

THE STRATEGIC USE OF PRESIDENTIAL REFERENDUMS IN POST-SOCIALIST ROMANIA

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Abstract: Praised by many as a remedy for various democratic deficits and criticized by others for their capacity to promote populist agendas, referendums are key participatory devices of representative democracy. However, a rich corpus of literature describes numerous occasions in which they become merely strategic levers in the hands of politicians instead of substantive popular consultations on policy issues. The Romanian post-socialist political system is no exception to this trend. Among the referendums held between 1990 and 2020, this paper analyses a particular class, those initiated by the President of Romania according to the article 90 of the Constitution, with the aim to discern the general features and the specific context of their strategic use, emphasizing especially the 2019 referendum concerning the justice system, the most recent one of the entire series. My observations confirm and further reinforce prior generalizations regarding the instrumentalization of referendums in post-socialist Romania.

Keywords: referendum, consultative referendums, presidential politics, mobilization, anti-corruption, populism, Romania



Rezumat: Lăudate de mulți drept remediu pentru diverse deficite ale democrației și criticate de alții pentru capacitatea lor de a promova agende populiste, referendumurile sunt dispozitive participative cheie ale democrației reprezentative. Totuși, un număr mare de lucrări descriu numeroase ocazii în care acestea devin doar pârguri strategice în mâinile politicianilor, în loc să fie consultări substanțiale asupra politicilor publice. Sistemul politic românesc post-socialist nu face excepție. Dintre referendumurile organizate între 1990 și 2020, acest articol analizează o categorie particulară, cea a consultărilor inițiate de Președintele României în conformitate cu articolul 90 din Constituția României, cu scopul de a discerne trăsăturile generale și contextul specific al utilizării lor strategice, evidențiind în special referendumul din 2019 privind sistemul de justiție, cel mai recent din întreaga serie. Observațiile mele confirmă și consolidează generalizări formulate anterior referitoare la instrumentalizarea referendumurilor în România post-socialistă.

Cuvinte cheie: referendum, referendumuri consultative, politică prezidențială, mobilizare, anticorupție, populism, Romania

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I. Introduction: Referendums as Strategic Levers

The contemporary theoretical framework of liberal democracy relies upon a series of principles that recommend representative government as a practical and relatively reliable method of conveying the political preferences of the public, however diverse, to decision-making bodies that convert them into policy. This does not mean that mechanisms of direct democracy do not have any significant place in the process of representation. In fact, they may play a crucial role in compensating participation deficits when party systems are not fully able to perform their function of aggregating political demand¹, or in finding a cure for the “democratic fatigue” established electoral democracies tend to suffer from². Frequently seen as a necessary complement to elections, such institutional devices “are not intended to supplant representative democracy but rather to serve as intermittent safety valves against perverse or unresponsive behavior of representative institutions and politicians”³.

Referendums in particular, defined as devices of direct democracy “by which the people are asked to vote directly on an issue or policy”⁴, are increasingly present in contemporary politics. The number of national level referendums held worldwide has been growing, as well as the number of referendums held in European democracies⁵. It goes without saying that frequent use of referendums does not tell much about how they are used. On the cautionary side, while the

¹ Matt Qvortrup, “Introduction: Theory, Practice and History”, in *Referendums Around the World. The Continued Growth of Direct Democracy*, ed. Matt Qvortrup (London: Palgrave Macmillan UK, 2014), 12-13.

² David Altman, *Citizenship and Contemporary Direct Democracy*, 1st ed. (Cambridge: Cambridge University Press, 2018), 2-3.

³ Ibid., 30. David Altman, *Direct Democracy Worldwide* (Cambridge: Cambridge University Press, 2010), 2.

⁴ Laurence Morel, “Referendum,” in *The Oxford Handbook of Comparative Constitutional Law*, ed. Michel Rosenfeld and András Sajó (Oxford: Oxford University Press, 2012), 502.

⁵ Saskia Hollander, *The Politics of Referendum Use in European Democracies* (Cham: Springer International Publishing, 2019); Laurence Morel, “The Rise of Government-Initiated Referendums in Consolidated Democracies,” in *Referendum Democracy: Citizens, Elites and Deliberation in Referendum Campaigns*, ed. Matthew Mendelsohn and Andrew Parkin (London: Palgrave Macmillan UK, 2001), 47–64; Maija Setälä, “Referendums in Western Europe – A Wave of Direct Democracy?,” *Scandinavian Political Studies* 22, no. 4 (1999): 327–338.

avoidance of referendums is usually being considered suspicious in itself⁶, recent events reminded that also overemphasizing the need for popular consultations can be, to a great extent, problematic. Referendums can be used as a means of undermining state sovereignty during violent geostrategic confrontations. A referendum was used to assert economic sovereignty against European Union under the heavy influence of a short-sighted partisan campaign (the Brexit referendum of 2016). Even the history of the concept is eloquent of the perils of authoritarian and personalistic instrumentalization of *referenda*, in the form of plebiscites. Over time, numerous studies questioned the relation between referendums and populist, illiberal tendencies, which encourages majorities to take “bad decisions” or to force their will upon minorities⁷. Nevertheless, the mere fact that referendums initiated by the legislative or executive seem to be by far the most common globally⁸ may explain by itself the appreciable growth of interest in searching for more insightful depictions of how state officials employ them to attain their strategic objectives.

The manner in which politicians may use large-scale popular consultations to achieve their goals can vary greatly. Some strategic uses stem from the communicative function of referendum campaigns, others from the ability of leaders to exercise control over public agenda, other from the capacity of referendums to mobilize voters. Motives that describe why political parties make use of referendums to pursue their plans can be broadly classified in two main categories: policy-related and institutional⁹. From the policy-centered perspective, agents that favor popular consultations may act to support their parties (party-oriented or centripetal goals: agenda-setting, popularity, and

⁶ See the reluctance with which top officials in Sweden and Finland received the idea of organizing a referendum on joining NATO (Reuters, “Swedish PM Rejects Referendum on Possible NATO Membership,” April 28, 2022, <https://www.reuters.com/world/europe/swedish-pm-rejects-referendum-possible-nato-membership-2022-04-28/>, accessed May 29, 2022; Jon Henley, “Finland and Sweden Confirm Intention to Join Nato,” *The Guardian*, May 15, 2022, <https://www.theguardian.com/world/2022/may/15/finland-formally-confirms-intention-to-join-nato-russia>), accessed May 29, 2022.

⁷ Laurence Morel, “The Democratic Criticism of Referendums: The Majority and True Will of the People,” in *The Routledge Handbook to Referendums and Direct Democracy*, ed. Laurence Morel and Matt Qvortrup (London and New York: Routledge, 2018), 149–169; Cecilia Emma Sottiolotta, “The Strategic Use of Government-Sponsored Referendums in Contemporary Europe: Issues and Implications,” *Journal of Contemporary European Research* 13, no. 4 (2017): 1361–1376.

⁸ Abdurashid Solijonov, “A Statistical Look Back at Referendums through the Years,” *International Institute for Democracy and Electoral Assistance*, last modified December 21, 2016, <https://www.idea.int/news-media/news/statistical-look-back-referendums-through-years>, accessed March 13, 2022.

⁹ Sergiu Gherghina, “How Political Parties Use Referendums: An Analytical Framework,” *East European Politics and Societies* 33, no. 3 (2019): 683–687.

legitimacy), and/or to subvert other competitors (centrifugal goals: mobilization against parties or leaders). Thus, on the institutional side, they may act centripetally, having objectives relevant to party organization, and centrifugally, to displace deadlocks, by-pass institutions they do not fully control, or determine early elections.

According to Walker, whatever the forces at play in a particular political environment, referendum politics operate on the same basic mechanism:

1. Referendums are part of a bargaining process between elites who have their basis of power in different institutional settings.
2. Referendums give political actors the political legitimacy to pursue change and potentially alter status quo institutions.
3. Executives can better position themselves than legislatures along a policy spectrum to win when introducing referendums¹⁰.

This makes such consultations a tempting lever to be applied in domestic politics, especially in highly polarizing situations, and in institutional settings that foster intense confrontations between executive and legislators. Semi-presidential republics are of special interest in this respect, as they make possible intense intra-executive conflicts during cohabitation periods, when presidents and prime-ministers do not share the same political allegiance, and even outside the cohabitation time frame¹¹.

The complexities of transitional politics in Central and Eastern Europe tend to add further layers of uncertainty to the precarious equilibrium of semi-presidential regimes. Romania, like other East-European countries, took the path of semi-presidentialism shortly after the dismantlement of his socialist institutions. While conflicts between the two branches of the executive were not absent or negligible, it is only after 2004 that its turbulent transitional politics registered the first instance of cohabitation. A new configuration of competition came into play as president Traian Băsescu abandoned the traditional, constitutionally prescribed, stance of “mediator” to enter effusively the partisan battle. Thereby, he inaugurated an adversarial dynamic that was involved in various degrees in all subsequent referendums – six out of a total of ten held

¹⁰ Mark Clarence Walker, *The Strategic Use of Referendums: Power, Legitimacy, and Democracy*. 1st ed. (New York: Palgrave Macmillan, 2003), 3.

¹¹ Anthony Murphy, “Semi-Presidential Reform and Referendums in France and Romania,” *European Journal of Comparative Law and Governance* 7, no. 4 (2020): 384–407; Thomas Sedelius and Olga Mashtaler, “Two Decades of Semi-Presidentialism: Issues of Intra-Executive Conflict in Central and Eastern Europe 1991–2011,” *East European Politics* 29, no. 2 (2013): 109–134.

from the inauguration of Romanian post-socialist regime until now. Among those, the most numerous were president-initiated consultative referendums (2007, 2009, 2019), compared to just two impeachment referendums (2007, 2012) and one bottom-up constitutional referendum (see Table 1).

This paper will highlight one distinct category of national consultations, those initiated by the President according to the article 90 of the Romanian Constitution, in order to discern the general features, the dynamic, and the specific context of their strategic use. Therefore, along with the objective of tracing the intricacies of Romanian presidential politics in relation with the use of consultative referendums, the paper aims to point out some key interactions that could help get a better grasp of the political strategies of their initiators. In addition, I will examine if the 2019 “referendum on Justice” initiated by President Klaus Iohannis can be considered a further example of direct democracy instrumentalization compared to similar instances of president-initiated referendums organized in Romania, and how does it fit in the analytical framework advanced by Sergiu Gherghina¹² with respect to the strategic utilization of referendums.

Following the taxonomy proposed by Hollander, who centers his approach on the criterion of “who triggers the referendum”, I will refer to the category of referendums under scrutiny as “presidential referendums”¹³. This is particularly suitable for an analysis of political action, as it emphasizes the dominant actor who may exercise control over the political agenda. It is even more fitting for the referendums initiated by the President of Romania, which, unlike in other post-socialist semi-presidential systems where the president has the power to initiate such consultations on issues of national interest, do not depend on the support of the prime minister or of the Parliament¹⁴. According to the

¹² Sergiu Gherghina, “Hijacked Direct Democracy: The Instrumental Use of Referendums in Romania,” *East European Politics and Societies: and Cultures* 33, no. 3 (August 2019): 778-797; Gherghina, “How Political Parties Use Referendums”, 682-684.

¹³ Saskia Hollander, *The Politics of Referendum Use in European Democracies* (Cham: Springer International Publishing, 2019), 43. Hollander distinguishes 5 types of referendums: “(1) referendums triggered by a parliamentary majority (i.e. legislative majority referendums), (2) presidential referendums, (3) referendums triggered by a parliamentary minority (i.e. legislative minority referendums), (4) citizen-initiated referendums; and (5) mandatory referendums, triggered not by an actor but by the constitution”.

¹⁴ For instance, among EU member countries, in Poland, in order to trigger a referendum on issues of particular importance for the state, the president should have the consent of the Senate given by absolute majority. In Croatia the president needs the support of the prime-minister. (see Maciej Hartliński, “The Effect of Political Parties on Nationwide Referendums in Poland after 1989,” *East European Politics and Societies* 33, no. 3 (2019): 738; Hollander, *The Politics of Referendum Use*, 94; Silvia Suteu, “Recourse to the People in Semi-Presidential Systems: Lessons

comprehensive classification proposed by Morel, this kind of popular consultations could be included in the category of top-down, executive-initiated, propositive, advisory referendums (Type 7), the one withholding a minimal amount of legislative power compared to the rest¹⁵.

The article proceeds with a brief outline of the legal provisions related to the organization of national referendums in Romania, showing how the legislation itself became, in some instances, a strategic lever in the hands of the parliament – or the government, through the means of emergency ordinances. Then, it presents the consultative referendums initiated by president Traian Băsescu during his first term in office, the tumultuous political clash that inaugurated an extended period of political cohabitation. Finally, it will delineate the 2019 referendum on justice-related issues, the most recent in the entire series.

II. National Referendums in Romania: Legal Provisions

The Constitution of 1991 refers to the prerogative of the President to initiate referendums in Art. 90, which states: “The President of Romania may, after consultation with Parliament, ask the people of Romania to express, by referendum, their will on matters of national interest”¹⁶.

A referendum is also necessary during the so-called “suspension procedure”, part of the process of impeachment, in order to remove a president from office (Art. 95). The Constitutional Court has the power “to guard the observance of the procedure for the organization and holding of a referendum and to confirm its returns” (Art. 146). Aside from the top-down referendums gravitating around the institution of the Presidency, the fundamental law also contains provisions for national popular consultations in the matter of constitutional laws.

Leaving the task of establishing a more detailed normative framework to be picked up by the organic law (Art. 73), the text remains silent with respect to the possibility of initiating bottom-up referendums on policy issues. In fact, Romania has been noted as being one of the former socialist countries that do

from Romanian Referendum Practice During Periods of Divided Government,” *UCL Working Paper Series*, no. 4 (July 15, 2020): 10-11, <https://papers.ssrn.com/abstract=3652220>, accessed September 19, 2022).

¹⁵ Laurence Morel, “Types of Referendums, Provisions and Practice at the National Level Worldwide,” in *The Routledge Handbook to Referendums and Direct Democracy*, ed. Laurence Morel and Matt Qvortrup (London and New York: Routledge, 2018), 29-34.

¹⁶ ***, *Constitution of Romania - Republished* (București: Monitorul Oficial R.A., 2012), <https://www.ccr.ro/wp-content/uploads/2020/11/constitutie-ingleza.pdf>.

not have an explicit constitutional basis for the citizens-initiated referendums, together with Czech Republic, Poland, and Estonia¹⁷.

Many other constitutional issues were left by the Constituent Assembly to future parliaments to decide. However, the organic law regarding the organization of referendums came later than expected, not long before the first revision of the constitution that took place, in 2003. The Law No. 3 of 22 February 2000 on the organization and conduct of referendums distinguishes between two main categories of consultations, national and local. According to the Article 2 of the law: “The national referendum is the form and means of direct consultation and expression of the sovereign will of the Romanian people regarding: a) revision of the Constitution b) dismissal of the President of Romania; c) issues of national interest.”

With two types of national referendums revolving around the presidential branch of the two-sided Romanian executive and a highly-charged political atmosphere, it is unsurprising that the legislation itself would become a strategic lever in the conflict between the Parliament and the Presidency during the prolonged cohabitation period that followed the 2004 presidential elections.

From its adoption until now, the above-mentioned law suffered no less than 28 revisions¹⁸, the most controversial of which related to quorum provisions introduced to facilitate the impeachment of the president. Less controversial, but questionable still¹⁹, the presence of a general attendance quorum in the original version of the law raised a high bar in terms of turnout, requiring that any national consultation have at least half plus one of the voters on electoral rolls participating in order to be valid (Art. 5.2). Together with the approval quorum stipulated exclusively for the class of impeachment referendums (Article 10: “The dismissal of the President of Romania is approved if it meets the majority of votes of the citizens registered on the electoral rolls”²⁰), this

¹⁷ Hollander, *The Politics of Referendum Use*, 92.

¹⁸ Romanian Parliament, “Law no. 3/2000 on the organization and conduct of referendums with all subsequent additions and modifications,” <http://legislatie.just.ro/Public/DetailiiDocument/21139>, accessed January 14, 2022.

¹⁹ Mihaela Ivănescu, “Insurmountable Rules, Absenteeism and Political Strife: A Comparative Analysis of the Romanian National Referendums (1990-2018),” *Annals of the „Ovidius” University of Constanța – Political Science Series* 7 (2018): 138-139.

²⁰ See the synopsis provided by the European Commission for Democracy through Law (European Commission for Democracy through Law, “Opinion on the Compatibility with Constitutional Principles and the Rule of Law of Actions Taken by the Government and the Parliament of Romania in Respect of Other State Institutions and on the Government Emergency Ordinance on Amendment to the Law N° 47/1992 Regarding the Organisation and Functioning of the Constitutional Court and on the Government Emergency Ordinance on

secured an enhanced political protection for presidents in office against hostile parliamentary majorities.

The fact that a relatively high general turnout threshold needed to be applied in every nationwide referendum became an obstacle even in the case of the first revision of the 1991 Constitution, in 2003, when the government felt necessary to schedule the voting over two days instead of just one (Government Emergency Ordinance no. 92/2003). Subsequent governments continued to make extensive use of emergency ordinances when introducing new revisions. In 2007, before the first impeachment referendum against President Traian Băsescu, the approval quorum was lowered by law as an explicit derogation from the rule regarding the attendance quorum: “By derogation from Article 5 paragraph (2), the dismissal of the President of Romania is approved if it meets the majority of valid votes cast at country level by the citizens that took part in the referendum” (article 10 of the Law no. 129/2007). After that, the same article was modified multiple times, reverting to the majority of votes of the citizens registered, just to be lowered once again and to stabilize in the end to the “majority of the valid votes cast”. This prolonged struggle over legislation gave the experts of the Venice Commission sufficient grounds to state that “both in 2007 and in 2012, the quorum required for the adoption of a referendum on the suspension of the President was changed while a suspension was imminent” and that “such event driven changes of electoral legislation amount to a violation of the legal certainty and the principle of the stability of the referendum process”²¹.

Finally, the article 5 of the Law no. 3/2000 was revised once again in 2013, the general attendance quorum being expressed to this day in a twofold manner: in order to be considered valid, at least 30% of the number of citizens registered on the permanent electoral rolls should participate, and the number of valid votes should be equal to at least 25% of those registered on the permanent electoral rolls (Law no. 341/2013).

No approval quorum exists in the case of presidential referendums, due to their consultative nature, and this feature remained remarkably stable over time. However, the parliamentary majority did not refrain from trying to prevent the organization of the 2019 referendum on judiciary at the same time as the

Amending and Completing the Law N° 3/2000 Regarding the Organisation of a Referendum of Romania, Adopted by the Venice Commission at Its 93rd Plenary Session (Venice, 14-15 December 2012)” (December 14, 2012), 9, [https://www.venice.coe.int/webforms/documents/CDL-AD\(2012\)026-e.aspx](https://www.venice.coe.int/webforms/documents/CDL-AD(2012)026-e.aspx), accessed January 14, 2022).

²¹ Ibid.

election of Romanian representatives in the European Parliament, by amending the Law on the organization and holding of European Parliament elections. The text amending was struck down by the Constitutional Court (Romanian Constitutional Court Ruling no. 146/2019)²², a decision entirely predictable taking into account the prior jurisprudence of the Court with regard to the issue of simultaneity of national referendums and presidential, parliamentary, local or European Parliament elections (Romanian Constitutional Court Ruling no. 147/2007). Table 1 shows the complete list of nationwide referendums held in post-socialist Romania, chronologically ordered and pointing out the occasions in which invalidation occurred:

Date	Topic	Initiative	Advisory?	Turnout (%)	Votes yes (%)	Votes no (%)	Votes null (%)	Validity
1991, 8 Dec.	Adoption of a new constitution	Parliament	No	67.3	77.3	20.4	2.3	Valid
2003, 18-19 Oct.	Constitution revision	Parliament	No	55.7	89.7	8.8	1.5	Valid
2007, 19 May	Presidential impeachment	Parliament	No	44.5	24.8	74.5	0.7	Valid
2007, 25 Nov.	Electoral system (two-round majority vote)	President	Yes	26.5	81.4	16.1	2.5	Not valid
2009, 22 Nov.	Unicameral Parliament	President	Yes	50.9	72.3	20.7	7.0	Valid
	Decrease the number of MPs to 300				83.3	10.5	6.2	Valid
2012, 29 Jul.	Presidential impeachment	Parliament	No	46.2	87.5	11.2	1.3	Not valid
2018, 6-7 Oct.	Constitutional ban on same sex marriage	Parliament	No	21.1	91.6	6.5	1,9	Not valid
2019, 26 May	Banning amnesty and pardon regarding corruption offences	President	Yes	43.3	81.5	13.4	5.1	Valid

²² Adelina Rădulescu, „Mizele organizării unui referendum simultan cu alegerile pentru PE, după pronunțarea CCR,” *Europa Liberă România*, March 13, 2019, <https://romania.europalibera.org/a/referendum-alegeri-europarlamentare-justitie/29819489.html>, accessed October 1, 2022.

	Banning the use of emergency ordinances concerning crime, punishment and the organization of the judiciary				43.4	81.8	13.1	5.1	Valid
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Table 1. Referendums in post-socialist Romania (1991-2019)

Source: Data compiled from Autoritatea Electorală Permanentă, *Cartea Albă a Referendumului Național din 22 Noiembrie 2009* (București: Autoritatea Electorală Permanentă, 2009); Mihaela Ivănescu, “Insurmountable Rules”, 141-142; Biroul Electoral Central, „Proces verbal privind rezultatele referendumului național pentru revizuirea Constituției din 6 și 7 octombrie 2018,” October 11, 2018; Biroul Electoral Central, „Proces verbal privind rezultatele referendumului național privind interzicerea amnistiei și grațierii pentru infracțiuni de corupție din 26 mai 2019,” March 6, 2019; Biroul Electoral Central, „Proces verbal privind rezultatele referendumului național privind interzicerea adoptării de către guvern a ordonanțelor de urgență în domeniul infracțiunilor, pedepselor și al organizării judiciare corelată cu dreptul altor autorități constituționale de a sesiza direct Curtea Constituțională cu privire la ordonanțe din 26 mai 2019,” March 6, 2019; Gherghina, “Hijacked Direct Democracy”, 782.

The president decides when the consultation should take place as well as puts forth the questions under consideration. The parliament is invited to give its own opinion on the subject matter. The referendum statements are approved at the polls with the majority of valid votes cast.

It should be noted that from the point of view of the constitutional design, while not being kept in check by a possible veto from the head of the government or by the Parliament, the referendums initiated by the President of Romania are optional and not legally binding (advisory) plebiscitary devices. Thus, we can theorize that, from a checks-and-balances standpoint, it was originally intended to provide a political “recourse to the people”, giving the Presidency the ability to influence the decision-making process, without having the possibility to take over. On the other hand, from the perspective of the liberal theory of democratic representation, regardless how prominent the role of the president, this kind of popular consultations can be considered genuine mechanisms of direct democracy insofar they allow a readjustment of the mandate entrusted by the people to the representatives during elections, giving to the voters a say in the decision-making process²³, within the limits established by the president.

²³ Carlo Invernizzi Accetti and Giulia Oskian, “What Is a Consultative Referendum? The Democratic Legitimacy of Popular Consultations,” *Perspectives on Politics* 20, no. 1 (March 2022): 123–138.

III. Presidential Referendums During the First Two Cohabitation Terms: Pushing for Electoral Reform (2007) and Parliamentary Reform (2009)

Anthony Murphy²⁴ accurately noted that, paradoxically, Romania entered its tumultuous cohabitation era (2004 to present day) only after a constitutional reform which was supposedly designed to improve the stability of the post-socialist political system. As a result of extending the presidential mandate to five years, the presidential and legislative elections went out of sync according to the new electoral calendar, thus allowing for the possibility of a presidential mandate politically separated from the parliamentary majority. Certainly, reassured and contented by the economic and diplomatic achievements of his government²⁵, the prime minister in office at the time, Adrian Năstase, leader of the Social Democratic Party (PSD), was not expecting to see the above-mentioned consequence taking effect so soon. Nevertheless, he failed to secure the presidential mandate with a narrow margin against his challenger, Traian Băsescu (the candidate of Justice and Truth Alliance, a grouping of opposition parties combining the forces of National Liberal Party and Democratic Party), who immediately started to corrode the electoral alliance that obtained the majority of votes in the legislative elections, and forced an *ad-hoc* coalition by nominating fellow Alliance member, Călin Popescu Țăriceanu, as prime minister²⁶. Adrian Năstase became head of the Chamber of Deputies, PSD being able to get a hold of the leadership of both chambers of Parliament. It was the inauguration of a turbulent cohabitation term that began with a justice system and property rights reform that gave to the executive, through the Presidency and Justice Ministry, overall control over the appointment of chief prosecutors (Law no. 247/2005 on the reform in the fields of property and justice), continued with the indictment of Adrian Năstase²⁷ on corruption

²⁴ Murphy, “Semi-Presidential Reform and Referendums”, 390.

²⁵ In March 2004, Romania entered NATO, and succeeded to advance on the road to EU membership leading even to the announcement of a definite date for its accession, set to be made at the European Council from December 2004.

²⁶ William M. Downs and Raluca V. Miller, “The 2004 Presidential and Parliamentary Elections in Romania,” *Electoral Studies* 25, no. 2 (June 2006): 409–415.

²⁷ Radio Free Europe, “Former Romanian PM Nastase Indicted on Graft Charges,” February 7, 2006, <https://www.rferl.org/a/1065534.html>, accessed March 23, 2022.

charges, and culminated with the breakup of the Justice and Truth Alliance and a failed impeachment attempt against President Băsescu.

These are the overall circumstances describing the first presidential referendum, one held on the same day as the first elections for the European Parliament organized after Romania’s official accession to EU. It is worth mentioning that all three presidential referendums under analysis were organized together with different types of elections: the elections for the European Parliament (2007, 2019) and the presidential elections (2009). Thus, a strong relation to the electoral interest of the parties that gained presidential support is to be expected.

Having survived the impeachment, Băsescu found itself in a position to capitalize on his previous success. A referendum initiative, first of its kind, would have been the best way to both reinforce the image of a leader deeply engaged in the fight against the corrupt parliamentary elite and to support his party during the first elections of Romanian representatives in the European Parliament, as the Democratic Party could have benefited from a “popularity transfer” during the referendum campaign.

He selected an older issue, riddled with technicalities of little interest for the general public: the electoral reform. Outlined initially by a civic association, the electoral reform initiative already under parliamentary debate aimed to replace the traditional list proportional representation system with a mixed-proportional one. To clearly distinguish his position, Traian Băsescu embraced the more radical and less likely option, a two-round majority system, and called for a national consultation on the matter, insisting on presenting it as a step forward towards the “cleansing of the political class” or “the reformation of the political class”²⁸. Unsurprisingly, the referendum failed to attain the turnout required for validation. However, the level of mobilization of Băsescu’s sympathizers was enough to guarantee the victory of his party in the supranational electoral contest.

The opinion according to which, in this instance, “the important stake was not necessarily representation in the European Parliament but more of a rehearsal before the 2008 legislative election”²⁹ is entirely legitimate. Having said this, the symbolic influence of European elections in Romanian domestic politics should not be underestimated. At the time, opinion polls reported high

²⁸ Carmen-Cristina Catargiu, “A Critical Discourse Analysis of the Political Discourse of President Traian Băsescu,” *Synergy* 7, no. 2 (2011): 170.

²⁹ Gherghina, “Hijacked Direct Democracy”, 791.

approval ratings regarding the European Union and its institutions, in sharp contrast with the general dissatisfaction showed in relation to the government³⁰. In addition, the Democratic Party had just acquired the status of Associated Member to the European Peoples Party³¹ after leaving the social-democratic ideological family and aspired to confirm its strategic ideological shift by helping the center-right group consolidate its position in the European Parliament.

The 2009 presidential referendum followed a similar mobilization-oriented logic. This time, Traian Băsescu decided to schedule the referendum at the same time with the presidential elections. Concentrating the intense adversity of the legislative and trying to help a relatively favorable but unstable government to postpone the worst effects of the public finance crisis of 2008, Băsescu continuously exercised his adversarial leadership style, while his political position became increasingly contested. At the same time, he continued to assume the appearance of a strong leader and fighter against corruption: “In the 2009 presidential campaign, Băsescu rallied his supporters against the «media moguls» and a corrupt parliament (the slogan of his campaign was «Burn all those corrupt!») and he campaigned on promises to jail corrupt officials and mafia leaders”³². The referendum over the parliamentary reform remained attached to this image, and directly served the right-wing populist rhetoric he used multiple times in order to defy the hostility of the legislative, one that portrayed the Romanian Parliament as a costly and inefficient (if not useless) institution, which offers privileges and protection against the law to the corrupt elite at the expense of the ordinary citizen. According to this view, renouncing bicameralism and lowering the number of representatives would have only improved the country’s governance, while reducing the cost and time spent on law-making.

Moreover, Băsescu was able to exploit his agenda setting power against his opponent, basically forcing Geoană to include the parliamentary reform in his candidate discourse by accepting the very popular proposition of reducing the

³⁰ Boyka Stefanova, “The 2007 European Elections in Bulgaria and Romania,” *Electoral Studies* 27, no. 3 (2008): 566–571.

³¹ Georgeta Voinea, *The Democratic Party from Romania Became an Associate Member of the European People’s Party. Political Report* (Bucharest: Konrad Adenauer Stiftung, 2006), https://www.kas.de/documents/252038/253252/7_dokument_dok_pdf_9672_2.pdf, accessed April 3, 2022.

³² Cosmina Tanasoiu and Mihaela Racovita, “Post-Accession (Anti-)Corruption Record in Romania and Bulgaria,” *L’Europe en Formation* 364, no. 2 (December 10, 2012): 258.

number of MPs in future legislatures³³. More generally, in the strategic setting of the Romanian president-initiated referendum, when proposing questions on polarizing issues, the president will always have, independently of the reaction of his opponents, the opportunity to portray his supporters as valuing the stated will of the people, in contrast with his opponents, portrayed as departing from it by failing to take sufficient action with respect to the issues under consideration.

Under these circumstances, it can be easily seen how the referendum was instrumentalized as a tool of mobilization and as an opportunity for the formally “neutral” incumbent to amplify his electoral messages. The referendum showed large support for the presidential agenda, although, even with this comparative advantage, Băsescu managed to win the run-off with less than one percent of the votes (50.3% vs. 49.7%) over his challenger³⁴. The discontented (mostly members of the Social-Democratic Party) claimed for a long time afterwards that the result was manipulated by fraud at the polling sites abroad.

	Type of intended goals	
	Policy	Institutional
Type of Action	Centripetal (party-oriented)	Constitution 1991
		Electoral system 2007
	Centrifugal (vs. opponents)	Size of Parliament 2009
		Unicameral Parliament 2009
	Impeachment 2007	Impeachment 2012

Table 2 The use of referendums in Romania

Source: Sergiu Gherghina, “Hijacked Direct Democracy: The Instrumental Use of Referendums in Romania,” *East European Politics and Societies: and Cultures* 33, no. 3 (August 2019): 793.

In his article about the strategic use of referendums held in Romania between 1989 and 2012, Sergiu Gherghina proposes an analytic framework which combines a two-category criterion regarding the publicly assumed goals of the

³³ Paul Dobrescu, „Geoană: «După cinci ani de scandal, poporul are puterea să decidă»” *Libertatea*, November 22, 2009, <https://www.libertatea.ro/stiri/geoana-dupa-cinci-ani-de-scandal-poporul-are-puterea-sa-decida-408477>, accessed October 1, 2022.

³⁴ Aurelian Muntean, Grigore Pop-Eleches, and Marina Popescu, “The 2009 Romanian Presidential Election,” *Electoral Studies* 29, no. 4 (December 2010): 753–757.

initiators (policy-oriented or institutional) with the centripetal-centrifugal dimension of political action, in order to lay out the cases that showed, according to the author, significant signs of strategic instrumentalization (see Table 2). While some of the interpretations and choices advanced by the author remain debatable, this framework is a very useful attempt at systematization.

One problematic aspect of this approach consists in the argumentation according to which the 1991 constitutional referendum is a valid example of partisan strategic use. Gherghina argues that because there was no valid constitutional provision already in place to make the constitutional referendum mandatory, the main factor that advanced it was the unilateral interest of the dominant political forces to use it as a partisan legitimation tool³⁵.

However, considering the bootstrapping nature of the constitutional institutions of the newly envisioned capitalist regime, it is hardly believable that the referendum could have been considered optional. Of course, the result reflected the power positions and the confrontations relevant at the time, but its essential function was to provide legitimacy to the new political regime. The one from 1991 could have safely been treated like the one of 2003 was, thus being excluded from the list.

Within the taxonomy, the issues raised by the presidential referendums of 2007 and 2009 are placed, with good reason, in the quadrant that describes centripetal (party-oriented) actions with openly assumed institutional goals. In the following section, I will sketch an updated version of this layout, taking into account the observations occasioned by the 2019 referendum.

IV. The Presidential Referendum of 2019: Capitalizing on 2017 Anti-Corruption Protests

The presidential referendum of May 26, 2019 was envisioned long before it came to fruition. “The fight against corruption” being for many years at the very center of the clashes between the parties supported by the president, on one hand, and the Social-Democratic Party (PSD) and its allies, on the other hand, no one would have been surprised to hear that a referendum on this issue will be scheduled sooner or later. President Klaus Iohannis announced the initiation of a referendum concerning “the continuation of the fight against corruption” during the anti-government protests of 2017³⁶, but postponed it until March

³⁵ Gherghina, “Hijacked Direct Democracy”, 785.

³⁶ Katie French, “Romanian Parliament Approves Anti-Corruption Referendum,” *The Guardian*, February 13, 2017, <https://www.theguardian.com/world/2017/feb/13/romania-approves-anti-corruption-referendum>, accessed April 1, 2022.

2019, when he scheduled it on the same day with the elections for the European Parliament³⁷. Later, he announced the questions to be included on the ballot:

1. Do you agree with the ban on amnesty and pardon for corruption offenses?
2. Do you agree with the prohibition of the adoption by the Government of emergency ordinances in the field of crime, punishments, and judicial organization and with the extension of the right to challenge the ordinances directly to the Constitutional Court?³⁸

Both questions directly referenced the events of the winter of 2017, in the aftermath of legislative elections, when large scale demonstrations were held in Bucharest against the intention of the newly appointed government to promote a general amnesty and pardon ordinance concerning various lesser, non-violent, crimes.

The draft emergency ordinance was presented as a means to alleviate prison conditions. Romania had been receiving alarming penalties from The European Court of Human Rights, and the provisional technocratic government in office before the 2016 legislative election promoted an ample debate over workable solutions, including an amnesty law³⁹. However, many influential opinion leaders, politicians, and NGOs were seeing in the latter just an attempt from the newly elected parliamentary majority “to craft an escape route” for the officials prosecuted by the Anti-Corruption National Directorate (DNA). As rumors emerged about the intentions of the newly installed government to revise some definitions from the Criminal Code, opposition leaders from the National Liberal Party (PNL), defeated in the legislative elections from December 2016 in spite of the support received from the president, expressed their disapproval, together with the leaders of Save Romania Union (USR), whose political identity was already heavily relying on the anti-corruption rhetoric. This sparked a vibrant protest movement that received full support from President Iohannis, who hurried to join the protesters in the streets⁴⁰. His encouragements led to a series of protests that resulted in a major governmental crisis⁴¹.

³⁷ Radu-Sorin Marinas, “Romania’s President Calls Referendum to Back Anti-Graft Reform,” *Reuters*, March 28, 2019, <https://www.reuters.com/article/us-romania-corruption-referendum-idUSKCN1R926Y>, accessed April 2, 2022.

³⁸ Adelina Rădulescu, „România: semnele de întrebare ale referendumului de la 26 mai,” *Radio Europa Liberă*, April 25, 2019, <https://moldova.europalibera.org/a/romania-semnele-de-ntrebare-ale-referendumului-de-la-26-mai/29903773.html>, accessed April 4, 2022.

³⁹ Dan Tăpălagă, „Cum golim închisorile și de ce putem face asta fără grațiere - Juridice,” *Juridice*, July 4, 2016, <https://www.juridice.ro/454080/cum-golim-inchisorile-si-de-ce-putem-face-asta-fara-gratiere.html>, accessed February 27, 2022.

⁴⁰ Ovidiu Gherasim-Proca, „Mobilizare și conflicte politice în România. O competiție între populisme?,” in *România – de la Marea Unire la integrarea europeană. Dezbateri, provocări, perspective*, ed. Bogdan Ștefanachi and Alexandru Muraru (Iași: Editura Universității „Alexandru Ioan Cuza”, 2020), 69; Carmen Păun, “Romanian Government under Fire over Plan to Commute

The referendum was largely seen (and acclaimed) as a new, more clear, albeit belated, popular repudiation of the lenient criminal justice policies promoted by the ruling coalition during the previous years, and the call of the president to the citizens “to punish” his adversaries “for the disastrous way they have governed the country” had been echoed enthusiastically by his supporters abroad, queuing to the polling stations and chanting: “Thieves!” and “We want to vote!”⁴². Journalists reported on the difficulties voters encountered to reach the polls, and the satisfaction with which they received the news that the leader of the governing coalition, Liviu Dragnea, was sentenced to prison for complicity to abuse of power, just hours after the polling station closed⁴³.

Overcrowding of the polling stations abroad had been the signature feature of the unexpected victory achieved by Klaus Iohannis in the 2014 presidential election⁴⁴. Being framed as a necessary conclusion of the battles from previous years on the issue of the dangers of leniency in the “fight against corruption”, the referendum contributed to a mobilization spike which produced overcrowding once again, giving the PNL representatives the opportunity to repeat the accusations that proved to be so successful during the 2014 presidential elections by pressing criminal charges against the Foreign Minister Meleşcanu⁴⁵.

Less loudly heard, but still having a voice through the media outlets close to the government coalition, the critics were denouncing the ambition of President

Sentences,” *Politico*, January 18, 2017, <https://www.politico.eu/article/romanian-government-under-fire-over-plan-to-commute-sentences/>, accessed February 27, 2022.

⁴¹ Ovidiu Gherasim-Proca, “Anti-Corruption Protests and Political Crisis. A Contextual Analysis,” in *Borders, Barriers and Protest Culture*, ed. Ovidiu Gherasim-Proca (Iași: Editura Universității „Alexandru Ioan Cuza”, 2018), 19–44.

⁴² RFE/RL’s Romanian Service, “Romanians Reject Controversial Changes to Anti-Corruption Laws, Judicial Reforms,” May 27, 2019, <https://www.rferl.org/a/29963404.html>, accessed January 14, 2022.

⁴³ Luiza Ilie and Radu-Sorin Marinas, “Romania’s Ruling Party Chief Jailed for Corruption,” *Reuters*, May 27, 2019, <https://www.reuters.com/article/uk-romania-corruption-trial-idUKKCN1SX123>, accessed January 14, 2022.

⁴⁴ Ovidiu Gherasim-Proca, „Al șaptelea scrutin prezidențial din istoria României post-comuniste (2-16 noiembrie 2014). Hipermobilizare online, criză politică și rezultate neașteptate,” in *Alegeri, alegători și aleși în România 2009-2014*, ed. Bogdan Gheorghiu (Sibiu: Editura Tehno-Media, 2016), 117–169.

⁴⁵ Social media platforms were inundated by angry mobilization-driven messages, like this one: “Again, Diaspora is humiliated by the red plague! We are over 800 people in line and the queue is getting bigger minute by minute. After waiting 2-3 hours to enter the polling station, they are forced to get out of the line to go back to work, especially the truck drivers!#Diaspora does not give up and will Vote!” (Alina Grigoras, “Romanians in Diaspora Queued to Cast Their Votes, Thousands Left out. Incidents Reported in All European Cities. PNL to File Criminal Complaint against FM Meleşcanu,” *The Romania Journal*, May 27, 2019, <https://www.romaniajournal.ro/politics/romanians-in-diaspora-queued-to-cast-their-votes-incidents-reported-in-all-european-cities-pnl-to-file-criminal-complaint-against-fm-melescanu/>, accessed January 4, 2022).

Iohannis to influence the result of the coming elections and even of trying to emulate Traian Băsescu. They were also arguing that the second question put forward by the president was hardly intelligible, due to its technical nature and convoluted form, and that the consultation in itself is useless.

As in the case of the 2007 referendum, the importance of the mobilization during the European elections should not be underestimated. This time, the symbolic significance associated with participation was closely related to the perceived crisis of the EU values, endangered by a right-wing populist upheaval⁴⁶. Thus, intense mobilization in support of the “fight against corruption”, one key topic of the Cooperation and Verification Mechanism, was to be seen as a symbolic proof of the success of the European project. Together with the victory in elections, and thus a higher number of representatives, this should have given PNL and President Iohannis a “prestige surplus” easily convertible in political capital.

Acting politically in the interest of your party cannot always be easily distinguished from acting against your opponents. In some respects, everything a political agent does against opposing groups reinforces the position of their own. Moreover, in the case of presidential referendums we can assume that they will overwhelmingly serve the leaders who initiate them and their parties. Also, policy and institutional goals can combine in various ways. However, taking multiple factors under consideration, there is enough evidence to support the inclusion of the 2019 referendum in the category of centripetal actions, as defined in the taxonomy proposed by Gherghina⁴⁷ (updated accordingly), with the first question displaying clear policy goals, and the second mainly institutional ones (Table 3).

In my opinion, the first question belongs to the policy-oriented side of the framework because it points to a precise policy outcome: no clemency towards the corrupt, thus a harsher punishment regime to accompany “the fight against corruption”. Conversely, the second question has its place in the quadrant reserved for institutional motivations, because of its abstract procedural nature. Set aside its convoluted form, which does not translate well in policy-making terms, few experts were prepared to agree that the results of the referendum would have been able to determine the outcome envisioned by its second question⁴⁸. Along these lines, it is worth mentioning that if consistently

⁴⁶ Susi Dennison and Zerka Pawel, “The 2019 European Election: How Anti-Europeans Plan to Wreck Europe and What Can Be Done to Stop It – European Council on Foreign Relations,” *ECFR*, February 11, 2019, https://ecfr.eu/special/the_2019_european_election/, accessed October 15, 2022.

⁴⁷ Gherghina, “How Political Parties Use Referendums”, 677–690; Gherghina, “Hijacked Direct Democracy”, 778–797.

⁴⁸ In fact, for practical reasons, none of the following two PNL-led governments adhered to its prescriptions. They persisted in using emergency ordinances concerning the organization of the judiciary. See: Uniunea Națională a Judecătorilor din România, „AMR, AJADO și UNJR au solicitat Avocatului Poporului sesizarea CCR cu privire la OUG 23/2020,” February 21, 2020,

followed, assuming an overwhelming popular consent, both questions would have demanded a subsequent revision of the Constitution, thus a new referendum, this time a legally binding one. This maximalist interpretation of the goals assumed by the president would justify placing both of them on the institutional side of the framework. However, while directly suggested by the uncompromising wording of the questions, it is less plausible when seen through the lenses of inherent practical constraints.

	Type of intended goals	
	Policy	Institutional
Centripetal (party-oriented)	Constitution 1991	Electoral system 2007
		Size of Parliament 2009
	Constitutional ban on same-sex marriage 2018	Unicameral Parliament 2009
Type of Action	<i>Banning amnesty and pardon regarding corruption offenses 2019</i>	<i>Ban on emergency ordinances related to criminal justice and organization of the judiciary 2019</i>
Centrifugal (vs. opponents)	Impeachment 2007	
	Impeachment 2012	

Table 3. The use of referendums in Romania (updated)

Source: Updated from Sergiu Gherghina, “Hijacked Direct Democracy: The Instrumental Use of Referendums in Romania,” *East European Politics and Societies: and Cultures* 33, no. 3 (Aug. 2019): 793.

Calling for a consultative referendum in order to validate the opportunity of a legally binding referendum on constitutional matters would have been redundant, self-contradictory and ultimately self-defeating – why show indecision by asking the people if they are willing to be asked again the same questions during a constitutional referendum? This is why a minimalist interpretation seems more plausible: the questions, with their amount of ambiguity, would have been conceived so that they would be perceived by the public not so much as a way of legitimating a future straightforward

<https://www.unjr.ro/2020/02/21/amr-ajado-si-unjr-solicita-avocatului-poporului-sesizarea-ccr-cu-privire-la-prevederile-din-oug-23-2020-ce-incalca-independenta-justitiei-si-dreptul-la-un-proces-echitabil/>, accessed April 3, 2022; Iulian Luca, „Guvernul amână prin OUG intrarea în vigoare a completurilor de 3 judecători,” *Capital*, December 30, 2020, <https://www.capital.ro/guvernul-amana-prin-oug-intrarea-in-vigoare-a-completurilor-de-3-judecatori.html>, accessed April 4, 2022.

constitutional reform, but as inhibiting the initiation of amnesty and pardon initiatives similar to those enacted during the 2017 and the use of emergency ordinances in the manner the PSD-led government did⁴⁹. Most importantly, while keeping in the background the general public criticism against the use of emergency ordinances in matters of high significance, like the justice system, they would have also reminded the prominent role played by President Klaus Iohannis in countering the weakening of the enforcement of criminal penalties in Romanian prisons during the 2017 protests.

The popular consultation has a centripetal action because its primary function was to help the incumbent and the party he supported to regain control over the populist anti-corruption narrative⁵⁰ in preparation for the presidential elections scheduled the same year, and to promote PNL during European Parliamentary elections, considering that the so-called “fight against corruption” and the strict adherence to the policy directions established through the Mechanism of Cooperation and Verification was the most obvious link between domestic and supranational levels of governance. Though Klaus Iohannis presented the idea of an anti-corruption referendum much earlier, his initiative gained traction only after it was appropriated by USR, which campaigned for a constitutional referendum that would have denied those previously convicted the right to be elected, contrary to the current legal practice, that gives the courts the latitude to establish such interdictions depending on the circumstances of the case under consideration. Of course, the campaign conducted under the slogan “No convicted criminals in public offices!” was targeting primarily the leader of the governing party, Liviu Dragnea, already convicted for unlawfully supporting the impeachment of the former president during the 2012 referendum. Because PNL and USR were disputing roughly the same core set of policy proposals regarding the criminal justice system, it is reasonable to assume that the presidential referendum of 2019 was in part driven by the need to surpass USR, which was challenging the president’s leadership in the battle against PSD. Also, by reminding the electorate of the events of 2017, Iohannis was recreating the mobilization atmosphere that generated the backlash against the Grindeanu government, and

⁴⁹ Interestingly enough, during the process of validation, the Constitutional Court indirectly favored this minimalist interpretation when addressing the question of whether the president-initiated referendums may ask questions that may result in constitutional change. According to the opinion expressed by the court (Romanian Constitutional Court Ruling no. 2/2019), the result of a president-initiated referendum is not able to impose a specific course of action where the representatives are concerned, despite the fact that they have to take them under consideration (see Suteu, “Recourse to the People”, 19).

⁵⁰ Tamás Kiss and István Gergő Székely, “Populism on the Semi-Periphery: Some Considerations for Understanding the Anti-Corruption Discourse in Romania,” *Problems of Post-Communism* (2021): 5; Dragoș Dragoman, “‘Save Romania’ Union and the Persistent Populism in Romania,” *Problems of Post-Communism* 68, no. 4 (2021): 309.

thus was able to channel it towards an overwhelmingly negative vote against PSD.

This weakened PSD even more, and together with the fact that their leader was sent to prison the day after the national consultation, permitted the reconfiguration of intra-legislative alliances that finally led to the formation of a PNL-led government just weeks before the presidential elections, won by the incumbent in a landslide⁵¹. PNL was also the winner of the European elections, though the referendum benefited both parties that joined forces against PSD, campaigning almost exclusively on the issue of corruption. USR performed exceptionally well. The turnout rose to a record high 51.20%, which confirmed their ability to link the national and transnational political competitions, thus challenging the classic second order elections model⁵².

V. Conclusions

The referendum concerning the judiciary conducted in 2019 confirms prior generalizations regarding the strategic use of top-down consultations at the national level in Romania. Firstly, it is overwhelmingly apparent that referendums in general, and presidential referendums in particular, tend to be heavily instrumentalized by political actors that have the capacity to initiate them, with little concern about the effective policy outcome or general interest aggregation, thus complying with the qualification of “hijacked direct democracy” proposed by Gherghina⁵³.

With no exception, presidential referendums were organized simultaneously with national or supranational electoral contests in which the president in office had a stake, and they pointed towards institutional reforms or policy objectives which were very unlikely to attract the support needed to generate concrete outcomes, but offered wide-ranging partisan campaigning and mobilization opportunities, while leaving little time for complex debate and deliberation. As Suteu remarks, all three presidential referendums were organized within thirty days from the publication of the presidential decrees that triggered them, on a much shorter deadline than a well-informed large scale popular debate would require⁵⁴. Given the advisory nature of such consultations, this timing makes noticeable the persistent interest of both ten-year term presidents in maximizing the gains of their supporting parties and of their own, disregarding the need for debate and deliberation.

⁵¹ Kiss and Székely, “Populism”, 6.

⁵² Mihaela Ivănescu, “An Electoral Outlier or Second Order Business as Usual? A Decade of European Elections in Romania (2009-2019),” *Revista de Științe Politice*, no. 70 (2021): 162.

⁵³ Gherghina, “Hijacked Direct Democracy”, 778–797.

⁵⁴ Suteu, “Recourse to the People”, 20.

On the other hand, the contextual examination of the strategies at work reveals that the issues set to be the object of consultation were invariably more able to exploit the polarization among voters than to translate into concrete significant political decisions. The 2019 referendum particularly stands out in this respect, its questions largely referencing past events and pointing to legal outcomes particularly hard to achieve. Moreover, the 2009 and 2019 referendums were constructed around constitutional issues which, despite their popular appeal, would have required improbable levels of agreement between political competitors in order to become effective at the decision-making level, thus guaranteeing to their initiators the ability to parade a certain special receptivity to the “will of the people” in contrast with their opponents.

Within the constitutional framework of the post-socialist constitution of Romania, even the grassroots campaigns organized in order to amend the constitution, while able to produce concrete direct policy outcomes, showed how their initiators’ agenda departed to a high degree from what would have been a coherent policy-driven consultation. The referendum regarding the constitutional prohibition of same-sex marriage, for instance, intended just to reinforce preemptively legal provisions already in place⁵⁵. The campaign “No convicted criminals in public offices!”, inspired by typical populist claims⁵⁶, answered to a firm rejection of corruption by the Romanian public and proposed a general rule that was directed especially against the leader of the governing majority, Liviu Dragnea. However, the constitutional referendum based on this proposal was postponed in 2019, and is still waiting to be enacted, in spite the hopes of USR that this could have been organized during the parliamentary elections of 2020⁵⁷.

Secondly, it is once again apparent that the adversarial logic behind referendum initiation remains entrenched in a set of strategic action-reaction exchanges – which Ivănescu pertinently qualifies as “exercises in tit-for-tat”⁵⁸. The presidential referendum of 2019 provides a clear illustration of this mimetic action-reaction game. Immediately after Klaus Iohannis announced

⁵⁵ Ovidiu Gherasim-Proca, „Referendumul pentru modificarea articolului 48 din Constituția României și revirimentul militantismului politic conservator,” in *Resurgența ideologiilor nedemocratice în România contemporană*, coord. Emanuel Copilaș (Timișoara: Editura Universității de Vest, 2019), 409–435.

⁵⁶ These claims could be generally attributed to the category of “penal populism” when assuming that the justice system favors perpetrators from the ranks of the elite, at the expense of ordinary citizens, and to the one of “anti-corruption populism” insofar as it points towards the corruption of the elite as the main cause of state failure and popular dissatisfaction. See: John Pratt, *Penal Populism* (London: New York: Routledge, 2007); Kiss and Székely, “Populism”.

⁵⁷ Cristian Andrei, „Inițiativa «Fără penali în funcții publice» nu a fost votată la Senat. Cum i-a jucat PSD pe cei de la USR și PNL,” *Europa Liberă România*, November 11, 2020, <https://romania.europalibera.org/a/ipocrizie-in-senat-initiativa-fara-penali-in-functii-publice-nu-a-fost-votata-desi-toate-partidele-spun-ca-o-sustin/30942651.html>, accessed April 14, 2022.

⁵⁸ Ivănescu, “Insuperable Rules”, 151.

consultations on the issue of corruption in 2017, the leader of the parliamentary majority, Liviu Dragnea, threatened publicly to support the constitutional referendum proposed by the “Coalition for family”⁵⁹. Whereas the amount of backing PSD really offered is debatable, the above-mentioned support was clearly thought as a means to bust Dragnea’s popularity among the conservative electorate. Refraining strategically, Iohannis chose to enact his own, only after the 2018 constitutional referendum unfolded. At the same time, USR refrained to enact its referendum in 2019 – their campaign being in itself a prior reply to the lack of action from the part of the Presidency after the announcement made in 2017 – as a very similar presidential referendum was on the way. However, under new circumstances, it is highly probably that the initiative will be revived.

These observations raise unsettling questions not only about the ability of current constitutional institutions to foster effective mechanisms of direct democracy, but also whether meaningful institutional reforms would be possible in the near future, considering the self-reinforcing strategic incentives provided by the rules and practices already in place.

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⁵⁹ Alina Neagu, „Liviu Dragnea: De multe ori cei care au inițiat un referendum au fost și cei care au pierdut în final,” *Hotnews*, February 20, 2017, <https://www.hotnews.ro/stiri-politic-21621106-liviu-dragnea-multe-ori-cei-care-initiat-referendum-fost-cei-care-pierdut-final.htm>, accessed April 14, 2022.

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