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*'Hungary's New System of Direct Democracy:
International and National Perspectives'*

(Budapest, Andrásy University – Pázmány Péter Catholic University,
9 March 2012)

INTRODUCTION

On 9 March 2012 the conference 'Hungary's New System of Direct Democracy: International and National Perspectives' took place. This conference was organized by the Faculty of International Relations of Andrásy Gyula German-Speaking University and the Faculty of Law and Political Sciences of Pázmány Péter Catholic University on the occasion that Hungary's Fundamental Law, which entered into force on 1 January 2012, has established a new legal framework for the instruments of direct democracy. The new constitutional regulation provided a good opportunity to take into account the Hungarian experiences with referendums since 1989, to take a look at the international developments of direct democratic instruments in the last decades and to evaluate Hungary's new system of direct democracy against this background.

Hungary's first Law on Referendum and Popular Initiative was adopted by the last Parliament of the one-party state in 1989. Since that time, the regulation underwent two considerable revisions (1997/1998, 2011). Hungarian citizens have cast their votes in six national referendums on twelve factual issues. In 1989, before the democratic transition was complete, they decided – within the legal frame of the one-party state – to hold elections for the newly created post of the president only after the first free parliamentary election. In 1990, an invalid referendum took place on the direct election of the president. Hungary's accession to NATO and to the European Union was approved by two referendums in 1997 and 2003, respectively. In 2004, two referendums were held on the prohibition of the privatisation of state-owned health care institutions and on the citizenship of ethnic Hungarians living abroad, but both failed because of the low turnout. In 2008, voters abolished the fees for out-patient and in-patient treatments and the tuition fee for higher public education.

Seen from an international perspective, even if we take into account the growing number of polities, the use of different mechanisms of direct democracy had shown

significant increase in the last century until the 1990s.¹ In addition to other factors, different manifestations of social change must also be recognized at the back of this growing use of participatory instruments. The generally rising level of education of citizens, the easy accessibility of information by means of social media, the rising living standards which reduce the costs of participation, the individualisation of society which results in people relying less on traditional representative organisations (like the church, parties, trade unions, etc.) but rather tending to take their concerns in their own hands² – all these certainly contribute to the increasing interest in direct participation. The diverse interests of modern society demand additional ways for their articulation; instruments of direct democracy can provide such channels to complement traditional representative decision-making processes.

The conference comprised of two working panels and one panel discussion. The first panel (held at Pázmány Péter Catholic University, Faculty of Law, Dean's Council Room) provided an overview on European developments from normative and practical perspectives. It was chaired by *Ellen Bos* (Andrássy University, Faculty of International Relations) and included the following papers: *Theo Schiller* (Philipps University Marburg, Faculty of Social Sciences and Philosophy, Department of Political Science): 'Origins of Direct Democracy – the Background of Conflict and Transformation'; *Krisztina Arató* (Eötvös Loránd University, Faculty of Law, Institute of Political Sciences): 'European Citizens' Initiative – Towards a More Democratic European Union?'; *Zoltán Tibor Pállinger* (Andrássy University, Faculty of International Relations): 'Direct Democracy in Europe: Current Discussions'.

The afternoon session (Andrássy University, Andrásy Hall) focused on Hungary's experiences with direct democracy and its prospects. This panel was chaired by *Máté Szabó* (Eötvös Loránd University, Faculty of Law, Institute of Political Sciences; Commissioner for Fundamental Rights) and comprised three papers: *László Komáromi* (Pázmány Péter Catholic University, Faculty of Law and Political Sciences, Department of Legal History): 'Milestones in the History of Direct Democracy in Hungary'; *Zsolt Enyedi* (Central European University, Department of Political Science): 'Elite- and Mass-perceptions of Referendums and of Representative Democracy in Hungary'; *Lóránt Csink* (Pázmány Péter Catholic University, Faculty of Law and Political Sciences, Department of Constitutional Law): 'Tendencies of Direct Democracy in Hungary – Referendums in the Light of the New Basic Law'.

¹ David ALTMAN: *Direct democracy worldwide*. New York, Cambridge University Press, 2011. 65–66.; David BUTLER – Austin RANNEY (eds): *Referendums around the world*. Washington, D.C, AEI Press, 1994. 5.

² These factors are mentioned as causes of the upswing of direct democracy in German member states in the 1990s by Otmar JUNG: Siegeszug direktdemokratischer Institutionen als Ergänzung des repräsentativen Systems? In: Hans-Herbert von ARNIM (ed.): *Siegeszug direktdemokratischer Institutionen als Ergänzung des repräsentativen Systems?* Berlin, Duncker & Humblot, 1999. 103–137.

The panel discussion which took place at Andrassy University was intended to give an opportunity to politicians both of the government party and of the opposition to expound their views on the role, importance, past experience and future prospects of the participatory elements of Hungarian democracy. It was hosted by Krisztina Arató; the government's side was represented by *József Szájer* (FIDESz – MPSZ, member of the European Parliament), the opposition by *Benedek Jávor* (LMP, party whip). Theo Schiller represented the scientific point of view.³

Five papers submitted by the conference speakers are published hereinafter. *Theo Schiller* elaborates on the emergence of direct democratic institutions. He identifies three main types or models: 1) The internal conflict model relates to political clashes between dominant and disadvantaged groups of a given society concerning the redistribution of power in a democratic system. Direct democratic instruments emerge here as a means available to disadvantaged groups in the struggle. 2) The formation of independent states can also contribute to the evolution of direct democracy, as referendums are used for the expression and confirmation of state sovereignty and national identity. 3) Finally, the cases of democratic transformation are to be mentioned: the transition from authoritarian to democratic regimes can also become a breeding ground for the establishment of direct democratic instruments. These three types entail different profiles, practices and developments.

Zoltán Tibor Pállinger gives an overview on current discussions on direct democracy in Europe with special regard to the relation between direct and representative democracy. Based on empirical findings mostly from Switzerland, he stresses the importance of institutional design and the interaction between direct and representative decision-making processes. He also presents suggestions for further discussions.

László Komáromi's paper focuses on the historical antecedents – ideas, plans, regulations and concrete cases – of direct democracy in Hungary, on the circumstances of the first breakthrough of popular rights in 1989 and on the turning points of their evolution until the new Basic Law of 2011. This overview provides evidence that the wide-ranging rights of 1989 were later curtailed step by step both by the Parliament and the Constitutional Court.

Lórint Csink elaborates the constitutional foundations of referendums, he reveals the different approaches of the regulation of 1989 and the Constitutional Court and finally he evaluates the alterations made by the new Basic Law. As he points out, the new regulation still concentrates on the fundamental right character of the initiative, however, the proper place and function of referendums in society and state mechanisms is still not clear.

And last but not least, *Máté Szabó* demonstrates the functions of a special medium in the communication between citizens and the state: that of the Commissioner for Fundamental Rights in Hungary. After having outlined the characteristic features

³ The recording of the panel discussion can be downloaded from the following link: www.andrassyuni.eu/internationale-beziehungen/mitarbeiter/professurleiter/dr-zoltan-tibor-pallinger.

of the new Hungarian ombudsman system, he summarizes the guiding principles of the ombudsman's activity and gives a retrospective overview on its practice of 2011.

In the *Annex*, the provisions on referendums of the former Constitution (Act XX of 1949) and on that of the new Basic Law of Hungary are shown in parallel.

The overall picture which emerges from these studies is only a snapshot. Although the fundamental principles and rules are already laid down by the Basic Law, the new Law on Referendums has still not been adopted. The bill⁴ was introduced in June 2011 but it hasn't yet been put up for detailed discussion. The four most important alterations provided by the draft are the following:

- 1) The signatures of twenty enfranchised voters are required for the question to be handed in to the National Election Committee for validation (until now one single enfranchised voter was entitled to hand in questions proposed to be submitted to referendum);
- 2) it empowers the leader of the competent election committee to reject the question (and the signature collection sheet) within three days if it is obviously in contradiction with the constitutional purpose of the referendum or if it does not meet the formal requirements. The draft does not ensure a right to appeal against this decision, however, the initiator is entitled to hand in the question again, and if he/she does so, the question must be put on the agenda of the competent election committee. According to the official explanation of the bill, these two alterations serve for filtering out irresponsible initiatives.
- 3) Pursuant to the bill, a complaint can be lodged with the competent court against the decision of the election committee, in case of decisions of the National Election Committee with the Curia of Hungary. Accordingly, it is not the Constitutional Court who judges the National Election Committee's decisions on referendum initiatives any more,⁵ however, it is not yet clarified, whether the Constitutional Court accepts constitutional complaints submitted against the Curia's decisions. If so, this would certainly lead to the prolongation of the validation process of popular initiatives. The bill also empowers the Curia to alter the National Election Committee's decision. (According to the regulation still in force, the Curia is only entitled to approve or to annul the decision, and in the latter case, to instruct the National Election Committee to conduct new proceedings.)
- 4) Finally, the draft law implements the rules required by Regulation (EU) No 2011/2011 of the European Parliament and of the Council of 16 February 2011 on the European citizens' initiative: it empowers the National Election Committee to verify the statements of support and to deliver to the organisers

⁴ Draft Law on the Initiation of Referendum, Nr. T/3479, www.parlament.hu/irom39/03479/03479.pdf.

⁵ This new rule of competence was already introduced by Act CCI of 2011 on the Alteration of Certain Laws in Relation to the Basic Law (art. 145, para. 7), now it is part of Act C of 1997 on Election Procedure (art. 130).

of the initiative a certificate on the conformity of the online collection system with the relevant EU regulation and on the number of valid statements.⁶

The organisers of the conference hereby express their heartfelt thanks to all speakers and participants and recommend the papers to the attention of the interested public.

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⁶ Also these rules were already enacted by Act CCI of 2011 and are now a part of Act C of 1997 on Election Procedure (art. 148/B).

