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*The Intelligibility of Referendum Issues and the Opportunities
to Inform Voters. Comparative Observations
with Special Regard to Hungary*

ABSTRACT

The intelligibility of initiative proposals is of utmost importance in case of direct democratic decisions. This study sums up the tools by means of which voters are informed about referendum issues in countries or states with well developed direct democratic traditions, like Switzerland, Oregon and California. A special attention is paid to ballot pamphlets and requirements regarding the wording of the proposal. The second part of the study focuses on Hungary. Ballot pamphlets are not in use here, the practice of the authorities is centred on the “requirement of the unambiguity of the question”. Based on an analysis of the resolutions of the National Election Committee, the decisions of the Constitutional Court and the Curia (Supreme Court) of Hungary, the authors demonstrate that the requirement of unambiguity has become an obligation of initiators which is very difficult to comply with. The study finally recommends possible solutions in order to make the tool of bottom-up initiative a more practicable instrument of direct democracy in Hungary.

Key words: direct democracy, referendum, popular initiative, voters’ competence, intelligibility of referendum issues, ballot pamphlet, Hungary, Switzerland, Oregon, California

INTRODUCTION

Among the various institutions of direct democracy – by direct democracy are meant here procedures in which citizens may decide or express their opinions on

policy issues directly at the ballot box – mechanisms triggered by the citizens themselves are often denoted with attributes like “bottom-up” or “citizen-initiated” and contrasted with “top-down” instruments, i.e. direct democratic procedures launched by authorities [cf. Altman 2011: 2, 8].

The two types – “top-down” and “bottom-up” mechanisms – may have significantly different functions. Although top-down instruments may well have a place in the toolbar of a constitutional state, they easily become dubious tools in the hands of those in power: the plebiscites held during the Napoleonic era are historic examples of this usage. Both Napoléon Bonaparte and his nephew, Charles-Louis Napoléon Bonaparte repeatedly deployed this instrument in order to legitimize unconstitutional acts, to circumvent the parliament or to strengthen themselves in their own political position [cf. Frei 1995]. These uses of direct popular votes clearly testify that the vote is not always the sole and most important determinant of a decision. The authority to formulate the question and to set the date for the vote may be just as much significant for the outcome.

This latter observation is true for “bottom-up” mechanisms as well. Those few initiators who are able to collect enough signatures in order to launch a direct democratic decision-making process at the end of which the final word will be spoken by the voters are equally in a powerful position: they can place an issue on the political agenda and determine the common theme for months. It is no accident that such mechanisms are often tools in the hands of those being in opposition. By them they try to exert a control over the governing majority and to put through interests that would otherwise be lost in the labyrinth of parliamentary decision-making. Under modern constitutionalism, the practice of bottom-up mechanisms first showed significant development in Switzerland in the second half of the 19th century [Trechsel, Kriesi 1996: 185–192; Serdült 2018: 49–56]. Swiss institutions of direct democracy were adopted in many of the western member states of the USA from the turn of the 19th and 20th centuries [Auer 1989: 83–92]. In Europe, the interwar period has brought the first spread of direct democratic mechanisms that could be triggered by the citizens [Komáromi 2014: 55–57].

THE VOTERS' COMPETENCE

One of the counter-arguments, often referred to by opponents of direct democracy, is the competence of the voters. Direct popular decisions on policy issues usually require more information than average citizens normally have. If they want to cast their votes in a reasonable manner, they have to make efforts in order to increase their knowledge about the issue. Gathering information may cost time, energy, sometimes money as well and surveys show that far not every citizen is ready to pay the price of being informed. Some of them remain absent from voting, others cast their votes based on the directives given by parties and opinion leaders they trust. Even so, a significant part of the electorate enters the poll-stations without well-founded and complex knowledge on the subject put to referendum. Voters may particularly

be overcharged if they have to vote on multiple issues at the same time [cf. Möckli 1994: 186–189, 218–221; Milic, Rousselot, Vatter 2014: 271–276, 283–284].

Bottom-up direct democratic procedures are faced with the challenge of the citizen's competence twice. Not only citizens who will cast their votes at the final stage of the process shall have enough knowledge but also those who trigger this process: the initiative group and the citizens who sign the signature collection sheets. (Henceforth the term "initiators" will denote the "initiative group": those few people, who start the direct democratic process, hand in their request to the competent authority – if there is any – and organise the collection of signatures.) Even if the initiative is only intended to reject or abolish a law that was already passed by the parliament (this is usually called facultative or optional referendum), initiators shall know the procedural preconditions of their request, the parts and technical details of the process. If the initiative is not directly meant to reject or abolish an existing regulation but to adopt a new one (this can be called popular initiative – cf. Altman 2011: 11), the knowledge requirement is even higher on the side of the initiators. They have to prepare their own proposal on how to change the *status quo*. Such initiatives may have the form of detailed drafts or general proposals¹ (or questions of principle). Detailed drafts require specialized knowledge not only about the issue itself but also on the existing normative framework and on how legal regulations shall be formulated. Also in case of general proposals initiators must be acquainted with the norms that are related to the issue in question. They must know if their intent can be realized under the current scheme of international and constitutional regulations.

The knowledge of initiators and the competence of voters are not independent from one another. If initiators want to convince citizens to support their concern, they have to provide information about the issue. This can happen through different channels of campaign communication and finally, the text of their initiative itself may be decisive as well. They must, therefore, formulate the latter with regard to the supposed intellectual level of voters. On the other hand, voters usually rely on the information provided by the initiators. In addition to a variety of campaign materials, the initiative text should therefore also include the essentials of the issue, the goal of the initiative, in a clear and – as far as possible – understandable form.

THE INFORMATION OF VOTERS: EXAMPLES FROM SWITZERLAND, OREGON AND CALIFORNIA

But what may be the role of legal regulations in increasing the knowledge of citizens? How, by means of what rules or institutions, can legal systems support the endeavour to inform the electorate about a subject-matter submitted to popular vote?

¹ This is the case, for example, in Switzerland on the federal level – cf. Federal Constitution of the Swiss Confederation, Art. 139(2).

It is clear that regulations and institutions alone cannot guarantee a well-informed citizenry. There are, however, examples which show that certain rules or institutions may indirectly work towards an electorate conversant in the topics put to referendum. We only shortly mention here the educational system, which should, very generally, prepare prospective voters for turning with interest to matters of the public, enable them to collect and critically select information on the most important political affairs and to draw and maybe also share their own conclusions, being ready for conversation with others.

CAMPAIGN REGULATIONS

On a more concrete level, also campaign regulations may serve the purpose of increasing voters' information. The core aim of such regulations is to secure a "level playing field" in which interests and arguments of all affected groups can be articulated and transmitted to the citizenry with equal chances. The solutions are manifold and they relate either to the financial background of referendum campaigns or to the fair access to media or both. Mandatory disclosure or reporting of campaign expenditures, restrictions on public or private campaign spending, public subsidy of the main sides, free television or radio slots for parties and equal newspaper and news portal advertisements – maybe these are the most important tools by means of which the fairness of the campaign activity is tried to be secured [Beramendi et al. 2008: 152–156]. However, it is also clear that the effectiveness of such measures is largely dependent on the actual media conditions and the distribution of financial and political power resources in a given country. What can be expected is a more or less balanced information covering the campaign messages of the most important political sides rather than accurate, extensive and neutral information on the issue.

BALLOT PAMPHLETS

An even more effective tool can be if an official but possibly impartial body is entrusted with providing information on the initiative, its complex background and possible consequences. In California, for example, it is the Secretary of State who is responsible for preparing and publishing the "Voter Information Guide" (or "Ballot Pamphlet") before every public vote on ballot propositions (initiative or referendum measures to be submitted before the electorate for approval or rejection). The Voter Information Guide includes the title of the proposition, a short summary of it explaining what a "Yes" or a "No" vote would mean, an analysis by the Legislative Analyst expounding the meaning and possible fiscal effects of the proposition, the arguments of the groups supporting and opposing the proposition and the rebuttals of the other side, finally, the elaborated text of the proposition, which is a detailed

draft law.² “Voters’ Pamphlets” (or “Voters’ Guides”) in Oregon cover essentially the same content, the explanatory statements are, however, elaborated by a committee of five persons (two proponents, two opponents and one chosen by them), and the estimate of financial impact statement is prepared by another committee including the Secretary of State, the State Treasurer and further office holders³ [cf. Möckli 2007: 28–29; Beramendi et al. 2008: 157]. In Switzerland, the Federal Council shall inform voters about federal ballot propositions (initiatives and referendums) in accordance with the “principles of completeness, objectivity, transparency and proportionality”.⁴ The federal voters’ booklet (*Abstimmungsbüchlein*) is edited by the Federal Chancellery and shall include the text of the ballot paper and the initiative, the arguments of the initiators, the most important views represented in the parliamentary debate, the explanations of the Federal Council and its eventual recommendations (the latter should not diverge from the position of the Federal Assembly). Although the absolute impartiality and objectivity of the information provided in such guides, pamphlets and booklets can hardly be guaranteed (even if their content and wording is subject to judicial review), it is well understandable that such materials tend to give more insight into the essence of an issue than vague campaign slogans usually do.

REQUIREMENTS PERTAINING TO THE WORDING OF THE INITIATIVE

Last but not least, regulations pertaining to the wording of the ballot question may also promote the goal that voters understand the issue which was submitted before the electorate for approval or rejection. Most jurisdictions have rules on how to formulate the question – or the short explanatory statement – in order to assure that it is clear, unambiguous and does not deceive voters. In Switzerland, the Federal Council is authorised to “amend or reject defamatory, blatantly false or excessively long statements” [PRA Art. 11(2)]. It is laid down further that in case of a popular initiative for the partial revision of the Federal Constitution, the initiative shall either “take the form of a general proposal or of a specific draft of the provisions proposed”. Initiatives shall comply with the requirement of the consistency of form, which means that it may not combine the general proposal form with a specific draft. They shall observe the requirement of the consistency of the subject matter as well (“single-subject rule”).⁵ The latter means that the initiative may only be related to one area field, or if the proposal affects two or more factual questions or subject

² The voter information guides are available on the California Secretary of State’s website as well: <https://www.sos.ca.gov/elections/voting-resources/voter-information-guides/> (access: 11.06.2019).

³ See menu entry “Measures” at <http://oregonvotes.gov/voters-guide/english/votersguide.html> (access: 11.06.2019).

⁴ See Federal Act on Political Rights (PRA) of 17 December 1976 (Status as of 1 November 2015), Art. 10a(2).

⁵ Federal Constitution of the Swiss Confederation, Art. 139(2-3).

matters, they may not be connected with each other in a way that voters would not have the freedom to choose between them. If the proposal involves more factual issues or matters, they shall be coherent, have an intrinsic connection with one another and be aimed at the same goal.⁶ If an initiative violates the principle of the unity of form or the single-subject rule, the Federal Assembly may declare it to be invalid in whole or in part. Nevertheless, no initiative has been declared invalid because of the infringement of the consistency of form and only two were declared invalid because of the violation of the single-subject rule (1977 and 1995), thus, the Federal Assembly's attitude is very generous [cf. Moeckli 2017: 220–221].

The Constitution of Oregon pronounces that "(...) [a]n initiative petition shall include the full text of the proposed law or amendment to the Constitution. A proposed law or amendment to the Constitution shall embrace one subject only and matters properly connected therewith" [Art. IV, Sec. 1(2)d.]. Thus, the single-subject rule is in force here as well. Further requirements are related to the form of the ballot title and the explanatory statement (mostly regarding their length). The statement shall be "simple and understandable" and "of not more than 25 words that describe the result if the state measure is approved"; it shall "not describe existing statutory or constitutional provisions in a way that would lead an average elector to believe incorrectly that one of those provisions would be repealed by approval of the state measure, if approval would not have that result". It is laid down further that the same terms shall be used for describing the same thing or action "to the extent practical". Since voters usually cast their votes on more than one ballot propositions at the same election, it is also required, that, "(...) [t]o avoid confusion, a ballot title shall not resemble any title previously filed for a measure to be submitted at that election".⁷

The single-subject rule is also included in the Constitution of California: "(...) [a]n initiative measure embracing more than one subject may not be submitted to the electors or have any effect" [Art. 2, Sec. 8(d)]. The initiative shall also here set forth "the text of the proposed statute or amendment to the Constitution" [Art. 2, Sec. 8(b)]. The title, the summary of the chief purpose and points of the initiative are formulated by the Attorney General. Detailed rules determine the form of the proposed initiative measures (e.g. length, type and size of the letters) and the mandatory content of the ballot pamphlets. The first version of the latter shall be made available for public examination and it is subject to judicial review, which may be initiated by any elector. A peremptory writ of mandate shall be issued upon clear and convincing proof that the ballot pamphlet is false or misleading, thus, the court may order the Secretary of State to correct or amend it.⁸

⁶ Judgement 1P.223/2006 of 12 September 2006 of the Swiss Federal Tribunal (2.).

⁷ Oregon Statute 250.035, (1)-(2), (6).

⁸ California Statute 9092.

INTERIM SUMMARY: CODE OF GOOD PRACTICE ON REFERENDUMS

The above examples show that in Switzerland both general proposals and detailed drafts, in Oregon and California, however, only detailed drafts – i.e. text of laws or constitutional amendments – can be qualified as popular initiatives. (The latter form is preferred by initiators in Switzerland as well – cf. Linder 2005: 253.) Apart from substantial limits that are not presented here (like the Swiss requirement that initiatives shall not infringe mandatory provisions of international law) the central element of the provisions regarding these texts is the single-subject rule. Since the in-depth understanding of sometimes quite complicated legal texts should not evidently be expected from all citizens, ballot pamphlets that explain the content of these texts are reasonable concomitants of the initiatives. The requirements of accuracy and understandability are usually related to the content of these complementary materials. In order to provide balanced information, the regulation lays down that both proponents and opponents may have a claim to the presentation of their arguments.

It is worth mentioning that the European Commission for Democracy Through Law (Venice Commission) also laid down guidelines in its “Code of Good Practice on Referendums” regarding the understandability of referendum issues. According to this, authorities must provide objective information implying not only the text submitted to a referendum but also “an explanatory report or balanced campaign material from the proposal’s supporters and opponents” [Venice Commission 2006: 8]. The Code’s explanatory memorandum makes a difference between four forms of texts submitted to referendum: (1) specifically-worded draft, (2) the repeal of an existing provision, (3) question of principle and (4) generally-worded proposal [Venice Commission 2006: 20]. In connection with the “procedural validity of texts submitted to a referendum” the Code specifies three requirements: (1) the unity of form (specifically-worded drafts should not be combined with generally-worded proposals or questions of principle), (2) the unity of content (“there must be an intrinsic connection between the various parts of each question put to the vote” in order not to compel voters “to accept or refuse as a whole provisions without an intrinsic link”; this does not apply, however, to total revisions of a text or changes of several chapters of a text), and (3) the unity of hierarchic level (“the same question should not simultaneously apply to legislation of different hierarchic level”; the explanatory memorandum classifies this as “not as crucial” as the previous two). The Code also lays down that in order to prevent invalid referendums, an authority shall be enabled to correct faulty drafting “when the question is obscure, misleading or suggestive”. In case the procedural validity has been violated, this authority should declare the text partially invalid if the remaining text is coherent [Venice Commission 2006: 12–13, 20–21].

REFERENDUMS IN HUNGARY: THE GENERAL FRAMEWORK

Since the adoption of the first law on national referendums in 1989⁹ Hungarian voters have been enabled to initiate national referendums and, if their initiative fulfils the legal conditions, the holding of the referendum is mandatory. According to Art. 8(1) of the Basic Law of Hungary, the Parliament shall order a national referendum at the initiative of at least 200,000 voters. (It may order a referendum if the initiative came from the President of the Republic, the Government or 100,000 voters.) Detailed rules are laid down by Act CCXXXVIII of 2013 on Initiating Referendums, the European Citizens' Initiative and Referendum Procedure (henceforth: Referendum Act). The Hungarian regulation does not make a difference between facultative referendums, which are aimed at repealing an existing regulation and popular initiatives, which have the intention to enact a new regulation, but generally, both are possible.

Initiatives shall pass through a certification process at the National Election Committee (NEC). In case of a bottom-up initiative also a preliminary check is carried out by the National Election Office (NEO). Initiators first have to hand in the question they want to submit to referendum to the NEO, which examines if this petition fulfils the formal requirements, if it is in line with the constitutional functions of referendums and if another referendum process on the same issue is not already underway (the regulation excludes concurrent procedures). If these conditions are fulfilled, the NEO submits the initiative to the NEC for certification. The NEC checks the fulfilment of both formal and substantive requirements. The NEC examines (1) if the question falls within the competence of the Parliament; (2) if it does not concern any prohibited issue enlisted in Art. 8(3) of the Basic Law; (3) if the question was submitted according to the provisions of the Referendum Act; (4) if the question is unambiguous; and (5) if there is no other referendum procedure in progress on the same issue. If any of these circumstances cannot be ascertained, the NEC declines to certify the question, otherwise it certifies it and the collection of signatures can be started. The decisions of the NEC regarding the certification of the question are subject to judicial review by the Curia (Supreme Court) of Hungary. Prior to 2012 it was the Constitutional Court, which played the same role (now it only may intervene in the process exceptionally).

As regards the information of citizens, Hungarian regulation is quite restrained. There are rules on the conduct of referendum campaigns, which are basically aimed at ensuring equal opportunities for initiators and parliamentary parties to publish or release political advertisements in the broadcastings of media service providers (cf. e.g. Referendum Act, Art. 69). Regarding ballot pamphlets or similar explanatory documents no provisions are available in Hungarian regulation; the posters of the NEO usually cover rather technical details on the time and place of the vote and the different deadlines; the question submitted to referendum is usually also indicated

⁹ Act XVII of 1989 on Referendum and Popular Initiative.

without any explanation. Other posters sometimes provide information on how to cast a valid vote. In addition to this, informatory announcements or leaflets have been released in the past with procedural information.¹⁰ The announcement on the 2008 national referendum consisted, for example, of four pages and involved the questions put to referendum, a description on how to register for voting at another polling-station or abroad, on how to request a mobile poll, on the validity requirements and the availability of the voting information services in the different counties.¹¹

Provisions on the unambiguity of the question submitted to referendum have been present in the regulations since 1989. Art. 25(1) of Act XVII of 1989 laid down, for example, that “(...) [t]he question(s) to be put to referendum shall be worded in such manner, which enables all citizens to answer unambiguously”. The current formulation in Art. 9(1) of the Referendum Act stipulates: “The question proposed for referendum shall be worded in such manner that it allows a straightforward response, and permits the Parliament to decide – on the basis of the outcome of the referendum – whether it has the obligation to make a law, and if so, what kind of a law”.¹² Section (2) adds that “(...) [t]he question proposed for referendum shall not contain any obscene expression or any other expression shocking in any other way”. What an unambiguous question or a straightforward response means is, however, not laid down in-detail in the regulation. It was much more the judicial practice – until 2011 that of the Constitutional Court and since that the decisions of the Curia (Supreme Court) of Hungary – which determined the aspects to be examined. These aspects or requirements are usually denoted with the general term “the unambiguity of the question” [cf. Szabó 2007: 100–101]. In the followings we will sum up the most important elements of the judicial practice.

THE UNAMBIGUITY OF THE QUESTION AS A REQUIREMENT IN HUNGARY

The Constitutional Court first addressed the problem of unambiguity in 2011. In its decision 32/2001. (VII. 11.) it had to decide on the certification of the specimen of a signature collection sheet, which involved four matters including holidays for employees, the increase of pensions, the abolition of the mandatory military service and the gratis language exam for students in the secondary school. The Court pronounced that the political right to referendum includes the opportunity for voters to clearly indicate, which questions do they propose for referendum. Since the signature collection sheet did not make this possible, the sheet was declared unconstitutional. This decision basically applied the single-subject rule outlined above when it made

¹⁰ https://static.valasztas.hu/nepszav08/hu/17/17_4.html (access: 11.06.2019).

¹¹ <https://static.valasztas.hu/nepszav08/hu/17/szorolap.pdf> (access: 11.06.2019).

¹² We henceforth use the English translation available at the website of NEO, sometimes with amendments: <https://www.valasztas.hu/web/national-election-office/act-cxxxviii-of-2013-on-initiating-referendums-the-european-citizens-initiative-and-referendum-procedure> (access: 11.06.2019).

clear that questions relating to essentially different subject matters may not be on the same signature collection sheet.

In a next case the question relating to the increase of pensions was put already on one single signature collection sheet: “Do you agree that in addition to the increase of salaries also the increase of the prices, based on the consumption (consumer basket) of pensioners, should be taken into consideration when determining the yearly increase of pensions?” In its decision 51/2001. (XI. 29.) the Court laid down that the unambiguity of the question requires that it should be answerable with “Yes” or “No”, it must be clear and understandable only in one way. Initiators are not obliged to use the technical terms of the different branches of law. It added further that the requirement of unambiguity also means that the Parliament should know whether it is, as a result of a successful referendum, obliged to pass legislation and if yes, what legislation. The Court has found that the question fulfilled these criteria.

Decision 52/2001. (XI. 29.) addressed a question on holidays: “Do you agree that the Labour Code should ensure two whole holidays per week for employees in a way that one of them falls on Sunday, and for work on holiday should be due increased salary?” In this case the Constitutional Court focused on the aspect of the single-subject rule. It pronounced that a question put to referendum may include more clauses or sub-questions. If, however, these are contradictory to one another, or their relation is not clear, they do not follow from one another or their content is not connected, this would mean the violation of the requirement of unambiguity and the political right to referendum. Based on this, the Court declared unconstitutional the initiative because it connected two sub-questions, which did not follow from each other: one relating to the holiday and another relating to the salary. It repeated further its statements delivered in the previous decisions.

These three decisions and especially the last one determined the framework for the later interpretations of the requirement of unambiguity. This requirement has two sides: (1) the unambiguity from the aspect of the voter and (2) the unambiguity from the aspect of the Parliament. Each of these aspects originally embraced two tests:

(1) Unambiguity for the voter:

A. Is the question clear and understandable for the voter?

B. Is the question answerable by the voter with “Yes” or “No”?

(2) Unambiguity for the Parliament:

A. Is the Parliament able to decide whether it has an obligation to pass legislation based on the successful referendum? – And if yes,

B. is the Parliament able to decide with what content should it pass legislation?

The NEC, the Constitutional Court and from 2012 the Curia (Supreme Court) of Hungary later developed further criteria regarding both aspects (for a current overview on the practice of the Curia in Hungarian [see: Balogh 2015: 96–99]; in the following description we partly rely on this).

UNAMBIGUITY FOR THE VOTER

The text submitted to referendum shall be a question and not a declarative sentence. In 2010, for example, when an initiative was handed in with the following wording: “We agree that in Hungary there should be no Olympic games.” – this initiative was declared unconstitutional.¹³ The question to be submitted to referendum should be clearly answerable with “Yes” or “No” and interpretable only in one way.¹⁴

A referendum may not be regarded as legitimate if voters cannot exactly know about what they shall cast a vote. The question may, therefore, not be misleading or deceptive. The question “Do you agree that the company register should include the actual owners of the companies?”, for example, was rejected because it falsely suggested that the company register does not keep records of the actual owners or their particulars would not be real.¹⁵

Voters shall be able to clearly see the consequences of their decision. A popular initiative on the exclusion of companies of public procurement procedures over an amount of 100 million forints, which are owned by the relative(s) of a mayor in office, was rejected because the question did not make clear if also companies were excluded in which the mayor’s relative only has a very small share. Being that the distribution and structure of shares may be manifold, voters would not be able to comprehend all possible consequences of their decision – said the Curia of Hungary.¹⁶

The question shall comply with the grammatical rules of the Hungarian language. The following question “Do you want snap parliamentary elections in 2015?” was, for example, rejected by the NEC because it typed the word *választás* (“election”) incorrectly with two “l” letters (*vállasztás* – “ellection”).¹⁷ As the Curia laid down, the incorrect sequence of words, wrong conjugation or declension may cause obscurity to such an extent, which hinders voters from understanding the essence of the question.¹⁸

The question shall be clear to all. Initiators are not obliged to use the technical terms of different branches of law in the text of the question; the use of such technical terms will not necessarily make the question understandable for everyday citizens. A question, for example, which included a series of technical expressions of financial law, raised, according to the Curia, such problems of interpretation, which would have been understandable for experts only but not for average voters. Its certification was, therefore, rejected.¹⁹ The Curia rejected another initiative, which

¹³ Decision 12/2010. (II. 4.) of the Constitutional Court.

¹⁴ Curia Knk.37.145/2013/3.

¹⁵ Curia Knk.IV.37.457/2015/3.

¹⁶ Curia Knk.IV.37.132/2016/4.

¹⁷ NEC resolution 128/2015.

¹⁸ NEC resolution 59/2017.

¹⁹ Curia Knk.IV.38.010/2015/2.

proposed a complicated calculation method for the minimum wage, with almost the same explanation.²⁰

The problem of complex questions covering more issues was already addressed in connection with decisions 32/2001. (VII. 11.) and 52/2001. (XI. 29.) of the Constitutional Court. This problem has been occurred since that several times. An initiative, for example, which was aimed at the revision of the legality of loans based either on foreign currency or on Hungarian currency, and on suspending all proceedings of distraining that arose from them, was rejected by the NEC because – in addition to other arguments – it connected the revision of foreign currency-based and Hungarian forint-based loans.²¹

It is also problematic if the question may be interpreted in a way that contradicts the intention of the initiator. An initiative, for example, proposed to prohibit the establishment of public institutions in the Castle District in Buda, a territory included in the World Heritage List of the UNESCO. The initiative was obviously directed against the relocation of the Chancellery from Pest to Buda, the wording of the question did not make clear, however, how the prohibition would affect the Office of the President of the Republic, which has already been located in the Castle District for many years.²² The Curia rejected therefore this initiative.

UNAMBIGUITY FOR THE PARLIAMENT

In order to better understand this aspect, it must be made clear that successful referendums impose the obligation to the Parliament to implement the result of the vote. The decision of voters will not directly and automatically become a part of the Hungarian legal system: it is not effective law. The Parliament shall, therefore, adopt the appropriate law if the result of the referendum makes necessary the change of the legal *status quo*. From the perspective of this requirement it is clear, why it is important, that the Parliament knows whether a new legislative enactment is needed and if yes, with what content. This content should be, according to the practice, clear to the extent that enables the Parliament to decide, how the intention of voters shall be implemented. An initiative, for example, which required to lay down by law that renewable energy takes precedence over all other sources of energy in the energy consumption of citizens, was rejected by the Curia, because it did not make clear, based on what criteria should renewable energy prevail and how the Parliament should implement this principle. This decision also referred to another requirement, namely that the decision of people shall be realizable and executable. Giving preference to renewable energy over other sources of energy is not only a question of intent, it also

²⁰ Curia Knk.IV.37.458/2015/3.

²¹ NEC resolution 45/2013.

²² Curia Knk.IV.37.356/2015/2.

depends on Hungary's natural endowments.²³ In the explanation, the Curia explicitly made reference to a former decision of the Constitutional Court as well, in which the Court rejected an initiative that proposed to introduce gratis beer in restaurants. This initiative was not only unclear for citizens, since they could not foresee, who should then finally pay the price of gratis beer, but also for the Parliament, because in case the initiative was approved by the citizens, it would not know how to implement the result.²⁴

To how extreme conclusions the requirement of unambiguity can lead is shown by a resolution of the NEC on an initiative, which intended to ban tobacco shops within a 600 meter radius of schools educating less than 18-year-old students. The NEC rejected the initiative with the reasoning that in case of a successful referendum the Parliament would not know from which part of the school the radius should be measured (from its fence or from its entrance and if yes, from which one) and whether the distance shall be understood as bee line or as walking distance. (The other part of the reasoning referred to the violation of the right to property.)²⁵

An initiative laid down concrete rates of exchange for paying back foreign currency-based loans and proposed to apply these if it is favourable for debtors. The NEC rejected the certification of the question among other reasons because the question did not make clear how long these rates of exchange should be applicable: during the whole duration of the loan or only during one part of it. The NEC declared that the question determines the expected regulation only roughly and it does not lay down its concrete content, therefore, it is not in line with the requirement of unambiguity from the perspective of the Parliament.²⁶

CONSEQUENCES IN THE LIGHT OF STATISTIC DATA

The above examples show that in the practice of the certification procedures of bottom-up initiatives new criteria are developed from time to time by the authorities in addition to those which were laid down already in 2001. Some of these requirements may be well understandable and legitimate; it is, however, also clear that others are due to a wide interpretation of the requirement of unambiguity [cf. Kukorelli, Milánkovich, Szentgáli-Tóth 2018: 4, 11–12]. The result is, however, dubious: on the one hand, many unwise or unserious initiatives can be strained off before the collection of signatures could begin, on the other hand, however, the putting through of reasonable interests are sometimes hindered because of the

²³ Curia Knk.VII.37.336/2017/3.

²⁴ Decision 26/2007. (IV. 25.) of the Constitutional Court.

²⁵ NEC resolution 130/2013. (VIII. 7.).

²⁶ NEC resolution 15/2013. (X. 31.).

legal requirements. Based on a comprehensive overview of the NEC's resolutions that were adopted about initiatives handed in between 1999 and 2018, out of 2,079 initiatives only 265 (13%) were certified and 1,814 (87%) were rejected (see: Figure 1). Since 2010, the proportion of rejections increased higher than 90% and since 2014 it is close to 95%.²⁷

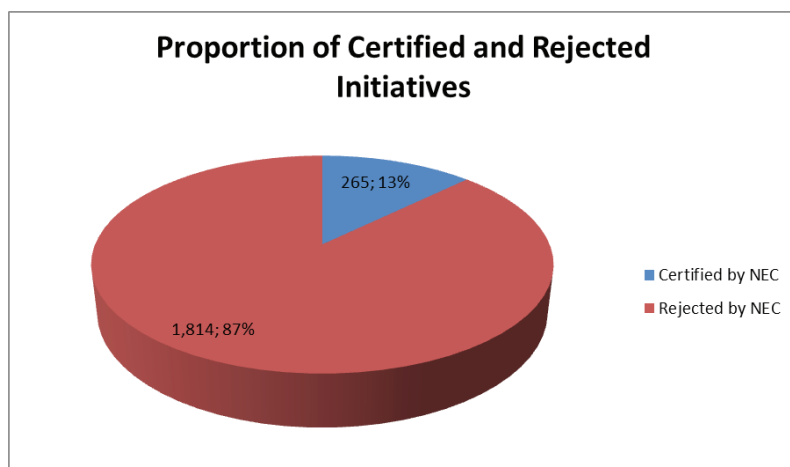


Figure 1. The proportion of referendum initiatives certified and rejected by the National Election Committee between 1 January 1999 and 31 December 2018²⁸

Source: Gabriella Antalicz's own study.

Among the reasons for rejections, the lack of unambiguity has the highest proportion: approximately 56% (see: Figure 2).

²⁷ Cf. the data provided by the NEO at <https://www.valasztas.hu/orszagos-nepszavazasi-kezdemenyezesek>, "Statisztikák az elbírált népszavazási kezdeményezésekről" ["Statistics on the verification of referendum initiatives" (access: 11.06.2019)].

²⁸ Research results based on the resolutions available on the website of the National Election Office. Revisions by the Constitutional Court or the Curia (Supreme Court) of Hungary were not taken into consideration (their proportion is insignificant). The total number of grounds for rejection is higher than the total number of rejections (Figure 1) because the NEC sometimes sets forth multiple grounds for rejection in one case.

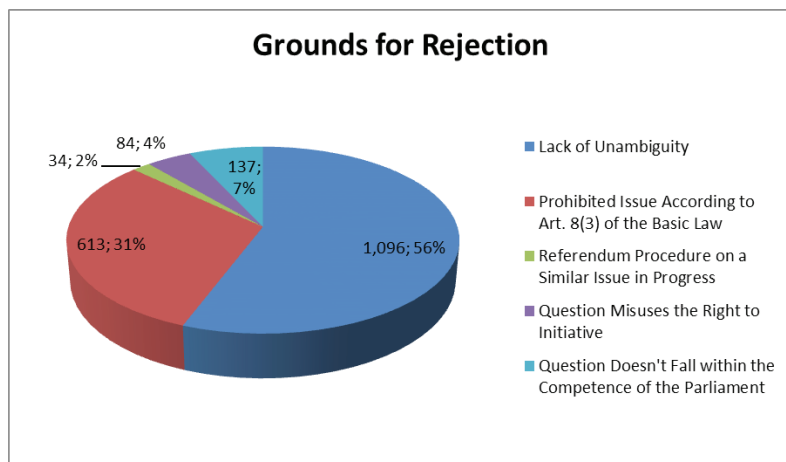


Figure 2. The proportion of different grounds for the rejection of initiatives in the practice of the National Election Committee between 1 January 1999 and 31 December 2018²⁹

Source: Gabriella Antalicz's own study.

In the period between 2014 and 2017, the lack of unambiguity was set forth in the reasoning in case of 72% of the initiatives rejected by the NEC [Mécs 2018: 111]. This high proportion of ambiguous questions needs further explanation.

CONCLUSIONS I: POSSIBLE EXPLANATIONS

The above-mentioned criteria of the unambiguity of the question are partly contradictory. The extremely rigorous understanding of the single-subject rule, as expounded in decision 52/2001. (XI. 29.) of the Constitutional Court, goes far beyond the similar requirement of the Swiss, Oregonian or Californian regulations and it is also more strict than the recommendation of the Venice Commission. The text of the question may not involve two concerns, which do not follow necessarily from one another and could be decided separately. This means that only one-sentence questions may be qualified as valid initiatives. At the same time, it is expected that the question itself provides enough information for citizens to understand its meaning, foresee its consequences and for the Parliament to find the exclusive way of the implementation of the result. The question may not leave alternatives, because this would be classified as ambiguity. Complex issues, however, which require complicated rules, cannot, of course, be summed up in one single sentence.

²⁹ Research results based on the explanations to be found in the resolutions of the NEC (resolutions available on the website of the NEO).

The Hungarian requirements wrongly combine two different types of popular initiatives, which are separated in Switzerland (and even more clearly in the Code of Good Practice of the Venice Commission): the general proposal (or question of principle) and the detailed, specific draft. Unambiguity, as it is understood by Hungarian authorities, could normally be expected from detailed drafts. The strict interpretation of the single-subject rule expects it, however, from one single sentence. One single sentence would be optimal for general suggestions or questions of principle. Nevertheless, in this case it should be accepted that the Parliament has a larger scope for action in the implementation of the result. Citizens only lay down the main direction and it is up to the legislator to decide how to reach the goal and to determine the details.

Last but not least, the Hungarian practice expects intelligibility and the clarity of consequences from one single sentence. The examples of Switzerland, Oregon and California make clear that this is nearly impossible. That is why they introduced different kinds of ballot pamphlets, which enable citizens to make a well-informed decision. Usually not the text of the initiative itself (which may be a complicated, detailed draft law), but the content of these ballot pamphlets should fulfil the criteria of understandability and provide balanced information. The Hungarian regulation and practice does not take into account this possibility, information materials of this kind are not prepared for voters.

CONCLUSIONS II: RECOMMENDATIONS

Based on the above observations it would be worth considering the followings:

The regulation should make a difference between initiatives in form of a general suggestion and in form of a detailed draft. The latter should be made possible (Herbert Küpper recommends the exclusivity of this form – cf. Küpper 2011: 32–33.); in case of the former the Parliament should be enabled to lay down the details at its own discretion.

Initiators should be offered official assistance for the appropriate wording of their initiative. This could especially be important in case of initiatives in the form of detailed drafts since that needs specialized knowledge in codification.

An option would be to empower NEC to correct the text of the initiative, if it is improvable. This improvement should be made subject to judicial review in order to ensure that the improved version does not change the original intention of the initiators.

Last but not least, appropriate forms for the information of citizens should be elaborated on the essence of the initiative and its possible consequences [cf. Petrétei 2016: 11]. In this respect, the examples of Switzerland, Oregon and California may provide enough inspiration, including the question of legal remedies against false or unbalanced content of ballot pamphlets or similar materials.

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