

ELEMENTS OF DIRECT DEMOCRACY IN LEGAL SYSTEM OF BOSNIA AND HERZEGOVINA: ANALYSIS, DEVELOPMENTS AND PERSPECTIVES

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Abstract

Mechanisms of direct democracy enable citizens to get involved in the decision-making processes over common values and questions of general interest, either by initiating certain laws and regulations or simply by deciding upon the public policy proposals made by the government. In Bosnia and Herzegovina, elements of direct democracy are not consistently represented throughout the country due to the specificity of its structure and constitutional history. Various scholars have diametrically opposed views on these forms of decision-making and continue arguing either in favour or against their application in complex and multicultural states. The greatest concern is whether mechanisms of direct democracy indeed provide majority group within one state with a power to blatantly outvote minorities and thus endanger their rights, or rather serve as a tool for promotion and better protection of minority rights and civil rights in general. As of yet, there are not enough comprehensive empirical studies of the concrete effects of direct democracy in multicultural societies, with lots of hypotheses still remaining in the field of speculation. Nevertheless, its mere idea delivers much more positive and constructive elements for a society that declares itself as being democratic. After trying to firstly (a) define the notion and variations of different mechanisms of direct democracy, this paper (b) delves into the complex legal system of Bosnia and Herzegovina, relying on the comparative and descriptive method in analysing and interpreting the existing data (primary sources – legal documents, and secondary sources – academic contributions), and (c) reflects on the recent developments and searches for the specific elements of direct democracy, while evaluating possible outcomes of their concrete application in a divided multiethnic society of

Bosnia and Herzegovina, concluding with (d) the framing of policy recommendations on the basis of findings using the prescriptive method.

Keywords: *direct democracy, representative democracy, consociationalism, multicultural states, political elites, referendum, plenum, Bosnia and Herzegovina.*

1. Introduction: Defining Direct Democracy

Direct democracy is often considered as the best and the purest expression of a rule “of the people, by the people, for the people”. It is founded on a perception of the people as of the ones having the highest legitimacy and authority within a country, thus being endowed with a right to directly decide on certain issues and matters (at least to some restricted extent). Direct democracy seen as such differs from the representative democracy, where people indirectly influence public policies by exercising their right to vote every few years on the regular and periodic elections, when choosing political representatives to established state institutions. Since in the modern era there are no countries exercising “pure” direct democracy due to its size limitations in populous societies, many representative democracies are nowadays complemented by certain elements of direct democracy, aiming for a greater democratic legitimacy of their decision-making processes.

It is argued that contemporary representative democracies more closely resemble “oligarchies with a facade of democracy” (Altman, 2011, p. 3), rather than the ideal, prototypical representative democracies. In other words: “government is in principle democratic, in (liberal) theory mixed, and in practice oligarchic” (Altman, 2011, p. 4). Consequentially, we witness the current phenomena of ever-growing disenchantment of many ordinary citizens with the politics, discerned and analysed already at the turn of the century (Greer & Murphy, 2005, p. 162). The level of civic dissatisfaction is high, as well as the distrust towards the political parties, and in general animosity towards the “democratic game” is omnipresent (Altman, 2011, p. 4) reflected, for instance, in a trend of decreasing voters’ turnouts to the various electoral processes and cycles across the globe. Political problems are getting increasingly complex and technical in nature, and democratic process is perceived as making little difference to their solution (Greer & Murphy, 2005, p. 162). Even though free and fair elections are *sine qua non* constitutive elements of democracy, inter-election periods constitute the weakest links of current democracies (Altman, 2011, p. 1), and representative democracy often produces policies that oppose the actual citizens’ preferences. Therefore,

citizens through the initiative process of “proposing and voting on public policy measures” (Gerber, 1996, p. 100) substitute elected representatives in deciding substantially over certain country’s issues. As Gerber argues, “it is expected that legislative policies produced in the initiative states [employing mechanisms of direct democracy] to either be indistinguishable from, or to more closely reflect that state’s voters’ preferences, than policies produced in the non-initiative states” (Gerber, 1996, p. 112).

Direct democracy has a long history – from the ancient Athens *polis* to today’s Switzerland (sometimes referred to as the “champion of direct democracy”), Italy and the USA (where more than half of the states allow citizen initiatives), among others. As mentioned above, notable trend over the last two decades was occurrence of a “widespread dissatisfaction with democratic performance of the representative forms of government, and growing practice of using alternative forms of citizen inclusion in the political process” (Stojanović, 2006, p. 183), both in the Western democracies and the new-emerged Central and Eastern European democracies. The frequency of using mechanisms of direct democracy is still increasing dramatically, “both in the number of countries employing such devices, and in the number of issues being put to a direct vote” (Beramendi et al., 2008, p. 20). Some authors interpret the efforts in favour of direct democracy in light of a struggle for socio-economic justice, equality and good governance (Kapović, 2011, p. 17). The use of a referendum in many European countries to determine whether or not to join the European Union¹ (EU) may serve as an example of this trend towards the use of direct democracy to resolve important and difficult political questions, particularly where political parties are divided over an issue (Beramendi et al., 2008, p. 20-21). In relation to this, the observed proliferation of using referendum as a particular form of direct democracy across the European continent during the last couple of years, addressing the ground-breaking social, cultural, political and economic issues, was especially notable: from the Scottish independence referendum in 2014, Irish constitutional referendum on same-sex marriages in 2015, Greek bailout referendum in 2015, and the United Kingdom’s (UK) EU membership referendum (so called “Brexit referendum”) in 2016.

Nevertheless, it should be stressed at this point that there is a possibility of certain shortcomings in the application of direct democracy, such as the

¹For illustration, last ten out of thirteen countries joining the EU held referendums on the issue (source: <http://en.euabc.com/word/798>). For an interesting analysis of how the proliferation of national EU-related referenda keeps the European integration in check, see: Lehne, 2015.

possibility of the limitation of “checks and balances”, allowing for the small groups of people to absorb too much power, and opening a space for the approval of unjust laws which restrict freedoms. Also, this form of government involves the risk of providing an incentive for the opposition to bypass institutions of representative democracy and impose conservative or liberal agenda through the initiatives (or through the threat of using them), as well as the potential of using polarizing social issues to dictate the policy agenda (Bieber, 2013).

In more general terms, contemporary literature defines direct democracy through few basic institutional features:

- a) decision-making by a popular vote on political issues;
- b) public deliberations of those issues;
- c) absence of the intervention of political elites and detachment from the established institutions;
- d) supplementing representative democracy with “enriching and controlling functions”, including the observance of the basic democratic principles (for example, see Marxer, 2012, p. 34).

Core values and principles of the mechanisms of direct democracy are hence not different from the ones of the credible and legitimate representative/electoral democracy, those being: freedom, popular sovereignty, political equality, fairness, transparency, accountability, strengthening social capital, policy pluralism, equitable delivery of public services, respect for human rights and the rule of law, “level playing field”, etc. For some forms (e. g. referendum) additional elements such as the secrecy of the ballot and the increased citizens’ participation are essential (Marxer, 2012, p. 2, Greer & Murphy, 2005, p. 11).

Finally, elements of direct democracy may be manifested in various ways – by the means of referendum, plebiscite, national veto, popular/citizen initiative, agenda initiative, citizen assembly, recall, and so forth (Marković, 2009, p. 2). Those variations could in general be differentiated on the basis of what triggers them as the “bottom-up” (citizen-initiated) and “top-down” (initiated by the chief executives or legislators) mechanisms of direct democracy (Altman, 2011, p. 2). They can also vary as to their legal status, i. e. whether they are regulated by the constitution or the law (mandatory and optional/facultative); their legal value, i. e. whether they need to be confirmed by another institution (binding or consultative); their legal timeframe, i. e. whether they are preliminary or subsequent towards a certain policy proposal (prospective and retroactive); and their legal intention, i. e. whether they

attempt to sustain or alter the *status quo* (proactive and reactive) (more in Altman, 2011, p. 8).

The important thing about mechanisms of direct democracy is that they always strive to affect the behaviour of the government. Political representatives thus seek to come up with consensual and compromising solutions which might match the voters' preferences and hence be widely acclaimed, while bearing in mind possibility that majority has a way through the means of direct democracy to *ex post* reject certain proposals or acts.

Methodologically, the present article describes, compares, and interprets the existing data from the available primary (constitutions and laws) and secondary sources (academic contributions). After introducing the notion and theoretical variations of direct democracy, remainder of the articles is focused on, firstly, the complex legal system of Bosnia and Herzegovina (BiH) and references to the specific elements of direct democracy therein, and, secondly, evaluation of possible outcomes of concrete application of mechanisms of direct democracy in BiH's divided multiethnic society, concluding with policy recommendations on the basis of the present findings.

2. Elements of Direct Democracy in Bosnia and Herzegovina

Direct democracy in the system of one country may be introduced through the constitutional provisions or special laws. However, there are no laws on the state (i. e. central) level in BiH dealing with the direct democracy, nor does the Constitution of BiH include any provisions regarding citizens' right to directly influence policy-making process over certain issues. There are at least two reasons for such arrangement. First, the state Constitution was drafted and brokered by the international community, relying on the pattern of the Constitution of the USA, which also does not provide any basis for direct democracy on the federal level. In addition, the context in which the BiH Constitution was delivered, as a part of the Dayton Peace Accords, shows that its main purpose was to stop the war, so it had to focus mostly on power-sharing arrangements and the unanimous support of the three former warring parties (Marković, 2009, p. 10).

Some authors and constitutional law scholars (Marković, 2009) argue that the mechanisms of direct democracy could be implicitly assumed in the legal system of BiH on the state level. Annex 1² of the Constitution

²Titled: Additional Human Rights Agreements to be applied in Bosnia And Herzegovina.

enumerates fifteen human rights documents that are directly applicable in BiH, having constitutional value and being above domestic laws and regulations. Some of them³ enumerate the “*right of citizens to take part in the conduct of public affairs directly or through freely chosen representatives*” (*italics added*). By this analogy, constitutional basis for introducing the mechanisms of direct democracy on the state level in BiH is already present, and it is only up to the highest judicial instances or state’s legislator to explicitly recognize this right and possibility, framing it through the binding judicial interpretations or state law.

A similar possibility of acknowledging that the mechanisms of direct democracy already exist and could be widely and consistently applied in BiH, though only on the lower levels of government, is by looking at some of the international agreements that BiH became party to, which are also in the legal hierarchy ranked at the constitutional level. One of them is the European Charter of Local Self-Government⁴, which in its Article 3 makes reference to the establishment of mechanisms of direct democracy at the local level through “assemblies of citizens, referendums, or any other form of direct citizen participation”.

Finally, some research (Beramendi et al., 2008) derives the existence of the mechanisms of direct democracy in BiH on the state level from the Annex 2⁵ of the Constitution. It provides that all laws in effect within the territory of BiH when the Constitution entered into force “*remain in effect to the extent not inconsistent with the Constitution*, until otherwise determined by a competent governmental body of BiH” (*italics added*). With this provision, laws of the former Socialist Federative Republic of Yugoslavia are transposed into the contemporary legal system of BiH. Some of them include Law on referendum in Socialist Republic of Bosnia and Herzegovina from 1977 (amended in 1991)⁶, which even though passed during the old socialist regime, do not contain “any obvious or clear inconsistency with the Constitution” and therefore could be considered as valid and in force (Beramendi et al., 2008, p. 203). These laws provide for the optional though no mandatory referendum on the state level, the outcome of which is to be considered as binding for the legislator, concerning all issues (even the constitutional ones), together with citizens’ initiative on all levels of government, and local instruments of direct democracy.

³For instance: International Covenant on Civil and Political Rights (Article 25).

⁴Entered into force in BiH in 2002.

⁵Titled: Continuation of Laws.

⁶Also – Law on Proceedings with Petitions and Proposals from 1977 (amended in 1987 and 1990).

However, interpreting and reading the Constitution in this way and introducing these references to the mechanisms of direct democracy on the state level in BiH is somewhat dubious and disputable. Therefore, for the purposes of this article we will consider and examine only the existing positive legal provisions that could be encountered in the constitutional system of BiH. Also, it is worth mentioning that a few years ago the coalition of non-governmental organizations ran a campaign for the introduction of comprehensive mechanisms of direct democracy into the BiH Constitution⁷, which did not produce any results.

Hence, mechanisms of direct democracy within BiH exist only in the system of one of its entities – Republika Srpska (RS). This implies that on the other levels of governance (i. e. Brčko District, Federation of BiH and its cantons and municipalities) direct democracy cannot be exercised. The Constitution of RS contains provisions for the referendum⁸ (voting on the proposed legislation) and popular initiative⁹ (right to initiate the legislative process). Regarding the referendum in RS, its result is always binding (in contrast to the advisory non-binding referendum), and can be both preliminary and subsequent. With the Law on Referendum of RS, it is prescribed that assemblies of municipalities can also initiate referendum for the questions within their jurisdiction.

These rights are, however, not often exercised for several reasons. Constitutional and statutory legal provisions in RS do not allow for a certain number of citizens to initiate referendum; rather only the highest entity institutions can initiate them. Also, it demands a high legal threshold of voters in favour for the referendum to be successful – majority of the overall number of registered voters (Marković, 2009, p. 11). In the end, referendum as an institute in RS is mostly exploited in those political discourses which use it as a threat for the dissolution of BiH (e. g. often mentioned referendum on the independence of RS). Thus, the RS government in September 2016 initiated a much disputed referendum¹⁰ on rejecting a previous judgment by the state-

⁷Further information at: <http://www.ustavnareforma.ba/en>.

⁸Articles 70 and 77 of the Constitution of RS.

⁹Amendment XXXVIII on the Constitution of RS (which changed Article 76 of the Constitution of RS).

¹⁰In 2015, the state-level Constitutional Court ruled that “holding the annual Day of Republika Srpska on January 9th was discriminatory against non-Serbs in the entity because it was also a Serbian Orthodox religious holiday”. Referendum, held on September 25th, was strongly opposed by the EU and the USA, and was seen by many as a violation of the Dayton Peace Agreement and as a precursor to a referendum on the RS’s secession from BiH. The state Constitutional Court a week before the referendum issued a ruling

level Constitutional Court that banned the entity's "statehood day" (Rose, 2016), despite the same Court in a preliminary procedure issued a ruling which temporarily banned holding of the referendum. Provoking additional tensions in the state-level institutions and political arena, the referendum was also a politicised use of a direct-democratic decision-making by the RS government over sensitive ethno-national issue, in an attempt to secure more votes prior to the local elections later that year.

Views of various scholars are contradictory on whether the means of direct democracy are suitable and appropriate at all in a complex multicultural/multiethnic country such as BiH. BiH's political reality represents the "ideal type of consociationalism¹¹ (or "consociationalism plus") which is consistent to the Lijphart's model" (Stojanović, 2009) and is comprised of the "three big sub-systems" relying mostly on the "decisions delivered by the compromise, often even by consensus" (Marković, 2009, p. 12), where by specific constitutional arrangements veto-power has been institutionalized and given into the hands of the three constituent groups/nations (Bosniaks, Croats, Serbs).

Lijphart himself considers referendum to be a "blunt majoritarian instrument that may well be used against minorities" (Marxer, 2012, p. 65), what has been demonstrated in practice too many times. Modern theorists of democracy are generally concerned with the correlation of the mechanisms of

provisionally banning the referendum, which was ignored by the RS political leaders. Eventually, turnout was around 60 percent (out of 1.2 million eligible voters) and voters overwhelmingly (99.79 per cent) voted in favour of the RS's annual 'statehood' holiday, thus rejecting a ban by the country's highest court. More in: Rose, 2016.

¹¹Two fundamental elements of the Lijphart's theory of consociational democracy are: (a) power sharing in government among the most important segments of the pluralist society, and (b) the autonomy of those segments, especially territorially and on a federal basis (even though this has been doubted in the case of BiH, given that three nations/constituent groups do not formally exercise territorial autonomy throughout the entities). Two additional elements of this model are: (c) the capacity for a minority veto, and (d) proportionality, e. g. in the electoral system, or proportional representation of all segments in the state's institutions (which is "more than proportional" representation of minorities in the common institutions). According to Lijphart's consociational model, the present constitutional system of BiH is indeed a classical model of consociationalism, given that it not only satisfies all the elements of the consociational model, but it goes even beyond it (a very rigid veto-power, an ethno-national scheme applied consistently in the institutional structure, etc.). More details in: Stojanović, 2009.

direct democracy and minority rights. Even though it is acknowledged that direct democracy may actually empower minorities by providing them with an alternative way to raise an issue that is not necessarily favoured by the majority within a legislature or parliament (Beramendi et al., 2008, p. 23), cases like the “minaret initiative” in Switzerland and banning gay marriages in California show that minority rights may very likely be endangered by those mechanisms (Marxer, 2012, p. 9). Therefore, it has to be kept in mind that “referendums, and particularly initiatives, could possibly threaten civil rights of the vulnerable minorities or exacerbate racial or ethnic tensions in some societies” (Beramendi et al., 2008, p. 23). As for the challenges of direct democracy in the post-conflict and transitional societies (as one could arguably still regard the present BiH), it is also uncertain whether direct voting could help end the conflict and assist in the political process of transition after violent conflict as it did in the case of the Northern Ireland, or on the contrary confirm and deepen the existing divisions as happened in some other instances, e. g. in Timor Leste (Beramendi et al., 2008, p. 5).

3. Discussion on the Possible Effects of Concrete Application of Mechanisms of Direct Democracy in BiH

Disadvantages of the possible concrete application of direct democracy in BiH could be roughly summarized as:

- a) question of minorisation – tyranny of the majority,
- b) manipulative misuses by the government and media,
- c) passive or ignorant approach by the people, and
- d) financial costs and structure of the civil sector.

a) As suggested above, the fundamental issue is whether direct democracy “protects or endangers minorities in multicultural societies” (Stojanović, 2006, p. 183). Results of various studies are conflicting and there are many examples supporting both of the answers to this dilemma. There is indeed a possible scenario where the minority is constantly outvoted what leads to a so called “tyranny of majority”. Thus, limitations and dangers of mechanisms of direct democracy are especially salient when putting civil rights of a minority groups to a direct vote. On the example of the US states, Gamble argued that “without the filtering mechanism of the representative system, direct democracy promotes majority tyranny” (1997, 245).

Another possibility relevant in the context of BiH is that two numerical minorities may outvote the numerical majority, given that voting patterns usually follow the ethno-national lines (Stojanović, 2006, p. 188). This type of vote can also lead to a problem. Both of these options may seem very

plausible in BiH in relations to the three main ethnic groups, any of which would, without doubt, severely harm the fragile and insecure situation. Therefore, many argue that direct democracy is not a desirable tool in the societies where basic political questions are overlapped and intertwined with ethnic groups' issues (Boschler, 2009), as it is currently still the situation in BiH. Rather, the claim is made that better protection of minority rights can be ensured by introducing the consociationalist model through the system of "checks and balances" (Boschler, 2009), as it was originally embodied in the Constitution of BiH. The conclusion in favour of this view would be that no legal arrangements on direct democracy should be applied in BiH. However, the example of Switzerland shows how elements of direct democracy proved successful in handling issues within one heterogeneous society. Switzerland, similar to the present BiH situation, was also once deeply divided, after consolidation of the cantons in the Confederation following the civil war in the mid-1800's occurred, and was thus originally founded on consociationalist premises. Here another conclusion occurs, although opposite to some scholars' views: that direct democracy can go along very well with the consociationalist theory. Stojanović (2009) thus writes that, albeit not exclusively and solely by its means, direct democracy in Switzerland facilitated "creation of cohesive, stable and sustainable society", and influenced many other institutions which all together made Switzerland a successful democracy.

b) Direct democracy allows citizens to take part in deciding on certain policies. Observed from another perspective, citizens could be misled by the government and media in order to influence the possible outcome of such decision-making process. This leaves room for the manipulation by the political elites, termed as "rich and corrupt demagogues and populists" (Stojanović, 2009), which often abuse their positions and privileges. Translated into BiH's political reality where predatory and parasitic state machinery reinforces itself through nationalism, corruption, nepotism and opportunism (Blecherman, 2014), we have a situation where ethno-national political elites preserve power and control only by inducing "insecurity, conflict and instability" (Mujkić, 2006). So there is a serious possibility that the same manipulative tactics would be applied by the leading ethno-national parties in order to minimize the effects of direct democracy in BiH. Researching the use of mechanisms of direct democracy in the processes of dissolution of the former Soviet Union and ex-Yugoslavia (latter relevant to the argument in question), Wheatley reaches similar conclusion that political elites almost as a rule used the referendum "as a weapon", rather than "as a solution". He furthermore suspects that in such potentially conflicting

situations (at least in these regions), direct democracy tends to intensify conflict rather than produce viable solutions for it (Marxer, 2012, p. 8).

In addition, media have important role in the process of shaping the public opinion and often they play crucial (mostly negative, given the “tabloidization” of mainstream media) role in emphasizing differences, reproducing misunderstandings and raising tensions. Their overall performance is characterized by the superficial and oversimplified reporting on the political dynamics, causing the erosion of democratic interest, feeding into the narrative of “post-truth” political era, and making the politics “a spectator sport” for the general population (Greer & Murphy, 2005, p. 162). We currently witness similar situation in BiH, where even public media sometimes serve as platforms for the certain political options, rather than critically observing the role and actions of these political players. Taking into account the present political context in BiH where the two premises of the government and media manipulations fit perfectly, one may legitimately argue that mechanisms of direct democracy would only produce its counter-effects and thus become meaningless, or even worse – cause additional tensions and problems.

c) Another question at issue is whether the voters could “accurately perceive the content of direct legislation”, being therefore able to “understand and decide upon the serious and overlapped political issues” (Gerber, 1996, p. 103), and in the end would there be any quality and worthy initiatives. Introducing mechanisms of direct democracy to decide on certain proposals demands that the citizenry has a high level of capacity and knowledge of the issues that are oftentimes very complex. This is sometimes regarded as one of the major obstacles for successful employment of the mechanisms of direct democracy. Voters could make ill-considered decisions based on e. g. partial knowledge, simplification of the complicated issues, emotions for the campaign, or some unrelated factors such as feelings about the particular political party or personality (Beramendi et al., 2008, p. 22). An example of this can be seen in the recent “Brexit referendum” in the UK: along with the generation gap and urban-rural distribution of votes, there was an enormous gap in the educational level between the voters supporting and opposing UK’s exit from the EU; also, proponents of the UK leaving the EU were misled by the populist alt-right Euro-sceptic rhetoric (“winning back UK’s independence”) and misinterpreted facts, leaving them uninformed on what the actual socio-political and economic consequences of the “Brexit” would be; and reportedly, “Brexit” supporters were casting their votes in a political act of protest and disillusionment with the major political parties and establishment in the UK, rather than as a desire to substantially determine their country’s status within the EU.

The participation rate is another important element to consider: it questions willingness of the voters to go out more frequently to the polls, assemble for discussions and voting in the citizen's assemblies, etc. The reason why referendums often have low turnouts is that they usually manage to mobilize only voters who are particularly concerned with the specific issue at the stake (Bieber, 2013), showing that direct democracy can suffer from the problem of "voters apathy" too. Research shows that the turnout and quality of the citizen participation in many referendums are comparable to those found in the national parliamentary elections, but in other instances may fall well short of expectations (Beramendi et al., 2008, p. 20). It is also considered that the threshold of required signatures is easier to reach if the issue in question has a polarizing effect on the society, and if well-organized groups stand behind the initiative (Bieber, 2013). Comparing all this to an average percentage of the voters in for example local and state elections in BiH, which is usually well under or around fifty percent, could raise concerns over whether direct democracy would be exercised to the fullest in BiH, or even if decisions made using the instruments of direct democracy would represent real majority of citizens.

d) In the end, experiences actually demonstrate that introducing elements of direct democracy in one country does not mean that a great number of initiatives for exercising those mechanisms will automatically emerge. One of the reasons for a relatively small number of initiatives is the cost of developing a quality and potent initiative proposal (running a campaign, organizing public discussions, promotion in the media, etc.), as well as the big risk of failure. The overall economic situation in BiH over the years has constantly been poor (not taking into account here foreign donors and financial donations), so this would as well influence effectiveness of the application of mechanism of direct democracy.

Another important factor is the structure and competence of the civil society organizations operating in the political arena. Regarding BiH, civil society is weak and fragmented. There are often complaints of the NGO's inactive, shallow and counter-productive engagement in the social and political sphere.

On the other side, advantages and positive elements and possibilities of direct democracy in BiH are numerous. Here are only some of the most important:

a) legislation closer to the voters' preferences and more legitimate decisions,

- b) emergence of the unitary political entity (*demos*) on the state level and (in some instances at least) avoidance of social conflicts,
- c) restoration of the authority to the people and inclusion of the community in the decision-making process, with an improved citizen participation and strengthened popular freedom of speech, and
- d) making political representatives more responsible, responsive and accountable.

a) Mechanisms of direct democracy may serve as a useful discipline on the behaviour of elected representatives and strong instrument of the political control. Thus, there should ideally be “greater correspondence between the views of the citizens and decisions of their representatives” (Beramendi et al., 2008, p. 20). Representative democracy as applied in BiH does not allow for citizens to directly influence government policies or hold their elected representatives accountable, for example by voting them out of office. Problems occur when the legislature is “unconstrained and passes laws at its ideal point” (meaning: laws mirroring its own particular/institutional preferences, rather than electorate’s), or its ideal point is *status quo* itself (Gerber, 1996, p. 107). As today’s situation in BiH demonstrates, there are no laws that would substantially tackle the biggest problems in the country (e. g. human rights, economy, education, public expenditure), and yet the same ethno-national political parties preserve their dominant position enjoying the current *status quo*. But instruments of direct democracy themselves affect the behaviour of the legislators because there is a legal ability to challenge every policy and act *ex post*, so political representatives have to work on the proposals which will be closer to the voters’ preferences. That provides a way out of the *status quo* situation where the political institutions and legislative process in general are in deadlock.

However, it is important to mention that the critics sometimes stress that the processes of direct democracy might irreversibly weaken the parliamentary system by undermining the role and importance of elected officials (Beramendi et al., 2008, p. 20). In this view, it might “involve the risk of creating something like permanent electoral campaigns, diverting the attention of representatives from the responsibilities of their elected office” (Beramendi et al., 2008, p. 20), which makes this argument on the stability of political system hard to neglect.

b) Stojanović (2009) argues and demonstrates on the Swiss example that direct democracy is important in the process of the construction of political *demos* within a state (“vertical integration”). By deciding upon certain questions, the people are seen as the unitary body (regardless of differences between the particular groups). This creates common sense and

awareness of collectiveness – or in different words a “nation’s existence is a daily plebiscite” (Renan, 1882). The problem in BiH is also a lack of the “constituent nation”, where main three ethno-national groups (constituent peoples) do not perceive and “feel” BiH on the same way. Therefore, the nation-building process which is one of the preconditions for a stable and prosperous country of all its citizens could arguably be substantially improved by, *inter alia*, introducing elements of direct democracy into the domestic legal system, analogous to the Swiss example.

c) Instruments of direct democracy to some extent restore the authority to the people and include the community in the decision-making process, allowing for the launch of political debate on given themes, and common and specific issues to be addressed by the people. Sometimes there is no willingness on the side of government officials to discuss and tackle some of the important issues, and direct democracy gives an opportunity for the undesirable political questions to be brought to the table. One interesting example of citizens deciding upon a political question that would otherwise hardly be addressed by the government comes from Italy: in the 1980’s referendum was held to decide on the abolition of public funding of political parties and elimination of certain state’s ministries (Marković, 2009, p. 6). Also, there were instances of voters in the several US states using referendums to pass limitations on government spending, and disapprove the tax rates’ increases (Beramendi et al., 2008, p. 20). From this point of view, it would be interesting to see the level of voters’ turnout and what possible outcome of a similar referendum would be in BiH, or in the instance where citizens would be able to propose measures on the rationalization of public expenses, e. g. by reducing the salaries of political representatives.

d) Finally, the contemporary political system of BiH could be characterized as non-democratic and authoritarian because there is no political responsibility of the elected representatives towards citizens (Mujkić, 2006). As mentioned before, direct democracy gives citizens the power to decide over some unpopular political questions. Among these would definitely be voting on politicians’ actions and mandates, and thus directly electing/dismissing them, as e. g. we had cases of the popular vote on recall of politicians in Peru and California (Governor G. Davis case), or referendums on overthrowing the anti-democratic regimes (“ending the rules of demagogues” – Pinochet case in Chile) (Beramendi et al., 2008, p. 24). This would in perspective easily and effectively (at least) significantly reduce the problem of political unaccountability in BiH.

4. Recent Developments: Bosnian Spring in February

The socio-political dynamics after the protests and popular unrests in BiH in the early February 2014 led to the emergence of political organizations of citizens from local communities – so-called plenums in several bigger cities such as Sarajevo, Tuzla, Mostar, and Zenica, as self-governed, direct democratic, general citizen's assemblies. With the origins in the Greek word *plenarius* (meaning full or absolute composition of a certain body or institution) and the earliest versions being present already in the ancient Athens, these assemblies "in their various forms are very old means of direct democratic organization of the oppressed during times of protests, rebellions, strikes and revolutions" (Kapović, 2014), e. g. 1905 and 1917 revolutions in Russia, 1936 in Catalonia or 1956 in Hungary. Many "theorists of utopia" imagine some kind of similar general assemblies in their blueprints of potential democratic societies in the future (Kapović, 2014), though this seems hard to envisage as being plausible in the foreseeable future in BiH.

It is argued (Marković, 2014) that this form of direct democracy, which strongly opposes contemporary indirect and elitist democracy, was actually "imported" to BiH from Croatia and their "students occupying Universities" protests in 2009. The main characteristics of these plenums in BiH were: no limits to freedom of expression, no hierarchy, open public sessions, inclusiveness, equal say (equal weight of votes), no functionaries/officials, majority vote deciding on proposal with no possibility to abstain, etc. As an output, the plenums produced requests addressed to the governments and officials (mostly at the cantonal level) and some of those had a partial (mainly local) success; e. g. in Tuzla some officials resigned or decided to give up on certain financial privileges (so-called "golden parachutes").

At the first glance over-enthusiastically, some authors acclaimed these movements in BiH as a possible "birth of the true activist citizenship" (Štiks & Horvat, 2014), with their effects spreading throughout the region, and shifting the paradigm from the citizens/people as "periodical voters" and "permanent tax-payers" to the real decision-makers (Blecherman, 2014). Plenums were also touted by some as "far more democratic decision-making process than any other existing in bourgeois representative democracy/capitalist parliamentarism" (Kapović, 2014), an argument that could be refuted just by observing the number of people involved in the work of plenums. At the same time, critics pointed to the following issues of this form of direct democracy in BiH:

a) question of legitimacy – did plenums with a couple of hundred/thousand participants actually represent the general population of several times more citizens/voters;

b) spins and manipulations by the politicians – from accusations that it is only a populist demand to give the power in the hands of citizens, to questioning whether the protests and subsequent establishment of the plenums were mono-national (i. e. concerned only with the parts of BiH where Bosniaks are in majority) and thereby ethno-nationally motivated and orchestrated by the certain political options;

c) and finally, problem of banning the citizens who are members of the political parties from the activities of plenums (worrying about their possible intentional obstructions) – whether this violated one of the main principle of direct democracy, that being inclusive and open general deliberations and work.

Plenums were from the beginning associated with the protests, and faced a tough challenge of evolving from the “bodies of protesters to a possibly permanent decision-making institutions” (Kapović, 2014). It was observed that “without the protest, plenums would lose their potential to apply the pressure, and without the plenums, protest would lose their legitimacy and articulation” (Štiks & Horvat, 2014). Experience showed that the political strategy of similar former social movements – be it protests, petitions or referendum initiatives – does not often result in engaging and institutionalizing in the parliamentary politics, either through the self-created parallel institutions (like these citizen-led assemblies) or political parties which enter the electoral process (Štiks & Horvat, 2014). Observing from this point in time, this seems to be the case with the plenums in BiH as well. From the one side, they declined in their activities within a year. From the other side, they missed both 2014 state elections and 2016 local elections as the opportunity of articulating through a political party and entering the political arena. Especially prominent was the opportunity for capitalising on these social movements during the 2016 local elections. Given that the entire dynamics came from the spontaneous grassroots initiatives, local elections raised a question whether anything out of these movements still remained at the local levels of government, crystallised for instance in citizens associations or independent electoral lists. However, apart from the couple of independent candidates being elected as mayors, there were no signs or remnants of plenums in the domestic politics. Therefore, this attempt to institutionalize one particular mechanism of direct democracy (plenum) in

BiH failed, or at best was postponed – a social movement surrounding it lost its momentum, while the future of plenums remains uncertain.

5. Concluding Remarks

The genuine and hard question surrounding the issues presented in this paper is whether mechanisms of direct democracy indeed increase voters participation and engagement, increase their satisfaction with the political outputs, and whether such political outcomes more accurately reflect popular preferences (Altman, 2011, p. 2). The answer is probably going to vary depending on the background and political context of an area where certain mechanism of direct democracy are employed. But the fact remains that the choice of political institutions do matter a lot – the “outcome of the decision-making is dependent on the form of democratic institution chosen, so even though the views of every citizen remain the same, the decision made with one set of political institutions in place will not be the same as the decisions made with the different ones” (Beramendi et al., 2008, p. 3).

Acknowledging the limits of representative democracy, it seems valid to strive to make direct democracy as expansive and participatory as it can be within the system of representative democracy, and to employ its instruments as a necessary corrective of the electoral democracy and “creeping partitocracy”, i. e. *de facto* governance of dominant political parties (Štikš & Horvat, 2014). Carefully observing these interrelations, analyses suggest that “mechanisms of direct and representative democracy could indeed complement and enrich each other, rather than being seen as opposed and exclusionary” (Beramendi et al., 2008, p. 1). Therefore, one of the main contemporary challenges of modern democracies remains: how to translate popular sovereignty, being a “traditional backbone and leitmotiv of democratic tradition” (Altman, 2011, p. 2), from the old mechanisms of democracy designed in the 19th century, into the properly working institutions, modernized and adapted for the 21st century’s new-age of technology, globalization and rising interconnectedness.

With regards to this paper’s case study, there are many reasons in favour of introducing certain elements of “power-dividing” concept to BiH’s legal system – one of them being direct democracy – along with the already dominant “power-sharing” elements of consociationalism (Stojanović, 2006, p. 185). Indeed, consociationalism as applied in BiH has shown proneness to strengthen (if not deepen) political and societal differences, rather than to tackle and minimize them (Vlaisavljević, 2005). One example of similar shortcomings is the “power-sharing institutions” formed in BiH, with a

primarily ethno-national structure. They proved to be incompetent and inefficient in the practice, serving mostly as a “generator of destabilisation” (Mujkić, 2008). Building on these negative references of the consociationalist institutions, Mujkić (2008) seems to be right when he argues that a solution for contemporary problems in BiH cannot be found in introducing greater level of consociationalism.

If the reforms of the political system of BiH are to be conducted in a manner so as to hand over decisions on some questions to the civil society, we are led to suggest certain proposals. If the mentioned reform is ever to happen, certain necessary restrictions and democratic safeguards have to nevertheless be laid down in this process, for example:

a) deciding strictly and clearly on the following issues: the legal threshold of minimum number of voters/signatures for initiating certain proposal (“initiation quorum”) be set at a generally realistic and feasible figure; “turnout quorum”, to guarantee genuine representativeness and legitimacy of the decision-making process; and percentage of voters in favour of certain proposal (“acceptance quorum”) in order for it to be considered as successful (but overall, not so high as to disable the exercise of direct democratic instruments in practice, nor so low as to provide for the excessive financial costs of e. g. conducting frequent referendums);

b) introducing “double” or “super” majorities (as in Switzerland – majority of people and majority of cantons voting in favour) to strengthen the legitimacy of the decision;

c) leaving delicate questions about constituent groups’ vital (national) interest in the area of parliamentary arena (within the established political institutions), or subject the results of direct voting to the approval in the parliament (in case of BiH, the second parliamentary chamber – House of Peoples);

d) establishing the mechanisms for protection of minorities, given that the “question of majority-minority relation is extremely complex when observed in the context of the application of instruments of direct democracy, so every possible consequences for the rights and protection of minorities must be weighed carefully” (Beramendi et al., 2008, p. 24); for instance, introducing *ex ante* and *ex post* judicial (constitutional) review of the proposed scope and of the outcome of a majoritarian direct decision-making, with an aim of safeguarding the rule of law, fundamental rights of citizens and minorities, and core liberal democratic constitutional values and principles.

Other important issues which ought to be regulated by the statutes and by-laws in order to ensure proper functioning of particular mechanisms of direct democracy in the abovementioned designated context are: timing for the proposal-initiation procedure (to avoid abuses in pre-electoral campaigns), wording of the question on the ballot, type (as suggested above, fundamental rights of minority groups should not be subject to a decision by the majority's will) and number (so called "single subject rule") of issues allowed to be subject of a direct vote, access to impartial information and media responsibility, updating of voters' registers (acute problem in BiH of duplicated and deceased voters), ceilings for campaign spending, government assistances in the campaigns, etc.

Also, more successful way to apply positive elements of direct democracy in BiH would be by introducing "bottom-up" approach which implies that initiatives come immediately from the people (Stojanović, 2009). Moreover, direct democracy should be applied first at the local level, where it proved to be able to function successfully (local communities, universities, municipalities, workers' unions at the level of companies) using plenum – that does not imply that every person should participate every time in the decision-making process, but rather that everyone would have a right and opportunity to do so (Kapović, 2011, p. 18). It is interesting to note, however, that this very argument, here used in favour of direct democracy, is at the same time neglected in the context of representative democracy, when for instance the advocates of direct democracy criticize low turnouts on the elections.

In order to introduce certain elements of direct democracy in BiH, the Constitution of BiH has to be changed so citizens would have a way of directly influencing and addressing certain political issues in the country. One of the possibilities could be a simple constitutional amendment on the right and duty of Parliamentary Assembly of BiH to initiate referendum upon the fulfilment of certain conditions. As mentioned before, providing more safeguards on certain decisions (e. g. over constituent peoples/ethno-national group's vital interests), subjecting them to the regular parliamentary procedure and having them decided by qualified or "multiple" majorities would be helpful. Also, it has to be emphasized that elements of direct democracy surpass the institution of referendum, as this term has a mostly negative connotations in BiH: controversies over the referendum on state's independence in the 1990's, which determined the BiH's legal status by votes from two out of three ethnic groups, and which is still perceived differently by the constituent peoples; or referendum on the independence of RS, which is mostly used as a threat for dissolution of BiH. For that reason, any future amendment should contain more instruments of direct democracy: popular

initiative, plebiscite, delegation of the authority to the lower state levels over deciding upon certain issues by the means of direct democracy, etc.

In sum, introducing direct democracy in the political system of one state is definitely a long-lasting and hard process (Stojanović, 2009), which has to be started from the micro-level and remain focused on the everyday mutual and inclusive issues. Possible obstacles would probably emerge along this path, but it can ultimately bring many positive practices and deliver better policy outputs, as well as boost cultivation of the political culture, development of the civil society, reform and improvement of democratic institutions and their effectiveness in BiH.

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