



**FOREIGN POLICY
INITIATIVE BH**

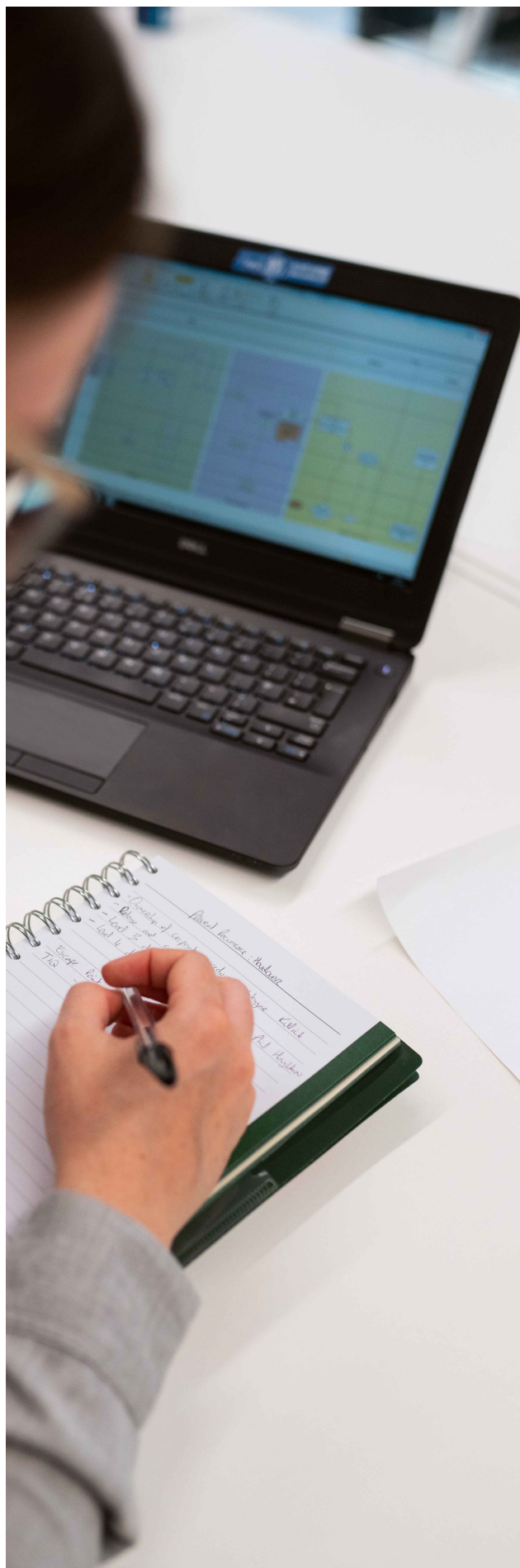
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VPI BH RESEARCH INTERNSHIP

**THE EXAMINATION
OF THE CURRENT
STATE OF THE
E-CONSULTATIONS
WITHIN THE
MINISTRY OF
FOREIGN AFFAIRS OF
BOSNIA AND
HERZEGOVINA AND
ITS PATH TOWARDS
THE IMPROVEMENT**

Author: Tajra Hadžić

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Abstract

The Council of Europe in 2008 adopted a Strategy on Innovation and Good Governance at local level, in which 12 principles of good governance are listed. (Council of Europe, n.d.). One of the principles is „Openness and Transparency“, within which is argued that the information on decisions and proposals should be available to the public eye, so citizens can contribute to the work of the institutions. Although the e-consultation was intended to increase the democratic participation of citizens, it did not achieve its full potential in the reality of Bosnia and Herzegovina (BiH). Since 2017, the Council of Ministers of BiH is obliged to organize e-consultations in order to increase the legitimacy of the policymaking, however it still has not become the mean of assessing public opinion, but rather the mere satisfaction of the legal obligation. The paper underlines the significance of e-consultations for the modern democracy and shows what is the current state of online participation when it comes to the Ministry of Foreign Affairs of Bosnia and Herzegovina. Furthermore, the concrete proposals, such as the promotion on social media, more educational workshops for governmental officials and the public, increased collaboration with the non-governmental organizations, academia, media, citizens' associations and similar, are illustrated as more effective steps leading to a stronger collaboration between citizens and government in the formulation of foreign policy acts. The main goal of this paper is to present what are the shortcomings of the current practice and to demonstrate the concrete steps that relevant institutions can implement in order to facilitate a better e-consultation.

KLJUČNE RIJEČI:

- e-consultations;
- public debate;
- e-participation;
- foreign policy;
- digital democracy;
- transparency;
- Bosnia and Herzegovina

Mentor: Lejla Ramić-Mesihović, PhD

E-consultations: the modern style of civil participation

People around the world are monitoring, analyzing, and discussing all the changes in their lifestyle that the Internet made possible. Information is travelling faster than ever, and people are becoming increasingly aware of the power they have in their hands. Thus, as technology has impacted every aspect of human life, it also influenced the way the government communicates with the public. Since the 1990s, administrations in democratic societies started implementing e-consultations as a tool that will enable them to hear the opinions of the citizens, and at the same time have more democratic and participative governance (Spirakis et.al., 2010). The three most important concepts in the understanding of Internet-based participative governance are e-democracy, e-government, and e-consultations.

The United Nations Department of Economic and Social Affairs produced the report *Bench-Marking E-government: A Global Perspective* in 2002, according to which e-government is defined as „utilizing the internet and the world-wide-web for delivering government information and services to citizens.“ (*Benchmarking E-government*, 2002). By using information and communication technologies, governments are transforming traditional relations with citizens into a more collaborative partnership. Further on, the term e-democracy is focused on the advancement of democratic institutions by the use of internet technologies (Spirakis et.al., 2010). The first example of the e-democracy within the EU is noted in 2012, under the name the European Citizens Initiative. (*E-democracy: opportunities and risks*, 2017). It represents the main bridge between citizens of the EU and the Commission, the EU body responsible for legislation proposing. The third concept, which is the most important in the context of this paper, is e-consultation, defined as the usage of the Internet to inform the public about governmental policies, while also allowing the citizens to contribute and influence the policymaking through web platforms (Quental and Gouveia, 2018). E-consultation is the hallmark of an inclusive democracy that mitigates the declining citizens' trust in governmental hierarchies (Oni et al., 2020, p.3).

The Council of Europe adopted the Strategy on Innovation and Good Governance at local level in 2008, in which 12 fundamental principles crucial for

good democratic governance are listed. The transparency of the institutions' activities, as well as the importance of citizen's participation, are highlighted within Principle 4 entitled Openness and Transparency, according to which "Information on decisions, implementation of policies and results is made available to the public in such a way as to enable it to effectively follow and contribute to the work of the local authority" (Council of Europe, n.d.). The Principles of Good Governance, coupled with other principles that protect a legal system, constitute the Stabilization and Association Process, which is a roadmap for Western Balkan countries who aspire to become the EU member states (Policy Dialogue Manual, 2011).

The information and communication technologies enable the government to go one step further from just making its policies more transparent and approachable to citizens, to the creation of a more democratic society fostered by public discussions. By the usage of e-consultations, citizens can point out those legal provisions that can have a negative effect, and thus prevent the consequences of inadequate policies (Policy Dialogue Manual, 2011). The dialogue about policy recommendations, draft of laws, and initiatives unlocked a whole new level of e-democracy, in which citizen's participation is the crucial aspect. Essentially, citizens became more informed about the public issues and empowered to shape the solutions since e-consultations make their voices heard. Besides these positive aspects, Wright also highlighted that e-democracy is constructive because people feel free to express their opinions and that leads to increased tolerance and public dialogue (Wright, 2006). OECD Handbook recognized that government also benefits from this two-way relation, first because citizens will adapt faster and easier those policies in which they contributed, and second because the e-consultations creates the feeling that the government is approachable, objective, and more trustworthy (OECD, 2001). Besides these aspects, more educated citizens who are showing interest in policymaking are also contributing to the stronger democratic system, which is especially important for the systems with complex political structures.

On the other side, the dependence on technology

and Internet access is listed as the main drawback of e-consultations. People who are not informatically literate or who do not have the necessary devices to access the web platforms of online consultations are not able to exercise this right. Furthermore, e-consultations are conditioned by the extent to which the public administration or state legislators take into account the recommendations and comments made by citizens. In other words, if people's voices are ignored, e-consultation is not effective, and soon the interests of citizens for this aspect of democracy will decrease.

Methodology

This research paper is based on a thorough literature review composed of the analysis of different academic articles, journals, and reports. The special attention is devoted to the analysis of the Rules of Consultations in the development of legal acts and the Report on the implementation of rules of consultations in legislative drafting in the institutions of Bosnia and Herzegovina. Furthermore, the semi-structured interview conducted with Selma Asceric, who is a coordinator of the Javnorasprava.ba project, contributed significantly to the clarification of the current state of e-consultations in BiH, and also to the listing of the recommendations that could improve it.

Although there was an intention to include interviews with employees working on e-consultations within the Ministry of Foreign Affairs of Bosnia and Herzegovina, it was challenging to reach them due to the constraints posed by the Coronavirus outbreak. To mitigate this obstacle, the research was based on the thorough analysis of the previous study on online consultations, coupled with the input provided by the interview. The research leads to the identification of concrete proposals that could improve the current level of e-consultations that is not meeting the expectations.

Do e-consultations in BiH represent more than lip service related to a satisfaction of the legal obligation?

The Council of Ministers of Bosnia and Herzegovina adopted the Rules of Consultations in the development of legal acts at the 86th meeting held on 20th December 2016 (The Official Gazette of Bosnia and Herzegovina, 2017). According to these rules, all non-governmental organizations, foundations, physical and legal subjects,

international organizations, and informal groups can participate in discussions about proposals, decisions, international acts, rules, and other forms of legal acts brought by Ministries within the Council of Ministers of Bosnia and Herzegovina. All participants need to register in order to be able to take part in discussions at the webpage ekonsultacije.gov.ba. The roles of the coordinator and deputy coordinator of consultations are explained in Article 4 of this regulation. The public has a minimum of 15 days after the consultation is opened at the webpage to engage in discussion, and on some special matters with an important impact on the public, the deadline for commenting on proposals and other legal acts cannot be shorter than 30 days. After the e-consultations have been formally closed, the Institution in question can accept, partially accept, or reject the proposals and critical remarks made by citizens. Further on, it is obliged to submit a report about organized consultations to the Council of Ministers together with the final proposal or other legal act. That report should address the important comments made by participants, the extent to which citizen's input affected the legal act in question, and the reasons why certain proposals or critical remarks have not been taken into a consideration. The e-consultations represent a legal obligation that can be omitted only if the Council of Ministers gives its approval, and that could happen only (1) if the legal regulations should be formally accepted in a very short time period, (2) unpredictable international obligation or (3) judicial annulment of part of regulation or the regulation entirely (The Official Gazette of Bosnia and Herzegovina, 2017).

From the above-mentioned paragraph, it is clear that the Ministry of Justice of Bosnia and Herzegovina provided a considerable legal basis for a successful e-consultations, however, according to the Report on the implementation of rules of consultations in legislative drafting in the institutions of Bosnia and Herzegovina, published in February 2020, the number of registered users interested in the activities of institutions is not so satisfactory (Ministry of Justice of Bosnia and Herzegovina, 2020). What is more disappointing is that out of 17 institutions who got comments and recommendations during the e-consultations in 2019, only 1 institution regarded the received

comments as “good”, 15 reviewed it as “satisfactory”, and a majority of Institutions reported that they did not receive any comments during the e-consultations process (Ministry of Justice of Bosnia and Herzegovina, 2020). The report did not present what the grades “Good” or “Satisfactory” mean in the context of the research. Furthermore, although Institutions regarded the expertise of participants in the consultations as satisfactory, 4 institutions took less than 20% of the comments into the consideration, 7 Institutions took between 20–50% of the comments, and only 2 Institutions accepted more than 80% of comments (Ministry of Justice of Bosnia and Herzegovina, 2020).

As stated by Bosnia and Herzegovina Communications Regulatory Agency report for 2019, there were a total of 746,271 internet subscribers in BiH, and 3,330,502 Internet users, which represents 94.32% of the total population (Bosnia and Herzegovina Communications Regulatory Agency, 2020). Information literacy in the context of the above-mentioned research encompasses e-mail writing, ability to use the Internet, text editing skills, etc. This number looks quite impressive, and signals that access to the Internet should not be an obstacle to citizen’s participation in e-consultations. However, we have to take into consideration that access to the Internet does not mean media and information literacy. According to the Census conducted in 2013, there are 1.229.972 persons older than the age of 10 who are not information literate, and that number represents 38.7% of the overall population older than 10 years (Agency for Statistics of Bosnia and Herzegovina, 2013)

Throughout the research of the e-participation of the citizens in Bosnia and Herzegovina, as well as through the analysis of the current status of eConsultation platform, it is evident that there is one positive example of collaboration between government, or parliamentarians in this question, and citizens, and that is javna rasprava (public debate) web platform. . Javnaraspava.ba is created by “Zašto ne” (“Why not”) citizens’ association with the aim to connect citizens with decision-makers and enable them to participate in the legislation drafting. Besides the fact that this webpage has an educational aspect, it also gives citizens the opportunity to express their opinion about various laws that are currently in the legislative process within the state- and entity-level governmental bodies.

Moreover, citizens can also sign an online petition and directly post a question to a parliamentarian. The main coordinator of the project explained that the main obstacle that had occurred when the platform was launched in 2015. represented the challenge of collaboration with parliamentarians who were resisting the technology. However, the Covid-19 outbreak “forced” people to use technology, so things have changed dramatically. (1)

Javnaraspava.ba is very active on Facebook (2), where they have more than 25.500 followers. Each post about the law that is currently in the procedure is followed by an explanation of the unknown terms and the reason why that particular law is important for the life of every citizen. “Webpages of different governmental organs are often very outdated, content is complex and hard to understand, and most citizens cannot see why is that important for their life. Unfortunately, they realized the negative sides of the laws when they are already in force, thus it is important to be informed and participate in the process of decision-making. We try to promote our posts on social networks and make the complicated legislative procedures easy to follow and understand”, Asceric explains. (3) Currently, the team is expanding the platform to include also debates on issues that are closer to the citizens. Consequently, they recognized that the unsatisfying interest of citizens for the question of foreign policy is partly caused by the fact that the legislation on this level often includes complex terms, for instance extradition, that are not clear or familiar to the public, and it also covers decisions which consequences are often not visible in the short-term. Nonetheless, Asceric emphasized that some laws with label “EU laws”, such as Law on the prohibition of indoor smoking, Excise law, and similar attracted the attention of the wider public, so it is essential to underline the importance and ordinary application of laws. (4)

“Index otvorenosti regionalnih institucija” (Regional Institution Openness Index) illustrates the position of Bosnia and Herzegovina in the region when the openness of the governmental institutions is in the question. This analysis is provided by the ACTION SEE, regional network composed of non-governmental organizations from Bosnia and Herzegovina, Montenegro, Northern Macedonia, and

Serbia, with the aim of showing to what extent are executive and legislative authorities in the above-mentioned countries transparent and open to the citizens ("Index otvorenosti regionalnih institucija- o projektu", 2021). Countries are analyzed and compared based on the 4 indicators: transparency, accessibility, integrity, and efficiency. In the context of this analysis, it is important to underline that the accessibility principle is referring to "providing and respecting procedures for free access to information, improving the availability of information through a mechanism of public debates, and strengthening interaction with citizens" ("Index otvorenosti regionalnih institucija", 2021).

According to their analysis entitled "Openness of the executive body in the Bosnia and Herzegovina and the region", Bosnia and Herzegovina has the lowest percent of openness (35.60%), compared to Serbia (40.17%), Montenegro (51.67%) and Northern Macedonia (52.09%). (Karovic & Gvozdenovic, 2020). The executive body of BiH, representing the Council of Ministers of Bosnia and Herzegovina, Government of the Federation of Bosnia and Herzegovina, and Government of Republika Srpska, is satisfying 52.5% of the accessibility indicator, while the Ministry of Foreign Affairs has an average grade of openness of only 23.84% (Karovic & Gvozdenovic, 2020). Karovic and Gvozdenovic have recognized that the low number of returned questionnaires, as well as eConsultations platform that has not been used in its full capacity, contributed to the low score on the accessibility indicator. Some of the questions that had impacted the low score were the following: "Are the current strategies published on the webpage?", "Does the Ministry have its communication strategy?", "Did the ministry officials participate in trainings / workshops in the field of the free access to information in 2019?", etc. ("Index otvorenosti regionalnih institucija", 2021). It is undisputed that these findings are damaging the image of the Ministry of Foreign Affairs of BiH, and thus the overall perception of the democracy in the country. For this reason, the following part is aimed to point out the concrete steps that could recover the state of e-consultations and overall openness of the Ministry of Foreign Affairs, as well as other executive and legislative institutions in Bosnia and Herzegovina.

In the Report for 2019, the Ministry of Justice of Bosnia and Herzegovina highlighted

that there is a need for a more intensive promotion of e-consultations among the members of Academia, non-governmental organizations, and the wider public. Also, the education of the coordinators and deputy-coordinators of e-consultations should proceed, and in addition to that other interested representatives of the Institutions should be included. According to the Report, Institutions expressed the need for greater support in the process of e-consultations, adding that the rules for participation in e-consultations should be easier for citizens as well (Ministry of Justice, 2020). Policy Dialogue Manual, published in 2011, also recognized the need for concrete steps in informing the relevant civil society organizations about online discussions that should precede the official opening of the consultations. This preparation includes: "drafting different announcements and invitations for consultations on draft laws or policies. These need to be clear, concise, and written in simple language, so that they are comprehensible to the target group" (Policy Dialogue Manual, 2011). In addition to this, Policy Dialogue Manual also states that it is recommended to provide additional documentation, such as research on which the draft of the regulation is based, or international standard that serves as a basis for the amendment of the current law, since this could provide the necessary context for the participants interested in the e-consultations (Policy Dialogue Manual, 2011).

Recommendations

The Ministry of Justice should find a valuable partner in the civil society organizations that include activists, think-tanks, media, academia, trade unions etc., so that they could work together in the promotion of public discussions. The Ministry could act more proactively, reaching out to different civil society organizations and proposing to them to participate in the e-consultations, as well as to promote those consultations on their social networks. Further on, the Institutions, primarily the Ministry of Justice as a responsible body, should use the webpage "eConsultations" to feel the pulse of people, by posting the short questioners through which they could get an insight into citizens' perceptions about things that could be improved. The "javnasprava.ba" platform is using polls to present how many citizens are for or against certain legal proposals, and this is a positive practice that

could also be implemented within the eConsultation webpage. The publishing of the e-consultation reports by the Ministry of Foreign Affairs is on a very low level, which does not signal to the citizens that there is a strong interest or commitment to the e-consultations. One big step ahead would definitely be if the Ministers publicly invite the citizens and the civil society organizations to visit the eConsultations webpage and contribute to the legislative drafting.

Furthermore, interested parties and civil organizations could be more informed and educated through different conferences and seminars. We are living in a digital age, why should the Institutions hide from visibility on social networks? According to the Digital Data report for 2020, 1.70 million people (52%) in Bosnia and Herzegovina use social networks, (Kemp, 2020), so it would be beneficial to create an official webpage of eConsultation where the public could be informed about the deadline of submission of comments, as well as about additional information connected with the legal proposals.

So far, we can see that political willingness for advancement of work on the e-consultation platform and its efficiency is insufficient. This practice is treated as a bare formality and the legal requirement, rather than a process implemented to truly raise the democracy to a higher level. Further research on this topic can include responses of the officials responsible for the e-consultations within relevant institutions. It is undisputed that e-consultation goes hand in hand with some costs, and the government needs to invest both financial and human resources to ensure its smooth and effective functioning. However, benefits for democracy, government, and citizens are significantly greater, and they are worth the investment.

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Endnotes

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