

COUNTRY REPORT

HUNGARY



Dr. Kálmán Pócza

Dr. Daniel Oross

February 2021



Table of Contents

Country Background	1
<i>Type of regime and constitutional law</i>	<i>1</i>
Formal Constitution-Making	1
<i>Legal Framework of Constitution-Making and constitutional amendment</i>	<i>1</i>
<i>Constitution Making Dynamics</i>	<i>2</i>
Incremental Constitution-Making	4
Deliberative Events* And Incidents	4
<i>Challenges and next developments</i>	<i>7</i>
References & Sources:	9

Country Background¹

Type of regime and constitutional law

Since 1990 Hungary is a parliamentary representative democratic republic. The Prime Minister is the head of government, while the President is the head of state and holds a largely ceremonial position. In Hungary, parties are the key players in public life due to their resources. They are better organized than civic organizations, trade unions or movements. The spread of democratic innovations to complement the institutions of representative democracy is limited. Established direct democratic practices (e.g. national and local referendum) are operated by party politicians instead of citizens.

Constitution making has never been a highly deliberative process in Hungary, which does not mean that we could not detect few very rudimentary elements of deliberation while drafting a new fundamental law for the Hungarian political community. Nevertheless, from a normative point of view both processes in 1989 and 2010 were rather directed and managed by the political elite with few incentives for including deliberative bodies or techniques.

Deliberative mini-publics (in the form of citizens' assemblies and conventions) are not a common feature of Hungary's constitutional landscape. However, some events were organized at local level in recent years.

Formal Constitution-Making

Legal Framework of Constitution-Making and Constitutional Amendment

Both the former Constitution, adopted in 1989, and the new Fundamental Law of Hungary (adopted in 2011) had been very flexible. There haven't been any special restrictions on how constitutions could be amended, the one and only criterium was to have a parliamentary two-thirds majority in a unicameral parliamentary system. The Parliament adopts the constitution, and it can amend it with a simple supermajority. The founding fathers did not differentiate between the *Pouvoir constituant originaire* (constitution making power) and the *pouvoir constituant dérivé* (power of amending the constitution.) Furthermore, there is no special requirement of popular involvement or confirmation by the next parliament after a new election, and even the head of state does not have any role in the constitution-making process or constitutional amendment. In this procedural sense the Hungarian constitution has been a highly flexible one. Due to this flexibility, formal amendments were quite frequent in the last 30 years. Beyond this formal flexibility, however, the constitutional adjudication of the Hungarian Constitutional Court played also a crucial role in an unceasing "post-sovereign constitution-making" process as reflected in the practice. The Hungarian Constitutional Court played also an important role in informal amendments of the Constitution and the Fundamental Law.

¹ Authors/affiliations: Dr. Kálmán Pócza, Senior Research Fellow at the Centre for Social Sciences, Hungarian Academy of Sciences Centre of Excellence; Dr. Daniel Oross, Research Fellow at the Centre for Social Sciences, Hungarian Academy of Sciences Centre of Excellence.

Constitution Making Dynamics

Constitution making has never been a highly deliberative process in Hungary, which does not mean that we could not detect few very rudimentary elements of deliberation while drafting a new fundamental law for the Hungarian political community. Nevertheless, from a normative point of view both processes in 1989 and 2010 were rather directed and managed by the political elite with few incentives for including deliberative bodies or techniques.

During the democratic transformation process in 1989/1990 inclusive deliberation on the future institutional structure of the Hungarian politics was almost unimaginable. It was an elite-driven negotiation between the reform communists and the democratic opposition in which strategic considerations about their future positions determined the mindset of all relevant political actors. For candid consultations with the citizens remained less room, citizens' participation was in general less desired by the parties. The democratic opposition feared an inclusive deliberative process for two reasons. On the one hand, a nation-wide deliberation could have been manipulated by the Communist given the fact they possessed what the opposition at that time still missed: power resources, and they could lose control on the process of democratic transformation. On the other hand, competition among democratic leaders started well before the first democratic election campaign in spring 1990 which impeded not only a deliberative turn in the constitution making process of 1989 but created a highly fragile cooperative willingness among them. Furthermore, it should be also noted, that deliberation still hasn't been such a buzzword in Central Europe of the early 90's as it became worldwide two decades later.

Surely, a referendum held even before the first democratic elections might (delusively) indicate some kind of a nation-wide deliberation about the most important and pressing issues of the constitution making process: initiatives are apt to channel interests and opinions upstream and could encourage discussions in elite circles and among ordinary citizens. Nevertheless, the 1989 referendum could not be considered as an element of candid deliberation on the future constitution of Hungary since the Round Table Talk discussions and negotiation on the most important changes of the constitution has been finished at the time of the referendum (26th November 1989). The constitutional amendment has been adopted by the last Communist parliament, and the changes came into effect as early as 23rd October 1989. The referendum held one month later on four questions could be evaluated only as an instrument of the political competition heading to the first democratic elections after the fall of Communism in April 1990. Furthermore, three of the four proposals were at the time of the referendum accomplished facts, and only the question on whether the president of the republic should be elected directly or indirectly had a real stake. While this question could be considered as a typical question of constitutional referendums and turnout on referendums has never been higher in Hungary (almost 60% of the qualified citizens casted their votes), the main problem with the deliberative part of the story was not only a missing democratic public sphere in 1989 but also the fact that one of the main parties of the democratic opposition called for a boycott. Doubtless, discouraging people from participation on a referendum has an effect on the debates in electoral campaign, partly diverting attention, partly decreasing interest in debate. All in all, and in spite of the record level of turnout, this referendum did not contributed to a deliberative turn in the constitution making process from 1989.

A second chance was given to the political elite in 2010, as Fidesz party won a two-third majority and with it a power to change, amend and rewrite the Hungarian

constitution. As for the process, this time it was more open than in 1989, but it certainly did not meet most of the normative criteria developed in the meantime in political science literature and legal scholarship. Nevertheless, some rudimentary deliberative moments could be once again pointed out which were constrained by the political power relationships and political realism of the governing party.

The constitution making process in 2010/2011 was a staggered, several times interrupted and, consequently, incoherent one which had little effect on the final outcome, i.e. on the new Fundamental Law of Hungary. Directly after the landslide victory, the second Orbán government set up a small advisory committee (consisted in former intellectuals, legal scholars and scientist) which had the task to give advise directly to the prime minister on how the new constitution of Hungary should look like. Little publicity was given to this body, and at the end nobody knew what kind of influence this small advisory committee on the new Fundamental Law had. It is mainly argued that it was rather insignificant in the scope.

As a second step, an ad hoc parliamentary commission was set up with the task of travaux préparatoire and drafting the framework of the new constitution. This committee invited a wide range of scholars, experts from the public sphere to submit proposals which will be discussed in the ad hoc commission. No sooner the first proposals have been arrived, left-wing and green opposition parties left the commission as a protest against the constitutional amendments, adopted by the right-wing two third majority, which overwrote some of the most recent decisions of the Hungarian Constitutional Court. While the commission continued its work without the left-wing and green MPs, it was once again not clear which proposals coming from the public sphere were included and why into the final report of the commission. Even more disappointing was the destiny of the report of the commission, since after having been adopted it landed practically in the dustbin of the Hungarian parliament. Thus public involvement became not only obsolete, but completely neglected by January 2011 as the commission finished its work.

As a third stage, the government started a national consultation on the constitution and, at the same time, asked the parliamentary factions to prepare their own version of a draft constitution on which a debate should take place in the parliament. This time public involvement was limited to answering 12 questions (multiple choice) – some of them had a real stake, others were rather included to reinforce the governing party's position (see Table 1 on the national consultation on the constitution). There were no events held to reach out to the public thus the participatory dimension was this time already narrowed down to sending back the answers to the questionnaire by mail. As no face-to-face public hearing or discussions were organized, the only way citizens could communicate their views was replying to the questionnaire. The balance between deliberation and interest aggregation has certainly shifted, but still several questions served deliberative aims even if the agenda setting dimension and the participatory dimension was clearly narrowed down through the neglect of open ended questions (see Table 1).

Incremental Constitution-Making

Deliberative Events* And Incidents

In 2011 there was an incidental process included as part of the formal constitution-making: the Hungarian government started a national consultation on the constitution and at the same time, the government asked the parliamentary factions to prepare their own version of a draft constitution on which a debate should take place in the parliament.

As for the deliberative dimension of the process the “Citizens’ Questionnaire on Fundamental Law” involved the public into answering 12 (multiple choice) questions. As no face-to-face public hearing or discussions were organized, the only way citizens could communicate their views was replying to the questionnaire. Several questions served deliberative aims even if the agenda setting dimension and the participatory dimension was clearly narrowed down through the neglect of open ended questions (see Table 1).

Table 1: Questions and most supported responses of the "Citizens' Questionnaire on Fundamental Law" (Number of responses: 920 000)

Question	Number of answer options	Most popular answer (%)	Policy impact
Q1: Some people say that the new Hungarian constitution should only declare the rights of citizens and not obligations. Others argue that, in addition to securing rights, the most important civic obligations that express our responsibility to the community (work, learning, defense, protection of our environment) should be included in the document. What do you think?	3	In addition to rights, the new Hungarian constitution should also include civic obligations. (91%)	Yes
Q2: Some people suggest that the new Hungarian constitution should limit the level of indebtedness of the state, thereby taking responsibility for future generations. Others argue that there is no need to require such guarantee. What do you think?	4	The new Hungarian constitution should set a maximum level above which public debt should not rise. This limit should be respected by all future governments in all circumstances. (53%)	Yes
Q3: Some people suggest that the new Hungarian constitution should protect common values such as family, order, home, work, and health. Others don't think this is necessary. What do you think?	4	In addition to the protection of human rights, the new Hungarian constitution should protect commonly accepted social values (work, home, family, order, health). (91%)	Yes

<p>Q4: Some people suggest that in accordance with the new Hungarian constitution parents who raise a minor child, may exercise their children's right to vote in some way. What do you think?</p>	3	<p>According to the new Hungarian constitution, parents or families with minor children should not be entitled to exercise further voting rights. (74%)</p>	No
<p>Q5: Some people suggest that the new Hungarian constitution should not allow government to tax the costs of raising a child (ie. the cost of raising a child should be recognized by tax system). Others argue that this is not necessary, and that governments should be allowed to tax these costs. What do you think?</p>	4	<p>The new Hungarian constitution should not allow the government to tax the costs of raising children. (72%)</p>	No
<p>Q6: Some people suggest that the new Hungarian constitution should commit to future generations. Others say that no such commitment is required. What do you think?</p>	3	<p>The new Hungarian constitution should include a commitment to future generations. (86%)</p>	Yes
<p>Q7: Some people suggest that the new Hungarian constitution should allow public procurement or state support only for companies with transparent ownership structure. What do you think?</p>	3	<p>According to the new Hungarian constitution only those enterprises should be allowed to get state support or to take part in public procurement opportunities, whose ownership structure is transparent and all owners can be identified. (92%)</p>	No
<p>Q8: Some people suggest that Hungary's new constitution should express the value of national cohesion to Hungarians living beyond the borders, others do not think it is necessary. What do you think?</p>	4	<p>The new Hungarian constitution should express the value of national belonging to Hungarians living beyond the borders and oblige the government to protect this value. (61%)</p>	Yes
<p>Q9: Some people suggest that Hungary's new constitution should protect the natural diversity of the Carpathian Basin, animal and plant species, and the Hungaricums. What do you think?</p>	4	<p>The new Hungarian constitution should protect both the natural environment and traditional species. (78%)</p>	Yes

Q10: Some people think that the new constitution should protect national wealth, especially land and water resources. Others do not consider it important. What do you think?	3	The new Hungarian constitution should protect national wealth. (97%)	Yes
Q11: Some people suggest that Hungary's new constitution should allow courts to impose actual life imprisonment for high-severity crimes. What do you think?	3	The new Hungarian constitution should allow the courts to impose actual life imprisonment for crimes of high severity. (94%)	Yes
Q12: Some people suggest that Hungary's new constitution should make participation compulsory for anyone summoned to a hearing by a parliamentary committee of inquiry and to impose a penalty on those who stay away. What do you think?	3	The new Hungarian constitution should make participation compulsory for a person who is summoned to a parliamentary committee of inquiry. (83%)	No

National Consultation had consultatory power. As for its political uptake, impact the 2011 questionnaire was a mixture of questions based on sincere curiosity of the decision-maker and questions which were formulated with latent suggestions implicitly promoting the “right answer”. The questions on plural or family voting (Q4) and on limiting the state debt (Q2) fall certainly in the former category, while the question on entrach of the family in the constitution in the second one. As a third category we can mention questions which were low-profile enough in the sense that they weren’t supposed to implicate heavy debates in the Hungarian electorate (see questions number 7, 9 and 10 for example). Nevertheless, it is important to stress that decision-makers included regulations into the new Fundamental Law which reflected the results of the National Consultation. However biased the answers might have been due to the self-selection of participants in the National Consultation process², the options which gained an overwhelming majority as far as questions number 1, 2, 3, 6, 8, 9, 10 and 11 have been more or less accurately included into the new constitution. The overwhelming majority of respondents rejected the idea of plural voting right and the new constitution didn’t change the one citizen one vote principle, thus the answers to question 4 have been also taken into account by the decision makers. Questions number 5, 7 and 12 did not have any consequences as far as policy implementations are concerned.

² I can be assumed with good reason that most of the respondents are core supporters of Fidesz-KDNP.

Challenges and next developments

In Hungary, the spread of democratic innovations to complement the institutions of representative democracy is limited. Most established innovations (e.g. national and local referendum) are controlled by party politicians, citizens' successful bottom up initiatives are exceptional. Although it is not related to the country's Constitution Making, the phenomenon of Deliberative Democracy in Hungary is not without precedent.

The first documented citizens' assembly was organized by the European Commission Representation in Hungary between 1 and 3 December 2006. In connection with the future of the European Union 25 randomly selected Hungarian citizens could express their opinions about three topics: 1. energy and the environment, 2. family and social well-being, as well as 3. immigration and the role of Europe in the world. The outcome of the consultation was summarized into a national report. Together with other Member States' reports, the document formed the basis of a document called "European Citizens' Perspective on the Future of Europe" prepared for the European Parliament.

In May 2008, in the Kaposvár Subregion a representative survey was conducted (Lengyel, Göncz, Vépy-Schlemmer, 2012) on the European Union, on unemployment and the economic situation. Later, the 435 respondents were invited to a citizens' council. The event was attended by 108 people who participated in small group conversations with experts and then they completed a questionnaire similar to a previous survey. More than three-quarters of the participants said that the event was an incentive for them to participate in public debates while more than two-thirds of the participants said that it helped them to communicate better and understand others attitude; some of the participants highlighted that after the event they had a better understanding on the public debate about employment and their knowledge about unemployment and the European Union have expanded.

“The new participatory tools of EU citizens” was the name of the citizens' assembly organized by DemNet Foundation for Development of Democratic Rights under the Europe for Citizens program's Citizens Assemblies for Europe project, where participants were selected randomly and it took place on 3 December and 4 December 2018 in Budapest. The project has shown that citizens want to be constructively involved in decisions about complex issues of the European Union.

As a recent development, a Citizens Assembly was organized by DemNet and Sortition Foundation in cooperation with Budapest City Council³. Fifty randomly selected citizens of Budapest debated over 4 days about the topic of climate change in September 2020. The results of the consultation contribute to the review of the capital's climate strategy.

Recent political changes brought democratic innovation into the Hungarian political system as during the 2019 municipal elections parties of the opposition

³ <https://demnet.hu/en/projektek/budapesti-kozossegi-gyules-a-klimavaltozasrol-2020/>

managed to turn municipal elections into ‘a referendum against the government’. Parties of the opposition joined their forces in Budapest and in bigger cities of the country. Governing together, those parties strengthen their social embeddedness by developing a number of new practices at local level, experimenting with organizing Citizens’ Assemblies and Participatory Budgeting.

References & Sources:

- Arato, Andrew (2016): *Post Sovereign Constitution Making. Learning and Legitimacy*, Oxford: Oxford University Press.
- Lengyel, György – Göncz, Borbála, and Vépy-Schlemmer, Éva (2012): Temporary and Lasting Effects of a Deliberative Event: the Kaposvár Experience. *In: Andrew Ryder and Zoltán Szántó (eds). Social Resources in Local Development – Conference Proceedings*. Corvinus University of Budapest, Institute of Sociology and Social Policy, Budapest. pp. 43-67.
- Pállinger, Z.T. (2018): Direct democracy in an increasingly illiberal setting: the case of the Hungarian national referendum. *Contemporary Politics* 25(1), 62-77
- Tóth, Gábor Attila (ed.): *Constitution for a Disunited Nation: On Hungary's 2011 Fundamental Law* (Budapest – New York: Central European University Press 2012)