

MILESTONES IN THE HISTORY OF DIRECT DEMOCRACY IN HUNGARY

László KOMÁROMI
associate professor (PPKE JÁK)

1. Introduction

Hungary's first experience with national referendums was in 1989, in the last days of the one-party state. However, the history of Hungarian ideas concerning direct democracy and the use of direct democratic instruments dates back to earlier times. When speaking of milestones of this development I also involve thoughts, plans and practices related to direct democracy, prior to the first nation-wide regulation of direct democratic instruments and the first national referendum in 1989. Therefore we must first briefly go back into the distant past.¹

2. Ideas, plans and regulations relating to direct democratic instruments until 1989

2.1. An early attempt: Ignác Martinovics's draft constitution (1793)

The ideas of the French Enlightenment gradually infiltrated into Hungary from the middle of the 18th century. This process strengthened in the first years of the French Revolution. One of the propagators of the revolutionary ideas was Ignác Martinovics, a former Franciscan friar and professor in Lviv (Lemberg), court chemist and spy of the Hungarian King Leopold II (1790–1792), who – after his employer had died unexpectedly in 1792 and the new king, Francis I (1792–1835)

¹ I already elaborated the history of popular rights in Hungary in the following paper: László KOMÁROMI: Popular rights in Hungary. A brief overview of ideas, institutions and practice from the late 18th century until our days. *C2D Working Paper Series*, 2010/35. 1–35. Hereinafter I will partly rely upon this elaboration.

had revoked his commission – spread more and more radical views by means of anonymous pamphlets.² He knew that the king needed both recruits and money for the war against France, the estates assembly was therefore to be convoked in order to get the estates to approve the recruitment and the war-tax. He also supposed that the discontented noblemen could be persuaded to adopt a constitution which would curtail the powers of the ruler. For this reason, in August 1793 Martinovics elaborated a draft constitution and prepared proclamations for the noblemen.³ The draft obviously relied on the French Montagnard Constitution adopted by the French National Convention on 10 June 1793 and ratified subsequently by popular referendum, although it did not intend to abolish the monarchy: the monarch would have been the first, the nobility and the people would have represented the second and third estates. As for direct popular participation Martinovics's draft involved two instruments: the mandatory constitutional referendum and the popular veto on parliamentary laws. According to art. XXII, the constitution was to be adopted explicitly by the whole nation and every law was accepted by tacitly remaining silent during six weeks. Both votes on constitutional amendments and eventual vetoes on parliamentary laws were to happen in primary assemblies (art. XLII–XLIII).⁴ In France, the mandatory constitutional referendum was enacted in a resolution of the National Assembly already on 21 September 1792; the popular veto on parliamentary laws was regulated by art. 58–60 of the Montagnard Constitution.⁵

However, contrary to Martinovics's expectations, the king did not convoke the estates. Not even the pamphlets were sent to the counties and the deputies. Martinovics entrusted the draft to János Laczkovics, one of his followers and instructed him to present and popularize it at a convenient time. Nevertheless, the right moment never came: both Martinovics and Laczkovics were arrested and in 1795 executed as members of secret organisations (the Society of Liberty and Equality and the Society of the Reformers – together also called “Hungarian Jacobine Movement”) which strove to launch an insurrection and to abolish the Habsburg monarchy and

² Vilmos FRAKNÓI: *Martinovics és társainak összeesküvése*. Budapest, Ráth Mór, 1880. 68–76., 134–138.

³ Kálmán BENDA: *A Magyar Jakobinus mozgalom iratai*. Budapest, Magyar Történelmi Társulat, 1957. 896–897.

⁴ Art. XXII: “Doch muss die Konstitution von der ganzen Nation ausdrücklich, und alle Gesetze durch vordauerndes Stillschweigen von sechs Wochen angenommen werden.” Art. XLII–XLIII: “Die Urversammlungen bestehen aus dem König, ganzem Adel und allen Gemeinden des Volkes. Diese üben bloß die Haupthandlungen der ursprünglichen Souveränität aus, nämlich bestätigen oder verwerfen den vom Landtag bestimmten Konstitutionsentwurf, wählen Deputierte zum Landtag, verwerfen entworfene Gesetze, wenn diese ihnen schädlich scheinen, erklären ihren Willen über die Höhe der Steuer, und über einen zu unternehmenden oder vermeidenden Krieg.” BENDA op. cit. 899–900.

⁵ Stéfane DIÉMERT: *Textes constitutionnels sur le référendum*. Paris, Presses universitaires de France, 1993. 5–7. The popular constitutional initiative, the right of the primary assemblies to propose amendments to the constitution (art. 115), doesn't appear in Martinovics's draft.

the feudal institutions.⁶ The first concrete idea for adopting modern direct democratic instruments in Hungary was not realized, however, the draft shows that French solutions of that time touched Hungarian intellectuals as well.

2.2. Hungarian reform era (1825–1848), neo-absolutism (1849–1867) and the Austro-Hungarian Monarchy (1867–1918)

The times until World War I were not favourable for introducing direct democratic elements in the Hungarian constitutional system. Development first demanded further steps in most European countries as well: 1) the transformation of estates' representation to parliamentary representation throughout the whole nation and 2) the change from imperative to free mandate of the representatives.⁷ In Hungary, both aims were advocated by the most important political thinkers in the reform era (1825–1848) and accepted by the members of the liberal nobility. They did not consider the time fit for the introduction of direct popular participation in political decision-making. When the historian, lawyer, politician and publicist László Szalay (1813–1864) wrote about the Swiss legislation and federal system in 1844 and referred to the direct democratic institutions evolved and practiced in some cantons during the reform movement of the 1830s and 1840s, the so-called "Regeneration", he explicitly denied the applicability of such instruments in Hungary: "...we all know, that some cantons gradually accepted the doctrines of 1791 over the last fifteen years, where not only the popular sovereignty and the citizens' equality are set down, but the popular veto and the periodical revision of the constitution are also declared by law, moreover the right of resistance – the Ultima Thule of liberty –, in other words things we don't want to follow..."⁸

Thus, during the transformation of 1848 the bourgeois representative system was established⁹ and the deputies were freed from the instructions of their electors.¹⁰ Direct popular decisions were not acknowledged: for example the protestant pastor of the commune of Tiszabercel, József Litkei, when he held a popular meeting on the New Year's Day of 1849 and had a resolution on the abolishment of the 'regalia minora' passed (profitable rights connected with the nobles' property), he was later

⁶ Andor CSIZMADIA: *Hajnóczy József közjogi-politikai munkái*. Budapest, Akadémiai Kiadó, 1958. 20.

⁷ Cf. Georg BRUNNER: *Direct vs. Representative Democracy*. In: Andreas AUER – Michael BÜTZER (eds): *Direct vs. Representative Democracy*. Aldershot, Ashgate, 2001. 215–216.

⁸ László SZALAY: A' schweitzzi diéta 's a' foederatív-rendszer. *Pesti Hírlap*, 1844, 10 July 1844, see it reprinted in: László SZALAY (ed.): *Publicistai dolgozatok*. Pest, Heckenast Gusztáv, 1847. 204–205.

⁹ See Act V of 1848 on the Election of Parliamentary Deputies on the Basis of Popular Representation and Act IV of 1848 on Annual Parliamentary Sessions.

¹⁰ When the city of Esztergom decided to deprive its deputy of his mandate because of loss of confidence and requested from the Parliament the approval of the resolution and the permission to elect a new deputy, the Parliament responded that the recall of parliamentary deputies is not admitted – János BEÉR (ed.): *Az 1848/49. évi népképviselési országgyűlés*. Budapest, Akadémiai Kiadó, 1954. 195.

condemned to imprisonment of one month by the tribunal which investigated the case on the spot.¹¹

After the revolution and war of independence had been suppressed, Hungary was degraded to a simple territory and incorporated into the centralized Habsburg Empire; its independent governmental and parliamentary institutions were abolished. During times of the so-called neo-absolutism leading Hungarian personalities never gave up the idea of political autonomy and they insisted on the principles of 1848, among others on the idea of popular sovereignty. For example Lajos Kossuth, one of the most popular revolutionary leaders, after fleeing to Turkey, he elaborated a draft constitution as a proposal for Hungary's future political system and for the arrangement of the situation of the national minorities. In his draft – which was first prepared in Kütahya in 1851 – Kossuth emphasized the principles of democracy and self-government and endeavoured to put them into effect both on the level of the communes, the counties and the country. However, he only planned direct popular decision-making in the communes; he envisaged a representative system in the counties and on the national level, where deputies could be recalled by their electors.¹²

The Austro-Hungarian Compromise of 1867 restored Hungary's legislative autonomy and established a dual monarchy under the rule of a common monarch. Only questions of foreign policy, military and the finances related to them were common affairs. During the five decades of this dual monarchy, political debates were dominated by questions of public law; the opposition constantly questioned the settlement between the two states. Thus, although the system bore the characteristics of a parliamentary democracy, governments went to all ends to prevent the opposition from coming to power and from overthrowing the establishment. The suffrage was extended slowly and gradually; responsible statesmen did not consider it reasonable to introduce direct democratic rights. Only the extra-parliamentary Social Democratic Party declared the claim for “direct legislation manifested in the people's right of initiative and veto” on its congress in 1903.¹³

¹¹ Imre RÉVÉSZ: Az utópikus szocialista gondolat magyarországi hatásaihoz. *Századok*, 1951/1–2. 143.; both cases also referred to by István SZENTPÉTERI: *A közvetlen demokrácia fejlődési irányai*. Budapest, Akadémiai Kiadó, 1965. 120–121.

¹² György SPIRA: *Kossuth és alkotmányterve*. Debrecen, Csokonai Kiadó, 1989. 57–59., 62–64.

¹³ See the Program of the Hungarian Social Democratic Party, section 2: Tibor ERÉNYI – Ferenc MUCSI – Edit S. VINCZE (eds.): *A magyar munkásmozgalom a 20. század első éveiben és az 1905–1907-es forradalmi válság idején: 1900–1907*. Budapest, Szikra, 1955. The authors of the Program were supposedly impressed by the German Social Democratic Workers' Party's Eisenach Program of 1869, which also involved the popular legislation: “Einführung der direkten Gesetzgebung (das heißt Vorschlags- und Verwerfungsrecht) durch das Volk” (III. 2.) – Wilhelm MOMMSEN (ed.): *Deutsche Parteiprogramme*. München, Olzog, 1964. 312. Referred to also by SZENTPÉTERI (1965) op. cit. 363.

2.3. The question of territorial plebiscites during times of the dissolution of the Austro-Hungarian Monarchy

Hungary's defeat in the First World War and the occupation of two third of the territory of the country by the Czechoslovak, Romanian and Southern Slavic armies in the turn of 1918–1919 raised the question of territorial plebiscites. The Károlyi Government and especially Oszkár Jászi, the minister entrusted with the preparation of the autonomy of ethnic minorities in Hungary, strove to achieve a peace settlement based on wide-ranging consensus. Jászi first planned to establish autonomous cantons for different ethnic minorities, then to create a confederation with Danubian succession states. The “Short Catechism on the right of ethnic minorities living in Hungary to self-government”, which summarized Jászi's policy, declared further that “the Hungarian People's Government already accepts the competence of the peace conference in advance relating to a resolution by virtue of which Slovaks and Romanians, Serbs and Ruthenians living in Hungary can decide on their own by means of referendum which country they wish to belong to”.¹⁴ Also the Hungarian delegation to the Versailles Peace Conference considered the plebiscite on debated territories a suitable solution for the conclusion of peace and for the establishment of good-neighbourly relations in the area, however, its proposals for direct popular decisions were not reconcilable with the plans of the victorious powers and the neighbouring countries.¹⁵

Finally, the Treaty of Trianon, the peace agreement between the Entente Powers and the Hungarian Kingdom signed on 4 June 1920, detached ca. two-thirds of the territory of Hungary; more than a half of its inhabitants, among them more than three million ethnic Hungarians became citizens of the neighbouring states. The disannexed territories included a zone of nearly 4.000 square kilometres in the western part of the country which had already been awarded to Austria by the Treaty of Saint-Germain in 1919, however was still not occupied by the Austrian gendarmerie. The Hungarian Government proposed a plebiscite for this region as well, but Austria requested that Hungary draw its forces out of the territory. After the Hungarian armed units had been evacuated, irregular troops took possession of the territory and were not ready to give admittance to the Austrian gendarmerie, moreover on 4 October 1921 they proclaimed the “Leitha-Banat” as independent microstate which was not recognized by the Hungarian, the Austrian and any other government, either. István Bethlen Hungarian prime minister and Johannes Schober Austrian chancellor tried to find a solution by the mediation of the Italian Government. On 13 October the two parties agreed in Venice that Hungary clear the region of insurgents and Austria give their

¹⁴ László DOMOKOS: *Kis káté a Magyarországon élő nemzetek önrendelkezési jogáról*. Budapest, Lantos, 1919. 13.

¹⁵ László SZARKA: A magyar békejegyzők érvrendszere és a trianoni békeszerződés. In: László SZARKA (ed.): *Duna-táji dilemmák. Nemzeti kisebbségek – kisebbségi politika a 20. századi Kelet-Közép-Európában*. Budapest, Ister, 1998. 136., 142–143. See further: László SZARKA: Keleti Svábj – illúzió vagy utópia? *Ibid.* 113–125., 344–348.

permission to organise a plebiscite on the status of the city of Sopron (Ödenburg) and of eight surrounding communes. The right to vote was not only given to male and female inhabitants over 20 years but also to people who were born in the territory in question. The vote took place between 14 and 16 December 1921. Around 85% of the enfranchised voters took part in the plebiscite (23.561) and 65% voted for Hungary, 35% for Austria, thus, Sopron and its surroundings remained a territory of Hungary. In 1922, the Hungarian Parliament rewarded the city with the title “*civitas fidelissima*” (“the most loyal town”).¹⁶ The Sopron plebiscite was the first popular vote on a factual issue in modern Hungarian history.

Apart from this single territorial plebiscite, Hungary had no experience with popular votes in the interwar period. However, at that time, it came to a first breakthrough of direct democratic instruments in many European countries. The Weimar Constitution (1919), the Constitution of Austria (1920), the first Constitutions of the Republics of Estonia (1920), Latvia (1922) and Lithuania (1922), the Constitution of the Irish Free State (1922),¹⁷ all adopted different instruments of popular legislation. Between 1918 and 1949 more than 40 national referendums were held in European countries, without taking into consideration referendums in Switzerland and Lichtenstein. Thus, Hungary did not take part in this first wave of direct democracy in Europe.

2.4. Socialist era

The means of referendum first appeared in the Hungarian constitutional system during the socialist period, when the Constitution of 1949 – obviously taken after the Stalin Constitution of 1936 – declared that the Presidential Council (an organ for the substitution of the Parliament) was entitled to submit questions of national importance to referendum (Act XX of 1949, art. 20, para. 1). However, this regulation was never applied in practice.

In addition to this, the Law on Local Councils (Act I of 1971, art. 35) and its supplementary decree (Gov. Decree No. 11/1971, art. 33) entitled local authorities to raise questions of common importance before the village meeting. In communes with joint council (with common administrative organisations) it was mandatory to organise these consultative meetings in order to inquire about the inhabitants’ opinion regarding the medium-term plan, the general resettlement plan and any other significant plans of the commune and their execution. However, the local authority was not bound to the view expressed by the majority of the inhabitants. Only in

¹⁶ Tibor ZSIGA: Mikor volt az első népszavazás? *Belügyi Szemle*, 1990/2. 78–83. For a detailed overview on the history of the Sopron plebiscite see: Mária ORMOS: *Civitas fidelissima*. Győr, Gordiusz, 1990.

¹⁷ See art. 18 and 73–76 of the Constitution of the Weimar Republic (1919); art. 41 and 43–46 of the Constitution of the Republic of Austria (1920); art. 30–34 and 87–89 of the Constitution of the Republic of Estonia (1920); art. 48, 50 and 72–80 of the Constitution of the Republic of Latvia (1922); art. 20 and 102–103 of the Constitution of the Republic of Lithuania (1922); art. 47–48 and 50 of the Constitution of the Irish Free State (1922).

1987 did the President of the Government's Council Office (the central leading body of local authorities) issue a decree stating that the majority opinion of inhabitants could be established by voting and in this case it was obligatory to the council. Such popular votes could not only be initiated by local authorities but by 5% of inhabitants as well, however, it was the council who was entitled to submit the question(s) to the vote by its own free deliberation.¹⁸

The following right still remains to be mentioned from the socialist period: the right of enfranchised voters to recall members of local councils and of parliamentary representatives (Act XX of 1949, art. 30, para. 3 and art. 62, para. 3). Also this right was a dead letter until the turn of 1988 and 1989 when different organisations of the opposition launched recall processes – collecting the required number of signatures – in order to remove unpopular MPs most of whom did not wait for the ballot and resigned without having a clear popular decision.

3. The breakthrough of direct democratic instruments in 1989

3.1. Two motivating factors for adopting popular rights

The first reason for the introduction of direct democratic rights in Hungary was the demand of environmental organisations. In 1977, the Hungarian and the Czechoslovak Governments concluded an agreement on the construction of a large river barrage system on the Danube at Bős/Gabčíkovo and Nagymaros in order to produce electricity, prevent dangerous floods and improve navigability. The project was first postponed because of financial problems, however, in 1988, when the construction was given a boost, civil protests present since the mid-1980s, became even stronger. Environmentalists called the people's attention to the damages caused to nature by the dams and they began to collect signatures to submit the issue to popular vote. Until December 1988 ca. 80.000 signatures were gathered, however, except for the laconic regulation mentioned above, no detailed rules existed on the procedure to be followed.¹⁹

Although the political authorities were not quick to put the question to referendum, the civil campaign boosted another process which evolved from governmental circles.²⁰ Since the beginning of the 1980s, different scientific background organisations of the

¹⁸ Directive 7007/1987. (TK. 22.) of the President of the Government's Council Office – cited after István SZENTPÉTERI: *A közvetlen demokrácia elméleti alapjai és intézményei*. In: Márta KATONÁNÉ SOLTÉSZ (ed.): *A közvetlen demokrácia elméleti alapjai és intézményei*. Budapest, Eötvös Loránd Tudományegyetem Jogi Továbbképző Intézet, 1988. 255–256.

¹⁹ For the order of events see: Gábor LÁNYI: *A kuvik éve - környezetvédelmi jelzések. Romló környezet – romló életkilátások. Magyarország politikai évkönyve*, 1988/1. 144–160.

²⁰ I first touched upon this issue in a conference paper presented at the international conference “Freiheit und Verantwortung” organised by the Károli Gáspár University of the Reformed Church in Hungary in Budapest on 10 May 2013. The paper will be published in a conference volume – as can be foreseen – in autumn of 2013.

Hungarian Socialist Workers' Party (MSZMP) were engaged in conducting research on the reform of the political system. In November 1988 the concept of a draft constitution was completed which emphasized that "it proceeds from the essence of popular sovereignty that fundamental questions are from time to time decided by the people themselves" and that the power of the Parliament "is restricted first of all by popular rights, popular initiative and referendum". The concept proposed to submit the planned new constitution and its subsequent total revisions to the ballot.²¹

3.2. The first Law on Referendum and Popular Initiative

In January 1989, the Parliament adopted a constitutional amendment which prescribed that national referendums shall be regulated by a specific law. The bill was handed in by the Government in May and the Parliament passed it on 1 June 1989 without considerable debate, nearly unanimously.²² According to the law a national referendum was generally allowed on the confirmation of acts passed by the Parliament and on other decisions falling in the competence of the Parliament, especially on the necessity of a new legislation, the determination of the principles of a bill and other questions of national importance. Budgetary questions and tax regulations, appointments to office and the fulfilment of obligations already accepted in international agreements were prohibited matters for referendum. However, the future acceptance of international agreements was not excluded from popular vote. In addition to different state officials and organisations (the President of the Presidential Council – later the President of the Republic, the Government, at least fifty members of Parliament) also 50.000 citizens were entitled to initiate a referendum and the Parliament was empowered to order the referendum by two-third majority. In case the initiative was launched by 100.000 citizens (ca. 1,25% of the electorate), the Parliament was obliged to order the referendum. For a national referendum to be valid at least more than a half of all registered voters had to cast a valid vote. The law introduced the national agenda-initiative (questions proposed by at least 50.000 citizens for parliamentary debate were obligatory to be placed to the Parliament's agenda) and laid down the rules of local referendums as well.

As can be seen, it was relatively easy to initiate referendums, the rules concerning prohibited issues left plenty of opportunities for referendum proposals. Moreover, the law prescribed a mandatory referendum for the approval of Hungary's planned new constitution. The law did not institutionalize a specific control mechanism for bottom-up initiatives; it was the Parliament who was entitled to reject proposals if the required amount of signatures was not collected (a complaint could be lodged at the Constitutional Court against this resolution). Not even the time-limit for collecting

²¹ Géza KILÉNYI (ed.): *Egy alkotmány-előkészítés dokumentumai*. Budapest, MTA Államtudományi Kutatóközpont, 1991. 6–14., 115–116., 138.

²² Act XVII of 1989 on Referendum and Popular Initiative. The overall revision of the Constitution was passed only in October 1989 and the new Parliament was elected in spring of 1990.

signatures was laid down. The most important impediment to the exercise of popular power was the participation quorum of 50% which meant that only questions (and initiators) with an exceptional mobilizing force had a chance to reach the threshold. As István Kukorelli expressed: the law was an important but premature product of constitutional transformation.²³

3.3. The “Four-Yes Referendum”

The new law was put in practice barely a couple of months after its birth. The MSZMP, which carried on negotiations with oppositional parties regarding the political transformation since June 1989, intended to have its own popular candidate József Pozsgay elected as President, directly by the people before the first free parliamentary election. In turn it offered the dissolution of the Workers’ Militia. Although the majority of the opposition accepted this proposal, the Alliance of Free Democrats (SZDSZ) and other parties launched an initiative in order to postpone the presidential election to after the election of the new parliament and to submit three further questions to the vote: the withdrawal of party organisations from work places, the calling of the MSZMP to account for its assets and the dissolution of the Workers’ Militia. After 100.000 signatures had been collected, the Government and the Parliament retreated in the last three questions and fulfilled these requests of the opposition before the referendum. As for the question of the presidential election the voters approved the initiative with a slight majority (50,07%) on 26 November 1989. The referendum was valid because 58% of the enfranchised voters took part in the ballot.²⁴ The new President was in fact elected by the new Parliament. The result showed that the Government can be forced to retreat by means of direct democratic actions. In addition to this, the initiative added considerably to the popularity of the SZDSZ. Hungary’s first national referendum proved to be an effective political weapon in the hands of the opposition.

4. The evolution of popular rights until 1998

4.1. The Constitutional Court’s decision on the relation of direct and representative power (1993)

Except for one unsuccessful referendum held on the initiative of the Hungarian Socialist Party (MSZP) in 1990 on the introduction of the direct election of the President (only 14% of the enfranchised voters took part in the vote in the middle

²³ István KUKORELLI: Az országos népszavazás, 1989–1998. In: Sándor KURTÁN – Péter SÁNDOR – László VASS (eds.): *Magyarország politikai évtizedkönyve 1988–1998*, vol. I. Budapest, Demokrácia Kutatások Magyar Központja Alapítvány, 1998. 469.

²⁴ The other three questions were also decided positively with a majority of 95% of the votes.

of the summer), Hungary's representative government was not challenged by direct democratic actions until the end of 1992. At that time, however, a civic organisation, the Association of Citizens under the Subsistence Minimum Level launched an initiative for the dissolution of the Parliament. The Parliament asked the Constitutional Court for a preliminary opinion. The Court declared that 1) the primary form of exercising the popular sovereignty is by representation; referendums only serve for influencing representative decision-making, therefore they shall be complementary in relation to representative power; 2) a question submitted to referendum may not involve an implied constitutional amendment; 3) the Parliament can't be forced to dissolve by means of referendum (popular initiatives aiming at the dissolution of the Parliament are not admissible). The Court concluded further that the rules of the Law on Referendum concerning prohibited issues are not conform to the Constitution in its form adopted in 1989, thus, the Parliament is obliged to harmonize the two regulations.²⁵

The decision strove to clear some basic questions of the relation between direct and representative decision-making and restricted popular rights. One and a half years later the Parliament was thereby encouraged to reject the initiative of the Independent Smallholder's Party on the direct election of the President, the extension of his competence and other questions by the argument that the Constitution cannot be modified by means of popular initiative.²⁶ Another initiative of 1995, that of the Hungarian Communist Workers' Party concerning Hungary's NATO-accession was rejected without appropriate legal reasoning. The Parliament only stated that it is not timely to submit this question to referendum because the Republic of Hungary is not in a decision-making situation relating to the issue.²⁷

4.2. The revision of the legal framework I: constitutional amendments (1997)

In 1997–1998, the Parliament took measures to recodify direct democratic instruments.²⁸ On 1 July 1997 it adopted a constitutional amendment which enacted basic rules of referendums in the Constitution.²⁹ As the official explanation of the law pointed out: beyond the contradictions between the Constitution and the Law on Referendums as exposed in the decision 2/1993. (I. 22.) of the Constitutional Court, a constitutional amendment is also reasonable because fundamental rules concerning direct democracy must be encompassed in the constitution. Therefore, the amendment specified the types of referendums. According to the latter, a referendum may be *decisive* or *consultative*. The referendum is *facultative* if the Parliament decides by

²⁵ Decision 2/1993. (I. 22.) of the Constitutional Court.

²⁶ Parliamentary resolution 54/1995. (V. 26.).

²⁷ Parliamentary resolution 120/1995. (XII. 22.).

²⁸ For an overview of this process see KUKORELLI op. cit. 469–471.

²⁹ Act LIX of 1997 on the Amendment of the Constitution, art. 2–4.

free deliberation whether to put the question to popular vote or not (the President of the Republic, the Government, one third of the members of Parliament and at least 100.000 enfranchised voters are entitled to propose a referendum); the referendum is *mandatory* if the Parliament is obliged to submit the question to popular vote (this is the case if the initiative comes from at least 200.000 enfranchised voters provided that the question is admissible). In the latter case the result is binding for the Parliament (decisive referendum). The amendment significantly expanded the list of prohibited issues: in addition to prohibitions which had already existed since 1989 (see above 3.2.) further matters became inadmissible: provisions of the Constitution on national referendums and popular initiatives; the dissolution of the Parliament; the program of the Government; the declaration of a state of war, state of national crisis or state of emergency; the use of the Hungarian Defence Forces abroad or within the country; the dissolution of the representative body of the local government; the exercise of general amnesty. Finally, the new regulation changed the threshold of validity: a referendum was effective if more than a half of the voters, but at least more than one-quarter of all enfranchised voters gave the same answer in the referendum. To put it concisely: the threshold for launching an initiative was raised from 100.000 to 200.000, but the participation quorum of 50% was replaced by an approval quorum of 25%.

A second constitutional amendment (adopted on 14 October 1997) set a deadline of four months to gather signatures for referendum initiatives.³⁰

4.3. The revision of the legal framework II: new Law on Election Procedure (1997) and on National Referendum and Popular Initiative (1998)

The next stage of the recodification was the new Law on the Election Procedure³¹ (also adopted on 14 October 1997) which contained rules concerning the different stages of referendum procedures: the initiative, the validation of the question by the National Election Committee, the gathering of signatures and their verification, the ordering of the referendum by the Parliament, the campaign, the ballot, the summing up of the votes casted, the competent authorities and the rules concerning judicial review. The most important novelty of the law was that it empowered the National Election Committee to validate signature collection sheet (practically to make a decision regarding the admissibility of the question proposed for referendum) and also it made this decision subject to revision by the Constitutional Court.

The last step in the re-regulation of direct democratic instruments was the adoption of the new Law on Referendum on 17 February 1998.³² The Law specified

³⁰ Act XCVIII of 1997 on the Amendment of the Constitution, art. 4.

³¹ Act C of 1997 on Election Procedure.

³² Act III of 1998 on National Referendum and Popular Initiative.

the validation procedure of the National Election Committee and the requirements relating to the Parliament's decision on the ordering of the referendum.

The most important changes of 1997–1998 in short were the following: the raising of the initiative threshold, the lowering of the participation quorum, the expansion of the prohibited issues and the establishment of a control system for referendum initiatives. As for the last one: in addition to a two-stage validation process relating to the admissibility of the question (National Election Committee and Constitutional Court) the Parliament's decision on the ordering of the referendum was also subject to judicial control by the Constitutional Court. This meant that the popular referendum initiative had to pass – in an extreme case – four control institutions (decision on the admission: National Election Committee and Constitutional Court; ordering the referendum: Parliament and Constitutional Court) until it came to a popular vote.

4.4. The Constitutional Court's subsequent decision on the relation of direct and representative power (1997)

Still in 1997 – on the same day the law on Election Procedure was adopted – the Constitutional Court again set up a milestone concerning the relation of parliamentary and direct popular decision-making. In the background of the decision was the popular referendum initiative of oppositional parties in order to prevent the Government from adopting a law which would have made it possible for agricultural co-operatives to acquire the ownership of agricultural land. (Since 1994 it was prohibited for foreigners and corporations to acquire agricultural land.³³) The opposition emphasised that the Government's planned legislation would also enable foreign companies and private persons to obtain Hungarian agricultural land and began to gather signatures in order to maintain the prohibition on both possibilities. The Government in response proposed that the Parliament order a plebiscite on two separate questions: 1) should Hungarian agricultural co-operatives be enabled to acquire land ownership and 2) should it be denied to foreign private and juristic persons to obtain agricultural land in Hungary further on? However, six MPs and the ombudsman for civil rights turned to the Constitutional Court with the question: which one of the concurrent referendum initiatives shall have priority, that of the Parliament or that of the opposition?

The Court in response declared: 1) the direct exercise of popular sovereignty is exceptional, in such cases however, if it materializes, it supersedes representative power; 2) accordingly a bottom-up popular initiative shall take priority against the Government's facultative proposition from the handing in of signatures; 3) in case of an effective referendum the Parliament takes an executive role: its task is to implement the popular decision.³⁴

³³ Act LV of 1994 on Agricultural Land, art. 7.

³⁴ Decision 52/1997. (X. 14.) of the Constitutional Court.

This ruling confirmed the exceptional character of direct democratic decisions, however it set them over the Parliament and stressed that in case of referendums the representative power is forced into an executive position: its role is merely to give effect to popular will.

5. Milestones in the practice of Hungarian direct democracy since 1998

5.1. General remarks

Although four national referendums on seven questions have taken place since 1997, I wouldn't consider all of them milestones as only few of them seem to have a significant effect on the formation of the referendum practice, even if they mostly concerned important matters. In 1997, the voters approved Hungary's NATO-accession, in 2003 Hungary's entry into the EU. In 2004 a referendum was held on granting citizenship to ethnic Hungarians living abroad and on the prohibition of the privatization of state-owned health care institutions. This vote was ineffective in both questions because of the low turnout, however, both issues – especially citizenship – still remained hot topics of the political agenda later on. In 2008 the people decided on the abolition of fees for out- and in-patient treatments and fees for higher public education; perhaps this referendum had the most impact on public discussions relating to direct democracy. Beyond this last popular vote (see below further explanation), the Constitutional Court's decisions had the greatest effect on Hungary's practice with referendums: these decisions usually closed doors which were left open by the legislation of 1997–1998.

5.2. The Constitutional Court's decision on popular referendum initiatives aimed at the amendment of the Constitution (1999)

In 1999, the Constitutional Court ruled on the popular referendum initiative of the Social Democratic Youth League which intended to introduce the direct election of the President. The initiative would have modified the Constitution, but the National Election Committee validated the question as it was not prohibited by the new list of inadmissible matters (only the provisions on national referendums and popular initiatives were explicitly prohibited). However, the Constitutional Court assessed the case differently.³⁵ According to its reasoning, the Constitution entitles only the Parliament to amend the Constitution in its capacity of constituent power. This constituent power cannot be curtailed by popular referendum initiative. As a consequence, bottom-up initiatives aiming at amending the Constitution are not

³⁵ Decision 25/1999. (VII. 7.) of the Constitutional Court.

admissible, only a revision adopted already by the Parliament can be approved by means of referendum.³⁶

This decision practically forbade popular constitutional initiatives and confirmed the Court's former view that the list of prohibited issues can be extended by interpretation.

5.3. The Constitutional Court's decision on the requirements of the unambiguity of the question (2001)

In 2001 the Hungarian Socialist Party (MSZP) launched an initiative process on the question: "Do you agree that the Labour Code once again provide two days holiday a week for employees, one of them on Sunday, and that the work performed on Sunday or on the other holiday be paid extra?" The National Election Committee validated the question, however, the Constitutional Court took another view.³⁷ According to this, the question put on referendum must be unambiguous from two perspectives: 1) the voters have to be able to answer it with "yes" or "no", it shall be clear and open to one interpretation only; 2) the Parliament has to be able to decide, whether it is obliged to adopt a law and if yes, with what kind of content. The Constitutional Court declared further that 3) if the proposed question consists of two or more subquestions, which are contradictory, or whose relation is not unequivocal, or which don't follow from one another, or which are essentially not linked to each other, the question is not admissible because it would infringe the right to referendum.³⁸ In the judgment of the Constitutional Court, the concrete question consisted of two separate subquestions (one related to the two holidays and one on the extra salary) and their relation was not clear: the whole question could be answered with "yes" only if the voter agreed with both subquestions (it was not possible to accept only one of the subquestions), thus he or she couldn't have expressed his or her wish on an appropriate manner. Accordingly, the question was not admissible.

This strict interpretation of unambiguity means – if we take it seriously – that elaborated draft laws cannot be submitted to referendum because they certainly have elements which don't follow from one another and which can be answered differently.

³⁶ For the criticism of this train of thought see: Géza KILÉNYI: A képviselői és a közvetlen demokrácia viszonya a magyar államszervezetben. *Magyar Közigazgatás*, 1999/12. 673–681.

³⁷ Decision 52/2001. (XI. 29.) of the Constitutional Court.

³⁸ For and overview the Constitutional Court's practice concerning the unambiguity of the question put on referendum see: Máté Dániel SZABÓ: A népszavazásra szánt kérdés egyértelműsége. In: András JAKAB – Péter TAKÁCS (eds): *A magyar jogrendszer átalakulása*, vol. I. Budapest, Gondolat – ELTE ÁJK, 2007. 100–104.

5.4. The Constitutional Court's decision on the role of a "new circumstance" which arises after the validation process and hinders the referendum (2008)

In 2008, MPs of two oppositional parties, the FIDESz – Hungarian Civic Union (FIDESz) and the Christian Democratic People's Party (KDNP) proposed a referendum on the following question: "Do you agree that the personal income tax returns of the Prime Minister, of the ministers, of the under-secretaries of state and of the MPs should be accessible to the public?" The National Election Committee validated the question but the Constitutional Court supervised the decision. Namely, after the validation of the question the Parliament adopted new regulations which partly met the requests of the opposition: they made the main tax return data of the members of the Government accessible (the modifications did not concern MPs). The Constitutional Court declared that the new regulation superseded the question which became – at least for members of the Government – matterless. With regard to this, the question also became unambiguous because in case it would be approved by referendum, the Parliament wouldn't know whether it has an obligation to adopt or amend a law, and if yes with what kind of content.³⁹

The Constitutional Court referred to the possibility of a "new circumstance" which made the proposed question objectless already in 2004.⁴⁰ The decision of 2008 opened the door to the Parliament to avoid a referendum by adopting a law which fulfils the demand of a popular initiative. On the other hand this meant that the enfranchised voters are prevented from voting on the issue, although it is also possible that the majority would cast a vote against the initiative.

5.5. The "explosion of a dormant mine"

In spring of 2006, the social-liberal coalition acquired majority again. After the second Gyurcsány Government had taken serious cost-cutting measures and after the Prime Minister's confidential speech in Balatonöszöd ("we lied morning, noon and night") had become public, severe protests broke out in autumn. In October, Viktor Orbán, the leader of the oppositional FIDESz announced a series of popular initiatives which were aimed against the Government's unpopular provisions. Finally, only three of them got through the labyrinth of the National Election Committee and the Constitutional Court and were submitted to the referendum in spring of 2008. The vote resulted in the victory of the opposition and entailed the dissolution of the coalition. The so-called "Social Referendum" played a great part in the FIDESz triumph in the election of 2010.

³⁹ Decision 67/2008. (IV. 30.) of the Constitutional Court.

⁴⁰ This aspect first emerged in the decision 33/2004. (IX. 28.) and was dealt with in detail by the decision 40/2004. (X. 27.) of the Constitutional Court.

The series of initiatives contributed to another development as well: as of 2007, the number of popular referendum initiatives increased significantly.⁴¹ Péter Paczolay, the president of the Constitutional Court called the referendum a “dormant mine” which exploded in 2007–2008.⁴² The majority of initiatives was unserious and overburdened both the National Election Committee and the Constitutional Court. The right to referendum as political right which entitled every single enfranchised voter to launch popular initiatives without any charges hit back.

6. The New Basic Law of Hungary (2011)

After the FIDESZ-KDNP coalition had achieved a two-third majority in the general election of 2010, the preparation of a new constitution was announced. The Basic Law of Hungary was adopted by the Parliament on 18 April 2011 and was put into force on 1 January 2012.

As for direct democracy, the Basic Law made the following alterations:⁴³

- 1) While the former Constitution still co-ordinated representative and direct democracy, the new Basic Law declares the latter exceptional (art. B, para. 4).
- 2) The consultative referendum and the agenda initiative have been abolished. (The latter is still included in the Law on National Referendum and Popular Initiative, but the draft law on referendum does not provide it any more.)
- 3) The list of prohibited issues was also changed. In this regard the most important alteration is that questions aiming at the amendment of the Basic Law are not admissible. According to the Decision 25/1999. (VII. 7.) of the Constitutional Court only popular constitutional initiatives were prohibited, however, amendments adopted by the Parliament were not forbidden to be subsequently submitted to referendum. A further change is that laws on the election of MPs, local representatives and mayors, and members of the European Parliament are now also excluded from popular votes (art. 8, para. 3).

⁴¹ In 2002, the National Election Committee dealt with 18, in 2003 with 25, in 2004 with 9, in 2005 with 28, in 2006 with 47 popular initiatives; in 2007 with 412! Péter SZIGETI: A népszavazási kezdeményezések dömpingje – 2007. *Magyarország politikai évkönyve*, 2007/1. 236.

⁴² Emília KRUG: Szunnyadó akna. A népszavazás szellemét nem az Alkotmánybíróság szabadította ki a palackból. *168 Óra Online*, 4 July 2008, www.168ora.hu/cikk.php?cikk=21823 (accessed: 30 September 2013).

⁴³ I first dealt with the changes made by the new Basic Law of Hungary in the following conference paper: László KOMÁROMI: Az országos népszavazás szabályozásának egyes kérdései. In: Tímea DRINÓCZI – András JAKAB (eds): *Alkotmányozás Magyarországon 2010–2011*, vol. I. Budapest – Pécs, Pázmány Press, 2012. 395–418. See further in German: László KOMÁROMI: Direkte Demokratie in Ungarn. Kurze Zusammenfassung über die letzten zwei Jahrzehnte und Bemerkungen zum neuen ungarischen Grundgesetz. *Pázmány Law Review*, 2013/1. 105–117.

- 4) The Parliament is not entitled to order a referendum on the initiative of one third of its members any more. This means that the Parliament cannot submit questions to referendum upon its own motion, only upon the motion of at least one hundred enfranchised voters, of the President of the Republic or of the Government (art. 8, para. 1).
- 5) The approval quorum of 25% has been replaced by a participation quorum of 50% (art. 8, para. 4).

Concerning the practice of referendums the change of the quorum is certainly the most important element. Only initiatives with an enormous mobilising power will have the chance to be adopted by means of referendum. (From six national referendums since 1989 only two reached the 50% threshold: the “Four-Yes Referendum” of 1989 and the “Social Referendum” of 2008.) Moreover, opponents will always be interested in campaigns which are aimed at talking their adherents out of participation: it is much easier to hinder the success of a referendum in this way in case of a participation quorum of 50% than by means of positive argumentation and by motivating adherents to take part in the referendum. And this can be a encumbering force for possible initiators as they will be much less ready to put considerable energy and money into a campaign knowing that its success can be prevented by relatively few opponents.

