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**Popular Rights in Hungary: A Brief
Overview of Ideas, Institutions and
Practice from the Late 18th Century until
Our Days**

László KOMÁROMI

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ABSTRACT

The idea of the direct exercise of the people's power was raised for the first time in Hungary in the 1790's by members of the Hungarian Jacobin movement: Ignác Martinovics's draft constitution of 1793 adopted direct democratic elements of the French Montagnard Constitution (1793), but it did not become an effective law in the end.

During the times of the Hungarian bourgeois transformation (1825-1848), the neo-absolutism (1849-1867) and of the Austro-Hungarian Monarchy (1867-1918) the idea of different popular rights were only rarely addressed on the political agenda. Thus the right to instruct and to recall parliamentary deputies – customary of nobleman's county assemblies at the time – remained a debated question (see e.g. the Kútahya draft constitution of Lajos Kossuth), although since 1848 Hungarian constitutional laws did not admit this practice. In 1903, the Hungarian Social Democratic Party included – presumably inspired by the Social Democratic Party of Germany – “the direct legislation of the people manifested in their right to initiate and to >>throw out<< laws” in its program.

At the end of the First World War, Oszkár Jászi, Minister of Nationalities of the Károlyi Government, intended to form a cantonal system based on the Swiss model in Hungary and to hold referendums concerning Hungarian borders but this idea was refused by the Allied Powers. It came to a territorial plebiscite only once, in December 1921, in case of the town Sopron and its surroundings, according to a special agreement between Austria and Hungary.

In the socialist era the Hungarian Constitution of 1949 enabled both optional legislative referendums and the recall of parliamentary deputies, but neither of them was implemented in practice until the end of the eighties. “Village meetings” and “public discussions” on local level didn't have any real power over local authorities.

The “breakthrough” of direct democratic institutions is a product of the political transformation of 1989. Since then there have been six national referendums on twelve questions in Hungary. The paper sums up the experience thereof and the Constitutional Court's most important decisions on direct democratic institutions.

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CONTENTS

1. Introduction.....	1
2. The Hungarian Jacobin movement (1793-1795).....	1
3. The idea of popular rights in Hungary from 1825 to the Sopron plebiscite of 1921. 3	
3.1. Reform era (1825-1848) and Bourgeois Revolution (1848/49).....	3
3.2. Neo-absolutism (1849-1867) and Austro-Hungarian Monarchy (1867-1918).....	5
3.3. Oszkár Jászi and the idea of an “Eastern Switzerland” in the Danubian Basin (1918); the Sopron plebiscite of 1921.....	6
4. Socialist era.....	7
5. The “breakthrough”: regulation and practice of direct democratic institutions on national level 1989-1997.....	9
5.1. Reasons for introducing direct democratic institutions.....	9
5.2. Referendums and rejected initiatives from 1989 until 1997; Decision 2/1993. (I. 22.) of the Constitutional Court.....	11
6. Regulation and practice of popular rights on national level since 1997.....	13
6.1. Revised legal framework; Decision 52/1997. (X. 14.) of the Constitutional Court.....	13
6.2. National referendums in 1997, 2003, 2004 and 2008; further important decisions of the Constitutional Court.....	15
7. Concluding remarks.....	19
Bibliography.....	21
Annexes.....	25
Annex I: Popular rights in Ignác Martinovics’s Draft Constitution of August 1793 and in French constitutional laws of 1792/93.....	25
Annex II: Popular rights according to Act XVII of 1989 on Referendum and Popular Initiative and the steps of the procedure in case of bottom up initiatives.....	26
Annex III: Popular rights according to the 1997 constitutional amendment and the steps of the procedure in case of a bottom up initiative according to Act III of 1998 on Referendum and Popular Initiative and to Act C of 1997 on Electoral Procedure.....	28
Annex IV: Referendums in Hungary 1989-2008.....	30
Annex V: Important decisions of the Hungarian Constitutional Court on referendum issues.....	33

1. Introduction

When mentioning popular rights in Hungary, one would certainly first think of direct democratic institutions adopted at the time of the political change in 1989 and of their practice during the last twenty years. However, Hungary wasn't totally left untouched by direct democratic ideas in earlier times either. Therefore, when examining popular rights in Hungary from an historical perspective we must first take into consideration the antecedents and thus come to the breakthrough in the late eighties and to the pertaining use of direct democratic instruments since that time.

2. The Hungarian Jacobin movement (1793-1795)

The idea of direct democracy appeared in Hungary for the first time at the end of the 18th century. When the news of the French Revolution in 1789 got through to Hungary, the country was under Habsburg rule. Hungary represented a relatively autonomous part of the Habsburg Empire, with its own legislation but under the hereditary reign of the Habsburg dynasty and in an "indivisible and inseparable" community with the other Habsburg territories.

The most active propagator of the revolutionary ideas at that time was the Hungarian Jacobin movement. They were the first to ever raise the question of direct democracy in Hungary. The leader of the movement, Ignác Martinovics (1755-1795) – a former Franciscan friar, professor of natural history at the university of Lemberg – established secret organisations from 1794 based on the French model – the Society of Reformers, the Society of Liberty and Equality – in order to launch the insurrection of Hungarian noblemen, to break off the country from the Habsburg territories and dynasty, to abolish feudal institutions and to create a free and democratic Hungarian republic.¹

The leading figures of the movement professed the ideas of the French enlightenment and wanted to assert the popular sovereignty in state life. As revealed in the documents of the investigations against the societies, József Hajnóczy (1750-1795), a talented member of the revolutionary group, who as an enthusiastic journalist propagated the French ideas, translated the French monarchic Constitution of 1791 into Latin for people who didn't understand French, followed by the Constitution of the First Republic of 1793.² But the Hungarian Jacobins were not satisfied with a mere copy and circulation of the French documents. Martinovics – presumably under the inspiration of the French Montagnard Constitution –

¹ Andor Csizmadia (ed.), *Hajnóczy József közjogi-politikai munkái*, Budapest, Akadémiai Kiadó, 1958, p. 20.

² György Bónis, *Hajnóczy József*, Budapest, Akadémiai Kiadó, 1954, pp. 127-128.

prepared an original draft constitution for Hungary in German.³ It lays down – as does the resolution of the French National Convention of the 21st September 1792 – that the expressed consent of the whole nation is required to adopt a new constitution.⁴ In addition to this, the people's direct power shall appear in the legislation as well: the parliamentary statutes shall be adopted with the silent agreement of the nation which lasts at least six weeks.⁵ The people shall express both their consent to the constitution and the possible veto on statutes in course of so called primary assemblies (*Urversammlungen*) which also have the right to elect members of Parliament, to declare their will concerning the level of taxes and the proclamation of war.⁶ However, in case of a decision the king shall give his vote first, to the declaration of the primary assemblies comes only after.⁷ It is similar to the legislation process laid down in the French Constitution of the 24th June 1793, where the draft shall be sent to the communes of the republic and if ten percent of the primary assemblies set up in the majority of the departments do not oppose within forty days, the draft becomes law. In case of protest every primary assembly shall be called together.⁸ To put it concisely, the draft constitution of Martinovics included the institutions of the mandatory constitutional referendum and the popular veto on parliamentary statutes. Both originate from

³ Kálmán Benda (ed.), *A magyar jakobinus mozgalom iratai*, vol. 1, Budapest, Akadémiai Kiadó, 1957, pp. 896-908. The draft was completed in the first days of August 1793.

⁴ Cap. IV. art. XXII.: *“Doch muss die Konstitution von der ganzen Nation ausdrücklich, und alle Gesetze durch vordauerndes Stillschweigen von sechs Wochen angenommen werden.”* The resolution of the French National Convention of the 21st September 1792: *“La Convention nationale déclare, 1° qu'il ne peut y avoir de constitution que celle qui est acceptée par le peuple...”* According to art. 115. of the French Constitution of 24 June 1793 the people can request the revision of a Constitutional Act or the amendment of some of its articles in course of primary assemblies: *“Si, dans la moitié des départemens, plus un, le dixième des assemblées primaires de chacun d'eux, régulièrement formées, demande la révision de l'acte constitutionnel, ou le changement de quelques-uns de ses articles, le Corps-Législatif est tenu de convoquer toutes les assemblées primaires de la République, pour savoir s'il y a lieu à une Convention nationale.”* Jean Baptiste Henri Duvergier, *Collection complète des lois, décrets, ordonnances, réglemens, et avis du Conseil-d'État*, vol. 5, Paris, Guyot et Scribe, 1825, pp. 1., 441.

⁵ Cap. IV. art. XXII.

⁶ Cap. VI. art. XLII.: *“Die Urversammlungen bestehen aus dem König, ganzem Adel und allen Gemeinden des Volkes.”* Art. XLIII.: *“Diese üben bloss die Haupthandlungen der ursprünglichen Souverainität aus, nämlich bestätigen oder verwerfen den vom Landtag bestimmten Konstitutionsentwurf, wählen Deputierte zum Landtag, verwerfen entworfenen Gesetze, wenn diese ihnen schädlich scheinen, erklären ihren Willen über die Höhe der Steuer, und über einen zu unternehmenden Krieg.”*

⁷ Cap. VI. art. XLIV.: *“Diese Urversammlungen geschehen auf folgende Art: der König gibt über diese Gegenstände seine Stimme allein...”*

⁸ Art. 58.: *“Le projet est imprimé et envoyé à toutes les communes de la République, sous ce titre: Loi proposée.”* Art. 59.: *“Quarante jours après l'envoi de la loi proposée, si, dans la moitié des départemens, plus un, le dixième des assemblées primaires de chacun d'eux, régulièrement formées, n'a pas réclamé, le projet est accepté, et devient loi.”* Art. 60.: *“S'il y a réclamation, le Corps-Législatif convoque les assemblées primaires.”* Duvergier, *Collection complète des lois...*, vol. 5, p. 439.

the French Constitution of the First Republic, although Martinovics intended to adapt them into a monarchic system.⁹

The draft constitution of Martinovics did not become an effective law in the end. Originally it was prepared with the intention of introducing it as a bill and to have it adopted by the legislative assembly of 1793; the proclamations for the conviction of the noblemen were also completed. However, they were not posted, because the king – in view of the oppositional mood – didn't convene the Diet, so the draft had finally no significant influence. The Jacobin movement was eliminated after a few months by the frightened court, its seven leaders were executed on charges of infidelity and high treason on 20th May 1795.

3. The idea of popular rights in Hungary from 1825 to the Sopron plebiscite of 1921

3.1. REFORM ERA (1825-1848) AND BOURGEOIS REVOLUTION (1848/49)

As a result of the events mentioned previously, the Hungarian Jacobins' ideas of direct democracy remained isolated. The leading figures of the noble intellectuals in the reform era before the Hungarian bourgeois revolution of 1848/49 strove for the transformation of feudal society and the establishment of a bourgeois representative system, rather than for the adoption of French or Swiss forms of direct democracy. In this respect the opinion of the lawyer, historian and well-known political writer László Szalay (1813-1864) is quite characteristic, when – mentioning the Swiss example in 1844 – he argues that it shouldn't be followed 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, not only the citizens' equality are set down, but the popular veto and the periodical revision of the constitution is also declared by law, moreover the right of resistance – the Ultima Thule of liberty –, in other words things we don't want to follow..."¹⁰

The April Laws of the Revolution of 1848, which demolished the feudal structures, declared a pure representative legislative system¹¹ and contained no direct democratic elements, neither in form of primary assemblies on the French model nor in form of referendum, popular initiative or recall.¹² However, the revolutionary fervent sometimes led to

⁹ The regulations of Martinovics's Draft Constitution and the correspondent French constitutional laws of 1792/93 concerning popular rights are shown in a parallel version in Annex I.

¹⁰ László Szalay, "A' schweitz diéta 's a' foederatív-rendszer", *Pesti Hírlap*, 10th July, 1844, reprinted in László Szalay, *Publicistai dolgozatok*, vol. 1 (1839-1844), Pest, Hackenast Gusztáv, 1847, pp. 204-205.

¹¹ Act IV of 1848 on Annual Parliament; Act V of 1848 on Representative Election of Parliamentary Deputies.

¹² For direct democratic aspects of the Hungarian Revolution and War of Independence of 1848/49 see: István Szentpéteri, *A közvetlen demokrácia fejlődési irányai*, Budapest, Akadémiai Kiadó, 1965, pp. 119-129.

events, which seemed to be manifestations of the direct exercise of the power of the people. But the state authorities didn't tolerate these ambitions. For example on the New Year's Day of 1849 the Calvinist pastor of Tiszabercel, József Litkei arranged a "popular assembly", which decided to abolish the so-called "*regalia minora*".¹³ The tribunal which was ordered to the spot sentenced the initiator to an imprisonment of one month.¹⁴

There is one single element in the Hungarian bourgeois transformation, which carried in itself the possibility of an institution usually counted among the popular rights: the question of the recall of parliamentary representatives. It derived from the right of the former county assemblies of the nobility to elect deputies to the Hungarian Diet, to give them instructions, to order them at any time account for their work and even to recall them without any reason. This right to instruct and recall remained a common idea for many people even after the bourgeois transformation and the establishing of the representative Parliament, although the April Laws of 1848 abolished the right of the counties to send deputies to the Parliament and to take part on the legislation process and didn't contain any rules concerning the right to instruct and to recall representatives. The so-called "Hungarian doctrinaires" or centralists,¹⁵ who strove for the representative system since the 1840ies, steadily refused the possibility of the right of instruction and recall.¹⁶ The representative Parliament of the revolution itself adopted a resolution, in which it repealed a popular decision on the recall of a deputy, saying: the right to recall doesn't exist.¹⁷

¹³ „*Regalia minora*“: profitable rights connected with the nobles' property, e.g. publican's licence, the right to run a butcher's stall or a flour-mill, to collect customs, the right of holding markets etc.

¹⁴ Imre Révész, "Az utópista szocialista gondolat magyarországi hatásaihoz", *Századok*, vol. 85, 1951/1-2. p. 143. Quoted also by Szentpéteri, *A közvetlen demokrácia...* pp. 120-121. fn. 2.

¹⁵ Centralists or "Hungarian doctrinaires": oppositional group on the Hungarian Diet from 1843/44, mostly young publicists, writers, scholars and noble intellectuals who strove for the bourgeois transformation in Hungary and transmitted the ideas of Western liberalism. Their leaders were the above mentioned László Szalay, furthermore József Eötvös (1813-1871), Hungarian writer and statesman, in 1840 member in the Upper House; from 1866 president of the Hungarian Academy of Sciences; after the Austro-Hungarian Compromise, from 1867 Minister of Education.

¹⁶ István Stipta, *Kíséret a vármegyék polgári átalakítására*, Budapest, Osiris, 1995, pp. 7-8, 10-11, 40-41, 78. For the viewpoint of László Szalay see: László Szalay, "Évenkinti országgyűlés, 's utasítási rendszer II", *Pesti Hírlap* 28st February, 1847, reprinted in László Szalay, *Publicistai dolgozatok*, vol. 2 (1844-1847), Pest, Hackenast Gusztáv, 1847, pp. 276-278. For the bourgeois transformation of the counties see: István Stipta, "Die Geschichte des ungarischen Selbstverwaltungssystems", in István Stipta, *Die vertikale Gewaltentrennung. (Verfassungs- und rechtsgeschichtliche Studien)*, Budapest, Gondolat, 2005, pp. 191-300.

¹⁷ János Beér (ed.), *Az 1848/49. évi népképviseleti országgyűlés*, Budapest, Akadémiai Kiadó, 1954, p. 195. Quoted also by Szentpéteri, *A közvetlen demokrácia...*, p. 121. fn. 3.

3.2. NEO-ABSOLUTISM (1849-1867) AND AUSTRO-HUNGARIAN MONARCHY (1867-1918)

However, there were also those who – either by analogy with the former county assemblies or for other reasons – considered the direct control of the voters over their representatives to be important. The leading figure of the revolution, Lajos Kossuth,¹⁸ who fled into exile to Turkey after the defeated war of independence, in his draft constitution worked out in Kütahya 1851 – also encouraged by the Italian revolutionist Giuseppe Mazzini –, Kossuth excluded the possibility of instructions by the voters, but would have given a right to recall against representatives of the Lower House (elected by citizens), and against senators of the Upper House (delegated by the counties), for the case of lack of confidence. Besides he insisted the county assemblies to discuss the public affairs and to inform their senators about their decisions. The draft of Kossuth would have enabled the use of recall against office holders of communes and counties as well.¹⁹

Also in the last period of the Habsburg neo-absolutism, in the 60's, when the chance to arrange the constitutional conditions' arose again, there were some who thought that some kind of direct popular legislation may possible within the framework of county assemblies (Elek Fényes²⁰), or at least to instruct and recall representatives (Kálmán Tisza²¹).²² These plans were, however, definitely upset by the Austro-Hungarian Compromise in 1867, which led to a dual monarchy: two countries ruled by the same emperor, a common army, mutual foreign policy and shared finances relating to them.

In the times of the Austro-Hungarian dual monarchy the questions of direct democracy were not addressed in an in-depth manner. Only the Hungarian Social Democratic Party formed a political claim on its congress in 1903, when it included in its program – presumably inspired by the Social Democratic Party of Germany²³ – “the direct legislation of the people manifested in their right to initiate and to >>throw out<< laws”.²⁴

¹⁸ Lajos Kossuth (1802-1894), lawyer, journalist and politician; in 1849 Regent-President of Hungary. In 1849, after the defeat of the Hungarian War of Independence, he emigrated to Turkey, from 1861 to Italy.

¹⁹ Cf. the subsequent translation of the original French version into Hungarian by Lajos Kossuth (with additions) cap. III-IV. György Spira, *Kossuth és alkotmányterve*, Debrecen, Csokonai, 1989, pp. 49-83, especially pp. 8, 57, 59, 62-64.

²⁰ Elek Fényes (1807-1876), economic and geographical writer, leading figure of Hungarian economic statistics, member of the Hungarian Academy of Sciences.

²¹ Kálmán Tisza (1830-1902), Hungarian prime minister between 1875 and 1890.

²² Stipta, *Kísérlet...*, pp. 121-122.

²³ The Social Democratic Workers' Party's Eisenach Program, III. 2.: “*Einführung der direkten Gesetzgebung (das heißt Vorschlags- und Verwerfungsrecht) durch das Volk.*” Wilhelm Mommsen (ed.), *Deutsche Parteiprogramme*, 2nd ed., München, Olzog, 1964, p. 312. The similarity was mentioned also by Szentpéteri, *A közvetlen demokrácia...*, p. 363.

²⁴ Program of the Hungarian Social Democratic Party, 1903, item 2. *A Magyar Munkásmozgalom Történetének Válogatott Dokumentumai*, vol. 3, *A magyar munkásmozgalom a 20. század első éveiben és az 1905-1907-es forradalmi válság idején, 1900-1907*, Budapest, Szikra, 1955, p. 140. For its explanation see: Sándor Csizmadia,

3.3. OSZKÁR JÁSZI AND THE IDEA OF AN "EASTERN SWITZERLAND" IN THE DANUBIAN BASIN (1918); THE SOPRON PLEBISCITE OF 1921

The demand for referendums arose in special circumstances at the end of the First World War in 1918 with the Károlyi Government coming into office after the so-called October Revolution. Oszkár Jászi,²⁵ who was entrusted with the preparation of the autonomy of national minorities in Hungary, intended to form a cantonal system based on the Swiss model in Hungary (the idea was called "Eastern Switzerland") which – on the one hand – could have kept the integrity of the state territory and – on the other hand – would have established autonomous regions for different national minorities. He also declared in advance to accept a possible decision of the Peace Conference about holding referendums where Slovaks, Romanians, Serbs and Ruthenians who live in Hungary can decide which country they wish to belong to.²⁶ However, these concepts were refused by the leaders of the national minorities who strove at that time to establish their own nation-states, rather than for autonomy inside of Hungary. The idea to resolve territorial and border issues by referendums was adopted in 1920 by the Hungarian delegation to the Versailles Peace Conference as well,²⁷ but the plan failed again because the Allied Powers did not support this concept.

It came to a referendum only once in this era: in the case of Sopron and its surroundings, a region next to the Austrian-Hungarian border, in December 1921. The Treaty of Saint-Germain awarded a territory of 4500 square kilometres with 350 000 inhabitants to Austria which originally belonged to Hungary. It was later called Burgenland because of the word "Burg" in the names of concerned counties (Wieselburg – Moson, Ödenburg – Sopron, Eisenburg – Vas). However, on the day appointed for yielding the territory (the 28th August, 1921), different revolting and armed groups – partly sent by the Hungarian Government, partly formed spontaneously but tolerated by the state – demonstrated resistance and

Mit akarunk? A Magyarországi Szociáldemokrata Párt programjának magyarázata, Budapest, Népszava, 1903, p. 32. Quoted also by Szentpéteri, *A közvetlen demokrácia...*, pp. 367-368. fn. 57.

²⁵ Oszkár Jászi (1875-1957), Hungarian social scientist, historian and politician; from October until December 1918 Minister of Nationalities. In 1919, he emigrated from Hungary to Vienna, in 1925 to the USA.

²⁶ See the "short catechism" summarizing the principles and ideas of the ministry: László Domokos, *Kis káté a Magyarországon élő nemzetek önrendelkezési jogáról*, Budapest, Lantos, 1919, pp. 12-13. Quoted also by László Szarka, *Duna-táji dilemmák. Nemzeti kisebbségek – kisebbségi politika a 20. századi Kelet-Közép-Európában*, Budapest, Ister, 1998, p. 122.

²⁷ See e.g. the speech of Albert Apponyi, leader of the Hungarian delegation to the Versailles Peace Conference (16th January, 1920) and his remarks on the peace conditions (12th February, 1920), in Béla Pomogáts, Magda Ádám, Győző Cholnoky (eds.), *Trianon. A magyar békeküldöttség tevékenysége 1920-ban*, Budapest, Lucidus, 2000, pp. 227, 359-362.

held their position for several days in battle, hindering the Austrian gendarmerie from marching through the territory still controlled by the Hungarian Government. Finally, by the mediation of Italy, it came to negotiations in Venice between István Bethlen Hungarian prime minister and Johannes Schober Austrian chancellor, where the parties agreed to clear the region from insurgents and to arrange a referendum about the future of Sopron and its environs (a part of Burgenland). The ballot was held between the 14th and 16th December with a significant participation, where 65% of the inhabitants voted for Hungary, and 35% cast their vote for Austria. Sopron and eight villages in its surroundings therefore remained a part of Hungary and the Parliament commemorated the noble act by means of law by inserting the following phrase into the coat of arms of the town: "*civitas fidelissima*" ("the most loyal town").²⁸

4. Socialist era

Paradoxically, the first law which enacted the possibility of referendums in Hungary – similar to that of the 1936 Soviet Constitution²⁹ – was the 1949 socialist Constitution of the Hungarian People's Republic. It states that the Presidential Council – an organ substituting the Parliament, endowed with legislative power as well – was entitled to call a referendum in questions of national importance.³⁰ The regulation didn't contain any rules on admitted and excluded subject matters, nor on the procedure itself. Therefore, this article of the Constitution remained a dead letter: during the socialist period – except the so-called "Four-Yes" referendum just before the first free election in 1989 – not a single national referendum was held in Hungary. However, on local level the law on local councils enabled to hold explanatory, consultative referendums in the course of so-called *village meetings*. Consequently, the local authority could raise questions of common importance before the village meeting in order to inform the local inhabitants and to get acquainted with their opinion. In communes with joint council³¹ it was prescribed to call the village meeting to discuss the council's report on its work.³² According to the decree on the implementation of the law, the council was to inquire about the people's opinion regarding the medium-term plan of the commune, about its general resettlement plan or any other significant plans and their

²⁸ Act XXIX of 1922. For the antecedents, circumstances and course of the Sopron referendum see: Mária Ormos, *Civitas fidelissima. Népszavazás Sopronban 1921*, Győr, Gordiusz, 1990.

²⁹ 1936 Soviet Constitution (adopted on the 5th December), art. 49: "*The Presidium of the Supreme Soviet of the U.S.S.R.: d) conducts referendums on its own initiative or on the demand of one of the Union Republics...*"

³⁰ Act XX of 1949 art. 20, section 1: "*The Presidential Council: d) may order referendums in questions of national importance...*"

³¹ Two communes situated next to each other had the possibility to establish a common administrative organisation in order to use local resources on a more effective way.

³² From 1984 in other communes without joint council, were included as well.

execution as well as other important issues.³³ As stated, these consultative village meetings took place with considerable interest,³⁴ although the opinion expressed by the inhabitants wasn't binding for the council. From 1984 the decree also prescribed, that drafts of council decrees affecting a larger part of the inhabitants shall be opened for *public discussion* and the council shall be informed about the opinions expressed there.³⁵ However, these public discussions didn't function in practice.³⁶ It was first decreed in 1987 by a directive of the central leading body of local councils, by the President of the Government's Council Office, that the opinion expressed on village meetings is obligatory for the council. The directive tried to lay down detailed rules as well.³⁷ As for popular rights, another interesting element of Hungarian socialist constitutional law was the institution of recall. The Constitution of 1949 ordered namely – as did its model, the Stalin Constitution of 1936³⁸ – that both parliamentary representatives and members of local councils can be recalled by the voters according to the detailed regulation of a special law.³⁹ As for the members of local councils the question was first regulated in detail in 1954,⁴⁰ including parliamentary representatives only from the year 1966.⁴¹ Voters could therefore recall the representative if he/she could not fulfil the mandate or became unworthy of it. According to the law, it was the competent institution of the Patriotic Popular Front (a mass organisation controlled by the Hungarian Socialist Workers' Party in reality), who was entitled to propose a recall process. The circle of initiators was expanded by the law on elections in 1985: in case of representatives were elected it empowered 10% of the inhabitants in the

³³ Art. 35. of Act I of 1971 on Local Councils and art. 33. of Governmental Decree no. 11/1971. (III. 31.) on the implementation of the act.

³⁴ Pál Kara, György Wiener, "A népszavazás bevezetésének lehetősége a helyi tanácsoknál", *Jogtudományi Közlöny*, vol. 41, 1986/5, p. 229.

³⁵ Regulation of the art. 32. sec. (2) of the Governmental Decree no. 11/1971. (III. 31.), which was implemented by art. 14. of the Cabinet Decree no. 50/1983. (XII. 28.).

³⁶ Kara, Wiener, op. cit., ibid.

³⁷ Directive no. 7007/1987. (TK. 22.) of the President of the Council Office of the cabinet on local ballot. Quoted by István Szentpéteri, "A közvetlen demokrácia elméleti alapjai és intézményei", in Márta Katonáné Soltész (ed.), *Az emberi jogok hazánkban*, Budapest, Eötvös Loránd Tudományegyetem Jogi Továbbképző Intézet – Kutató Csoport, 1988, pp. 255-256.

³⁸ 1936 Soviet Constitution (adopted on the 5th December), art. 142.: "It is the duty of every deputy to report to his electors on his work and on the work of the Soviet of Working People' Deputies, and he is liable to be recalled at any time in the manner established by law upon decision of a majority of the electors."

³⁹ Act XX of 1949 art. 30. sec. 3.: "Members of local councils may be recalled by citizens of the district according to law." Art. 62. sec. 3.: "Voters can recall elected parliamentary representatives." Art. 66.: "A special law shall be enacted on the detailed rules concerning the recall of parliamentary representatives."

⁴⁰ Act IX of 1954 on the Election of Local Councils art. 1. sec. (3), art. 53-54.

⁴¹ Act III of 1966 on the Election of Parliamentary Members and Members of Local Councils art. 1. sec. (3), art. 58-59. The recall of members of the county and metropolitan councils was regulated by art. 1. sec. (4) and art. 65. of the Act III of 1970.

local districts to initiate a recall.⁴² The citizens had to vote openly until 1985, from that year on voters could vote privately, given a minimum 50% participation rate and a majority decision.⁴³ However, it hardly ever came to recall processes, except for the last days of the socialist system. At that time, at the turn of the year 1988 to 1989, organisations of the opposition, the Federation of Young Democrats and the Hungarian Democratic Forum initiated – collecting enough signatures within a short period of time – the recall of about two dozens of parliamentary representatives. The most of them resigned before the day of the ballot, their places were taken by representatives of the opposition.

5. The “breakthrough”: regulation and practice of direct democratic institutions on national level 1989-1997

5.1. REASONS FOR INTRODUCING DIRECT DEMOCRATIC INSTITUTIONS

The demand for a detailed regulation on referendums and popular initiatives especially emerged with a great power in the last days of the party state. The question of settlement development contribution is usually referred to here as an immediate provoking factor: from 1986 local councils had the right to impose this kind of tax but according to law the prior consent of inhabitants was needed, and it was also necessary to inquire about their opinion regarding the purposes to be achieved and the amount and duration of the contribution that was to be collected.⁴⁴ This made the regulation of referendums necessary on the *local level*. The struggle of associate communes to become independent by means of referendum appeared too on local level. The question of referendums on *national level* was raised by different environmental movements in 1988, especially by protests against the planned Bős-Nagymaros dam on the Danube. The construction of the dam would have led to serious environmental damages; therefore, environmentalist groups started – despite the lack of detailed regulation – a campaigning for signatures in order to put the dam construction issue on referendum.⁴⁵

⁴² Act III of 1983 on the election of parliamentary members and members of local councils art. 15. sec. (2), art. 74-75., art. 85. After the proposition of the Patriotic Popular Front the Parliament was entitled to decide on the recall of parliamentary deputies elected from lists, see: art. 15. sec. (4).

⁴³ For the recall see: Ottó Bihari, “Összeférhetetlenség, visszahívás”, *Állam és Igazgatás*, vol. 21, 1971/12. pp. 1070-1082.; Márta Dezső, “Jelölés és visszahívás a szocialista országok választási rendszerében”, *Jogtudományi Közöny*, vol. 36, 1981/10. pp. 832-841., especially pp. 834-835.; István Szentpéteri, “A közvetlen demokrácia elméleti alapjai és intézményei” op. cit., p. 254.; István Kukorelli, “Állampolgári részvétel a választásokban”, in Márta Katonáné Soltész (ed.), *Az emberi jogok hazánkban*, Budapest, Eötvös Loránd Tudományegyetem Jogi Továbbképző Intézet – Kutató Csoport, 1988, pp. 241-242.

⁴⁴ Law decree no. 12 of 1984 on settlement development contribution, art. 1.

⁴⁵ For the reasons of introducing referendum see: István Kukorelli, “A közvetlen demokrácia „visszafejlesztésének” irányai”, in Károly Tóth (ed.), *Emlékkönyv Dr.*

The first detailed law on referendum and popular initiative was therefore adopted by the last Parliament of the party-state in 1989, not long before the first free elections.⁴⁶ Only after that did the overall revision of the Constitution come into force, which transformed Hungary into a democratic republic. The "new" Constitution contained only one rule of competence concerning referendums (the Parliament was entitled to order a national referendum; the regulation of referendums was subject to a two-third majority vote of the Parliament) and the President's right to propose national referendums.⁴⁷ Interestingly, the new law made it easy to initiate a referendum: the President, the Government, at least fifty parliamentary representatives or fifty thousand citizens had the right to propose a referendum. In local councils 3% of the inhabitants were entitled to initiate a referendum.⁴⁸ On national level, in case the initiative came from one hundred thousand citizens the Parliament was obliged to order the referendum.⁴⁹ Not many subjects were excluded: some regulations concerning state finance, questions of appointments by the Parliament, international obligations which had already been undertaken. However, the conditions of a valid and successful referendum were strict: valid votes of more than half of all the citizens and the same answer of the majority of the votes were required. At least ten thousand signatures were needed for a national agenda initiative in order to ask the Parliament

Szentpéteri István egyetemi tanár születésének 70. évfordulójára. *Acta Universitatis Szegediensis de Attila József Nominatae, Acta Juridica et Politica*, Szeged, vol. 49, fasc. 1-48, 1996, pp. 315-316.; *idem* "Az országos népszavazás, 1989-1998", in Sándor Kurtán, Péter Sándor, László Vass (eds.), *Magyarország évtizedkönyve 1988-1998*, Budapest, Demokrácia Kutatások Magyar Központja Alapítvány, 1998, p. 468.; Márta Dezső, András Bragyova, "Hungary", in Andreas Auer, Michael Bützer (eds.), *Direct Democracy. The Eastern and Central European Experience*, Aldershot, Ashgate, 2001, pp. 64-66. – see it also as part of the C2D Working Papers Series (7/2000) at http://www.c2d.ch/files/C2D_WP7.pdf.

⁴⁶ Act XVII of 1989 on Referendum and Popular Initiative.

⁴⁷ Act XX of 1949 art. 19. sec. (5), art. 30/A. sec. (1) item g). Art 2. of Act I of 1989 entitled – instead of the Presidential Council – the Parliament to order a referendum. The right of the President of the Republic to propose a referendum was enacted into the Constitution by art. 16. of Act XXXI of 1989.

⁴⁸ Henceforth, I don't deal with local level regulation and practice of referendums. For further details see Márta Dezső, András Bragyova, *op. cit.*, pp. 88-89.

⁴⁹ In Hungarian usage, a referendum is called "*compulsory (or mandatory) referendum*" if it was initiated by a certain number of voters (from 1989 by 100.000, since 1998 by 200.000 voters) and not by reason of a legal regulation which orders referendum for specific matters. If the required number of signatures is collected, the Parliament is obliged to order the referendum. Therefore, "*compulsory (mandatory) referendums*" are practically consequences of *popular initiatives*. However, the term "*popular initiative*" is used in Hungarian terminology only for *agenda initiatives*. The term "*facultative referendum*" indicates in Hungarian terminology a referendum which was initiated by less voters than prescribed for compulsory (mandatory) referendums (from 1989 by at least 50.000 voters, since 1998 by at least 100.000 voters) or by state organs (President, Government or a certain number of parliamentary representatives). In these cases, the Parliament is authorized to decide whether to order the referendum or not.

to discuss a question falling in its competence; however in the case of fifty thousand signatures the Parliament had to debate the subject.⁵⁰

5.2. REFERENDUMS AND REJECTED INITIATIVES FROM 1989 UNTIL 1997; DECISION 2/1993. (I. 22.) OF THE CONSTITUTIONAL COURT

A number of national referendums were held in Hungary under these regulations. The first was the so-called "Four-Yes" referendum in November 1989, before the first free elections.⁵¹ Since June 1989, the Hungarian Socialist Workers' Party and the parties and organisations of the opposition had been discussing the main questions of the democratic transition in scope of the so-called "National Round Table Talks". The Hungarian Socialist Workers' Party insisted on its own scenario: the President shall be elected first, directly by the people, the first free parliamentary elections may come only after. The governing forces pressed for a presidential system, because their candidate, the reform-communist leader Imre Pozsgay was popular and didn't have an apt rival in the opposition at that time. In turn they offered to dissolve the Workers' Militia if the candidacy of Pozsgay were accepted by the opposition. Some organisations of the opposition – amongst them the most influential, the Hungarian Democratic Forum – tended to accept the offer. However, the Alliance of the Free Democrats and three other oppositional parties⁵² started to collect signatures in order to put on referendum the question of the President's election, the dissolution of the Workers' Militia and two other claims the Hungarian Socialist Workers' Party was unwilling to meet: the withdrawal of the Hungarian Socialist Workers' Party's organisations from workplaces and the Party's accounting for its assets. The governing forces tried to defeat the initiative: the Parliament quickly adopted rules on the dissolution of the Workers' Militia and on the prohibition of party organisations at workplaces. The problem of the Hungarian Socialist Workers' Party's accountability was also been solved.⁵³ But the initiators very quickly collected – about 140 000 signatures within one month and the Parliament didn't dare to stop the process. Although the Hungarian Democratic Forum decided to boycott the referendum, it was successful with a turnout of 58%. The four initiatives of the Free Democrats were approved; the President was elected by the new multi-party Parliament in August 1990.⁵⁴ The referendum went a long

⁵⁰ The synoptic table of popular rights in the system of the 1989 Referendum Act and the steps of the procedure in case of a bottom up initiative are shown in Annex II.

⁵¹ For the background and the way to the referendum see: Kis, János: "1989: A víg esztendő", *Beszélő*, October 1999.

⁵² Federation of Young Democrats, Independent Smallholder's Party, Hungarian Social Democratic Party.

⁵³ Act XXX of 1989 on the Dissolution of the Workers' Militia; Act XXXIII of 1989 on the Operation and Financial Management of Political Parties, art. 2. and 16.

⁵⁴ See the list of Hungarian national referendums since 1989 with the questions, turnout and other data in Annex IV.

way to make the main initiator, the Alliance of Free Democrats more popular before the general elections.

The success of the referendum was not enough to help the Free Democrats to win the first free election (they got the second place after the Hungarian Democratic Forum and became the biggest oppositional party), but it showed clearly how unpopular the governing forces were. In April 1990, the Hungarian Socialist Party – actually a successor of the Hungarian Socialist Workers' Party – got only a scarce 9% of the seats in the new Parliament. In order to escape political isolation they supported the initiative of the independent parliamentary representative Zoltán Király to put the question of the President's direct election on the referendum again. The socialists could collect the prescribed amount of signatures very quickly, however – in the middle of summer – the turnout was low (only 14%) and the referendum for this reason was invalid.⁵⁵

At the end of 1992, the Association of Citizens under the Subsistence Minimum Level⁵⁶ planned to dissolve the Parliament by means of referendum, but the Parliament asked the prior opinion of the Constitutional Court. The Court in response pronounced that the Parliament could not be forced to dissolve, because it would be considered a common recall (not allowed by the Constitution). The Court declared further that referendums in the parliamentary system shall be complementary in relation to representative exercise of power, moreover, a question put on referendum can't involve an implied modification of the Constitution. It also called the attention of the Parliament to the fact that the rules of the law on referendum adopted before the new Constitution in 1989 concerning the subject matters of referendum are not compatible

⁵⁵ For the overview of referendums in the nineties see: István Kukorelli, "A közvetlen demokrácia „visszafejlesztésének" irányjai" op. cit. pp. 316-320.; *idem* "Az országos népszavazás, 1989-1998" op. cit., pp. 471-476.; *idem* "Az országos népszavazás helye a parlamenti demokráciában", in Sándor Mikolasek (ed.), *A magyar alkotmányosság ezer éve. Tudományos konferencia Esztergom 1998. november 17.*, Esztergom, Esztergom Város Önkormányzata, 1998, pp. 39-41.; György Szoboszlai, "A népszavazás alkotmányos helye és a politika. A politikai osztály találkozásai a közvetlen demokráciával, 1989-1997", in Sándor Kurtán, Péter Sándor, László Vass (eds.), *Magyarország politikai évkönyve 1997-ről*, Budapest, Demokrácia Kutatások Magyar Központja Alapítvány, 1998, pp. 103-121.; Mónika Gulyás, "A népszavazás intézménye – történeti-összehasonlító perspektívában", *Politikatudományi Szemle*, vol. 4, 1999/4, pp. 120-125. For the period until 1995 see further: Péter Szigeti, "Tendenciák Magyarországon a parlamentáris jogállam kialakulásától napjainkig. Pártrendszer, tulajdonviszonyok, a közvetlen demokratikus részvétel és összefüggéseik", in Tamás Krausz (ed.), *Rendszerváltás és társadalomkritika. Tanulmányok a kelet-európai átalakulás történetéből*, Budapest, Napvilág Kiadó, 1998, p. 239 ff.; beside the regulation and practice touching upon the decisions of the Constitutional Court as well: Márta Dezső, András Bragyova, op. cit., pp. 63-93. The more than 100 thousand of signatures collected by the Council for Conciliation of Social Interests in 1991 in order to repeal the law on compensation were finally not presented to the Parliament; neither the signatures collected by Fiksz Association in 1992 in order to maintain the regulation on abortion, cf. Mónika Gulyás, op. cit. p. 121.

⁵⁶ A civic organization aiming at safeguarding the interests of people living below the poverty line.

with the new regulation based on the separation of powers, thus, the Parliament has to harmonise the law with the Constitution.⁵⁷ The Court set a deadline at the end of 1993, but it didn't come to harmonisation until 1998. During this time however, the Parliament refused an initiative in 1995 about the direct election of the President of the Republic, about the extension of his competence and other questions raised by the Independent Smallholder's Party with two hundred thousand signatures. The Parliament referred to the decision of the Constitutional Court mentioned above, namely: the question involves a modification of the Constitution.⁵⁸ In the same year, the extra-parliamentary Hungarian Communist Workers' Party proposed a referendum with more than one hundred thousand signatures about the NATO accession of Hungary, but this initiative was refused by the Parliament as well – without any legal reasoning – under pretext: the question is not timely.⁵⁹ In reality the parliamentary parties were afraid of a possible negative result (and perhaps also of the strengthening of the Workers' Party).⁶⁰

6. Regulation and practice of popular rights on national level since 1997

6.1. REVISED LEGAL FRAMEWORK; DECISION 52/1997. (X. 14.) OF THE CONSTITUTIONAL COURT

The amendment of the Constitution concerning the rules of referendum came into effect in the summer of 1997.⁶¹ According to the new regulation,⁶² the number of signatures required for a binding referendum by popular initiative had increased to two hundred thousand; a facultative referendum – where the Parliament may deliberate whether to put the question on ballot or not – can be initiated by the President of the Republic, the Government, by one-third of the members of the Parliament

⁵⁷ Decision 2/1993. (I. 22.) of the Constitutional Court. With comparative considerations for the alteration of the act see: Márta Dezső, "A népszavazás szabályozásához", *Magyar Közigazgatás*, vol. 43, 1993/7, pp. 399-402. See the list of the most important Constitutional Court's decisions concerning referendums in Annex V.

⁵⁸ Parliamentary Resolution 54/1995. (V. 26.). In case of the popular initiative for organising the world exhibition "EXPO 1996", which was supported by parties of the opposition, were not collected enough signatures and the Parliament didn't put the question on the agenda.

⁵⁹ Parliamentary Resolution 120/1995. (XII. 22.).

⁶⁰ For the analysis of the circumstances and of the unfavourable decision see: Tamás Csapody, "Egy népszavazási kísérlet jogszerűsége", *Társadalmi Szemle*, 1996/6, pp. 40-47. The Workers' Party took recourse to the Constitutional Court, but the Court declared a lack of jurisdiction. Cf. Decision 3/1996. (II. 23.) of the Constitutional Court.

⁶¹ Act LIX of 1997 on the Amendment of the Constitution, art. 2-4.

⁶² The synoptic table of popular rights in the system of the 1997 constitutional amendment and the steps of the procedure in case of a bottom up initiative according to Act III of 1998 on Referendum and Popular Initiative and to Act C of 1997 on Electoral Procedure are shown in Annex III.

or by one hundred thousand citizens. The amendment added elements to the list of subject matters excluded from referendums as well. A national referendum may not be held (a) on the statutes concerning State Budget and its implementation, central taxes, stamp and customs duties, as well as on the content of statutes concerning uniform requirements on local taxes; (b) on the obligations arising from international treaties in force and on the content of the laws containing these obligations; (c) on the provisions of the Constitution on national referenda and popular initiatives; (d) on personal issues, and on questions concerning the establishment (restructuring, dissolution) of organizations that fall within the competence of the Parliament; (e) on the dissolution of the Parliament; (f) on the program of the Government; (g) on the declaration of a state of war, state of national crisis or state of emergency; (h) on the use of the Hungarian Defence Forces abroad or within the country; (i) on the dissolution of the representative body of the local government; (j) on the exercise of general amnesty.

However, according to constitutional amendment, the threshold was reduced: it was no longer required that the participation rate and valid votes exceed 50% of the eligible voters, it was enough for more than a half of the voters, but at least more than one-quarter of all eligible voters to give the same answer in the referendum. In autumn of the same year it was enacted in the Constitution as well, that in order to call a national referendum, signatures may be collected for a period of four months, in case of a national agenda initiative for a period of two months.⁶³

After this, still in 1997, the opposition initiated a referendum with the required amount of signatures in order to prohibit foreigners from acquiring agricultural land in Hungary. The Government intended to prevent this, so, it proposed – without collecting signatures – another question for facultative referendum on this issue. The Parliament accepted the questions of the Government and ordered the referendum.⁶⁴ On the complaint of the opposition and the ombudsman for civil rights the Constitutional Court stated in general – without examination of the concrete questions proposed – that a popular initiative – launched by enough signatures for a decisive referendum – shall take priority against the Government's facultative proposition. The Court declared further, that although the direct exercise of popular sovereignty is exceptional, in such cases however it supersedes representative power. In case of a binding referendum by popular initiative the Parliament is forced to adopt the relevant law.⁶⁵ Finally, the Parliament rejected the question of the opposition concerning the acquisition of agricultural land of foreigners, reasoning, that the wording of the question itself is not unambiguous enough and the result of the referendum may contrast with Hungary's

⁶³ Act XCVIII of 1997 on the Amendment of the Constitution, art. 4.

⁶⁴ Parliamentary Resolution 86/1997. (X. 8.).

⁶⁵ Decision 52/1997. (X. 14.) of the Constitutional Court. For its analysis see: Péter Szigeti, "Népszavazási dosszié. Rekonstrukció és analízis az Alkotmánybíróság döntése után", *Társadalmi Szemle*, vol. 53, 1998/2, pp. 88-92.

international obligations.⁶⁶ Thus there was no referendum about the question.

The decision of the Constitutional Court however contained more important directions concerning the new law about referendum in preparation, which was finally enacted in 1998.⁶⁷ It empowered the National Election Committee to control the incoming questions for referendum or popular initiative in advance from a legal aspect, and – for reasons laid down by law – to refuse the validation of the signature sheet. Everyone has the right to remonstrate upon the decision of the Committee and to take recourse to the Constitutional Court, who in turn is entitled to repeal it.⁶⁸ At the end of 2007 the Parliament adopted another important rule: a resolution taken by a successful national referendum held for reaching a decision shall be binding upon the Parliament for a period of three years during which the Parliament cannot adopt a new law that contradicts the decision made by referendum three years before.⁶⁹

6.2. NATIONAL REFERENDUMS IN 1997, 2003, 2004 AND 2008; FURTHER IMPORTANT DECISIONS OF THE CONSTITUTIONAL COURT

In November 1997 it came to the referendum about Hungary's NATO accession, which was successful due to the lowering of the validity threshold two weeks before. The relatively low turnout (49%) is perhaps explainable by the fact that all of the parliamentary parties had been in favour of the accession since 1991, they made it appear as a choice which hasn't any alternative (the question itself was also quite suggestive), therefore the people felt that the question has been already decided. The few opponents – two radical extra-parliamentary parties: the Hungarian Justice and Life Party and the Hungarian Communist Workers' Party – couldn't increase the stake by mobilizing more supporters.

Further referendum initiatives in 1998 were refused by the National Election Committee with correct legal reasons or lacking enough signatures; the questions concerned the construction of a dam on the Danube, re-establishing public ownership of the parties' estates, reintroducing capital punishment. Subsequently the Social Democratic Youth League proposed a referendum about the direct election of the President of the Republic. Since the question was not included in the new list of subjects prohibited by the amended rules of the Constitution, the National Election Committee validated the signature-collection sheet. However, the Constitutional Court – referring to the Constitution which assigns the legislation to the Parliament – declared, that no referendum may be held upon the initiation of citizens about the question of a

⁶⁶ Parliamentary Resolution 23/1998. (III. 11.).

⁶⁷ Act III of 1998 on Referendum and Popular Initiative.

⁶⁸ Act C of 1997 on Electoral Procedure, art. 130.

⁶⁹ Act CLXXII of 2007, art. 9.; Act III of 1998, art. 8. sec. (1).

constitutional modification, it is only permitted to affirm an amendment already adopted by the Parliament by means of referendum.⁷⁰

In 2001, the Constitutional Court came to another important decision in connection with a popular initiative on the revision of the Labour Code: the Court expounded the requirements concerning the unanimity of a question put on referendum. The question must be unambiguous from two perspectives: on the one hand the voters have to be able to answer it with "yes" or "no", it shall be clear and open to one interpretation only; in addition to this the Parliament has to be able to decide, whether it is obliged to adopt a law, and if so, the contents need to be defined.⁷¹

In 2003 a mandatory referendum was arranged,⁷² it addressed Hungary's accession to the European Union. The question was decided positively with a significant majority (83,76%) but with a participation rate of only 45,62%, lower than in case of the NATO-accession.

In 2004, the Constitutional Court came to an important decision again.⁷³ In connection with an initiative concerning the prohibition of the privatisation of state-owned health care institutions, the Court pronounced: it is possible that a "new circumstance" arises after the validation process. "New circumstance" can be for e.g. a constitutional amendment or a new international treaty. In such a case – if a complaint is lodged at the Constitutional Court against the Parliament's resolution concerning the ordering of the referendum – the Constitutional Court may reconsider the admissibility of the question which has already been admitted in the validation process. The "new circumstance" argument eventually became an essential part of the Constitutional Court's reasoning for the rejection of a question in such cases where the Parliament – after the validation of the question – adopted a new law or a revision which meets the intention of the initiative.

In 2004, for the first time, a referendum initiated by a non-party civic organization was held. This referendum about the citizenship of Hungarians living in other countries was launched by the World Federation of Hungarians. A second question was put on referendum too, on the initiative of the extra-parliamentary Hungarian Communist Workers' Party: it concerned the keeping of health institutions in state ownership. Both questions led to heated debates on the Hungarian political stage.

The problem of Hungarians living in the Carpathian Basin beyond the borders of the mother-country have been on the agenda since the middle of the nineties. There are about 2,5 million Hungarians living beyond the borders of present day Hungary on territories that were ceded as a

⁷⁰ Decision 25/1999. (VII. 7.) of the Constitutional Court. For its criticism see: Géza Kilényi, "A képviselői és a közvetlen demokrácia viszonya a magyar államszervezetben", *Magyar Közigazgatás*, vol. 49, 1999/12, pp. 673-681.

⁷¹ Decision 52/2001. (XI. 29.) of the Constitutional Court.

⁷² The mandatory referendum on the EU-accession was prescribed in 2002 by art. 10. of Act LXI of 2002.

⁷³ Decision 40/2004. (X. 27.) of the Constitutional Court.

consequence of the Peace Treaty of Trianon in 1920.⁷⁴ In 2001, the Parliament adopted the so-called Status Act which accorded some benefits to ethnic Hungarians abroad concerning matters of work, travel, education and health care in Hungary. However, the World Federation of Hungarians insisted on a closer legal link between Hungary and Hungarians living outside the country. As the organisation couldn't put through its ideas in Parliament, it started to collect signatures in order to organise a referendum on the citizenship of ethnic Hungarians abroad. During the collection of signatures the political parties were hesitant; they launched their campaign only when the Parliament ordered the referendum. The Government argued against, the opposition in favour of the initiative. At the end, the proposal got a close majority but the referendum was invalid because of the low turnout. The result was a great disappointment for Hungarians living outside of the mother-country; the Fidesz – Hungarian Civic Union, the main central right party of the opposition, promised to adopt a law on the citizenship of ethnic Hungarians abroad if the party gets a majority in the Parliament.⁷⁵

The other question of the referendum concerned the privatization of health care institutions. This was a vital topic of former political debates. As the Hungarian state-owned health insurance system has been showing a deficit for years which was to be met by tax incomes, governments planned to draw private capital into the operation of health care institutions. The first law concerning the privatisation was repealed by the Constitutional Court. Thereafter the Parliament adopted a second act enabling the participation of private capital in financing hospitals. In answer to this, the extra-parliamentary Hungarian Communist Workers' Party initiated a referendum in order to prohibit the privatisation of state-owned health care institutions. Even though this second regulation was also annulled by the Constitutional Court, the Workers' Party continued to collect signatures and the Parliament had to order the referendum. Just as in the question of citizenship where the Government took an opposing standpoint, the opposition argued in favour of the initiative. Finally, the initiative reached 65% but because of the low turnout the case ended without success.

The next – and to this day the last – Hungarian national referendum, the so-called "social" or "three-yes referendum" was held in 2008. It was initiated in 2006 by two parties of the opposition – the Fidesz – Hungarian Civic Union and the Christian Democratic People's Party. Hungary was just over the first financial restrictions of the second Gyurcsány-Government

⁷⁴ 1,5 millions in Transylvania in Romania, 0,5 million in Slovakia, approximately 300.000 in the Serbian Province of Vojvodina, 150.000 in Sub-Carpathia in Ukraine and some thousands in Croatia, Slovenia and Austria.

⁷⁵ After the 2010 parliamentary elections, the party – having a two-third majority in the new Parliament – adopted a revision of the law on citizenship which makes it now possible to become a Hungarian citizen without having any means of subsistence and residence in Hungary, if the applicant declares himself to be of Hungarian origin and proves knowledge of the Hungarian language (Act XLI of 2010 on the revision of the Act LV of 1993 on Hungarian Citizenship). The new law led to political conflict with Slovakia.

and after the public broadcasting of Ferenc Gyurcsány's confidential speech in Balatonószöd, in which the prime minister acknowledged between members of the Parliament's socialist faction, that his former Government "lied in the morning, at noon and at night" and kept secret their real plans before the elections in the spring of 2006. The leakage of the audio recording of the speech led to serious protests in Hungary. The two initiators originally proposed to put seven questions on the referendum. Four of them were stopped by the National Election Committee, but the Constitutional Court supervised the decisions in two questions and ordered the Committee to conduct new proceedings. In October 2007 – one year after the first registration of their questions – the parties started to collect signatures in three questions which had already been let through by both the Election Committee and the Constitutional Court. Finally, in the spring of 2008, the referendum was held about three subjects: the abolition of the out-patient "visit fee", the in-patient hospital care per-diem rate and finally the tuition fee at universities and other higher institutions of education. The three issues became a symbol of the Government's policies. Viktor Orbán, the leader of the Fidesz declared the referendum to be a decision on the Government's future. In the end, all three questions were a great success for the opposition (82-84% for the abolition) with a participation rate of more than 50%. However, the Government didn't resign and as a result of the referendum, the governing coalition broke up and a minority government took over which wasn't able to proceed with the planned reform program. The referendum divided the Hungarian public: some scholars considered it an attack against the constitutional basis of the Hungarian parliamentary democracy,⁷⁶ others regarded it as a possible solution for Hungary's political crisis.⁷⁷

Since the end of the last parliamentary cycle in 2010 – two questions were brought up by parties of the opposition and five by the governing party,⁷⁸ but the Parliament refused them as being non mandatory initiatives. In addition to this, two other initiatives with enough signatures

⁷⁶ See e.g. János Kis: "A népszavazási versenyfutás", *Népszabadság*, 10th November, 2007. Published in the Internet: 25th January, 2008 [<http://www.nol.hu/archivum/archiv-470810>].

⁷⁷ See e.g.: Tamás Fricz: "Kis János téved", *Népszabadság*, 29th November, 2007. Published in the Internet: 25th January, 2008 [<http://www.nol.hu/archivum/archiv-473102>].

⁷⁸ On the part of Fidesz – Hungarian Civic Party and of Christian Democratic People's Party: on the confirmation of the law on health insurance savings (before, the President of the Republic returned the draft to the Parliament for deliberation); on the annual examination of property growth of ministers, under-secretaries of state and parliamentary representatives. The Hungarian Socialist Party proposed the following subjects: political parties shall get financial aid only from the budget and from private persons; refund of expenses for parliamentary representatives without clearing of accounts shall be abolished; membership of Parliament and mayoralty shall be incompatible; the tax authority shall regularly check the property growth of specific public servants; other public officials holding a leading post shall also be checked regularly.

were handed in on behalf of private individuals⁷⁹ and they were accepted by the Parliament, however the Constitutional Court refused them, first of all because the Parliament adopted laws in the meantime that met the intention of the initiatives.⁸⁰ According to the Constitutional Court's argumentation, referendums have the primary purpose to oblige the Parliament to adopt or abolish a law. As a secondary purpose may they have the intention to oblige the Parliament to abstain from enacting a law but only in case the referendum counteracts the Parliament's or the Government's real endeavour for legislation. In consequence, the referendum – despite enough signatures – can't be held if the Parliament complies with the intention of the initiative and adopts an appropriate revision. In this way the Parliament can also circumvent the rule, that the result of the referendum is binding for 3 years.

7. Concluding remarks

The history of referendums in Hungary – except the Sopron referendum in 1921 – is visibly a history of the antecedents that runs all the way until the political transformation in 1989/1990. During that time, Hungary didn't belong to the pioneers of direct democracy. The political elite did not favour referendums, direct democratic institutions were not considered to fit into the Hungarian constitutional system. The 1989 Referendum Act was a real breakthrough although only six national referendums were held (with twelve questions altogether); in this respect Hungary has only a limited experience with direct democracy.⁸¹ To sum up the most important lessons of the last twenty years of Hungarian direct democracy:

Firstly: Nationwide referendums had mostly – with only few exceptions – considerable consequences. The NATO and EU accession referendums in 1997 and 2003 confirmed Hungary's belonging to the Western European and North Atlantic economic and political community – a fact that – after 45 years in the Soviet sphere of influence – can't be overstressed. Both the so-called "Four-Yes Referendum" in 1989 and the "Social Referendum" in 2008 contributed to the modification of the Hungarian political map; the failure of the 2004 Citizenship Referendum influences both domestic politics and foreign affairs of Hungary to this day.

⁷⁹ Zsolt Albert and his wife collected signatures against compulsory multi-player health insurance system; Mária Seres initiated a referendum on the question of whether members of Parliament should be compelled to present receipts in order to claim expenses.

⁸⁰ Decisions 130/2008. (XI. 3.) and 472/H/2009. of the Constitutional Court.

⁸¹ Agenda initiatives doesn't improve very much the experiences: between 1990 and 2009 the Parliament decided about eleven agenda initiatives. Ten of them were put on the agenda, but only two of them were accepted, the others were rejected. For information of agenda initiatives discussed by the Parliament see:

<http://www.parlament.hu/fotitkar/nepszav/nepszav.htm> (in Hungarian).

Secondly: perhaps because of their considerable political consequences, in most of the cases successful referendum initiatives start – even if by means of collecting enough signatures – on behalf of political parties. They – especially in opposition – regard referendums as chance to reach their political purposes. The governing majority strove mostly to hinder parties of the opposition from pushing through initiatives, or at least to modify the question according to its own intentions.⁸²

It is also clear that initiatives coming from civic organisations and from individuals or extra-parliamentary parties are hardly ever encouraged or even sabotaged by the parliamentary political elite. Only in 2004 did it come to referendums on the initiative of non-party organisations.

However, since the new Law on Referendums of 1998 the Parliament is no longer the most important filtering institution, this role now belongs to the National Election Committee and the Constitutional Court. The Court's decisions impose more and more restrictions on referendum initiatives. In 2008, the President of the Constitutional Court called the referendum a "dormant mine" which exploded in 2007/2008. He proposed to put reasonable limits on the institution of referendum: the possibility to launch initiatives shouldn't be open to everyone.⁸³ It must be acknowledged: in the last years the number of referendum initiatives increased significantly; the quality of initiatives leaves much to be desired.⁸⁴

Therefore, it is uncertain today how the institutions of direct democracy will be regulated in the new Constitution planned for 2012 by the new Hungarian Government.

⁸² For a summary of Hungarian referendum experiences until 1998 see: István Kukorelli, "Az országos népszavazás, 1989-1998" op. cit., p. 476.; *idem* "Az országos népszavazás helye a parlamenti demokráciában" op. cit., pp. 41-42.; see further: Márta Dezső, András Bragyova, op. cit., pp. 81-90.

⁸³ Emília Krug: "Szunnyadó akna. A népszavazás szellemét nem az Alkotmánybíróság szabadította ki a palackból. Paczolay Péter az alkotmányos aktivizmusról", *168 Óra Online*, 4th July, 2008 [<http://www.168ora.hu/cikk.php?cikk=21823>].

⁸⁴ Some proposed questions: "Do you agree that guests of restaurants shouldn't pay for beer?" [Decision 26/2007. (IV. 25.) of the Constitutional Court]; "Do you agree that the use of internet shall be gratis from the 1st January of next year?" [Decision 315/2008. (X. 30.) of the National Election Committee]; "Do you agree to build monuments in honour of the Christian, Jewish, Islamic, Hindu, Buddhistic religions, George Washington and Confucius at Freedom Square in Budapest?" [Decision 340/2008. (XI. 14.) of the National Election Committee]; "Do you agree that every cigarette-box shall be sold with a small booklet which shows ways to disuse smoking?" [Decision 357/2008. (XII. 12.) of the National Election Committee]; "Do you agree to change Hungary's form of government to Democratic Kingdom and that Hungary become a member of the Holy King's People's Community; do you accept Peter Svoren and the XVIth Dalai Lama as a king of the Holy King's People's Community?" [Decision 11/2009. (I. 9.) of the National Election Committee].

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Annexes

ANNEX I: POPULAR RIGHTS IN IGNÁC MARTINOVICS'S DRAFT CONSTITUTION OF AUGUST 1793 AND IN FRENCH CONSTITUTIONAL LAWS OF 1792/93

Draft Constitution of Ignác Martinovics	French constitutional laws:
<p><u>Cap. IV. art. XXII.:</u> "Doch muss die <i>Konstitution von der ganzen Nation ausdrücklich, und alle Gesetze durch vordauerndes Stillschweigen von sechs Wochen angenommen werden.</i>" [mandatory constitutional referendum] [popular veto on parliamentary statutes]</p> <p><u>Cap. VI. art. XLII-XLIII:</u> "Die <i>Urversammlungen</i> bestehen aus dem König, ganzem Adel und allen Gemeinden des Volkes." "Diese üben bloss die Haupthandlungen der ursprünglichen Souveränität aus, nämlich <i>bestätigen oder verwerfen den vom Landtag bestimmten Konstitutionsentwurf</i>, wählen Deputierte zum Landtag, <i>verwerfen entworfenen Gesetze</i>, wenn diese ihnen schädlich scheinen, erklären ihren Willen über die Höhe der Steuer, und über einen zu unternehmenden Krieg." [mandatory constitutional referendum] [popular veto on parliamentary statutes]</p> <p><u>Cap. VI. art. XLIV.:</u> "Diese <i>Urversammlungen</i> geschehen auf folgende Art: [zuerst] der König gibt über diese Gegenstände seine Stimme allein..."</p>	<p><u>The resolution of the French National Convention of the 21st of September, 1792:</u> "La Convention nationale déclare, 1^o qu'il ne peut y avoir de <i>constitution</i> que celle qui est <i>acceptée par le peuple...</i>" [mandatory constitutional referendum]</p> <p><u>French Constitution of the 24th of June, 1793, art. 115.:</u> "Si, dans la moitié des départemens, plus un, le dixième des <i>assemblées primaires</i> de chacun d'eux, régulièrement formées, demande <i>la révision de l'acte constitutionnel, ou le changement de quelques-uns de ses articles</i>, le Corps-Législatif est tenu de convoquer toutes les assemblées primaires de la République, pour savoir s'il y a lieu à une Convention nationale." [constitutional referendum (total or partial revision)]</p> <p><u>French Constitution of the 24th of June, 1793, art. 58-60.:</u> "Le projet est imprimé et envoyé à toutes les communes de la République, sous ce titre: <i>Loi proposée.</i>" "Quarante jours après l'envoi de la loi proposée, <i>si, dans la moitié des départemens, plus un, le dixième des assemblées primaires de chacun d'eux, régulièrement formées, n'a pas réclamé, le projet est accepté</i>, et devient loi." "S'il y a réclamation, le Corps-Législatif convoque les assemblées primaires." [popular veto on parliamentary statutes]</p>

ANNEX II: POPULAR RIGHTS ACCORDING TO ACT XVII OF 1989 ON REFERENDUM AND POPULAR INITIATIVE AND THE STEPS OF THE PROCEDURE IN CASE OF BOTTOM UP INITIATIVES

Institution	Aim	Type (regarding binding force)	Triggering (% of the electorate)	Possible issues in general	Excluded issues	Required turnout
Mandatory constitutional referendum	decision	binding	-	subsequent approval of a new constitution already adopted by Parliament	-	50%+1
Popular initiative ⁸⁵ (Must be held, Parliament shall order it)			100 000 voters (ca. 1,25%)	issues in the competence of the Parliament <ul style="list-style-type: none"> • confirmation of acts passed by Parliament, • decisions concerning the passing of a bill, • determining the principles of the bill, and issues of nation-wide significance that do not require a bill format 	a) acts on the budget, the central tax types and stamp duties, on the central conditions for local taxes; b) decisions (appointments) in personnel issues falling under the competence of Parliament; c) the completion of obligations accepted in international agreements, acts promulgating these agreements (but the confirmation or rejection of engaging in future obligations arising from international agreements or the extension of expired international agreements are not excluded).	
Optional legislative referendum (Parliament can deliberate whether to order it or not)	decision or expression of opinion	binding or consultative	President Government 50 parliamentary representatives 50 000 voters (ca. 0,625%)			
Agenda initiative ("compulsory")	put a question on the agenda of the Parliament	Parliament shall debate it	50 000 voters (ca. 0,625%)	all issues whose decision lies in the Parliament's field of competence	-	-
Agenda initiative ("facultative")		Parliament may decide whether to debate it or not	10 000 voters (ca. 0,125%)			

⁸⁵ For the terminology, see above footnote 49.

Procedure in case of bottom up initiatives:

1. collection of signatures;
2. handing in the signature-collection sheets to the Speaker of Parliament;
3. validation by the National Election Board (within 30 days, only the number of valid signatures can be taken into consideration);
4. Parliament orders the referendum or rejects the initiative (within two months after the handing in of the initiative; with two-thirds vote);
5. vote (within 3 months after the ordering of the referendum);
6. report of the National Election Board on the result;
7. Parliament includes the result of the referendum in a resolution (→ the result is binding for 2 years: a new referendum may not be held nor may an act confirmed by referendum be modified within the two years that follow).

A complaint can be lodged at the Constitutional Court against the resolution of the Parliament (step **4.** or **7.**)

- when the Parliament rejects a referendum on the basis of failed validation, or
- when the Parliament's resolution violates the lawful regulations pertaining to the holding of the referendum and determining the outcome of the vote.

ANNEX III: POPULAR RIGHTS ACCORDING TO THE 1997 CONSTITUTIONAL AMENDMENT AND THE STEPS OF THE PROCEDURE IN CASE OF A BOTTOM UP INITIATIVE ACCORDING TO ACT III OF 1998 ON REFERENDUM AND POPULAR INITIATIVE AND TO ACT C OF 1997 ON ELECTORAL PROCEDURE

Institution	Aim	Type (regarding binding force)	Triggering (% of the electorate)	Possible/prescribed issues in general	Excluded issues	Required turnout
Mandatory referendum	decision	binding	-	EU accession (according to art. 79 of the Constitution which was implemented in 2002)	-	25%+1 (the referendum is successful if more than half of the voters, but at least more than <u>one-quarter of all eligible voters</u> have given the same answer)
Popular initiative ⁸⁶ (It must be held, Parliament shall order it)	decision	binding	200 000 voters (ca. 2,5%)	issues falling under the jurisdiction of the Parliament	<ul style="list-style-type: none"> a) laws on the central budget, the execution of the central budget, taxes to the central government and duties, customs tariffs, and on the central government conditions for local taxes, b) obligations set forth in valid international treaties and on the contents of laws prescribing such obligations, c) the provisions of the Constitution on national referendums and popular initiatives, d) personnel and restructuring (reorganization, termination) matters falling under Parliamentary jurisdiction, e) dissolution of the Parliament, f) the Government's program, g) declaration of a state of war, a state of emergency or a state of national crisis, h) use of the Hungarian Armed Forces abroad or within the country, i) dissolution of the representative body of local governments, j) amnesty. 	
Optional legislative referendum (Parliament can deliberate whether to order it or not)	decision or expression of opinion	binding or consultative	President Government one-third of Members of the Parliament 100 000 voters (ca. 1,25%)			
Agenda initiative	put a question on the agenda of the Parliament	Parliament shall debate it	50 000 voters (ca. 0,625%)			

⁸⁶ For the terminology, see above footnote 49.

Procedure in case of bottom up initiatives:

1. National Election Committee (NEC) validates the specimen of signature-collection sheets (formal examination of the sheet and substantial examination of the question regarding unanimity and permitted/excluded matters; decision on admissibility – within 30 days);
2. collection of signatures (4 months), initiators hand in the sheets to the NEC;
3. NEC checks the amount of valid signatures (within 45 days) and inform the Speaker of the House;
4. Parliament orders the referendum (within 15 days) and informs the President;
5. the President sets the date of the referendum;
6. vote (within 90 days after the Parliament's resolution);
7. NEC declares the result;
8. Parliament executes the decision of the referendum, e.g. enacts a law (the result is binding for 3 years).

A complaint can be lodged at the *Constitutional Court* against:

- resolutions of the NEC concerning the validation of the signature-collection sheet (1.);
- resolutions of the Parliament concerning the ordering (or rejection) of the referendum (4.);
- resolutions of the Parliament concerning the execution (or non-execution) of the decision made by referendum (8.).

A complaint can be lodged at the *Supreme Court of Hungary* against:

- resolutions of the NEC declaring the amount of valid signatures (3.);
- resolutions of the NEC declaring the result of the referendum (7.).

ANNEX IV: REFERENDUMS IN HUNGARY 1989-2008

Referendum of the 26th November, 1989 (“Four-Yes referendum”):

Subjects/results:

- A. *the President shall be elected after the first free elections* (Result: Yes: 50,07%)
- B. *party organisations shall withdraw from work places* (Result: Yes: 95%)
- C. *the Hungarian Socialist Workers’ Party shall account for its assets* (Result: Yes: 95%)
- D. *the Workers’ Militia shall be dissolved* (Result: Yes: 95%)

Type: popular initiative

Initiators: four (extra-parliamentary) parties of the opposition

Turnout: 58%

Background: “National Round Table Talks” between the Hungarian Socialist Workers’ Party and oppositional parties had been in process since June 1989; the Hungarian Socialist Workers’ Party wanted its own candidate (Imre Pozsgay) elected for President by the people before the free elections, the Free Democrats refused him, they – and other oppositional parties – wanted the President elected by the new Parliament.

Political consequences: The opposition could get rid of the Hungarian Socialist Workers’ Party’s candidate; the Alliance of Free Democrats (main initiator) gained popularity before the elections; the weakness of the Hungarian Socialist Workers’ Party became obvious.

Referendum of the 29th July, 1990:

Subject: *direct election of the President*

Type: popular initiative

Initiators: Zoltán Király (independent parliamentary representative); the Hungarian Socialist Party

Turnout: 14%

Result: No (Yes: 86%, No: 14%)

Background: Referendum of the 26th November, 1989; general elections of 1990; isolation of the Hungarian Socialist Party.

Political consequences: The idea of a “medium-strong” President remained in the Constitution; the Parliament elected the President in August 1990.

Referendum of the 16th November, 1997:

Subject: *accession to the NATO*

Type: optional legislative referendum

Initiator: Government

Turnout: 49%

Result: Yes (Yes: 85%, No: 15%)

Background: Negotiations between Hungary and NATO on the accession had been in process since 1991; all of the parliamentary parties were in favour of the accession, only two radical extra-parliamentary parties campaigned against it. The turnout was low; the referendum was successful only because of the lowering of the threshold two weeks before. The suggestive wording was criticized (“Do you agree that the Republic of Hungary should guarantee its security by joining the NATO?”)

Referendum of the 12th April, 2003:

Subject: *accession to the European Union*

Type: mandatory referendum (according to art. 79 of the Constitution)

Turnout: 46%

Result: Yes (Yes: 84%, No: 16%)

Background: Negotiations between Hungary and the EU on the accession had been proceeding since 1998. All of the parliamentary parties were in favour of the accession; opponents tried to present it as a colonisation. In 2002, a constitutional amendment ordered a referendum on the accession.

Referendum of the 5th December, 2004:

Subjects:

- A. making easier to acquire Hungarian citizenship for ethnic Hungarians living abroad
- B. prohibition of the privatization of state-owned health care institutions

Type: popular initiative

Initiator: A: World Federation of Hungarians; B: Hungarian Communist Workers' Party (extra-parliamentary radical party)

Turnout: 37%

Result: No (subject A: Yes: 51,57%; subject B: Yes: 65%)

Background:

- A. The so-called Status Act (2001) accorded benefits to Hungarians living in neighbouring countries, but the World Federation of Hungarians insisted on a facilitated granted citizenship.
- B. In 2003, the Parliament adopted an act enabling the participation of private capital in financing hospitals; the Workers' Party launched an initiative in order to prohibit the privatization of state-owned health care institutions. Although the act was annulled by the Constitutional Court, the Workers' Party continued the campaign and the Parliament ordered the referendum. (The Government argued against, the opposition in favour of the initiative in both cases.)

Political consequences:

- A. Hungarians living abroad were disappointed, the FIDESZ promised to adopt a law on the citizenship if the party gets a majority in the Parliament. (It was realized in 2010 → political conflict with Slovakia.)
- B. Although the initiative failed, there is a strong resistance against privatization of state-owned health care institutions. Such attempts of the next Government run aground too.

9th March, 2008 ("Social" or "Three-Yes Referendum"):

Subjects/results:

- A. Abolition of "visit-fee" [fee for out-patient treatments] (Result: yes, 82%)
- B. *Abolition of in-patient hospital care per-diem rate* (Result: yes, 84%)
- C. Abolition of teaching contribution for higher public education (Result: yes, 82%)

Type: popular initiative

Initiator: FIDESZ – Hungarian Civic Union and the Christian Democratic People's Party (parties of the opposition)

Turnout: 50,49%

Background: The Socialist Party (MSZP) and the Liberal Party (SZDSZ) – after 4 years of government – won the 2006 Hungarian national elections. Ferenc

Gyurcsány established his second Government and introduced financial restrictions. After his confidential speech in Balatonőszöd (“we lied in the morning, at noon and at night”) went public, serious protests broke out. Two parties of the opposition (Fidesz and Christian Democrats) initiated referendums on seven questions. Finally – after long multiple-stage proceedings at the National Election Committee and Constitutional Court – the National Election Committee validated five questions, but the initiators collected signatures only for three questions. The issues became a symbol of the Government’s policies and the opposition considered the referendum a decision on the Government’s future. The referendum (and especially the Constitutional Court’s decisions on the admissibility) divided the intellectuals.

Political consequences: The Government didn’t resign but the coalition broke up and the minority Government was not able to proceed with its reform program.

ANNEX V: IMPORTANT DECISIONS OF THE HUNGARIAN CONSTITUTIONAL COURT ON REFERENDUM ISSUES

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

Main statements:

- a) the primary form of exercising the people's sovereignty in Hungary is by representation (→ referendums in the parliamentary system shall be complementary in relation to representative exercise of power);
- b) a question put on referendum may not contain an implied modification of the Constitution;
- c) the Parliament can't be forced to dissolve by means of referendum.

Background: the initiative of the Association of Citizens under the Subsistence Minimum Level to dissolve the Parliament by means of referendum.

Consequences:

In 1995, the Parliament refused an initiative of the Independent Smallholder's Party on the direct election of the President, on the extension of his competence and on other questions referring to the decision of the Constitutional Court.

The Parliament refused an initiative of the extra-parliamentary Hungarian Communist Workers' Party on the NATO accession of Hungary (without any legal reasoning: "the question is not timely").

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

Main statements:

- a) a popular initiative shall take priority against the Government's facultative proposition (from the handing in of signatures);
- b) although the direct exercise of popular sovereignty is exceptional, in such cases however, it supersedes representative power;
- c) in case of a referendum aiming a decision the Parliament is forced to adopt the relevant law.

Background and consequences: Oppositional parties collected more than 200.000 signatures in order to prohibit foreigners from acquiring agricultural land in Hungary. Subsequently, the Government proposed another question on the same issue. The Parliament decided to put the Government's question on referendum, but it couldn't be held because of the Constitutional Court's decision. The Parliament refused to put the other question on referendum, arguing: the question is not unambiguous. (The power of the National Election Committee to examine and verify the question before the collection of signatures was introduced only after, in 1998.)

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

Main statements:

- a) the Constitution can't be revised by means of bottom up initiative;
- b) a revision of the Constitution adopted already by the Parliament can be approved by means of referendum.

Background: The Social Democratic Youth League proposed a referendum about the direct election of the President; the National Election Committee validated the specimen of the signature-collecting sheets. The Constitutional Court repealed the National Election Committee's decision.

Consequence: Although in the list of excluded subjects it is not forbidden, there is no room for bottom up initiatives aiming a total or a partial revision of the Constitution.

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

Main statements:

The question put on referendum must be unambiguous from two perspectives:

- a) the voters have to be able to answer it with "yes" or "no", it shall be clear and open to one interpretation only;
- b) the Parliament has to be able to decide, whether it is obliged to adopt a law and if yes, what kind of a law.

Background: The Socialist Party initiated a referendum on the amendment of the Hungarian Labour Code: "Do you agree that the Labour Code guarantees for the employees weekly two days of holyday, one of them on Sunday, and that the work on holidays must be paid extra?" The Constitutional Court stated that the question includes two questions: one on the amount of weekly holidays and the other one the wages. The second doesn't follow from the first; the voters can't decide separately.

Consequences:

- a) The proposed question may include more questions but their connection must be clear, one must follow from the other.
- b) The decision opened the door to an argumentation with the "new circumstance": if a "new circumstance" (e.g. the modification of the legal environment) arises after the validation of the signature-collection sheet, it may have a negative effect on the unanimity of the question from the perspective of the Parliament (it can't decide whether it is obliged under the new circumstances to adopt a law and if yes, what kind of a law).

Decision 40/2004. (X. 27.) of the Constitutional Court:

Main statement:

- It is possible that a "new circumstance" arises after the validation process (National Election Committee decision and eventually Constitutional Court decision). "New circumstance" can be for e.g. a constitutional amendment or a new international treaty. In such a case – if a complaint is lodged at the Constitutional Court against the Parliament's resolution concerning the ordering of the referendum – the Constitutional Court may reconsider the admissibility of the question which has already been admitted in the validation process.

Background: Initiative concerning the prohibition of the privatisation of state-owned health care institutions.

Consequence: The "new circumstance" became an important argument of the Constitutional Court for the rejection of a question in such cases where the Parliament – after the validation of the question – adopted a new law or a revision which meets the intention of the initiative. [E.g.: Decisions 67/2004. (IV. 30.) and 130/2008. (XI. 3.) of the Constitutional Court.]

Decision 130/2008. (XI. 3.) of the Constitutional Court:

Main statements:

- a) a referendum (popular initiative) which intends a decision has the primary purpose to oblige the Parliament to adopt or abolish a law;
- b) a referendum (popular initiative) may have – secondarily – the purpose to oblige the Parliament to abstain from enacting a law, but only if the referendum counteracts a real endeavour for legislation (e.g. the draft is in preparation, it has been completed or has been brought in as a bill).

Background: In 2008 the Parliament adopted a law introducing a new health insurance system based on the competition of private insurance companies (market-based health insurance system). Two private individuals initiated a referendum on the question: "Do you agree that an obligatory multi-player market-based health insurance system should not be introduced in Hungary?" After the validation of the signature-collection sheet the Parliament abolished the law and the Government renounced its intentions to introduce the market-based health insurance system. However, the Parliament – accepting the decision of the National Election Committee on the validation of the sheet – ordered the referendum. The Constitutional Court refused it with the arguments mentioned above.

Consequences:

- If the Parliament complies with the intention of a popular initiative and – after the validation of the signature collection sheet but before the ordering the referendum – revise (adopt, abolish) the law, the referendum can't be held.
- In this way the Parliament can circumvent the rule that the result of the referendum is binding for 3 years.