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Zoltán Tibor Pállinger

Potentials of Direct Democracy in an Extremely Majoritarian System: The Case of Hungary

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Abstract

This paper gives an overview of Hungary's system of direct democracy. First, the legal framework is presented. Starting with the Hungarian conception of direct democracy, the individual instruments and procedures are discussed. Second, the development and the use of direct democracy are described. It can be stated that in the last 27 years the importance and the practice of direct democracy have changed and the function of direct democracy within the Hungarian political system is unclear. It is by no means insignificant – important issues have been decided by referendum – but it is impeded by two major conceptual flaws. Hungary's political system is simultaneously extremely majoritarian (this tendency has been reinforced with the new Fundamental Law) and predominantly representative. This constellation prevents the development of a political space in which questions can be discussed without reference to party politics. Furthermore, the government consciously pursues politics based on a friend-enemy scheme in order to polarize society. In such an environment, referendum campaigns may become disruptive. Finally, the dominance of the representative principle in Hungarian politics induces the political elite to condone direct democracy. It is illustrative that the state doesn't provide any support for citizens wishing to initiate a referendum. The conceptual and practical flaws lead to a situation in which the interaction of the representative system with direct democracy is very limited.

Keywords: Hungary, direct democracy, comparative politics, political theory, participation, transition, illiberalism

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1. Introduction

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

Direct democracy, however, is quite alien to Hungarian political traditions and practices. Since their introduction, direct democratic instruments have caused problems 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 called into question its practicability. The integration of direct democratic elements into the representative system made numerous clarifications necessary. Therefore, the Constitutional Court (CC) became a major actor in shaping Hungarian direct democracy. It helped to clarify procedural ambiguities and its fundamental decisions became guiding principles in parliamentary law-making.

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

The landslide victory of the Fidesz Party[1] and its ally the KDNP[2] in 2010, which lead to a two-thirds majority in parliament, made the enactment of a new constitution possible. The FL was regarded by the winning parties as the completion of Hungary's transition to democracy. Among many other provisions, the electoral system was reformed. The size of the parliament was practically reduced by half from 376 to 199. Although the mixed electoral system was retained, it was profoundly altered. Now 106 MPs are elected in single constituencies using the first-past-the-post system, instead of the old two-rounds voting system, and 93 MPs are elected from a national list. The electoral reforms reinforced the majoritarian traits of the political system. Because of the two-thirds majority, the opposition's room for manoeuvre is curtailed. Hungary's opposition and many foreign observers, however, considered the constitutional changes as problematic with respect to the quality of the country's democracy (Ágh 2015). Fidesz and KDNP were able to defend their two-thirds majority in 2014, thus consolidating the new constitutional system. Democracy measurements like Freedom House, the Bertelsmann Transformation Index, and Nations in Transit clearly show a massive decrease in democracy quality. Nation in Transit even classifies Hungary as "Semi-Consolidated Democracy" (NIT 2016, 21).

It is against this background that the potentials of direct democracy in Hungary have to be assessed. Between 1989 and 2008 six nation-wide referendums on 12 questions were held. Since then – under the new provisions – no further referendus have been held. However, between 1 January 2012 and 5 June 2016, 328 initiatives were submitted for validation, but in the end only 15 were able to pass this hurdle. However, none of these initiatives have collected the necessary signatures to date (Farkas 2016, 23). The paper will proceed as follows: First, an overview on the legal framework and the instruments of direct democracy in Hungary will be given, followed by an examination of the development of the practice of direct democracy. Finally, the system of Hungarian direct democracy will be evaluated and the conclusions will be presented.

[1] Fidesz = Fidesz – Magyar Polgári Szövetség (Fidesz – Hungarian Civic Alliance)
[2] KDNP = Kereszténydemokrata Néppárt (Christian Democratic People's Party)

2. Legal Framework

2.1 The Hungarian Conception of Direct Democracy

The Hungarian FL stipulates the principle of popular sovereignty (Art. B, Sect. 2 FL), which "shall be exercised by the people through elected representatives or, in exceptional cases, directly" (Art. B, Sect. 2 FL). This represents a slight shift in comparison with the old constitutional provision, in which representative and direct democracy were on equal footing: "supreme power is vested in the people, who exercise their sovereign rights directly and through elected representatives" (Act 1949/XX, Sect. 2). The new wording makes it clear that the use of direct democracy should be restricted to exceptional cases;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). These principles are echoed in the new referendum and popular initiative act (Act 2013/CCXXXVIII). Direct citizen-involvement is only an exceptional possibility; however, if a citizens' initiative leads to a successful referendum, the direct exercise of power supersedes the representative method. 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 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, to date, has always been met– but can't be enforced legally (through a ruling of the CC, for example). Secondly, the process of popular law-making (popular initiative) and the process of parliamentary/representative law-making are completely separated. The whole procedure – in case of a successful referendum – "is under the influence of the interested citizens" (Ruling 52/1997 of the CC). As we will see below, the strict procedural separation prevents a dialogue between the representatives and the civil sphere. The parliament only makes 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 does not take place. Furthermore, the parliament is permitted neither a recommendation for the attention of the citizens,, nor ithe opportunity 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.

2.2 Instruments

As Article 8, Section 2 FL states: "National referendums may be held about any matter falling within the functions and powers of the National Assembly." The constitution provides for three types of referendums (Art. 8, Sect.). The first is a full scale popular initiative which leads to a referendum. The second is a kind of an agenda initiative, by which the parliament can decide whether a referendum should be held or not. The third possibility is plebiscite, which can be initiated either by the government or the president. The constitutional changes of 2011 did not fundamentally alter the instruments of direct democracy. The three above-mentioned kinds of referendum remained typologically unchanged. However, the old "proper" agenda initiative, which existed in the old constitutional setting, was abolished.[3]

1. **Full-scale popular initiative** (Art. 8, Sect. 1 FL):
   200,000 eligible voters can initiate a so-called "national referendum" (országos népszavazás). This kind of referendum aims at deciding a political question or expressing an opinion. The result of a successfully held national referendum is binding for the parliament (Art. 8, Sect. 4 FL). Contrary to the international usage (which would be "optional referendum"), in Hungarian legal terminology this instrument is called a "compulsory referendum." It is compulsory in that, because a sufficient number of signatures have been collected, so that the parliament must schedule a referendum (cf. Komáromi 2015, 80).
2. **Popular agenda initiative with a possible referendum** (Art. 8, Sect. 1 1 FL):
   Based on its own consideration, the parliament can schedule a "national referendum"

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

upon an initiative led by 100,000 eligible voters. This kind of referendum aims at deciding a political question or expressing an opinion. If the referendum is successful, the results are binding for the parliament (Art. 8, Sect. 4 FL). In the old constitutional setting, the parliament had to decide in advance – before scheduling the referendum – if the results of a successfully-held, national referendum were regarded as binding or as merely consultative (Act 1949/XX, section 28/C [4]). Hungarian legal terminology does not differentiate between a popular agenda initiative with a possible referendum and a plebiscite; both are called a "facultative referendum." They are facultative because the decision to call for such a referendum is up to the parliament's discretion.

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

   Based on its own consideration, the parliament can schedule a "national referendum" (országos népszavazás) on 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]).

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, the FL constricts the scope of possible subjects in the next paragraph by stating that national referendums may not be held on the 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 within the competence of the parliament. However, the delineation of this provision is unclear, especially when the parliament delegates some of its competences to the government. The latest jurisprudence seems to interpret this provision very restrictively, meaning that delegated questions are not open for referendum anymore (Komáromi 2014, 5). The ban on constitutional initiatives has been made explicit and absolute. This question was not regulated in the old constitution. The CC ruled that the constitution could not be changed by popular initiative, however, it was possible that the parliament itself could decide to put single constitutional changes or even a whole new constitution to a confirmatory popular vote (Ruling XXV/1998 (VII. 7.) of the CC). Finally, there is a slight semantic difference regarding the formulation of the ban of referendums on international treaties. The FL states "any obligation arising from international treaties," whereas the old constitution was more comprehensive, stating "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 as well, which are not yet valid. Therefore, internal preparatory steps may also be excluded from a referendum (cf. Komáromi 2014, 6). Furthermore, electoral acts are also excluded, and validity requirements have become more restrictive. Now, there is a 50% + 1 participation threshold, whereas between 1997 and 2012, there was a 25% approval quorum. The new provisions represent a return to the original rules, which were enforced between 1989 and 1997 (Komáromi 2014, 6).

2.3 Procedures

The current system of direct democracy evolved through an interplay of legislative acts and rulings of the CC. 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 referendum and initiative act (Act XVII/1989).

The present Act on Referendum and Popular Initiative (Act 2013/CCXXXVIII), which was enacted after the FL, made a major attempt to unify the material regulation for all direct democratic instruments into one single act (European citizens' initiative, nationwide and local referendum). However, some procedural regulations stayed in the Act on Electoral Procedure (Act XXXVI/2013). The new Act on Referendum and Popular Initiative makes an attempt to reduce the number of "unserious" initiatives: firstly, by introducing the requirement that 20 citizens have to support the initiative proposal with their signature, where before only one person's signature was required; secondly, by having the president of the National Electoral Office (NEO) examine the proposal for compliance 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 resubmitted and must be put on the agenda of the NEC (cf. Komáromi 2014, 7f.).

Another important point that required clarification was the treatment of concurring initiatives. By stating that, in the case of initiatives dealing with the same subject, 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 problematic in practice (see below).

Furthermore, the new act has partially set new time limits and allows the initiators to withdraw the proposal before the submission of the signatures (Act XXXVI/2013, Para. 20).

The president and the government are also allowed to withdraw their proposal "until the day when the holding of the referendum is ordered" (Act XXXVI/2013, Para. 26).

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

The popular initiative process starts with 20 to 30 initiators submitting a specimen of the signature sheet to the NEC for validation.[5] 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 be within the competence of the parliament. Furthermore, the question has to comply with the above-mentioned constitutional exemption clauses and with other formal prescriptions. Initiators are entitled to submit a complaint against the NEC's decision and any of its other decisions during the referendum process before the Kúria.

Before commencing the collection of signatures, the initiators have to notify the data protection register of the processing of data (Act XXXVI/2013, Para. 2 [2]). If the question is validated, the NEO provides the necessary number of official signature sheets. The proponents have 120 days to collect the necessary signatures (Act XXXVI/2013, Para. 19 [1]). The NEC has to validate the collected signatures and the observation of the statutory periods

[4] There is an exception to the 90 days rule: Review requests against the resolutions of the NEC, in case of rejection of the initiative in some special cases ("offences"), have to be decided within thirty days (cf. Komáromi 2016, 8).

[5] Referendum questions initiated by the president or the government also have to be validated by the NEC the procedure corresponds to the procedure of the popular initiative.

within 60 days. Following this, the NEC has to inform the Speaker of the House of 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 an initiative with an optional referendum, the parliament must make a formal decision on conducting the ballot. If 200,000 or more valid signatures are collected, the parliament has no discretionary competences and has to schedule the referendum and provide the necessary funds. If there are between 100,000 and 199,999 valid signatures, the parliament can decide whether a referendum will be held or not.[6] 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 between 70 and 90 days. The referendum is valid if more than 50% of the voters have participated and more than half of them are in favour of the proposition (Art. 8, Para. 4 FL). The results of the referendum are binding for the parliament. Finally, the provisions of the referendum have to be enacted by the parliament within 180 days (Act XXXVI/2013, Para. 31 [1]), which means that the parliament also has to pass a bill which formally implements the content of the popular decision. Furthermore, the outcome of the referendum is binding for the parliament for three years, meaning that there is a ban on legislating on the same matter (Act XXXVI/2013, Para. 31 [2]).

3. The Hungarian Practice of Direct Democracy

Since 1989 six national ballots have been held in Hungary, through which twelve propositions have been decided. In the following, a short overview will be given in chronological order. The first group of referendums in 1990/89 were transition-related. The second group of referendums 1997 and 2003 were related to the process of European integration. Then, after the EU accession, Hungary seemed to sail in the calm waters of a consolidated democracy: In this period there were two referendums. However, this calm turned out to be delusional. From 2006, until the landslide victory of Fidesz in 2010, conflicts intensified and the

[6] It is possible to file a complaint against the decision of the parliament at the CC, which must answer the question within 30 days.

referendums of 2008 were instrumental in the struggle for power. Since 2008 there have been no nation-wide ballots. The political elite seem to have been successful in preventing popular initiatives. This is either achieved by manipulation or by substituting "genuine" direct democracy by pseudo-democratic instruments like National Consultations. The plebiscite on migrant quota, which will be held on 2 October 2016, is the culmination of the new trajectory of Hungarian democracy to date.

3.1 Transition-related initiatives and referendums in 1989/90[7]

The first two nation-wide votes ever held in Hungary were related to the democratic transition. The ruling socialists reached an agreement with the members of the opposition at the round-table negotiations in September 1989. This agreement laid the foundations for the new democracy. It had to be implemented by the parliament, which did so by passing the so-called "pillar laws," in order to pave a constitutional and peaceful way for the democratic transition. Two opposition parties, SzDSz[8] and Fidesz, wished for more radical changes. They aimed at dismantling the MSZP's[9] instruments of power in order to assure peaceful transition. Furthermore, they also wanted the state party to render an account ofits belongings. Finally, they also asked to postpone the presidential elections until after the general elections. These two parties began to collect signatures in order to enforce a referendum on these questions, and they succeeded in mobilising mass support and gathering the necessary signatures. Therefore, the parliament was obliged to call a referendum (Decision 25/1989 of the 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 the Fidesz Party to raise their popularity vis-à-vis the socialists and also through the more moderate opposition groups. The breach of the primordial agreement made it clear that the radical opposition was pursuing a long-term

[7] The overview on referendum practice between 1989 and 2009 is based upon Pállinger (2012).
[8] SZDSZ = Szabad Demokraták Szövetsége (Alliance of Free Democrats).
[9] MSZP = Magyar Szocialista Párt (Hungarian Socialist Party).

strategy to enhance its standing with regard to the coming general elections. This, in turn, deepened the rift between the political actors; they began to distrust each other. The referendum was held on November 29, 1989. Regarding the most important question (the presidential election), the socialists were defeated by a minimal margin. This frustrated their attempt to retain 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 whether the president should be elected directly by the citizens. They succeeded in gathering the necessary signatures, and the parliament was forced to schedule the ballot (Decision 56/1990 of the National Assembly). The MSZP wanted the vote to take place on the same date as the election of the local self-governing bodies in September of 1990, which would have ensured that the participation level would meet the threshold. Since the proposal was quite popular, the two biggest parties feared defeat. Therefore, they scheduled the ballot in the midst of the summer vacation. It came as no surprise, then, when the referendum failed on July 29, 1990, due tolow participation. With these two ballots, the immediate phase of transition was concluded and the phase of democratic consolidation began.

3.2 The Process of European Integration

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

3.3 Referendums in a Consolidated Democracy

The 2004 ballots are examples triggered by popular initiatives searching to achieve narrowly-defined, concrete goals. The extra-parliamentary, oppositional MP[10] started a successful collection of signatures for initiating a referendum in the autumn of 2003, which aimed to cancel the privatisation of health care. In December 2003 the CC declared the concerned law, which provided for the privatisation in the health care sector, unconstitutional, but the popular vote had to be held nevertheless (Decision 82/2004 of the National Assembly). However, due to these legal struggles it could only be scheduled on December 5, 2004. This, together with a rift within the majorparties, and the saliency of the other referendum, meant the campaign was not very disruptive. Opinion surveys show that 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. This referendum was also scheduled for 5 December 2004 (Decision 46/2004 of the National Assembly). The question took up the Hungarian national trauma of Trianon: After World War I, Hungary lost a great deal of its territory and about one-third of its population. Substantive parts of ethnic Hungarians are still, in the 21st century, living outside their "mother country". The settling of the relation between Hungarians living in Hungary and those living abroad has been a delicate question for every government, laden with symbolic references. In general, the conservative parties have a more supportive stance towards extending 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 with the other question, voters' decisions were more

[10] MP = Munkáspárt (Workers' Party).

influenced by individual attitudes and assessments than by ideological, party positions (Karácsony 2009).

The two questions, apparently, were not able to mobilise the masses, as both referendums failed because of the participation threshold. The situation calmed down after the ballot. Parties did not want to push the question of health care privatization; the topic was too risky for each side. The question of granting citizenship to ethnic Hungarians living abroad, however, remained on the political agenda. This topic became the focal point of newly emerging organisations on the extreme right and was only resolved after the general elections of 2010, when the ruling MSZP was ousted from government by Fidesz.

3.4 Deconsolidation and the Struggle for power

Hungary's political life has become more and more polarized during the second half of the last decade. The MSZP was able to win the elections of 2002 and 2006. Both sides made promises during the election campaign of 2006 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 of Prime Minister Ferenc Gyurcsány, 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 indirectly asked Gyurcsány to step down on the evening of the regional elections,October 1, 2006. The next day, Prime Minister Gyurcsány announced that he would ask for a vote of confidence against himself. Opposition leader Victor Orbán dismissed this proposal the same day and issued an ultimatum to the socialist parliamentary group to dismiss Gyurcsány and

to start negotiations with the opposition about the instalment of an expert cabinet within the next three days. If these demands were not met, he threatened, the opposition would call for mass demonstrations. On October 6 the parliament expressed its confidence in the Prime Minister. This led to new protests until October 23, 2006.

Due to the solid parliamentary majority, the government did not step down. Recognizing the futility of its endeavours, the opposition nevertheless sought to retain the momentum. 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 aimed at directing the protests into constitutional channels and at sustaining pressure on the government.

On October 24, 2006 the Fidesz, together with their allies, the KDNP, deposited seven referendum proposals at the NEC for validation. The proposed questions were carefully chosen. They covered a wide range of interest groups that were affected by the government's austerity measures. The NEC validated three questions (2, 4, 6); the rest were rejected (Szoboszlai 2009, 254). The Constitutional CC approved the NEC's ruling concerning two questions (5, 7) and instructed the NEC to reassess the other questions. The proponents deposited one question without modification (1); one question was modified (2), and a new question concerning the abolition of daily hospital fees in in-patient care (8). The NEC rejected all three questions in March/April 2007. The court, however, sent back all three questions to the NEC for re-evaluation. The core conflict between the court and the NEC was how to interpret the list of excluded issues in the constitution. The court issued a communiqué in which it declared that not only its rulings, but also its considerations, were binding. This was an unprecedented act which concretely meant that the court, without being authorised to do so, instructed the NEC to follow the court's more referendum-friendly interpretation. In On June 25, 2007 the NEC complied with the CC's guidelines and validated the three questions, but upheld its opinion that 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 made the necessary decisions (Decisions 109-111/2007 of the National Assembly), and the referendum was scheduled for March 9, 2008. Against the backdrop of the very unpopular austerity measures, public opinion was very much in favour of 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.

3.5 Colonialization of Direct Democracy

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

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 of 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 was also aimed against the government's plans to allow private investment in the healthcare sector. The parliament decided to call a referendum on June 9, 2008 (Decision 76/2008 of the National Assembly). However, the parliament had already cancelled the healthcare reforms in May of that year. The parliament was thus not obliged to

call a referendum because the subject matter of the referendum had ceased to exist. The parliament did not, however, want to take the blame for an action which would have potentially contradicted the people's will. Some private persons appealed to the CC, which annulled the parliament's decision and instructed it to re-decide the case (Ruling 130/2008 of the Constitutional Court). Therefore, the parliament had to cancel the referendum on November 19 (Decision 118/2008 of the National Assembly).

In the context of the abolition of fees referendum campaign, Mrs. Mária Seres launched an initiative, according to which MPs' expenses would only be refunded if supported by an official invoice. This initiative, directed against politicians' privileges, was very popular. She was able to gather approximately 600,000 signatures. On April 17, 2009 the parliament was obliged to call the referendum (Decision 28/2009 of the National Assembly). It was clear that such a proposal would very directly influence the MPs' financial situation. Therefore, the parliament, displaying a rare show of unanimity, decided on June 29 to modify the law on 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. 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 the opportunity afforded by the temporary weakness of Fidesz Party to extort it 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 a common platform for the opposition. Ultimately, these attempts turned out to be unsuccessful, but it also became clear that the

question of the ban on Sunday sales had 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 within 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 for question submission became open at the moment the Kúria's decision was put on-line on its homepage. From this moment on, it was possible to submit new proposals personally at the NEO's office, and their chronological order was determined by a time clock. Persons and organisations supporting the ban were successful 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, continuously checking Kúria's website, when suddenly they had to step aside from the door because some suppliers arrived with a delivery. 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; these examples are simply 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 from submitting his proposal by some bald strongmen, who were standing and shuffling around him. Instead, the strongmen helped an elderly lady, Erdösi Lászlóné, (the wife of a former Fidesz deputy mayor) to submit her proposal first. These tumultuous scenes were made public in the (social) media and stirred a storm of indignation. The NEC validated her proposal (Decision 16/2016 of the NEC) with the majority of members delegated by the governing parties. It saw no problem with the fact that Mr. Nyakó was impeded by strongmen[11] 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.[12] This was widely seen as a political

[11] It since turned out that these men are connected to a vice president of Fidesz, and to the owner of a major league football club. The strongmen are associated with the football club.

[12] „Do you agree that retail shops – in accordance with the Act on Banning Sunday Sales in the Retail Sector (Act 2014/CII) – should stay closed on Sunday?"

decision by the NEC. On April 6 the Kúria annulled the NEC's decision to validate the question of Erdösi Lászlóné because she was only able to submit first due to the help of the strongmen. Thus, István Nyakó's question had to be considered as being correctly submitted and was therefore validated (Decision III.37.223/2016/2 of the Kúria). This decision opened the possibility for signature collection on a topic that was very popular. The government reacted 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 referendums were 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, referendum 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 have been submitted for validation by the NEC. 79% of these questions were proposed by private persons, 16% by parties and 5% by other organisations. Only 15 were validated; 313 were rejected. Most of the questions were rejected on grounds of ambiguity (62 %), formal errors (48 %), bona fides/proper use (16 %) and competence of the parliament (12 %) (Farkas 2016, 111).[13] Two things can be stated. First, the NEC's (and also the CC's) reasoning is very formalistic and that it 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.

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

[13] Most questions were rejected with more than one justification, that's why the sum ads up to more than 100 % (Farkas 2016, 24).

administration and made public. To date there have been five National Consultations on 1) questions regarding pensions, in which only retired persons were consulted (2010), 2) guiding principles of the new constitution (2011), 3) social questions, 4) economic questions (2012), and 5) questions regarding "immigration and terrorism" (2015). These consultations are highly controversial: the questions are manipulative, and it is not clear how the questionnaires are analysed. Furthermore, the costs of the National Consultations have to be paid by taxpayers. Whereas the governing parties stress their willingness to take into account people's opinions, the opposition criticises the National Consultations forbeing populist propaganda measures.

On February 24, 2016 Prime Minister Viktor Orbán announced that the government would initiate a referendum on whether to accept mandatory EU quotas for relocating migrants. The concrete question would be: "Do you want the European Union to prescribe the settlement of non-Hungarian citizens into Hungary without the approval of the Hungarian Parliament?" (NEC 2016). The NEC validated the proposal February 29, 2016 (Decision 14/2016 of the NEC). The validation was problematic because it was seemingly in conflict with the FL prescriptions on the national referendum. First, it is not clear if decisions made in the European Council or the Council of the European Union fall under the competence of the government or the parliament (Art. 8, Section 2 FL). Second, if the decision of the Council of the European Union is valid, it could fall under the ban of initiatives in the field of international treaties (Art. 8, Sect. 3, Lit. d FL). Third, it is unclear which quota are concerned (future quota, or those already decided); therefore, the non-ambiguity-clause might be violated (Act XXXVI/2013, Para. 10 [1]). Notwithstanding these concerns, the Kúria confirmed the decision of the NEC (Decision IV.37.222/2016/9 of the Kúria), stating that the proposal met all the legal requirements. In the opinion of the author, this decision changed the existing practise of interpreting the no-ambiguity-clause very narrowly. The parliament decided to order a referendum on May 10, 2016 (Decision H/10611 of the National Assembly). Both the decision of the Kúria and of the parliament were challenged at the CC, but the court dismissed the appeals (Decision 3130/2016. (VI. 29) and Decision 12/2016. (VI. 22.) of the CC). Therefore, on July 5, the president scheduled a nation-wide referendum for October 2, 2016. The government had already started a so-called information campaign. This campaign was very

biased; it served to strengthen Orbán's position within the EU, to deflect from political problems (corruption, healthcare etc.) and to generate public support for the government.

4. Conclusions

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

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

initiate a referendum. These conceptual and practical flaws lead to a situation in which the interaction of the representative system with direct democracy is very limited.

It is difficult to fit direct democratic instruments, which are anti-hegemonic and are not controlled by government into a predominantly representative and extremely majoritarian system. Furthermore, the current state of affairs facilitates the colonialization of direct democracy by the representative system. Therefore, it can be concluded that the potential of direct democracy in Hungary is very limited. In extreme cases it can function as a safety valve, but under "normal" circumstances it is controlled by the political elite and its deliberative potential is not realised at all.

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