

THE RIGHT OF DIRECT PARTICIPATION OF CITIZENS AND ITS FORMS
AT THE LOCAL LEVEL IN THE REPUBLIC OF SERBIA

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Abstract: *The level of direct participation of citizens in the country is one of the important indicators of democracy. Countries in transition, such as Serbia, are facing a low level of trust in their governments and institutions, so this is the main reason why citizens are not interested in direct participation and why they do not believe that if they participated directly, they would not be able to change anything. The aim of this paper is to point out the possibilities of direct participation, which are recognized by law to citizens, at the level of local governments and to point out the obstacles they face, as well as what discourages citizens from direct participation. Examples of good practice are highlighted, bad examples are pointed out and solutions for improving the legislative procedure are proposed.*

Keywords: *direct participation, civic initiative, local community, citizen participation, civil society*

Introduction

The notion of democracy in modern society cannot be conceived without direct citizen participation in the formation of public policies. This principle must be implemented wherever it is possible. Keeping in mind the fact that, as a result of limiting factors, such as the number of members in a community, and the unfeasibility of reaching a decision due to a large number of community members, indirect or representative democracy represents the dominant form.

This is especially true if we perceive direct democracy in its ‘antique city-state’ form, as decisions approved by a citizens’ assembly composed of all local citizens. (Buček and Smith 2000, 132). Some authors claim that through forms of direct participation, citizens act as an additional veto player (Hug 2009, 257) (Stadelmann and Steffen 2011, 489) From that position, they can reject inefficient projects, demand and get more productive investments for their town and the public sector in general, at a lower cost. (Roberts 2015, 195). Direct democracy keeps community life vital and public institutions accountable It resolves conflict through “a participatory process of ongoing, proximate self-legislation and the creation of a political community capable of transforming dependent private individuals into free citizens and partial and private interests into public goods”. (Barber 1984, 205) Direct citizen participation contributes to open and transparent work of public authorities, both executive and representative, as it represents a form of supervision of the work of these bodies, thus paving the way for better decisions, and making government closer and more accessible to the people, resulting in a higher level of trust of citizens in public authority and its officials. These policies regulate issues that directly affect the quality of life of citizens in a local community. Therefore, citizens have a vested interest in participating in the process of the development and implementation of these policies. It can be said with certainty that direct citizen participation in decision-making provides legitimacy to political decisions and the regime that makes these decisions. It also ensures the stability of the system and contributes to the rule of law.

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The needs and interests of the local population, as well as the democratic capacities of local communities, can be best seen and recognized at the level of local self-government. Local self-government best reflects the needs of citizens and represents a level of government that is most suitable for various forms of direct citizen participation in policy-making.

When it comes to indirect democracy, citizens elect their representatives to assemblies, councils, committees, citizens elect their representatives to assemblies, councils, and committees. Thus elected bodies make decisions that are of interest to the local community and its citizens.

Participatory democracy allows citizens to advocate and defend their legitimate interests in the process of policy-making and thus contribute to the development of a democratic society.

The experiences of many countries testify to a kind of quest for a balance between direct and indirect democracy. Walsh (1996) explains why the two main approaches within local democracy should be harmonized. According to him, representative democracy has advantages in reconciling differences, and participatory democracy works better in revealing preferences. This combination of representative and participatory democracy suggests that more inclusive governance through direct participation mechanisms leads to an increase in government accountability and yields less inefficient governments. (67) On the other hand, the conclusion is drawn that the passivity of citizens quite often results in an irresponsible government. Citizens who directly participate in decision-making processes discover how to take other interests than their own into account when engaging in participatory processes. Moreover, they are expected to learn that public and private interests are linked and they are stimulated to deliberate with each other (Kern 2017, 21).

Unfortunately, political elites, especially those in countries in transition, as per their populist-authoritarian profile, are not truly inclined to encourage citizen participation in decision-making processes, the only exception being the election period. The actual participation of citizens in such countries is often reduced to a formal-decorative dimension. (Friedrich-Ebert-Stiftung, 2005)

1. The concept and classification of participatory democracy at the local level

The ideal of participatory democracy would be the assembly of all adult citizens in one local self-government. Of course, we are aware that such a solution is non-functional. However, the example of Switzerland demonstrates that solutions, similar to this one are possible in municipalities with a smaller number of citizens, or at an even higher functional level - the level of local community councils. For example, in two small Swiss cantons (Glaris and Appenzell Inner-Rhodes) the legislative power is exercised by the assembly of all citizens (Landsgemeinde). (Ladner 2002, 818)

International documents also guarantee the right of citizens to direct and indirect participation in decision-making processes. The Universal Declaration of Human Rights proclaims that “everyone has the right to take part in the government of his country, directly or through freely chosen representatives.” A similar provision can be found in the International Covenant on Civil and Political Rights of 1966, which states that “every citizen shall have the right and the opportunity, without any of the distinctions and without unreasonable restrictions, to take part in the conduct of public affairs, directly or through freely chosen representatives.”

The European Charter of Local Self-Government (Council of Europe, 1985) is one of the most important documents in relation to local self-government. This document defines local self-government as “the right and the ability of local authorities, within the limits of the law, to regulate and manage a substantial share of public affairs under their own responsibility and in the interests of the local population.” It further states that “this right shall be exercised by councils or assemblies composed of members freely elected by secret ballot on the basis of direct, equal, universal suffrage, and which may possess executive organs responsible to them. This provision shall in no way affect recourse to assemblies of citizens, referendums or any other form of direct citizen participation where it is permitted by statute.” Based on these provisions, it can be concluded that the European Charter of Local Self-Government primarily focuses on indirect governance, but that this mechanism does not exclude the implementation of direct forms of citizen participation, through direct gatherings (assemblies) or referendums. Also, the Charter does not list all possible forms of direct citizen participation, instead, it leaves room for each local self-government, by its statute and in accordance with its needs, to define possible forms and shapes of direct citizen participation. In addition, the

Charter recommends holding a referendum, whenever it is possible, to change the boundaries of a local community.

Nevertheless, when it comes to direct citizen participation, Recommendation no. 19 on the participation of citizens in local public life, adopted by the Council of Europe Committee of Ministers in 2001, holds great significance. This recommendation calls on all member states of the Council of Europe to actively participate in the promotion of the principles and implementation of the policy of promoting citizen participation. It also provides concrete recommendations and examples of how this can be accomplished. The Council of Europe Committee of Ministers recommends that the member states 1. “frame a policy, involving local and - where applicable - regional authorities, designed to promote citizens’ participation in local public life, drawing on the principles of the European Charter of Local Self-Government... 2. ...adopt legal regulations necessary for the participation of citizens in the work of local self-government and ensure that national legislation and regulation enable local self-governments to apply various mechanisms and instruments for citizen participation in the work of local self-government.

Depending on the intensity and legal significance, Milosavljević (2005) classifies forms of citizen participation into four basic groups: 1. the right to direct participation in decision-making process (forms of direct democracy, i.e. direct citizen participation in decision-making, such as: assemblies of all citizens, referendum, popular or civic initiative and forms of local self-government); 2. the right to submit proposals and public criticism (forms of citizen participation in proposing decisions and criticizing the work of representative bodies, such as: citizens’ assemblies, petitions, i.e. individual proposals, complaints and appeals and reports to the ombudsman, forms of public criticism, protests, peaceful gatherings, demonstrations); 3. the right to consultation (forms of citizen participation in determining the priorities of the local community, such as: panels and other forms of political consultations, public debates, consultations via electronic media and the Internet, participation in councils of service users and other advisory bodies); 4. the right to information (forms of exercising the right of citizens to receive information on the work, plans and intentions of representative bodies, the situation in the local community and other information of public importance). (Milosavljević et al. 2005, 205)

Forms of direct citizen participation in the running of local self-government, provided by the Law on Local Self-Government, include civic initiative, citizens’ assembly, and referendum. The special rules, which the Law on Local Self-Government elaborates in much greater detail than it was the case with some previous laws, apply to local community councils, which can play an important role in achieving participatory democracy.

1.1. Civic initiative

This kind of initiative has different names in different countries. This initiative type is sometimes referred to as people’s motions or submission rights, but also popular legislative initiatives. The purpose of a civic initiative is to allow citizens to advocate for their own interests before government bodies, state or local authorities.

Through a civic initiative, citizens in the Republic of Serbia propose to the local self-government assembly certain acts that could regulate a specific issue within the competence of local self-government, change the statute or other acts and call for a referendum in accordance with the law and the statute.

The Municipal Assembly is obliged to hold a debate and submit a well-reasoned response to the citizens within 60 days of receiving this proposal. The number of citizens’ signatures required to launch a civic initiative is 5% of the total number of citizens who are eligible to vote in that local self-government. The previous law provided for a threshold amounting to 10% of the total number of citizens who are eligible to vote in that local self-government, which indicates that the new legal solution is more beneficial for citizens, but still difficult to achieve, bearing in mind the size of some local self-governments, and that some cities have a large number of inhabitants. In that case, 5% of voters is too high of a number and can discourage citizens in their intention to launch a civic initiative. The Statute of the city of Belgrade stipulates that citizens, through a civil initiative, propose to the City Council the adoption of an act that would regulate a certain issue within the city’s jurisdiction, change the Statute or other acts and call for a referendum in accordance with the law and this statute. On the

positive side, the city administration is obliged to provide professional assistance to citizens in drafting an initiative proposal. In order to effectively launch a civic initiative in the city of Belgrade, the signatures of at least 30,000 voters is required, who were registered to vote by the day the initiative is submitted, which is a large number of citizens for the level of local self-government. The proposal for the civic initiative must be explained and drafted in such a way that it clearly shows the directions of changes, i.e. the solutions which the City Council should consider. In order to establish a civic initiative, the citizens must form a five-member initiative committee. The initiative committee submits the list of signatories of the civic initiative to the City Council. The City Council is obliged to hold a discussion on the proposal and present a well-reasoned response to the citizens within 60 days from the day of receiving the proposal.

The legal framework and insufficiently developed practice of making use of the civic initiative show that there is no stimulating environment for this instrument of civic participation in Serbia. Numerous obstacles in the legal and institutional framework may be the reason why citizens lack the motivation to utilize this mechanism. The new Draft Law on Referendum and Civic Initiative, drafted by the Ministry of Public Administration and Local Self-Government in 2019, includes several provisions that may completely discourage the use of civic initiatives. For example, one of the provisions states that the Draft introduces the requirement to pay a fee for the verification of signatures for the referendum and the people's initiative.

A study conducted in Germany showed that “the main tool of direct democracy in Bavaria (and other German States) are the initiatives (“Bürgerbegehren”), which can be initiated either by citizens (by collecting a minimum number of signatures of 3-10% of municipal population depending on size - around 90% of all initiatives) or by the city councils (by a two-thirds majority - around 10% of all initiatives) on issues within the competencies of the municipality (with several exclusions, such as initiatives on the internal organization of the municipal administration or ones directly on the local budgets).” These data referred to 1,095 initiatives in Bavarian towns between 2003 and 2011, and define an initiative to be a binary variable indicating whether a given town has hosted at least one initiative in the period between 2003-2011. In case an initiative successfully passes the legislative process (e.g. signature collection) and is put to vote (“Bürgerbegehren”), we also observe the turnout rate which might be an indicator of voters' relative (dis)interest in the given topic. (Asatryan and De Witte 2015, 59)

1.2. Citizens' Assembly

The citizens' assembly is convened for the part of the territory of the local self-government unit determined by the statute. At the citizens' assembly, proposals on issues within the competence of the local self-government unit are discussed and presented. The citizens' assembly, by a majority vote of the persons present, adopts requests and proposals and forwards them to the assembly or individual bodies and services of the local self-government unit. Bodies and services of the local self-government unit are obliged to review the citizens' requests and proposals and reach an appropriate decision or measure and inform the citizens about it within 60 days from the day the citizens' assembly is held. The manner of convening the citizens' assembly, its work, as well as the manner of determining the views of the assembly is regulated by the Statute and the decision of the municipal assembly.

1.3. Local referendum

In a local referendum, the citizens declare their acceptance or rejection of an individual proposal or decision on an issue of local interest and importance for local self-government. Etymologically speaking, the word referendum originated from the Latin term *ad referendum* (meaning “something to be brought, said, reported, informed, and instructed”). The word referendum is currently used in the majority of languages.

In the Republic of Serbia, at the local level, there is a mandatory referendum and an optional referendum.

When it comes to the former, the local self-government assembly may, at its own initiative, call a referendum on issues within its competence, and in the case of the latter, it is obliged to call a

referendum on the issue within its competence if the proposal is submitted by at least 10% of the electorate, as per the law and statute.

The decision is supported through a referendum if the majority of citizens, who are eligible to vote, voted in favor, provided that more than half of the total number of citizens had voted.

The decision made in a referendum is binding, and the assembly of the local self-government cannot abolish it, nor change its essence with amendments in the period of one year to the day the decision was made.

For example, in a consultative referendum related to the area of the local self-government unit, the citizens of Finland, other European Union countries, Iceland and Norway who have reached the age of 18 by the time of the elections and whose residence is registered (as specified in the Law on Residence) in the municipality where the consultative referendum is held may participate in it at least 51 days before the referendum. Citizens of other countries must meet the above-listed conditions and are required to have an established residence in Finland for at least two years before the elections. Only persons who live in a specific area hold the right to express their opinion on the change of the municipal territory. (Dimitrijević, Vučetić and Vučković 2018, 273) There are also opinions that referendum does not grant any direct law-making privileges to the people, “it simply gives the people the opportunity of approving or rejecting certain kinds of laws enacted by their representatives. Right here is where the initiative rushes madly forward and proposes that the voters themselves have the power of legislating” (Brown 1905, 750).

A total of 150 local referendums, initiated by local self-governments, were held in the Czech Republic between 2000 and 2008. These referendums dealt with the issues of local development or the environment (for example, utilization of nuclear waste, issues of transport, wind power plants, but also the opening of factories, industrial *zones*) (Smith, 2011, 44)

In Serbia, local referendums are practically non-existent. An example of good practice is the local self-government of the city of Šabac, which held a referendum in December 2017, when citizens from 24 villages shared their view of how the million euros collected through property taxes should be spent. Citizens had the opportunity to decide in which projects these funds would be invested – starting from the road infrastructure, through outpatient clinics to the reconstruction of existing facilities.

1.4. Local Community

In order to satisfy the needs and interests of the local population, local communities and other forms of local self-government are established in villages. Local communities can also be established in urban settlements.

A proposal to form or abolish local community must be submitted by at least 10% of the electorate residing in the area to which the proposal refers, at least one-third of local self-government councilors, and municipal or city council.

The local community council is the basic representative body of citizens in the area of local community. Elections for the local community council are conducted according to the rules of direct and secret ballots based on universal and equal suffrage. These elections are announced by the president of the municipal or city assembly.

The president of the local community council is elected by the members of the council in question, by secret ballot, and a majority vote of the members of the local community council.

Among other things, the local community council has the authority to initiate the adoption of new or make amendments to existing municipal regulations. Local communities are the level of government closest to the citizens, which can best recognize the problems that the residents of certain local communities are facing, especially those in remote settlements, where a small number of mostly elderly people reside. However, the local community councils were also not given the importance they deserve, or to put it more precisely, they only function pro-forma.

2. Cooperation between local self-government and civil society

Civil society organizations have proved themselves to be important factors in the development of democracy. (Popkewitz 2000, 233) They represent a kind of bridge between citizens and authorities,

both at the local and central levels. The civil sector regularly contributes to citizen participation in social and political life, although it often faces various institutional, normative, but also situational obstacles. The activities of CSOs in countries like Serbia, i.e. countries that are experiencing a lack of system stability and are characterized by great distrust of citizens in institutions, represent an encouraging factor and affirm the right to freedom of association as one of the fundamental democratic freedoms. In addition, the involvement of experts from various fields in CSOs is noticeable, which local self-governments, i.e. public authorities, should perceive as an advantage, which could help them to make the right decisions and improve regulation, instead of perceiving them as enemies who only want to underscore the poor work of the authorities. Cooperation with CSOs is in the interest of the citizens and every government must come to terms with that. (Dionne 1998, 198)

The decision to abolish the Office for Cooperation with Civil Society, as one of the government services, and transfer its responsibilities to the Ministry for Human and Minority Rights and Social Dialogue is concerning. Also, the state still lacks a strategy for cooperation and development of civil society, which would define the state priorities in creating a stimulating framework for the activities of CSOs and improve their capacities, as well as identify the strategy implementers. The executive and local self-government bodies have not yet adequately grasped the advantages of cooperating with CSOs, both in the process of drafting and the process of implementing public policies. It is not altogether certain whether this represents a lack of political will or a mere misunderstanding of the role and importance of CSOs in the democratization of society.

One of the key points that the non-governmental sector insists on while defining obstacles to finding more efficient solutions to the issues faced by local self-governments concerns the decentralization issue. (OSCE 2011)

For example, in the small settlement of Üllő near Budapest, an NGO runs a disability employment center. The municipality supports the work of that NGO by providing a workspace. This NGO launched an information center with Internet access in the same building and managed to obtain enough funds to employ approximately 200 people.

In the second phase of the Regional Program on Local Democracy in the Western Balkans (ReLOaD2), funded by the European Union and implemented by the United Nations Development Program (UNDP), local self-governments of Babušnica, Kruševac, Novi Sad, Subotica, Topola, Vladičin Han and Vrnjačka Banja were selected to strengthen the partnership between local authorities and civil society for the benefit of citizens and local communities, with the financial and expert-advisory assistance of the project team. The project supports the introduction and expansion of transparent financing of civil society organizations (CSOs) projects from the budgets of local self-government units, thus ensuring greater participation of citizens in decision-making processes and improving the provision of public services. Selected municipalities and towns will have the opportunity to use grants in the amount of one million and fifty thousand dollars to finance CSO projects which are of public interest and in line with the Sustainable Development Goals. The project aims to strengthen democracy and the EU integration process in the Western Balkans by empowering civil society and encouraging young people to actively participate in the decision-making process, as well as to improve the legal and financial framework, in order to encourage civil society development.

3. Why are citizens choosing not to participate?

Why are citizens choosing not to use formal and informal opportunities to directly participate in local policy-making processes? What are the limiting factors? What are the personal motives for not taking advantage of these opportunities, that are provided by the law and are supposed to improve some sphere of their life, i.e. which contribute to the fulfillment of their interests?

In recent years, we have become aware of how significant civic activism is and how much it can do to shift the situation to favor the citizens of local self-government, which is ultimately a positive step for the entire population of a country and the planet we live on, especially in terms of ecology and environmental protection.

One of the researches conducted by the author pertains to the municipality of Medvedja, situated in the south of Serbia, where the Lece mine is located, one of the largest mines of lead, zinc, and gold in Southeast Europe. Part of the waste, the so-called tailings from the abovementioned mine, flows directly into the Gajtanska river, which passes through the settlements of Lece and Gazdare, and

part into the Jablanica river, which flows along the entire territory of the municipality of Medvedja. The water from these rivers is used to irrigate the crops located along their course. It is an underdeveloped municipality, where one of the basic occupations of the local population is agriculture, either as a primary or secondary occupation. The study involved 190 respondents from the municipality of Medvedja, who are directly affected by this problem, and whose crops are located on the banks of these rivers. At the same time, it should be noted that the color of these rivers is visibly unusual, especially when it comes to the Gajtanska river, which is light green in color. When asked, if they are aware that the tailings from the mine flow directly into the river, which they use to irrigate their crops, 95% of the respondents answered affirmatively. When asked, if they are aware that this situation is harmful to their health, due to the metal concentrates in water, which they use daily to irrigate crops, plants, which are later used for food, while domestic animals (cows, sheep) drink water from these rivers, and products from these animals (meat and milk) are used for food later on, 90% of respondents replied that they are aware of the harmful effects, while 10% of them believe that this is not a big problem.

The next question referred to whether the respondents have knowledge about any formal, legal option available to them, which they could use to try to change the current hazardous situation. Have they heard or tried to use the option to launch a civic initiative or the opportunity to initiate a solution to this issue through local community councils? Unfortunately, as many as 98% of respondents replied that they have no knowledge about the legal options available to them. What is particularly worrying is the fact that when asked – “do you believe that could you change something if you were to launch a civic initiative,” as many as 100% of respondents said that they believe that any kind of civic initiative would not change anything because, in their words, “everything depends on politicians,” “the people do not have a say in anything,” “politicians don’t want to hear what the people think and what they need, because they just care about their own interests.” While some responders said: “We will not raise this issue, because a large number of citizens from the villages of Lece and Gazdare work in the Lece mine, so we fear that this could provoke the anger of employers or politicians, and some of our people could get fired,” “money drills where drill can’t,” “like anyone cares about us” and the like. When asked if they believe that the media should be informed about this problem and if a media campaign could help them, as well as if any of them, in this case, for example, the president of the local community council, would be willing to speak with the media, revealing only the facts, without any subjective statements, all respondents answered in the negative.

Conclusion

The everyday problems that citizens face can be best seen and recognized at the level of local self-governments. In what way, through which mechanisms, and what factors and resources should be applied to encourage citizens to actively participate in the decision-making process concerning key issues in their social life in the countries of the Western Balkans?

Public information should be the starting point in this process. Based on the research presented in the paper, which is not representative enough, but on the basis of which it can be concluded that very few people in the Republic of Serbia are familiar with the possibilities of participatory democracy. Local self-government, political authorities, and local officials play a key role in this information process. They are obliged to inform, but also assist citizens in taking advantage of the opportunities provided to them by law, as mechanisms of direct participation. NGOs and the media are also important factors in the public information process. The problem arises when the local self-government, or the political option in power, perceives the citizens and the non-governmental sector as opponents, instead of allies. That is why civic initiatives, petitions, and the civil sector are perceived as enemies, whose only goal is to criticize the government, instead of as a partner in building a better society. Every citizen should be allowed to become active in the local community and thus develop the local political culture. Direct citizen participation must not be discouraged nor prevented in any way. These obstacles must not be institutional or formal, as is the case with the proposed Draft Law on Referendum and Civil Initiative, which introduces a mandatory fee for verifying citizens’ signatures, and the abolition of the Office for Cooperation with Civil Society, which was shut down in an extremely non-transparent manner.

Citizens mostly do not have confidence that their participation could change something, because they believe that the government will make a decision in accordance with its interests, regardless of the interests of the citizens. This further reduces the citizens' motivation to participate. What is particularly worrying is that a certain number of citizens, especially in smaller local self-governments, where almost all residents know each other, are afraid that their direct participation could trigger the reprisal of the ruling power. They believe that if they fight for their interests, they could provoke certain people from the government and that they will be punished in some way because of it (dismissal, losing some financial benefits, etc.). Keeping in mind the current point of the civilizational development of democratic societies, this is utterly unacceptable. Authorities exist for the sake of the citizens and must be accountable to them, instead of creating an atmosphere of fear, which obliterates democracy.

The broken trust of citizens in the institutions of the system must be rebuilt, as well as the citizens' belief that the republic, and especially the local government, views the opinion of citizens as important, i.e. that they care about every citizen and their interests. The local authorities must demonstrate that they consistently care about their citizens, and not just during the election period.

Each local self-government should inform citizens about the manner and possibilities of their direct participation through its own online presentation, various brochures, open house days, media. They should also organize citizen consultations, various educational activities to involve as many citizens as possible, and civic activism campaigns, all with media coverage. Also, training courses for local officials on the topic of direct participation and cooperation with civil society organizations must be organized.

Appointing local officials (contact persons) in all local self-governments is proposed. They would be in charge of direct citizen participation, provide information, draft projects that would increase citizen participation, as well as provide legal assistance on procedures that must be implemented and cooperate with civil society. These officials would periodically report to the assembly of the local self-government unit on citizen participation and cooperation with CSOs, in order to discern if any progress was made in that regard and make recommendations for improvement.

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Право и облици непосредног учешће грађана на локалном нивоу у Републици Србији

Апстракт: *Ниво директног учешћа грађана у земљи један је од важних показатеља демократије. Земље у транзицији, попут Србије, суочавају се са ниским степеном поверења грађана у своје владе и институције, те је то један од главних разлога због којег грађани нису заинтересовани за директно учешће и зашто не верују да би било која форма непосредног учешћа дала резултате. Циљ овог рада је да укаже на могућности непосредног учешћа, које су грађанима признате законом, на нивоу локалних самоуправа и да укаже на препреке са којима се сусрећу, као и на оно што грађане демотивира од директног учешћа. Истакнути су примери добре праксе, указано на лоше и предочене су могућности за унапређење законских решења.*

Кључне речи: *директно учешће, грађанска иницијатива, локална заједница, цивилно друштво*