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The European Charter of Local Self-Government as a tool for enhancing direct democracy: the case of western Balkans countries

Abstract

Five of the six non-EU countries in the western Balkans region have signed the Council of Europe's European Charter of Local Self-Government, the exception being the Republic of Kosovo which is not yet a formal member of the Council of Europe. Moreover, Serbia, Montenegro and North Macedonia have signed and ratified the Additional Protocol, showing their willingness to enforce the effects of the Charter, while, in contrast, Bosnia and Herzegovina has neither signed nor ratified it and Albania has only signed it. Indeed, this Charter is a cornerstone of local governance whose aim is to enhance citizens' participation in local decision-making. This article compares the domestic institutional framework regarding local government in the five countries and seeks to highlight whether the Charter has indeed enhanced citizens' participation. In addition, it explores the practices occurring in some countries which have implemented the Charter before, ultimately, seeking to answer the question as to whether it has enhanced direct local democracy in the western Balkans.

Keywords*: western Balkans, citizens' participation, European Charter of Local Self-Government, decision-making, local democracy*

Introduction

We live in an era when information is fast and effective, mainly due to the development of technology tools. These tools are crucial in enhancing citizen participation, empowering people to understand their government's job, and in rapidly establishing ideas and spreading opinions. First, this situation can enhance citizens' interest in politics and, therefore, in democracy; and, second, it presents a significant opportunity for improvement in weaker democracies like those found in the western Balkans. In this situation, it is essential to investigate the tools that can bring citizens closer to political decisions – especially in local government, where this is more realistic.

One of the instruments, in use since 1987, is the European Charter of Local Self-Government. This aims to set the principles of local self-government in national laws, as well as the democratic functioning of decision-making, autonomy, the ability to be self-financed and the tools to protect the rights of local communities (CoE 1985). The 46 countries that have ratified the Charter include the states of the western Balkans peninsula: Slovenia was the first, in 1996; followed by North Macedonia, in 1997; Croatia later in 1997; Albania in 2000; Bosnia and Herzegovina

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in 2002; Serbia in 2007; and Montenegro in 2008 (CoE 2024a). Considering the post-conflict situation which is the case in most of these countries, the participation of citizens in decision-making can have a positive effect in diminishing differences between ethnic groups (Plošjaner 2001).

Intending to make the Charter more realistic in 2009, the Council of Europe approved an Additional Protocol. This enforces the right of citizens to control and influence authorities' decisions through specific laws. Consequently, each state must provide all the legal tools to ensure citizens' right to exercise their power directly in local decision-making. Furthermore, states should establish concrete consultative processes, local referendums, debates, initiatives and petitions to meet the needs of specific categories of people (CoE 2009).

Bosnia and Herzegovina has not yet signed the Additional Protocol, while Albania signed it in 2016 although ratification is still missing. On the other hand, Montenegro, North Macedonia and Serbia have succeeded in signing and ratifying it in 2012, 2016 and 2018, respectively (CoE 2024b). Considering that only 22 states out of 46 have signed the Protocol, this can be seen as positive progress for the countries of the western Balkans.

The Congress of Local and Regional Authorities (CLRA) – an institution of the Council of Europe, responsible for strengthening local and regional democracy and assessing the application of the Charter of Local Self-Government – published in 2011 a report that highly endorsed the integration of the Charter into domestic law as the only way to ensure its application and effectiveness (CLRA 2011). According to this document, there are two categories of country:

1. those with exclusively binding effects where provisions are not directly applicable
2. countries where the Charter is directly applicable.

In addition, each category is further organised at application levels, showing that a single document can have different effects according to how it is implemented.

Indeed, after dozens of years of ratification and implementation, it is important to establish if the Charter is improving citizens' direct participation in local decision-making process in western Balkans countries, thereby marking a good sign of self-government. To answer this question, as a first step it is essential to analyse how the Charter is being implemented in the five countries with which this article is concerned (i.e. those states that are not yet members of the European Union).

Therefore, after a literature review, which helps to clarify the importance of citizens' participation in local governance and the tools and criteria that ensure it, the article follows with a general analysis of the domestic legal framework. This is based mainly on primary resources like the official monitoring reports of the Congress, paying attention to the necessary constitutional amendments and the provisions of the Charter, the Index of Self-Government and field research undertaken in the five countries. This section ends with a summary table reflecting the main findings of the analysis in a general overview. Afterwards, the study continues with a section briefly demonstrating how different EU countries have implemented the Charter and their challenges and successes. Ultimately, by considering and comparing what is happening in the western Balkans and in EU countries, we can conclude some

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pointers to the Charter's effectiveness in direct local democracy in the five western Balkans countries.

Literature review

Without doubt, the participation of citizens in decision-making is crucial and has positive effects on the quality of a democracy. Democracy cannot work without the principle of the rule of law, so specific laws and regulations are needed to regulate such procedures. Indeed, decades ago, Sidney Verba (1967) argued that citizens' participation needed material and non-material resources, motivation and some other essential conditions; in his view, communities should be autonomous in terms of their resources. At the same time, decision-makers should firmly believe that the participation of citizens is crucial to the success of any policy. Moreover, as a conclusion to his research, Asirvatham (1955) highlights that people elected to boards should possess public spirit and also that stakeholders should show positive commitment, accompanied by the willingness of their government to build a bridge of communication and cooperation with civil society (see also Corrigan 2017).

Generally, this is the spirit of the Charter of Local Self-Government: state members of the Council of Europe have established local authorities intending to guarantee citizens proper rights to participate in democracy at local level; in other words, in everyday decisions at levels where the effects of those decisions are both tangible and specific (Himsworth 2015). Further, the decentralisation of power and the relevance of such powers to ordinary people is essential, along with the need to reconstruct bureaucracy (Kannan 1993).

A study of western democracies by Ank Michels (2011) finds that the more citizens participate, the more they increase their issue knowledge and civic skills, virtues and, even more importantly, the more they support political decisions, especially in democracies where tools like referendums, surveys and other innovative forms of political participation are used. Nevertheless, the same author argues that, as long as a considerable proportion of citizens remove themselves from these forms of involvement, we cannot be sure of the benefits of the results on a wide scale. Therefore, the effectiveness of local democracy depends not only on the laws and regulations but also on the attitude of the citizens themselves.

Indeed, in European countries, citizens have a wide range of participation tools like access to information, e-government, direct elections of mayors and municipal councils, citizens forums and community initiatives. Nevertheless, the dimension of participation depends on some individual factors among the citizenry, such as their ambitions, contacts and talents combined with those of the institutions they are electing. It is even more complex when we consider participation, not just in elections but also in the possibilities of having an influence over government decision-making, especially at local level (Denters and Klimonsky 2017).

Other research shows that direct democracy positively affects equality within a democracy (Krämling et al. 2023). Moreover, the Council of Europe highlights that citizens' right to have their say in decisions is a basic principle of democracy. Hence, direct participation can be implemented in informative and consultative forms, via participating in decision-making and in the implementation of other community

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services like ad hoc committees, resident representatives in council committees or boards of directors and other such arrangements (CoE 2000: 27). Nowadays, participation in decision-making is enforced by introducing more innovative tools and forms of direct democracy. European citizens are using new ways of participation, not only in the election process but also in public affairs, consultations, civil society, debates in local councils, communications technologies or e-participation, and within the forums of European Local Democracy Week or via the Charter on the Participation of Young People in Local and Regional Life (Kirchmair 2017).

Nevertheless, to make local self-government and direct democracy work, some constitutional changes and the implementation of some mandatory specifications may be necessary. These should be accompanied by a clear delineation of responsibilities and functions (Srivastava 2002) as well as the provision of assurances over the commitment of the financial resources which are essential for local authorities to implement local taxation. However, research has shown that decentralisation (Tschudin 2018) and legal or financial tools are only some of the necessary instruments for effective local self-government and direct participation. It is essential to see what forms of direct participation work in specific communities and at what level this can be supported by the respective local public administration structures (Berner et al. 2011).

Additionally, in communities where peace is not guaranteed because of differences between ethnic groups, the situation is more challenging because other factors, like civil society and traditional leaders, can have a strong voice in this regard.

The practice of self-government and direct democracy in the western Balkans

According to the CLRA's monitoring reports, western Balkans countries have undertaken vital steps to implement the Charter and insert it in their respective domestic law. Besides changes in the constitutional and legal framework, some relevant issues remain to be addressed, however.

According to Ivana Zvrko (2001), based on research conducted in nine southeast European countries, including Albania, Croatia, Montenegro, Serbia, Hungary, Bulgaria, Romania, Slovenia and Bosnia and Herzegovina, some of these issues are drawn from problems with the credibility of NGOs, some of which have been established by political parties that probably proceed thereafter to manipulate their activity. Moreover, citizens' belief in being active in NGOs is at a minimum level because social movements are often integrated with the party system.

Albania

In Albania, the CLRA report from 2021 reveals that the transfer of power from central government to municipalities had not happened and that the delegated powers were being implemented under a substantial monitoring process set in place by the ministries (CLRA 2021a). In addition, financial resources still needed to be delegated to the municipalities, such as part of income tax and of the country's circulation monitoring system (Bedini 2019).

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Citizens' participation in the local decision-making process is regulated through public hearings, although these are reserved for specific issues such as budgeting, alienation of property, local taxes and auditing (Articles 54 and 77), excluding other relevant topics from their attention (Law 139/2015). Likewise, the law defines the right to local referendums (Art. 18), which are supposed to be regulated via a specific law as determined by the constitution of Albania (Art. 150) (constitution of Albania 1998). However, this law does not exist at this moment. Marcin Pomarański (2018), based on research conducted with experts in Albania, argues that the missing local referendums are the responsibility of the state, which is failing to take the necessary measures to provide the respective legal provisions.

From a practical point of view, municipalities need more specialised human resources to provide consultations and other forms of direct participation in a structured way. Through the assistance of international donors and NGOs, who have implemented several thematic projects on local democracy, some positive results have been achieved, although these are unsustainable since they tend to dissolve at the end of the projects (Bino et al. 2022).

At the same time, the law does define the right to e-petitions and e-initiatives, which are structured by municipal regulations. Nevertheless, this practice is failing because citizens do not like providing their identification numbers on the grounds that they fear potential political pressure. Research results in three municipalities show that there are no appointed structures to examine and take care of citizens' approaches. Some petitions have been conducted successfully, but only in the framework of NGO projects (Qendresa Qytetare 2023).

Bosnia and Herzegovina

The most recent CLRA report reveals that the constitution needs to include the concept of self-government; currently, this is contained in only nine cantons within the Federation of Bosnia and Herzegovina due to the law of self-government thus needing to be independently approved in each respective canton (CLRA 2019). Moreover, implementing local self-government is complex because of the atypical organisation of the state, with its tripartite presidency and four levels of government, distinguished between the state level and two entity governments – the Federation of Bosnia and Herzegovina, with 10 cantons and 76 municipalities; and Republika Srpska, with 63 municipalities – plus the additional autonomous District of Brčko (World Bank 2007).

Practically, there are many disagreements between local and central governments regarding the delegation of competencies, budget, etc. (CoE 2000). On the other hand, Zlatan Begic (2021) argues that, even though not envisaged in the constitution, referendums do not occur on account of the presence of diverse political agendas. Nevertheless, a few local referendums have been undertaken, while other forms of direct participation are foreseen such as public consultations, citizen initiatives and participatory budgeting, although only in some municipalities. Based on research conducted into the direct participation of citizens in local decision-making, the majority of respondents think that they are not offered the opportunity of participation

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while a considerable proportion also do not have enough information on the forms of direct participation (Miljević 2001).

Montenegro

According to the most recent CLRA monitoring report (CLRA 2024a), the country has marked some successes, including the integration of self-government in the constitution which defined municipalities as the fundamental entities that implement democratic principles. In addition, the country has already approved the respective law, indicating that all the articles of the Charter have been integrated into Montenegrin law. As a result, citizens have the right to participate in decision-making processes through referendums, citizen initiative petitions and consultative petitions with the support of local governments (Marczewska-Rytko 2018).

Nevertheless, the situation presents challenges regarding the application of the Charter's principles. For instance, municipalities need additional approval from central government when deciding to build schools or other public service buildings or regarding coastal management. The insufficiency of financial and human resources within the municipalities worsens the overall position. In addition, the central authorities have violated the rights of local self-government, especially in the scope of consultation and the commitment of substantial financial resources, many of which have been taken away instead of being used to reinforce municipal financial autonomy. For instance, the right to issue building permission has been taken away from municipalities in favour of central government. Furthermore, consultation procedures need to be better present, while the concentration of investment and attention in the capital – the so-called 'Podgorica-isation', stemming from half the country's population living in and around the capital – is weakening regional development. Moreover, further assistance needs to be provided to the implementation of consultation processes, including over financial matters (CLRA 2024a).

North Macedonia

North Macedonia has taken considerable steps towards self-government by inserting 30 provisions into its domestic legal framework, pushing decentralisation further. However, there still needs to be greater clarity on implementing the law, especially regarding the division of competencies between central and local levels of government (CLRA 2021b). North Macedonia has implemented all the legal and constitutional tools on the basis of which referendums and citizens' initiatives can be held. For instance, a meeting with citizens can be organised upon the request of 10% of the electorate or with the initiative of the mayor to transform or adopt guidelines for the work of municipal bodies, which are then obligated to take them further into consideration (CoE 2000).

Nevertheless, referendums have only happened twice and only one of these was valid as a result of the low level of participation. Therefore, Magdalena Musiał-Karg (2018a) believes that such a tool of direct democracy should be used only for fundamental issues like independence. Similarly, Tanja Karakamisheva-Jovanovska (2023) states that, without the improvement of civil society in North Macedonia, there would be no development of direct democracy tools.

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Serbia

Serbia describes an improving trend, as local authorities have substantial competencies accorded to them by the constitution and the law. Serbia's constitution defines people's right to express their sovereignty through referendums, people's initiatives (through deputies, the government, assemblies of autonomous provinces and at the request of 30 000 citizens) and freely elected representatives. Indeed, a civil initiative can start at the request of just 5% of the population. However, local and national referendums are not often undertaken and are limited. According to Musiał-Karg (2018b), this is also a result of weak civil society. Also, Jovana Andjelkovic and colleagues (2023) state in their research that the right to local referendums exists only on paper and is rarely used in reality. In the city of Šabac, the citizens did hold a referendum on budget expenditure. Nevertheless, such practices are rare because of citizens' lack of information and confidence. Meanwhile, other studies show that participation is lacking because people believe that, even if they participate, it is not going to change anything – a factor which illustrates an absence of general trust in politics (Andjelkovic et al. 2023).

Additionally, the government repeatedly issues orders to local authorities. For instance, the government has blocked the recruitment of new staff in municipal authorities, giving such competence to a particular national commission. Sometimes, public consultations are undertaken after a decision has already been made (CLRA 2017).

Table 1 – Summarising the implementation of self-government in the western Balkans

Criteria	Albania	Bosnia and Herzegovina	Montenegro	North Macedonia	Serbia
Local self-government is included as a principle in the constitution	Yes	No	Yes	Yes	Yes
Special law on local self-government has been approved	Yes	Yes, but only in some cantons	Yes	Yes	Yes
Additional Protocol (signed and ratified)	Signed but not ratified	Not signed	Signed and ratified	Signed and ratified	Signed and ratified
Provisions ratified	30	30	24	30	25
Sufficient competencies delegated to local government	No	Yes	Yes, but sometimes withdrawn through government act	No	No

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Criteria	Albania	Bosnia and Herzegovina	Montenegro	North Macedonia	Serbia
Sufficient financial resources	No	No	No	No	No
Level of fiscal autonomy from 0-3 points (where 0 is minimum and 3 is mean)*	0	0.3	2	1	3
Consultations of citizens in local decision-making	Only for budgeting and limited issues	Yes	Yes	Yes	Yes
National referendums	No	No	Yes	Yes, but rarely valuable	Yes
Local referendums	No	Yes	Yes	Yes	Yes, but rarely
Other forms of participation (petitions, initiatives, etc)	Yes, but in the framework of projects	Yes	Yes	Yes	Yes

Source: CLRA (2024); * European Commission (2020).

Challenges to and good practice in direct citizens' participation in local decision-making

Even though all EU member countries have been implementing the Charter for decades, they still need help in engaging the public in local decision-making. The cases of Estonia, Hungary, Lithuania and Sweden show that some elected members of local councils want to keep the decision-making process exclusive, marking a difficulty for citizens' direct participation (CoE 2000). At the same time, the case of Belgium shows that municipal councils are becoming engaged in more tasks and, hence, councillors in Flanders have difficulties in becoming more deeply involved because of their limited remuneration as a result of their part-time mandates (Steyvers et al. 2021).

From a public point of view, citizens need to be better motivated where final decisions are in the hands of representatives, even in those cases where local referendums or consultations are regularly undertaken (CoE 2000). For instance, Slovenia approved the Charter in 1997 and is regularly using forms of direct participation in decision-making through referendums, which can be called by 5% of voters. Nevertheless, participation is low because citizens still need to be convinced that their involvement in decision-making is meaningful (Poštajner 2001).

Other challenges involve the legal framework and the complexity of the decision-making process. Hence, the monitoring studies of the Council of Europe, the body that created the Charter and is responsible for its application, show that sometimes

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direct participation does not work because of the complexity of decision-making processes or the lack of information among citizens and decision-makers (CoE 2000).

In addition, Milena Stefanova (2021) claims that Bulgaria, even though a member of the EU, has not yet included self-government concepts in domestic legal norms despite two government strategies on decentralisation. Likewise, the same situation results in Cyprus, where the principles of self-government still need to be made part of the constitution (Coucounis and Koukounis 2021).

However, there are positive cases in which the Charter can be seen to be functioning effectively and, more importantly, in which the presence of the instruments of direct democracy can be highlighted. The case of Spain, where the participation of citizens' associations happens often, can be distinguished, while Luxembourg, Netherlands and Finland are increasing the number of local referendums and consultations, even with residents' initiatives. In addition, Denmark has a thriving local self-government scene with substantial local referendums, citizen referendums and participatory budgeting (Svensson 2011). However, Norway, Iceland and Sweden still do not use this kind of direct democratic instrument even though there have been many citizens' requests (CoE 2000).

Other positive forms of direct participation are made possible through technology and information. For example, most municipalities in Finland have websites with feedback opportunities. In collaboration with media channels, Finnish municipalities have enabled online forms of debate to motivate youth participation (CoE 2000). Even though the use of technology can be considered to be a tool for fostering direct participation, we still cannot be sure that it will replace civic participation or will increase public interest in the local decision-making process, as indicated by Ángel Alonso (2009) based on empirical research conducted in Madrid.

Conclusions

Four of the five western Balkan states considered in this article are committed to adopting self-government initiatives in their countries because each has inserted the principle in the constitution and has approved the respective specific laws. The exception is Bosnia and Herzegovina, where the constitutional amendment is missing and the law on self-government has not been approved in all the cantons of the Federation. This situation is explainable by the country's historical and multi-ethnic social reality, combined with the complex federal form of state with four levels of government. Willingness to implement the Charter and enforce its effects is also noticeable in the approach towards the Additional Protocol that the countries have signed and approved, except for Bosnia and Herzegovina and Albania, where ratification remains pending.

Nevertheless, the Charter is a tool, not an objective per se. This means that its adaptation is supposed to bring about radical changes in local government, like greater autonomy in decision-making and more direct citizens' participation. Therefore, the legal improvements still need to be translated into real decentralisation in practice; and this means the presence of sufficient financial resources.

Analysis shows that, in contrast, there is a lack of sufficient financial autonomy at local level. There has been some progress in Serbia and in Montenegro, but all the

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municipalities in the five states still face insufficient budgeting autonomy, sometimes combined with insufficient human resources, including in Montenegro and in Serbia. While Albania is missing true decentralisation because of a lack of subsidiarity, in Montenegro and Serbia, the municipalities lack the given competencies as a result of government acts.

At the same time, forms of direct democracy are facing serious challenges in all countries. For instance, consultations are part of decision-making procedures but, sometimes, they are limited to particular issues, like in Albania. In other cases, there is a lack of interest and information from citizens, like in Bosnia and Herzegovina and in Serbia. National referendums are occurring in all countries except Albania, where there is as yet no law in this area. In the other countries, referendums are undertaken, but there is a lack of belief among citizens in this form of direct democracy because of their use for political reasons, like in Bosnia and Herzegovina. Other forms of local direct democracy are being developed in all the countries but, occasionally, they are the result of NGO project outcomes, with limited effects over time. In other countries, there is a lack of trust in NGOs because they often become instruments of the political parties. The mentality and the general culture are obstacles in these countries because people in local communities fear expressing their ideas as a result of political pressure or pure shyness at standing up in their neighbourhood.

Therefore, we can conclude that decentralisation through legal acts is insufficient to build solid local direct democracy. Real financial decentralisation, in terms of material resources and a common willingness from the political elite, is needed as part of the non-material resources required to support local democracy properly. Only in this way will the implementation of the Charter bring about some radical changes in local direct democracy.

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