

THE RIGHTS AND MECHANISMS FOR CITIZEN PARTICIPATION IN DECISION-MAKING PROCESSES AT LOCAL LEVEL

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Abstract

Citizen participation in decision-making processes at the local level is an issue open to discussion and involves quite a few interesting challenges, especially for the decentralized governments such as in Macedonia. Enhancing citizen participation in decision-making process is in line with the EU commitments of the state for strengthening participatory and representative democracy, the rule of law and human rights, in particular by reinforcing an active role of civil society.

Consultation with citizens is essential for practicing democratic, participatory and transparent good governance by the municipalities. The concept is based on the idea of citizens improving their own life through direct participation and the administration developing accountable local governance that can be trusted.

Local governments which are oriented toward their citizens and in continuous communication with them are in position to better address local needs and manage public expenses more efficiently. Hence, the exchange between the local government and the citizens needs to be practiced through institutional mechanism.

Basic forms of consultation with citizens are elaborated in legal documents adopted in the country at both national and local level. But when it comes to including citizens as equal partners in decision-making process the situation is somewhat challenging. Both citizens and local governments have at their disposal tools and mechanisms laid out in the legal documents yet they refrain from using them. Besides, by law there is no restriction on the methods that local governments can use to and other forms can be implemented as needed.

Key words: citizen participation, local self-government, good governance, democracy, participatory mechanisms, community forums, referendums, polls, submissions, proposals

I. Introduction

Citizen Participation is a process that gives people or citizens the opportunity to influence making public decisions and policies of a country's or community's governing institutions. As such, it has long been an important component of the democratic and participatory decision-making process.

Citizen participation also means the possibility of joining participatory processes by representatives of civil society, the business sector and other interested parties or interest groups of the community.

Participating in policy making or the development of local public life means being an active member of the community and the country we live in. This is done in the context of

implementing progressive reforms, voting or running for elections, expressing, debating or proposing on governing politics, doing various formal and informal activities, being a member of a political party, union or other association.

Consultation with citizens is an essential part in the process of exercising of good, democratic, participatory and transparent governance by the state institutions. The concept is based on the idea for citizens to be more involved in the institutional policymaking or reform in order to improve their lives through their direct participation, while the administration develops a more responsible, transparent and credible governance.

Also the participation of citizens in decision-making processes at local level in municipalities is a very important issue which involves many interesting challenges, especially for decentralized governments, such as in Macedonia.

Hence, local self-government units which are more oriented towards their citizens and in constant communication with them through various forms of citizen participation are in a more adequate position to respond better to local needs and to manage projects and public spending more efficiently.

II. The right of citizen participation

II.1 International framework

The importance of citizen or civic participation in policy making and decision-making processes has been largely accepted in democratic and progressive societies around the world. International organizations and institutions have developed strategies and development documents in this regard, foreseeing suitable mechanisms or models for practicing and advancing civic participation.

Thus, the United Nations organization defines civic participation as "involving citizens in a broad range of policy-making activities, including defining the level of services, budget priorities, and implementing projects in order to match the needs of citizens".¹

In September 2015, through a resolution, United Nations Organization approved the Agenda 2030 - Transforming our world: Agenda 2030 for Sustainable Development², in which the democratic governance and civic participation is promoted through the implementation of specific activities and measures.

The European Union and its institutions are also largely identified with good governance and democratic practices, as well as promoting the role of civic activism and citizen participation in policy-making. In this regard, the EU has adopted a series of documents and policies, and implements a large number of programs and projects.

Thus, in 2001, the European Commission drafted and adopted the White Paper on European Governance³, a document aimed, inter alia, on strengthening the culture of consultation and dialogue at EU level in order to increase the legitimacy of decisions. The concept of policy making and decision-making through participatory mechanisms at EU level and the member states is also foreseen in the Lisbon Treaty⁴. Specifically, Article 10 of the Treaty states: "Every citizen shall have the right to participate in the democratic life of the Union. Decisions shall be taken as openly and as closely as possible to the citizen."

The European Commission its legal framework and policies for civic activism and citizen participation executes also through the implementation of the Europe for Citizens

¹ Un Public Administration Glossary

² Transforming our world: Agenda 2030 for Sustainable Development, 25 September 2015

³ COM(2001) 428 , European Governance A White Paper, 25 July 2001

⁴ Treaty of Lisbon, Amending the treaty on European Union and Treaty establishing the european community

Programme¹, which includes, among others, specific measures and projects on democratic governance and civic participation in decision-making processes.

On the other hand, the Organization for Economic Co-operation and Development (OECD) addresses the issue of citizen participation in decision-making and co-operation with governmental authorities in public policy formulation in three different levels according to the degree of citizen involvement², namely:

Access to Information - It is the first and fundamental right that is the basis of the entire process of participation. This is a one-sided process where information comes from authorities to citizens. This type of interaction usually provides passive access to information on citizens' request and government's active measures to disseminate information to citizens (e.g., requests for official documents, official gazettes, websites etc.).

Consultations - This is a mutual relationship in which the government invites the public to give its opinion, comments, views and reactions to a particular document or policy. It is a reactive way of participation - the public becomes involved because the government asks for it (eg. comments on legal changes or proposals and laws).

Active participation - It is the highest level of exchange relations in which citizens are actively involved by the governing authorities in drafting and proposing alternatives to governing politics. This can be described as a situation where citizens participate equally with representatives of the governing authorities.

II.2. Local context

In Macedonia as a defined "democratic and social" state, the Constitution provides the basic legal framework within which the promotion of citizen participation in decision-making and the exercise of power is made and enables citizens to articulate their rights on freedom of expression and their influence on legislation. Thus, pursuant to Article 2 of the Constitution, it is explicitly stated that "sovereignty of the country derives from citizens and belongs to citizens. Citizens of the Republic of Macedonia exercise their power through democratically elected representatives, through referendum and other forms of direct declaration."³

The governing power in the Republic of Macedonia is organized in decentralized form by dividing the governing competencies between the central and local self-government as a result of the Law on Local Self-Government⁴ adopted in 2002 which followed after the signing of the Ohrid Framework Agreement⁵ signed in 2001. This law establishes the legal framework for the organization of the local self-government system in the country and provides general guidelines for the functioning of the units of local self-government. By this law a number of competencies were transferred from central government to the local government. Thus, local self-government units gained competencies and responsibilities for urban planning, environmental protection, local economic development, municipal services, culture, social protection and children, education, primary health care, crisis management and fire protection. These responsibilities required further the establishment of a number of services that municipalities should provide to citizens, thus making communication between municipal authorities and citizens an important and necessary issue.

¹ Europe for Citizens Programme (2014-2020)

² Citizens as Partners: OECD Handbook On Information, Consultation And Public Participation In Policy-Making

³ Constitution of Republic of Macedonia, Article 2

⁴ Law on Local Self-Government, 2002

⁵ Ohrid Framework Agreement, 2001

The Law on Local Self-Government defines citizen participation as "an individual or collective involvement of municipal residents in making decisions on issues of local importance at different levels of solutions".¹

Article 25 of the Law on Local Self-Government, in the context of the realization of the civic participation process, foresees as follows: (1) Citizens participate directly in decision-making on issues of local importance through civic initiatives, citizen rallies and referendum, in ways and procedures defined by law. And (2) Expenses for the implementation of these processes go to the burden of the municipal budget². The same provisions are also part of the Statutes of Units of Local Self-Government in the Republic of Macedonia.

Another law of importance for informing and involving citizens by the governing authorities is the Law on Free Access to Public Information³. With the adoption of this law in 2006 it was made possible for various civil society organizations, the media and the wider public to be equipped with a powerful tool through which they can realize their right to information on public affairs or the activities of institutions state and public. In practice, this Law provides transparency in the work of institutions and enables different persons and entities to exercise their right to free access to public information.

It is worth pointing out that improving citizen participation in decision-making processes at the central and local level is also in line with the country's orientation and engagement towards integration into Euro-Atlantic structures and the European Union, within the framework of measures to strengthen the participatory and representative democracy, the rule of law and human rights, particularly by strengthening the active role of civil society.

III. Legal mechanisms for participatory policy making in Macedonia

The exchange between the units of local self-government and citizens should be practiced through institutional mechanisms. Basic forms of civic consultation and participation are provided in the adopted legal and sub-legal acts in the country at central and local level. However when it comes to involving citizens as equal partners in the decision-making process, the situation is somewhat challenging. Both sides, citizens and local government have the tools and mechanisms outlined in legal documents, but they do not sufficiently adhere to them.

Direct citizen participation in the decision-making process at the local level is defined as individual or collective involvement of municipal residents and key stakeholders in issues of local importance at different levels of decision-making. Citizens can participate directly in the decision-making process through several mechanisms defined in the law such as: Civic Initiative; Rallies of citizens; Referendum; Complaints and Proposals; as well as Public Hearings, Surveys and Proposals. In addition, by law there are no restrictions on the methods and mechanisms that local self-government units can use and other forms may be implemented as needed.

III.1. Citizens' Initiative

Citizens' Initiative is an active mechanism by which citizens engage and organize themselves in the form of self-initiative on implementation or resolving of their requirements, ideas or proposals at the local level within the municipality they belong to, in order to improve the quality of their life and services in the municipality. Under this mechanism, citizens have the right to initiate an action to the Municipal Council for the approval of

¹ *Ibid* 9

² *Ibid* 9

³ *Law on Free Access to Public Information, 2006*

certain requests or acts or to resolve any given issue that falls within the competencies of the municipality and its organs.

The establishment of citizen initiative at the local level is done with the proposal of 100 citizens of the municipality. The proposal for setting up a citizen's initiative locally is submitted to the Chairman of the Municipal Council. The Municipal Council through the Council Chairman, after taking the proposal for the establishment of a citizens' initiative, undertakes the necessary measures for the registration and proceeding of the civic initiative. Initially, it is verified whether the citizens' initiative has been filed under the foreseen legal conditions and whether the same has to do with matters for which the council is competent to make decisions. If the Chairman of the Municipal Council confirms that the proposal for the citizens' initiative has been filed on a regular basis, within three days he/she will inform the authorized proposer of the initiative. While the Chairman of the Municipal Council will prove that the proposal for the establishment of civic initiative is irregular, i.e. is out of the competencies or matters for which the Council is competent or the signatures are not assembled on the relevant form, etc., the issue regarding the proposal of the initiative will be put on the agenda in the first session of the Council but not more later than 15 days from the day of initiating the irregularity of the initiative. The Council concludes by verifying whether it is definitely a regular proposal or not. The chairman of the council informs the authorized proposer of the Council's conclusion within a period of three days from the day of its adoption.

In cases when the proposal for a civic initiative is accepted by the council as a regular, the process of its implementation, or further formalization by the proposer or the initiating group, should be started. They are obliged that in the period of one month from the day of receipt of the notification of its regularity to collect the signatures in order for the civic initiative to be considered raised. Citizens' initiative at the local level is considered to be raised if at least 10% of the citizens registered in the extract of the municipal election list, with their signatures support the initiative. Citizens' signatures for civic initiative at the local level are submitted to the relevant state governing body for evidence of the right to vote, which to assign public points where the signatures will be collected. The collection of signatures is done on a separate form in which is obligatory to contain the title or the detailed purpose for which the initiative is. Further, there is a graph number of each signatory, than graphs for the name and surname, the citizen identification number, the date when it is signed, and finally, the place of signature. The form where the citizens have to be signed is verified by the official person with a stamp and a signature before they are signed.

If the citizen's initiative proposer manages to collect the necessary number of citizens' signatures, within three days from the day of completion of the collection of the signatures, the form with the signatures of the citizens on the proposal for which the initiative has been submitted shall be submitted to the Chairman of the Council. The municipal council within 90 days is obliged to discuss the initiative which is supported by 10% of the municipal voters and to notify the decision taken about the initiative.

III.2. Citizen rallies/gatherings

Citizens' rallies are meetings in which citizens are gathering in order to consider certain issues, give ideas or suggestions that can influence the decisions of the municipality to solve problems in the interest of their settlements or the community. In these gatherings, topics of discussion can be the municipal budget, municipal development programs, projects for economic and local development and other important issues that are within the competence of the municipality. Citizen rallies may be organized for the entire territory of the municipality or for the territory of a certain urban or local community or area. These meetings are more of an informal character and are most often called upon the initiative of:

the Mayor, the Municipal Council or even at the request of 10% of the municipal voters. No matter who initiates the gathering of citizens, the municipal administration is responsible for its full organization and implementation, as well as keeping records/minutes and evidencing citizens' requests and suggestions. In the citizen rallies right on discussion, review and decision have the citizens who reside in the region or the area where the rally is organized. The municipal bodies have a legal obligation to consider the conclusions of the citizens' gathering within 90 days and to consider them during the settlement and to inform the citizens about their decisions.

III.3. Referendum

Referendum is one of the most important forms of citizen involvement in the decision-making process at the local level in a direct way. A locally-based referendum may be mandatory or consultative.

The referendum is binding or mandatory if it is intended to settle a particular issue and the decision taken through the referendum will be binding on municipal bodies. Consultative referendum is a mechanism that is used only to get an opinion or to consult citizens on any matter of local importance and the same is not mandatory for the council or municipal bodies.

The consultative referendum may be in the form of a preliminary referendum which is organized for citizens' consultation on a new issue to be settled and regulated, and a complementary referendum that is used to reassess or supplement any solution that was previously active.

Referendum as a model of citizen participation can be used for certain issues such as: adoption of proposals for amending the municipal statute or other general acts of the municipality, proposals for bringing acts on issues of interest to the life and work of citizens such as the construction, reconstruction or re-destination of objects of communal importance, the regulation of the space, the hygiene of public areas in the territory of the municipality; setting up measures for contributing for certain purposes as well as other issues determined by law and municipal statute.

A local referendum cannot be announced on issues directly related to the municipal budget and the organization of the municipal administration. The initiative for the announcement of the referendum is made upon request submitted by at least 20% of the total number of voters registered in the excerpt of the municipality's electoral list. The manner of collecting signatures for support for the announcement of a referendum is the same as that of a citizen initiative. The initiative for announcing a referendum can also be done on the initiative of the Municipal Council.

By fulfilling the conditions for the announcement of the referendum, the municipal council decides on its announcement by setting the conditions and the manner of its organization, as well as the question on which the citizens should be declared. The decision to conduct the referendum should include: the name of the body that it is announcing, the region and territory for which it is promulgated, the title and the purpose, namely the question for which the referendum is promulgated, the day of retention that according to the law should be on Sunday, as well as the type of referendum, whether it is consultative or mandatory. The decision to announce a referendum at the local level is published in the official gazette of the municipality as well as through means of public information in a certain way prescribed with the statute of the municipality. The referendum should be held no less than 25 days or more than 40 days from the day of publication of the decision to announce the referendum.

Means for the implementation of the referendum at the local level are provided by the municipal budget. The authorized proposer at his own expense may lead a public

information campaign for a referendum that must expire no later than 48 hours before the voting day. The referendum should be implemented by the municipal election commission and election councils in the municipality. The right to vote in a referendum has the citizens who have residency in the territory of the municipality and have the right to vote, respectively are registered in the electoral list. In the referendum, citizens are declared directly by secret ballot, with a ballot paper prepared by the election commission. The question on the ballot must necessarily be clear and accurately formulated so that the citizen can respond with "for" or "against". Citizens and other interest groups have the right to observe the implementation of the referendum as a group of local observers.

The referendum will be successful if more than half of the total number of citizens registered in the municipal election list has been voted or the census of 50% has been achieved. Decisions of the local referendum are considered approved, if majority of the total number of citizens or voters has voted for them. The municipal council is obliged within 60 days after the announcement of the results of the referendum to regulate the issue for which it was voted in the referendum, in accordance with the results of the referendum.

A referendum on the same issue cannot be repeated before the expiration of two years from the date of the referendum.

III.4. Requests, submissions and proposals

One of the most widespread mechanisms that enable citizens individually or jointly with others to exercise their right to participate in local decision-making is the right to submit requests, submissions and proposals for solving problems of local importance or even for the work of municipal bodies and municipal administration. This form of citizen communication is usually carried out at the initiative of one or group of persons directed to the mayor's office or municipal council cabinet. Requests, submissions and proposals may be submitted directly to the municipal governing bodies, the municipal archives or through the information office and other sectors operating within the municipality.

The submission of requests or proposals shall be made in accordance with the content and in writing and the same shall contain the basic information on the submitter of the submission or proposal, the body to whom it is addressed and the matter which is the subject of the submission or proposal. Municipalities usually use standard forms for this purpose. The same can be found and practiced also in electronic form on the municipal website or electronic portal.

The executive municipal authorities, in particular the Mayor are obliged to seriously consider and, within a reasonable time (15 to 30 days from the day of receipt) of the submission or proposal, create conditions and opportunities for meeting the reasonable submissions proposals which are in the range of municipal competencies. The submissions and proposals that are outside of the competence of the municipality are redirected to the relevant competent body and thereof the municipality informs the submitter.

III.5. Open Days of the Municipality

Municipal authorities and in particular the Mayor, within their competencies, should make personal contacts with the local population in order to get acquainted directly with the problems faced by the citizens and their proposals to overcome those problems. Within these meetings, citizens through the presentation of arguments can directly contribute to finding quality solutions and improving the conditions in their local community. Through this model of citizen communication, the mayor also has the opportunity to be informed closely and directly by the citizens and to receive their assessment on the work of municipal services in order to and to act accordingly and provide fairer and more efficient services. For this

purpose, the mayor determines open municipality days or open meetings in his office that should be regular practice in its functioning.

On the other hand, the Mayor through his competence to make discretionary decisions can decide on the individual rights, obligations and interests of natural and legal persons who are in his direct competence. Decisions that are adopted in the process of consultations through this mechanism but also by other mechanisms tend to be more qualitative and more sustainable.

III.6. Public Tribunes/Debates, Surveys

Some other citizens' consultation models, which are usually initiated by the municipal authorities, such as the Municipal Council or the Mayor, are public hearings, surveys with citizens or requests for proposals by them.

The public tribune or debate as a model of civic participation is not legally sufficiently defined but can be an important institutional form for involving citizens in social life. Public Tribunes similar to the Citizen's Rallies provides the opportunity for municipal residents to engage in direct debate with the municipal leadership on certain issues, to review them in order to find adequate solutions. While the Citizens' Rallies are organized for citizens who are directly affected as residents of a certain territory, at the public debates can and should be engaged much wider public or community. For public debates, the same rules may apply whereby the gatherings of citizens are organized.

On the other hand, surveys enable the municipal administration and the Mayor to take the opinion of citizens on any specific issue, policy or project they plan to address through a specific developed questionnaire or interviews.

III.7. Innovative methods of citizen participation at the local level

In addition to the aforementioned forms under the law, there are no restrictions on the methods and mechanisms that local government units can use and other forms may be implemented as needed, always in the interest of greater and effective involvement of citizens. Thus, municipalities can apply other innovative and practical methods.

Such models can be considered the communication and consultation of citizens through electronic media, web pages, social networks and other electronic forms that are enabled by the modern developed technology tools. These forms are usually very effective, practical and easy to use, on the other hand, provide timely and visually understandable information to citizens.

Citizen involvement mechanisms in electronic or online form enable more people to be involved in the dialogue on municipal issues than traditional direct methods. Depending on the situation or issues to be considered and the size of the population affected by certain issues, online and electronic forms can bring hundreds or thousands of individuals to a joint discussion meeting or forum. These forms of consultation in addition to their practicality as well as comprehensive community approach are also less costly forms than traditional methods, such as surveys, telephone communications, or through other visual and print media.

Another highly practical and standardized model, already well known in Macedonia, is the Community Forums, which is a platform that represents a well-structured mechanism that enables citizens in the municipalities to participate actively and continuously in drafting programs, projects or even municipal budgets and monitoring their realization according to the priorities set by the forum (citizens).

Community forums are implemented on the basis of a defined methodology developed within the Community Forums Program, which has been successfully

implemented in the last ten years in Macedonia by the Swiss Agency for Development and Cooperation - SDC. The entire process represents a cycle of implementation of related activities by starting the capacity building of municipalities to implement the forum process through specific trainings for the preparation of implementation teams, followed by the implementation of six forum sessions or public meetings with citizens and other parties interested in presenting, reviewing and developing municipal programs, projects or budgets.

One of the main features of the community forums is the voting or prioritization of the issues discussed by the forum, whereby citizens have the opportunity jointly to select some of the most urgent and important problems to be solved by the municipality management in a fixed term. In this case, the municipality accepts the citizen priorities and incorporates them into its development programs or budget in order to implement the priorities and citizen recommendations for which the citizens have voted.

In addition, the adoption and implementation of forum priorities is monitored by a citizens' group, which are forum representatives, in order to ensure the realization and fulfillment of the citizens' proposals and priorities.

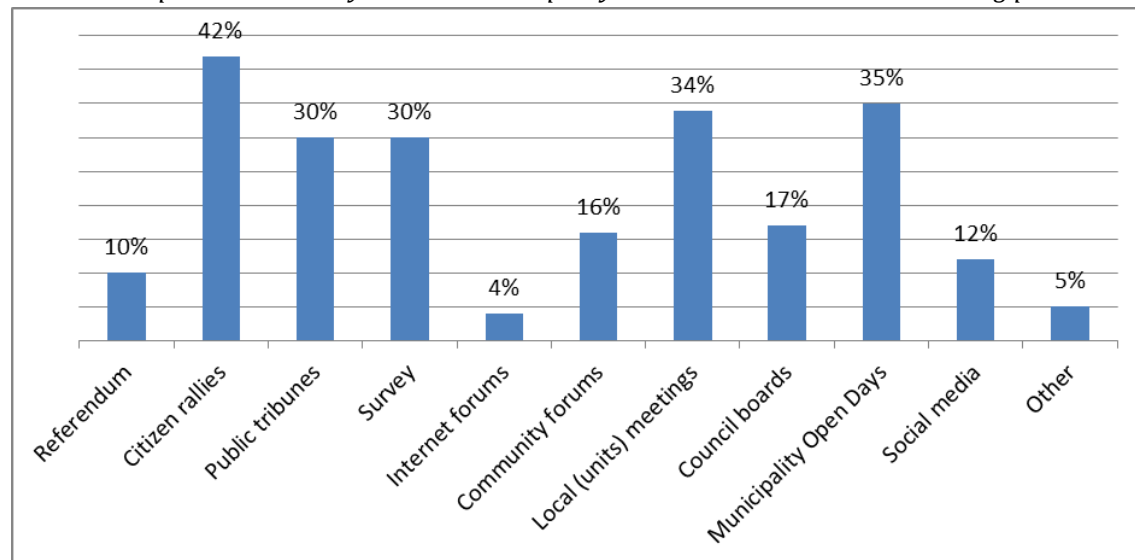
The municipality at a follow-up session reports on the process and progress of the implementation of the priority projects of the citizens expressed through the forum

Annex

According to a survey¹ conducted by the Foundation for Development of the Local Government in 2016 with 400 citizens in urban and rural municipalities from eight development regions in Macedonia, we obtain information to some extent on the current state of application of mechanisms for civic participation by municipalities in the country.

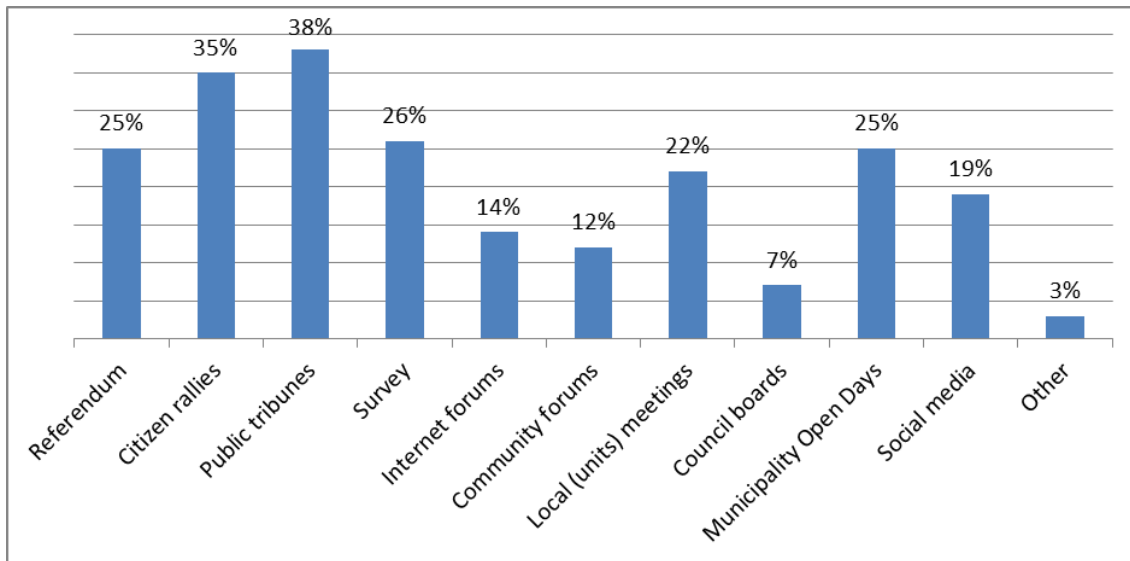
In the charts below are presented data on the ways of using different mechanisms for citizen participation at the local level, as well as information on the citizens' preferences for the most appropriate ways of involving them from the municipal administration.

Graphic: In what way does the municipality involve citizens in decision making process?



Graphic: Which form of participation do you think is more appropriate for citizens?

¹Hadji-Vasileva K., Analysis of the current practices of using the mechanisms for consultations with the citizens in public policy making on local level and its effectiveness, FDLG Shtip, 2016



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