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CHAPTER 4

CHAPTER 4

Agenda initiatives: when citizens can get a proposal on the legislative agenda

118. Within the family of direct democracy instruments, the agenda initiative plays a specific role. It is the only popular right that does not necessarily lead to a referendum vote. It places an issue on the political agenda and requires a specified authority – typically the legislature – to consider and/or act on a proposal. This action may sometimes include the possibility that the legislative body will put the issue to a referendum vote. Agenda initiatives are subject to certain regulations, covering, for example, the number of signatures required, the time allowed for gathering the signatures, and restrictions on the kinds of issue that can be the subject of an agenda initiative.

119. It is important to distinguish the agenda initiative procedure from petitions, which have little formal structure and can be as simple as a letter from a constituent to a legislator or official. These are weakly regulated and exist almost everywhere in the world. The agenda initiative is a stronger instrument.

120. Sometimes agenda initiative procedures can overlap with those of petitions or with citizens' initiatives requiring a referendum vote. This is the case when just one person is eligible to put an issue on the political agenda or when agenda initiatives request a legislative body to trigger a referendum vote on a certain issue. As a specific direct democracy procedure 'in between' petitions and citizens' initiatives, agenda initiatives are sometimes called by other names, such as 'people's motions', 'submission rights' or 'popular legislative initiatives'.

Table 4.1. Agenda initiatives: the instrument ‘in between’

Procedure	Definition	Example
Petition	A procedure which allows one or several citizens to present a proposal to the authorities	In 2005 a group of concerned Thai citizens gathered signatures in order to protest against the national film censorship practice.
Agenda initiative	A direct democracy procedure which enables citizens to submit a proposal which must be considered by the legislature but is not necessarily put to a vote of the electorate	In 2002 in Argentina almost 400,000 citizens signed a proposal to end special pension funds for state officials and legislators.
Citizens’ initiative	A direct democracy procedure that allows citizens to initiate a vote of the electorate on a proposal outlined by those citizens. The proposal may be for a new law, for an amendment to the constitution, or to repeal or amend an existing law.	A California citizens’ initiative, which gathered more than 500,000 signatures, led to a 2008 state-wide referendum on a high-speed railway system.

Table 4.2. The agenda initiative: an instrument with many names

Country	Name in the language of the country	Name in English
Austria	<i>Volksbegehren</i>	Popular demand
Argentina	<i>Iniciativa popular indirecta</i>	Indirect popular initiative
Benin	<i>Pétition citoyenne</i>	Citizens’ petition
Italy	<i>Iniziativa delle Leggi</i>	Law initiative
Netherlands	<i>Volksinitiatief</i>	Popular initiative
Norway	<i>Innbyggerinitiativ</i>	Inhabitant initiative
Switzerland	<i>Volksmotion, motion populaire, mozione popolare</i>	Popular motion

121. An agenda initiative procedure can be described as the right of a group of voters, meeting predetermined requirements, to initiate a process for the revision of a law, the introduction of a new law, or an amendment to the constitution. However, the legislative body retains full decision-making power. This is crucial for differentiating the agenda initiative mechanism from that of citizens’ initiatives: it means that the power-sharing aspect which is characteristic of all direct democracy instruments is limited here to agenda setting.

122. This chapter examines the existence and development of agenda initiative procedures around the world and considers issues related to their design and regulation. It also offers an overview of the use of agenda initiatives in practice, and identifies elements that need to be considered carefully when an agenda initiative procedure is designed, administered and used.

123. Historically, agenda initiative procedures surfaced for the first time in the constitutions of European countries after World War I. This group of countries included Austria, Latvia and Spain. After World War II, a second wave of introductions followed in Latin America (including Guatemala, Uruguay and Venezuela). Since 1989 agenda initiative procedures have been established in several jurisdictions around the world, including countries in South East Asia (the Philippines, Thailand), West Africa (Ghana, Niger) and Eastern Europe (Hungary, Poland, Slovenia).

The distribution of agenda initiative procedures

124. National-level agenda initiative procedures are also found at the sub-national (first tier/local) levels of many countries (e.g. Germany). At the transnational level, the EU has included an agenda initiative provision in the Treaty of Lisbon. While many countries in Europe and Latin America provide for an agenda initiative procedure, the mechanism is less well known in Africa, Asia and Oceania.

Table 4.3. Agenda initiative procedures, by region

Region of the world/country	National level	Only sub-national level
Africa		
Benin	•	
Burkina Faso	•	
Cape Verde	•	
Congo, Democratic Republic of the	•	
Liberia	•	
Niger	•	
Togo	•	
Uganda	•	
Total for Africa	8	
Americas		
Argentina	•	
Bolivia	•	
Brazil	•	
Colombia	•	
Costa Rica	•	

Region of the world/country	National level	Only sub-national level
Ecuador	•	
Guatemala	•	
Honduras	•	
Mexico		•
Nicaragua	•	
Paraguay	•	
Peru	•	
Uruguay	•	
Venezuela	•	
Total for Americas	13	1
Asia		
Kyrgyzstan	•	
Philippines	•	
Thailand	•	
Turkmenistan		•
Total for Asia	3	1
Europe		
Albania	•	
Andorra	•	
Austria	•	
Belarus	•	
Finland		•
Georgia	•	•
Germany		•
Hungary	•	
Italy	•	
Latvia	•	
Liechtenstein	•	
Lithuania	•	
Macedonia, the former Yugoslav Republic of	•	
Moldova, Republic of	•	
Montenegro	•	•
Netherlands	•	
Norway		•
Poland	•	
Portugal	•	
Romania	•	
San Marino	•	
Serbia	•	

Region of the world/country	National level	Only sub-national level
Slovakia	•	
Slovenia	•	
Spain	•	
Sweden		•
Switzerland		•
Total for Europe	22	7

Design and regulation

125. Design and regulation are critical to the efficient functioning of direct democracy procedures. Agenda initiatives have many similarities with other direct democracy procedures such as citizen-demand referendums, citizens' initiatives and recall. Very high signature requirements, for instance, will limit the possibility of a qualifying agenda initiative being brought forward, as will very short time periods allowed for the collection of signatures. However, as an instrument for agenda setting, the agenda initiative tool may be used fairly frequently, and with large numbers of signatures being gathered, as the Austrian experience shows (see box 4.1).

Box 4.1. Austria: the most intensive practitioner of the agenda initiative

In Austria a binding referendum cannot be initiated by gathering signatures, but the agenda initiative has been used frequently and successfully. Since 1964 more than 30 nationwide agenda initiatives have been launched. This step requires 8,000 signatures in support, which is the equivalent of 0.1 per cent of the electorate. For an initiative to qualify to be dealt with in the national parliament there is a second, more demanding, target of 100,000 signatures, which must be gathered within just eight days in state offices. Almost all these 30 initiatives reached this target. An agenda initiative can also be launched by just eight members of the national parliament, or by 12 members from at least three state parliaments.

One reason for the frequent and successful use of the agenda initiative may be the fact that the first three agenda initiatives in the 1960s were all accepted and implemented by parliament. Those initiatives covered issues such as the introduction of the 40-hour working week and school reform. But the most successful was the first, in 1964, when the state broadcasting company was reformed based on an agenda initiative supported by no less than one-fifth of the electorate. Another factor is that the agenda initiative is often seen by opposition political parties as a way to get publicity and to educate and motivate their voters.

An example from 2006 illustrates the role of the agenda initiative in Austrian politics. During one week in March, over 250,000 Austrians went to the offices of their local municipalities to sign an agenda initiative to the national parliament requesting a referendum on any future EU membership deal for Turkey. This initiative – by the right-wing Freedom Party – led to an announcement by the prime minister that a referendum will be held to let the people decide as soon as Turkish membership is formally placed on the EU agenda.

126. An important feature when assessing the procedural aspects of agenda initiatives is the number of signatures in support required at the national level. The available data present a picture of considerable variation regarding these requirements: for example, in Uruguay a legislative agenda initiative requires the signatures of not less than 25 per cent of the electorate, while the threshold in Georgia is less than 1 per cent. Many countries also have different requirements for legislative and constitutional agenda initiatives. In Kyrgyzstan one needs to gather 30,000 signatures for a proposal for legislation while a proposal for an amendment to the constitution requires ten times as many. In a third group of countries (e.g. Costa Rica), however, where signature requirements are concerned there is no difference between agenda initiatives to amend a law and agenda initiatives to amend the constitution.

Table 4.4. Examples of variations in signature requirements for agenda initiatives

Country	No. of registered electors	Agenda initiative for ordinary legislation		Agenda initiative for an amendment to the constitution	
		No.	% of registered electors	No.	% of registered electors
Ecuador	8,154,424	20,386	0.25	81,544	1
Georgia	3,143,851	30,000	0.95	200,000	6.36
Kyrgyzstan	2,537,247	30,000	1.18	300,000	11.8
Lithuania	2,719,608	50,000	1.84	300,000	11.03
Romania	17,699,727	100,000	0.56	500,000	2.82
Venezuela	12,048,000	12,048	0.10	1,807,200	15

127. Beyond signature requirements, there are several additional important design and regulation issues, such as: (a) issues which may be excluded from being the subject of an agenda initiative; (b) the specified timeframe and venues linked to the signature gathering; (c) how legislative bodies may deal with an agenda initiative; (d) possible

support by the authorities for agenda initiative committees, and; (e) the legal status of agenda initiative committees vis-à-vis the legislative body.

128. Jurisdictions differ with regard to the types of issues citizens can raise through procedures of direct democracy, just as they differ with regard to the types of issue elected legislative bodies can decide. This also applies to the ‘soft’ agenda initiative mechanism (‘soft’ because of its lack of decision-making power). Issues that cannot be the subject of an agenda initiative may include amendments to the constitution (as in Austria, Brazil, Cape Verde, Thailand), the adoption of international treaties (Austria, Mali, Peru), taxes and public expenditure commitments (Albania, Burkina Faso, Uruguay) or issues of devolution (Niger). Issues that are excluded from the agenda initiative procedure are therefore sometimes of great public interest, and are often politically controversial. Such exclusions may therefore weaken the agenda initiative instrument.

129. Where and how signatures can be gathered is also of considerable importance. They may be gathered freely and in any location, or in person only (excluding e-signatures) and in specified venues. Another important aspect is the time allowed for the gathering of the required number of signatures. Here again there are substantial variations around the world. For example, in Austria the required 100,000 signatures must be gathered within eight days at official bureaux, while Lithuanians are offered three months for the collection of 50,000 signatures for legislative agenda initiatives. There are, however, many countries where there are no fixed time schedules at all for the collection of signatures. Additionally, in comparison to citizens’ initiatives, the requirements with respect to citizenship status may be less stringent when it comes to agenda initiatives. While only registered citizens may be eligible to sign a citizens’ initiative, registered non-nationals may be entitled to sign an agenda initiative (as in Finland, Norway, Sweden).

130. In contrast to the special requirements, hurdles and restrictions outlined above, a dedicated initiative infrastructure may be provided to support the conduct of an agenda initiative procedure. A ‘dedicated initiative infrastructure’ means, for instance, providing public services for an agenda initiative committee during the various steps involved in the initiative process (as described in detail in chapter 6). Initially this may include checks of the language of the proposed text, translation assistance, and procedural advice (e.g. in Niger, the Philippines, Switzerland). At a later stage, the agenda initiative infrastructure may include some practical and financial support as well as the right for initiative committees to present their case in the legislative body themselves (as in Norway and Sweden at the local level).

Box 4.2. Poland: the agenda initiative as a test ground for reform

In Poland, an agenda initiative procedure was introduced with the national constitution in 1997. Legislation to regulate the procedure followed in 1999. All issues can be addressed through such a citizen-triggered initiative except finance laws and constitutional amendments. All proposals must be put forward in a fully formulated way, including an explanatory statement on the social, economic and financial effects of the proposal. All this must be done without any official assistance and is done by a 'legislative initiative committee'. Such a committee can be founded by a group of 15 registered citizens, who sign a written statement on membership of the committee together with personal data.

The name of the committee must reflect the subject of the proposed legislation. Only one proposal can be made at a time. To enable the initiative to be registered with the authorities, at least 1,000 signatures are required. When the proposal reaches this threshold, a specified official of the national parliament, the marshal of the Sejm (the lower house), will check the legality of the agenda initiative. If the answer is negative, the initiative committee has 14 days to correct the faults or to appeal to the Supreme Court. If the proposal is accepted, the committee should publish the initiative with all relevant information in a national newspaper – at its own expense. From then on, the committee has three months to gather at least 100,000 signatures. There are further limitations on how and where these signatures can be collected. If this second milestone is not met within three months, the committee is dissolved. If the proponents are successful, the marshal of the Sejm will forward the agenda initiative to the National Electoral Commission for the signature lists to be validated and verified. If approved, the bill is then sent to the national parliament for further debate.

Since 1999 almost 60 nationwide agenda initiatives have been launched. In 50 cases, the authorities rejected the proposal on formal legal grounds. Within 14 days, the committees responsible for about 40 initiatives managed to correct the faults and launch the initiative. Of the 45 agenda initiatives that reached the stage of signature collecting, 23 achieved the 100,000 signature target. Three of these were disallowed by the authorities leaving 20 agenda initiatives the subject of legislative processes in the parliament. None was completely rejected, and many were implemented in an amended form. Polish agenda initiatives have included proposals to improve the country's teacher training programmes, to establish a Foundation of National Education, to ban the promotion of violence in the mass media, to strengthen the laws on environmental protection, and to offer financial support to single-parent families.

131. The legal status of an agenda initiative committee is important, as it is this group that may be heard by the legislative body or may follow up (politically and juridically) the fate of an agenda initiative which has gathered enough signatures to qualify.

Box 4.3. Argentina: agenda initiatives as crisis management tools

In Argentina, when the economic crisis reached its peak in the early 2000s, the newly introduced agenda initiative was used more often than in any other country. Since 1996 Argentine legislation has provided the basic rules of this direct democracy mechanism: the signatures of 1.5 per cent of the electorate – about 400,000 registered electors – are required to bring a legislative proposal forward to the national parliament. As Argentina is a federal state, the 1.5 per cent threshold is additionally required in at least six out of the 24 states. However, according to the law, some issues cannot be forwarded by the citizens on to the legislative agenda. These include constitutional reforms, international treaties and the penal code.

While several dozen nationwide agenda initiatives have been launched since 1996, just two of them gathered the 1.5 per cent signatures required for them to be – at least partly – implemented by the parliament. In 2002 more than 400,000 signatures were delivered to the Electoral Commission proposing an end to special pensions for government officials and elected officials. In the same year another agenda initiative got as far as the parliament, demanding special funds for starving children and their families, who were suffering badly during the economic crisis of the time. The latter initiative was even signed by the president and was implemented by the parliament. Several other prominent attempts did not reach the signature threshold, including an agenda initiative to reform the electoral system and a citizen proposal to increase transparency and accountability in the political process.

In sum, the agenda initiative mechanism in Argentina has proved to be a powerful tool for agenda setting, while the elected parliament has retained its full decision-making powers. Moreover, its use during the economic crisis has shown that the instrument can be used as a political crisis management tool.

Conclusions

132. Any discussion of the use of agenda initiatives in practice should ideally be accompanied by an assessment of those that have been launched and have qualified to go forward. However, only limited data are available as yet to provide a basis for a more comprehensive overview of their use at the national, regional and local levels

worldwide. In fact, as the world survey on direct democracy (annex A) shows, it is often somewhat unclear whether a participatory instrument called an 'initiative' is a petition, an agenda initiative or a citizens' initiative. In Italy, between 1978 and 2002, there were 320 agenda initiative attempts, of which approximately one-third managed to get the required 50,000 signatures. One agenda initiative even made it indirectly to the ballot box – in 1988, when more than 110,000 signatures were gathered to ask the European Parliament to launch an EU constitution-making process. This non-binding demand was subsequently put to a consultative referendum by the Italian parliament and, in 1989, 88 per cent of the voters supported the proposal (turnout was 86 per cent). Other countries which have used agenda initiatives in a comprehensive way include Hungary (more than 150 attempts at the national level), Spain, Poland and Argentina (see box 4.3). In Sweden, local and regional agenda initiative rights were introduced in 1994, following up a recommendation by the Council of Europe in the same year. More than 150 local and regional agenda initiatives have been submitted to legislative bodies, but fewer than 15 have become the subject of a referendum process or have been implemented.

Box 4.4. The European Union: towards the first transnational agenda initiative mechanism

In the 2007 Lisbon Treaty and in the proposed European Constitutional Treaty of 2005, the European heads of state and government introduced an article on participative democracy, which includes the provision for an agenda initiative right (called the citizens' initiative). Article I-8b.4 reads: 'Not less than one million citizens who are nationals of a significant number of Member States may take the initiative of inviting the 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'. On ratification, an implementation law will have to decide important questions such as the range of issues which can be addressed, the forms of signature gathering across the EU member states, and the time limits allowed for the process. The idea of the first transnational procedure with direct democracy elements has inspired at least 20 committees across Europe to launch a 'European agenda initiative'.

A brief assessment of these 20 pilot initiatives shows that the new instrument is being used by many groups from different sections of society, including politicians, human rights groups, economic foundations and broad alliances of non-governmental groups. However, as the concept of the European citizens' initiative is still new, and as the culture and practice of initiatives are as yet only weakly developed in many European countries, several initiatives are still calling their attempt to gather 1 million signatures a 'petition'. Furthermore, the fact that the implementation regulation does not yet exist means that all kinds of ways of

collecting signatures are being used, including the simple and hardly verifiable registration of names online. At the same time, it is clear that the Internet offers a unique transnational platform for launching and conducting such initiatives. Interestingly, most of the initiatives so far launched understand the need to publish their information in as many European languages as possible.

This early but dynamic development of transnational direct democracy practice offers many practical opportunities, both for academics and for political practitioners, to test and assess the first steps towards transnational direct democracy. One question will be what a democratic infrastructure beyond the raw tool of the initiative could look like, including some kind of European ‘agenda management board’ to assist, test and follow up European citizens’ agenda initiatives, as well as implementing a comprehensive voter education programme across the region.

Source: Kaufmann, Bruno et al., *The Initiative and Referendum Institute Europe Guidebook to Direct Democracy in Switzerland and Beyond*, 2009 edn (Marburg/Brussels: IRI Europe, 2008)

133. As a direct democracy mechanism the agenda initiative offers a functional means for citizens and legislators to share power. However, the special value of being able to put an issue on the agenda of a legislative body is linked to the collective effort of gathering signatures in support of a certain idea. For this reason the signature-gathering period is significant for the democratic success of an agenda initiative. This leads us to the conclusion that the collecting of signatures should not be limited to certain official offices, and that the period available for gathering the required number of signatures should be neither too short (e.g. a few days or weeks) nor too long (more than a year or even unlimited). As with citizens’ initiatives, extended lists of excluded issues are not helpful as these often include the most interesting and controversial issues. As a simple rule, the agenda initiative should cover the same range of issues as the targeted legislative body is able to deal with.

134. As the agenda initiative is a fundamentally ‘limited’ direct democracy procedure, the public infrastructure provided for initiators and supporters is even more important to the democratic success of the procedure. This public infrastructure may include structured forms of presentations and deliberations between initiators and legislators as well as comprehensive forms of official assistance during the whole agenda initiative process. An examination of national and sub-national practice shows clearly that more frequent use of the mechanism is linked in several ways to the success of the instrument. When agenda initiative procedures fail to achieve their goals, citizens are inclined to try to find other ways of gaining influence in the legislative process.

Direct democracy in Oregon

Paddy McGuire

Historical background

The roots of direct democracy in the US state of Oregon can be traced back to the progressive movement in the late 1800s. William U'Ren, who briefly served in the Oregon legislature, was almost single-handedly responsible for the introduction of the right of Oregonians to write their own laws through the citizens' initiative, repeal acts of the legislature through the abrogative referendum, and remove elected officials through the recall, all of which were adopted in Oregon at the end of the 19th century.

The growth of direct democracy was a reaction to the view among the electorate that the railway industry, through its lobbyists and legislators beholden to it, controlled the actions of the state legislature. The railways held great political power in the early days of European settlement of the American West. To encourage quick settlement across the continent, in the 1860s the US Congress had granted vast tracts of unoccupied land (this was just after the removal from that land of the American Indians to reservations) to construct railways across the nation. In Oregon, those land grants to the railways meant that the companies owned much of the timber that would be the cornerstone of the state economy for the next 120 years.

U'Ren was elected to the legislature in 1896 as a member of the People's Party. Neither of the major parties had a majority in the 1897 legislature, and U'Ren controlled the swing votes that could allow either the Democrats or the Republicans to organize a majority. In what was known as the 'Holdup of '97', U'Ren withheld support from either side until the Republicans finally agreed to refer to the voters a constitutional amendment granting the right of citizens' initiative and rejective referendum to the citizens. The amendment was put to the voters in 1902 and was adopted by a vote of 62,024 to 5,668.

The Oregon constitution contains the following provision: 'The people reserve to themselves the initiative power, which is to propose laws and amendments to the Constitution and enact or reject them at an election independently of the Legislative Assembly'.

In quick succession following the enactment of the initiative, the people used their new power to enact a number of political reforms – the direct primary election, in 1904; the direct election of United States senators (state legislatures elected members of the United States Senate in the early days of the Republic), and the instruments of initiative and referendum at the local level, in 1906; recall of public officials, in 1908; the presidential primary election, in 1910; and women’s suffrage, in 1912.

Interestingly, one of U’Ren’s primary motivations for pushing the initiative system was that he advocated funding state government by a ‘single tax’ on the appreciation of real property values. He knew that the legislature would not approve the single tax but thought that the voters would. In 1908, the voters got their chance when U’Ren sponsored an initiative to enact the single tax. It was defeated, and he was subsequently defeated in 1914 when he stood for governor on a single tax platform. He left the political scene shortly thereafter.

Procedures and legal provisions

The citizens’ initiative

The 1902 amendment to the constitution gave the people the right to amend both the constitution and state statutes.

Petition organizers have up to 23 months to complete all the steps necessary to qualify an initiative for the ballot. To begin the process, one must gather at least 1,000 valid signatures on a petition containing the text of the proposed law. When that proposal is filed with the EMB, the state attorney general has 60 days to write a ballot title. The title is a statement of up to 25 words that explains the impact of the measure. Anyone may appeal against the attorney general’s ballot title to the State Supreme Court. Typically, the first five or six months of the 23-month window are taken up with the procedural processes needed to move forward.

Once a ballot title is finalized, the circulators may begin gathering signatures. The proposal may be to amend the constitution or to adopt a statute, the only structural difference being that to amend the constitution the proponents must gather valid signatures equal to 8 per cent of the number of people who voted in the most recent election for governor (in 2007–11 that threshold is 110,358), while a statutory change requires 6 per cent (82,769 during the same period).

The deadline for turning in signatures is 120 days before the biennial general election (the only election at which citizens’ initiatives can be voted on). Once the signatures are turned in, the EMB has 30 days to check their validity. The EMB takes a statistical sample of the signatures and 5 per cent of the signatures are actually verified. One invalid signature among the sample results in the invalidation of 20 total signatures and one duplicate results in the invalidation of 400 signatures.

Initiatives that qualify are sequentially numbered based on the date on which they were submitted for verification and are voted on in the general election in November of each even-numbered year. Since 1902, 340 initiatives have appeared on the ballot paper and 118 of them (35 per cent) have passed.

The rejective referendum

The 1902 constitutional amendment also granted to the people the right to reject new enactments of the legislature. Under this mechanism, petitioners must gather signatures equal to 4 per cent of the number of persons who voted in the previous election for governor (55,179 during 2007–11) within 90 days of the end of the session of the legislature that enacted the law.

The governor, who has 30 days to sign or veto a law from the date when it is enacted by the legislature, can frustrate this action substantially. Thus, when it is clear that there may be an attempt to organize a referendum on new legislation, the legislature can wait until its last day to enact it and the governor can wait the full 30 days to sign it, effectively using up one-third of the time available to petitioners to take the matter to the voters. Since 1902, 62 rejective referendums have been put to the voters and 21 (33 per cent) have succeeded in repealing the law concerned.

Recall

One of the first citizens' initiatives passed by Oregon voters was the right to recall public officers. Oregon was the first of the US states to do so, in 1908, and followed only the City of Los Angeles, which adopted the recall in 1903. A citizen may begin the recall process by filing a notice with the Electoral Management Body (EMB) and then has 90 days to gather valid signatures equal to 15 per cent of the votes cast in that district for all candidates for governor in the most recent election. Once the signatures are verified, the EMB has 45 days to call a special election to vote on the recall. The recall has only been used very rarely at the state level in Oregon. In 1988, a state senator accused of malfeasance was recalled. The recall is used with some regularity in smaller municipalities where it is easier to reach the 15 per cent threshold. Available evidence suggests that recalls are successful less than 50 per cent of the time.

Referendums

Oregon also has constitutional provisions for both mandatory and optional referendums. An amendment to the constitution adopted by the legislature triggers an automatic popular vote to accept or reject it. The legislature may also refer other matters directly to the people and generally does so for one of two reasons.

First, statutes must be adopted by a majority of both houses of the legislature and signed by the governor. If the governor vetoes the legislation, the legislature may override that veto and enact the statute directly by a two-thirds majority of each house. Veto overrides rarely happen. However, if the legislature refers the legislation to the people through an optional referendum, the governor has no opportunity to exercise the veto. Thus, a narrow legislative majority (more than 50 per cent but less than 66 per cent) may lead to the calculation that there is a better chance of getting the people to approve a piece of legislation than the governor, and the legislature may use the referendum mechanism in order to bypass the governor.

Second, the legislature may choose to refer a matter to a referendum because the subject is important enough to warrant it or because there is a belief that there will be a rejective referendum anyway. A referral gives the legislature greater control of the process. Of the 407 matters referred to the people by the legislature since 1902, 233 (57 per cent) have passed.

Campaigns both for office and for direct democracy instruments are privately financed in Oregon (as in most other US states), but there are strict reporting requirements, giving the public access to information on who is financing campaigns. There are no restrictions on who may contribute to a political campaign or how much they may spend. Thus corporations and labour unions alike often spend large amounts of money to support or oppose questions on the ballot paper. The press regularly reports on who is contributing to campaigns so that this discussion is a regular part of the election dialogue. In early 2007, the Oregon secretary of state introduced a new web-based system, called OreStar, to give citizens access to campaign finance information.

The use of direct democracy in Oregon

The ‘Oregon System’, as it has come to be known in the US, was envisaged as a way to take power away from the railway companies and other moneyed interests and return it to the people. In fact one of the very first initiatives in Oregon that was adopted in 1904 prohibited legislators from accepting free railway passes – a direct attempt to rein in the influence of the railways. The last 20 years have seen a shift towards the initiative process being used in many cases by moneyed interests which see the system as an easier (and perhaps cheaper) way to get what they want from the legislature. Oregon has seen initiatives in recent years regarding medical malpractice (essentially a battle between the insurance industry and trial lawyers), a ban on triple-tractor trailer trucks (a battle between truckers and the railways) and even allowing ‘licensed denturists’ to distribute dentures (opposed by dentists).

This is not to say that the system has been completely taken over by vested interests. Oregonians have also used the system to adopt a number of measures that would probably never have come out of the legislature – the legalization of physician-assisted suicide and the use of marijuana for medical treatment, regular increases in the minimum wage, a requirement that marriage be between one man and one woman, mandating that all voting be by post, and tough sentencing requirements for those convicted of violent crimes.

The Oregon experience

Direct democracy is a central part of the political scene in Oregon. Some bemoan the fact that the ease with which the electorate can amend the constitution has led to a founding document that is littered with the minutiae of tax policy. Few, however, suggest a fundamental change in the mechanisms that have allowed the citizens direct control of a significant part of the process of enacting legislation.

The public has been very resistant to any significant changes to the system. In 1996, the legislature referred to the people a constitutional amendment that would have required a portion of petition signatures on a citizens' initiative to be collected in each congressional district. As a practical matter, it is much easier to gather signatures in urban than in rural areas. The proposed amendment would have made it more difficult to qualify an initiative, and it was defeated by a 56 per cent to 44 per cent vote. In 2000, the legislature referred a constitutional amendment that would have increased the number of signatures required to place a citizens' initiative to amend the constitution on the ballot paper. It too was defeated, by 59 per cent to 41 per cent.

However, citizens have also been reluctant to limit the power of the legislature with regard to the initiative process. In 1996, there was a citizens' initiative that would have limited the ability of the legislature to change statutes passed by the voters. This proposal was defeated by 51 per cent to 49 per cent. In 2000, voters defeated an initiative that would have prohibited the legislature from 'making the initiative process harder', by 62 per cent to 38 per cent.

The only significant change to the initiative process that voters have approved in recent years was a 2002 citizens' initiative to amend the constitution to prohibit signature gatherers being paid by the number of signatures. This initiative came on the heels of widespread press reports of fraud and abuse in signature gathering and was approved by voters overwhelmingly, by 75 per cent to 25 per cent. Oregon voters thus appear satisfied with the balance currently being struck between their rights to amend the constitution and state statutes and the power of the legislature to do the same.

Direct democracy in the Republic of Hungary

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Historical background

The modern instruments of direct democracy in Hungary are the achievements of the democratic political transition in 1989. The first law on referendums and popular initiatives was Act no. XVII of 1989. This law was exceptionally liberal and surpassed the corresponding provisions of many of the West European parliamentary democracies. The political transition led to a reassessment of the value of the mechanisms of direct democracy as authentic legitimating institutions. The 1989 act was adopted before the new, democratic constitution (Act no. XX of 1989), and this gave rise to a number of conceptual difficulties. The act confused the different types of referendums and initiatives; and it failed properly to determine what kinds of questions could be the subject of the mechanisms of direct democracy, which made it impossible to establish whether the initiatives were compatible with the constitution. According to Act no. XVII, the collection of 100,000 signatures (with no time limit) was enough to launch a national referendum on nearly any question that fell within the competence of the parliament. In practice, this liberal regulation led to chaos: the parliament failed to handle the cases properly and often turned to the Constitutional Court, alluding to problems of interpretation of the constitution.

In 1995 the Constitutional Court called on the parliament to resolve this controversial situation and adopt a new act which would be in conformity with the constitution. The present regulation of *referendums* and *popular initiatives* was adopted in 1997, when a thorough revision and modification of the constitution took place.

The rules for *local* referendums and initiatives are established in Act no. LXV of 1990 on local government, which provides a framework regulation to be further refined by the local governments themselves in local government decrees.

The *recall* is unknown in Hungarian law.

The legal framework and institutional structure

The regulation of national referendums and popular initiatives can be found in three different legal acts: the 1989 constitution of the republic; Act no. III of 1998; and Act C of 1997 (the electoral code).

The constitution stipulates that citizens shall take part in conducting the affairs of the country primarily through their elected representatives. However, the people may also take part directly in either deciding or influencing issues of overriding public interest. Hungarian law provides for two forms of this – the referendum and the popular initiative. The constitution covers the main substantive aspects of the direct democracy instruments at the national level, namely the types of referendum, the conditions for ordering a referendum or handling an initiative, and the right to vote on them.

According to the constitution, there are two main types of national referendum – mandatory and optional. In both cases, the calling of a referendum is the exclusive competence of the parliament, while the date of the referendum is appointed by the president of the republic.

- *Mandatory referendums* (i.e. citizens' initiatives for the introduction or repeal of legislation). The parliament must call a referendum at the initiative of a minimum of 200,000 voters, whether or not it itself approves of the idea of issuing the writ of referendum.
- *Optional referendums*. Under the circumstances provided for by the law, parliament shall consider issuing a writ of referendum but is not obliged to do so. An optional national referendum may be held at the initiative of:
 - (a) the voters (if the initiative is supported by more than 100,000 but fewer than 200,000 voters);
 - (b) the president of the republic;
 - (c) the government; or
 - (d) at least one-third of the elected members of parliament.

As for the outcome of the referendum, the constitution distinguishes two different types of referendum – binding and indicative. The results of mandatory referendums are always binding. The results of optional referendums may be binding or indicative, depending on the decision of the parliament when it calls the referendum. The results of a referendum called with regard to a law already enacted by the parliament but not yet signed by the president of the republic (a rejective referendum) is binding.

There are certain subjects on which referendums may not be called as they fall within the exclusive competence of the parliament:

- (a) the contents of acts on the budget, on the execution of the budget, on types of central taxes and stamp duties, on customs duties, and on the regulation of local taxes;

- (b) obligations arising out of international agreements in force, or the contents of the acts containing these obligations;
- (c) the provisions of the constitution regarding referendums and popular initiatives;
- (d) any issues of personnel and organizational change (the transformation or dissolution of official bodies) that fall under the authority of the parliament;
- (e) the dissolution of the parliament;
- (f) the government programme;
- (g) the declaration of a state of war or a state of emergency;
- (h) the deployment of the armed forces abroad or within the country;
- (i) the dissolution of the delegates' assembly of the local government; and
- (j) a declaration of amnesty.

There is a threshold for the validity of the referendum vote: a nationwide referendum shall be valid if (a) more than half of the voters casting valid votes and (b) at least one-quarter of all registered electors give the same answer to the referendum question. In the event of the ballot paper containing more than one referendum question, the referendum result must be established separately for each question.

The right to vote in national referendums is identical to the right to vote in parliamentary elections.

The agenda initiative is regulated by the constitution as follows. An agenda initiative may be submitted by at least 50,000 voters. It may be directed at putting a certain question that falls within the parliament's competence onto its agenda. The parliament is obliged to discuss the question contained in the initiative.

The regulatory framework

The regulatory framework is based on Act no. III of 1998 and the electoral code of 1997.

The role of the National Electoral Committee

Attestation of the question and the signature-collecting sheet

A specimen of the signature-collecting sheets shall be submitted to the National Electoral Committee (NEC) for attestation before the collection of signatures begins.

The specific question put to a referendum shall be worded in such a way that it can be answered unambiguously, and shall be in compliance with the requirements enshrined in the constitution.

The NEC shall refuse to attest the signature-collecting sheet if:

- (a) the question does not fall within the competence of the parliament;
- (b) the question is one on which a national referendum may not be held;
- (c) the wording of the question does not comply with the requirements set out in the law; or
- (d) the signature-collecting sheet does not comply with the requirements stipulated in the Act on Electoral Procedure.

In the case of an agenda initiative, the initiative shall accurately and unambiguously contain the question proposed to be discussed by the parliament. The NEC will refuse to attest the signature-collecting sheet if criteria (a), (b) or (d) are not met. The NEC's decision with regard to the signature-collecting sheet or the particular question must be published within eight days in the official *gazette*.

Signatures may be collected over a period of four months in the case of a national referendum, and of two months in the case of an agenda initiative, from the attestation of the signature-collecting sheet. After the signature-collecting period expires, the signature sheets shall be submitted to the NEC, which shall arrange for the signatures to be checked.

The role of the parliament

In the case of a national referendum, the parliament decides on the citizens' initiative aimed at the ordering of a referendum. Its resolution must specify whether the referendum is binding or non-binding and the specific question put to the referendum, and shall give orders pertaining to the budget of the referendum.

In the case of an agenda initiative, the speaker of the parliament must announce it on the next session day following the receipt of the information from the head of the NEC. The parliament is obliged to put the initiative on the agenda and discuss it. The initiative must be decided within three months after the announcement.

The role of the Constitutional Court

Appeals against any decision of the NEC regarding the attestation of the signature-collecting sheet, or the particular question, may be lodged with the NEC (addressed to the Constitutional Court) within 15 days of the resolution being published.

Appeals against a decision of the parliament either to order a referendum, or not to order a referendum which would be mandatory may be lodged with the NEC within eight days of the resolution being published, addressed to the Constitutional Court.

The Constitutional Court shall either confirm or annul the resolution of the NEC or the parliament.

The role of the president of the republic

The president of the republic shall call the referendum within 15 days after the term for redress has elapsed without any result, or, in the event of redress, after it has been adjudged. The referendum shall be called for a date within 90 days after the parliamentary resolution ordering it has been published, or, in the event of redress, after it has been adjudged.

The national referendum process is managed by the election offices and 'guarded' by the election committees.

Regarding the reservations and appeals submitted against the decisions of the election committees (except for the decisions of the NEC concerning the attestation of the question and the signature-collecting sheet), the responsible bodies are the competent election committees and the courts (county or capital court, Supreme Court).

The financing of the use of direct democracy instruments

The funds for the conduct of referendums are granted out of the state budget to the amount established by the parliament and allocated to the organization appointed by the minister of the interior. Under the electoral code the determination of the rules of financial conduct is within the competence of the minister.

Voter participation and the dynamic of campaigns related to referendums

Voter participation is generally lower for referendums than it is for parliamentary elections, but it is a significant factor, as the validity of the referendum vote depends on whether more than one-quarter of all registered electors give the same answer to the referendum question. Voter turnout is strongly influenced by the way in which and the efficiency with which the campaign is run and by the non-partisan information received from the state organs concerning the voting process and deadlines. Usually turnout is around 40 per cent.

The dynamic of the campaign depends on who the initiators are and on the issue involved. When the referendum is initiated by the government, it is inevitably in an advantageous position where both access to the media and public appearances are concerned; however, public funding of referendum campaigns is prohibited. The general rules for campaigns embodied in the electoral code apply to referendums.

Media coverage

The general rules established by the electoral code apply to referendum campaigns. Regarding broadcasters' participation in an election campaign, the provisions of the law on radio and television broadcasting apply. Apart from parliamentary, local government and lower-level elections, television and radio broadcasters may only transmit political advertisements in connection with a referendum that has already been called. Access to the media depends heavily on the financial resources of the campaigning organizations.

No special obligations apply to public service broadcasters in referendums concerning the allocation of broadcast time between the campaigning organizations. The electoral code contains special rules for legal redress concerning the media campaign.

Voter education

Non-partisan information for the voters is provided by the National Election Office (part of the Ministry of the Interior) and by the election offices at different levels (regional, local etc.). This information is purely technical and addresses the issues regarding the referendum system and practical details about the election procedure (notices, brochures, guidelines etc.).

The success of a referendum initiative depends on an efficient election campaign as the key element in the forming of public opinion by the initiating organizations.

The funding of campaigns

There is no public funding for referendum campaigns. The rules on the functioning and financing of political parties apply for the parties participating in referendum campaigns. Whether, if a referendum is initiated by that government, it is 'fair' or 'legal' for that government to use the advantages of incumbency when campaigning is an interesting question.

Opportunities and constraints – strengths and weaknesses

Why are the instruments of direct democracy hardly used in Hungary? The answer lies in the weaknesses of the direct democracy system. It is not a neglected instrument, as the number of unsuccessful initiatives shows great activity on the part of the electorate – on average 20–30 initiatives a year since 2003 (see table 1). However, the strict regulations governing the initiatives and the wording of the questions often present obstacles and hamper or prevent the realization of such initiatives. In general, the main problems are:

- the difficulty of collecting the required number of signatures (200,000 for a national referendum, and 50,000 for an agenda initiative); and
- difficulty in wording the question (forbidden issues have to be avoided; questions must not be ambiguous; and it is forbidden to hold a referendum on the modification of the constitution or in matters that would force the parliament to act as a constitutional convention – for example, in the referendum initiative for the abolition of compulsory military service in 2001).

In the case of agenda initiatives, the parliament is only obliged to put the question on its agenda if the number of valid signatures collected is at least 50,000. Between 1989 and 1999, 20 agenda initiatives were unsuccessful because of this requirement.

The Constitutional Court plays a significant role in relation to the direct democracy procedures and constantly forms and establishes practice through its resolutions. The majority of the cases arise in connection with the prohibited referendum issues. The referendum initiative of the Fidesz party in 2006 also encountered this problem, as a number of the questions proposed concerned the ‘government programme’ which is prohibited as the subject of a referendum.

The number of signatures to be collected ensures that only serious and important issues are decided in a nationwide referendum or affect the work of the parliament. The requirement that at least one-quarter of all registered electors in Hungary have to give an identical answer to the question put to a referendum means that it is highly unlikely that a referendum would lead to a result that is not in the public interest.

The prohibited referendum issues also protect the exclusive competence of the parliament established by the constitution and ensure that those questions that need a particular approach or affect the constitution remain the competence of the supreme legislative body of the republic.

Table 1. National referendums in Hungary to date

(1) The ‘four-eye’ referendum, 6 November 1989

Question no.	Question	Result	No. of valid votes	No. of invalid votes	No. of ‘Yes’ votes	No. of ‘No’ votes
1	Should the president of the republic be elected after the parliamentary elections?	The vote was conclusive	4,283,642	242,630	2,145,023	2,138,619
2	Should party organizations leave the workplace?	The vote was conclusive	4,297,131	229,412	4,088,383	208,474
3	Should the MSzMP* account for the assets in its ownership or its custody?	The vote was conclusive	4,300,400	225,872	4,101,413	198,987
4	Should the Workers’ Guard be dissolved?	The vote was conclusive	4,271,528	254,744	4,054,977	216,551

* MSzMP: the Hungarian Socialist Workers’ Party, which was the then-governing communist party.

(2) The national referendum of 29 July 1990 on the direct election of the president of the republic

Question no.	Question	Result	No. of valid votes	No. of invalid votes	No. of 'Yes' votes	No. of 'No' votes
1	Do you think the president of the republic should be directly elected?	The vote was inconclusive	1,078,899	9,069	926,823	152,076

(3) National referendum of 16 November 1997 on the issue of joining NATO

Question no.	Question	Result	No. of valid votes	No. of invalid votes	No. of 'Yes' votes	No. of 'No' votes
1	Do you agree that the Republic of Hungary should join NATO in order to ensure the protection of the country?	The vote was conclusive	3,919,114	44,961	3,344,131	574,983

(4) National referendum of 12 April 2003 on the issue of joining the European Union

Question no.	Question	Result	No. of valid votes	No. of invalid votes	No. of 'Yes' votes	No. of 'No' votes
1	Do you agree that the Republic of Hungary should become a member of the European Union?	The vote was conclusive	3,648,717	17,998	3,056,027	592,690