



# **CIVIL PARTICIPATION IN DECISION - MAKING PROCESS IN BOSNIA AND HERZEGOVINA**

## **GENERAL OVERVIEW**

By Adis Arapovic, PhD  
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# CIVIL PARTICIPATION IN DECISION - MAKING PROCESS IN BOSNIA AND HERZEGOVINA - GENERAL OVERVIEW

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## EXECUTIVE SUMMARY

The main goal of citizens' participation in the decision-making process is to improve the effectiveness and efficiency of the work of the public authorities, and to legitimize the decisions made. The model of representative or indirect democracies allows citizens to participate in decision-making through elections and after elections by controlling the work of elected representatives. Although they are the sign of guaranteed possibility of expressing the democratic will of citizens, the elections themselves cannot be considered an exclusive label of their democratic will. Elections alone cannot be considered the sole feature of democratic political systems, while participatory democracy requires a much wider range of the

immediate involvement of citizens in the processes of consideration, adoption, implementation and evaluation of decisions, and a constant, transparent, and responsible public debate on all issues of general interest. This study gives an overview of the legislation and practice of civic participation in Bosnia and Herzegovina, considering the specific political and democratic history, legal order and modern context. The constitutional-legal framework, the legislation in question, and conventional institutional mechanisms of citizens' participation, together with the modern deliberate approach and digital democracy are topics that this study examines.

## 1. PHENOMENOLOGY OF PARTICIPATORY DEMOCRACY

Citizens' participation in the decision-making process is the basis for the functioning and development of a true democratic society, as it encourages social dialogue on the most important issues. Citizens accept the decisions of elected representatives and trust them when they are aware of the opportunities available to participate in a public debate on important topics and decisions.

**The tradition of participatory democracy** dates back to the ancient Greece, in which citizens participated in the political life of the *polis* in a direct way. "Democracy at the time was direct (participatory), which means that the decisions were made by the

people themselves (in limited numbers), not by its representatives as in modern representative democracies. Sovereignty originally belonged to the people and could not be separated from it or transferred to someone else, thus the people themselves represented sovereignty in its active form. By participating in the articulation of the common will of all citizens, the citizen as an individual participated independently without any representatives. There was no mediator between the will of the individual and the general will of the community. The political life *of a polis* based in the political participation of its citizens aimed to achieve the highest values for the polis, which are freedom, justice and the common good."<sup>2</sup>

<sup>1</sup> The author is a Doctor of Political Science in the field of theory of political parties and interest groups, an Assistant Professor at the Faculty of Administration of the University of Sarajevo, and a longtime civic activist, researcher and analyst of political developments in Bosnia and Herzegovina. He is currently an independent Member of the House of Representatives of the Parliament of the Federation of B&H.

<sup>2</sup> Pavlović, V. (2011). *Država i društvo*, Čigoja štampa, Beograd, pp. 86-87.

**The modern concept of civic participation** (civic participation and immediate democracy will be used as synonyms) is largely leaning on the ancient period and drawing its strength from it. However, contemporary civic participation is not only a mere reflection of its ancient model, it is largely different from the ancient concept while at the same time leaning on it. The ancient political community was an organic community, based on a special substantive custom that revealed to citizens the purpose of their action in the community. Therefore, political or, in the modern meaning, civic participation was aimed at meeting already established customs and norms (morality, religion, values, norms...) that were determinants of the political community. On the other hand, modern, i.e., contemporary societies are based on universal, abstract, and general principles of the rights of individuals who are free from substantial particularism. Civic participation is not intended towards achievement of the customary norms but is left to the different interests of its members.<sup>3</sup>

Forms of participatory democracy have lingered, but only in addition to representative democracy, because it is impossible to imagine the entire population of a state directly participating in political life. In fact, such a situation is possible through referendums and elections, but referendums and elections are prescribed by political representatives, and participatory democracy also includes forms of political participation that originate independently of political government. This expands the field of political freedom, and the guarantee of this is the existence of immediate action by citizens through civil society associations<sup>4</sup>, trade unions, local self-government, and modern forms of digital and deliberative democracy.

Deliberative democracy<sup>5</sup> is a type of direct democracy in which political decisions are shaped and accepted by the people, through a process of deliberation or debate that takes place in the public sphere. In contrast to traditional models of democracy, in which the focus of the democratic process is focused on voting

mechanisms, such as elections, referendums, plebiscites or a vote in parliament, deliberation and communication mechanisms occupy a central place in the model of deliberative democracy. The purpose of the development of the model of deliberative democracy is to eliminate the shortcomings contained in the models of representative democracy and the voting mechanisms themselves, such as distortion or even direct neglect of the will of the people, the issue of outvoting, relative majorities etc.

Deliberative, as well as other forms of participative (direct) democracies, complement the estranged way of making decisions through simple representative (representative, indirect) democracy, and promote the role of civil society and emphasize the role of a citizen. In this regard, participatory democracy is the answer to the "democratic deficit", evident in classical democratic systems, which is generally accompanied by a pronounced distrust of holders of state power and politics as a profession. Increased participation of citizens in the decision-making process reduces distrust towards holders of power, and the political system gains legitimacy. Relevant research into this phenomenon has shown that the "democratic deficit" is linked to the "communication deficit", which is reflected in the lack of effective communications between public function holders at different levels of social and state structure, on the one hand, and citizens on the other.

The main goal of citizens' participation in the decision-making process is to improve the effectiveness and efficiency of public government work. The model of representative or indirect democracies is the participation of citizens in decision-making through elections and after elections by controlling the work of elected representatives. Although they are the sign of guaranteed expressing of the democratic will of citizens, according to German political scientist Dieter Noheln, elections cannot be considered an exclusive label of democratic political systems, so he defines elections as a "democratic method of establishing representative bodies of the people".

<sup>3</sup> Vukojević, S. (2015). Kako građani Bosne i Hercegovine opažaju nevladin sektor, FES, Sarajevo, pp. 11-12.

<sup>4</sup> It's Ibid.

<sup>5</sup> Lat. Deliberativus: which advises, advisory

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In transition countries including Bosnia and Herzegovina, democratic experience is relatively short-lived, inconsistent, and very often frustrating. Further development of democracies in these countries requires "double-edged democratization", democratization of the state and civil society, because they maintain each other, enable each other, but also limit each other. "Faced with brand new challenges in a globalized world, authorities are increasingly realizing at all levels that they will not be able to implement and effectively apply their public policies, no matter how good they are, if their citizens do not understand or support them. They therefore turn to new or improved

models and approaches to better inform and involve citizens in the policy-making process."<sup>6</sup>

If we define civic political participation as a set of activities that can affect politics and authorities, the analysis would show that there are three functions of citizens' influence: electoral support (constituent and stabilizing), requesting-demanding and control-critique function. Literature is the most elaborate regarding first two functions and the ways in which citizens achieve these two functions, while the third function is not yet so systematically operationalized or empirically investigated.<sup>7</sup>

Activity models	Dimensions			
	Pressure/informativeness	Conflict	Consequences	Initiatives
Voting	High/less informativeness	Conflicting	Collective	A little
Campaign activities	High/less-highly informativeness	Conflicting	Collective	Quite a lot
Cooperative activities	High/less-highly informativeness	Often conflicting	Collective	Quite a lot/High
Individual contacts	Low/high informativeness	Non-conflicting	Collective/particular	High

Table 1: Models and dimensions of political participation<sup>8</sup>

It is obvious from this table that the first two models of activities relate to election (electoral) activities and the last two to non-electoral activities. Each activity model can take the appropriate place on four or five of the above-mentioned dimensions. Thus, for example, voting as the most widespread form of civic activity contains high pressure on parties and candidates, but less informativeness, because voting does not require particular information to be executed. Voting is still a very conflicting activity because it causes divisions in society, even conflicts, and each individual must choose a certain side in the act of voting. It further causes collective consequences, because the results of the vote, i.e., elections, are reflected in lives of all citizens – the consequences are therefore general or collective. In the act of voting, citizens' initiatives

are low – voting does not really require initiative, such as individual contacts with politicians, but only a decision on whether to go to the polls.<sup>9</sup>

Let us summarize, a set of planned and organized activities aimed at active participation of citizens in the decision-making process of legislative and executive authorities at local, regional, and state, and sometimes international level, we call participatory democracy. There are numerous definitions and interpretations of citizens' activities and participation in decision-making. Citizens' participation is one of the means of civilian control over the work of political government and public administration. Forms of citizens' participation can be internal (participation in the work of political institutions and administration) and external (impact

<sup>6</sup> Ploštajner, Z., Mendeš, I. (2005). Građanska participacija, FES; Zagreb, p. 90

<sup>7</sup> Causevic, J. (2020), Political Participation of Women, Friedrich-Ebert-Stiftung, Sarajevo, p.3

<sup>8</sup> Verba, S & Nie, N.H. (1972). (Supplemented model)

<sup>9</sup> Vujcic, V. (2000). Political participation, Polit. thought, Vol XXXVII, (2000), No 1, p. 125

on the work of administration)<sup>10</sup>, or, in literature, two basic types of civic participation – electoral and non-electoral inclusion are often mentioned. The prominent authors S. Verba and N. H. Nie (see table) have developed a theory of political participation that

shows those activities of citizens which are more or less directly influencing the choice of ruling staff and/or the action of the authorities. The focus, therefore, is on those activities (actions), which aim to influence the decisions of the authorities.<sup>11</sup>

## 2. LEGISLATIVE FRAMEWORK FOR CIVIC PARTICIPATION IN THE DECISION MAKING IN BOSNIA AND HERZEGOVINA

### 2.1 European Charter on Local Self-Government and other Council of Europe norms

"Citizens' participation is at the heart of the idea of democracy."<sup>12</sup> Effective democracy depends on citizens having the right to vote and being heard. The commitment to increased public participation is at the heart of the Council of Europe Recommendation (CoE) on citizens' participation in local public life from 2018. The purpose of these norms is to achieve public consultations and participation of citizens embedded in the culture of all CoE Member States. Since Bosnia and Herzegovina has been a member of the Council of Europe for 20 years and has accepted and ratified all the norms of the Council of Europe in the relevant institutions, they have become part of the legal ambiance and political culture partly in declarative and partly in obligatory terms. All key elements of the European Charter on Local Self-Government are incorporated into domestic relevant legislation, while numerous other recommendations, especially those of a recent date, are only on the way towards their interpolation into legal norms and political practice.

In introductory Part of the European Charter on Local Self-Government (CETS 122, Strasbourg, 1985) as the first widely accepted supranational act on the rights of citizens and local administrations, local units are treated as the basis of each democratic system, and the right of citizens to participate in the management of public affairs is a universal principle common in all Member States of the Council of Europe signatories to this Charter. Local self-government<sup>13</sup> entails the right

and possibility of local units to, within the framework of a particular law, govern and manage, with their own responsibility and in the interest of the local population, an essential part of public affairs and that that right will be implemented through councils or assemblies composed of members elected in free and immediate elections, through a secret vote based on general and equal voting rights. Councils or assemblies may have the executive bodies responsible to them. Those rights and opportunities of local units cannot in any way be considered restrictive in relation to the application of citizens' assemblies, referendums or other forms of immediate participation of citizens where provided for in the statute. According to the Charter,<sup>14</sup> the possibility of immediate decision-making of citizens by referendum is opened, where the law allows, when it comes to changing the local area of the local self-government unit.

In addition to the European Charter on Local Self-Government, as the first international treaty to define citizens' right to participate in public affairs in local self-government, accepted by all members of the Council of Europe, it is worth highlighting the following Council of Europe norms:

- Recommendation [Rec(1996)2] on a referendum and a people's initiative at the level of local communities;
- Recommendation [Rec(1998)12] on the supervision of local authorities' actions;

<sup>10</sup> Pusic, E. (2002). Science of administration, School Book, Zagreb, pp. 107-153

<sup>11</sup> Vujcic, V. (2000). Political participation, Polit. thought, Vol XXXVII, (2000), No 1, p. 130

<sup>12</sup> Council of Europe, CM [Rec(2018)4]

<sup>13</sup> Article 3 of the Treaty on the Functioning of European Charter on Local Self-Government

<sup>14</sup> Article 5 of the Treaty on the Functioning of European Charter on Local Self-Government,

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- Recommendation [Rec(2004)11] on legal, operational and technical standards of electronic voting;
- Recommendation [Rec(2005)1704] on referendums as good practices in Europe.
- Recommendation [Rec(2017)83] Guidelines for civil participation in political decision-making
- *Convention on the Participation of foreigners in public life at local level (CETS 144)*
- *Recommendation [Rec(2009)2] on evaluating, auditing and monitoring participation and participation policies at local and regional level*
- C.L.E.A.R. Civil participation tool (2008)
- *CoE Toolkit for increasing Civil Participation in Cross-Border Governance systems – “European Experience of Citizens' Participation in Cross-Border Governance” (2015)*
- *CoE Guidelines for Civil Participation (2017)*
- Recommendation [Rec(2018)4] on citizens' participation in local public life
- *Recommendation CM/Rec (2018)4 the Committee of Ministers to member States on the participation of citizens in local public life*

## 2.2 Constitutional and legal framework for citizens' participation in Bosnia and Herzegovina

### International standards and constitutional provisions on civil participation

The preamble to the Constitution of Bosnia and Herzegovina refers to **the General Declaration of Human Rights** and the International<sup>15</sup> Covenant on Civil and Political Rights (ICCPR). The International Pact on Civil and Political Rights<sup>16</sup> (Article 5) defines the right and ability of citizens to participate in the conduct of public affairs, directly or through freely elected representatives, and to choose and be elected in fair occasional elections with general and equal voting rights that must be carried out by secret vote, in a way that guarantees free expression of the will of voters.

The General Comment of the Committee on Human Rights of the **International Pact on Civil and Political Rights** determines that citizens participate directly in the performance of public affairs when exercising their powers as members of legislative or executive bodies. This right to direct participation is guaranteed by the International Covenant on Civil and Political Rights, when citizens participate directly in the performance of public affairs, when they choose or amend the constitution or when they decide in a referendum on the outcome of issues of public importance. Citizens can also participate directly when they participate in public decisions on issues of meaning for the local

or when participating in the work of bodies representing citizens in negotiations with the government.

According to the General Declaration (Article 21) on human rights, everyone has the right to participate in the management of their country directly or through freely elected representatives. The will of the people is the foundation of state power, and this will must be expressed in occasional and fair elections, which are conducted with a general and equal right to vote, secret voting or some other equally free voting procedure.

**The European Convention for the Protection of Human Rights and Fundamental Freedoms**<sup>17</sup> (ECHR) is a document mentioned in the Constitution of Bosnia and Herzegovina (Article 2). Under Protocol 1. in addition to the Convention on protection of both human rights and fundamental freedoms, the Article 3 ensures free elections, i.e., the direct participation of citizens in decision-making with the free expression of citizens' opinions in the election of legislative authorities.

<sup>15</sup> <https://www.un.org/en/about-us/universal-declaration-of-human-rights>

<sup>16</sup> <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

<sup>17</sup> [https://www.echr.coe.int/documents/convention\\_eng.pdf](https://www.echr.coe.int/documents/convention_eng.pdf)

There are no specific chapters in the Constitution<sup>18</sup> of Bosnia and Herzegovina as the highest legal act of the state on participation of citizens in the decision-making process. Several articles of the Constitution (e.g. Article 2) mention elections as a conventional form of political participation and an indirect way for citizens to participate in decision-making. Bosnia and Herzegovina's constitution therefore does not treat through any specific provisions the form and mechanisms of direct participation of citizens in decision-making. For example, the Constitution of the Federation of Bosnia and Herzegovina does not specifically regulate the issue of the call of a referendum.

**The Constitution of the Federation of Bosnia and Herzegovina**<sup>19</sup> (FBiH), an entity, also talks only at the declarative level about citizens' rights to establishing and belonging to political parties, to elect and be elected, to have equal access to services, and to have general political rights (Article 2), while one of the provisions guarantees the right to self-government at the local level.

**The constitution of the second BH entity, Republic of Srpska**<sup>20</sup> (RS), stipulates that the RS National Assembly, among other things, has the competence to call a republican referendum, and stipulates that "the National Assembly may decide to take a decision on certain issues within its competence after the citizens' previous plea in a referendum" (Article 5). Republic of Srpska's constitution, in its article 76 thereof, was corrected by Amendment XXXVIII, which stipulates that: "The right to propose laws, other regulations and general acts sought by the President of the Republic, the Government, any people's MP or at least 3,000 voters." This amendment defines the number of citizens who can propose to the RS National Assembly

the adoption of a particular act under its jurisdiction, guaranteeing the constitutional right to initiate and mandatory consideration of the legislative proposal by citizens, which we can consider an instrument of direct participation of citizens in decision-making.

There is also a special **Law on referendum and RS civic initiative**<sup>21</sup> in this entity. This law governs the call and conduct of a Republican referendum and a referendum in the municipality/city, referendum bodies, the way citizens are directly pleading in a referendum, protecting citizens' rights in conducting referendums and how to achieve a citizens' initiative.

However, the adoption of this law in the 2010 election was not the result of the development of political culture, concrete civic initiative, nor advocacy by civil society, but of direct political instrumentalization by the ruling elite that created this law, and subsequently repeatedly used it for political and ethno-national homogeneity, using the referendum as a threat against the decisions of state institutions, and indirectly as a threat of violation of the constitutional order and secession on behalf of one part of the state (Republic of Srpska entity). The culmination of this form of instrumentalization of the referendum as a mechanism for civic participation was the final decision of the Constitutional Court of Bosnia and Herzegovina in 2016., which annulled the results of the referendum because the Court found that the referendum "does not comply with the BiH Constitution due to the referendum issue, on which there is already a final and binding decision of the Constitutional Court, which is obliged to be respected by all public authorities and institutions".<sup>22</sup> Otherwise, it was an earlier Decision of the Constitutional Court to declare the Republic of Srpska Day Act unconstitutional.<sup>23</sup>

<sup>18</sup> [https://www.ustavnisud.ba/public/down/USTAV\\_BOSNE\\_I\\_HERCEGOVINE\\_bos.pdf](https://www.ustavnisud.ba/public/down/USTAV_BOSNE_I_HERCEGOVINE_bos.pdf)

<sup>19</sup> <https://www.predstavnickidom-pfbih.gov.ba/bs/page.php?id=103>

<sup>20</sup> [https://www.narodnaskupstinars.net/sites/default/files/upload/dokumenti/ustav/lat/ustav\\_republike\\_srpske](https://www.narodnaskupstinars.net/sites/default/files/upload/dokumenti/ustav/lat/ustav_republike_srpske).

<sup>21</sup> <https://www.vladars.net/sr-SP-Cyrl/Vlada/Ministarstva/muls/Documents/Zakon%20o%20referendumu>

<sup>22</sup> [https://www.ustavnisud.ba/bs/101-plenarna-sjednica?force\\_locale=true](https://www.ustavnisud.ba/bs/101-plenarna-sjednica?force_locale=true)

<sup>23</sup> <http://sluzbenilist.ba/page/akt/1MAMGOJk5Ss=>

## Civic participation in local self-government

Bosnia and Herzegovina ratified **European charter on local self-government** back in 1994<sup>24</sup>. On a country level, according to constitutional competences, there is no general law on local self-government, but these laws are passed at the level of entities, and even cantons in the entity of the Federation of Bosnia and Herzegovina. Under the **Law on Local Self-Government Principles in FBiH**<sup>25</sup> and the **Local Self-Government Act of RS**<sup>26</sup> local self-government is achieved in the municipality and the city and is carried out by citizens and bodies of local self-government units. According to the European Charter on Local Self-Government, whose principles have been implemented in domestic relevant legislation, local self-government entails the right and possibility of local units to, within the framework of a given law, govern and manage, with their own responsibility and in the interest of the local population, an essential part of public affairs. On this principle, legislation on the action of local self-government in Bosnia and Herzegovina can be a good example of open possibilities, although the application of these possibilities is in practice well reduced.

Fundamental normative-legal acts of municipalities/cities (as formal forms of local self-government) are "statutes" governing, inter alia, issues of the exercise and protection of human rights and fundamental freedoms, self-governing scope of the municipality, the interrelationship of the authorities, local self-government, direct participation of citizens in decision-making in local self-government, cooperation with other local self-government units, regulations and other acts, the publicity of work, as well as other issues important for the organization and operation of the municipality/city. Citizens' participation in local government work in almost all relevant research is considered insufficient.<sup>27</sup>

Citizens' participation in decision-making at the local level is a two-way process. Participatory processes require transparent information and effective communication, based on a responsible partnership. The most direct forms of direct participation (citizens' assemblies, active local communities, civic initiatives, etc.) are not standard patterns of behavior, both on behalf of local authorities nor of the inhabitants themselves.

Data for 2010-2016 suggest that declarative advocacy of bh. authorities for the inclusion of citizens and the development of so-called participatory democracy, does not have its projection in the practical work of the government and in reality, citizens have almost no influence on decision-making. Although almost 80% of citizens have declared themselves to want to actively participate in the adoption of public policies, and that, as the main mechanism of participation, they recognize the local community (close to 70% of those surveyed), the authorities have done nothing to reform the local community, which with its outdated role and conception becomes part of the problem of citizens' participation, not solutions. Unfortunately, recommendations for changes to the necessary policies have been repeated for years, but entity authorities, as responsible for the area of local government and self-government, do nothing to change the Law to make local communities a fashionable mechanism for citizens' inclusion. Even on the contrary, there are growing tendencies in practice to make local communities a tool of political parties in power, which would be disastrous for citizens' participation. The cause of all the described is a lack of consciousness and willingness in the political elite to open themselves to citizens and make their work more transparent and responsible.<sup>28</sup>

<sup>24</sup> <https://rm.coe.int/168007a088>

<sup>25</sup> <http://www.fbihvlada.gov.ba/bosanski/zakoni/2006/zakoni/34bos.htm>

<sup>26</sup> <https://www.narodnaskupstinars.net/?q=la/akti/usvojeni-zakoni/zakon-o-lokalnoj-samoupravi-0>

<sup>27</sup> Report on the state of citizens' participation in decision-making processes in BiH, (2010-2016). CCI, Banja Luka

<sup>28</sup> Ibid, p. 4



Only 26.5% of citizens believe in the work of local authorities, 47.6% of citizens are satisfied with the work of the authorities, existential questions are crucial for almost 70% of citizens in order to engage in decision-making processes.<sup>29</sup> Therefore, the role of

local self-government in the protection, promotion and complete effectiveness of civic participation is far from satisfactory, and in addition to legislative opportunities, it is in practice reduced to sporadic and limited examples of active participatory democracy.

### Laws on freedom of access to information

The increased importance of communication in the new, open public administration, and the need for a more transparent and responsible public government, has also been expressed through the adoption of the Freedom of Access to Information Act (ZOSPI), both at the state and entity level. The law explicitly prescribes and requires proactive transparency and responsible behavior of public authorities, their managers, and officials, in connection with informing and consultation with citizens. The Freedom of Access to Information Act governs access to information owned by public administration bodies. Bosnia and Herzegovina is the first country in the region to adopt in 2000 the Freedom of Access to Information Act, first at state level and then in 2001. in both entities, which were later perfected on several occasions. Under this Law, public administration authorities are obliged to help citizens prepare a request for access to information, collect information to respond to the requested information, comply with the legally prescribed 15-day deadline and ensure access to the requested information.

The right to access information is also protected by the European Convention on Human Rights, where it is prescribed that everyone has the right to freedom of expression, which includes freedom of opinion and freedom to receive and transmit information and ideas, without the interference of public authorities and regardless of borders, and as confirmed by the European Court of Human Rights in the case of the Hungarian NGOs "Hungarian Civil Liberties Union (Társaság a Szabadságjogokér) v Hungary".

The judgment established the state's obligation not to prevent the flow of information necessary for public discussion on issues of public importance. In fact, the Court considers that obstacles created by public authority in order to prevent access to information of public interest can discourage and distract those working in media or related areas from carrying out their activities. This could result in the media no longer being able to play the vital role of "public guards".

### Mandatory consultations and public debates in the policy-making process

Other normative-legal acts regulating citizens' participation in decision-making that should be mentioned are **Rules for consultation in the drafting of legal regulations of the Council of Ministers of Bosnia and Herzegovina** (state level), which define institutions' public consultation obligations. All interested citizens and legal persons have the opportunity to participate directly in the drafting of legal regulations.

In the Republic of Srpska entity, in the **Rules of Normative-Legal Technique for the drafting** of laws and other regulations<sup>32</sup> of RS 2006, the issue of consultation is addressed in principle in Article 72, which leaves the competent institutions the opportunity to consult other relevant administration bodies, business entities and citizens' associations during the drafting of pre-draft laws and other regulations. In addition, **Republic of Srpska's 2014 rules for drafting laws, regulations and other acts**

<sup>29</sup> It's Ibid.

<sup>30</sup> [https://www.parlament.ba/data/dokumenti/pristup-informacijama/zakon\\_o\\_slobodi\\_pristupa\\_informacijama](https://www.parlament.ba/data/dokumenti/pristup-informacijama/zakon_o_slobodi_pristupa_informacijama)

<sup>31</sup> Article 10, ECHR

<sup>32</sup> Official Gazette of Republika Srpska, No. 13, 2006.

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obliges institutions to conduct consultations when the Government is proposing laws, and Article 99 provides for mandatory consultations with other law-related administration bodies, while, where appropriate, consultations may be carried out with 'interested citizens' associations, economic operators and other interested legal entities. Guidelines for the conduct of departments and other administration authorities on public participation and consultations in the drafting of laws, in Republic of Srpska provide more detailed guidelines on how public consultations are carried out<sup>33</sup>.

At FBiH level, public consultations are prescribed by the **Regulation on rules for the participation of the interested public in the process of preparing federal legal regulations and other acts**<sup>34</sup>. In accordance with Article 1 of this document, rules shall be governed to ensure the participation of the interested public in the preparation of draft laws, strategies, programs, and other acts under the jurisdiction of the Government of the Federation, federal ministries, federal administrations and federal administrative organizations.

In addition, state-level representative bodies and entities in their branches<sup>35</sup> regulate the parliamentary procedure for public debate on the draft law, in the case of a law of particular importance to the public, or if it is necessary to consult other administration bodies, different organizations, scientific and professional institutions and citizens.

In principle, according to all these documents, which have diminished legal force as by-laws, with fewer differences, each institution is obliged to meet minimum obligations at a given level of government in relation to consultations on pre-draft legal regulations. This means that the competent institution is obliged to place a pre-draft legal regulation on the website, with the possibility of submitting comments online, and is also obliged to call for comments from interested actors on the consultation list. In the case of broader consultations, as regards laws having a significant impact on the public, additional consultations include seeking written and oral comments through the publication of a legal regulation or other act online or in the media, providing legal regulation to organizations and individuals, holding public meetings with interested actors, and working groups involving experts and representatives of the interested groups.<sup>36</sup>

<sup>33</sup> Official Gazette of Republika Srpska, No. 123/08, 73/12.

<sup>34</sup> Official Newspaper of the Federation of BiH, number 51/12.

<sup>35</sup> Rules of Law of the National Assembly of the Rs (Official Gazette of the Rs, No. 31,), Article 204-207; Rules of Office of the House of Representatives of the Parliamentary Assembly of BiH, Article 114-116; Rules of Office on the Work of the House of Peoples of the Parliament of the FBiH, Official Newspaper FBiH, No. 27/03, Article 165-170; Rules of Office of the House of Representatives of the FBiH Parliament, Article 173-177.

<sup>36</sup> Papić, Ž., Jusić, T. (2015). Politički dijalog institucija vlasti i organizacija civilnog društva u Bosni i Hercegovini, CBGI, Sarajevo, p.23.

### 3. ROLE OF CIVIC SOCIETY ORGANISATIONS

*CIVICUS civil society index* defines civil society as "a space outside the family, state and market, in which citizens join together to achieve common interests".<sup>37</sup> This implies different activities, which may be "informal or formal, temporary or long-term, collaborative or confrontational" and can take place at different levels, from local to international. Within civil society, there are a multitude of organizations with different roles and functions, such as advocacy, representation of the interests of certain groups, education, public information, the provision of services, or, for example, the provision of different recreational activities (trade unions, employers' associations, humanitarian organizations, human rights organizations, youth organizations, religious organizations, and the like).<sup>38</sup>

By their nature, civil society organizations have an interest in the process of adopting and implementing public policies. Since civil society organizations represent the legitimate private interests of different groups, or some general public interest<sup>39</sup> (such as environmental protection), it is necessary to engage in public policy-making processes in order to achieve lasting effects in the field of their action and to protect the interests they represent.<sup>40</sup>

As for the participation of civil society organizations in policy dialogue, particular attention is paid to the legitimizing function of civil society organizations in the policy process.<sup>41</sup> In this context, the role of civil society organizations is also important because they allow

citizens and legal parties to better organize themselves and lobby for different interests in the process of public policy formulation. Therefore, civil society organizations can also be called 'entrepreneurs' in the realm of public policies (policy enterprises), who seek to achieve certain objectives and promotions of certain interests by participating in political dialogue, thus affecting the content and direction of policies in the state.<sup>42</sup>

The most common forms of participation of civil society organizations in policy dialogue in Bosnia and Herzegovina are:

1. Participation in official public consultations for public policymaking.
2. Development and distribution of analyses and recommendations for changes to public policies.
3. Advocacy for certain public policy options through media, public rallies, lobbying and other advocacy channels.
4. Participation in policy networks and interest groups gathered around specific public policies.
5. Helping key stakeholders develop their own capacity to participate in policy dialogue.
6. Direct participation in the implementation of a particular public policy.
7. Monitoring the implementation of public policies.
8. Evaluation of the implementation and effects of public policies.

<sup>37</sup> Volkhart Finn H. (2004). Assessing and Strengthening Civil Society Worldwide: A Project Description of the CIVICUS Civil Society Index: A Participatory Needs Assessment & Action-Planning Tool for Civil Society, *CIVICUS Civil Society Index Paper Series 2*, br. 1, 2004.

<sup>38</sup> European Commission, 2001, *Towards a reinforced culture of consultation and dialogue – General principles and minimum standards for consultation of interested parties by the Commission*, p. 6.

<sup>39</sup> Legitimate private interests imply all those interests that the legislature has not defined as public, and which are not expressly prohibited by the constitution and the law.

<sup>40</sup> Julius, C., Mendizabal, E., Osborne, D. Young, J. (2006). *Policy Engagement How Civil Society Can be More Effective*, ODI - Overseas Development Institute, p. 4.

<sup>41</sup> Zimmer, Annette (2010). *Third Sector-Government Partnerships*, u Rupert Taylor (ed.): "Third Sector Research", Springer: New York - Dordrecht - Heidelberg – London, p. 202.

<sup>42</sup> Hall (1987), p. 3, cited in Najam, A. (2000). *The Four C's of Government Third Sector-Government Relations*, Nonprofit Management and Leadership, Volume 10, Issue 4, p. 380.

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As a result of efforts aimed at developing policy dialogue in BiH, important elements of the legal framework governing co-operation between public institutions and civil society organizations have been adopted.<sup>43</sup> Establishing policy dialogue, understood as a form of co-operation between citizens and public institutions in the processes of making, adopting and implementing public policies, is an important aspect of public administration reform and is an integral part of a multitude of projects and programs aimed at supporting the development of civil society organizations in Bosnia and Herzegovina.

In addition, involvement in the processes of defining, adopting, and implementing public policies is strongly encouraged,<sup>43</sup> through concrete projects of co-operation between the public and civil sectors, as well as through the development of the capacity of public institutions and civil society organizations to cooperate in policy dialogue. The establishment of policy dialogues is particularly current today, as co-operation between the state and civil society organizations, with a particular focus on the participation of civil society organizations in public policy-making processes, is de facto part of the political conditions for Membership of the European Union, as confirmed in the EU Enlargement Strategy.<sup>45</sup> In addition to the European Commission and other donors and international actors in BiH, they are putting on the list of their priorities the development of institutional mechanisms and capacity to include civil society organizations in decision-making and public policy-making processes.

Such a strong focus on developing an institutional framework, capacity, and overall conditions for establishing political dialogue and involving NGOs in decision-making processes stems from the assumption that this can significantly improve the quality of public policies and the effectiveness of their implementation. Such an approach is closely linked to the concept of "good governance" and the idea of establishing non-hierarchical models of administration (*government*) based on the partnership of authorities and civil society organizations, and the departure from the model of hierarchical government (*government*). In this regard, co-operation between civil society organizations and authorities is considered an important aspect of the development and consolidation of democracy, given the role civil society organizations play in promoting civic participation in decision-making. Therefore encouraging civil society organizations to participate in political dialogue takes a prominence in donor democratization policies, not only in BiH, but also in other transitional societies of the Western Balkans.<sup>46</sup>

Earlier research conducted in BiH showed that just ten years ago policy dialogue between public institutions and civil society organizations practically did not exist, so the influence of citizens and civil society on public policymaking and adoption processes was negligible.<sup>47</sup> The very nature of their engagement with the institutions in recent years is changing, so the European Commission's reports on BiH's progress indicate that civil society has become much more active in this regard.<sup>48</sup>

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<sup>43</sup> Golubović, D. et al. (2013). *Keeping up the Momentum: Improving Civil Society Cooperation Between Public Institutions and Civil Society in the Western Balkan and Turkey*, ECNL & TACSO, p. 6

<sup>44</sup> Ibid.

<sup>45</sup> European Commission (2013b). Communication from the Commission to the European Parliament

<sup>46</sup> Anheier, H. K., Lisa C. Jeremy K. (2001). *Third sector policy at the crossroads: continuity and change in the world of nonprofit organizations*, u: Helmut K. Anheier and Jeremy Kendall (ed.): *Third Sector Policy at the Crossroads: An international nonprofit analysis*, Routledge: London and New York, p. 2.

<sup>47</sup> Transparency International BH (2012). *Materijali sa Radionice društvenog integriteta Institucionalna saradnja i mehanizmi koordinacije*, Sarajevo, 2012

<sup>48</sup> European Commission (2014). *Bosnia and Herzegovina 2014 Progress Report*, Brussels, 8.10.2014 SWD(2014) 305 final, European Commission: 11-12; European Commission (2013), *Bosnia and Herzegovina 2013 Progress Report*. Brussels, 16.10.2013 SWD (2013) 415 final, European Commission, p. 11.

However, despite the evident positive shifts, there remain certain problems and obstacles, which make it difficult to establish policy dialogue. This is primarily a disinterest and distrust of public institutions in civil society organizations, a shortage of funding in civil society organizations, an inadequate legal framework for public consultations, too short deadlines for public consultations, unavailable information on consultations and inadequate capacities of public institutions. A significant problem faced by both government institutions and civil society organizations are limited resources and capacities to participate in policy dialogue. As research so far has shown, institutions often do not have the basic technical, human, and financial resources, nor knowledge necessary to work on the development and implementation of public policies and to effectively coordinate and co-operate with civil society organizations in these processes. In short, capacities for the development, implementation, monitoring and evaluation of public policies, and coordination of activities with civil society organizations remain very limited at virtually all levels of government.<sup>49</sup>

On the other hand, there is the issue of legitimacy of civic society organizations which are trying to impose and legitimize themselves as articulators and advocates of citizens' interests, and to encourage, promote and catalyze participatory democracy. Legitimacy for such highly set goals most civil society organizations cannot even have, since only those membership organizations such as trade unions, veterans' associations, employers' associations, pensioners' associations, organizations of persons with disabilities, etc., are rare social groups with a longer tradition and relatively homogeneous and mass membership. The sources of funding for these organizations are mainly hybrid and imply self-financing from membership fees, these regular and guaranteed grants from public budgets, which makes them vital enough for independent and active participation in matters of their interest, but also unnervingly multiple ties to authorities and even ruling political parties, thereby losing independence, but sporadically gaining influence on decision-making processes. In the overall public image and public

perception, these organizations have the strength, but limited legitimacy of the interest group they represent, so each form of their participation in public affairs reflects the particular interests.

On the other side there are mainly professionalized "NGOs" with wide ranges of interests (ecology, social protection, anti-corruption, watchdog, etc.) that do not have a long tradition of action or mass membership but achieve the creation of a positive image of general legitimacy, i.e., representation of general, not particular interests. The sources of funding for these organizations are mainly international funds (donors), and sporadically and on a smaller range of project financing from public budgets, which makes these organizations mainly independent of public authorities and political parties but limits their reach to public policies and the capacity to represent the interests of the wider population or citizens. At the same time, due to the addressing of some controversial themes, such as corruption affairs, irresponsible holders of power, etc., there is a noticeable tension between these civil society organizations and the ruling elite.

Organizations, a more precise coalition of civil society organizations dealing with civic monitoring of the electoral process, should be singled out as a special category. Under different names, different capacity, and intensity of action, and with different international sources of funding, civic monitoring of the electoral process in BiH lasts a full 20 years. These coalitions mainly manage to make a significant contribution to raising political culture by hiring thousands of civic observers of the electoral process, agitating for fair and fair elections, and active voter participation in the elections. The elections themselves as a universal form of participatory democracy would be significantly less democratic without domestic civilian efforts to monitor and mobilize voters. However, turnout rates in the last 10 election cycles range 50-55%, which is not an enviable level and speaks more of the widely present electoral abstinence and conscious decision of voters to express a political position on current policies and candidates by the action of not voting.

<sup>49</sup> Papić, Ž., Jusić, T. (2015). *Politički dijalog institucija vlasti i organizacija civilnog društva u Bosni i Hercegovini*, CBGI, Sarajevo, p 24.

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Taking into account Bosnia and Herzegovina's complex political and electoral system, a hybrid proportional-majority model of single-round elections, it generally happens that a parliamentary majority at higher levels of government is an expression of will between 25 and 35% of voters, which creates lasting political tensions, calls into question the legitimacy of the executive branch (minority rule), and derogates achieved level of democratization and civic participation.

All this has an impact on the agenda and priorities of decision-makers (conceptual impact), the overall process of public policymaking, but also on the very content of public policies (instrumental impact). In other words, at the level of concrete public policies, there is an increasingly significant impact of civil society organizations on defining specific problems and proposing possible solutions to address them through public policies. Although this is essentially a positive trend, it also causes strong tensions between institutions and civil society organizations, as in

parallel there is a transformation and development of the civil society sector, which is now putting additional pressure on governments to continue with the reform processes started. Civil society organizations are encouraged by stronger capacities, a higher degree of specialization, support from international actors and easily accessible mechanisms for launching collective action, thanks to established networks of civil society organizations and information and communication technologies.<sup>50</sup>

And given that there is no tradition of co-operation between the two sectors, and that their capacities are still quite limited, when it comes to policy dialogue and civic participation, the question arises of the nature and sustainability of the reforms achieved so far in the area. The issue of sustainability is particularly relevant given the significant role that external factors, i.e., donors and other international actors have had and still have.

### 4. ONLINE CIVIL PARTICIPATION TOOLS

**E-Consultation**<sup>51</sup> – platform for citizens' participation in the decision-making process

The "eConsultation" platform managed on behalf of the BiH Council of Ministers by the BiH Ministry of Justice is conceived as a tool of proactive transparency, and the participation of citizens and civil society organizations in the decision-making process.

As the site's administrators themselves state, "cooperation of institutions of government with civil society organizations and citizens, is one of the fundamental values of democratic societies. Functional dialogue with civil society representatives and citizens' participation in the process of creating and implementing public policies is an important element of the European integration process. Today, when Bosnia and Herzegovina submitted an application for membership in the European Union, these principles have even greater importance."

This platform was therefore created to enable the interested public, civil society organizations and citizens to participate in the creation and implementation and public policies under the competence of the BiH institutions, not only through classic methods of public consultation, but also through web tools. The "eConsultation" platform was developed with expert support from the project "Building the capacity of institutions of the authorities to participate in dialogue with civil society" (CBGI) financed by the European Union.

The platform provides full and timely information to citizens and civil society organizations about the process of adopting certain legal acts and provides a reliable communication channel for their participation in public policy-making.

<sup>50</sup> Ibid, p. 48.

<sup>51</sup> <https://ekonsultacije.gov.ba/>

The platform allows lower level of government authorities (primarily entities) to use the same to communicate immediately and involve citizens in decision-making processes, although the content itself sees this happening in a very small number of cases, because lower levels of government do not have an obligation, and citizens do not have a pressure mechanism that will result in one, central place for eConsultation, at least for higher levels of government. Through insight into the total and periodic number of visits we can conclude that this tool is not widely used, that state institutions use it as an instrument of publication of information and a partially proactive approach to the participation of the interested public in the public debate on certain issues, and that the most common beneficiaries are professionals from institutions of government, civil society organizations, researchers, and journalists.

**E-Administration**<sup>52</sup> – platform for public administration services used

At the level of the Federation of BiH entity, a web platform "eAdministration" has been established, which, although still in the making, gives several online administrative services to citizens. The purpose of establishing and functioning the eAdministration platform is to ensure public, in one place, communication of an interested public with federal administration bodies, administrative organizations and institutions, thereby ensuring transparency of work in the process of providing public services and creating regulations and other acts. It is evident that the intention and content of this platform is very similar to the "eConsultation" platform, although the numerous options offered by the platform are empty and the amount of useful and fresh information is negligible.

<sup>50</sup> <http://euprava.fbih.gov.ba/>

<sup>53</sup> <http://www.esrpska.com/>

<sup>54</sup> <https://www.javnaraspava.ba/>

**eSrpska**<sup>53</sup> – online public administration platform

In another entity (Republic of Srpska), a very substantive, functional effective portal of the entire public administration of this part of the state was established, which in one place provides a large number of public services electronically, both for citizens and economic operators. Although this is primarily a service providing public service, which has moved into the virtual sphere in order to simplify and provide cheaper process of exercising certain rights or issuing documentation for the citizens, this form of immediate communication of public administration with citizens is an example of proactive transparency that can also be applied in a number of other cases where civic participation in the decision-making process is possible and desirable through electronic channels.

**JavnaRaspava.ba**<sup>51</sup> – CSO platform for citizens' participation in legislative public debates

The portal of one of the prominent civil society organizations, intended solely for citizens' participation in the decision-making process, is called JavnaRaspava.ba. This portal offers an abundance of information on laws and other decisions contained in parliamentary procedure in state and entity parliaments, with the possibility for citizens to receive all relevant information in order to involve themselves in the course of consideration and final decision-making. The portal also offers the opportunity for citizens to ask direct questions to parliamentarians, to get answers and to participate in forum debates. It is noticeable that part of the functions and content of this portal is obsolete, as a result of the previously explained problem of civil society organizations in BiH, which is temporary limited by donor financing of short-term projects. This portal, although an extremely useful and effective method of civic participation and immediate participation in the preparation, consideration, and decision-making, has an extremely modest range, both in terms of the number of citizens

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used therein and in terms of parliamentarians' participation in public debate, answering citizens' questions, etc. Since the portal was created from a professional CSO, the lack of mass participation of citizens is a phenomenon described above, and a low level of spontaneous participation in a formatted platform for citizens' participation is a phenomenon for sociological and political analyses. The bottom line is that this approach proves that even when there is a relatively functional and effective tool for online mass participation, it is missing out, and the causes can be sought in the poor image of NGOs, insufficiently strong PR activities in order for a significantly larger number of citizens to know and use the platform, and, equally importantly, a pronounced suspicion that such platforms can really ensure the end result – citizens' influence on decision-making, that they are more form than content, to serve those who do this job more than those who should benefit from the final benefit, namely citizens.

### **Social networks** - model of civic mobilization

The development of digital technology has opened the door to new possibilities of creating and transmitting information in different forms with the help of digital media. Online media, especially social networks, has a certain way to affect the development of political activism in citizens thanks to the possibility of interactive communication. The shift from conventional media (newspapers, television) to unconventional (internet) enables the decentralization of communication, makes control and restrictions difficult and makes information and exchange of opinions and attitudes widely available. Thus, citizens are given the opportunity through social networks to participate in public discourse, express opinions and views and discuss political and social issues. Once seen only as passive consumer, viewers become active participants as citizens<sup>55</sup>, which greatly affects the interaction between citizens and development of critical opinion.

In the absence of strong institutional mechanisms, and an underbuilt civic political culture and tradition of political participation, social networks have enabled rapid and mass civic mobilization over certain themes, issues, or cases, mainly of those with negative prefixes in recent years. Several major affairs whose actors were mainly the holders of the executive were triggers for a strong civic reaction that resulted in either more mass street protests, or strong media pressure on the subjects of affairs, or even the resignations or dismissals of certain individuals involved in affairs.

Social networks Facebook and Twitter remain dominantly present and a powerful tool in the hands of civic activists, and today it can already be argued that the mainstream of civic activism has dominantly moved to the virtual sphere. It has its positive and negative characteristics. The nature of rapid and mass online mobilization is positive, where practically in a very short time a large number of citizens, social media users can consume the information in question, take a certain attitude, and contribute to an advocacy goal with their own action. Of course, there always remains a risk of misinformation, fake news, instrumentalization and manipulation, but there is a wide availability of information, many verification options, and public debates about the same are a good recipe for fact-checking. On the other hand, virtual civic activism in Bosnia and Herzegovina, too often has the qualms of "barrel in a glass of water", because civic reaction, mobilization, and even mass action, is not articulated into specific demands or addressed action. Also, often, ruling elites, using some of them loyal media and already well probed manners, depreciate criticism by challenging the problem, topic, or legitimacy of civic participation, by transposing it into the sphere of high politics, party manipulation and conspiracy theories.

The Internet has become a tool for communication between citizens and different levels of government or serves as a place where citizens meet to discuss different issues. The relationship between authorities and citizens is becoming more complex and diverse.

<sup>55</sup> Perišin, T. (2004.). *Profesionalni kriteriji selekcije vijesti i utjecaj javnosti*, Politička misao, 41 (1): p. 86



The development of digital technologies changes the context of governance. New communication technologies allow citizens to overcome obstacles to physical distance and to organize themselves faster and more effectively. This increasing access to information has a "democratizing effect: politicizes citizens and often mobilizes them to act."<sup>56</sup>

Social networks today largely affect all forms of social life, so more recently, the term "digital activism" has begun to be used among the population. Digital activism has proved to be a powerful means of political mobilization in Bosnia and Herzegovina and actually provides new ways to involve citizens in decision-making processes, concrete protest action or public pressure.

## 5. CONCLUSION

Bosnia and Herzegovina is not far from a relatively favorable legislative ambiance to encourage and consume modern forms of participatory democracy. The constitutional-legal framework is mainly based on the highest European standards of protection and promotion of citizens' political rights, legislation, except for several cases, is mainly affirmative of civic participation, but factors of political and administrative practice, and cultural and transitional vectors remain the strongest dams for mass consumption of active citizenship.

In the absence of stronger institutional mechanisms, and an underbuilt civic political culture and tradition of political participation, social networks have enabled rapid and mass civic mobilization around particular cases on several occasions in recent years, as evidenced by the vitality of civic mass.

Numerous studies confirm the general findings of this study, which is that there has definitely been a "kind of stabilization of the level of conventional political participation (voting in elections), but that there has also been a significant increase in unconventional participation (petitioning, demonstrations, etc.) (digital democratization - author's note). It has been showed that there are significant differences in the level of

political participation, especially in the level of "protesting potential" of citizens. "Protesting potential" is treated as a significant indicator of possible political mobilization of citizens and is treated as a reflection of their democratic political culture."<sup>57</sup>

Unlike traditional models of democracy, in which the focus of democratic process or civic participation is primarily focused on voting mechanisms, such as elections, referendums, plebiscites or, ultimately, voting in parliament, a model of deliberative democracy through permanent consultations and debates, and instruments of digital democracy brings freshness and fills the "legitimacy gap". The purpose of further developing a model of deliberative democracy in Bosnia and Herzegovina is to eliminate deficiencies, i.e., a "participatory deficit" that is a feature of current hybrid representative democracy and the mechanisms of (ethnic) voting in BiH themselves. Distortion or even direct neglect of the will of the people (citizens), public will versus secret political agendas, and persistence on a permanent but controlled crisis, and status quo versus participatory democracy of the 21st century is the dilemma which is fictitiously forced by the domestic political elite, and the very solution to this dilemma is in the above-described positive antipodes.

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<sup>56</sup> Ploštajner, Z., Mendeš, I. (2005). Građanska participacija, FES; Zagreb, p. 93

<sup>57</sup> Vujčić, V. (2000). *Politička participacija*, Politička misao, Vol XXXVII, (2000.), . No. 1, p. 139

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