\\_3.html](http://valasztas.hu/hu/nvb/734/734_3.html) (retrieved on 29.10.2016).



Newton, Ken: Curing the democratic malaise with democratic innovations. In: Geissel, Brigitte/Newton, Ken (eds.): *Evaluating Democratic Innovations. Curing the democratic malaise?* London/New York, Routledge, 2016, 3-20.

Orbán, Viktor (29.07.2014): Full text of Viktor Orbán's speech at Băile Tuşnad (Tusnádfürdő) of 26 July 2014, <http://budapestbeacon.com/public-policy/full-text-of-viktor-orbans-speech-at-baile-tusnad-tusnadfurdo-of-26-july-2014/10592> (retrieved: 07.05.2017).

Origo (17.10.2017): Orbán Viktor: Az új egység felülírja a pártpolitikai határokat, <http://www.origo.hu/itthon/20161017-orban-viktor-es-a-partok-az-alaptorveny-modositasrol.html> (retrieved on 29.10.2016).

Pállinger, Zoltán Tibor: Citizens' Initiatives in Hungary: An Additional Opportunity for Power-Sharing in an Extremely Majoritarian System. In: Setälä, Maija/Schiller, Theo. (eds.): *Citizens' Initiatives in Europe*.

*Procedures and Consequences of Agenda-Setting by Citizens*. Houndmills, Basingstoke, Palgrave Macmillan, 2012, 113-133.

Scheppele, Kim Lane: The Rule of Law and the Frankenstate: Why Governance Checklists. Do Not Work. *Governance*, Vol. 26, No. 4, 2013, 559-562.

Schiller, Theo: Direkte Demokratie in der vergleichenden Politikwissenschaft. In Lauth, Hans-Joachim et al. (eds.): *Handbuch vergleichende Politikwissenschaft*. Wiesbaden, VS Springer, 441-452.

Schmitter, Philippe C.: Crisis and Transition, but not Decline. *Journal of Democracy*, Vol. 26, No. 1, 32-44.

Szalai, Laura (24.2.2016): Rogán Antal találkozott a népszavazási kezdeményezést benyújtó magánszeméllyel, <http://magyaridok.hu/belfold/rogan-antal-talalkozott-nepszavazasi-kezdemenyezest-benyujto-maganszemellyel-408793/> (retrieved:16.10.2016).

Szoboszlai, Györg: Országos népszavazás 2008-ban előzmények, következmények, szabályozások és értelmezések. Szavazzunk-e arra, hogy többet fizessünk? In: Sándor, Péter/Vass, László (eds.): *Magyarország Politikai Évkönyve 2008-ról*. Budapest, DKMKA, 2009, 244-272.

Tardos, Róbert: Ötven: ötven: Részvétel és távolmaradás a 2008-as népszavazáson. In: Enyedi, Zsolt (ed.): *A népakarat dilemmái. Népszavazások Magyarországon és a nagyvilágban*. Budapest, Századvég Kiadó, 2009, 133-195.

Vospersnik, Stefan: *Modelle der direkten Demokratie. Volksabstimmungen im Spannungsfeld von Mehrheits- und Konsensdemokratie – Ein Vergleich von 15 Mitgliedstaaten der Europäischen Union*. Mit einem Vorwort von Arend Lijphart. Baden-Baden: Nomos, 2014.

**Donau-Institut Working Papers**  
**ISSN 2498-9177**

- 1 Pállinger, Zoltán Tibor (2016): Potentials of Direct Democracy in an Extremely Majoritarian System: The Case of Hungary.
- 2 Pállinger, Zoltán Tibor (2016): The Uses of Direct Democracy in Hungary.
- 3 Fischer, Lorenz (2017): Strategische Kulturen im Vergleich. Russland und die Türkei oder die Wiederbelebung einer geokulturellen Konfrontation.
- 4 Bräutigam, Yvonne (2017): Krisenkommunikation Online – Politische (Krisen-)Kommunikation am Beispiel der Reaktion der Bundesregierung zum Germanwings-Flug 4U925
- 5 Pállinger, Zoltán Tibor (2017): Direct democracy in an increasingly illiberal setting: the case of Hungary

Besuchen Sie uns auf unserer Homepage unter <http://www.andrassyuni.eu/zedem>. Wir machen sie darauf aufmerksam, dass wir die Weitergabe des entsprechenden Working Papers einstellen, falls eine revidierte Version für eine Publikation an anderer Stelle vorgesehen ist.