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Scope

“Global Perspectives on Japan” focuses on developing a global perspective on the study of Japan and Asia. The journal promotes innovative, interdisciplinary, inter-regional and transnational approaches to Japanese Studies.

The journal aims to be a venue for scholarship in E.M.E.A. region with a special focus on Turkey and neighboring regions. It especially encourages scholars from the Middle East, Balkans, Central Asia and the Mediterranean but also welcomes scholars from other parts of the world.

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International Comparison of Constitutional Reform Processes In Terms of The Requirements of Indirect And Direct Democracy*

Takashi Kitamura

(NUCB Business School)

Introduction

This paper is an international comparison of the requirements for indirect and direct democracy in the constitutional revision process. It aims to examine whether a “comparison with other countries’ constitutional revision procedures” is a valid basis for amending Article 96 of the Constitution of Japan by making an international comparison of the requirements for indirect and direct democracy in the constitutional revision process.

Background

If we were to use the terms “indirect democracy/direct democracy” to describe the argument for the revision of Article 96 of the Japanese Constitution announced by the Liberal Democratic Party in 2012, it would be “in the process of constitutional revision, the requirements for indirect democracy should be relaxed.” However, the ratio of requirements for direct democracy should be increased.” Regarding the procedure for amending the Constitution of Japan, the Liberal Democratic Party (LDP) has commented

* This article was published originally in Japanese: 北村貴。「憲法改正手続の国際比較：間接民主制及び直接民主制の要件の観点から」法政論叢 51 (1), 161, 2014 日本法政学会 https://doi.org/10.20816/jalps.51.1_161. It is abbreviated and translated by Ayşe Duygu Dayıoğlu for GPJ.

that “If the procedures in the Diet are too strict, the opportunities for the people to express their views on the Constitution will be narrowed”.¹ On top of that, he argues that the requirement for the Diet to initiate a bill should be relaxed from “two-thirds or more of all members of each house agreeing” to “more than half of all members of each house agreeing.” If this revision is realized, the ratio of the requirement for indirect democracy, “suggested by the Diet” in the constitutional amendment procedure will decrease, and as a result, the ratio of the requirement for direct democracy, “referendum” will increase.

There are two questions raised by the Liberal Democratic Party’s claims. First, there is the question of whether the requirements for indirect democracy in Japan’s constitutional revision procedures are too strict compared to other countries. The LDP’s value judgment of “too strict” is premised on comparison with constitutional revision procedures in other countries. However, the LDP does not present systematic comparison results. Secondly, there is the question, “Does the requirement for direct democracy account for a large proportion of the constitutional revision procedures in other countries?” Even though the requirements for indirect democracy are based on international comparison, it is not appropriate not to examine the requirements for direct democracy from the perspective of international comparison. In other words, it will be necessary to conduct an international comparison of not only the requirements for indirect democracy but also the requirements for direct democracy.

Against this background, this paper breaks down the constitutional revision procedures in the constitutional systems of developed countries into the requirements for indirect democracy and the requirements for direct democracy and conducts an international comparison. The purpose of this paper is to objectively verify whether or not a “comparison with constitutional amendment procedures in other countries” is appropriate as the basis for the amendment of Article 96 of the Japanese Constitution. In other words, it does not discuss the author’s arguments for and against the revision of Article 96 of the Japanese Constitution.

1 Liberal Democratic Party of Japan (2013), “Q & A on the Draft Amendment to the Constitution of Japan,” p. 42.

Countries and Methods of Comparison

The countries for comparison in this paper are 22 countries with rigid constitutions among developed countries² including Japan. Specifically, Australia, Austria, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Iceland, Ireland, Italy, Japan, South Korea, Luxembourg, Netherlands, Norway, Portugal, Spain, Sweden, Switzerland, and the United States. These 22 countries have in common a relatively long experience of constitutional politics based on democracy. In that respect, it can be said that it has an advantage for comparative verification.

These 22 advanced countries are classified into six types in terms of the "existence of a direct democracy requirement in the constitutional amendment process". Specifically, the six types are as follows:

(1) Countries where direct democracy is not required in all constitutional amendment procedures

(2) Countries where the direct democracy requirement is mandatory only for constitutional amendment procedures with specific contents

(3) Countries where direct democracy requirements can be incorporated into the constitutional amendment process through specific procedures

(4) Countries in which the direct democracy requirement is mandatory for the constitutional amendment procedure for specific content and the direct democracy requirement can be incorporated into the procedure for other content through a specific procedure

(5) Countries where direct democracy requirements are mandatory in more than one constitutional amendment procedure

(6) Countries in which the direct democracy requirement is mandatory in all constitutional amendment procedures.

After outlining the contents of the constitutional amendment procedures in each country based on these six categories, we will break them down into requirements for indirect democracy and requirements for direct democracy, and compare and examine the requirements for each.

2 1- OECD countries, 2- "High Income Economies" by the World Bank, 3- "Advanced Economies" by the International Monetary Fund, 4- "Advanced Economies" by the CIA, and 5- "Human Development Index" by the UNDP, p. 42. A Human Development Index of 0.9 or higher by UNDP, and 6- Countries that meet all six requirements of the Top 30 Quality of Life Countries by The Economist Intelligence Group are treated as developed countries.

Constitutional Reform Procedures in Each Country

As a prerequisite for comparative verification, this section outlines the constitutional amendment procedures in the 22 advanced countries based on the classification from (1) to (6) presented in the previous section. Table 1 summarizes the results of the classification.

Table 1: Classification of “whether direct democracy is a requirement in constitutional amendment procedures”

(i) Belgium, Canada, Finland, Germany, Greece, Holland, Norway, Portugal, USA
(ii) Iceland
(iii) Luxembourg, Sweden
(iv) Italy, Austria, Spain
(v) France
(vi) Australia, Denmark, Ireland, Japan, South Korea, Switzerland

(Created by author)

Below is a summary of the constitutional amendment procedures in each country based on the classification in Table 1³. In addition, from the viewpoint of accurate translation of the original language, there are countries where it is appropriate to write “basic law revision” instead of “constitutional revision”. However, in this paper, it is written uniformly as “constitutional revision.” Also, regarding the United States, it is common to translate the original Amendment as “modification” rather than “amendment”. Based on this point, the term “constitutional amendment” is used when explaining procedures unique to the United States, but when making an overall comparison, the term “constitutional amendment” will be used for the sake of convenience.

³ With regard to the explanation of the constitutional revision process of each country, formal and ceremonial requirements such as “promulgation by the emperor” in the Japanese constitutional revision process are omitted in this paper for reasons of space limitation.

1. Countries that do not require direct democracy requirements in all constitutional amendment procedures

1.1 Belgium

The procedure for amending the Constitution in Belgium is regulated in Article 195 of the Constitution of the Kingdom of Belgium (Belgische Grondwet / Constitution Belge / Verfassung Belgiens).

The first requirement is the passage of a "Declaration of Constitutional Reform". The declaration of constitutional amendment means "designation of the articles to be amended" and "specification of the grounds for the amendment," and it is not necessary to clarify the specific details of the amendment. A declaration of a constitutional amendment can be proposed by a member of the House of Deputies (lower house), a member of the Senate (upper house), or the King⁴ and is passed by a "majority vote of the members present" in each house. The powers of the two houses in the constitutional amendment process are equal.⁵

The next requirement is a passage by the new Congress following a general election held after the declaration of the constitutional amendment.

Upon passage of the Declaration of Constitutional Amendment, the House of Deputies and the Senate are automatically dissolved and general elections are held. After the general election, each house of the new National Assembly passes the constitutional amendment by "the attendance of two-thirds or more of the total members" and "the approval of two-thirds or more of the present members".

Thus, the constitutional amendment procedure in Belgium is based on the bicameral indirect democratic two-round voting system.

1.2 Canada

The constitutional amendment process in Canada is regulated in Articles 38 to 49 of the Constitution Act, 1982 (Constitution Act, 1982/ Loi constitutionnelles de 1982), and can be broadly divided into five types.

4 The following constitutional revision procedures and cases in each country are as of October 2014.

5 The Constitution of the Kingdom of Belgium has been amended 68 times since its enactment on February 7, 1831, but no constitutional amendment proposed by the king has ever been passed.

The first is the procedure stipulated in Article 38, which requires “a resolution of the House of Peoples (House of Representatives), a resolution of the Senate, and a resolution of two-thirds or more of the state legislatures and approved by at least 50% of the population of all the states. Resolutions are passed by a “majority of the members present” in each assembly. However, in the case of limiting the authority of a state, a “majority of the total number of members” of each assembly is required to approve the resolution. Furthermore, the state legislature of the state whose authority is to be restricted may refuse to apply the amendment to that state by “the opposition of a majority of the total number of members. Note that this amendment procedure is a general amendment procedure. At the same time, enumerations of Article 42, such as the principle of proportional representation of the states in the House of Peoples, may only be amended through this procedure.

Second is the procedure provided for in Article 41, “by resolution of the House of Peoples, by resolution of the Senate, and by resolution of all Provincial Assemblies.” The enumerated items in Article 41, such as the status of the Queen and the Governor General and the procedure for amending the Constitution, cannot be amended without following this procedure.

Third is the procedure provided for in Article 43: “Resolutions of the House of Common Pleas, of the Senate, and certain Provincial Assemblies.” The “particular state” refers to the state to which the amendment applies. Enumerated items in Article 43, such as changes in interstate boundaries, can be amended through this procedure.

The fourth procedure is the “resolution of the General Assembly and enactment of laws by the Senate,” which is provided for in Article 44. Matters related to the federal government, the House of Peoples, or the Senate that do not include matters that can only be amended through the first or second procedure may be amended through this procedure.

Fifth is the procedure of “enactment of state legislation by certain state legislatures,” as provided for in Article 45. The amendment of the state constitutions⁶ of each state can result in a state in which the Constitutional Act of 1867 (Constitution Act, 1867/ Loi constitutionnelles de 1867) and the

6 Woyke, W. (2009), “Das politische System Belgiens”, Ismayr, W. hrsg., Die politischen System Westeuropes, 4. Aufl., VS Verlag für Sozialwissenschaften, p. 455 ff.

Constitutional Act of 1982, in particular, the Constitution of the Federation, are effectively amended. It can be amended by this procedure as long as it does not contravene the provisions of Articles 41 and 43.

These five amendment procedures can be divided into "amendment by resolution" and "amendment by law". The first three procedures are "amendments by resolution. In the case of "amendment by resolution," the procedure is initiated upon the passage of a resolution by either house of the Senate. If the Senate does not pass the amendment, the House of Peoples may pass it again and the amendment can be made without a resolution of the Senate. On the other hand, the fourth and fifth procedures are "amendments by law". The fourth procedure is generally initiated when the government submits a bill to the House of Peoples. Since the two Houses are equal with respect to the enactment of laws, the General People's House alone cannot be amended. In addition, the "laws" in the fourth and fifth procedures are ordinary laws. In this sense, the provisions that can be amended in these procedures are soft constitutions, not hard constitutions.

Thus, although there are multiple constitutional amendment procedures in Canada, they all have in common that they can be amended only by the requirements of indirect democracy.

1.3 Finland

The procedure for amending the Constitution in Finland is regulated in Article 73 of the Finnish Constitution (Suomen perustuslaki/ Finlands grundlag).

The first is the procedure for ordinary amendments. Normal amendments require passage by Congress on two occasions, with a general election in between. The government and members of Congress may submit a bill to amend the Constitution.⁷ First, this constitutional amendment bill must be passed by a "majority of the members present. After the initial passage, the constitutional amendment process enters a suspension period, which lasts until the convening of the new Congress after the general election⁸, but this passage does not automatically dissolve the Congress. Next, the

7 The provincial constitutions of Canada are unwritten constitutions, consisting of parliamentary statutes, case law, and custom as sources of law.

8 Auffermann, B. (2009), "Das politische System Finnlands", Ismayr, W. hrsg. a. a. O., S. 240 ff.

new Congress must pass the amendment by a “two-thirds majority of the members present.”⁹ The last three amendments¹⁰ to the current Constitution, enacted in 1999, were all made through this process.

Second is the procedure for emergency amendments. An emergency amendment does not require an intervening general election. The Congress may pass an emergency proclamation by a “five-sixths majority of the members present. If the emergency proclamation is passed, the same Congress must pass a bill to amend the Constitution by a “two-thirds majority of the members present” to pass the amendment.

Thus, the constitutional amendment procedure in Finland differs between ordinary and emergency cases, but both use a unicameral indirect democratic two-part voting system.

1.4 Germany

The procedure for amending the Constitution in Germany is regulated in Section 79 of the Basic Law of the Federal Republic of Germany (Grundgesetz für die Bundesrepublik Deutschland).

There is only one procedure for constitutional reform in Germany. The federal government, the Bundestag (lower house of parliament), or the Bundesrat (upper house of parliament) may propose a bill for constitutional reform.¹¹ The constitutional amendment is passed by a “two-thirds majority of all votes” of the members of the Bundestag and a “two-thirds majority of all votes” of the Bundesrat.

Thus, the constitutional amendment procedure in Germany is based on the bicameral indirect democratic single-vote system.¹²

9 Husa, J. (2011), *The Constitution of Finland*, Hart Publishing, p. 217.

10 vrt. 25.5.2007/596, 24.8.2007/802 en 4.11.2011/1112

11 Hesse, K. (1999), *Grundzüge des Verfassungsrechts der Bundesrepublik Deutschland*, C. F. Müller, S. 221ff.

12 Strictly speaking, the provision of Article 146 of the Basic Law that “this Basic Law shall cease to have an effect on the day on which the constitution (among other things) which the German people have freely decided to vote on comes into force” may be problematic, but this paper will focus only on the amendment procedure under Article 79, paragraph 2, Vgl. Münch, h. c. I., Vgl. und P. Kunig hrsg. (2012), *Grundgesets Kommentar Band 2: Art. 70-146, 6. Aufl.*, C. H. Beck, S. 1868f.

1.5 Greece

The constitutional amendment procedure in Greece is regulated in Article 110 of the Greek Constitution (Σύνταγμα της Ελλάδας).¹³

First, it requires the passage of two “proposals for constitutional amendments” by the same assembly. A proposal to amend the Constitution refers to the “designation of articles to be amended accompanied by a statement of reasons.¹⁴ A proposal for a constitutional amendment is made by at least 50 members of the Assembly. The proposal is passed by a “three-fifths majority of the total members of the assembly. Furthermore, at least one month after the initial passage, the proposal must be passed again by “three-fifths or more of the total members” of the same assembly.

The next requirement is the passage of a constitutional amendment by the new Congress after the general election. However, the second passage of a proposal for a constitutional amendment does not automatically dissolve the assembly. This resolution is made during the first session of the new Congress and is passed by a “majority of the total membership. This passage of the resolution enacts the constitutional amendment.¹⁵ In this regard, if during the second vote on a proposal to amend the Constitution, “a three-fifths majority of the total members of the House does not approve the proposal, but a majority of the total members approve it,” the constitutional amendment can be passed in the new Congress by a “three-fifths majority of the total members of the House.”

Thus, the constitutional amendment process in Greece employs a unicameral indirect democratic three-vote system.

1.6 Netherlands

The constitutional amendment procedure in the Netherlands is regulated in Article 137 of the Constitution of the Kingdom of the Netherlands (Grondwet voor het Koninkrijk der Nederlanden).

13 Spyropoulos, P. C. and T. P. Fortsakis (2009), *Constitutional Law in Greece*, Wolters Kluwer, pp. 64-65.

14 βλ. άρθρο 119 του Κανονισμού της Βουλής

15 Note that for an amendment to the Greek Constitution, five years must have passed since the most recent amendment; as of October 2014, the most recent amendment was that of May 27, 2008 (ψηφισμα 27.5.2008).

The first requirement is the enactment of a “Constitutional Amendment Proposal Act”. The government and the second house (the Chamber of Deputies) may propose a proposed law to amend the Constitution.¹⁶ The proposed law is passed by a “majority of the members present” in each house. The first house (the Senate) cannot amend a bill transmitted by the second house, but can only pass or reject it.

The next requirement is the passage of the Constitutional Amendment in the new Congress after the general election of the Second House, which takes place after the promulgation of the Constitutional Amendment Proposal Act. In this regard, it is the original intent of the Constitution that the Second House be automatically dissolved after the promulgation of the Constitutional Amendment Proposal Act. In reality, however, the timing of the ordinary general election of the Second House is operated in such a way that it coincides with the timing of the enactment of the Constitutional Amendment Proposal Act.¹⁷ After this general election, the constitutional amendment is enacted when it is passed by “a two-thirds majority of the members present” in each house of the new parliament.

Thus, the constitutional amendment procedure in the Netherlands is based on the bicameral indirect democratic two-round voting system.

1.7 Norway

The constitutional amendment procedure in Norway is regulated in Article 112 of the Constitution of the Kingdom of Norway (Kongeriket Norges Grunnlov).

There is only one procedure for amending the Constitution in Norway, which requires passage by two sessions of Parliament¹⁸, with a general election in between. The government and members of parliament can submit bills for constitutional amendments.¹⁹ First, the requirement is a passage by

16 Lepzy, N. und M. Wilp (2009), “Das politische System Niederlande”, Ismayr, W. hrsg. a. a. O., S. 416ff.

17 Kortman, C. A. J. M., and P. P. T. Bovend’Eert (2007), *Constitutional Law of the Netherlands*, Kluwer Law International, pp. 30-31.

18 Constitutional amendments effective October 1, 2009 (cf. Grlbest. 20 Feb 2007 kunngjort ved res. 30 mars 2007 nr. 365) Previously Norway had an irregular bicameral system but now has a unicameral system.

19 Groß, H. und W. Rothholz (2009), “Das politische System Norwegens”, Ismayr, W. hrsg. a. a. O.,

“two-thirds of the total members” of Congress. Second, the constitutional amendment is enacted by passage by “two-thirds of the total members” of the new Congress after general elections. However, the first passage does not automatically dissolve the parliament.

Thus, the constitutional amendment procedure in Norway is based on a unicameral, indirect democratic, two-part voting system.

1.8 Portugal

The constitutional amendment procedure in Portugal is regulated in Articles 284 to 289 of the Constitution of the Portuguese Republic.

The first is the amendment procedure when five years have elapsed since the most recent amendment. In principle, five years must have elapsed since the most recent amendment to the Constitution. The mover is the members of the Congress of the Republic and the Constituent Assembly²⁰, with the requirement of passage by a “two-thirds majority of the total membership”. The President has no veto power over passed constitutional amendment laws.

The second is the amendment procedure if five years have not elapsed since the most recent amendment. The Constitution may be amended even if less than five years have passed since the most recent amendment. In such a case, the requirement for passage is a “four-fifths majority of all members” of the assembly. Other than the requirement for passage, the procedure is the same as for a case where five years have passed since the most recent amendment. It should be noted that the original intent of this procedure was to be an exception only. However, four of the seven total amendments to date have been made within five years of the most recent amendment.²¹

Thus, constitutional amendment procedures in Portugal differ in a procedure according to the number of years elapsed since the most recent amendment, but they all use a unicameral indirect democratic single-vote system.

S. 169ff.

20 Gouveia, J. B. (2011), *Constitutional Law in Portugal*, Wolters Kluwer, p. 44.; Lunshof, H. (2004), “The Portuguese Republic” (Translated by Alexander, H.), Prakke, L. and C. Kortmann ed., *Constitutional Law of 15 EU Member States*, p. 660.

21 Cf. Lei Constitucional 1/1992 (DR I série A N^o.273 Supl.1992.11.25), Lei Constitucional 1/2001 (DR I série A N^o.286 2001.12.12), Lei Constitucional 1/2004 (DR I série A N^o.173 2004.07.24) e Lei Constitucional 1/2005 (DR I série A N^o.155 2005.08.12).

1.9 The United States

There are four different combinations of constitutional amendment procedures in the United States, as defined in Article V of the Constitution of the United States of America (U.S. Constitution).

First, there are two types of motions. The first is by “a two-thirds majority of the House of Representatives and the Senate of the United States. Members of each house may submit a joint resolution for a constitutional amendment to their house. The joint resolution is considered in the same manner as an ordinary bill of law, except that it must be passed by “a two-thirds majority of the members present. The second method of initiation is “a proposal by the Constitutional Assembly, which is initiated by a two-thirds majority of the state legislatures and convened by the Federal Assembly. In this regard, it is positioned as “additional” because no constitutional amendment has ever been proposed by the second method of initiation.²²

Then there are two methods of approval. The first method of approval is “approval by three-fourths of all state legislatures. The requirement for passage by state legislatures varies from state to state, but referendums are not allowed.²³ The second method of approval is “the approval of the state constitutional congresses of at least three-fourths of all states. In only one case out of a total of 27 amendments has a constitutional amendment been approved by this second method of approval.²⁴

Thus, there are four different combinations of constitutional amendment procedures in the U.S., but they all have one thing in common in that they can be amended using only the requirements of indirect democracy.

These nine countries are the “countries that do not require direct democracy requirements in all constitutional amendment procedures.

22 Tushnet, M. (2009), *The Constitution of the United States of America*, Hart Publishing, p. 238.

23 Cf. *Hawke v. Smith*, 253 U.S. 221 (1920)

24 Cf. Amendment XXI (Passed by Congress February 20, 1933. Ratified December 5, 1933)

2. Countries where the requirement of direct democracy is mandatory only in the constitutional amendment process for specific content

2.1 Iceland

The constitutional amendment procedure in Iceland is regulated in Article 79 of the Constitution of the Republic of Iceland (Stjórnarskrá lýðveldisins Íslands).

The first is the ordinary amendment procedure. Normal amendments require passage by Parliament on two occasions, with a general election in between. The government and the members of the Parliament may submit a bill to amend the Constitution to the Parliament. First, it is passed by a “majority of the members present. Second, the new Congress after the general election must likewise pass the bill by a “majority of the members present” for the constitutional amendment to be enacted. In other words, the deliberation process for a constitutional amendment bill is the same as for ordinary legislation, except that it must be passed by the legislature twice between general elections.²⁵ However, the first passage does not automatically dissolve the assembly.

The second is the procedure for amending the provisions regarding the status of the state church. Article 62 of the Constitution of the Republic of Iceland grants the Evangelical Lutheran Church the status of the state church. Article 62 itself stipulates that the provisions of this Article 62 may be amended by “ordinary law. However, Article 79 stipulates that if Parliament passes a law amending Article 62 regarding the status of the State Church, it must be approved by a referendum. If a “majority of those voting” in this referendum is in favor of the amendment, the amendment to Article 62 is approved.

Thus, the constitutional amendment procedure in Iceland normally employs a unicameral indirect democratic two-part voting system, but it includes a direct democratic requirement with respect to the amendment of the provisions regarding the status of the state church.²⁶

25 Eythórsson, G. T. und D. Jahn, (2009), “Das politische System Islands”, Ismayr, W. hrsg., a. a. O., S. 203 ff.

26 The eighth constitutional amendment (l. 91/2013) of July 18, 2013, added a provision to the transitional provision of the Constitution of the Republic of Iceland (Ákvæði um stundarsakir) regard-

3. Countries that can incorporate direct democracy requirements into the constitutional amendment process through specific procedures.

3.1 Luxembourg

The constitutional reform procedure in Luxembourg is regulated in Article 114 of the Constitution of the Grand Duchy of Luxembourg (Constitution du Grand-Duché de Luxembourg).

Constitutional amendments through the general procedure must be passed twice by the Parliament. The government and members of Parliament may submit a bill to amend the Constitution.²⁷ After deliberation by the Assembly and approval by the State Council, the bill is first passed by the Assembly “with the approval of two-thirds of the members present. After a further period of at least three months, the constitutional amendment is passed again by “a two-thirds majority of the members present.”

The requirements of direct democracy can be incorporated into this general constitutional amendment procedure. Within two months of the first vote, a referendum may be held if “at the request of at least one-fourth of the members of the Assembly” or “at the request of at least 25,000 voters,” and no second vote by the Assembly is required. This referendum is a binding referendum and is approved by “a majority of the voters. However, no referendum on constitutional amendments has been held since the introduction of this procedure by the 24th Constitutional Amendment in 2003.²⁸

Thus, the constitutional reform procedure in Luxembourg is normally based on a unicameral indirect-democratic bicameral voting system, but there is still room for substituting some of the requirements of direct democracy.

ing the procedure for amending the Constitution. According to this transitional provision, until “April 30, 2017,” the Constitution is to be amended according to a different procedure than that provided for in Article 79. Specifically, constitutional amendments are enacted by “a two-thirds majority of the Parliament” and “a majority of the referendum and 40% of the voters”. The addition of the transitional provision is related to the fact that Iceland is planning a complete constitutional reform in the wake of the 2008 financial crisis. This development of constitutional politics in Iceland is of great importance. However, in this paper, the amendment procedure is not included in the comparative analysis because it is only a transitional provision and Article 79 itself was not repealed.

27 Schroen, M. (2009), “Das politische System Luxemburgs”, Ismayr, W. hrsg. a. a. O., S. 491 ff.

28 Cf. Mém. A - 185 du 31 décembre 2003, p. 3969; doc. parl. 4765.

3.2 Sweden

The procedure for amending the Constitution in Sweden is regulated in Chapter 8, Articles 14 to 16 of the Regeringsform (Code of Governance).²⁹

Constitutional amendments through the general procedure require passage by Congress twice, with a general election in between. The government and members of Congress can propose a bill to amend the Constitution.³⁰ First, it must be passed by a "majority of the members present. Second, the constitutional amendment is passed by a similar "majority of the members present" in the new Congress after the general election. In this regard, a period of at least nine months must elapse between the first notification of the amendment bill to the plenary session and the election. However, if the bill is passed by "five-sixths or more of the members of the Constitutional Committee," the nine-month period is not required.

This general constitutional amendment procedure may incorporate the requirements of direct democracy. If a motion is submitted by "at least one-tenth of the members" within five days of the initial vote, and if "at least one-third of the members" vote in favor of the motion, a referendum is held simultaneously with the general election. This referendum becomes a binding referendum only if it is rejected. The requirements for rejection are "opposition by a majority of the valid votes cast" and "the number of negative votes exceeds half of the valid votes cast in the general election. However, since the enactment of the Governing Code in 1974, no referendum has been held to amend the Constitution.

Thus, although the constitutional amendment procedure in Sweden normally employs a unicameral indirect democratic two-round voting system, there is still room to add the requirements of direct democracy.

These two countries are "countries in which direct democracy requirements can be incorporated into the constitutional amendment process through specific procedures.

²⁹ The Swedish Constitution consists of four basic laws: the Governing Code, the Succession Act (Successionsordning), the Freedom of Publication Act (Tryckfrihetsförordning), and the Basic Act on Freedom of Expression (Ytrandefrihetsgrundlag). The four basic laws are The other three basic laws are amended according to the same procedure as the Governing Code.

³⁰ Nergelius, J. (2011), *Constitutional Law in Sweden*, Kluwer Law International, p. 24; Jahn, D. (2009), "Das politische System Schwedens ", Ismayr, W. hrsg. a. a. O., S. 118 ff.

4. Countries in which the requirement of direct democracy is essential in the constitutional amendment process for certain content, and in which the requirement of direct democracy can be incorporated with other content through specific procedures.

The fourth classification is “countries in which the requirement of direct democracy is mandatory in the constitutional amendment process for certain content, and in which the requirement of direct democracy can be incorporated through specific procedures for other content”. This category is a composite of the second and third categories.

4.1 Italy

The procedure for amending the Constitution in Italy is regulated in Article 138 of the Constitution of the Italian Republic (*Costituzione della Repubblica Italiana*).³¹

The general procedure for amending the Constitution requires two rounds of passage by the Chamber of Deputies (Chamber of Deputies) and the Senate (Senate). The government, members of both houses of Congress, and the people may submit bills to amend the Constitution.³² In matters concerning the states, the state legislatures may also submit bills to amend the Constitution. First, it must be passed by a “majority of the members present” in each house. After a period of at least three months after the initial passage, the bill is passed by a “majority of the total members” of each house. The powers of the two houses in the constitutional amendment process are equal.

In this regard, in the case of constitutional amendments concerning the merger or creation of new states, a referendum is always held, which is a requirement of direct democracy. In accordance with Article 132 of the Constitution, the merger of states, or the establishment of a new state, a majority approval by referendum is required. In this regard, the provisions of Article 131 shall be amended in the event of the merger or establishment of a new state. Therefore, a referendum is required to amend Article 131.

31 For a general description of the amendment procedure of the Constitution of the Italian Republic, see Norio Yamaoka (2001) “Italy”, National Diet Library, Research and Legislative Review Bureau, “Constitutional Affairs of Other Countries”, pp. 122-125.

32 Ullrich, H. (2009), “Das politische System Italiens”, Ismayr, W. hrsg. a. a. O., S. 648 ff.

However, there have been no cases of constitutional amendments based on this procedure.

A "referendum," a requirement of direct democracy, may also be incorporated into the general constitutional amendment process, if the second passage is "by a majority and less than two-thirds of the total membership," and if within three months "more than one-fifth of the members of either house," "more than 500,000 voters," or "more than five state legislatures". When requested by either of these, a referendum will be held. This referendum is a binding referendum and is approved by a "majority of those voting. Of the 16 amendments to date, only the 12th amendment on October 18, 2001, has been approved through a referendum based on this procedure.³³

Furthermore, the constitutional amendment process can be initiated through a "people's initiative," which is a requirement of direct democracy. The aforementioned constitutional amendment bills include the people as right to submit them. In Italy, "the initiative of a draft law in the form of articles" by "more than 50,000 voters" is allowed. This legislative proposal includes a constitutional amendment bill, which means that the people can initiate a constitutional amendment. However, there has never been a case in which a constitutional amendment based on a people's initiative has been enacted.

Thus, the constitutional amendment procedure in Italy normally employs a bicameral indirect democratic bicameral voting system, but a direct democratic requirement is always added in the case of constitutional amendments concerning the merger or establishment of new states, and in other cases, there is still room for the addition of a direct democratic requirement.

4.2 Austria

The procedure for amending the Constitution in Austria is regulated in Articles 44 and 45 of the Federal Constitution (Bundes-Verfassungsgesetz).

As a rule, partial amendments to the Austrian Constitution can be made only under the requirements of indirect democracy. The federal government, members of the National Assembly (Chamber of Deputies), and one-third

³³ Cf. Gazzetta Ufficiale n. 248 del 24 ottobre 2001.

of the members of the Bundesrat (Senate) or Bundesrat (Upper House) may propose a bill to amend the Constitution.³⁴ Partial amendments can be further classified into three categories according to their content, with different requirements for passage. First are ordinary partial amendments. This is the most common type of constitutional amendment and is passed by the National Assembly with “the presence of at least half of the total members” and “the approval of at least two-thirds of the members present. The second type of amendment is one that limits the legislative and executive powers of the states. In this case, in addition to the aforementioned requirements for ordinary partial amendments, the amendment must be passed by “the presence of more than half of the total members” of the Bundesrat and “the approval of more than two-thirds of the members present. Third is the amendment of Articles 34 and 35 of the Federal Constitution regarding the composition of the Federal House of Councillors. In this case, in addition to the requirements for passage in the second procedure, a majority of the representatives in at least four states must vote in favor of the amendment when the Bundesrat votes on it.

On the other hand, in the case of a total revision, a “referendum” is always held, which is a requirement for direct democracy. A full revision includes not only amending the Constitution as a whole but also amending its basic principles, such as “democracy,” “republic,” “federalism,” or “rule of law. Congress decides whether an amendment constitutes a total amendment or not. In the case of a full amendment, approval by a “majority of the votes cast” is required in a binding referendum after passage by the Congress. Of the 119 amendments to date, only the 68th amendment for accession to the European Union on December 21, 1994, was passed through a referendum based on the procedure for a full amendment.³⁵

Also for partial amendments, a “referendum” may be incorporated, which is a requirement of direct democracy. A referendum may be held after passage by Parliament if “a request is made by two-thirds or more of the members of the National Assembly or the Federal Councilors. In this case, the referendum is also a binding referendum, and the requirements for approval

34 Berka, W. (2013), *Verfassungsrecht*, 5. Aufl., Verlag Österreich, S. 147 ff.; Öhlinger, T. und H. Eberhard (2014), *Verfassungsrecht*, 10. Aufl, facultas.wuv, S. 196 ff.

35 Vgl. BGBl. Nr. 1013/1994.

are the same as for a referendum in the case of a full amendment. However, there have been no cases of referendums based on this procedure.

Thus, the constitutional amendment procedure in Austria is based on the indirect democratic one-vote system for partial amendments, but the requirement of direct democracy is always added in the case of full amendments, and there is room for direct democracy in other cases as well.

4.3 Spain

The procedure for amending the Constitution in Spain is regulated in Articles 166 to 169 of the Spanish Constitution (Constitución Española).

Partial amendments through the general procedure must be passed by the Chamber of Deputies (Chamber of Deputies) and the Senate (Senate). The government, the Chamber of Deputies, the Senate, and the Autonomous Provincial Legislatures may submit bills to amend the Constitution.³⁶ The proposed constitutional amendment bill is passed by “three-fifths or more of the total members” of each house. If the two houses vote differently, a joint committee consisting of an equal number of members from both houses is formed. This joint committee works to reach a consensus between the two Houses, and the proposed amendment is then submitted to both Houses again. The amendments submitted by the joint committee are also approved by “three-fifths or more of the total members” of each house. However, in the event that the Senate “fails to obtain the approval of three-fifths or more of the total members, but an absolute majority is obtained,” the House of Deputies may pass the amendment “with the approval of two-thirds or more of the total members. All two previous amendments to the Constitution have been made through the partial amendment procedure.

On the other hand, in the case of a “total amendment” or a “partial amendment including provisions on human rights or the King,” the requirements for passage by the Assembly are different, and in addition, a referendum is always held. First, the principle of the amendment must be approved by “two-thirds or more of the total members” of each House.

³⁶ Comella, V. F. (2013), *The Constitution of Spain*, Hart Publishing, pp. 113-118; Robled, A. R. (2012), *Constitutional Law in Spain*, Wolters Kluwer, pp. 53-58.; Barrios, H. (2009), “Das politische System Spaniens”, Ismayr, W. hrsg. a. a. O., S. 729 ff.

If passed by both Houses, both Houses are automatically dissolved and a general election is held. Next, after the general election, the new Congress must reapprove the principles of the amendment and then deliberate on specific amendments, which must be passed by “a two-thirds majority of the total membership” of each House. Finally, a referendum is held. This referendum is a binding referendum, requiring approval by a “majority of the total number of votes cast.

A “referendum” can also be incorporated for partial amendments that do not include human rights provisions or provisions concerning the King, which is a requirement for direct democracy. A referendum may be held if, within 15 days of passage by Parliament, “a request is made by at least one-tenth of the members of either house of Parliament. In this case, the referendum is also a binding referendum, and the requirements for approval are the same as for a referendum in the case of a full amendment, for example.

The constitutional reform process in Spain normally follows a bicameral indirect democratic single-vote system, but direct democracy is always added in the case of a comprehensive amendment, and in other cases, there is room for direct democracy to be added.

These three countries are those in which the direct democracy requirement is mandatory for certain constitutional amendment procedures and can be incorporated in others through specific procedures.

5. Countries with more than one constitutional amendment procedure for which the requirement of direct democracy is mandatory

5.1 France

There are four types of constitutional amendment procedures in France, as provided for in Articles 11 and 89 of the Constitution of October 4, 1958 (Constitution du 4 octobre 1958).³⁷ These procedures are as follows.

The first is the procedure consisting of the following requirements: “motion by a member of the National Assembly (Chamber of Deputies) or

³⁷ For a general description of the revision process of the Constitution of October 4, 1958, see Tanaka, Y. (2001), “France”, National Diet Library, Research and Legislative Review Bureau, “Constitutional Situations in Other Countries”, pp. 122-125.

Senate (Senate)," "passage by both Houses," and "approval by referendum. Under this procedure, a member of the National Assembly or a member of the Senate may propose a bill to amend the Constitution. The deliberation and voting requirements are basically the same as for ordinary laws, with "identical wording" and approval by a "majority of the members present" in each house. Then, it must be approved by a referendum. This referendum is a binding referendum³⁸ and its requirements are defined by a decree enacted for each referendum. However, there is no case in which a referendum has been approved through this first procedure.

The second procedure consists of the requirements of a "motion by the president on the proposal of the prime minister," "passage by both houses of Congress," and "approval by referendum. This procedure is similar to the first one, except that the initiating authority is "the President on the proposal of the Prime Minister"; only the 15th Amendment³⁹ to shorten the presidential term in 2000 was enacted under this second procedure.

The third procedure consists of the requirements of a "motion by the president on the proposal of the prime minister," "passage by both houses of Congress," and "passage by a joint session of both houses." This procedure is similar to the second procedure, except that instead of "approval by referendum," "passage by a joint session of both houses" is required. The joint session of the two houses is convened by the president after passage by Congress and can pass a bill to amend the Constitution by a "three-fifths majority of its members. This procedure is the only one of the four constitutional amendment procedures in which constitutional amendments are passed without a referendum. In this regard, 22 of the total 24 amendments have been passed through this third procedure.

Fourth is the "referral by the President of the Constitutional Amendment Bill to a referendum" and "approval by referendum". While the first three procedures are based on the provisions of Article 89, this fourth procedure is based on the provisions of Article 11. By interpreting "proposed law" in Article 11 of the Constitution to include "bills to amend the Constitution," it is possible to amend the Constitution based on the provisions of Article 11.

38 Boyron, S. (2013), *The Constitution of France*, Hart Publishing, pp. 238-242.

39 Cf. Loi constitutionnelle n° 2000-964 du 2 octobre 2000 relative à la durée du mandat du Président de la République (JORF n°229 du 3 octobre 2000 p. 15582).

In this regard, it has been pointed out that the fourth procedure is a different method of operation from the original intent of Article 11.⁴⁰ However, the second amendment⁴¹ to make a direct election the method for electing the president was enacted through this fourth procedure.

Thus, there are four types of constitutional amendment procedures in France, only one of which does not require the requirement of direct democracy, but the operation is the opposite: more than 90% of amendments are made by procedures consisting only of indirect democratic requirements.

6. Countries where direct democracy requirements are mandatory in all constitutional amendment procedures

6.1 Australia

The procedure for amending the Constitution in Australia is set out in Section 128 of the Commonwealth of Australia Constitution Act.

First, a Constitutional Amendment Bill must be proposed. The government, the House of Representatives, and the Senate may propose a bill to amend the Constitution.⁴² If a constitutional amendment bill is passed by a “majority of the total membership” of each house, the Governor General must submit it to a referendum within not less than two months and not more than six months. If only one house passes the bill, and if the house that passed it passes it again after a period of three months, the Governor General may refer it to a referendum.

Next, approval by referendum is required. This referendum is a mandatory voting system⁴³ and is approved by a “double majority. First, “a majority of the total number of votes cast. Second, a “majority of the votes cast in a majority of the states,” which requires a majority of votes cast in four or more states. There are five bills to amend the Constitution that were rejected because they did not receive a second majority.

40 Boyron, *op. cit.* pp. 242-243.

41 Cf. Loi n° 62-1292 du 6 novembre 1962 relative à l'élection du Président de la République au suffrage universel (JORF du 7 novembre 1962, p. 10762)

42 Saunders, C. (2011), *The Constitution of Australia*, Hart Publishing, pp. 47-50.

43 cf. Referendum (Machinery Provisions) Act 1984 - Sect. 45.

Thus, the constitutional amendment process in Australia adds the requirements of direct democracy to the bicameral indirect democratic single-vote system.

6.2 Denmark

The constitutional amendment procedure in Denmark is regulated in Article 88 of the Danish Constitution (Danmarks Riges Grundlov).

First, it must be passed twice by the Parliament. The king and members of parliament may submit bills to amend the constitution, but the king's power to submit bills is ceremonial and formal and is exercised substantially through the government.⁴⁴ With regard to voting, the bill must be passed by "a majority of the members present. Furthermore, it must be passed by "a majority of the members present" in the new Congress after the general election with "the same wording. However, the first approval does not automatically dissolve the assembly.

Next, the amendment must be approved by a referendum, which must be held within six months of the second parliamentary vote, and must be approved by a "majority of the votes cast" and "at least 40% of all voters voting in favor of the amendment.

Thus, the Danish constitutional amendment procedure adds the requirements of direct democracy to the unicameral indirect democratic two-turn vote system. The current Danish Constitution has not been amended since its enactment in 1953. However, the 2009 amendment to the Succession to the Throne Act (Tronfølgeoven)⁴⁵ is based on the same procedure as the constitutional amendment.

6.3 Ireland

The procedure for amending the Constitution in Ireland is set forth in Article 46, Section 2 and Article 47, Section 1 of the Irish Constitution (Bunreacht na hÉireann).

First, it must be passed by Parliament. Constitutional amendment bills are generally proposed by the government to the Chamber of Deputies (House

44 Nannestad, P. (2009), "Das politische System Dänemarks", Ismayr, W. hrsg. a. a. O., S. 81ff.
45 jfr. Lov om Ændring af Tronfølgeoven (LOV nr 528 af 12/06/2009)

of Representatives).⁴⁶ The deliberation and voting requirements are the same as for ordinary bills, and the bill is passed by a “majority of the members present” in the House of Deputies and the Senate. However, even if the Senate does not pass the bill, it is considered to have been passed by the Assembly if the House of Delegates passes it again within 180 days after the specified period has elapsed.

Next, approval by referendum is required. If passed or deemed passed by the Assembly, a referendum is held within not less than 30 days and not more than 90 days.⁴⁷ A “majority of the total number of votes cast” in the referendum approves the constitutional amendment.

Thus, the constitutional amendment process in Ireland adds the requirements of direct democracy to the bicameral indirect democratic single-vote system.

6.4 Japan

The procedure for constitutional revision in Japan is stipulated in Article 96 of the Constitution of Japan.

First, a proposal for constitutional revision must be proposed by the Diet. A draft of a constitutional amendment is submitted by the affirmative votes of 100 members of the House of Representatives and 50 members of the House of Councillors.⁴⁸ The submitted draft is approved by “two-thirds or more of the total members” of each house of the Diet.

Next, it must be approved by a referendum. The constitutional amendment is approved by a “majority of the votes cast” in the referendum, which is held within 60 to 180 days of the proposal.⁴⁹

Thus, the constitutional revision process in Japan adds the requirements of direct democracy to the bicameral indirect democracy single-vote system.

6.5 South Korea

The constitutional amendment process in Korea is regulated in Articles 128

46 Elvert, J. (2009), “Das politische System Irlands”, Ismayr, W. hrsg. a. a. O., S. 317 ff.

47 Cf. Acht an Reifrinn 1994 -Alt 10 agus 11.

48 Cf. Article 68bis of the Act of Parliament.

49 Cf. Law on Procedures for Amending the Constitution of Japan, Articles 2, 98, paragraphs 2 and 126.

through 130 of the Constitution of the Republic of Korea (대한민국헌법).

First, a proposal to amend the Constitution must be passed by the Assembly. Proposals for constitutional amendments may be submitted by a majority of the members of the Assembly or, after deliberation by the Council of State, by the President. Submitted constitutional amendments are passed by a "two-thirds majority of the total membership" of the Assembly.

Next, it must be approved by referendum. The amendment must be approved by a "majority of voters" and a "majority of the total number of votes cast" in a referendum to be held within 30 days after the amendment is proposed.

Thus, the constitutional amendment process in Korea is a unicameral indirect democratic single-vote system with the addition of direct democratic requirements. The current Korean Constitution has not been amended since its enactment in 1982.

6.6 Switzerland

The constitutional reform procedure in Switzerland is regulated by Articles 192 to 195 of the Swiss Federal Constitution (Bundesverfassung der Schweizerischen Eidgenossenschaft / Constitution fédérale de la Confédération suisse / The Swiss Federal Constitution (Bundesverfassung der Schweizerischen Eidgenossenschaft / Constitution fédérale de la Confédération suisse / Costituzione federale della Confederazione Svizzera) provides in Articles 192 to 195.⁵⁰

The first is the procedure for partial amendments proposed by a member of the Federal Assembly, the Federal Council, or a state. First, the National Assembly (Chamber of Deputies) and all state legislatures (Senate) must pass a constitutional amendment bill "by a majority of the members present". Next, the bill is approved by a "majority of the votes cast" and a "majority of the states" in a referendum. The opinion of the majority of the states is considered as one state's opinion, while the votes of the six territories are treated as one-half of one state's vote.

⁵⁰ For a general description of the amendment procedure of the Swiss Federal Constitution, see Norio Yamaoka (2013), "Constitutions of Countries (6) Swiss Constitution", National Diet Library, Research and Legislative Review Bureau, Basic Series 12, pp. 20-24; Vgl. Biaggini, G. (2007), Bundesverfassung der Schweizerischen Eidgenossenschaft, orell füssli Verlag AG, S. 867 ff.

The second is the procedure for partial amendments proposed by the people, whereby partial amendments to the Constitution may be proposed to the Federal Assembly by the signatures of 100,000 or more voters. This procedure differs depending on whether the proposal is made in the form of a legal text or a general form. First, in the case of a proposal in written form, the Bundestag passes a recommendation for approval or rejection "by a majority of the members present. If the recommendation of rejection is passed, the Bundestag may present a counterproposal. The proposal is then submitted to a referendum, which must be approved by a "majority of the votes cast" and a "majority of the state's present" in order to pass the constitutional amendment. In the case of a proposal in general form, the Bundestag passes the proposal with the consent or rejection of "a majority of the members present. If agreed, the Bundestag will adopt the proposed amendment into law. If rejected, a first-past-the-post referendum is held. If approved by a "majority of the valid votes" in the first referendum, the Bundestag will adopt the amendment into law. After the legal culture, the amendment passed by "a majority of the members present" is submitted to a referendum and approved by "a majority of the votes cast" and by "a majority of the states" to become a constitutional amendment.

Third is the procedure for a full revision proposed by a member of the Bundestag, the Bundesrat, or a state. First, the National Assembly and all state legislatures vote on whether or not a full revision is necessary by "a majority of the members present. If both chambers of the National Assembly and the State Councils agree on the necessity of a comprehensive revision, the draft of the new Constitution is translated into law and passed by a "majority of the members present. If one of the two houses rejects the need for a full revision, a first-past-the-post referendum is held. If the first referendum is approved by a "majority of the valid votes cast," elections are held for the Bundestag. After the elections, the new parliament drafts the new constitution into law and passes it by a "majority vote of the members present. The draft is submitted to a referendum and approved by a "majority of the votes cast" and a "majority of the states.

Fourth is the procedure for a full amendment proposed by the people: a full amendment of the Constitution can be proposed to the Federal Assembly by a petition signed by more than 100,000 voters. The proposed constitutional

amendment is submitted to a first-past-the-post referendum, and if approved by a "majority of the valid votes cast," elections to the Bundestag are held. After the elections, the new parliament will adopt the new draft constitution into law and pass it by a "majority of the members present". The draft constitution is submitted to a referendum and approved by a "majority of the votes cast" and a "majority of the states".

Thus, the constitutional amendment procedure in Switzerland differs depending on whether it is a partial or total amendment and whether the proposer is a citizen or not, but the requirement of direct democracy is mandatory in all procedures. In particular, the possibility of multiple referendums and the fact that constitutional amendments initiated by the people are frequently implemented in Switzerland means that the requirement of direct democracy is more important than in other countries constitutional revision procedures.

These are the six countries for which the direct democracy requirement is mandatory in all constitutional amendment procedures.

Comparative Verification

This section provides a comparative examination of the constitutional amendment procedures of the 22 industrialized countries presented in the previous section in terms of the requirements for indirect democracy and direct democracy.

1. Comparison of Requirements For Indirect Democracy

This section provides a comparative examination of the question, "Are the requirements for indirect democracy in Japan's constitutional revision process too strict compared to those of other countries?"

Table 2 summarizes the requirements for indirect democracy in the constitutional revision process in 22 advanced countries in terms of special majorities and the plurality of votes. There are two types of special majorities. First, while the passage of ordinary bills is based on "members present," special majorities are based on "total members. Second, a special majority is based on a "two-thirds majority," "three-fifths majority," or the like, whereas

the standard for passage of an ordinary bill is a “majority of the members present. In this regard, even if “total members” were used as “members present,” not only passage would not be facilitated, but rejection would also be facilitated in the same proportion. Also, with regard to the point that abstentions and invalid votes are counted as negative votes in the case of “all members,” if it is well-known as a voting rule that they are treated as negative votes when voting, it does not affect the essential severity of the requirement of indirect democracy in the system of constitutional amendment procedures. In view of these points, the special majority in this paper is a special majority in the second sense.

Requires multiple passes across the general election		Requires multiple passes	Does not require multiple passes
Special majority required	Belgium / Finland (regular) / Greece / Netherlands / Norway / Spain (entire)	Finland (emergency) / Luxembourg (regular)	Canada (specific), Germany, Portugal, USA, Luxembourg (specific), Austria, Spain (regular), Japan, South Korea
Special majority not required	Iceland / Sweden / Denmark / Switzerland (overall)	Italy, Switzerland (partly)	Canada (regular), France, Australia, Ireland, Switzerland (partly)

(Created by author)

From Table 2, it can be read that many countries require a special majority as a requirement for indirect democracy. Of the constitutional amendment procedures that require a special majority, the only special majorities that are less stringent than the a “two-thirds majority” passage requirement in Japan are those in Greece and in Spain in the case of partial amendments. In all other cases, a requirement of passage equal to or greater than “two-thirds majority” is imposed at least once.

It can also be read that nearly half of the constitutional amendment procedures that require a special majority require multiple votes. The constitutional amendment procedures of Belgium, Finland, Greece, the Netherlands, Norway and Spain in the case of a full amendment, and

Luxembourg in the case of a regular amendment all require multiple votes. As noted above, the constitutional amendment procedures of all but Greece impose a passage requirement equivalent to at least one of the multiple passages, which is at least the equivalent of "more than two-thirds". Also with respect to Greece, while no more than two-thirds is required, three passages are required, one of which must be "three-fifths or more."

In addition to these "special majority" and "multiple passage" requirements, whether unicameral or bicameral would also be relevant to the severity of the requirements for indirect democracy. In this regard, Belgium and Spain, in the case of a full revision, have the same bicameral system as Japan, with procedures that require multiple rounds of voting with general elections in between. The requirements for indirect democracy in these procedures can be regarded as more stringent than in Japan. In addition, the essence of the multiple sessions between general elections is the multiple passages of bills in legislatures with different compositions. In this regard, the requirements for indirect democracy in Norway, which has a unicameral legislature but requires a two-thirds majority twice between general elections, can be regarded as similar in severity to those in Japan.

From the above comparison of the requirements for indirect democracy in the constitutional revision process in 22 advanced countries, it is clear that the requirements for indirect democracy in the constitutional revision process in Japan are not loose, but they are not too strict compared to those in other countries.

2. Comparison of Requirements for Direct Democracy

In this section, a comparative study is conducted on the question of whether direct democracy requirements account for a large percentage of constitutional amendment procedures in other countries.

Table 3 summarizes the requirements for direct democracy in constitutional revision procedures in 22 advanced countries in terms of referendum and popular initiative.

Table 3: Requirements for Direct Democracy in the Constitutional Amendment Procedures of Each Country			
	Referendum	Referendum for Specific content	No Referendum
Public initiative possible	Switzerland	Italy	-
Public initiative not possible	Australia, Denmark, Ireland, Japan, South Korea	Australia, France, Iceland, Italy, Luxembourg, Spain, Sweden	Belgium, Canada, Finland, German, Greece, Holland, Norway, Portugal, USA

(Created by author)

From Table 3, it can be seen that fewer countries incorporate referendums, a requirement for direct democracy, into the constitutional revision process as a mandatory part of the constitutional system. Of the 22 countries, only 6, including Japan, have a referendum as a mandatory part of the constitutional revision process, while 9 countries do not have a referendum as part of the constitutional revision process. In other words, fewer countries have incorporated referendums, a requirement of direct democracy, into their constitutional systems as a mandatory requirement.

Moreover, even with regard to the nine countries where referendums are possible, they are rarely actually held: with regard to constitutional amendments in the nine countries, referendums have been held only once in Austria, as noted above, out of a total of 119 amendments, twice in France, out of a total of 22 amendments, and once in Italy, out of a total of 16 amendments. Only one of the amendments has been implemented. Amendments to the current constitutions in Iceland, Luxembourg, Spain, and Sweden are all solely due to the requirements of indirect democracy.

Constitutional amendments based on the popular initiative are allowed only in Italy and Switzerland, but the nature of the relationship between the popular initiative system and constitutional amendments in the two countries differs. In Italy, the people's initiative is recognized for all legislation, and constitutional amendments are considered to be included in the legislation, making constitutional amendments based on the people's initiative possible. However, there has been no constitutional amendment based on a people's

initiative. In Switzerland, on the other hand, the people's initiative is not allowed for ordinary legislation, but only for constitutional amendments. In Switzerland, the people's initiative is frequently used, and as a result, many constitutional amendments have been passed based on the people's initiative. In this sense, the emphasis on the requirement of direct democracy in Switzerland should be understood as a conditional peculiarity of the "semi-direct democracy" of the country.

The above comparison of the direct democracy requirement in the constitutional amendment procedures of 22 industrialized countries reveals that the direct democracy requirement does not necessarily account for a large proportion of the constitutional amendment procedures in other countries.

Conclusion

This paper examines whether a "comparison with the constitutional revision procedures of other countries" is a valid basis for amending Article 96 of the Constitution of Japan through a comparison of constitutional revision procedures in 22 industrialized countries. First, it became clear that the requirements for indirect democracy in the constitutional revision process in Japan are not too strict compared to those in other countries, although they are not loose. Second, it became clear that the direct democracy requirement does not necessarily account for a large percentage of the constitutional revision process in other countries. In light of these two points, it is not appropriate to use comparisons with other countries' constitutional revision procedures as the basis for revising Article 96 of the Japanese Constitution, as advocated by the LDP.

Two issues for future research are listed below. The first is a study that synthesizes the amendment process and the content of amendments. This paper has focused on a comparison of the constitutional systems of other countries' constitutions in terms of their "amendment procedures" and has discussed them in relation to the "number of amendments" as appropriate. On the other hand, the contents of amendments have not been adequately discussed. For international comparative research on constitutional amendments, it is necessary to systematically organize the "content" of amendments, i.e., "what kind of amendments were enacted as constitutional

policy and against what background. Second is a normative analysis of the Article 96 amendment to the Constitution of Japan. This paper merely shows that “comparison with the constitutional revision procedures of other countries” is not a valid basis for revising Article 96 of the Constitution of Japan. In this regard, it will be necessary to establish the author’s view on the pros and cons of amending Article 96 of the Constitution of Japan, taking into consideration perspectives other than “comparison with constitutional amendment procedures of other countries”.