

PARTICIPATORY DEMOCRACY: INTERNATIONAL AND EUROPEAN TENDENCIES, CONSTITUTIONAL FRAMEWORK IN VISEGRAD COUNTRIES, HUNGARIAN INSTRUMENTS AND EXPERIENCES*

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1. Introduction

“Participatory democracy” denotes theories, movements and practices which lay a great stress on popular participation in democratic decision-making processes. Instead of concentrating merely on the aims and “outputs” of democracy, their main focus is on the “input”: on how decisions are reached. In this respect, the idea of participatory democracy expresses a fundamental claim for participation of persons concerned in as many fields of public life as possible. According to adherents of this ideal, participation does not only embody a value per se; it may also contribute to increasing the quality of public deliberation, to improving the skills of citizens in dealing with matters of public interest and to making appropriate political decisions with greater legitimacy.¹

In addition to expected advantages based on theoretic considerations, the growing demand for an increased participation of citizens in political decision-making processes is boosted by different elements of a general social change as well. As Otmar Jung points out regarding the spread of direct democracy in German communes and member states, the causes of this positive development are factors like the growing level of education, the easy accessibility of information through electronic and social media, the mobility and welfare of society, the disintegration and individualisation of traditional communities. These circumstances, on the one

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¹ Manfred G. SCHMIDT: *Demokratietheorien. Eine Einführung*. 4th revised and extended edition. Wiesbaden, VS Verlag für Sozialwissenschaften – GWV Fachverlage GmbH, 2008. 236–238.

hand, reduce the costs of participation, on the other hand they result in the changing attitude of citizens: instead of relying on long-established institutions of social representation, like political parties, the church or trade unions, people tend to take matters into their own hands.² Possible forms of participation range from protests, strikes, sit-ins and petitions over citizens' workshops and popular consultations to referendums and popular initiatives; new modes and practices have appeared time and again in the last decades.

2. Growing international normative framework

The tendency to involve people in democratic decision-making processes is also reflected in international agreements, mostly in the field of environmental protection. The roots of this progress go back to the turn of the 1970s and 1980s. Just by way of illustration: in 1979, the Parliamentary Assembly of the Council of Europe adopted a recommendation on public participation in decision-making on aircraft noise matters which urged governments to provide for appropriate consultative committees and exchange of information concerning the impact of aircraft noise and the operation of airports, to involve local residents into these committees and to make no decision on major extensions or building of civil airports "without a full preliminary enquiry in public".³ In 1981, the Committee of Ministers of the Council of Europe generally recommended to "involve citizens more directly in the management of the affairs of their community" and to improve their participation "by giving citizens the opportunity of participating in the various phases of the decision-making process", if possible, in different phases like "programming, drafting and alternative phases and implementation".⁴ In 1982, the General Assembly of the United Nations adopted the World Charter for Nature which laid down as a principle that "All persons, in accordance with their national legislation, shall have the opportunity to participate, individually or with others, in the formulation of decisions of direct concern to their environment, and shall have access to means of redress when their environment has suffered damage or degradation".⁵

² Otmar JUNG: Siegeszug direktdemokratischer Institutionen als Ergänzung des repräsentativen Systems? Erfahrungen der 90er Jahre. In: Hans-Herbert von ARNIM (ed.): *Demokratie vor neuen Herausforderungen. Vorträge und Diskussionsbeiträge auf dem 1. Speyerer Demokratie-Forum vom 29. bis 31. Oktober 1997 an der Deutschen Hochschule für Verwaltungswissenschaften Speyer*. Berlin, Duncker & Humblot, 1999. 109–110.

³ Council of Europe Recommendation 875 (1979) of the Parliamentary Assembly on public participation in decision-making on aircraft noise matters (adopted on 4 October 1979), 5.1–2.

⁴ Council of Europe Recommendation No. R (81) 18 of the Committee of Ministers to member states concerning participation at municipal level (adopted on 6 November 1981), main text and annex 3.1.

⁵ Resolution 37/7 of 28 October 1982, para. 23. For further examples see Stephen STEC – Susan CASEY-LEFKOWITZ – Jerzy JENDROŚKA: *The Aarhus Convention: an implementation guide*. New York, United Nations, 2000. 86–87.

2.1. Aarhus Convention

The most comprehensive international treaty providing for citizens' participation in environment related issues is the UNECE "Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters", widely known as Aarhus Convention. It was signed on 25 June 1998 in Aarhus, entered into effect on 30 October 2001 and was ratified by 46 – mostly European and Central Asian – states and the European Union until March 2014. Principle 10 of the UN Rio Declaration on Environmental and Development (1992) can be mentioned as a direct antecedent of the Convention which had already formulated the three pillars representing the basis of the Aarhus Convention: the appropriate access to information concerning the environment, the opportunity to participate in decision-making processes related to environmental issues and the effective access to judicial and administrative proceedings.

The Convention reflects a human rights-based approach. Its preamble considers environmental protection "essential to human well-being and the enjoyment of basic human rights, including the right to life itself" and guarantees the above mentioned principles as public rights. The Convention also lays a great stress on enabling the public to participate in environment related decision-making processes:⁶ it obligates member states to promote participation by informing the concerned public on the planned activities having a considerable effect on the environment (the activities are listed in Annex I), on the competent authority and on the envisaged decision-making procedure. Member states are also entrusted with the task of establishing procedures which allow people to submit their comments, information, analyses and opinions regarding the proposed activity, either in writing or at public hearings or inquiries. All forms of public participation shall be allowed in due time to have the chance to influence the decision and the authorities shall take into consideration the outcome of the public participation during the decision. The Convention also requires appropriate provisions for public participation in the preparation of environmental plans, programmes and policies and of executive or normative regulations.⁷

2.2. European Citizens' Initiative (ECI)

Attempts to introduce participatory instruments in the European Union's decision-making processes originate mainly from the general feeling of lack of democratic legitimacy in the mechanism of the European integration which is often referred to as "democratic deficit". Different NGOs (Mehr Demokratie, Democracy International, Initiative and Referendum Institute Europe) tried to persuade members of the European Convention already during the elaboration of the European Constitution of 2004 to adopt direct democratic rights, like the right of citizens' initiative,

⁶ FÜLÖP Sándor: Az Aarhusi Egyezmény eszméi [The ideas of the Aarhus Convention]. *Fundamentum*, 2008/1. 107.

⁷ See Art. 6–8.

citizens' referendums and obligatory referendums for constitutional amendments, in the planned Constitutional Treaty.⁸ As a result, art. I–47 of the Treaty laid down the principle of participatory democracy, which, among others, enabled at least one million citizens to submit initiatives to the European Commission demanding appropriate legal acts falling within the competence of the European Union. After the ratification of the Constitutional Treaty had failed in two subsequent referendums in France and the Netherlands in 2005, the Treaty of Lisbon, signed in December 2007, adopted similar rules on citizens' participation. While art. 10 considers representative democracy to be primary in the functioning of the Union, it also lays down as a principle that "Every citizen shall have the right to participate in the democratic life of the Union" and that "Decisions shall be taken as openly and as closely as possible to the citizen". Art. 11 obliges institutions of the EU to "give citizens and representative associations the opportunity to make known and publicly exchange their views in all areas of Union action" and to "maintain an open, transparent and regular dialogue with representative associations and civil society". Besides, the Commission has to "carry out broad consultations with parties concerned in order to ensure that the Union's actions are coherent and transparent". In addition to these generally formulated requirements, para. 4 provides for basic regulation regarding ECI stipulating that "Not less than one million citizens who are nationals of a significant number of Member States may take the initiative of inviting the European Commission, within the framework of its powers, to submit any appropriate proposal on matters where citizens consider that a legal act of the Union is required for the purpose of implementing the Treaties".⁹

Detailed rules concerning ECI are laid down in an EU regulation adopted by the European Parliament and the Council in 2011.¹⁰ Organisers have first to register their initiative with the Commission which examines it not only from a formal aspect but also reviews it in merit. Abusive, impractical, provoking initiatives, or any initiatives that don't fall within the competence of the Commission, or are contrary to the values of the Union (respect for human dignity, freedom, democracy, equality, the rule of law, respect for human rights and the rights of minorities) are not admissible. The Commission has a two-month term to examine and to register the initiative or to refuse its registration. After the successful registration process, organisers have twelve months to collect one million statements of support either in paper form or electronically. Statements of support have to come from at least one quarter of all member states; the minimum number of statements is set out for each member state by Annex I of the Regulation. After the twelve-month period has elapsed the

⁸ Michael EFLER: A rollercoaster ride towards transnational democracy. In: Bruno KAUFMANN – Alain LAMASSOURE – Jürgen MEYER (eds): *Transnational democracy in the making. IRI Europe Handbook 2004. The new challenge of European Initiative & Referendum after the Convention*. Amsterdam, Initiative & Referendum Institute Europe, 2004. 47–49.

⁹ Consolidated version of the Treaty on European Union [2010], OJ C 83/13, Art. 11(4).

¹⁰ Regulation (EU) No 211/2011 of the European Parliament and of the Council of 16 February 2011 on the citizens' initiative, OJ L 65/1.

organisers submit the statements of support to the competent authorities of the member states, which in turn, within a period not exceeding three months, check the amount of statements and deliver a certificate on the number of valid statements to the organisers. Subsequently, organisers may submit the initiative to the Commission. They are also entitled to present it at a public hearing at the European Parliament in the presence of appropriate representatives of the Commission. The Commission is obliged, within three months, to summarise and publish its political and legal conclusions, the planned actions regarding the issue and the reasons for this, or for not taking any action.

Until mid-May 2015, the Commission has refused to register twenty proposed citizens' initiatives; ten were withdrawn and twelve failed to reach the required number of statements of support within twelve months. Three initiatives are still open; the collection of statements of support is closed in case of six initiatives: three were already submitted to the Commission and the Commission has answered two of them. The first reply on behalf of the Commission was published on 19 March 2014.¹¹ The subject-matters range from the protection of the dignity and the right to life of the foetus over environmental issues, the legalization of cannabis, the protection of media pluralism and the phasing out of animal experiments to matters of education and the development of female entrepreneurship.

3. Participatory rights in the Visegrad countries' constitutions

Concrete regulations which go back either to the Aarhus Convention or to the ECI are not found in the Visegrad (V4) countries' constitutions; for rules of implementation concerning these international and EU regulations should be sought on a lower level of the hierarchy of norms. Different participatory rights are, however, comprised in the constitutions as well, even if many of them fall in the scope of traditional political participation rights.

Each constitution¹² is based on the principle of popular sovereignty and declares the people (the nation, the citizens) to be the source (or the holder) of state power. The Constitutions of Poland (art. 4, para. 1–2) and Slovakia (art. 2, para. 1; art. 30, para. 1) mention direct and indirect exercise of the power as simple alternatives, while the Basic Law of Hungary considers representative power as primary and direct popular decisions as exceptional (art. B, para. 3–4). The Constitution of the Czech Republic

¹¹ See the official register for European citizens' initiatives: ec.europa.eu/citizens-initiative/public/initiatives/finalised/answered?lg=en (accessed: 10 May 2015).

¹² The Constitution of the Republic of Poland of 2 April 1997 (English text: www.sejm.gov.pl/prawo/konst/angielski/kon1.htm); the Constitution of the Czech Republic of 16 December 1992 (English text: www.usoud.cz/en/constitution-of-the-czech-republic/); the Constitution of the Slovak Republic of 1 September 1992 (English text: www.slovak-republic.org/constitution/); the Fundamental Law of Hungary of 25 April 2011 (English text: www.kormany.hu/download/e/02/00000/The%20New%20Fundamental%20Law%20of%20Hungary.pdf), each accessed on 10 May 2015.

only relates to the “majority manifested in free voting” without mentioning direct or indirect exercise of power (art. 2, para. 1; art. 6).

Voting rights are self-evidently provided by each constitution. In addition to the right to vote for members of parliament, the right to elect a president (Poland, Czech Republic, Slovakia) and to vote for members of local (territorial) representative bodies is also guaranteed. The right to participate in a referendum is recognized as a fundamental right by the constitutions of Poland (art. 62, para. 1), Slovakia (art. 94) and Hungary (art. XXIII, para. 7). The Constitution of the Czech Republic also provides for popular participation in the nomination of candidates for the President of the Republic enabling 50,000 citizens to propose someone for president (art. 56, para. 5).

As for the direct exercise of popular sovereignty, the constitutions of Poland, Slovakia and Hungary comprise detailed regulations. Mandatory *national referendums* are provided for in Poland and Slovakia. In Poland, a *mandatory referendum* is required to amend chapters I (“The Republic”), II (“The Freedoms, Rights and Obligations of Persons and Citizens”) and XII (“Amending the Constitution”) of the constitution (art. 235, para. 6). In Slovakia, a referendum is mandatory to “confirm a constitutional law on entering into an alliance with other states or on withdrawing from that alliance” (art. 93, para. 1). The constitutions of Poland (art. 90, para. 3) and of the Czech Republic (art. 10a, para. 2) make it possible to hold referendums on international treaties which delegate state power to an international organization but don’t necessarily require it; the Basic Law of Hungary categorically prohibits popular votes on any obligation arising from an international agreement (art. 8, para. 3). As regards *optional referendums*, in Poland only the Sejm or the President of the Republic (the latter with consent of the Senate) are entitled to order national referendums in matters of particular importance; the result is only binding if more than a half of all enfranchised voters have participated in the vote (art. 125, para 1–3). In Slovakia, referendums can be held upon a resolution of the National Council and upon the petition of at least 350,000 citizens as well; the referendum is valid if the turnout exceeded 50% of all enfranchised voters (art. 95, para. 1; art. 98, para. 1). In Hungary, the Parliament may order a national referendum upon the motion of the President of the Republic, the government or 100,000 electors. If, however, the initiative came from 200,000 electors, the Parliament is obliged to order a national referendum (art. 8) provided that the initiative fulfils the requirements laid down by law (e.g. its subject does not fall in the scope of issues prohibited for referendum). Similarly to Slovakia, a turnout of more than 50% is required for a valid referendum. The Constitution of the Czech Republic does not provide generally for mandatory or optional national referendums; it only mentions the possibility of holding a referendum on the ratification of international treaties whereby state power is transferred to an international organization or institution (art. 10a, para. 2). However, the general rule is that such treaties can be ratified by the parliament, it only comes to a referendum if this is required by a constitutional act.

In Poland (art. 127, para. 1), in the Czech Republic (art. 54, para. 2) and in Slovakia (art. 101, para. 2) the head of state shall be elected directly by the citizens. In addition to this, Slovak voters are entitled to *recall the President* from his post by a plebiscite.

This vote can be ordered by the National Council by a three-fifths majority of all members of parliament and the plebiscite is valid if an absolute majority of all enfranchised voters cast a vote for the recall. Otherwise the National Council shall be dissolved, a new parliamentary election announced and a new presidential term shall begin (art. 106).

Local (territorial) referendums are mentioned both by the constitutions of Poland (art. 170) and Slovakia (art. 67, para. 1) and by the Basic Law of Hungary (art. 31) as an instrument whereby matters within the competence of local governments can be decided directly by local voters; in Poland voters also have the right to recall elected local organs directly by means of referendum.

The *right to have access to data of public interest* – a precondition for exercising participatory rights in a reasonable way – is explicitly guaranteed by the constitutions of Poland (art. 61), Slovakia (art. 26, para. 5) and by the Basic Law of Hungary (art. VI). The most detailed regulation is provided for by the Constitution of Poland which specifies state organs and persons on whose activities citizens shall be informed compulsorily if such an information is requested. Organs of public authority, persons carrying out public functions, self-governing economic or professional organs and organizational units are subject to such an obligation in the field they perform public authority or manage state property or communal assets.

The *right to submit petitions*, proposals and complaints to state organs and territorial self-administration bodies is enshrined in the constitutions of Poland (art. 63), Slovakia (art. 27) and in the Basic Law of Hungary (art. XXV). The Constitution of the Slovak Republic also explicitly involves “the *right to put up resistance* to anyone who would eliminate the democratic order of human rights and basic liberties”. This right is, however, limited to the case “if the activity of constitutional bodies and the effective use of legal means are rendered impossible” (art. 32).

Finally, each constitution opens the door to *participation of lay assessors in judicial proceedings* (Poland: art. 182; Czech Republic: art. 94, para. 2; Slovakia: art. 142, para. 2; Hungary: art. 27, para. 2); however, detailed regulations related to this shall be laid down by special laws.

4. Participatory rights in Hungary

Principles and rules, however, which are laid down in constitutions, are mostly laconic and offer only a limited insight to detailed regulations and practical experience. A more profound examination shall fill this gap relating to Hungary.

4.1. National level

4.1.1. National referendums

National referendum can be regarded as the most effective participatory instrument: enfranchised voters are entitled to decide matters of national importance directly. If we add moreover that 200,000 electors (approximately 2.5% of all enfranchised voters) can enforce a referendum by popular initiative (the parliament is obliged to

order the vote), one may conclude that the civil society has a powerful instrument to influence decision-making processes on the national level, to repeal resolutions of the parliament or simply to put issues on the agenda of public, governmental or legislative authorities. Popular votes also could be expected to contribute to the solution of political conflicts, to the acceptance of decisions and to the stability and legitimacy of the political system as a whole.¹³

A constitutionally ensured possibility in itself, however, does not make referendum a significant and frequently used element of democracy. Legal constraints and political culture of the society can reduce the effect of popular rights.

As for legal constraints: quorums, prohibited issues and procedural norms may prevent both positive and negative consequences of referendums. In Hungary, the turnout quorum of 50% was re-introduced by the Basic Law in 2012 (between 1997 and 2011 the constitution provided an approval quorum of 25%), this makes it nearly impossible to organize valid national referendums as only questions with an enormous mobilizing power can get more than half of all enfranchised voters to the ballot-box. Of the six national referendums which were held in Hungary since 1989 only two could reach the 50% threshold (1989 and 2008). The requirement of 200,000 signatures (2,5% of enfranchised voters) for launching a popular initiative which, theoretically, necessarily entails a national referendum, cannot be considered an extremely high proportion in an international comparison. (The 350,000 signatures in Slovakia amount to nearly 8% of the total electorate.) However, considering that initiators only have 120 days to collect this amount of signatures, it seems still not too easy to fulfil the requirement. Signatures can – except for European Citizens’ Initiatives – not be collected electronically. Only organizations with a significant number of activists and an extensive, nation-wide network have a real chance to overcome this obstacle. In this respect, it is meaningful that of the twelve questions which were submitted to referendum since 1989 only one single was proposed by a non-partisan civic organization (the World Federation of Hungarians, 2004: citizenship for Hungarians living abroad). Big parliamentary parties have much greater chance of launching popular initiatives. (For an overview of Hungarian national referendums between 1989 and 2013 see Table 1.)

Also the list of issues that cannot be subjects of referendum narrows down the scope of popular rights. Constitutional matters are explicitly excluded: any proposed question which involves an – even implicit – constitutional amendment will be declared inadmissible by the competent authorities. The same can be stated for initiatives which concern financial issues like the state budget, taxes, pension or healthcare contributions and customs. The Basic Law of Hungary also excludes any obligation arising from an international agreement.

As regards the political culture, direct democracy requires an active citizenry which shows interest in questions of national importance, is ready to deliberate and to

¹³ On functions and effects of referendums and popular initiatives in the Swiss political system see: Wolf LINDER: *Schweizerische Demokratie. Institutionen – Prozesse – Perspektiven*. 2nd completely revised and updated edition. Bern–Stuttgart–Wien, Haupt, 2005. 256–270.

weigh up the pros and cons of factual issues and to participate in civic actions related to it. Sense of responsibility, commitment to common good and the conviction that personal efforts and civic collaboration can have a real effect on political decision-making are motive powers of democracy. In this respect, attitudes of Hungarian society still leave much to be desired. Participation in societies and other civic organizations is limited, only Bulgaria and Romania show similarly modest figures as Hungary does.¹⁴ 42% of Hungarians consider tax fraud a pardonable fault and only 53% regard it as a condemnable crime. (Just in comparison: in the Czech Republic only 18%, in Poland only 30% treat tax fraud as pardonable.)¹⁵ If Hungarians are asked whether they consider a “strong economy” or a “good democracy” more important, 73% opt for the former. 49% prefer a “strong leader” instead of a “democratic government”, the latter gets only a support from 42% if the two choices are offered as an alternative.¹⁶ In this regard, other V4 countries show a higher commitment to democracy. If we still add that the Hungarian political arena is deeply polarized, the main political forces and their adherents do not strive for consensus, not even in the most important issues of national public life, the situation suggests the assumption that popular rights will tend to be used mostly by political parties and referendums will become weapons which deepen the conflicts rather than instruments which promote reconciliation. Furthermore, the general distrust of Hungarians towards state institutions¹⁷ can result in a destructive use of popular initiatives.

¹⁴ GICZI Johanna – SIK Endre: Bizalom, társadalmi tőke, intézményi kötődés [Trust, social capital and institutional devotion]. In: TÓTH István György (ed.): *TÁRKI Európai Társadalmi Jelentés [TÁRKI European Social Report]*. Budapest, Táarki, 2009. 70., diagram 4.4.

¹⁵ TÓTH István György: *Bizalomhiány, normazavarok, igazságtalanságérzet és paternalizmus a magyar társadalom értékrendszerében [Lack of confidence, norm disorders, feeling of injustice and paternalism in the value system of Hungarian society]*. Budapest, Táarki, 2009. 31, table 7.

¹⁶ PEW RESEARCH CENTER: *Two decades after the wall's fall*. November 2, 2009. 25–26. <http://pewglobal.org/files/pdf/267.pdf> (accessed: 10 May 2015).

¹⁷ TÓTH op. cit. 19., table 2 (mostly based on European and World Values Studies between 1999 and 2009).

Table 1: National referendums in Hungary 1989–2013

Year	Subject (<i>instrument</i>)	Initiator(s)	Turnout (%)	Yes (%)	Result
1989	The president shall be elected after the parliamentary elections (<i>Popular initiative – PI</i>)	Two parties of the opposition (SZDSZ and FIDESZ)	58	50,07	Accepted
	Party organisations shall withdraw from workplaces (<i>PI</i>)			95	
	The Hungarian Socialist Workers' Party shall account for its assets (<i>PI</i>)				
	The Workers' Militia shall be dissolved (<i>PI</i>)				
1990	Introduction of direct presidential election (<i>PI</i>)	Zoltán Király (parliamentary representative) and the Hungarian Socialist Party (MSZP)	14	86	Invalid (turnout quorum of 50% was not reached)
1997	Accession to the NATO (<i>parliamentary plebiscite</i>)	Government	49	85	Accepted
2003	Accession to the EU (<i>mandatory referendum</i>)	-	46	84	Accepted
2004	Making easier to acquire Hungarian citizenship for ethnic Hungarians living abroad (<i>PI</i>)	World Federation of Hungarians	37	51,57	Rejected (approval quorum of 25% was not reached)
	Prohibition of the privatization of state-owned health care institutions (<i>PI</i>)	Hungarian Communist Workers' Party		65	Rejected (approval quorum of 25% was not reached)
2008	Abolition of "visit-fee" (fee for out-patient treatments) (<i>PI</i>)	FIDESZ – Hungarian Civic Union and Christian Democratic People's Party (parties of the opposition)	50,49	82	Accepted
	Abolition of in-patient hospital care per-diem rate (<i>PI</i>)			84	
	Abolition of teaching contribution for higher public education (<i>PI</i>)			82	

Based on data published at the website of the Centre for Research on Direct Democracy (www.c2d.ch) and the webpage of the Hungarian National Election Commission (valasztas.hu/en/nvb/index.html) – both accessed on 10 May 2015. This table was first published in German in László KOMÁROMI: *Volksabstimmungen in der ungarischen Politik*. In: Ursula MÜNCH – Eike-Christian HORNIG – Uwe KRANENPOHL (eds): *Direkte Demokratie. Analysen im internationalen Vergleich*. Baden-Baden, Nomos, 2014. (2015) 228.

4.1.2. Popular consultations

The Hungarian FIDESZ-government has been performing “popular consultations” since September 2010. After the parliamentary elections of 2010, a letter of the prime minister was sent to 1.7 million pensioner households, in which Viktor Orbán asked recipients to answer questions related to their personal living conditions, measures taken by the new government, the most serious problems and the most important tasks to be fulfilled. In February 2011, a new, “*national consultation*” was started on twelve issues in connection with the preparation of the new Basic Law of Hungary. Citizens were asked e.g. whether the new constitution should not only declare fundamental rights but obligations as well, whether the maximum level of state debt should be set out in the constitution, whether parental proxy voting should be introduced and further questions were also included. Until the end of March 2011 nearly 917,000 questionnaires were sent back out of 8,093,000; the results were reputedly taken into consideration in the course of the elaboration of the new constitution. In May 2011 a “*social consultation*” was launched on ten questions which concerned the introduction of a “protected age” for employees at least 55 years old in order to protect them from dismissal, the reduction of the “extra-profit” of public-utility service companies and of the general expenses (costs of water, litter service, sewage disposal, gas, electricity and heating), different forms of unemployment assistance, an increased pension for persons who brought up children and other issues. Until mid-June more than one million questionnaires were sent back. In May 2012 a “*new national consultation*” began on 16 questions mostly related to job creation politics (e.g. presumptive taxation for small businesses, minimum wage, tax allowances for companies creating new jobs). Until 20 August nearly 700,000 answers were returned.

A similar consultation was announced in December 2012 on the culpability of homeless people living on the streets. In addition to this, in February 2013, the prime minister sent letters to 160,000 ethnic Hungarians living abroad with the promise that they will also be involved in the dialogue. These consultations were, however, not performed until March of 2014. In February 2015 a national consultation was launched at a governmental website on Internet related issues;¹⁸ the questionnaire of twenty questions was allegedly composed based on suggestions of the citizens and shall be available for completion between May and June 2015. In April 2015 an additional national consultation was started on questions related to terrorism and immigration.¹⁹

This form of popular consultation clearly shows plebiscitary characteristics: the date (period) is set and the questions are formulated by the government, possible answers are mostly also laid down in advance. Suggestive formulation of both questions and answers were often criticized and, in fact, in the course of the

¹⁸ www.internetkon.hu/ (accessed: 10 May 2015).

¹⁹ www.kormany.hu/download/7/e2/50000/nemzeti_konzultacio_bevandorlas_2015.pdf (accessed: 20 May 2015).

consultations that have already been held, in most cases the overwhelming majority of people replying chose the same alternative (e.g. at the “national consultation” of 2011, more than two-thirds of the people opted for the same answer in 10 questions out of 12). The processing of the answers and the establishment of the results was neither transparent nor controllable and it was not made clear to what extent the opinion of the majority is mandatory for the legislation. These peculiarities lead to believe that such consultations serve primarily as devices of political marketing and only secondarily as instruments of participatory democracy.

4.1.3. Social participation in the elaboration of normative regulations

Since November 2010, rules on forms and methods of social consultation regarding different kinds of draft regulations are laid down in a special law in Hungary.²⁰ Laws, governmental and ministerial decrees and their official explanations shall mandatorily be submitted to social consultation. Payment obligations, state subsidies, the state budget, annual accounts, subsidies coming from EU or other international sources, the proclamation of international treaties and the founding of organizations and institutions are exempt from social consultation similar to drafts and conceptions, the open discussion of which would endanger Hungary’s fundamental interests regarding national defence, national security, finances, foreign affairs, nature and environmental protection and cultural heritage. Also drafts which demand urgency can be exempt from mandatory consultation.

The two main forms of civic participation are general and direct consultations. *General consultation* means that the draft (conception, explanation) shall be published on a governmental website in due time to enable people to study it, to submit comments and proposals and to enable the competent authority as well to sum up and consider the reactions and to revise the draft if necessary. Comments and proposals have to be summarized and the summary shall also be published together with the list of persons and organizations which submitted comments or proposals. The competent authority has a duty to give reasons for rejected proposals but the individual proposals shall not be answered. In case of draft laws, they can only be introduced as a bill before the parliament if the general consultation has taken place. In-depth regulation on general consultation is provided for by a governmental decree.²¹

Direct consultations can be performed in collaboration with specific institutions like civic organizations, churches, professional or scientific organizations, self-governments of national or ethnic minorities, business federations, public corporations and institutions of higher education. The competent minister is empowered to conclude strategic agreements with such institutions in order to collaborate with them in certain fields in the elaboration of draft regulations until the end of the mandate

²⁰ Act CXXXI of 2010 on Social Participation in the Elaboration of Normative Regulations.

²¹ Governmental decree Nr. 301/2010. (XII. 23.).

of the government. The collaboration may not only include written consultations but personal discussions as well.

It is often stated that the rules of mandatory social consultations are not kept in practice as the regulation does not involve any effective guarantee for the compliance with legal requirements. This is indeed the case if draft regulations are not published in due time thus not allowing citizens enough time to submit their comments and proposals. On the other hand the practice can also be observed when important draft laws or amendments are introduced by individual members of parliament thus avoiding mandatory social consultation prescribed for governmental drafts.

4.2. Local (territorial) level

4.2.1. *Local (territorial) referendums*

Act CCXXXVIII of 2013 on Referendum Initiatives, European Citizens' Initiative and Referendum Process lays down detailed rules not only concerning national referendums but also on local and territorial referendums. As on the national level, referendums can be ordered "from above" by the local representative body and initiated "from below" by local inhabitants, parties and civic societies as well. The required number of signatures shall be set out by a decree of the local self-government, the law only provides that the number be fixed between ten and twenty-five percent of local inhabitants. Bottom-up initiatives are subject to a validation process whereby referendum proposals are checked both from a formal aspect and as regards their content. Initiatives relating to financial issues (local budget, annual accounts and taxes), personal or organizational matters and that aimed at the dissolution of the local representative body are not admitted. If the initiative was qualified as admissible, initiators have 30 days to collect the required amount of signatures. The law also provides that a mandatory referendum be held on a certain question if it is required by a specific law or local decree. This is the case for example if the commune or township intends to join another county, if a part of the commune plans to establish an independent new commune or if two communes intend to join. Similar to national referendums, a turnout of more than 50% of all enfranchised voters is required for a valid local referendum. Basically similar rules apply to referendums in larger territorial units (the capital Budapest and the counties).

According to data from the period between 1999 and 2001, the relative majority (two-fifths) of local referendums related to questions of regional structuring (separation and joining of communes), nearly one-third was aimed at a decision on construction projects, local investment and alienations (e.g. relating to real estate or public utilities), one-fifth concerned environmental issues (e.g. the building of dumpsites, waste incinerators or factories polluting the environment) and a few dealt with social matters (e.g. the closing down of schools or the placement of handicapped

persons).²² Most initiatives were launched by independent local inhabitants; parties and civic societies seemed not to have a significant mobilizing force. Three-fourths of referendums which were initiated by local inhabitants reached the validity threshold of 50% in the period under survey, but only around half of the popular votes ordered “from above” by local representative bodies were valid. Questions of regional structuring proved to be the most motivating issues for participation while the majority of referendums on construction and investment projects did not reach the turnout quorum. Also environmental and social matters could awaken the interest of inhabitants only to a limited extent. As it turns out from data between 1999 and 2001, the majority (52%) of local referendums were reactive: the initiative was aimed against planned decisions or resolutions which were already adopted. Only one-fifth of initiatives had a proactive character and tended to put new questions or claims on the agenda.²³

4.2.2. *Public hearings*

Public hearings are consultative forums held in local self-governments. According to Act CLXXXIX of 2011 on Hungary’s Local Self-Governments, the local body of representatives shall hold public hearings yearly at least once in which local inhabitants and civic organizations may ask questions and present suggestions relating to local common affairs. Such forums shall be held both in communes, townships and counties. Questions and proposals must be answered immediately on the spot or within 15 days at the latest. In-depth rules regarding the holding of public hearings are laid down mostly in the Organizational and Operational Rules of local self-governments or in a special local decree. Typical subject matters, which are most often set out in advance by the body of representatives are the following: settlement development plans, local tax regulations, total revisions of local organizational and operational rules, the dissolution of the body of representatives and the discussion of local popular initiatives. Notwithstanding, participants can raise other questions as well. Public hearings are not vested with decisive authority; it is the body of representatives which is empowered to pass resolutions based on the outcome of the public hearing. Therefore, many local governments hold public hearings immediately before the session of the body of representatives. Evaluations of the practice of public hearings mostly emphasize low participation rates: the most part of local inhabitants cannot be motivated to take part in such forums as they either don’t consider themselves directly concerned or don’t believe that their contribution will exert any major influence on the decisions of local authorities. On the other hand, low

²² NAGY Csilla –TAMÁS Veronika: Helyi népszavazások Magyarországon [Local referendums in Hungary]. *Politikatudományi Szemle*, 2004/3. 199–203.

²³ NAGY–TAMÁS op. cit. 203–206. As for the proportion of different initiators and topics basically similar results are presented by TÓTH Adrienn: Igen vagy nem. A helyi népszavazások magyarországi gyakorlata (1999–2011). [Yes or no. The Hungarian practice of local referendums (1999–2011)] *Politikatudományi Szemle*, 2012/3. 95.

turnout may also indicate a general satisfaction with the operation of the local self-government. Relatively high participation rates can often be observed in communes with embittered public feelings, where such forums become expressions of general indignation.²⁴

4.2.3. Village meetings

The village meeting is a participatory instrument similar to public hearings. It is a forum of people living in a village convened by local authorities in order to discuss specific subject matters. Detailed rules can be laid down in local regulations. The Act on Hungary's Local Self-Governments mentions only one issue in which village meetings shall mandatorily be involved: if communal inhabitants launch a local popular initiative aimed at the forming of a new commune, the village meeting has to elect a preparatory commission to make appropriate arrangements for the territorial transformation process. The new commune can only be established by virtue of referendum. According to the former regulation,²⁵ instead of holding a referendum, the local body of representatives was also entitled to assign the decision to the village meeting. This rule was, however, to be applied only to communes with less than 500 inhabitants and the village meeting was only capable of making a decision if at least more than a half of all local enfranchised voters took part in the meeting.²⁶

4.2.4. Communal and municipal policy forums

Communal and municipal policy forums serve first of all the discussion of long-term political plans of the communes (e.g. the settlement development plan). As a central regulation on this participatory instrument does not exist, it is the local body of representatives which can lay down rules on this institution.²⁷

4.2.5. Other participatory instruments

Forums similar to public hearings, village meetings or municipal policy forums can be organized for one specific part of the commune or township as well. In addition to this, special literature also refers to other possibilities which may promote popular participation in the management of local political affairs. To mention one of these forms: the local body of representatives is empowered to establish *commissions* for specific fields of its operation (e.g. for financial, cultural or social affairs) and the body also can elect *outside members* to these commissions who are not elected

²⁴ Kiss Mónika Dorota: *A közmeghallgatás helyi önkormányzati intézménye. Doktori értekezés [The institution of public hearings in local self-governments. Doctoral dissertation]*. Pécs, Pécsi Tudományegyetem Állam- és Jogtudományi Kar, 2012. 22–23., 29., 31–32., 156–157.

²⁵ Act LXV of 1990 on Local Self-Government, art. 47, para. 4, no longer valid since 18 January 2014.

²⁶ Kiss op. cit. 82–83.

²⁷ Ibid. 83.

representatives of the local body. Nevertheless, the proportion of outside members shall not reach 50%.²⁸ In the most cases leaders of civic organizations, local business federations and public utility service providers are asked to take part in the work of the commissions. They not only play a consultative role but have a right to vote as well thus being able to express and represent specific interests in decision-making processes of local self-governments. *Consulting hours of mayors and local representatives* are sometimes also referred to as a participatory instrument, these occasions are, however, used to voice individual and personal issues rather than those of public interest.²⁹

4.3. Popular participation in environmental issues

Although most construction projects which may cause environmental damage have typically a local or regional range, it is reasonable to treat them separately from general forms of local popular participation with regards to their specific subject matter and regulation.

Act LIII of 1995 on General Rules of Environmental Protection lays down as a principle that information regarding the state of environment shall be considered information of public interest and that everyone is entitled to access such data. The law also obliges every organization in possession of environmental information to make them accessible (art. 12). In addition to this, chapter VIII is dedicated to the participation of the public in environmental protection. According to this, everyone is entitled to call the attention of authorities to dangers, damages and pollution of the environment and the competent authority is liable to give a substantial answer within a term fixed by law. Furthermore, environmental organizations are granted the status of a client in administrative proceedings related to environmental issues. Such organizations are also entitled to take part in country planning, to collaborate in the preparation of regional development plans, environmental protection programs and can sue persons and institutions which burden the environment (art. 97–100).

The possibility of popular participation is also secured in procedures for the grant of permits for the operation of installations carrying out activities which are dangerous to the environment (e.g. energy industries, chemical installations, waste management). The competent authority has to inform the concerned public on the opening of such proceedings and on the characteristics of the planned installation. Everyone has the right to remark on the plan in writing and the competent authority is also obliged to hold a public hearing for inhabitants concerned. The remarks which were submitted in a written form or which were presented at the public hearing must be examined and evaluated by the competent authority; the official reasoning of the decision shall also touch upon these considerations.³⁰

²⁸ Act CLXXXIX of 2011, art. 58, para. 1.

²⁹ Kiss op. cit. 85–86.

³⁰ Governmental decree Nr. 314/2005. (XII. 25.) on Environmental Impact Assessment and on Integrated Pollution Prevention and Control Permit Process, art. 9–10., 21.