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Civic participation in the Visegrad Group member states after 1989

Good Practice Guidelines

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Introduction

Civic participation is a concept that has gained great popularity over the last quarter of a century. In the countries of mature democracy, it is often referred to in parallel with concerns about the decrease in the level of citizens' engagement in public affairs and possible erosion of civil society structures. These processes, if they actually occur, are usually perceived as a threat to democracy, or at least as a significant obstacle to the smooth functioning of this political system. Civic participation is an issue of great importance also in the countries that have entered the path of democratization only recently. Nearly 30 years ago, the Czech Republic, Hungary, Poland and Slovakia i.e. the countries constituting the Visegrad Group, had to undertake the process of fundamental transformation from the communist system into democracy. However, in order to ensure that the victory over communism is lasting and definite, deep changes involving the entire societies of the V4 states themselves were necessary. The Czechs, Hungarians, Poles and Slovaks had to regain confidence in the political elite, as well as to learn anew how to engage in public decision-making process and control the implementation of changes at the national and local level alike. Have they succeeded in making this vision come true?

These guidelines shall provide a preliminary answer to the above question. This document constitutes a part of the research project “Practical Aspects of Civic Participation and Referendum in the Visegrad Group Countries after 1989” conducted by a multinational team of scientists originating from the V4 countries. The project is co-financed by the Governments of Czechia, Hungary, Poland and Slovakia through Visegrad Grants from International Visegrad Fund. The mission of the fund is to advance ideas for sustainable regional cooperation in Central Europe. These guidelines present a summary of the research results with special emphasis on the practical aspect of civic participation in the region and recommendations for improving its quality.

The explicit definition of the very term “civic participation” is quite challenging. Generally speaking, it means “participation of citizens in managing the affairs of the community to which they belong as members”. However, for the purposes

of the research conducted within the framework of the project, we focused on several forms of civic participation. This way, the scope of the analysis has been narrowed down so as to cover the following procedures: referendum, agenda initiative, citizens' initiative, public consultation and participatory budgeting.

Legal basis for various forms of civic participation in the V4 countries

The legal basis for the exercise of civic participation in all four Visegrad Group countries has been generally defined in basic legislation and further developed in specific regulations adopted by respective parliaments of the V4 member states. However, even in the case of countries with similar historical experiences and even cultures, the range of permissible forms of such participation was found to be very diverse.

The Czech Republic

In the Czech Republic, the Constitution of the Republic of 16 December 1992 in Article 2 states that “1. The people are the source of all state power; it is exercised through the bodies of legislative, executive and judicial power. 2. The Constitution may determine the circumstances in which the people exercise state power directly.” In this case, the sole provision of the right to use direct forms of democracy does not, however, translate into a rich practice of their application, in particular at the nationwide level. The Czechs do not even have any statutes on national referendum. Similarly, Czech legislation does not provide for any other forms of civic participation: citizens’ initiative, agenda initiative or public consultation. The participatory budgeting is, however, used to a limited extent through a specific social practice, but without a clear legislative foundations in the Constitution or specific statutes.

The only procedures that are rooted in Czech legislation are the local and regional referendums. The rules for holding a referendum are specified in the applicable laws adopted in 2004 and 2010 respectively. Under those regulations, the right to initiate a referendum procedure is vested in local government authorities, including municipal and city councils, as well as groups of citizens who submit a petition for referendum.

Hungary

In Hungary, the principle of employing various forms of civic participation is set out in the Constitution of 25 April 2011. Chapter titled the “State” in Article 8 pro-

vides for two types of nationwide referendum: mandatory and optional. Both are called by the National Assembly with only difference, namely the former is held following the petition of at least 200,000 citizens and must be called by the Parliament, whereas the latter is held at the initiative of the President of the Republic, the Government or 100,000 citizens, and the National Assembly may grant or refuse consent to such initiative. Therefore, the Hungarian constitutional order provides for citizens' initiative procedure. The issues which are decided by way of a referendum may include the matters within the scope of the powers and duties of the National Assembly, with a large number of exceptions. The Constitution also provides for a local referendum (at the lowest level of local government administration) "on matters falling within the scope of responsibilities and powers vested in the local government". The initiators of such a referendum may be residents who enjoy a right to vote. Their number is determined by local regulations, but in any case the initiative of such local referendum must be supported by not less than 10% and not more than 25% of the total number of residents entitled to vote.

The legal basis for conducting public consultations is the Act of 2010 on public participation in the development of legislation. The law provides for two forms of public consultations: general consultations and direct consultations. General consultations consist in publishing on the government website draft regulations along with a summary of their impact assessment and the citizens having the possibility to submit comments via email. As far as direct consultations are concerned, the competent minister may invite selected organizations to issue opinions on planned regulations. These organizations should represent a broad social interest or conduct research in a respective discipline.

It should be emphasized that Hungary has no applicable regulations nor practical experience related with participatory budgeting, although both natural persons, civic organizations and opposition parties support the introduction of such legislation. The Hungarian legal system provided for agenda initiative in the past (1989-2013).

Poland

The Constitution of the Republic of Poland of 2 April 1997 in Article 4 provides for a solution according to which: “1. Supreme power in the Republic of Poland shall be vested in the Nation. 2. The Nation shall exercise such power directly or through their representatives.” Likewise in the Czech Republic, the Constitution of the Republic of Poland, in addition to indirect democracy, provides for the means of direct democracy. However, it differs in the way it governs the range of available instruments employed for the purpose of the latter system. The Polish Basic Law not only implies the referendum and the agenda initiative by direct references, but it also indirectly mentions public consultations. In addition, these procedures are regulated by applicable statutes.

The provisions of the Constitution of the Republic of Poland, complemented by the Act on the nationwide referendum of 2003, provide for three types of a nationwide referendum: 1) a referendum on matters of special importance for the state; 2) a referendum on granting the consent for the ratification of an international agreement; 3) a referendum approving the amendment to the Constitution of the Republic of Poland within the scope of chapters I, II or XII. In the first two cases, the referendum is called by the Sejm [lower chamber of the Parliament] or the President upon the consent of the Senate, while in the third case - by the Speaker of the Sejm. Only in the case of a referendum on matters of special national importance, the initiative of 500,000 citizens is also considered beside other bodies authorized to launch the procedure, however, the issues of expenditures and income, in particular taxes and other public levies; state defence and amnesty are excluded from the citizens' initiative. On the basis of the Act of 2000, these prerogatives were also vested in local communities of communes, poviats and provinces.

The Constitution of the Republic of Poland together with the Act of 1999 also regulate the issue of agenda initiative. In the first place, the agenda initiative is conferred on the Members of Parliament, the Senate, the President and the Council of Ministers. Pursuant to Article 118 section 2 of the Act, also a group of minimum 100,000 citizens enjoying the right to vote shall be entitled to launch the agenda initiative. The limitations of the agenda initiative include only “the scope of the

budget act, the law on budgetary provisional adjustment, amending the budget act, law on incurring public debt and the act on granting financial guarantees” as well as with reference to amendments to the provisions of Chapter XII of the Constitution of the Republic of Poland.

The issues of public consultations and participatory budgeting are not directly regulated under the Constitution of the Republic of Poland, nor by applicable regulations. It is the constitutional principle of the sovereignty of the nation that serves as a legal basis for public consultations and participatory budgeting. Public consultation procedure as a mandatory or optional process is stipulated in a number of different regulations, including the law on public benefit and voluntary work; on the promotion of employment and labour market institutions; act on spatial planning and development; law on the principles of development policy; law social assistance - to name just a few. On the other hand, participatory budgets are established on the basis of Article 5a of the Act on Local Government of 1990, according to which the council of the commune has the power to determine the mode of proceeding and rules for conducting public consultations on the matters of particular relevance for the community, and thus also determine the rules for establishing participatory budgets.

Slovakia

In Slovakia, the fundamental regulation introducing the principle of civic participation into the Slovak legislative system is also the Basic Law. The Constitution of the Slovak Republic of 1 September 1992 in Article 2 section 1 states that: “The state power derives from the citizens, who shall exercise it through their elected representatives or directly.” The Basic Law sets out in detail the rules for holding a referendum, both at the national and local levels. The matters put to the vote in a referendum may include a decision to join a union with other states (or to withdraw from it) as well as “other important issues of public interest”, but excluding the matters of fundamental rights and freedoms, taxes, military conscription and state budget. The referendum procedure is mandatory only in the former case, thus mandatory and optional referendum may be distinguished. A referendum may be initiated by members of the National Council or the Government. The procedure

may also be launched by the President of the Republic upon petition submitted by a group of 350,000 citizens. The provisions of the Constitution shall apply both to the local referendum and the referendum at the regional level.

As far as other forms of civic participation are concerned, Slovak regulations do not provide for any applicable legal framework. Procedures such as participatory budgeting, public consultations or agenda initiative are not specified in the Constitution nor the specific regulations. Such procedures are only partially addressed in legislation. However, in terms of their possible introduction into the constitutional order in the future, the regulations in force stipulate the absence of any indication to the contrary. Such premises for future regulations pertaining to participatory budgeting procedure arise even from the Act on the right to submit petitions, under which a group of citizens is entitled to submit petitions to the authorities also with reference to the rules of distributing public money within the annual budget. This is reflected in the exercise of the principle of participatory budgeting by some Slovak local governments. Likewise, there are no legislative obstacles to launching public consultations with respect to certain legal initiatives.

Table 1. Forms of civic participation in particular member states of the Visegrad Group (as of May 2018).

	The Czech Republic	Hungary	Poland	Slovakia
National referendum	-*	Yes	Yes	Yes
Agenda initiative	-	-	Yes	-
Citizen's initiative	-	Yes	-	Yes
Public consultation	-	Yes	Yes	-
Participatory budgeting	Yes	-	Yes	Yes

* The referendum procedure was applied once, ad hoc.

Forms of civic participation in the V4 countries - practice and recommendations

National referendum

The V4 member states do not resort frequently to the institution of referendum at the national level. Since 1989 to date, a total of 22 national referendums have been held in the V4 countries. Moreover, not in all V4 countries the constitutional order provides for a referendum at the national level - in the Czech Republic the only national referendum so far has been organized ad hoc in connection with the accession to the European Union. Furthermore, it should be underlined that only a relatively small proportion of referendums held are valid (8 out of 22).

Table 2. National referendums in the Visegrad Group after 1989. (as of May 2018)

V4 member states	National Referendums in total	Valid referendums
The Czech Republic	1	1
Hungary	8	4
Poland	5	2
Slovakia	8	1
Total	22	8

The substantial changes which seem necessary to make a better use of the nationwide referendum would require a revision of the current constitutional order in all the V4 member states (and in the case of the Czech Republic - the introduction of regulatory provisions on referendum at this level). Therefore, no spectacular results in that respect should be expected in the short term from grassroots initiatives endorsed by NGOs. Moreover, dominant political groups (the Hungarian case) and/or extremist forces could use the nationwide referendums for propaganda purposes; consequently deepening and aggravating political and social conflicts, and thus contributing to the destabilization of the political system. Therefore, it is advisable that any reforms of this instrument be undertaken with great caution. As far as any general guidelines are to be formulated, these would concern the

following:

- The range of issues that may be put to the vote in a referendum - although not all matters can be decided by way of referendum, it is for instance difficult to justify the ban on holding a referendum on the amendments to constitution (as is the case in Hungary), especially if the proposed amendments refer to the matters of particular importance. Moreover, any restrictions regarding the subject put to the vote in a referendum should be formulated in a clear and unambiguous manner.
- Quorums applied - high turnout quorums, and sometimes also to the required majority [approval quorums] result in that non-participation in a referendum eventually has the same effect as the voting 'no'. This is one of the reasons that only a relatively small number of referendums are successful. However, any decision on lowering the quota thresholds should be balanced by striving to sustain the stability of the political system.
- The binding legal value of a referendum - a consultative referendum is not conducive to the increased civic engagement or profound democratic deliberation. Another problem which should be considered is the absence of unambiguous regulatory framework governing the legal effects of the referendum (as is the case in Slovakia).

Local referendum

In comparison with the nationwide referendum, the practice of holding referendums at lower administrative levels in the V4 countries is far more common. Unfortunately, available data in this regard is often imprecise, in particular pertaining to the referendums held in the 1990s. One of the most striking differences observed between the countries is the power to dismiss the local government authorities by means of local referendum (as is the case in Poland and Slovakia) or the absence of such a possibility (in the Czech Republic and Hungary). Local referendums held in order to dismiss local authorities are particularly common in Poland (where they turned out successful in approx. 11% of instances). The major problem observed in all V4 countries is the non-application of the institution of referendum at higher levels of administration (in Poland that would be voivodeship [regional] level, the regional level in the Czech Republic and Slovakia, while in Hungary there is even

no such legal possibility). The recommendations relating to the exercise of nation-wide referendum may to a great extent be applied also to the local referendum. The following issues shall be the subject of particular attention:

- Administering flexible and (reasonably) low quorums, in particular in optional referendums
- Extending the range of issues put to the vote under mandatory local referendums
- Strengthening the role of local media and non-governmental organizations in shaping the practice of local referendums

Citizens' initiative

Currently, this instrument of civic participation is present in its original form only in Hungary and Slovakia out of all the V4 countries. A referendum can also arise from grassroots initiatives in Poland, but the citizens' proposal on this matter is not binding on the Sejm. To date, the effectiveness of the citizens' initiative has been rather limited. In order to enhance the applicability of this instrument, the following aspects need to be addressed:

- The number of signatures required from the supporters of the initiative - it should be adapted to the demographic reality of a given country. Too high a number of signatures required is favourable to big parties and organized interest groups and renders this initiative an ineffective form of citizen participation. The advisable number of signatures required should be set at around 5% of the number of persons entitled to vote or lower.
- Timeframes devised for collecting signatures - to make the best use of citizens' initiative, the organizers should be given enough time to collect signatures. However, it should not be too long.
- Impartiality and political non-partisanship of verification bodies - since the citizens' initiative could be used by opposition parties and unpopular minority groups to attain their goals, it is of pivotal importance that the verification bodies controlling the exercise of this procedure (e.g. verifying the number of signatures and constitutional compliance of the initiative) are independent from any polit-

ical influence.

- Access to objective and comprehensive information - the solutions in this regard applied in other countries are noteworthy. To enable citizens to make a more knowledgeable decision, the referendum authorities and initiators may, for example, be required to jointly create a brochure containing e.g. draft legislation put to the vote in a referendum, justification and objectives of the initiative and recommendations of the parliament (e.g. Switzerland). The brochure is then distributed to all voters.
- Quorum required - the quorum required for the results of the referendum initiated by a group of citizens to be binding and enforceable cannot be too high (likewise in the case of other referendums). A high quorum requirement and the required majority is justified only in the case of a citizens' initiative regarding the amendment to the constitution (if such a legal possibility exists).
- The binding nature of a citizens' initiative - if the referendum is successfully held and all formal requirements are met, the results should be binding on the authorities. Otherwise, the exercise of this instrument of civic participation is pointless.

Agenda initiative

Currently, Poland is the only V4 country that provides for the exercise of agenda initiative. Until 2013, such a possibility existed also in Hungary. The Czech and Slovak legal order provide for an institution of a petition, but these two forms of civic participation are substantially different. Likewise the citizens' initiative, the effectiveness of the agenda initiative is negligible. In Poland, the number of draft bills submitted by citizens accounts for about 0.5-1% of all draft bills submitted to the parliament. In consideration of the above, the following improvements are advisable:

- The number of signatures required - too low a number encourages Parliament's negligence of legislative proposals submitted under this initiative, whereas too high requirement renders the effective use of the agenda initiative unrealistic. It seems reasonable that the number of signatures required for agenda initiative be lower than in the case of a citizens' initiative.

- Interplay between the initiators and the parliament - a procedure allowing the initiators to present their position to the parliament and other forms of interaction with the legislative authority in place are advisable. These should contribute to the improvement of the quality of the proposed bills. Certain forms of procedural, logistical and financial public support for initiators are not only acceptable, but even desirable.
- Agenda initiative as the first step in the process of popular law-making - the solution implemented in some German Länder (e.g. Brandenburg, Saxony) provide for an interesting model in this respect. If a given agenda initiative is rejected by the regional parliament, it can be resubmitted with more signatures and thus be voted in a local referendum.

Public consultation

At present, this instrument of civic participation exists only in Hungary and Poland. In Hungary, the rules governing public consultations as well as the scope of their applicability are defined in detail in the Act of 2010. This law provides for two basic forms of public consultation: general consultations and direct consultations. In Poland, specific rules governing the process of public consultations were developed in the course of administrative practice which took several years, as such were neither established under the Constitution of the Republic of Poland nor in specific regulations. In the Polish legal system, the characteristic regulations on mandatory or optional public consultations are contained in a dozen or so separate specific acts, however, none of those specifically determines the manner and form of conducting such consultations. Regardless of these differences, certain bad practices characteristic of both countries can be identified. Eliminating such flaws would render the exercise of this form of civic participation easier and more effective:

- Reluctance on the part of the authorities - public consultations are often treated by the authorities as a chore imposed by the provisions of law. This may result in shaping the mechanisms of public consultation so that the result has hardly any impact on the decisions and issues being the subject of these consultations.
- Passive forms of conducting public consultations - authorities usually resort

to posting information about consultations only on the official websites (or bulletin boards in offices), and expect any comments to be submitted.

- Manipulating the dates of public consultations – including the practice of organising consultations too late, eliciting the citizens' opinions only when the regulation is finished, and not when the assumptions are developed. Other examples of such malpractice include too short time to conduct the entire procedure making it difficult and in extreme cases even impossible to acknowledge the assumptions of the decision to be made and matters being the subject of consultation.

Participatory budgeting

Participatory budgeting is a means that has been exercised in V4 countries for several years now (except Hungary) and its popularity is gradually increasing. It is worth noting, however, that in the Czech Republic, Slovakia and Poland this form of civic participation is not regulated at the statutory and constitutional level. In comparison with other V4 countries, in Poland the practise of participatory budgeting is already quite widespread and common. Although the number of local governments exercising participatory budgeting may vary on a year-to-year basis, the overall sum of money allocated for this purpose nationwide is systematically growing (in 2016 it was approx. PLN 318.5 million). Nevertheless, the potential which lies in this solution remains largely untapped due to numerous shortcomings and sometimes even pathological practices related to participatory budgeting. The overall Polish experience in this regard may be summarised in the form of the following guidelines for other V4 member states and the region:

- Transparent and open procedure - the principles of participatory budgeting should not be imposed on members of local communities by the authorities without providing the opportunity to discuss and allow the public to contribute with their own ideas. The rules, in particular those regarding project selection criteria that will be put to the vote, should also be announced in advance, prior to the procedure and formulated in a clear and unambiguous manner.
- Participatory budgeting treated as a long-term solution - the participatory budgeting should provide the public with the opportunity to discuss not

only individual, usually short-term projects, but also the needs and priorities for the development of a local community in a longer perspective. This requires cooperation of representatives of local government administration, NGOs, local activists and the members of the community alike.

- Providing all the individuals concerned with the possibility to discuss the common goals - the participatory budget is devised not only to decide on the allocation of money to particular projects. By creating the space for discussion for different participants in the process, it should also serve the important educational functions and foster the development of citizenship.
- Binding results of the participatory budgeting procedure - local authorities must not ignore or change the decisions expressed in a vote on the projects to be implemented.

Summary

After 1989, several forms of civic participation have been introduced into the legal systems of the V4 member states. However, the effective implementation of those new opportunities for engagement is hampered by numerous obstacles, including but not limited to reluctance of authorities or imprecise regulatory provisions. Nevertheless, some positive changes may be observed in the level of awareness demonstrated by citizens and politicians alike. The growing popularity of participatory budgeting and non-standard forms of civic participation in public life may contribute to a more effective implementation of other measures including a referendum, a citizens' and agenda initiative, or public consultations. However, to a large extent it depends on the activity of public benefit organizations, whether this potential can be effectively utilised for the benefit of the general public.

Practical Aspects of Civic Participation and Referendum in the Visegrad Group Countries after 1989

Active involvement of the citizens in the processes of political decision-making is a crucial precondition of a robust, stable democracy. Almost 30 years after the collapse of communism in Central and Eastern Europe some of the most pressing questions are related to the issue of how the Visegrad Group countries have been faring in that regard. What has been already achieved and in what areas there is still a lot to be desired? How the experiences of the individual V4 countries with regard to the legal implementation and use of various instruments of civic engagement, including referendum, can be compared? What are the prospects for the future improvement of the quality of civic participation in the region? A research project “Practical Aspects of Civic Participation and Referendum in the Visegrad Group Countries after 1989” attempted to address those questions by bringing together the perspectives of social scientists from all the V4 countries. The results of the project were instrumental not only in the creation of the guideline at hand, but also formed the basis of a scientific monograph on civic participation in the V4 countries. Furthermore, participants organized a series of workshops in their home countries which promoted the idea of active citizenship.

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“Gazeta Samorządu i Administracji”

- supported by
- Visegrad Fund
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