

JOGI- ÉS TÁRSADALOMTUDOMÁNYI KÖZLEMÉNYEK
A KÖZÖSSÉGEK SZOLGÁLATÁBAN V.

LEGAL AND SOCIAL STUDIES
ON THE SERVICE OF THE COMMUNITIES V.

RÓBERT SASVÁRI

**EVOLUTION OF THE NATIONAL REFERENDUM
REQUIREMENTS IN HUNGARY**

TUDATOSAN A KÖRNYEZETÜNKÉRT EGYESÜLET
CONSCIOUS FOR OUR ENVIRONMENT ASSOCIATION

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Forewords

According to Article B) Section (4) of the Fundamental Law of Hungary, “The power shall be exercised by the people through elected representatives or, in exceptional cases, directly”. The means of direct exercise of power is the referendum, which has been in the focus of political and public interest in Hungary almost continuously since the change of regime in 1990. A referendum or a popular initiative allows the people to "seize" the direct decision-making at any time. However Article 8 Section (3) of the Fundamental Law of Hungary lists the issues in which a national referendum may not be held. Essentially this can be understood as a rule of competence, because there is no place for the direct will of people on what cannot be held in a national referendum, but it has to be decided by the National Assembly. The Fundamental Law lists in ten points the subjects in which a referendum may not be held and on the basis of which the National Election Commission (hereinafter referred to as: NEC) after an in-depth examination refuses to certify the question proposed for referendum by its resolution. After presenting the legislation, this volume describes who can initiate a national referendum. The initiator should formulate and submit the question. He then presents the process of the referendum procedure, the rules for authenticating the issue and collecting signatures, and the ordering and setting of a national referendum based on these. If the issue complies with the law and the collection of signatures was also regular, then a valid and

effective referendum can give effect to the instrument of direct exercise of power. The volume then deals with topics excluded from the referendum. The subjects are generally in line with those set out in the European constitutions and apply to the classic prohibited subjects. We can find out which of the prohibited subjects most often lead to the refusal to authenticate the referendum question in Hungary.

**Part I – The general requirements of referendum in the
Hungarian regulation**

1. *Legal background*

The Hungarian Fundamental Law renewed the rules of the national referendum with its entry into force on 1st of January, 2012. It abolished the opinion expressing referendum and the institution of popular initiative¹. The detailed rules for the national referendum initiative are set out in Act CCXXXVIII of 2013 on Initiating Referendums, the European Citizens' Initiative and Referendum Procedure² (hereinafter referred to as: *Nszftv.*), which entered into force on 18th of January, 2014. The new referendum act sets out the rules for the national referendum procedure in accordance with the provisions of the Fundamental Law.

The Fundamental Law broadened the circle of those who are entitled to vote on the national referendum, ensuring the right for Hungarian voters abroad to participate as well. It also reinstated the previous regulation on the validity of referendum, i.e. it requires the participation of more than 50% of voters as a condition of validity. The Fundamental Law slightly modified the scope of prohibited objects, as well as the rules for initiating a referendum and the rules of the binding power thereof. The *Nszftv.* regulates the rules for initiating and conducting local and national referendum within an

¹ Elżbieta Kuźelewska: How far can citizens influence the decision-making process? Analysis of the effectiveness of referenda in the Czech Republic, Slovakia and Hungary in 1989–2015. *Baltic Journal of European Studies* 5, no. 2 (2015). 175-176.
DOI: <https://doi.org/10.1515/bjes-2015-0019>

² Victor, Cuesta-López: A comparative approach to the regulation on the European Citizens' initiative," *Perspectives on European Politics and Society* 13, no. 3 (2012) 257-260.
DOI: <https://doi.org/10.1080/15705854.2012.702571>

uniform approach on procedural framework, and rectifies the omissions previously established by the Constitutional Court³, with the concerning subject of terms of legal remedy, issues with same content and the revocability of the initiative.⁴

According to the above-mentioned legislation, there are two types of national referendum in Hungary:

1. Compulsory referendum: referendum must be held if it is initiated by 200,000 voters,
2. Optional referendum: if the referendum is initiated by the President of the Republic, the Government or 100,000 voters, the Parliament is free to decide to order the referendum.

In order to comprehensively inform the voters, the proposed referendum questions submitted by the initiators are published by the National Election Office (hereinafter referred to as: NEO) on its official website.

³ Laszlo, Sólyom, et al.: *Constitutional judiciary in a new democracy: the Hungarian Constitutional Court*. Michigan, University of Michigan Press, 2000. 371-375.
DOI: <https://doi.org/10.3998/mpub.16423>

⁴ Adrián Fábián: A Nemzeti Választási Bizottság szerepe és gyakorlata az országos népszavazási kezdeményezések kérdéseinek hitelesítésében. In: *A népszavazás szabályozása és gyakorlata Európában és Magyarországon : tanulmánykötet a Nemzeti Közszerológiai Egylet és a Nemzeti Választási Iroda 2015. szeptember 24-én rendezett közös konferenciáján elhangzott előadásokból*, [Regulation and practice of the referendum in Europe and Hungary. Study volume from the presentations given at the joint conference of the National Civil Service University and the National Electoral Office on 24 September 2015.] Eds: Krisztián Gáva, and András Téglási. Budapest, Nordex, 2016. 123-136.

2. Initiator of the national referendum

Depending on who initiates the national referendum, we can talk about voters' initiative or a referendum initiated by the Government or the President of the Republic. At least 100,000 voters can initiate a national referendum. The collection of signatures shall be coordinated by the organizer of the initiative. Organizer of national referendum initiative can be any adult Hungarian citizen who has not been disenfranchised by court from the exercise of right to vote and has Hungarian address or lack of Hungarian address he/she has been entered in the central electoral register upon his/her request. In addition to natural persons, political party or other association may also be initiator, but only in matters subject to the scope of activities registered in its memorandum of association. An initiative may have several organizers. In this case, one person shall be appointed who is entitled to liaise with the election bodies, such as the NEO or the National Election Commission (hereinafter referred to as: NEC), on behalf of the organizers. The Government or the President of the Republic may also initiate a national referendum. However, an important difference is, that while the voters' initiative may be binding or optional depending on the number of signatures, the initiative of the Government and the President of the Republic is always optional, i.e. the Parliament has the right to decide to order

or to refuse to order the referendum⁵. Before commencing the collection of signatures the proposed referendum question shall be submitted to the NEC for certification, on the template of the signature sheets provided for this purpose. There can be only one question on the signature sheet. The template of the signature sheet of the national referendum is stipulated in KIM Decree 37/2013. (XII. 30.). When submitting a question, the private individual organiser shall give his name, home address and personal identification number to the National Election Commission, if he/she has no personal identification number, the number of the document proving his/her identity, and the association shall attach its deed of foundation. In order to preserve the constitutional function and seriousness of the national referendum initiative, the *Nsztp.* stipulates that the organizer of a voters' initiative shall submit the question on the signature sheet with signatures of support from at least twenty voters whose maximum number must not exceed thirty. If the organizer of the initiative is a private individual, his/her signature must also be included in the required 20 support signatures. The initiative can be supported by the signature of the person who has the right to vote in the national referendum, i.e. any adult Hungarian citizen who has not been disenfranchised by court from the exercise of right to vote and has Hungarian address or has no Hungarian address but he/she has been entered in the central electoral register upon his/her request.

⁵ Suksi, Markku: *Bringing in the people: A comparison of constitutional forms and practices of the referendum*. Dordrecht, Martinus Nijhoff Publishers, 1993. 5-15.

The collection of supporting signatures has been previously considered as data processing and had to be reported to the Hungarian National Authority for Data Protection and Freedom of Information (*NAIH*). The data protection register has been abolished by the Act XXXVIII of 2018 on the amendment of Act CXII of 2011 on the right to informational self-determination and on the freedom of information related to the data protection reform of the European Union and on the amendment of other related laws entered into force on the 26 of July, 2018, since then the data processing related to the voters giving their supporting signatures to the referendum initiative shall not have to be reported to the NAIH⁶. The requirement for a supporting signature of at least twenty but no more than thirty voters was not included in the previous legislation, so it may have occurred that an individual person submitted 140 questions on his/her own at one time, in handwritten form, on a checkered booklet. The first referendum initiative on the expansion of the Paks Nuclear Power Plant after the *Nsztp.* entered into force was submitted without supporting signatures⁷. This later decisively effected the certification of the initiative, namely after the rejection of the NEO, the NEC had to

⁶ The limits and a framework of data protection issues, see: Paterson, Moira, and Maeve, McDonagh: Data Protection in an era of Big Data: The challenges posed by big personal data. *Monash University Law Review* 44, no. 1. (2018) 1-17.

⁷ Viktor, Glied: Social Conflicts in the Shadow of the Paks Nuclear Power Plant. *Geographical Locality Studies* 1, no. 1 (2013) 209-210.

Balázs, Hohmann: Civil szervezetek és a társadalom részvételi lehetőségei a környezet védelmét érintő hatósági eljárásokban,” [„NGO’s and the society of participation opportunities in the environmental administrative proceedings.”] In: *XIII. Kárpát-medencei Környezettudományi Konferencia, [13th Carpathian Basin Conference for Environmental Sciences]*. Eds: Lívia-Irma Szigyártó, and Attila Szikszai. Cluj-Napoca, Sapientia University, 2017. 280-285.

refuse to certificate the question submitted with valid supporting signatures due to the collision with a prohibited subject related to the international agreement concluded in the meantime.

3. Formulation of the referendum question

The content of the referendum question is governed by the following main requirements: the question proposed for referendum shall concern subjects within the tasks and competences of the National Assembly, shall be clear and the wording and content shall be in accordance with the constitutional purpose of the legal institution of the national referendum⁸. Thus, a national referendum may be held on matters on which the National Assembly is entitled to make decisions. However, there are so-called prohibited subjects that cannot be the subject of a referendum despite the fact that they fall within the tasks and competence of the National Assembly.

According to Article 8 of the Fundamental Law of Hungary no national referendum may be held on:

- a) any matter aimed at the amendment of the Fundamental Law;
- b) the content of the Acts on the central budget, the implementation of the central budget, central taxes, duties, contributions, customs duties or the central conditions for local taxes;

⁸ Rocher, François, and André Lecours: Does the wording of a referendum question matter?. In: *The Routledge Handbook to Referendums and Direct Democracy*. Eds: Laurence Morel, and Matt Qvortrup. New York, Routledge, 2017. 227-230.

- c) the content of the Acts on the elections of Members of the National Assembly, local government representatives and mayors or Members of the European Parliament;
- d) any obligation arising from international treaties;
- e) person- and organisation-related matters falling within the competence of the National Assembly;
- f) the dissolution of the National Assembly;
- g) the dissolution of a representative body;
- h) the declaration of a state of war, state of national crisis and state of emergency; furthermore, on the declaration and extension of a state of preventive defence;
- i) any matter related to participation in military operations;
- j) the granting of amnesty.

Another important requirement against the question proposed for the referendum is to be unequivocal both for the voters and for the National Assembly. The former requirement is called voter clarity, while the latter is called legislative clarity. From the point of view of voter clarity, the referendum question is clear if it is well understandable, the question complies with the rules of Hungarian orthography and its essence is clear, its wording is precise, understandable in one way only and thus it can clearly answered, its consequences are clear (so-called predictability), voters can assess the effects and possible consequences of the referendum at the

moment of the decision. It should be emphasized that precise wording means intelligibility in the ordinary sense, i.e. the use of the relevant professional language is not obligatory for the initiator of the referendum. If the initiator takes the possibility to use technical terms, he/she should seek to make the question understandable to all voters. From the point of legislative clarity it is important that the question is clear to the National Assembly as well, i.e. it permits the National Assembly to decide whether it has the obligation to make a law, and if so, with what kind of content it is obliged to make the law. The constitutional purpose of the institution of national referendum is to enable people of the country, as the holder of power, to directly make decisions in the most important issues affecting the fate of the country. Referendum question containing any unworthy expression or content to the legal institution of referendum shall not be ordered to referendum. According to Section 9 subsection 2 of the *Nsztv.* question proposed for referendum shall not contain any obscene expression or any other expression shocking in any other way.⁹

⁹ Maija Setälä: On the problems of responsibility and accountability in referendums. *European Journal of Political Research* 45, no. 4 (2006) 699-711.
DOI: <https://doi.org/10.1111/j.1475-6765.2006.00630.x>

4. Submission of the referendum question

The question proposed for the referendum shall be submitted to the NEC in person for the purpose of certification, at its address. Individual organizer may submit an initiative in person or through a proxy, or in case of a political party or other association the initiative may be submitted by the legal representative or a person authorized to represent the legal representative (for example a proxy). The question can be sent by post. Since the supporting signatures can only be attached on original document, it is not possible to submit a referendum initiative by email or fax. The NEO publish the submitted questions together with the name of the organizer and the date of submission. Although it is not mandatory, but it is advisable to collect the 20-30 supporting signatures on the signature sheets provided by the NEO to ensure that the data at the time of submission is complete. Signature sheet for the signature of voters with a personal ID differs from the signature sheet for the signature of voters living abroad who do not have a personal identification. The preliminary review of the voters' initiative is carried out by the president of the NEO within 5 days, during which he reviews whether the referendum initiative complies with the legal requirements for formal conditions (e.g.: the existence of required number of valid supporting signatures), the question is in accordance with the constitutional purpose of the national referendum, does exist the prohibition that no other question with the same content shall be submitted. Based on the

preliminary review the president of the NEO lays the referendum question before the NEC if it complies with the legal requirements, or rejects the question by means of resolution if the initiative does not meet any of the legal requirements. If the president of the NEO rejects the question, the decision shall be sent to the organizer by short route (if e-mail/fax contact is available) and by post as well on the day it is taken. NEO also publishes the decision on its official website¹⁰. There is no appeal against the decision of the president of the NEO, but the organiser may re-submit the question within fifteen days after the publication of the resolution. In case of re-submission, the NEC will put the adjudge of referendum question on the agenda within 30 days after the re-submission (except when the number of valid supporting voters does not attain 20).

¹⁰ Balázs Hohmann: The Principles and Fundamental Requirements of the Transparency on the Public Administrative Proceedings. In: *Proceedings of the IIER International Conference Dubai*. Eds: Padma Suresh. Dubai, International Institute of Engineers and Researchers, 2019. 1-2.

5. Authenticate the question

The NEC shall examine, as to its substance the referendum question within 30 days of its submission, in the framework of whether the referendum initiative complies with the formal and content requirements¹¹ set out in the legislation. Based on these, the NEC can make the following decisions:

1. certifies the referendum question if it complies with the legal requirements, i.e. the provisions of the Fundamental Law and the referendum act;

2. rejects the initiative without an in-depth examination if it contains an obscene expression or any other expression shocking in any other way;

3. refuses to certify the referendum question if it does not meet with a legal requirement, for example e.g. the question does not fall within the competence of the National Assembly, the question falls within the scope of prohibited objects stipulated in the Fundamental Law, the submission of the question did not comply with the requirements of the referendum act, the question is not unequivocal, the question with same subject was submitted under the parallel moratorium.¹²

¹¹ Robert Sasvári: The Procedure of Authentication of the Question of the Quota-Referendum-From a Practitioner's Perspective. *Jura 2* (2017) 411-412.

¹² Zoltán T. Pállinger: Direct democracy in an increasingly illiberal setting: the case of the Hungarian national referendum. *Contemporary Politics* 25 no. 1 (2019) 62-77. DOI: <https://doi.org/10.1080/13569775.2018.1543924>

Questions with same subject cannot be certified after the NEC has determined by a final resolution that the number of valid signatures of an earlier submitted and certified question with the same content is at least two hundred thousand, or the National Assembly has finally ordered the referendum on the basis of the President of the Republic, the Government or such an initiative where the number of valid signatures attains one hundred thousand but does not attain two hundred thousand. The resolution of the NEC will be sent to the organizer by short route (e-mail/fax) and by post as well exactly the same day the resolution is taken. The resolution of the committee is published on the official website of NEO on the exact day of resolution. In case the NEC has certified the question the resolution is published in the Official Gazette of Hungary¹³. The Official Gazette of Hungary is a periodical, the official gazette of Hungary, edited by the Ministry of Justice, publishing legislation and other legal documents that do not qualify as legislation. If the NEC refuses to certify a question about its resolution a notice is published in the Official Gazette of Hungary. A judicial review request against the resolution of NEC in connection with the certification of the referendum question shall be addressed to the Curia, the supreme judicial forum of Hungary, by submitting it to the NEC in person, or by post, or electronically to the e-mail address of NEO within 15 days after the publication of the resolution on the official website. Legal representation is

¹³ András, Bencsik, et al.: A közigazgatás és a média kapcsolódási pontjai,” [The connection between the public administration and the media,] *Pro Publico Bono* 3, no. 4 (2015): 61-65.

mandatory in judicial review procedure. A person with a professional examination in law may act in his/her own case without legal representation. While submitting a judicial review request electronically, the electronic document must be signed by the legal representative with a qualified electronic signature. Court procedure is not exempt from duty upon its subject matter, but the submitter of the application of legal remedy has fee deferral due to the subject matter of the action. The essence of cost deferral is that it exempts of duty advance payment and the advance payable of costs incurred during the procedure, but not from the payment of costs, i.e. the Curia may oblige the applicant to pay thereof in its decision. This is helpful however, because the procedure can be initiated and payment obligation may arise at the end of it. The Curia shall adjudge the judicial review request within ninety days either upholding or altering the resolution of the NEC. The Curia publishes its decision on the exact day of the decision making on its official website. In addition, the Curia publishes its decision in the Official Gazette of Hungary as well, unless it upholds the resolution of the NEC to refuse to certify the question, while in this case a notice of its decision will be published in the Official Gazette of Hungary. The decision of the Curia shall not be subject to further legal remedy. If the NEC rejected the initiative without an in-depth examination while it contains obscene expression or any other expression shocking in any other way, the Curia adjudges the judicial review request within 30 days. The Curia shall either uphold the resolution of the NEC or instruct the Commission to conduct a new procedure.

6. *Signature collection*

The voter's national referendum initiative can be signed on the signature sheet issued by the NEO after the final certification of the question. The NEO indicates the question proposed for the referendum on the signature sheets and assigns each sheet with a unique serial number. Thereby the recommendation sheet is unique and identifiable, cannot be copied, and is forgery-resistant. The sheets must be requested by the organizer, indicating how many sheets is needed for the signature collection. It is advisable for the organizer to submit the request for the signature sheets immediately after the decision on the certification of the question has become final. NEO will provide the required sheets forthwith, but not later than five days. The organizer may request additional signature sheets at any time during the signature collection process. A separate signature sheet is provided for voters with a personal identification number and voters without a personal identification number. Disregarding to do so will result the invalidity of the signature. Signatures can be collected for 120 days from receipt of the sheets. A national referendum initiative can be supported by any adult Hungarian citizen by signing it who has not been excluded by court from exercise of right to vote and has a Hungarian address or lack of Hungarian address he/she has been entered in the central electoral register upon his/her request¹⁴. The voter's family and

¹⁴ Yanina Welp: Recall referendum around the world: origins, institutional designs and current debates. In: *The Routledge Handbook to Referendums and Direct Democracy*. Eds: Laurence Morel, Matt Qvortrup. New York, Routledge, 2017. 454-460.

first name as well as his/her personal identification number, voters who do not have personal identification number the number of the document proving their Hungarian citizenship (passport, certificate of naturalization or citizenship certificate) and his/her mother's name must be written in a legible form on the signature sheet. In addition, the signature sheet must be signed by the voter in person. If the voter's name or his/her mother's name is so long that it does not fit in the available box, the name can be continued on the next line of the sheet. It is very important that voters shall provide their data correctly as only that signature can be accepted as valid in which the indicated data correspond to the data of the central electoral register during the verification of signatures. The central electoral register, the register of citizens without voting right, the register of polling districts and electoral districts, the register of nominating organizations, candidates and lists, and the register of representatives falls within the scope of national data assets, a computer center for the operation of the IT infrastructure of the state registers managed by the Minister of Interior and a part of the election information system based on computer workstations connected to it in a secure network connection. The above rule is intended to ensure the legitimacy of the referendum, as the matches of the data shows whether the initiative was signed actually by the person entitled to it. A voter may support the initiative by a single signature, his further signatures shall be invalid. Signatures can be collected by anyone who has a personal identification number or a document certifying Hungarian citizenship. On the signature sheet, the person collecting the signature must also indicate his/her name

and personal identification number or the number of his/her document certifying his/her Hungarian citizenship, as well as his/her signature. It is very important that the person collecting signature shall provide his/her data on the signature sheet correctly as the case of an incomplete or incorrect data will result the invalidity of all supporting signatures on the sheet. Signatures may be collected anywhere without harassing voters, with the exceptions listed below. No signature shall be collected at the workplace of the person collecting or providing the signature during working hours, or while one or the other is fulfilling his or her obligations to perform work arising from employment or other legal relation concerning performance of work, from persons in service in the Hungarian Armed Forces or a central administration body at their service post or while they are performing their duty, on means of public transport, in the official premises of state, local governments and minority self-government bodies, on the premises of healthcare providers, in higher education and public education institutions. The restrictions mentioned above are intend to ensure that the signature is not influenced. Locations are excluded where the person giving the signature may be vulnerable to the person collecting the signature. It is forbidden to give or promise money or any other benefit to the voter for his/her signature. Voter giving his/her signature shall not ask for money or other advantage in return for giving his/her signature nor accept an advantage or a promise. However, during the collection of signatures, the remuneration by the organizer to the persons performing the collection of signatures is not prohibited. In the period between the

fortieth day before the date of the general election of Members of Parliament, Members of the European Parliament, municipal representatives and mayors, and representatives of national minority self-governments, and the fortieth day after the date of one or more of these elections, the collection of signatures shall cease. Where the organiser does not finish collecting the signatures until the fortieth day before the date of the election, he/she must hand over the signature sheets so far collected and signature sheets without signatures as well to the National Election Office not later than thirty-nine days before the date of the poll. In case of a failure to comply with this obligation, the NEC of its own motion shall impose a fine of one thousand forints for each signature sheet not handed over. The legal consequence of failing to meet the deadline, in addition to the fine imposed, the signatures on these sheets will be invalid. On the fortieth day after the date of the poll, the collection of signatures may continue, and the NEO shall hand over to the organiser new signature sheets. No additional signature sheet may be issued to the organizer and the sheets already issued shall be handed over to the NEO if the final resolution of the NEC has established that the number of valid signatures collected in support of another question on the same subject is at least two hundred thousand, or the National Assembly has ordered the referendum in a legally binding way on the same subject on the basis of the President of the Republic, the Government or voters' initiative supported by one hundred thousand valid signatures. The handed out signature sheets after reception within one hundred and twenty days may be submitted by the organiser or its representative on one

occasion to the NEO. At that time, but not later than 16.00 o'clock on the 120th day, all received signature sheets, i.e. signature sheets with signatures and without signatures must be handed over to the NEO. If the organizer fails to do so, the NEC will impose a fine of one thousand forints per sheet. There is no exculpation from the failure to meet the time limit. There is no impediment to the organizer to submit the collected signatures within 120 days, thereafter, but within 120 days to submit the not yet submitted sheets as well. As the issued sheets can only be submitted to the NEO on one occasion the signatures on the sheets submitted later cannot be verified, they are invalid, but so imposition of fine can be avoided. When submitting signature sheets the number of signatures submitted shall be stated or the number of signature sheets. The received signature sheets shall be handed over even if the organizer has not been able to collect the required number of signatures or if he/she does not wish to order the referendum. Within five days following the inconclusive expiry of the deadline for legal remedy against the decision to certify the question, or – in the case of a legal remedy – within five days following the communication – to the local election commission – of the decision of a county court to uphold the certification or to certify the question, the head of the local election office shall affix a certification clause to the template of the signature sheet, and shall hand it over to the organiser. As in the case of supporting signatures submitted for the certification of the question, in the case of the processing of signature sheets, due to the data protection register has been abolished by the Act XXXVIII of 2018 on the

amendment of Act CXII of 2011 on the right to informational self-determination and on the freedom of information related to the data protection reform of the European Union and on the amendment of other related laws entered into force on the 26 of July, 2018, the data processing related to the voters giving their supporting signatures to the referendum initiative shall not be reported to the NAIH¹⁵.

If the voter or the political party (or any other natural or legal person involved in the case) experiences an infringement of right related to the collection or verification of signatures may submit an objection in writing - in person, by letter, fax or e-mail - to the NEC within 5 days of the infringement. If the last day of the period does not fall on a working day, the period shall expire only at 16.00 o'clock on the next working day. The objection must contain an indication of the infringement (indication of legislation, legal section and subsection), evidence of the infringement (e.g. statement, document, photograph, testimony, material evidence), the name and address (registered office) and the postal notification address if it differs from his/her address (registered office) of the objection submitter, the personal identification number of the objection submitter, or if the voter living abroad does not have a

¹⁵ But the data recorded will nevertheless be considered personal data and will be subject to personal data protection rules, which will be even more strongly protected after the entry into force of the General Data Protection Regulation (GDPR), see for details: Bence Kis Kelemen, and Balázs Hohmann: A Schrems ítélet hatásai az európai uniós és magyar adattovábbítási gyakorlatokra,” [„The effects of the Schrems judgment on EU and Hungarian data transfer practices,”] *Infocommunication and Law* 13, no. 66-67 (2016) 64-70.

Hungarian address and personal identification number, the type and number of his/her document certifying his/her Hungarian citizenship or, in case of an organization the court registration number. The NEC will adjudge the objection within 5 days. If the last day of the time limit does not fall on a working day, the period shall expire only at 16.00 o'clock on the next working day. A judicial review request may be submitted to the Curia against the decision of the NEC within five days of the date of the resolution. The request for review shall be addressed to the Curia and submitted by letter or by electronic document to the NEC. Legal representation is mandatory in judicial procedure. A person with a professional examination in law may act in his/her own case without legal representation. While submitting a judicial review request electronically, the electronic document must be signed by the legal representative with a qualified electronic signature. Court procedure is not exempt from duty upon its subject matter, but the submitter of the application of legal remedy has fee deferral due to the subject matter of the action. The Curia shall adjudge the judicial review request within five days. If the last day of the time limit does not fall on a working day, the period shall expire only at 16.00 o'clock on the next working day. The decision of the Curia shall not be subject to further legal remedy.

7. Ordering and setting a referendum

If the number of valid signatures does attain at least one hundred thousand the president of NEC notifies the Speaker of the National Assembly of the result of the verification of signatures on the next working day of its resolution becoming legally final. The Speaker of the National Assembly shall announce the initiative to the National Assembly on the next day following the receipt of the information received from the president of the NEC. Thereafter, within 30 days, the National Assembly may decide as follows:

1. If the number of valid signatures reaches 200,000 (compulsory referendum¹⁶), the National Assembly must order the referendum.
2. If the number of valid signatures is between 100,000 and 200,000, or if the referendum was initiated by the Government or the President of the Republic (optional referendum), it falls within the competence of the National Assembly to decide to order or not a referendum¹⁷.

The decision on the order of the referendum will be published in the Official Gazette of Hungary. If the National Assembly has

¹⁶ Gábor Soós: Local government reforms and the capacity for local governance in Hungary. In: *Reforming Local Government in Europe*. Eds: Norbert Kersting, and Angelika Vetter. Wiesbaden, VS Verlag für Sozialwissenschaften, 2003. 243-250. DOI: https://doi.org/10.1007/978-3-663-11258-7_12

¹⁷ Fabio Ratto Trabucco: The evolution of referendum experience in Hungary. *Jura* 2, (2017) 208-215.

ordered a national referendum or refused to order the mandatory referendum, anyone may initiate a judicial review of the decision at the Constitutional Court within 15 days after the publication of the related decision. The application can only be based on a circumstance in which there was a significant change between the certification of the signature sheet and the ordering of the referendum, and which the NEC and the Curia could not take into account during the certification of the question. Thus, constitutional concerns solely about the content of the referendum question or related to the certification of the question cannot be invoked. The Constitutional Court makes its decision within 30 days, during the procedure it examines the conformity and legality of the resolution of the National Assembly with the Fundamental Law. In the event of a substantive examination, the Constitutional Court upholds the resolution of the National Assembly or, in addition to annulling the resolution calls the National Assembly to adopt a new resolution. The President of the Republic shall fix the date of the referendum. The date of the referendum shall be fixed within fifteen days after the inconclusive expiry of the deadline for legal remedy against the parliamentary resolution ordering the referendum, or – in the case of a legal remedy – after the adjudgment of that legal remedy. The referendum shall be called so that the day of the vote in Hungary falls between the seventieth and the ninetieth day after the day of the calling. The vote shall take place on Sunday. If a referendum on another question has been previously called, a referendum on the other question may be held at the same time if there are at least fifty days left until the date of

the referendum, and the holding on the same date of the referendum on the new question does not jeopardize the legal conduct of the voting. No national referendum shall be called on the day of the general election of, Members of Parliament, Members of the European Parliament, municipal representatives and mayors, and within a period of 41 days before and 41 days after that day. In this case the national referendum shall be called within a period of 131 days after the election. The decision on calling the date of the referendum shall be published in the Official Gazette of Hungary.

8. Effectiveness and binding force of the referendum

The national referendum is valid if more than half of all voters, i.e. voters with a Hungarian address and voters without Hungarian address but registered into the central electoral register vote validly. National referendum can be mentioned successful if more than half of the validly voting voters gave the same answer to the formulated question, i.e. there is no equality of votes. The decision made by a referendum is binding on the National Assembly for 3 years. In case the National Assembly is required to enact a law on the basis of the result of the referendum, it must fulfill this obligation within six months.

9. The issue of referendum initiatives on the same subject

Two questions are considered to have the same subject matter if they impose - even in part - the same or mutually exclusive obligation on the National Assembly, i.e. in case of two valid and effective referendums, the legislative body would be obliged to regulate the same legal relationship, either with the same or with different content¹⁸. Therefore identity does not mean the literal similarity or complete opposition of two questions, but the existence of identity in relation to the subject-matter wished to be regulated. In the interest of predictable procedure, in case of the submission of several referendum initiatives on the same subject, it is necessary to clarify which one prevails, i.e. in which question may be held a national referendum. The prohibition on submitting referendum questions on the same subject (the so-called parallel moratorium) was significantly eased with the amendment of the referendum act on 21 May, 2016. In the case of voters' initiatives, several question with the same subject may "run" in parallel until the signatures are collected. Whether the question proposed for the referendum has the same subject matter as a national referendum initiative that has already been adjudged, the NEC will make the decision in its question certifying resolution¹⁹. If several questions

¹⁸ David B. Magleby: Let the Voters Decide-An Assessment of the Initiative and Referendum Process. *University of Colorado Law Review* 66, (1994) 13-17.

¹⁹ Adrián Fábrián, and Emese Pál: Választási bizottságok működése Magyarországon, különös tekintettel a 2014. évi helyi önkormányzati választásokra," [„Operation of

on the same subject are certified, the NEO will inform upon this in writing by sending the final decision to the organizer of the first question. The NEO informs voters about initiatives on the same subject on the official website of the elections. No other question with the same content shall be submitted after a final resolution of the National Election Commission has stated that the number of valid signatures is at least two hundred thousand, until the resolution refusing to order the referendum has become final, until the referendum has been held, if the referendum is inconclusively, or until the expiration of the binding force of an earlier called national referendum on the same subject (for three years from the promulgation of the law made on the basis of the referendum). No question on the same subject may be submitted after the National Assembly has lawfully ordered a referendum on another question initiated by one hundred thousand voters, the Government or the President of the Republic until the referendum was held if the referendum was inconclusively, or until binding force (three years from the promulgation of the law passed on the basis of the referendum) of the a national referendum called earlier on the same subject. Following the submission of a voters' initiative, no other question with the same content shall be submitted by the President of the Republic or by the Government within sixteen days following the rejection by the president of the NEO if no re-

election committees in Hungary, with special regard to the 2014 local government elections,") In: *Választási dilemmák: Tanulmányok az új választási eljárás törvény novumai és első megmérettetése tárgyában* [Election Dilemmas: Studies on the Novias and First Competition of the New Electoral Procedure Act]. Eds. Ákos Cserny. Budapest, National University of Public Service, 2015. 38-45.

submission has been made, until the expiry of the deadline for submitting judicial review requests against the decision of the NEC concerning the certification of the question (on the 15th day after the publication of the resolution on the website www.valasztas.hu), if no judicial review request against the decision refusing to certify that question has been submitted, up until 0.00 o'clock on the day after the publication in the Official Gazette of Hungary the resolution of the Curia upholding the decision of the NEC to refuse the certification, or rejecting, without an in-depth examination, the judicial review request submitted against that decision, or altering the decision of the National Election Commission certifying the question, until the referendum initiative is withdrawn, (which is possible until the submission of signature sheets), until the deadline for the submission of signature sheets expires inconclusively, until the resolution refusing to order the referendum has become final, until the referendum has been held, if the referendum was inconclusively, or the expiry of the binding force of a national referendum held on the same subject earlier (for three years from the promulgation of the referendum law). In case of signature collection of several questions on the same subject the NEO will first check the signatures on the earliest submitted signature collection forms. If signatures are collected on several questions on the same subject and the number of valid signatures on signature sheets firstly submitted in time (so-called primary submission) is more than one hundred thousand, but does not reach two hundred thousand, and the decision establishing the result of signature verification has become final, until the 85th day after the primary

submission (so-called suspension submission deadline) all other signature sheets shall be submitted (so-called secondary submission) to the NEO by the other organizers. Failure to do so will result in the imposition of the usual fine (one thousand HUF/sheet). There is no exculpation either in case of failure to meet the time limit. During the secondary submission, the organizer (who submits the sheets secondly, thirdly, etc.) must declare that he/she requests the suspension of the collection of signatures, requests the verification of the submitted signatures, or withdraws his/her referendum initiative. If the organizer does not make a statement, the referendum initiative shall be deemed as withdrawn. The president of the NEO shall notify the Speaker of the National Assembly on the working day following the entry into force of the result of the verification of the signatures submitted and requested to be verified by the suspension submission deadline. This notification shall also include the final result of the verification the order of submission of the supporting signatures on the same subject submitted and verified until the suspension submission deadline. The National Assembly makes decision on the initiatives in the order of the submission of the sheets. The National Assembly may order only one referendum on a question with the same subject matter. From the day following the suspension submission deadline until the decision of the National Assembly on order of optional referendum, the NEO does not issue signature sheet. If the organizer has requested the suspension of the signature collection on the occasion of the secondary submission, the suspension shall be terminated on the

day the National Assembly decides not to hold an optional referendum, and within five days the NEO shall provide the organizer the requested number of signature sheets. From the date of the secondary submission until the handover of the signature sheets the 120-day time limit for collection is suspended. However, if the National Assembly has finally ordered the referendum on the first question submitted with at least one hundred thousand valid signatures, the suspended referendum initiative shall be terminated. If signatures are collected on several issues of the same subject and the final decision of the NEC establishes that the number of valid signatures collected in support of question submitted in time at first is at least two hundred thousand, for other referendum initiatives on the same subject the issuance of signature sheets will be suspended from the day after the resolution of the NEC becomes final and also the 120 days time limit for collecting signatures. Within 15 days of the entry into force of the Commission's decision establishing the existence of two hundred thousand valid signatures, the organizer collecting signatures on the same subject shall hand over all signature sheets to the NEO. Upon handover, the organizer may declare the withdraw of his/her referendum initiative. In case of failure with the obligation to hand over the sheets, the NEC acting ex officio, imposes a fine of one thousand forints per signature sheet. There is no exculpation in case of failure. But if on the other hand the decision of the National Assembly to order the referendum does not become final due to legal remedy, the suspension shall be terminated on the day following the publication of the decision of the Constitutional

Court. In this case, the NEO will provide the organizer the requested number of signature sheets within five days and the signature collection can continue. In the event that the NEC establishes by a final resolution that the number of valid signatures is at least two hundred thousand, or that the National Assembly has finally ordered a referendum on the basis of the President of the Republic²⁰, the Government or voters's initiative supported by one hundred thousand valid signatures, signatures collected and submitted in support of further referendum initiatives on the same subject are no longer verified by the NEO. However, despite the final resolution of the NEC establishing that the number of valid signatures has reached two hundred thousand, but due to legal remedy the decision of the National Assembly to hold a referendum does not become final, the NEO will carry out the itemized verification of the signatures collected in support of other referendum initiatives on the same subject following the publication of the decision of the Constitutional Court.

²⁰ Patrick, O'neil: Presidential power in post-communist Europe: The Hungarian case in comparative perspective. *The Journal of Communist Studies and Transition Politics* 9, no. 3 (1993). 180-195.

10. Summary of findings

The institution of a national referendum, as we have seen above, originally serves to enforce the will of the voters in Hungary, who can express their will and opinion on certain issues in this way between parliamentary elections. However, most of the initiatives do not lead to the actual holding of the vote. In Hungary, from 1989 to the present day only seven national referendums were held, on 26 November, 1989 the so-called "four-part referendum", on 29 July, 1990 on the direct election of the President of the Republic, on 16 November, 1997 about NATO accession, on 12 April, 2003 was the referendum on EU membership, in addition we can remember to the referendum of 5 December, 2004, the "referendum on visit fee" held on 9 March, 2008 and the "quota referendum" held on 2 October, 2016. One of the main reasons for holding a relatively small number of national referendums is that many initiatives do not have the ultimate goal of holding a referendum. This can be clearly seen from the fact that in countless cases the organizers do not start collecting signatures despite the final resolution of NEC on the certification of the question. Publishing their question on the website of NEO or in the Official Gazette of Hungary satisfactory for them. So we can say that the real goal of national referendum initiatives is usually to draw public attention to a problem or a political party supporting strata to be addressed during the political off-season. National referendums were tools of the political elite in the past as well to mobilize voters,

good opportunities for political parties to identify their own committed voters from the masses of voters through signature collections. The referendums did not function as an autonomous initiative of the voters. In the history of national referendums can be observed that the referendums ordered so far are usually initiated by the Government or political opposition parties, while unsuccessful referendum initiatives are mostly initiated by private individuals.²¹ In summary, it can be stated that the Hungarian referendum regulations are not among the strictest in an international context, the legal conditions of national referendum initiatives do not seem unachievable. However, the number of rejected initiatives is high. This may be due - among other things - to the fact that the challenge of a clear and prohibited subject non-affecting wording of the referendum question cannot be fulfilled by the majority of the initiators. In most cases questions asked in the referendum fail on the test of clarity, especially with regard to voters' clarity. We can therefore say that the current legal environment creates a more or less good basis for the exercise of direct democracy in Hungary. The possibility of initiating referendums is assured for a very broad scale, although clarity requirements and the prohibited subjects significantly limit concretely what question may be asked in the referendum.

²¹ Csaba Cservák: A politikai részvétel előmozdítása. In: *Jó állam jelentés*, [Report of *Good State Index*]. Eds: Tamás Kaiser. Budapest, Nordex, 2016. 107.

Part II – Excluded Subject from the Referendum

1. *Legal background*

Article 8 Section (3) of the Fundamental Law of Hungary lists the issues in which a national referendum may not be held. Essentially this can be understood as a rule of competence, because there is no place for the direct will of people on what cannot be held in a national referendum, but it has to be decided by the National Assembly.²² The Fundamental Law lists in ten points the subjects in which a referendum may not be held and on the basis of which the National Election Commission (hereinafter referred to as: NEC) after an in-depth examination refuses to certify the question proposed for referendum by its resolution.

The Fundamental Law entered into force on the 1st of January, 2012 and partly took over the wording of the previous Constitution, but partly amended them taking into account the decisions of the Constitutional Court. The subjects are generally in line with the content to European constitutions and concern the classical prohibited subjects. The prohibited subjects are as follows:

- a) any matter aimed at the amendment of the Fundamental Law;
- b) the content of the Acts on the central budget, the implementation of the central budget, central taxes, duties, contributions, customs duties or the central conditions for local taxes;

²² Nóra, Chronowski, and Attila, Vincze: Népszavazások uniós ügyekben és a magyar gyakorlat. [*Referendums on EU matters and Hungarian practice*]. *Közjogi Szemle*, 2019/1., 20-21.

- c) the content of the Acts on the elections of Members of the National Assembly, local government representatives and mayors or Members of the European Parliament;
- d) any obligation arising from international treaties;
- e) person- and organisation-related matters falling within the competence of the National Assembly;
- f) the dissolution of the National Assembly;
- g) the dissolution of a representative body;
- h) the declaration of a state of war, state of national crisis and state of emergency; furthermore, on the declaration and extension of a state of preventive defence;
- i) any matter related to participation in military operations;
- j) the granting of amnesty.²³

²³ *Summary report of the jurisprudence-analysing working group of the Curia of Hungary on cases related to legal remedy in election proceedings and referendum proceedings* Budapest, 2018. (hereinafter referred to as: Curia's summary report) 106.

2. Consideration, legal and judicial requirements of referendum related to the Fundamental Law amendments

The most significant restriction of the prohibited subjects is that no national referendum may be initiated in any matter aimed at or lead to the amendment of the Fundamental Law.²⁴ This prohibition has already been declared by the decision 2/1993. (I. 22.) of the Constitutional Court, the Constitutional Court of Hungary stated that the result of a popular referendum cannot result in an implied amendment of the Constitution. The reason for this, as pointed out by the Constitutional Court, is that the Constitution, as fundamental law, regulates the basis of the state system, the relationship between the state and its citizens. Therefore only within its own system, by the constitutional power empowered by it and in accordance with the procedure laid down therein shall be amended. The basic norm regulates the constitutional/constitutioning process differentially within the competence of National Assembly. The making and amending of the basic norm falls within the exclusive competence of the National Assembly, and the National Assembly may act in this competence in accordance with the procedural and decision-making requirements governing the constitutional amending, on

²⁴ László, Komáromi: A népszavazásra vonatkozó szabályozás változásai az Alaptörvényben és az új népszavazási törvényben [Changes to the referendum legislation in the Fundamental Law and the new Referendum Act]. *MTA LAW WORKING PAPERS*, 2014/35., 5-6.

the basis of a direct and express constitutional power provision aimed to constitutional amending. Also on the basis of an international review of the constitutional process, the Constitutional Court could find that a referendum is usually presented as an additional constitutional power in the constitutional process, the function of a referendum is almost exclusively to confirm or reject the constitutional text adopted by the representation. Taking all this into account, the Constitutional Court has stated several times that a referendum on the question of amending the Constitution cannot be called on voter's initiative that would deprive the National Assembly of its constitutional competence due to its binding nature. The main judicial forum of Hungary, the Curie declared as a general rule in its decision Knk.IV.37.387/2015/3 that according to Article 8 Section (3) a) of the Fundamental Law that national referendum cannot be held on any question aimed at the amendment of the Fundamental Law. In case the question on the signature sheet of the national referendum concerns a restriction of fundamental rights, it shall be also examined in the concerned case, whether the restriction of fundamental rights remains within the framework of Article I Section (3) of the Fundamental Law. If either the NEC or the Curia of Hungary concludes, that the constitutional collision being potentially in question or the conflict of the given fundamental right with a constitutional value can only be resolved by amending the Fundamental Law, the question shall not be ordered for national referendum in accordance with Article 8 Section (3) a) of the Fundamental Law. Article I Section (3) and Article 8 Section (3) a)

of the Fundamental Law are connected as such.²⁵ The Curia of Hungary, as a review court, in its decision of Knk.IV.37.584/2016/2 emphasized in connection with a law-making initiative of make all contracts relating to the state budget, EU funds and state-owned assets available on the Internet, that the question is relating to the right of access to data of public interest, gives effect to the principle of transparent spending of public funds.²⁶ It referred to the practice of the Constitutional Court regarding the disclosure of data of public interest, and declared at the same time that the majority of fundamental rights are not unrestrictable. Identifying the substance of the question, it emphasized that the unrestricted availability of named contracts has the consequence that personal data are entered into the internet database without the consent of the data subjects, which entails a restriction on the right to protect personal data.²⁷ The right of access to data of public interest and the right to the protection of personal data may therefore be in conflict through this question. According to the decision of the Curia of Hungary, in the event of a valid and effective referendum, the National Assembly should enact a law that would disproportionately restrict the right to the

²⁵ István, Kukorelli, et. al.: Népszavazási jogorvoslatok—a modellváltás tapasztalatai [Referendum remedies-the experience of model change]. *MTA Law Working Papers*, 2018/15., 19.

²⁶ Balázs, Hohmann: *The interpretation of transparency from the legal point of view*. In: Haffner Tamás (Eds.): *Proceeding of 4th FEU Conference*. Pécs, Sopianae Association, 2018. 160-161.

Balázs, Hohmann: Interpretation the Concept of Transparency in the Strategic and Legislative Documents of Major Intergovernmental Organizations. *Közigazgatási és Infokommunikációs Jogi PhD Tanulmányok*, 2(1), 2021, 48-55.

DOI: <https://doi.org/10.47272/KIKPhD.2021.1.4>

²⁷ Bence, Kis Kelemen, et. al.: op. cit. 65-68.

protection of personal data, the law could only remain in force by amending the Fundamental Law, so the initiative aims to an implied amendment of the Fundamental Law. Several decisions have dealt with the publication of the declaration of assets of persons living in the same household as the persons required to make a declaration of assets. The Curia of Hungary pointed out in its decision of Knk.IV.37.416/2015/2 that the disclosure of this statement constituted a necessary restriction of the right to the protection of personal data through the declaration of the assets of the relatives connecting to the purity of public life. However, it considered that the disclosure of this statement constituted a disproportionate restriction on the fundamental right regarding to the group of the concerned persons, in particular that relatives do not have the freedom to decide on the disclosure of data since they do not decide themselves about the public competition and the additional burdens in association with this role. The Curia of Hungary examined in its decision Knk.IV.37.359/2015/3 whether the Government may be obliged by the National Assembly to support the establishment of a European Public Prosecutor's Office established under Article 86 of the Treaty on the Functioning of the European Union (hereinafter referred to as: TFEU) in case of the proposal of the European Commission during the procedure of the Council of the European Union or the European Council. According to its interpretation, the organizer with its referendum intended question wanted to gain the support of the establishment of a European Public Prosecutor's Office with defined powers on

the basis of Article 86 of the Treaty on the Functioning of the European Union (TFEU) by the member state of Hungary.

In the above decision the Curia of Hungary did not share the view that the establishment of the European Public Prosecutor's Office does not require an amendment to the Fundamental Law. According to the Curia of Hungary, the question is in conflict with Article 8 Section (3) a) of the Fundamental Law. The intention to amend the Fundamental Law arose in a special way in the case of Kvk.IV.37.394/2017/3. The Curia examined the certifiability of the question of *“Do you agree that Act XLIII of 2010 on central state administrative organs and on the legal status of Government members and state secretaries should be amended so that a person who has previously been elected as Prime Minister at least twice by the National Assembly cannot be nominated and elected to Prime Minister again?”* In connection with the question asked by the applicant the Curia pointed out primarily that the Prime Minister has no comparable relationship in relation to re-election with most of the public dignities and public law officers listed by the applicant. The possibility of re-election of the Prime Minister is in close relationship to the character of the government form, only the President of the Republic is in a comparable position. The relationship between the President of the Republic (Head of State) and the Prime Minister (Head of Government) - and at the same time the possibility of re-election per cycle or its limitation - fundamentally determines the character of the form of government. Therefore according to the declaration of the Curia the relationship between the legislation, the head of state and the Government

settled in the Fundamental Law the balance position established in this relationship must be taken into account during the judgement of the question. However, the referendum question intervenes radically in this relationship: a valid and effective referendum on the question would result that the legislation power restricts the re-election of the head of the executive power, whose mandate is linked to parliamentary cycles, independently of the result of the election. The responsibility of the executive power, the institution of trust, and the constitutional position of the Government in Hungary were developed by the concrete historical situation after the 1990 parliamentary elections. *“The essential feature of the form of parliamentary government defined by the Constitution, the responsibility of the Government before the National Assembly is ultimately prevailed through the person of the Prime Minister. The Constitution puts the Prime Minister at the center of the Government's work.”* This decisive role gives the Prime Minister a special public law status [see decision 122/2009. (XII. 17.) of the Constitutional Court]. The Fundamental Law did not change the essence of this, i.e. the German-like form of prime ministerial government. Limiting the re-election of the head of state who is exercising the executive power provides the protection against overpowering ambitions in the presidential and semi-presidential systems of government, while in parliamentary systems the accountability of the prime minister and Government by the Parliament and the institutions for enforcing parliamentary responsibility provides the limitation. It is unusual to parliamentary systems that in addition of restricting the re-election of the head of state a restriction is placed on the re-election of the prime minister

which does not allow the prime minister to hold the office after two cycle even if he/she wins the election. Such a restriction would rearrange the possibility of exercising executive power, rearrange the relationship between the legislation, the head of state and the Government, i.e. a characteristic operating principle of the parliamentary government form. Though it is certain, that any such restriction, since it affects the operation of the government form, shall be placed in the constitutional rules, in the Fundamental Law. The solution included in the referendum question would add another limit to the formation of the government, independently from the parliamentary responsibility, in addition to the Government's trust and responsibility before the National Assembly. The Fundamental Law characterizes the relationship between the National Assembly and the Government, within that primarily the Prime Minister with the political responsibility towards the National Assembly. The Prime Minister's mandate is arising from the decision of the popular representation organ acquiring public power through direct election, which, in addition to reasons specifically related to his/her person, is maintained by parliamentary trust based on political responsibility to the Prime Minister for the duration of the parliamentary term. The crisis or termination of the confidence of the National Assembly leads to the termination of the mandate. Thus, according to the Fundamental Law, the right to elect the Prime Minister belongs to the sovereignty of the current popular representation organ (elected on cyclical basis). Limiting the sovereignty of this decision of the National Assembly is inconceivable without the relevant rule of the

Fundamental Law.²⁸ Pursuant to Article 8 Section (3) a) of the Fundamental Law, a national referendum on the question of amending the Fundamental Law may not be held. In the decision of the Curia in connection with the person nominated as prime minister, the criterion related to the number of previously held prime ministerial mandate(s) requires an amendment of the Fundamental Law, therefore Article 8 Section (3) a) of the Fundamental Law is an obstacle to hold a national referendum in that question. It can be seen from the above examples that there were three type of cases in connection with referendum initiatives aimed to amend the Fundamental Law. On one hand, with the initiative aimed to amend the state organization part of the Fundamental Law, and on the other hand - according to a separate interpretation thereof - the problem of a referendum affecting fundamental rights issues, and finally with the surprising initiative which includes the intention to amend the Fundamental Law in the question itself. The part of the state organization was affected by the referendum initiatives related to the European Public Prosecutor's Office and the re-election of the Prime Minister. With regard to fundamental rights questions – i.e. a referendum initiative, which restricts fundamental rights may be against the Fundamental Law - the Curia laid down in cases related to the declaration of assets and questions on the disclosure of data of public interest.

²⁸ Csaba, Erdős: *Áttekintés a közvetlen demokrácia fogalmi körének meghatározására tett jogtudományi kísérletekről* [An overview of jurisprudential attempts to define the concept of direct democracy]. In: *Új Nemzeti Kiválóság Program 2017/2018 Tanulmánykötet* [Proceedings on New National Excellence Programme 2017/2018]. Eds: Rechnitzer Sándor. Győr, Széchenyi István University, 2018. 239-248.

Finally it is clear that a valid and effective referendum on the following judged question would result the amendment of the Fundamental Law: "*Do you agree that the Fundamental Law shall provide the right to a Sunday rest?*" Article 8 Section (3) a) of the Fundamental Law makes barrier to this. Thus, on the basis of practice it can be stated that the question is aimed to the prohibited amendment of the Fundamental Law if it openly endeavours to the amendment of the Fundamental Law, even if the question itself raises an opposition to the Fundamental Law, but the result of the certification of the question forces the National Assembly to such legislation which requires the amendment of the Fundamental Law. With this latter shall be identical when the question involves a conflict of fundamental rights and the resolution thereof supposes a disproportionate and unnecessary restriction of the fundamental right.²⁹

²⁹ Curia's summary report, op. cit. 106-110.

3. Budget issue and national referendum

Prohibition of central budgetary implications is one of the most flexibly interpretable areas.³⁰ According to Article 8 Section (3) b) of the Fundamental Law, no national referendum may be held on the content of the Acts on the central budget, the implementation of the central budget, central taxes, duties, contributions, customs duties or the central conditions for local taxes. Article 8 Section (3) b) of the Fundamental Law is worded in the same way as the regulation of Section 28/C Subsection 5 a) of the former Constitution. The Constitutional Court has ordered a number of significant decisions in relation to the initiative concerning the central budget and the exclusion of public charges. The principal statement shall be strongly emphasized that it follows from the constitutional listing accordingly that the closed and strict interpretation of prohibited subjects is in line with the outstanding significance of the constitutional regulation. The statement that in the definition of Budget Act should not be included all the legislation that have financial and budgetary implications shall also be considered as a general line of measure. The turn on the implementation of the budget does not mean in any way the content of all laws serving the enforcement of budget, but refers specifically to the final account act. The Curia in its decision of Knc. IV.37.339/2015/3. held during the examination of the question

³⁰ Attila Gábor, Tóth: *Túl a szövegben. Értékezés a magyar alkotmányról [Beyond the text. Interpretation of the Hungarian Constitution]*. Budapest, Osiris, 2009. 59.

intending to change the transfer of the retail sale of tobacco products from exclusive state competence, that the Constitutional Court considered in three circle of cases the relationship between the referendum and the Budget Act as direct and substantive: a) the question is specifically aimed to the amendment of the Budget Act; b) the question reasonably results the amendment to the Budget Act; c) finally, a valid and effective referendum will concretely define the issuance of a future budget act. Citing the Constitutional Court's argument, the Curia emphasized that the purpose of the distinction between the revenue and the expenditure side beyond the enforceability of the budget is to guarantee in the budget the fulfillment of state tasks³¹ and the preservation of manageability. While the revenue side of the budget is prohibited once and for all by the Fundamental Law by classifying the content of the laws on central taxes, duties and contributions, customs duties and the central conditions for local taxes as excluded subjects, there is no such guarantee on the expenditure side. In the interpretation of the Constitutional Court to protect the expenditure side, one of the excluded subjects was the referendum on a concrete expenditure item which is part of a future budget act not yet adapted. The question provided for certification intended to put the act classifying tobacco retail trade as a state monopoly to a referendum. The question has budgetary implications according to the Budget Act, as the current Budget Act records the expected fee income from the usage of the monopoly through a concession on a specific

³¹ Balázs, Hohmann, 2019, op. cit. 1-2.

revenue line. The question therefore concerns to such a legal title of revenue specified in the budget which regardless of its amount would mean the total cessation of the legal title of revenue in the event of a valid and successful referendum. The Curia also refers to the fact that Article 8 Section (3) point (b) of the Fundamental Law precludes the possibility of holding a referendum in the case of certain sources of income. These resources and all statutory payment obligations serve as revenue to cover common needs. Statutory obligations that impose a payment obligation on citizens, therefore in addition to other fees concession fees as well, usually exercise affects with their existence or termination on the content of the budget act. Thus, statutory obligations that impose a payment obligation on citizens, therefore in addition to other fees concession fees as well usually exercise affects with their existence or termination on the content of the budget act. Several other decisions could be mentioned, such as for example toll road becoming free of charge would affect on the revenue side of the budget and therefore have a budgetary impact (decision with case number Knk.IV.37.361/2015/3) or the support of spectator team sports with tax advantages and tax credits narrows the scope of state tax revenues (decision with case number Knk.IV.37.341/2015/3). However, in Resolution No. Kvk.IV.37.456/2015/3 the Curia stated that the referendum on the following question had no direct budgetary impact: „Do you agree that the state should provide free child feeding for children who receive regular child protection benefits every day of the year?“ The reason is that during child feeding, the rules for free meals have

been amended within the budget frames for that year. During the budget year the state has already expanded the range of benefits, without amending the central budget, so the budgetary connection of the question is not so direct that it would raise an infringement of Article 8 Section (3) point (b) of the Fundamental Law. The reason for the request for revision is correct as in the event of a valid and effective national referendum, the National Assembly can choose from several solutions to fulfill its legislative task, many of which are solutions that do not require an amendment of the Budget Act. The Curia of Hungary confirmed that it adheres to the previous position of the Constitutional Court that the concept of the Budget Act should not include all the legislations that have financial and budgetary implications, since there are hardly any issues within the competence of the National Assembly that have no budgetary connection. The Curia in its decision with case number Knk.37.467/2015/3 dealt with the amendment of pension legislation. It examined the opportunity to secure for men to retire with benefits on equal terms with women. According to the opinion of the Curia, the question requested to be certified does not affect entirely the content of the obligation to pay contributions, its manner or extent, nor does it implicitly contain the intention to amend the pension scheme set out in Article XIX. Section (4) of the Fundamental Law and in Article 40, and does not affect entirely the determination of the pension fund or the level of pensions either. When drafting and then proposing the future budget law, it may be necessary to pass on any amendments, but the direction and concrete amount of the amendments may be

decided by the National Assembly in a sovereign manner. The Curia noted in this case that the last sentence of Article XIX Section (4) of the Fundamental Law legitimizes the positive discrimination against women in terms of the conditions for entitlement to a state pension. However, the indicated constitutional possibility, legislative power do not constitute an obligation at the same time: according to the decision of the National Assembly - or the will of the people - the requirement undertaken by the state for increased protection of women may appear in the conditions of the entitlement to a state pension, but it is not necessary. The Curia held that the question was intended to amend basically Act LXXXI of 1997 on the Eligibility for Social Security Benefits and Private Pensions instead of the current Budget Act and does not follow thereof either that the voter would determine certain specific expenditures in the future budget act. Thus the question shows only a distant, indirect connection with the Budget Act, as it seeks only to unify the conditions for the “retirement” of women and men. The distant and indirect connection with the subject circle of a prohibited referendum does not result the question becoming a subject of a prohibited referendum. The mere fact that a valid and effective referendum affects the framing what National Assembly can do at the next drafting of the budget act does not make the referendum prohibited. The Constitutional Court annulled the order of the Curia Knk.IV.37.467/2015/3 with its decision of case number 28/2015. (IX. 24.). As a result, the Curia ordered a new decision on the request for review in the referendum case with its Resolution of Kpkf.37.938/2015/2. Finally in its Resolution of

Knk.IV.37.989/2015/2 in the repeated review procedure, citing the decision of the Constitutional Court, the Curia took the position that in the event of a successful referendum, the question would result such legislation which aimed to determine a future budget expenditure item. The question results in legislation an increase in the amount for pensions provided in the Budget Act. In addition, interpreting the second sentence of Article XIX Section (4) of the Fundamental Law stated as well, also referring to the decision of the Constitutional Court, that women's right to positive treatment is guaranteed by the Fundamental Law. Thus, an effective referendum on the benefits provided to women in the conditions of state pension benefits would be an obstacle to the prevail of both Article XV Section (5) and the second sentence of Article XIX Section (4) in case of a successful referendum, it would essentially empty it. The Curia in its decision with case number Knk.IV.38.133/2015/3 examined the question on the prohibition of sale of state-owned agricultural land. According to the Curia's point of view, the sale of state-owned agricultural land is not a direct budgetary issue, but above all the management of asset with special legal status belonging to the national property. The subject of the referendum is related to the sale of state-owned agricultural land. The Curia emphasized that the Constitutional Court had referred in several decisions to the fact that land ownership had specific natural and property characteristics. According to the Constitutional Court, *“the finite nature of land (because land as a natural object is limited and cannot be reproduced or replaced with anything else), its indispensability, renewable capacity, special risk sensitivity and low profitability*

embody the special social constraints of land ownership. These circumstances may justify the enforcement of the public interest over property rights. The Constitutional Court has already previously stated that due to its peculiarities, the legal treatment of land ownership, differently from other property objects, is justified in a certain respect” [Decision 16/1991. (IV.20.) AB, Constitutional Court Decision 1993, 381.]. The specific subject-matter of regulation, to which the judged question in the present case relates dissolves the direct link between the issue and the Annual Budget Act. The relationship is considered as indirect, since the question intends above all how the state cannot dispose over the land it owns. In case no. Knk.IV.37.349/2016/2 had to be examined whether or not affects the budget the initiative on grant of guaranteed benefit for every Hungarian citizen with registered residence in Hungary. The Curia held that the resolution of the NEC on the refuse of certification was in line with current practice of the Curia, since the success of the initiative would burden the current and any additional budget act fundamentally with measurable billions in expenditures, questioning the functioning of the state where appropriate. Therefore in case of the success of the question intended to be put to referendum would justify an amendment of the Fundamental Law contrary to Article 8 Section (3) point (a) and would affect the prohibited subject matter of Article 8 Section (3) (b).³² Therefore we can say that it alone is not enough in itself to be in the circle of prohibited budgetary subject if the question falls within the scope of budget issue. Not all

³² Curia’s summary report, op. cit. 110-113.

legislation is subject to budget which has budgetary implications. However, the question falls within the scope of this subject, if it specifically aims to amend the Budget Act, reasonably follows therefrom the amendment of the Budget Act, or it determines concrete expenditures, concerns revenues of the future Budget Act. The distant, indirect connection does not specify the subject matter of the prohibited subject, therefore the question may be ordered to a referendum, which restricts the margin of discretion of the National Assembly when drafting the Budget Act.³³

³³Curia's summary report, op. cit. 114.

4. Conflict with an international treaty

From the point of view of conflict with an international treaty, the wording of the Fundamental Law is slightly extensive compared to the previous Constitution, as, on a literal interpretation, it governs not only to existing international treaties.³⁴ The Constitutional Court stated about the rule contained in the previous Constitution that the provision itself contains a completely clear and unambiguous provision free from uncertainty of interpretation. The prohibition in that provision precludes the direct exercise of power from further development of international obligations already in force. Referendum on the undertaken commitments themselves cannot be ordered constitutionally, completely regardless of whether the result of the referendum contradicts or even confirms these commitments.³⁵ It should be mentioned that the referendum on the accession to the European Union was required to be enacted to the Constitution by Act LXI of 2002 due to this rule. This provision was subsequently repealed at the time of accession. The Curia gave opinion on referendum initiative on the intention of secession from the North Atlantic Treaty in the decision with case number Kvk.II.37184/2012/2, from the European Union in the decision with case number

³⁴ Gábor, Sulyok: A nemzetközi jog és a belső jog viszonyának alap-törvényi szabályozása [The basic law regulation of the relationship between international law and domestic law]. *Jog / Állam Politika*, 4(1), 2012, 31.

³⁵ Katalin, Kelemen: Van még pálya. A magyar alkotmánybíróság hatáskörében bekövetkező változásokról [There is still a track. On changes to the powers of the Hungarian Constitutional Court]. *Fundamentum* 2011/4., 88.

Kvk.II.37.185/2012/2, from the International Monetary Fund in the decision with case number Kvk.II.37.186/2012/2. In all three decisions it was indicated that also the applicant had acknowledged that a treaty (therefore international treaty as well) is a set of rights and obligations. Consequently, forcing the termination of an international treaty by a referendum is not only about the exercise of law but also a decision on the obligations arising from the international treaty. An international treaty is a commitment of one state to other state(s), the observance of the undertaken obligations or the release from them shall be performed within the framework regulated by international law, which justifies the constitutional exclusion of referendums to be ordered within this circle. The rules for entering and leaving an international treaty are not the same due to the nature of the matter, and this also justifies the different rulings on the possibility of a referendum on the two question. The Curia therefore concluded that the referendum question which intends to withdraw from a valid international treaty falls within the scope of the prohibited referendum accordingly to Article 8 Section (3) point (d) of the Fundamental Law, and therefore the decision refusing to certify the question is lawful. The Curia in its decision with case number Kvk.37.178/2014/3 outlined during the examination of the question "no new nuclear power plant units should be built in Hungary from loan increasing the public debt", that the Government of Hungary and the Government of the Russian Federation concluded an international convention on the co-operation in the peaceful uses of nuclear energy (hereinafter referred to as: Convention), which was enacted into the internal

law. It was not disputed that it was about an international convention in this case. The question put to referendum is clearly related to the Convention, a possible valid and effective referendum would affect the provisions of the international treaty. The Curia examined the provisions of Article 1 Section (1) and Article 9 of the Convention. In its point of view Article 9 furtherly enforces that the enacted Convention contains an obligation arising from an international treaty. However, Article 8 Section (3) point (d) of the Fundamental Law can be interpreted as an existing obligation to one of the parties of an international agreement, and an international agreement can hardly be imagined as imposing an obligation on only one of the parties. The question intended to be ordered to referendum is directly related to Article 9 of the Convention, when it questions as follows: do you agree that no new nuclear power plant units should be built in Hungary from loan increasing the public debt? The Curia finally pointed out that the Convention deals separately with the obligations of the parties, also in respect thereof cannot be said that they are not constitute as obligation arising from an international treaty. Resolution with case number Knk.IV.37.446/2014/3 examined the question initiating the amendment - which restricts the acquisition of the ownership of Hungarian agricultural land - of our accession treaty to the EU. It stated that the Accession Treaty is such an international agreement from the point of view of the law of the European Union, which has been concluded by the European Union and its Member States with a third state, namely Hungary. Referred to the Decision 143/2010. (VII. 14.) AB and to the Decision 22/2012. (V.

11.) AB of the Constitutional Court maintaining the statements thereof, emphasizing that all such treaties by which Hungary exercises any of the powers specified in the Fundamental Law together with the institutions of the European Union shall be deemed as an international treaty. The decision on the issue of the transfer of competences, the procedure for concluding the treaty follows the general order of concluding international treaties, with that the Fundamental Law orders the assumption of obligation under special ratification regime. According to Article E Section (2) of the Fundamental Law such international treaty is first and foremost the Treaty of Accession. Despite the fact that since the entry into force of the Accession Treaty, it has necessarily amended the founding treaties of the European Union, i.e. its primary sources of law, and thus became part of domestic law as EU law, its international contractual form cannot be ignored. The National Assembly promulgated the Accession Treaty and the obligations contained therein in act, making with it part of the Hungarian legal system. The Accession Treaty is part of the EU legal order as regards the obligations it entails, while it has not been dissolved in EU law as an international treaty. The Curia did not have to compare the question to be certified with the Accession Treaty, not yet entered into force but had to answer the situation when the question aimed to amend the current Accession Treaty, which paved the way for the EU legal order. The current Accession Treaty in the domestic law is that international document which recorded the content of the Hungarian membership's legal relationship at the moment of accession. The question submitted for certification was

considered by the Curia as multi-layered, since it intends to induce the Government to amend the Accession Treaty in a specific direction through the obligation of the organ of popular representation. Based on the content of the question the Curia of Hungary interpreted it as it seeks to amend the condition system of Hungary's membership in the European Union set out in the international document, to achieve a more favorable situation with concretely defined direction in the question, and for this asks the support of the voters. The Curia of Hungary did not accept the argument that the question wanted to be ordered to referendum does not seek to change the international obligation itself, but only intends to start negotiations about it. The prohibition pursuant to Article 8 Section (3) point (d) of the Fundamental Law shall be applied if a successful referendum affects not only the promulgating law but also the obligations arising from the international treaty. The endeavoring to renegotiate the membership conditions of the European Union necessarily affects these obligations. In the decision of the case number Knk.37.358/2015/3 the Curia examined the question of the disclosure of all financial information related to the expansion of the Paks Nuclear Power Plant.³⁶ It referred to its decision with case number Knk.IV.37.178/2014/2, essentially this case was judged along that line as well. The Curia in

³⁶ The publication of environmental information relating to a major project is also considered desirable as a means of social control. See: Balázs, Hohmann: *A hatósági eljárás társadalmi ellenőrzésének lehetőségei [Possibilities for social control of the administrative proceedings]*. Pécs, TAKE, 2018. 25-27.; Viktor, Glied, 2013, op. cit. 209-210.; Attila Pánovics, et. al: *Vízvédelem és elővigyázatosság - megjegyzések a 13/2018. (IX.4.) AB határozathoz [Water protection and precaution - comments on Constitutional Court Decision No. 13/2018 (IX.4.)]*. *JURÁ*, 2019/1, 305-307.

its decision with case number Kvk.IV.37.222/2016/9 on the resettlement quota disagreed with the position that the question of the possibility of a referendum should be examined solely in terms of the decision-making, organization and functioning order of the European Union and concludes on this basis that ordering a referendum in connection with the functioning of the European Union is excluded. The question was as follows: "Do you agree that the European Union is able to mandate the obligatory resettlement of non-Hungarian citizens to Hungary without the approval of the National Assembly?" The EU context of the certified question prevails partly on the international nature of EU law and partly on the provision of the Fundamental Law related to the European Union, in particular according to Article E). The question intended to be ordered to referendum is not against Article E Section (2), as this provision of the Fundamental Law specifically refers to the extent necessary to exercise the rights and fulfil the obligations deriving from the Founding Treaties, is exercised some of the competences arising from the Fundamental Law jointly with other Member States, through the institutions of the European Union. From the point of view of the Hungarian referendum rules, the question is not aimed to amend the Accession Treaty nor impose additional conditions for the implementation by Hungary of the decisions taken by the institutions of the EU, thus it does not violate Article 8 Section (3) point (d) of the Fundamental Law. According to the opinion of the Curia, the resolution of the dispute related to the certification of the question can be based solely on the provisions of the Fundamental Law and the Act CCXXXVIII

of 2013 on Initiating Referendums, the European Citizens' Initiative and Referendum Procedure, it does not require either the direct application or the interpretation of EU law. It stipulated in connection with the asked referendum question that the certified question concerned the introduction of a measure by a Council decision falling within the scope of secondary EU law. From EU law, thus between obligations arising from Council decision adopted as a secondary source of law and those arising from an international treaty cannot be drawn parallel. According to the case law of the European Court of Justice, the EU legal order is a specific and special legal order. Accordingly „By contrast with ordinary international treaties, the EEC Treaty has created its own legal system, (...) by creating a Community of unlimited duration, with real powers stemming from a limitation of sovereignty or a transfer of powers from the States to the Community, the Member States have limited their sovereign rights, albeit within limited fields, and have thus created a body of law which binds both their nationals and themselves.” (Flaminio Costa v E.N.E.L., Case 6-64, ECLI:EU:C:1964:66). Among the specific classification of EU law, the Curia referred to the case law of the Constitutional Court. The Constitutional Court stated in its Decision 143/2010. (VII.14.) AB on the constitutionality of the Act CLXVIII of 2007 of promulgation of the Lisbon Treaty during the ex-post review of conformity with the Fundamental Law, that according to Decision 1053/E/2005 AB of the Constitutional Court the Treaties establishing and amending the European Communities are not international agreements from the scope of competence of the

Constitutional Court (Decisions of the Constitutional Court 2006, 1824. 1828. ABH). Pursuant to Articles E) and Q) of the Fundamental Law, Hungarian constitutional practice attributes different legal effects to EU law and international law. According to the Decision 22/2012. (V.11.) AB of the Constitutional Court on the interpretation of Article E Sections (2) and (4) of the Fundamental Law, the Constitutional Court stated that the definition of “international treaty (concluded) in order to participate in the European Union as a Member State” has a different classification of international treaty bound to the European Union. This classification does not necessarily require the Treaty to classify itself as European Union law or to be one of the founding treaties of the European Union. In this respect, the parliamentary mandate to formally recognize the binding force of an international treaty under Article E Section (4) of the Fundamental Law and the promulgation under Article Q Section (3) of the Fundamental Law also differ. This is also expressed in the guarantee requirement under Article E Section (2), which requires a two-thirds majority of votes of the members of National Assembly for an authorization under Article E). In this regard, the Decision 22/2012. (V.11.) AB of the Constitutional Court considered the Treaty on Stability, Coordination and Governance in Economic and Monetary Union as being EU law under Article E) of the Fundamental Law instead of an international treaty under Article Q. The implications of an obligation under an international treaty should be treated differently accordingly the subject of prohibited referendum under Article 8 Section (3) point (d) of the

Fundamental Law on International Treaties, that the referendum question refers to „an international treaty concluded on the basis of participating in the European Union as a Member State” according to Article E of the Fundamental Law or an international treaty under Article Q. By transfer of competences according to Article E the Member State, while limiting its own sovereignty, provides the possibility of creating binding legislation for itself, its nationals and its residents. The guarantee possibility of this legal institution is indicated by the stricter ratification procedure and terminological difference than in Article Q of the Fundamental Law required for the recognition of its binding force. Therefore it is legally incorrect to refer to the bilateral international treaty and the European Union treaties as a restriction with the same content in referendum issues. According to the Curia's view, the subject circle of a prohibited referendum under Article 8 Section (3) point (d) of the Fundamental Law does not exist in the present case, as the question of the referendum initiative concerns to the EU law under Article E of the Fundamental Law, which cannot be classified as an international treaty under Article Q of the Fundamental Law or an obligation arising therefrom. In its decision with the case number of Knk.IV.37.712/2016/2 the Curia examined the question supporting the withdrawal from the European Union. It pointed out that in its practice it has taken several decisions on referendum initiatives concerning international commitments, with regard to the obligations arising from the international treaties linking Hungary to the European Union. The Curia of Hungary did not see in this case either any reason to allow a referendum initiative openly

representing the intention to change membership status in the European Union based on international treaties and the obligations arising therefrom. The Curia of Hungary referred to its decision with the case number Kvk.II.37.185/2012 in which clearly stated that accession to an international treaty and the withdrawal therefrom requires a different decision, which also justifies a derogation from the relevant rules. He also stated that, prior to the accession to the European Union, the national referendum held on 12 April 2003 was an unusual referendum, it could be ordered on the basis of Section 79 of Act LXI of 2002 on the amendment of the contemporary Constitution, which also determined the decisive nature of the referendum and its date. Accession to the European Union was therefore ordered by the Constitution, with all the details according to the importance of the issue was determined at the same time. The Curia therefore did not see a parallel between the referendum on accession in 2003 and the referendum to be held on the basis of the question which the applicant intended to ask. It emphasized that the possible consequences of the result based on logical reasoning of the referendum held on 2 October 2016 in connection with the Resolution 1065/2015 of the Council of the European Union, do not justify the Curia to change the decision of the NEC against the Article 8 Section (3) point (d) of the Fundamental Law and certify the applicant's question. In summary we can state that an international treaty can be a commitment of one state to other state(s), compliance with the undertaken obligations or exemption from them can be provided within the framework regulated by the international law, which justifies the

constitutional exclusion of a referendum to be ordered in this circle. The rules for joining and withdrawal from an international treaty are not the same, due to the nature of the matter, and this also justifies the different rules on the possibility of a referendum on the two issues. The Treaties establishing and amending the European Communities are not international treaties. With regard to the subject circle of a prohibited referendum the implications of an obligation under an international treaty should be treated differently accordingly that the referendum question concerns to „an international treaty concluded on the basis of participating in the European Union as a Member State” under Article E of the Fundamental Law, or an international treaty under Article Q of the Fundamental Law. By transfer of competences according to Article E the Member State, while limiting its own sovereignty, provides the possibility of creating binding legislation for itself, its nationals and its residents. The guarantee possibility of this legal institution is indicated by the stricter ratification procedure and terminological difference than in Article Q of the Fundamental Law required for the recognition of its binding force. Therefore it is legally incorrect to designate the bilateral international treaty and the European Union treaties as a restriction with the same content in referendum issues.³⁷

³⁷ Curia’s summary report, op. cit. 114-118.

***5. Personnel and organizational formation powers
within the competence of the National Assembly***

According to the interpretation of the Constitutional Court, not every organization-related matters of all public institutions fall within the scope of personal and organization-related competencies of the National Assembly, but only those organization-related matters and personnel issues that are specifically within the competence of the National Assembly.³⁸ Such was for example the case with the initiative to reduce the size of the National Assembly [Decision 25/2004. (VII. 7.) AB of the Constitutional Court] or the initiative to restructure the composition of the National Judicial Council [Decision 45/2010. (IV. 22.) AB of the Constitutional Court]. The Curia in its decision with case number Knk.IV.37.356/2015/2 dealt with the settlement of the institution exercising the function of public power in the Buda Castle District. The NEC in its decision refusing the certification argued *inter alia*, that the result of the referendum on the question would necessarily imply a legislative obligation concerning the seat of the office of the President of the Republic, as a person exercising executive powers, which organization-related matter falls within the competence of the National Assembly pursuant to Article 8 Section (3) point e) of the Fundamental Law. The Curia of Hungary agreed with this argument supplementing it. In its decision with case number

³⁸ János, Kis: A népszavazás a harmadik köztársaság alkotmányában [The referendum in the Constitution of the Third Hungarian Republic]. *Fundamentum*, 2009/4., 17.

Knk.II.37.997/2016/4 the Curia of Hungary examined the adequacy of the initiative to repeal Act LVIII of 2016 on the tender and organization of the XXXIIIrd Summer Paralympic Games. Due to the decision of the NEC it examined the question whether the initiative affects the prohibition contained in Article 8 Section (3) point (e) of the Fundamental Law. It considered the Decision 51/2001. (XI. 29.) AB of the Constitutional Court relevant, accordingly “*the fact that the question to be put to a referendum is remotely, indirectly related to a prohibited referendum subject, does not result in the question becoming a prohibited subject*”, and Decision 105/2007. (XII. 13.) AB of the Constitutional Court according to which “*the question of the establishment, transformation or abolition of a specific body or type of body may be classified as an organization-related matter covered by the prohibition on ordering a referendum*”. According to the opinion of the Curia of Hungary, the question on the signature sheet concretely not aimed to organizational change, based on the question the voters have to take a position on whether they agree with the repeal of the law. The fact that the repeal of this law has also organization-related consequences cannot be a reason itself for refusing to certify the question. To adopt the opposite position would unduly narrow and disproportionately restrict the exercise of a fundamental right compared to the goal to be achieved. The Curia of Hungary noted principally in the case that if the question to be ordered to referendum does not directly aimed to an organization-related matter falling within the competence of the National Assembly, only indirectly affects it, or if the involvement is only apparent, the certification of the issue may not be refused with the reference of

Article 8 Section (3) point e) of the Fundamental Law. Thus we can state that in the case of person- and organisation-related matters falling within the competence of the National Assembly an individual examination is necessary if the question to be ordered to a referendum does not directly aimed for such an issue, only indirectly affects it, or if the involvement is only apparent, certification of the question cannot be refused.³⁹

³⁹ Curia's summary report, op. cit. 119.

6. Summary

In Hungary, from the prohibited subjects most commonly the violation of the Fundamental Law or an international treaty, as well as the involvement of the budget leads to the refusal to certify the question. On the content of the Acts on the elections of Members of the National Assembly, local government representatives and mayors or Members of the European Parliament, the dissolution of the National Assembly, the dissolution of a representative body, the declaration of a state of war, state of national crisis and state of emergency; furthermore, on the declaration and extension of a state of preventive defence, any matter related to participation in military operations and furtherly the granting of amnesty and other questions containing prohibited issues are by their very nature very rare or non-existent in the practice of certification procedures. The above mentioned can be well illustrated having regard to the absence of review application on these subject matters, the Curia of Hungary did not take a position on similar matters.

Bibliography

András, Bencsik, et al.: A közigazgatás és a média kapcsolódási pontjai,” [The connection between the public administration and the media,”] *Pro Publico Bono* 3, no. 4 (2015): 61-65.

Victor, Cuesta-López: A comparative approach to the regulation on the European Citizens’ initiative,” *Perspectives on European Politics and Society* 13, no. 3 (2012) 257-260.

DOI: <https://doi.org/10.1080/15705854.2012.702571>

Csaba Cservák: A politikai részvétel előmozdítása. In: *Jó állam jelentés*, [Report of Good State Index,]. Eds: Tamás Kaiser. Budapest, Nordex, 2016. 107.

Nóra, Chronowski, and Attila, Vincze: Népszavazások uniós ügyekben és a magyar gyakorlat. [Referendums on EU matters and Hungarian practice]. *Közjogi Szemle*, 2019/1., 20-21.

Csaba, Erdős: *Áttekintés a közvetlen demokrácia fogalmi körének meghatározására tett jogtudományi kísérletekről* [An overview of jurisprudential attempts to define the concept of direct democracy]. In: *Új Nemzeti Kiválóság Program 2017/2018 Tanulmánykötet* [Proceedings on New National Excellence Programme 2017/2018]. Eds: Rechnitzer Sándor. Győr, Széchenyi István University, 2018. 239-248.

Adrián Fábián, and Emese Pál: Választási bizottságok működése Magyarországon, különös tekintettel a 2014. évi helyi önkormányzati választásokra,” [Operation of election committees

in Hungary, with special regard to the 2014 local government elections,"] In: *Választási dilemmák: Tanulmányok az új választási eljárási törvény novumai és első megmérettetése tárgyában [Election Dilemmas: Studies on the Novias and First Competition of the New Electoral Procedure Act]*. Eds. Ákos Cserny. Budapest, National University of Public Service, 2015. 38-45.

Adrián Fábián: A Nemzeti Választási Bizottság szerepe és gyakorlata az országos népszavazási kezdeményezések kérdéseinek hitelesítésében. In: *A népszavazás szabályozása és gyakorlata Európában és Magyarországon : tanulmánykötet a Nemzeti Községi Szolgálati Egyetem és a Nemzeti Választási Iroda 2015. szeptember 24-én rendezett közös konferenciáján elhangzott előadásokból*, [Regulation and practice of the referendum in Europe and Hungary. Study volume from the presentations given at the joint conference of the National Civil Service University and the National Electoral Office on 24 September 2015,] Eds: Krisztián Gáva, and András Téglási. Budapest, Nordex, 2016. 123-136.

Rocher, François, and André Lecours: Does the wording of a referendum question matter?. In: *The Routledge Handbook to Referendums and Direct Democracy*. Eds: Laurence Morel, and Matt Qvortrup. New York, Routledge, 2017. 227-230.

Viktor Glied: Social Conflicts in the Shadow of the Paks Nuclear Power Plant. *Geographical Locality Studies* 1, no. 1 (2013) 209-210.

Balázs, Hohmann: Civil szervezetek és a társadalom részvételi lehetőségei a környezet védelmét érintő hatósági eljárásokban,"] [„NGO's and the society of participation opportunities in the

environmental administrative proceedings,] In: *XIII. Kárpát-medencei Környezettudományi Konferencia, [13th Carpathian Basin Conference for Environmental Sciences]*. Eds: Lívía-Irma Szigyártó, and Attila Szikszai. Cluj-Napoca, Sapientia University, 2017. 280-285.

Balázs, Hohmann: *The interpretation of transparency from the legal point of view*. In: Haffner Tamás (Eds.): *Proceeding of 4th FEU Conference*. Pécs, Sopiana Association, 2018. 160-161.

Balázs, Hohmann: *A hatóságj eljárás társadalmi ellenőrzésének lehetőségei [Possibilities for social control of the administrative proceedings]*. Pécs, TAKE, 2018. 25-27.

Balázs Hohmann: *The Principles and Fundamental Requirements of the Transparency on the Public Administrative Proceedings*. In: *Proceedings of the IIER International Conference Dubai*. Eds: Padma Suresh. Dubai, International Institute of Engineers and Researchers, 2019. 1-2.

Balázs, Hohmann: *Interpretation the Concept of Transparency in the Strategic and Legislative Documents of Major Intergovernmental Organizations. Közigazgatási és Infokommunikációs Jogi PhD Tanulmányok, 2(1), 2021, 48-55. DOI: <https://doi.org/10.47272/KIKPhD.2021.1.4>*

Katalin, Kelemen: *Van még pálya. A magyar alkotmánybíróság hatásköreiben bekövetkező változásokról [There is still a track. On changes to the powers of the Hungarian Constitutional Court]*. *Fundamentum* 2011/4., 88.

János, Kis: A népszavazás a harmadik köztársaság alkotmányában [The referendum in the Constitution of the Third Hungarian Republic]. *Fundamentum*, 2009/4., 17.

Bence Kis Kelemen, and Balázs Hohmann: A Schrems ítélet hatásai az európai uniós és magyar adattovábbítási gyakorlatokra,” [„The effects of the Schrems judgment on EU and Hungarian data transfer practices,”] *Infocommunication and Law* 13, no. 66-67 (2016) 64-70.

László, Komáromi: A népszavazásra vonatkozó szabályozás változásai az Alaptörvényben és az új népszavazási törvényben [Changes to the referendum legislation in the Fundamental Law and the new Referendum Act]. *MTA LAW WORKING PAPERS*, 2014/35., 5-6.

István, Kukorelli, et. al.: Népszavazási jogorvoslatok—a modellváltás tapasztalatai [Referendum remedies—the experience of model change]. *MTA Law Working Papers*, 2018/15., 19.

Elżbieta Kuźelewska: How far can citizens influence the decision-making process? Analysis of the effectiveness of referenda in the Czech Republic, Slovakia and Hungary in 1989–2015. *Baltic Journal of European Studies* 5, no. 2 (2015). 175-176.

DOI: <https://doi.org/10.1515/bjes-2015-0019>

David B. Magleby: Let the Voters Decide-An Assessment of the Initiative and Referendum Process. *University of Colorado Law Review* 66, (1994) 13-17.

Suksi, Markku: *Bringing in the people: A comparison of constitutional forms and practices of the referendum*. Dordrecht, Martinus Nijhoff Publishers, 1993. 5-15.

Paterson, Moira, and Maeve, Mcdonagh: Data Protection in an era of Big Data: The challenges posed by big personal data. *Monash University Law Review* 44, no. 1. (2018) 1-17.

Patrick, O'neil: Presidential power in post-communist Europe: The Hungarian case in comparative perspective. *The Journal of Communist Studies and Transition Politics* 9, no. 3 (1993). 180-195.

Zoltán T. Pállinger: Direct democracy in an increasingly illiberal setting: the case of the Hungarian national referendum. *Contemporary Politics* 25 no. 1 (2019) 62-77.

<https://doi.org/10.1080/13569775.2018.1543924>

Attila Pánovics, et. al: Vízvédelem és elővigyázatosság - megjegyzések a 13/2018. (IX.4.) AB határozathoz [Water protection and precaution - comments on Constitutional Court Decision No. 13/2018 (IX.4.)]. *JUR-4*, 2019/1, 305-307.

Robert Sasvári: The Procedure of Authentication of the Question of the Quota-Referendum-From a Practitioner's Perspective. *Jura* 2 (2017) 411-412.

Maija Setälä: On the problems of responsibility and accountability in referendums. *European Journal of Political Research* 45, no. 4 (2006) 699-711. DOI: <https://doi.org/10.1111/j.1475-6765.2006.00630.x>

Laszlo, Sólyom, et al.: *Constitutional judiciary in a new democracy: the Hungarian Constitutional Court*. Michigan, University of Michigan Press, 2000. 371-375.

DOI: <https://doi.org/10.3998/mpub.16423>

Gábor Soós: Local government reforms and the capacity for local governance in Hungary. In: *Reforming Local Government in Europe*. Eds: Norbert Kersting, and Angelika Vetter. Wiesbaden, VS Verlag für Sozialwissenschaften, 2003. 243-250. DOI: https://doi.org/10.1007/978-3-663-11258-7_12

Gábor, Sulyok: A nemzetközi jog és a belső jog viszonyának alap-törvényi szabályozása [The basic law regulation of the relationship between international law and domestic law]. *Jog Állam Politika*, 4(1), 2012, 31.

Attila Gábor, Tóth: *Túl a szövegen. Értekezés a magyar alkotmányról [Beyond the text. Interpretation of the Hungarian Constitution]*. Budapest, Osiris, 2009. 59.

Fabio Ratto Trabucco: The evolution of referendum experience in Hungary. *Jura* 2, (2017) 208-215.

Yanina Welp: Recall referendum around the world: origins, institutional designs and current debates. In: *The Routledge Handbook to Referendums and Direct Democracy*. Eds: Laurence Morel, Matt Qvortrup. New York, Routledge, 2017. 454-460.

Summary report of the jurisprudence-analysing working group of the Curia of Hungary on cases related to legal remedy in election proceedings and referendum proceedings Budapest, 2018.