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Participatory Mechanisms for National Minorities



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Participatory mechanisms for national minorities

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I. INTRODUCTION

A. Purpose of the Handbook

The ability of national minorities to participate effectively in public life represents one of the fundamental conditions for creating a cohesive, inclusive society. The right of minorities to participation in public life is included in the major documents dedicated to the protection and promotion of the rights of national minorities (CSCE Copenhagen Document, United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, and the Framework Convention for the Protection of National Minorities); moreover, the emphasis placed on this right by national minority representatives and international human rights organisations is a further indication of its importance. However, international legal documents usually do not define the concept of participation, nor do they specify what constitutes a minority (and therefore a potential beneficiary of such arrangements); with the exception of the Lund Recommendations on the Effective Participation of National Minorities in Public Life, they offer no details as to the kinds of arrangements that best foster participation. Given the widely differing domestic and regional contexts, it is perhaps understandable why provisions of international law are vague as to the ways in which the right to participation can be realised in practice. This is left at the hands of national governments, which will decide on who the recipients of this rights are and how the right to participation will be implemented in practice. This in turn means that there are a plethora of options which have been identified and implemented in varying local contexts, each with its advantages and challenges.

As such, the purpose of this Handbook is to provide an informed and balanced perspective on the most common mechanisms for the effective participation of national minorities to public life on the ways in which national governments across Europe have found an answer to the question of how national minorities residing on their territory can best participate to public life. We will do this by taking a combined approach, whereby we will first provide an overview of the relevant international legislation, followed by a discussion of some of the concepts related to participation, and then by an analysis of the most common ways of practical realization of the right to participation in public life of national minorities.

The audience we are envisioning for this Handbook is not necessarily an academic readership (although they are by no means excluded), but rather policy-makers, stakeholders within minority groups, and practitioners in the field of national minorities. The Handbook will also most probably be a helpful tool to students of political science looking for a starting point in their endeavours to learn more about this topic.



B. A new tool for promoting minority participation

The breadth of existing arrangements for participation in very different domestic contexts across Europe and beyond invites the question of which models are better suited to certain specific contexts; in other words, both the advantages and challenges of these models need to be better understood, so that policy makers, minority representatives, and practitioners generally can get a better understanding of the options available to them. One way to ascertain this is to select several of these models, and provide an analysis of the advantages and challenges they involve in specific settings.

Of course, this Handbook does not claim to be either the first or the only endeavour to this purpose. Among the handbooks, compendiums and reports focusing on the participation of national minorities in public life, we should mention the study commissioned by the DH-MIN entitled 'The Participation of Minorities in Decision-Making Processes' ¹; the DH-MIN 'Handbook on Minority Consultative Mechanisms' ²; the Minority Rights Group's Report 'Public Participation and Minorities' ³; Friedrich Ebert Stiftung's 'Political Parties and Minority Participation' ⁴; or indeed the extremely comprehensive 'Political Participation of Minorities. A Commentary on International Standards and Practice' ⁵ by Marc Weller and 'Participation, Representation and Identity. The right of persons belonging to minorities to effective participation in public affairs: Content, justification and limits' by Annelies Verstichel. ⁶ All provide comprehensive information to the interested reader, offering insights into the various types of participation mechanisms in various contexts. Some focus on specific types of participation mechanisms, others have a specific geographical scope, while others take a legal-institutional approach.

Our Handbook hopes to complement the existing literature on the subject by combining academic insight, empirical case studies, and legal and institutional analysis in a succinct and comprehensive form, designed to serve decision makers, governments officers, minorities, practitioners or relevant stakeholders. To our knowledge, presently there is no such instrument available, and we believe it would be a good tool for governments exploring options for minority participation, or for minority communities looking to improve or expand their right to participation in public life. Our hope therefore is that by providing this Handbook in the present form, and by making it freely available online, we will contribute to the advancement of participation rights of national minorities across Europe and beyond.

¹ Jochen Abr. Frowein and Roland Bank, "The Participation of Minorities in Decision-Making Processes" (Council of Europe, Strasbourg, 2000).

² Committee of Experts on Issues relating to the Protection of National Minorities (DH-MIN), "DH-MIN Handbook on Minority Consultative Mechanisms" (Council of Europe, Strasbourg, 2006).

³ Yash Ghai, *Public Participation and Minorities* (Minority Rights Group, International, London, 2003).

⁴ NA, *Political Parties and Minority Participation* (Friedrich Ebert Stiftung, Skopje, 2008).

⁵ Marc Weller (ed.), *Political Participation of Minorities: A Commentary on International Standards and Practice* (Oxford University Press, Oxford, 2010).

⁶ Annelies Verstichel, *Participation, Representation and Identity. The right of persons belonging to minorities to effective participation in public affairs: Content, justification and limits* (Intersentia, Antwerp, 2009).

C. Structure and methodology

As mentioned above, this Handbook attempts to combine academic insight with practical case studies and legal and institutional analysis. As such, it is divided into two main parts, one focusing on the conceptual and legal aspects of participation, while the other focuses on the practical aspects of it. As such, the first part of the Handbook will first provide an overview of the academic debates concerning the definition, scope, and limits of several concepts that will be used throughout this Handbook (i.e. 'participation', 'representation', 'national minority'). After reviewing the academic debates surrounding these concepts, the Handbook will provide a brief overview of the international legal framework for the protection of national minorities, focusing on the provisions for the participation of national minorities to public life. This overview is of not intended to be exhaustive, nor is it intended to replace the many excellent analyses on the topic already written by legal scholars; instead, it is intended to provide a starting point and an orientation toolkit for the interested reader. Finally, the second main part of the Handbook will identify and analyse the most common practical arrangements for the implementation of the right to participation; it will do so by first providing a few details concerning each specific type of arrangement, then by analysing selected case studies, highlighting both the advantages and challenges of each type of arrangement.

In terms of the methodological approach used, the first part will be realised through a close reading and analysis of academic debates concerning the main concepts used in this Handbook, while the section concerned with international legislation will be realised through a close reading of the relevant legal texts. The second part, focusing on practical examples of arrangements designed to foster the participation to public life of national minorities, will be realised on the basis of a qualitative analysis of the Opinions of the Advisory Committee on the Framework Convention for the Protection of National Minorities (FCNM), as well as of the State Reports and Comments submitted within the monitoring process of the FCNM. Where necessary and feasible, data collected from these documents will be supplemented with information concerning domestic legislation and its practical implementation of process obtained from reports drafted by domestic and international human rights organisations, organisations of national minorities etc.

Finally, there are a few things this Handbook does not intend to do. First of all, it is not among the purposes of this Handbook to provide an exhaustive overview or analysis of the academic debates surrounding participation and the concepts related to it; similarly, an exhaustive analysis of the international (and domestic, for the case studies) legal framework for the protection of national minorities is beyond the purpose of this text. As the Handbook is envisioned as a tool for policy makers, minority groups, and minority stakeholders in general, the information contained in it is not exhaustive, but instead meant as a comprehensive point of departure for any stakeholder wishing to better understand the options available for the participation of minority groups to public life. Secondly, it cannot be sufficiently emphasised that the practical examples selected and outlined in this Handbook should be considered in the domestic or regional context where they were implemented; under no circumstances do we suggest that any of the models presented are more suitable than others, or that a positive example from a particular country would work just as well elsewhere. In this respect, we would like to emphasize that context is all important, and that different contexts in different societies will call for different (or differently adjusted) models. As such, what this Handbook is aiming to offer is not magic solutions, but rather an informed perspective on both the advantages and disadvantages of each arrangement presented. Clearly, it is important to recognize that the suitability and effectiveness of each



solution presented here are context dependent, and the selection of any of these arrangements must be sensitive to this.

A final caveat refers to the fact that the case studies and domestic legislation we make reference to are in constant change; of necessity, the overviews we are providing will reflect the situation at the moment of writing. Indeed, should this Handbook prove a successful tool for its target audience, we might consider the possibility of continuing to update it periodically, so as to reflect contemporary evolutions.

II. CONTEXTS, CONCEPTS, AND THE CURRENT LEGAL FRAMEWORK

A. The context

In recent years, the general political climate across Europe has presented both minority groups and policy makers with renewed challenges, among which the rise of racist, xenophobic and extremist discourses of an anti-Semitic, Islamophobic, anti-Gypsy, anti-migrant and anti-refugee nature are the most frequent and the most worrying. Increasingly, parties on the far and extreme right political spectre have come to promote such rhetoric, sometimes escalating into direct threat, as reports emerged of harassment and even physical attacks on persons belonging to national minorities.⁷

This rise in far right extremism has occurred in the context of an ongoing economic crisis, which had a negative effect on the budgetary allocations for the protection of national minorities, with consequences into the actual levels of enjoyment of rights by persons belonging to these groups, as indicated by various reports and Opinions drafted by the Advisory Committee on the Framework Convention for the Protection of National Minorities (henceforth AC).⁸ In this context, the Roma minority has been particularly hard hit both by the rise of extremism and the economic crisis, as this minority continues to represent one of the main targets of far right discourses and even attacks, while the cuts in budgetary allocations for the protection of national minorities have had a particularly negative impact on this group.

Adding to an already complex picture, the recent events in the Ukraine and the ongoing refugee crisis unfolding throughout Europe have in their turn created a further challenges, with profound implications for both the domestic politics of EU's member states and for the EU's foreign policy.

⁷ Advisory Committee on the Framework Convention for the Protection of National Minorities, "Ninth activity report covering the period from 1 June 2012 to 31 May 2014" (Council of Europe, September 2014), 11.

⁸ See for instance Advisory Committee on the Framework Convention for the Protection of National Minorities, "Ninth activity report", *ibid.* Fourth Opinion on Spain (adopted on 3 December 2014), p.12; third Opinion on the United Kingdom (adopted on 30 June 2011, published 22 December 2011), Para. 221.

Considering all of the above, it becomes clear that creating and maintaining the premises for persons belonging to national minorities to be able to meaningfully take part in public affairs has become an ever important undertaking. Many of the Opinions issued by the AC encourage governments to ensure the adequate financial resources for the full realisation of the rights of national minorities; the right to participation is a very important one, and selecting the most suitable arrangement to enable national minorities to participate to public life must go hand in hand with the allocation of adequate funding.

B. Concepts

As mentioned previously, this section will concentrate on the debates surrounding the main concepts used in this Handbook. As such, in the following we will discuss the concepts of *political participation*, *political representation*, and *national minority*.

Participation

In the political science literature, *participation* is usually understood as the capacity of the people to exert an influence over political, socio-economic, cultural etc. decisions. Indeed, the idea of participation has become so central to democracy, that the rule of the people through the maximum participation of all the people has become the ideal form of democracy;⁹ or, as another scholar puts it, ‘the more participation there is, the more democracy there is’.¹⁰

Participation: the capacity of the people to exert an influence over political, socio-economic, and cultural decisions.

Looking at the ways in which people can participate in public life, Sidney Verba identified four types of political participation: (1) voting, which he describes as potentially the single most important act of participation; (2) election-related campaign activities, such as campaigning for a candidate, attending meetings, or contributing money to a candidate’s campaign; (3) citizen-initiated contacts, where people who are concerned about an issue initiate contacts with government officials, (4) cooperative participation, by which he refers to group or organizational activities initiated by individuals to deal with social or political issues.¹¹ Other scholars analyzing the concept of participation point towards the *scope* of participation as another indicator of the fairness of decision-making processes; thus it is important to look at *who* participates in decision-making (thus recognizing that some participatory processes are completely open to all, while others invite only elite stakeholders); at the *mode of communication and decision* by analyzing *how* participants exchange information and make decisions (therefore differentiating between public meetings where citizens simply receive information from officials, meetings where citizens can express their preferences, and meetings where citizens engage in an active debate, take positions, exchange reasons etc.); and finally at the *extent of authorization*, that is at the link between discussions and policy (analysing the extent to which the deliberations have an impact on decision making).¹²

The most common way of achieving participation in practice is through electoral and consultative processes.

⁹ Carole Pateman, *Participation and Democratic Theory* (Cambridge University Press, Cambridge, 1970), 2.

¹⁰ Sidney Verba, *Democracy in America* (University of Chicago Press, Chicago, 1972), 1.

¹¹ Ibid, 46-47.

¹² Archon Fung, *Varieties of Participation in Complex Governance*, ‘Theorizing Democratic Renewal’ workshop (University of British Columbia, Vancouver, Canada (June 10-11, 2005)), 6.



Researching the political participation of immigrant groups, some scholars have expressed a concern that the majority of studies on this issue focus on formal modes of participation (i.e. participation in electoral processes), and analyse patterns of voter turnout, registration or election to political office, leaving non-electoral forms of participation largely unexplored.¹³ As such, in recent years a range of studies have emerged focusing on *non-electoral forms of political participation* as an important tool for the empowerment of immigrant group, particularly immigrant women.¹⁴ In her study analysing the political participation of an immigrant Latino community in the U.S., Hardy-Fanta found that Latino women were more active than Latino males in U.S.-based political organizing, and that the women's distinct values and practice were centred on community and collective, rather than hierarchical modes of organizing. Additionally, also departing from the classic understanding of participation as a political undertaking, a growing number of studies focus on *religious participation*. Some scholars noted that religion and participation in religious practices serves as a prominent vehicle for integration in society, particularly in the case of immigrant groups, remarking that the resettlement period also involves an increase in religious consciousness.¹⁵

Political representation

Participation in public life is closely linked to *political representation*; while direct democracy is not a viable option in today's societies, through active participation people can influence decisions that affect their lives. By taking part in consultations, meetings, referenda, or by supporting their preferred candidate in elections people can express their policy options and influence the decision-making process. In the case of minority communities, the existence of special arrangements for participation in public life is of particular importance, as in without them such groups may not have the resources to make their voices heard in policy-making settings.

Before embarking on a more detailed analysis of what representation of minority groups actually entails, we should first clarify the concept of 'representation' itself. In a seminal study on representation, starting from the analysis of the Latin (*'repraesentare'*) root of the word, Hanna Pitkin finds the basic meaning of 'representation' to be that of making present 'something that is *not* in fact present'.¹⁶ If we are to translate this meaning into the realm of *political* representation, it becomes clear that representation is the act of making citizens' voices, opinions, and perspectives 'present' in public policy making processes, even if they are not physically present in legislative and decision-making bodies.

¹³ See Carol Hardy-Fanta, *Latina Politics, Latino Politics: Gender, Culture, and Political Participation in Boston* (Temple University Press, Philadelphia, 1993).

¹⁴ See Michelle C. Kondo, "Influences of Gender and Race on Immigrant Political Participation: The Case of the Trusted Advocates", 50(5) *International Migration* (2012), 113–129..

¹⁵ See Prema Kurien, "Becoming American by Becoming Hindu: Indian Americans Take Their Place at the Multi-Cultural Table", in R. S. Warner, and J. G. Wittner, (eds.), *Gatherings in Diaspora: Religious Communities and the New Immigration*, (Temple University Press, Philadelphia, PA, 1998).

¹⁶ Hanna Fenichel Pitkin, *The Concept of Representation*, (University of California Press, Berkeley, Los Angeles, London, 1972), 92.



One of the fundamental dilemmas related to political representation is the one usually referred to as the ‘delegate vs. trustee’ dilemma. Simply put, the question that arises is whether the representative, once elected, should act according to the instructions he receives from his constituency, or whether he should act in the interest of the community but according to his best judgment, even if this might mean acting against the wishes of the constituency. Both perspectives have their own supporters, with scholars endorsing one or the other based on a range of arguments. For instance, James Madison articulated a delegate conception of

representation whereby the representative acts as the voice of those who are represented, while Edmund Burke argued that representatives should use their superior judgment and not yield to the desires of the masses: ‘Your representative owes you, not his industry only, but his judgment; and he betrays, instead of serving you, if he sacrifices it to your opinion.’¹⁷

Representation: is the act of making citizens’ voices, opinions, and perspectives ‘present’ in public policy making processes, even if they are not physically present in legislative and decision-making bodies.

Obviously, a representative will not be able to exclusively maintain one or the other positions, as this would deem the act of representation void of meaning. This classic debate has been approached by Hanna Pitkin – one of the foremost scholars writing on the topic of representation – by proposing that there is no rational basis for choosing between the representative’s judgment and the constituency’s wishes; instead of generalizing one or the other standpoint, she proposes that when these two opposing positions fail to coincide, a resolution should be taken by identifying the reason for this disagreement on a case-by-case basis.¹⁸

In this context, what appears to be central to any theory of representative democracy is the presence of an accountability mechanism, which would allow those represented a degree of control over the actions of their representatives. In this respect, Andrew Roberts argues that the quality of a democracy is equivalent to the degree to which citizens control their rulers or, alternatively, to the strength of linkages (understood as the power to sanction incumbents, the power to select new officials, and the power to petition the government in between elections).¹⁹ Anne Phillips, writing about the representation of marginalized groups (and minorities are usually included under this category), considers accountability to be ‘always the other side of representation, and, in the absence of procedures for establishing what any group wants or thinks, we cannot usefully talk of their political representation’.²⁰

¹⁷ Edmund Burke, “Speech to the Electors at Bristol at the Conclusion of the Poll” cited in Jon Elster, *Deliberative Democracy* (Cambridge University Press, Cambridge, 1998), 3.

¹⁸ Pitkin, *ibid*, 165.

¹⁹ Andrew Roberts, *The Quality of Democracy in Eastern Europe. Public Preferences and Policy Reforms* (Cambridge University Press, Cambridge, 2010), 31-33.

²⁰ Anne Phillips, “Democracy and Difference: Some problems for feminist theory”, 63(1) *The Political Quarterly* (1992), 79-80.



Representative democracies have at their core several elements, among which the organization of free, fair, and regular elections ensuring that representatives reflect the wishes and aspirations of their constituencies in law-making processes and in the policies they create. While for majority populations this can work in a fairly straightforward manner, it is a more complicated issue for minority groups. These are segments of society which – due to historical discrimination or marginalization (e.g. African Americans, the Roma, women, etc.), or to their low numerical proportion compared to the majority population (e.g. national minorities in Europe) – find it difficult to achieve an adequate level of political representation.

In an attempt to define marginalized groups, Melissa Williams finds that they share four characteristic features: (1) patterns of social and political inequality are structured along the lines of group membership; (2) membership in these groups is not usually experienced as voluntary; (3) membership in these groups is usually not experienced as mutable; (4) generally, negative meanings are assigned to group identity by the broader society or the dominant culture.²¹ Other definitions of marginalized groups – in particular those attempting to define ethnic or national minorities – sometimes add the numerical dimension to this definition, as an important obstacle in their path to achieving fair representation.

Selective representation of minority groups helps to set up relations of trust and contributes to the deliberative and aggregative functions of democracy.

Where such groups are underrepresented in legislative or policy-making bodies, one cannot speak of their fair legislative representation and the equality as citizens of the members of these groups.²² As such, many scholars argue that the adoption of special measures for correcting this situation of underrepresentation is the most effective way to remove inequality and ensure these groups' fair representation; these special measures are known in the academic literature as 'selective' or 'descriptive' representation.

One of the normative questions that scholars interested in descriptive representation had to address is related to the advantages brought by descriptive representation of a minority group. As such, one of the advantages of selective representation is that it increases the level of trust between the representative and the represented because of their 'shared experience', which triggers the expectation on the part of the represented that the interests that the representative will pursue will be common to that of the group.²³ Apart from the impact the representative's identity has in setting up relations of trust, an equally important role it may fulfill relates to the *deliberative and aggregative functions of democracy*. Thus, scholars argues that in order to produce legitimate decisions where interests conflict (such as in divided societies), it is better to have minority representatives engage in deliberations, because such a representatives can best communicate the interests and needs of the respective community.²⁴

²¹ Melissa Williams, *Voice, Trust, and Memory. Marginalised Groups and the Failings of Liberal Representation* (Princeton University Press, Princeton, 1998), 15-16.

²² *Ibid*, 3.

²³ Claudine Gay, "Spirals of Trust? The Effect of Descriptive Representation on the Relationship between Citizens and Their Government", 46(4) *American Journal of Political Science* (2002), 718.

²⁴ Jane Mansbridge, "Should Blacks Represent Blacks and Women Represent Women? A Contingent Yes", 61(3) *The Journal of Politics* (1999), 635

These theories describing the positive role of selective representation, as determined by the identity of the representative, appear to be confirmed by studies researching the effects of the descriptive representation of African Americans. Whether focusing on participation, electoral turnout, or policy influence,²⁵ studies generally demonstrate the positive impact descriptive representation has had on African American communities.

As with everything, selective representation has its challenges. The most important problem linked to it has been identified in the fact that the constituency tends to focus on *who* the representative is rather than on *what s/he* does.²⁶ This is explained in the literature by the fact that where voters select a member of their own group, the descriptive characteristics can ‘lull [them] into thinking their substantive interests are being represented even where this is not the case’.²⁷ As such, scholars have acknowledged that the mere presence in legislatures of members of a marginalized group, although often necessary, is not sufficient for the fair representation of the group; to make sure the interests of the group are adequately represented, descriptive representation needs an accountability mechanism, and elections appear as a very important mechanisms of accountability.²⁸

In addition, selective representation presents the problem of defining and selecting the criteria specifying which groups should be selectively represented. Such a process carries the *cost of essentialising*, as it involves selecting a single characteristic common to all members of the group (e.g. language, national origin, religion, or celebration of specific holidays), and categorizing the respective characteristic as coinciding with the common interests of the group.²⁹ The problem is that such categorization obscures cleavages within the group; moreover, it may encourage the ‘assimilation of the minority or subordinate interests in those of the dominant group without even recognizing their existence’.³⁰

Policy makers need to be aware of the risk of essentialising posed by selective representation.

National minority

Another fundamental concept that is extensively used in this Handbook and thus in need of unraveling is that of ***national minority***. The concept has been variously defined, both historically and across countries. As noted by Will Kymlicka, before the 1995 adoption of the Framework Convention for the Protection of National Minorities, the concept of ‘national minority’ carried no legal status or meaning in any Western country, as no legislation in any of these states specified either which groups were to be considered ‘national minorities’ or the range of rights deriving from such a status.³¹

International law provides no definition of what constitutes a ‘national minority’.

²⁵ See for instance Robert R. Preuhs, “The Conditional Effects of Minority Descriptive Representation: Black Legislators and Policy Influence in the American States”, 68(3) *The Journal of Politics* (2006), 585-599.

²⁶ Mansbridge, *ibid*, 630-633.

²⁷ *Ibid*, 640.

²⁸ Williams, *ibid*, 7.

²⁹ Jane Mansbridge, “What Does a Representative Do? Descriptive Representation in Communicative Settings of Distrust, Uncrystallized Interests, and Historically Denigrated Status”, in Will Kymlicka and Wayne Norman (eds.), *Citizenship in Diverse Societies* (Oxford University Press, Oxford, 2000), 108.

³⁰ *Ibid*.

³¹ Will Kymlicka, “National Minorities in Postcommunist Europe: The Role of International Norms and European Integration”, in Zoltan Barany and Robert G. Moser (eds.), *Ethnic Politics after Communism* (Cornell University Press, Ithaca and London, 2005), 191-217, at 195.



As will become apparent in the following, defining the concept of 'national minority' as the beneficiary of protections instituted by international legal documents and recommendations proved to be a very difficult task. Since the Minority Treaties adopted following the Paris Peace Conference at the end of World War One, despite the fact that a range of various legal instruments and recommendations have been adopted since then, consensus on the definition of 'national minority' has not been reached.

The Minority Treaties, the first attempt to set up a comprehensive system of minority guarantees, did not attempt to define the concept of minority, but rather referred to 'persons who belong to racial, religious, or linguistic minorities'.³²

The classic definition of what constitutes a minority was put forward much later by Francesco Capotorti, Rapporteur of the United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities, who defined a national minority as 'a group numerically inferior to the rest of the population of a state, in a non-dominant position, whose members – being nationals of the state – possess ethnic, religious or linguistic characteristics differing from those of the rest of the population and show, if only implicitly, a sense of solidarity, directed towards preserving their culture, traditions, religion or language.'³³

Several elements in this definition have been particularly debated over time. As such, the criterion of numerical inferiority was inapplicable to states like South Africa during the apartheid years,³⁴ where a white minority dominated and oppressed a black majority (hence Capotorti's addition of the criterion of non-dominance), while the criterion of citizenship has been deemed as putting an unnecessary burden on minority groups.³⁵

Other proposals for a definition of national minorities emphasised the common ethnic, religious or linguistic background that distinguished such groups from the rest of the population, while offering alternative criteria of number or citizenship. Thus, in the course of the efforts of the United Nations to reach a definition, Absjorn Eide proposed that the definition of a minority should specify that the persons constituting the group be 'resident' within a sovereign State and constitute less than half of the state's population.³⁶

³² Carlile Aylmer Macartney, *National States and National Minorities* (Oxford University Press, London, 1934), 505.

³³ Francesco Capotorti, *Study on the Rights of Persons Belonging to Ethnic, Religious and Linguistic Minorities* (United Nations, New York, 1979), para.568.

³⁴ Philip Vuciri Ramaga, "Relativity of the Minority Concept", 14(1) *Human Rights Quarterly* (1992), 104. See also United Nations Commission on Human Rights, *Definition and classification of minorities, E/CN.4/Sub.2/1985* ([s.n.], New York, 1950).

³⁵ United Nations Commission on Human Rights, "Report of the Working Group on Minorities on its third session", *E/CN.4/Sub.2/1997/18* (10 July 1997), at <[http://www.unhcr.ch/huridocda/huridoca.nsf/\(Symbol\)/E.CN.4.Sub.2.1997.18.En?Opendocument](http://www.unhcr.ch/huridocda/huridoca.nsf/(Symbol)/E.CN.4.Sub.2.1997.18.En?Opendocument)> (Accessed: October 12, 2015)

³⁶ Absjorn Eide, "Protection of Minorities. Possible ways and means of facilitating the peaceful and constructive solution of problems involving minorities", *E/CN.4/Sub.2/1993/34*, UN Commission on Human Rights, 10 August 1993, para.29, at <<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G93/145/23/PDF/G9314523.pdf?OpenElement>> (Accessed: October 12, 2015)

Stanislav Chernichenko's proposed definition emphasised the 'will to preserve the identity of the group'³⁷ in a manner quite similar to Capotorti's earlier definition. Chernichenko's criterion was however criticised as unworkable, as it did not make clear who should determine the existence of this will. Moreover, in the course of debates it was argued that the determination of such a will is closely linked to the state's policy, as in those states where assimilationist policies are in place, the will of a minority to preserve its identity would be less evident than in states where minorities are recognised and protected.³⁸

Contemporary legal documents and recommendations continue to maintain a vague approach to defining national minorities. Thus, the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (1992), with its stress on individual rights, does not include a definition of national minorities. Article 1 simply states that 'States shall protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities within their respective territories and shall encourage conditions for the promotion of that identity.'³⁹

While OSCE documents similarly avoid defining the concept, High Commissioner on National Minorities Max van der Stoel did however list a set of criteria for defining a national minority: 'First of all, a minority is a group with linguistic, ethnic or cultural characteristics which distinguish it from the majority. Secondly, a minority is a group which usually not only seeks to maintain its identity but also tries to give stronger expression to that identity.'⁴⁰ The definition appears to have many elements in common with Capotorti's, and importantly, maintains the criterion of the group's wish for preservation of identity, which UN debates found wanting.

Classic definition: 'a group numerically inferior to the rest of the population of a state, in a non-dominant position, whose members – being nationals of the state – possess ethnic, religious or linguistic characteristics differing from those of the rest of the population and show, if only implicitly, a sense of solidarity, directed towards preserving their culture, traditions, religion or language.' (Francesco Capotorti, Rapporteur of the United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities)

Council of Europe documents are equally vague in defining national minorities. An exception is constituted by the 1990 Parliamentary Assembly's Recommendation 1134 on the rights of minorities, which, although acknowledging the wide range of ethnic, linguistic, religious or other characteristics of minority groups, does attempt to provide a definition. The Recommendation defines national minority groups as 'separate or distinct groups, well defined and established on the territory of a state, the members of which are nationals of that state and have certain religious, linguistic, cultural or other characteristics which distinguish them from the

³⁷ Stanislav Chernichenko, "Definition of Minorities, Second working paper", E/CN4/Sub2/AC5/1997/WP1, UN Commission on Human Rights, 2 April 1997.

³⁸ United Nations Commission on Human Rights, "Report of the Working Group on Minorities on its third session", E/CN.4/Sub.2/1997/18, 10 July 1997, at <[http://www.unhcr.ch/huridocda/huridoca.nsf/\(Symbol\)/E.CN.4.Sub.2.1997.18.En?Opendocument](http://www.unhcr.ch/huridocda/huridoca.nsf/(Symbol)/E.CN.4.Sub.2.1997.18.En?Opendocument)> (Accessed: October 12, 2015)

³⁹ United Nations, "Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities", 18 December 1992, at <<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N93/076/55/IMG/N9307655.pdf?OpenElement>> (Accessed: October 12, 2015)

⁴⁰ Max van der Stoel, "Case Studies on National Minority Issues: Positive Results", Warsaw 24 May 1993, address given at the Conference on Security and Co-operation in Europe (CSCE), Human Dimensions Seminar, at <<http://www.osce.org/odihr/19660>> (Accessed: October 12, 2015)



majority of the population.⁴¹ Interestingly, the element referring to the group's desire to maintain its identity, present in both Capotorti's and Van der Stoel's definitions, is not included.

The Council of Europe's Framework Convention on the Protection of National Minorities does not provide any definition of what a 'national minority' is, or what criteria states could employ in defining a national minority; consequently, no considerations are provided as to the size, territorial distribution, socio-economic situation, or degree of assimilation of national minorities.⁴²

III. LEGAL FRAMEWORK

The legislation protecting the rights of national minorities started to develop into the current form after the fall of communism, at the beginning of the 1990s. At the end of WW1, the Minority Treaties and the creation of the League of Nations were the first comprehensive attempt to offer legal guarantees to minority populations in Europe. However, after WW2 a paradigm shift took place, switching the emphasis from the protection of minorities to the protection of universal human rights, which emphasised the rights of individuals rather than those of groups. Thus, the Universal Declaration of Human Rights (1948) contains no reference to rights of ethnic groups; instead, it mentions a list of individual rights which, while generally applicable, were deemed sufficient to cover the protection of members of ethnic groups as well.⁴³ Minority rights however were not completely absent from international legislation, as Art. 27 of the UN International

International consensus on minority protection in Europe is built on four moral principles: equality, recognition, inclusion in democratic decision-making, and participation in mainstream society.

Covenant on Civil and Political Rights (ICCPR) mentioned the right of minorities to enjoy and practice their own culture, religion, and language in community with other members of their group; also, Art. 1 stated the right to self-determination of 'all peoples'.⁴⁴ With the collapse of communism, it became apparent that these articles were not sufficient for the protection of national minorities in Eastern Europe. The need for more specific instruments for the protection of national minorities became apparent, triggering the adoption of a series of legal measures that

regulated the middle ground between the two ICCPR articles.

Presently, the international consensus on minority protection in Europe is built on four moral principles, equality, recognition, inclusion in democratic decision-making, and participation in mainstream society.

Equality refers to the equal treatment of persons, irrespective of numbers, before the law as well as within the law. It is a European principle developed after the French Revolution. Equality as

⁴¹ Council of Europe, "Parliamentary Assembly's Recommendation 1134", 1 October 1990, at <<http://assembly.coe.int/Documents/AdoptedText/TA90/erec1134.htm>> (Accessed: October 12, 2015)

⁴² Council of Europe, "the Framework Convention for the Protection of National Minorities", 1995, at <<http://conventions.coe.int/Treaty/en/Treaties/html/157.htm>> (Accessed: October 12, 2015)

⁴³ Among these, participation rights included the right to freedom of assembly and association (Art. 20), the right to take part in government, either directly or through freely elected representatives (Art. 21), and the right to participate in the cultural life of the community (Art. 27). See United Nations, "The Universal Declaration of Human Rights", at <<http://www.un.org/en/documents/udhr/>> (Accessed: October 12, 2015)

⁴⁴ United Nations International Covenant on Civil and Political Rights, 1966, at <<http://www2.ohchr.org/english/law/ccpr.htm>> (Accessed: October 12, 2015).

a public policy can be implemented both at the individual and at the group level. For instance, the right to education in your mother tongue is a universal human right that all people should enjoy, whereas the right to education in your mother tongue parallel to learning the predominant official language of the country is a minority right enjoyed by members of minorities qua the group. Most policies on equality are anti-discrimination policies. Some countries opt for stronger policies and adopt affirmative action and quota policies. Many countries now mainstream non-antidiscrimination across the board of public policy. Important is it that equality is achieved in all spheres of life, in public service as well as in private enterprises.

Recognition is usually awarded on the basis of past suffering. Public policies of recognition can be implemented both at the political level and in law, or they may be political without legal backing. Recognition is seen as problematic in those countries where large groups have suffered. Thus for instance, several countries have recognized the suffering of slaves but are reluctant to move to reparation, whereas in countries, such as Canada and Australia, the suffering of small, historic indigenous groups has been recognized and commissions have been established to measure out reparations. Moreover, minority groups are now often recognized on the basis of the right to be different. By the right to be different is meant the right not to be assimilated against one's own will. In other words, it is recognition that people are different and deserve the right to remain different. Recognition is only awarded at the group level and may be both symbolic or consist of hard law. Public policies may include constitutional clauses or government declarations. Constitutional recognition exists in a number of countries mainly in Eastern Europe, and declarations have been made in connection with signing international conventions, such as the FCNM.

Main legal documents covering minority rights:

- *European Convention on Human Rights (ECHR), Article 14 (1950)*
- *International Covenant on Civil and Political Rights (ICCPR), Article 27 (1996)*
- *UN Declaration on national or ethnic, religious and linguistic minorities (1992)*
- *Council of Europe Charter on Regional or Minority Languages (1992)*
- *Council of Europe Framework Convention for the Protection of National Minorities (1995)*

Collective decision-making is a democratic ideal that most European countries follow. By collective is meant that all groups are heard and have a voice even if they are not represented at the political level. Thus, not listening to all voices or deliberately suppressing certain voices amounts to violation of democratic rules and values. Countries follow different approaches of incorporating all voices. In the event groups are weak or small in numbers, public policy may allow special arrangements. Inclusion in decision-making may involve both individual and group rights. Public policy aimed at including minorities in decision-making is usually framed as special rights of representation, such as reserved seats in parliaments, exemption from thresholds for political parties, parliamentary commissions and committees as well as representation offices. Occasionally, minority parties participate in government coalitions. This has happened in Finland, Lithuania, Slovakia and Romania as well as currently in Schleswig-Holstein and Holland. Of course, some of the most powerful men in Westminster are Scottish, and currently members of the Turkish minority in Bulgaria do hold positions in the government.

Participation in mainstream society is not only a democratic ideal; it is also a question of social cohesion and prosperity. Societies that exclude certain groups from the labour market are in fact



excluding manpower and competencies; societies that exist as parallel societies risk breaking apart. The right to participation is rather recent in international law although it has deep roots in European philosophy. Aristotle advocated participatory democracy. Participatory rights are usually based on individual rights, such as anti-discrimination rights, although there may be a need to go further than anti-discrimination. Stronger public policies may be based on special rights supporting cultural identity in the public space, i.e. rights based on language, culture, religion or ethnicity.

These principles are enshrined in Europe's minority rights regime, which has been designed by policy-makers and experts in inter-governmental organizations like the UN and the Council of Europe. Thus, legal instruments of specific relevance for minority policy-making in Europe after World War II include the following legal documents, which require member states of the UN and the Council of Europe to implement minority rights:

- European Convention on Human Rights (ECHR), Article 14 (1950)
- International Covenant on Civil and Political Rights ICCPR), Article 27 (1996)
- UN Declaration on national or ethnic, religious and linguistic minorities (1992)
- Council of Europe Charter on Regional or Minority Languages (1992)
- Council of Europe Framework Convention for the Protection of National Minorities (1995)

These instruments are legally binding with the exception of the 1992 UN Declaration, which was adopted by a unanimous vote in the UN General Assembly.

Legal standards for the political representation of national minorities after 1989

OSCE standards concerning national minority protection concentrate mainly on promoting regional peace and security.⁴⁵ In this respect, the office of the High Commissioner on National Minorities (HCNM) was established in 1992 as an 'early warning' and 'early action' mechanism for conflict prevention, rather than to act as a voice for national minorities.⁴⁶ With no powers of legal enforcement, the HCNM relies mostly on quiet diplomacy and normative pressures.

Concerning the participation of national minorities to public affairs, the 1999 Lund Recommendations on the Effective Participation of National Minorities in Public Life is among the most relevant OSCE documents. The document provides a set of options for policies to be instituted by governments for the participation of national minorities. As such, the Lund recommendations include the setting up of advisory bodies to act as channels for dialogue between national minorities and national governments;⁴⁷ the special representation of national

⁴⁵ Li-Ann Thio, "Developing a "Peace and Security" Approach Towards Minorities' Problems", 52 (1) *International and Comparative Law Quarterly* (2003), 115-150, at 117.

⁴⁶ Michael Johns, "'Do As I Say, Not As I Do": The European Union, Eastern Europe and Minority Rights", 17(4) *East European Politics and Societies* (2003), 682-699, at 688.

⁴⁷ OSCE Lund Recommendations on the Effective Participation of National Minorities in Public Life, "Section D", 1999, at <<http://www.osce.org/hcnm/32240>> (Accessed: October 12, 2015)

minorities, for example, through reserved seats in one or both chambers of parliament,⁴⁸ or through lower thresholds for representation in the legislature.⁴⁹ The document also recommends the application of the principle of self-identification as one of the most important guiding principles in any system for the participation of national minorities in public life.⁵⁰ While the document does not offer a definition of national minorities, it does propose different electoral arrangements depending on the territorial distribution of national minorities.⁵¹ No other variations among national minorities (size, socio-economic conditions, degree of assimilation) are taken into account.

The ratification of the Council of Europe's Framework Convention on the Protection of National Minorities (FCNM) and European Charter for Regional or Minority Languages (ECML),⁵² although not explicitly a condition for accession to the European Union, was repeatedly mentioned in 'the EU's Regular Reports monitoring candidate states' compliance to conditionality, thus incentivising post-communist states wishing to join the EU to adopt them. These two legal instruments provided a European framework for minority protection, although arguably not one that designed universally valid and clear standards.⁵³ This was because, on the one hand, the FCNM had not been ratified by all the 'older' member states of the European Union, while the ECRML had had even fewer EU signatories.⁵⁴

The Council of Europe's Framework Convention on the Protection of National Minorities is the most important legal instrument for protecting the rights of national minorities in Europe.

Framework Convention on the Protection of National Minorities

FCNM defines in very broad terms the tasks that states should fulfil toward protecting national minorities on their territories.⁵⁵ The reluctance of the Convention's drafters to include specific criteria in defining national minorities is understandable, given the wide variety of ethnic and religious populations within the member states;⁵⁶ however, this omission from the Convention led to many reservations on the part of ratifying states (among EU states: Austria, Estonia, Germany, Latvia, the Netherlands, Denmark, Poland, Sweden, Slovenia).⁵⁷

⁴⁸ *Ibid.*, "Section A, para.6.

⁴⁹ *Ibid.*, "Section B", para.9.

⁵⁰ *Ibid.*, "General Principles", para.4.

⁵¹ *Ibid.*, "Section B" para.9.

⁵² Council of Europe, "The European Charter for Regional or Minority Languages", 1992, at <<http://conventions.coe.int/treaty/en/Treaties/Html/148.htm>> (Accessed: October 12, 2015).

⁵³ Martin Brusis, "The European Union and Interethnic Power-sharing Arrangements in Accession Countries", 1 *Journal on Ethnopolitics and Minority Issues in Europe* (2003), 1-19, at 3.

⁵⁴ In 2004, when 10 of the 12 candidate countries joined the EU, Belgium, France, Greece, Luxemburg and the Netherlands had not yet ratified the FCNM. Of these, only the Netherlands had signed the Convention by the time Romania and Bulgaria joined the EU in 2007. Cf., at <http://www.coe.int/t/dghl/monitoring/minorities/1_AtGlance/PDF_MapMinorities_bil.pdf> (Accessed: October 12, 2015)

⁵⁵ States ratifying the Convention are for example expected to 'promote the conditions necessary for persons belonging to national minorities to maintain and develop their culture, and to preserve the essential elements of their identity, namely their religion, language, traditions and cultural heritage' (Art. 5), to 'encourage a spirit of tolerance and intercultural dialogue and take effective measures to promote mutual respect and understanding and co-operation among all persons living on their territory, irrespective of those persons' ethnic, cultural, linguistic or religious identity, in particular in the fields of education, culture and the media' (Art. 6).

⁵⁶ International treaties are known to be generally ambiguous in formulation. Given that treaty drafters cannot foresee all possible applications of the text or that certain issues cannot be resolved among potential signatory states at the time of drafting, a more vague formulation is often the best solution to reaching agreement. See Abram Chayes and Antonia Handler Chayes, "On Compliance", 47(2) *International Organization* (1993), 175-205, at 188.

⁵⁷ Council of Europe, "List of Declarations Made with Respect to Treaty No. 157, Framework Convention for the Protection of National Minorities", at <<http://conventions.coe.int/Treaty/Commun/ListeDeclarations.asp?NT=157&CM=&DF=&CL=ENG&VL=1>> (Accessed: October 12, 2015)



The participation to public life of national minorities (Art.15) is phrased in broad, general terms: ‘The Parties shall create the conditions necessary for the effective participation of persons belonging to national minorities in cultural, social and economic life and in public affairs, in particular those affecting them.’⁵⁸ As such, unlike the Lund recommendations, this document presents a much higher level of generality.⁵⁹

European Charter for Regional or Minority Languages

The ECMRL is a more specific instrument, offering a menu of concrete options that states can opt in to; the Charter however focuses exclusively on the protection of languages, and has limited bearing on the participation to public life of national minorities.

IV. POLITICAL PARTICIPATION OF NATIONAL MINORITIES IN PRACTICE

With the FCNM open for signatures in 1995, many former communist states signed and ratified the convention soon afterwards. Among the commitments these states undertook by ratifying the FCNM, Art.15 cited above requires the setting up of the appropriate policies for ensuring the effective participation to public life of national minorities. With the FCNM not offering a definition of national minorities, and with Art.15 being formulated in very general terms, states could tailor the specific arrangements for national minorities in accordance with their particular demographic, cultural, social, economic, and political circumstances. As such, the policies implemented for the political participation of national minorities differ from country to country; the following is intended as a brief summary of the main types of policies implemented by states in order to ensure the representation of national minorities in national legislatures or at national level.

A common characteristic of national minority policies throughout CEE is their exclusive application to ‘traditional’ minorities (i.e. not to recent immigrants). Also, some states (Poland and Macedonia) made clear in their reservations to the FCNM that they would apply the provisions of the Convention exclusively to their citizens.

Concerning the minority groups covered by the provisions of the FCNM, two main options seem to have emerged in the region: a few states (Albania, Hungary, Macedonia and Slovenia) chose to clearly nominate those ethnic groups that benefitted from the status of national minority, while most others did not provide a list. While most CEE states did not differentiate among national minorities, applying the provisions of the FCNM equally, some chose to distinguish among them, based on either their relative size (Croatia, Montenegro) or the presence (or absence) of a kin state (Slovenia).

⁵⁸ Council of Europe, “Framework Convention for the Protection of National Minorities”, 1995, art. 15, at <<http://conventions.coe.int/Treaty/en/Treaties/html/157.htm>> (Accessed: October 12, 2015)

⁵⁹ For international legal instruments, a more general formulation is particularly useful where there is no general consensus on the issue. Council of Europe (and EU) member states have very different approaches to the issue of national minorities (some do not even recognise the very existence of any national minority on their territory, such as France; others restrict the application of minority policies to very specific groups, such as Denmark, Germany, Slovenia, or the Netherlands. Therefore a broadly formulated convention such as the FCNM serves the purpose of creating a reference framework, leaving the design of concrete domestic policies in the hands of national governments. In addition, details are vulnerable to the maxim *expressio unius est exclusio alterius* (to express one thing is to exclude another) so in this respect the reluctance to draft a Convention specifying detailed policies avoids a reductionist approach on the part of ratifying states. See Chayes and Handler Chayes, *ibid*, 189.



Political representation of ethnic minorities is carried out by means of representative associations or ethnic parties; the exception to this is Bulgaria, whose constitution prohibits the setting up of parties on ethnic grounds. Elsewhere in the region, the right to participate in general elections is not hindered by such exclusions, with some states facilitating the access of national minorities to legislatures by means of reserved seats. In this respect, Slovenia provides two reserved seats in the National Assembly for its Italian and Hungarian minorities (not for the Roma minority though); Montenegro secures a reserved seat to those minorities amounting to between 1 and 5% of the total population, while minorities over 5% of the total population benefit from three reserved seats; Croatia similarly secures reserved seats for its national minorities function of their size. Another option for facilitating the access of national minorities to legislatures is to provide a reduced electoral threshold in general elections; in this respect, Romania and Poland instituted such reduced thresholds. A different approach to political representation is the setting up of national self-governments of national minorities (Hungary, Serbia). Other states however chose not to institute such measures for facilitating national level political representation of minorities (e.g. Slovakia, Macedonia, the Czech Republic); in these cases, national minorities wishing to contest general elections face the same electoral threshold as mainstream parties; alternatively, their presence on mainstream party lists may permit representation in the legislature.

A final issue concerning electoral arrangements is related to the setting up of electoral registers for national minorities. While less common in the region, Hungary and Slovenia chose to set up such electoral registers, so as to ensure that the members of national minorities have the exclusive right of electing their representatives.

In the following section the main arrangements for political participation of national minorities will be surveyed, starting from an overview of what they entail, the advantages and challenges they present, and followed by several examples of countries that have implemented the respective arrangements.

A. Political participation based on electoral processes

Experience in Europe demonstrates the importance of the electoral process for facilitating the participation of minorities in the political sphere. States are supposed to guarantee the right of minorities to take part in the political debate and process.



1. Ethnic parties

There is a wealth of academic literature focusing on the role, functioning, and characteristics of ethnic parties. Fundamentally, all definitions of ethnic parties underscore the importance of the ethnic element in the electorate, leadership, electoral platform, or its external descriptors.

All definitions of ethnic parties underscore the importance of the ethnic element in the electorate, leadership, electoral platform, or its external descriptors.

For instance, Donna Lee Van Cott defines an ethnic party by identifying several key characteristics: the party's authorization to run in elections, the ethnic belonging of both party membership and leadership, and the centrality of ethnic or cultural demands in the party's electoral platform.⁶⁰ Other scholars choose to define an ethnic party instead on the basis of its external descriptors, such as the party's name, or the symbols associated with that

party, such as the flag, electoral logo, colors, and clothing.⁶¹ The ethnic background of the

leadership is also important, either as an ethnic identity self-activated by the leader (where the leader declares to belong to a certain identity) and one activated by others (where the leader's ethnic identity is ascribed by other people).⁶² In terms of the membership of an ethnic party, the literature on ethnic parties agrees that these parties primarily limit their appeal to a well-defined constituency, rather than seeking to broaden their appeal outside the ethnic group.⁶³ Finally, scholars observed that ethnic parties generally display a low level of ideological or programmatic commitment and that instead of promoting a particular ideology they focus on obtaining cultural, political, or material benefits for the ethnic groups they represent.⁶⁴

A challenge associated with the existence of ethnic parties is that of outbidding, where intra-minority political competition leads to an escalation of claims based on ethnic belonging.

For a system of representation based on ethnic parties to succeed, the electoral arrangements in place must allow the setting up of political parties based on ethnic affiliation and their unhindered participation in elections; additionally important are issues related to the existence of rules promoting internal democracy within these parties, ensuring strong links with their electorates.

The success of a political system where national minorities pursue their interests through ethnic parties depends on several factors. First and foremost, the electoral arrangements in place must allow the setting up of political parties based on ethnic affiliation and allow their unhindered participation in elections. Also very important are issues related to the existence of rules promoting internal democracy within these parties, ensuring strong links with their electorates.

While widely recognized as one of the most important and successful pathways through which ethnic minorities can pursue their interests, scholars have found that ethnic parties also present major challenges to the functioning of democratic societies. The most important of these challenges is the risk of ethnic outbidding, where intra-

⁶⁰ Donna Lee Van Cott, *From Movements to Parties in Latin America: The Evolution of Ethnic Politics* (Cambridge University Press, New York, 2005), 3.

⁶¹ Kanchan Chandra, "What is an Ethnic Party?", 17(2) *Party Politics* (2011), 159.

⁶² *Ibid.*, 165.

⁶³ Donald Horowitz, *Ethnic Groups in Conflict* (University of California Press, Berkeley and London, 1985), 293;

Richard Gunther and Larry Diamond, "Species of Political Parties: A New Typology!", 9(2) *Party Politics* (2003), 183.

⁶⁴ *Ibid.*

minority political competition leads to an escalation of claims based on ethnic belonging. Horowitz, in his discussion of ethnic outbidding, identifies the origins of this process in various sources of discontent inside the ethnic group: opposition factions inside the group may appear as a result of perceived lack of intra-ethnic competition, or when members are no longer satisfied with the political direction of the leadership.⁶⁵ With little scope for new supporters outside the limits of the constituency, challenger parties are incentivized to claim they present a ‘purer’ ethnic alternative, thus producing a mechanism of ethnic outbidding.⁶⁶ This in turn presents the potential for ethnic conflict, as majorities may find the claims and requests of such challenger parties as threatening to the existing order of things. However, if one differentiates among ethnic political parties more precisely (mono-ethnic or multiethnic?)⁶⁷, one finds some evidence that the occurrence of outbidding processes is more relevant to the mono-ethnic and less to multiethnic parties (by facilitating political integration, multiethnic parties contribute to democratic consolidation more than mono-ethnic parties).

In the following we outline representation of national minorities by means of ethnic parties as it occurs in four selected countries – Lithuania, Romania, Slovakia, and Germany.

Lithuania

The Electoral Action of Poles in Lithuania (originally Akcja Wyborcza Polaków na Litwie, AWPL) represents the Polish minority of Lithuania. Formed in 1994 from the political wing of the Association of Poles in Lithuania, AWPL has increased its support in the 2000s, under the leadership of Waldemar Tomaszewski. Electoral support of this Polish ethnic party had risen from 2 per cent in 2000 to over 5 per cent in 2012.⁶⁸ The party voters live in a rather compact area in the south-east of the country, around the capital city Vilnius. Allthough the party aims to be the main protector of the Polish minority rights and orients itself to the foreign policy of Warsaw, AWPL increasingly appeals also to a Russian-speaking community.⁶⁹ The unprecedented success of this party in the proportional segment of the Lithuanian electoral system in the 2012 parliamentary elections is explained by overcoming the boundaries of the own ethnic group and mobilising voters not only among Polish but also among Russian-speakers.

Romania

The Democratic Alliance of Hungarians in Romania (in Hungarian: Romániai Magyar Demokrata Szövetség - RMDSZ) is an ethnic party that illustrates very well many of the theoretical insights outlined above. RMDSZ was founded in December 1989, and throughout the years has been the main representative party of Hungarians in Romania, having a continuous parliamentary presence since its founding. In terms of the external descriptors and the ethnic belonging of the leaders and of the membership, all clearly denote the ethnic Hungarian character of the party

⁶⁵ Horowitz, *ibid*, 335.

⁶⁶ *Ibid*, 293.

⁶⁷ A typical ethnic (or mono-ethnic) party attempts to mobilize the votes of its own ethnic group, whereas multiethnic parties appeal to more than one ethnic minority group.

⁶⁸ Wolfram Nordsieck, “Parties and Elections and Europe” (2012), at <<http://parties-and-elections.eu/lithuania.html>> (Accessed: November 23, 2015)

⁶⁹ Łukasz Trybulski, “Wpadka kandydata do PE. Waldemar Tomaszewski z symbolem rosyjskiej armii”, at <<http://natemat.pl/101621,wpadka-kandydata-do-pe-waldemar-tomaszewski-z-symbolem-rosyjskiej-armii>> (Accessed: June 3, 2015). See also Vismantas Žuklevičius, “Raudonoji žvaigždė suspindo LLRA veikloje”, “Valstietis”, 11 June 2014, at <<http://valstietis.tv3.lt/Pradzia/Naujienos/Lietuvoje/Raudonoji-zvaigzde-suspindo-LLRA-veikloje#>> (Accessed: November 23, 2015).



Throughout the years, RMDSZ formed various coalitions with governing parties both on the left and the right political spectrum, also confirming the assumption put forward by scholars that ethnic parties have a weak ideological stand, promoting instead pragmatically the interests of the ethnic group they represent. Finally, the phenomenon of ethnic outbidding also occurred, with two challenger parties, the Hungarian Civic Party (Magyar Polgári Párt), founded in 2008, and the Hungarian Popular Party in Transylvania (Erdélyi Magyar Néppárt – EMN) established in 2011, running in the 2008 and the 2012 general elections by presenting themselves as alternatives to RMDSZ. Although unsuccessful in the general elections, they obtained some success at local level. Their leaders have repeatedly criticised the ‘small steps’ policy of the RMDSZ leadership, promoting more radical measures in favour of the Hungarian minority.⁷⁰

Slovakia

The Party of the Hungarian Community (Hungarian: *Magyar Közösség Pártja*, Slovak: *Strana maďarskej komunity*; SMK-MKP), formerly known as Party of the Hungarian Coalition (Hungarian: *Magyar Koalíció Pártja*, Slovak: *Strana maďarskej koalície*)⁷¹, is a political party in Slovakia representing the Hungarian minority. It was led by Pál Csáky (formerly led by Béla Bugár), until the parliamentary election of 12 June 2010 where it failed to acquire 5 per cent of the popular vote, the threshold necessary for entering the National Council of the Slovak Republic. Most of its votes went to Most-Hid⁷², a new party led by former SMK leader Béla Bugár. The party became a member of the European People’s Party (EPP) on 7 June 2000.

Germany

The South Schleswig Voters’ Association (in Danish: *Sydslesvigsk Vælgerforening*, in North Frisian: *Söödschlaswiksche Wäalerferbånd - SSW*) was founded in 1948. The political party, representing Danes and Frisians in Germany, positions itself on the left-right ideological scale and seeks to promote policies similar to Scandinavian countries.⁷³ In 2012 the SSW was part of the governing coalition with Social Democrats (SPD) and Greens in the German state “Schleswig-Holstein” (it is the first time in German history that an ethnic minority party is part of the state government) and had a position of a minister for culture, justice and European affairs. Since 1965 the SSW does not run in federal elections and is active in only one of the federal states of Germany.⁷⁴

2. Reduced thresholds

Where minorities are concentrated territorially, districts may provide sufficient minority representation. However, it might be necessary to allow for lower numerical thresholds for representation in the legislature to enhance the inclusion of minorities in the political process. In that sense geographic boundaries of electoral districts should facilitate equitable representation of minorities. Systems of reduced thresholds do raise controversy in countries where they exist as well as in countries that have not adopted the approach. The notion is often raised that

⁷⁰ Maria Adam, “Sfaturile lui Laszlo Tokes pentru UDMR în privința autonomiei”, in *Jurnalistii*, at <<http://www.jurnalistii.ro/actualitate/sfaturile-lui-laszlo-tokes-pentru-udmr-in-privinta-autonomiei/>> (Accessed: July 26, 2015)

⁷¹ Janusz Bugajski, “Political Parties of Eastern Europe: A Guide to Politics in the Post-Communist Era” (M.E. Sharpe, Armonk, New York, 2002), 318-319.

⁷² Nordsieck, *ibid.*

⁷³ The South Schleswig Voters’ Association, at <<http://www.ssw.de/en/history.html>> (Accessed: November 23, 2015)

⁷⁴ *Ibid.*

minorities get a “discount” and thus may not represent proportionally as many voters as ordinary parties while nevertheless holding the same degree of power. For this reason, securing the right to be exempt from thresholds at the constitutional level is often necessary, so that it may not be contested in courts. As such, it provides for a stronger measure from the perspective of protection while governments may see constitutionalization as a high price to pay. Perhaps for that reason, threshold exemptions do not exist in many European countries; but Italy, Germany, Poland, and Romania provide for such.

Lower numerical thresholds for representation in the legislature enhance the inclusion of minorities in the political process.

In order for reduced thresholds to represent a valid form of representation, they need to accommodate minority groups of various sizes and geographical distributions. Thus, policy makers need to be sensitive to the size of minorities on their territory, so as to create a threshold that is feasible in terms of the number of votes the minority party must generate; also, the issue of geographical dispersion must also be considered, as those minorities that are geographically dispersed face a much higher challenge in gathering a sufficient number of votes than those concentrated on a certain territory. Finally, even where such a policy of reduced thresholds is in place, certain minorities – who due to specific socio-economic conditions are characterized by a low electoral turnout (e.g. the Roma) – may fail to benefit from them; in such cases policy makers must consider adequate alternatives or ways in which the representation of such communities is ensured.

Below are several examples of countries where the system of reduced thresholds are implemented as means of promoting the participation of national minorities in political life.

Germany

Concerning participation in general elections to the German Bundestag, political parties of national minorities are exempted from the 5% threshold established by the Federal Electoral Act. The same exemption is in place in the case of the parties of the Sorbian minority participating in Land elections in Brandenburg and of the parties of the Danish minority participating in Land elections in Schleswig-Holstein. Importantly, parties of national minorities are exempted from the minimum number of votes required to qualify for political party funding.⁷⁵

The Sorbian minority, with a population of approximately 20,000 people residing in Brandenburg, did not manage to obtain direct parliamentary representation, despite the exemption from the 5% threshold. As such, as an alternative, the Land parliament set up a Council for Sorbian Affairs (Rat für sorbische Angelegenheiten) with the rights and the function of a parliamentary committee and thus is involved in legislative proposals concerning the Sorbian people.⁷⁶

In the case of the Danish minority in Schleswig-Holstein, the Land Electoral Act exempts the Danish Party ((Sydslesvigsk Vælgerforening - SSW) from the 5% threshold for elections to the Schleswig-Holstein Land parliament; this measure successfully facilitated the access of the SSW to the Land parliament.⁷⁷

⁷⁵ Council of Europe, Third Report submitted by Germany pursuant to art. 25, paragraph 2 of the Framework Convention for the Protection of National Minorities, 9 April 2009, 268, at <http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/PDF_3rd_SR_Germany_en.pdf> (Accessed: November 13, 2015).

⁷⁶ *Ibid*, 270.

⁷⁷ *Ibid*, 269.



Poland

In Poland, the participation of national minorities in general elections is facilitated by the exemption granted to organizations of national minorities from the general rule of seat allocation to the Senate. According to the Electoral Code, in the allocation of seats to the Senate, accepted are only district list of candidates of these committees, which at the country level received at least 5% of the valid votes cast. This condition does not apply to registered organizations of national minorities, thus facilitating the access of national minorities to Parliament.⁷⁸

Romania

The Romanian system for the political representation of national minorities provides that any national minority organisation can take part in the general elections. Provided that that such an organisation obtains at least 10% of the average number of votes received by an elected mainstream deputy, it can enter parliament and therefore be represented by one MP in the Chamber of Deputies. Where there are two or more organisations from the same national minority competing for entry to Parliament, the one obtaining the highest number of votes (of course on condition that it has passed the reduced, 10% threshold) will enter Parliament.⁷⁹ There is no predefined list of national minorities, meaning that any minority group passing this reduced threshold can obtain a seat as MP. Currently there are 19 minority groups represented in Parliament by 18 deputies (the Czech and the Slovak minorities chose to be represented by a single MP); the Hungarian minority has consistently managed to pass the general electoral threshold of 5%, therefore it has seats both in the Chamber of Deputies and the Senate and does not make use of the 'reduced threshold' provision. Conversely, the Roma minority, although the second largest in the country, has never been able to pass the 5% general electoral threshold, and relies on the reduced threshold for representation in parliament; however, given the size of the Roma community, representation by just one MP seems hardly sufficient and demonstrates the limits of such an arrangement.

Denmark

Danish election legislation grants the German minority's party a favourable status, in that it benefits from some rights that are normally subject to parliamentary representation. Thus the party may participate in general elections by simply notifying the Ministry of the Interior, while mainstream political parties are required to collect 20,000 signatures from the electorate to qualify as candidates; the German minority's party also has an exclusive right to use a special letter for its lists of candidates. In other words, although the Danish system does not provide a reduced threshold concerning the number of votes necessary for accessing Parliament, the elimination of the threshold of signatures necessary for participation in the general elections represents an important measure for promoting representation of national minorities.⁸⁰ It should however be noted that despite these positive measures, the German minority party has not been represented in Parliament, obtaining instead seats at local level.

⁷⁸ Council of Europe, Third Report submitted by Poland pursuant to art. 25, paragraph 2 of the Framework Convention for the Protection of National Minorities, received on 13 December 2012, at <http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/PDF_3rd_SR_Poland_en.pdf> (Accessed: November 13, 2015)

⁷⁹ See Art. 4(2) of Law 373/2004 concerning the Election of the Chamber of Deputies and the Senate, Monitorul Oficial 887 / 29 September 2004.

⁸⁰ Council of Europe, Report submitted by Denmark pursuant to article 25, paragraph 1 of the Framework Convention for the Protection of National Minorities, 6 May 1999, 41, at <http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/PDF_1st_SR_Denmark_en.pdf> (Accessed: November 13, 2015)

3. Reserved seats

Reserved seats in parliamentary assemblies are a way to recognize the right of minorities to participate in the political decision-making process. Opinions vary as to the effectiveness of reserved seats, and critics warn that they may only have tokenistic value. Many countries, however, practice the system for instance when minorities are too small to be able to compete in the regular political party system. Countries also combine reserved seats with other arrangements for representation. While reserving seats in parliamentary assemblies must be formalized, there is also an option to reserved seats in terms of cabinet positions, seats on the supreme or constitutional court or lower courts, and positions on nominated advisory bodies or other high-level organs. Many countries provide for reserved seats for national minorities, mostly in parliaments. The cases of Slovenia and Croatia, outlined below, are good examples of how such a system can successfully enhance participation of national minorities in political life.

Reserved seats for national minorities are a particularly effective way to improve the representation of minorities that are too small to be able to compete in the regular political party system.

Slovenia

Slovenia has instituted a system of reserved seats for its national minorities, whereby the Hungarian and Italian communities have the guaranteed right to one deputy each in the National Assembly.⁸¹ The two deputies are elected from special lists of candidates, voted for only by members of the national communities, and have a right of veto over laws, regulations and other legislative texts pertaining to the special rights secured to them under the Constitution. Likewise, a Commission for the National Communities, presided over by MPs representing the Hungarian and Italian minorities, has been formed within the National Assembly, monitoring all legislative regulations, which may have a bearing on the status of the national communities in the country. The Roma community in the country does not benefit from this system.

Croatia

Croatia has introduced a system of reserved seats for its national minorities based on their size.⁸² As such, national minorities in the Republic of Croatia are entitled to elect eight deputies to the Croatian Parliament who are elected in a special electoral unit that corresponds to the entire territory of the Republic of Croatia. The Serbian national minority elects three deputies, the Hungarian and Italian minority elect one deputy each, and Czech and Slovak minorities jointly elect one deputy. The Austrian, Bulgarian, German, Polish, Roma, Romanian, Ruthenian, Russian, Turkish, Ukrainian, Vlach and Jewish minorities jointly elect a single deputy. Additionally, the Albanian, Bosniac, Montenegrin, Macedonian and Slovenian minorities jointly elect a single parliamentary deputy.

⁸¹ See Council of Europe, Report submitted by the Republic of Slovenia pursuant to article 25, paragraph 1, of the Framework Convention for the Protection of National Minorities, 29 November 2000, 43-44, at <http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/PDF_1st_SR_Slovenia_en.pdf> (Accessed: October 12, 2015)

⁸² See Council of Europe, Third report submitted by Croatia pursuant to article 25, paragraph 2 of the Framework Convention for the Protection of National Minorities, 12 October 2009, 66, at <http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/PDF_3rd_SR_Croatia_en.pdf> (Accessed: October 12, 2015); Art. 16 of the Act on election of representatives to the Croatian parliament (consolidated wording), 9 April 2003, at <www.sabor.hr/fgs.axd?id=3086> (Accessed: October 12, 2015)



4. Minority seats on mainstream party lists

Often times mainstream parties choose to include on their party lists members of national minorities. The reasons for this may be found in a belief in the values of cultural diversity, or an attempt to show a commitment to equal participation, or, more pragmatically, they may hope to attract votes or other forms of political support from that respective minority. This type of representation may occur in those countries that have not adopted any special arrangements for the representation of national minorities (e.g. Slovakia, Macedonia, the Czech Republic); in such cases, national minorities must either face the same electoral threshold as mainstream parties or, alternatively, their presence on mainstream party lists may permit representation in the legislature.

Voluntary inclusion of representatives of national minorities on mainstream party lists, although a good way to promote minority issues, presents several challenges which should not be overlooked.

While such an arrangement provides the minority group with descriptive representatives present in the legislative bodies, which may in turn determine the minority's desired policy changes, a number of critiques point towards certain disadvantages of this system of representation. First, where elections take place on party lists, it may be that the minority itself has little control as to the representative who is nominated on the list; instead, it would be the party who would decide on this issue. Second, inclusion of

one or more members of a national minority on a party list may be nothing more than a symbolic gesture without practical consequences for the minority group; if the nominees are inexperienced, or if their numbers are very low, their impact on policy may be insignificant. Lastly, inclusion of minority representatives on party lists may not work in the case of minorities which are negatively perceived by majorities (such as the Roma), as parties might not want to be associated with them. This has become particularly obvious in the countries of Eastern Europe, where despite the presence of significant Roma populations, there are very few nominees of Roma background included on mainstream party lists.

Estonia

The Estonian parliament included ethnic minority parties (mainly parties of Russian-speakers) in the legislative periods from 1995 to 2003.⁸³ Later on (from 2003 onwards) ethnic minorities started to enter the legislature exclusively on the lists of the left liberal, right liberal or conservative parties. There is no formal requirement to include minorities on the mainstream party lists, however, this happens all over the entire political spectrum. This could be interpreted as a sign of the normalization of relations between the Estonian majority and the Russian minority as Estonian parties continue to actively integrate ethnic Russians into their Russians ranks.⁸⁴

⁸³ See Mindaugas Kuklys, "Recruitment of Parliamentary Representatives in an Ethno-Liberal Democracy: Estonia", in Elena Semenova, Michael Edinger and Heinrich Best (eds.), *Parliamentary Elites in Central and Eastern Europe: Recruitment and Representation* (Routledge, London, 2014), 108-109.

⁸⁴ See Vello Pettai, "The parliamentary elections in Estonia, March 2003", 23(4) *Electoral Studies* (2004), 832.

Lithuania

In Lithuania, ethnic minorities (except for the Polish minority) choose a rather conventional way into the parliament – on the lists of the mainstream political parties. For instance, the Russians usually get elected on the lists of social democrats or the Labour party. The Poles, on the contrary, tend to get into parliament through their own ethnic parties – the Union of Lithuanian Poles (Lietuvos lenkų sąjunga) in the beginning of 1990s and more recently the Polish Electoral Action (Lietuvos lenkų rinkimų akcija)⁸⁵.

5. Coalition governments

The arguably strongest form of accommodation is participation in coalition governments.⁸⁶ This presumes, however, a consistent participatory pattern in politics, not only through representation but also through effective participation in public affairs across the board. In other words, minorities will need to be represented in a broad spectre of society's institutions. It requires for the minorities to have a platform for the future of the shared nation in terms of all aspects of society management, including foreign and security policy. While coalition governments have the potential of mainstreaming minority issues and efficiently addressing the needs of minority communities, such arrangements are not without their challenges. For example, smaller minorities, due to their low electoral weight, may be excluded; additionally, such coalitions are dependent on electoral result, and therefore lack the permanent character of other types of arrangements (e.g. reserved seats in legislatures ensure the presence of minority representatives in legislatures regardless of the general electoral outcome).

While coalition governments have the potential of mainstreaming minority issues and efficiently addressing the needs of minority communities, such an arrangement carries the risk of excluding smaller minorities and dependent on the results of general elections.

Not many minorities achieve this strong presence in mainstream society. In Europe examples of coalition governments that included minority parties have existed at the national level in Belgium, Croatia, Finland, Lithuania, the Netherlands, Romania and Switzerland. At the local level, minorities have been in coalition in Germany, Italy, Lithuania, Romania and Switzerland.



⁸⁵ In the last parliamentary elections, Russians formed a coalition with the Polish Electoral Action (Lietuvos lenkų rinkimų akcija).

⁸⁶ See Michael Laver and Norman Schofield, *Multiparty Government: The Politics of Coalition in Europe* (The University of Michigan Press, 1998); Michael Laver and Kenneth A. Shepsle, *Making and Breaking Governments: Cabinets and Legislatures in Parliamentary Democracies*, (Cambridge University Press, Cambridge, 1996); Wolfgang C. Müller and Kaare Strøm (eds.), *Coalition Governments in Western Europe* (Oxford University Press, Oxford, 2003); Kaare Strøm, Wolfgang C. Müller and Torbjörn Bergman (eds.), *Cabinets and Coalition Bargaining: The Democratic Life Cycle in Western Europe* (Oxford University Press, Oxford, 2010).



Romania

A good example of a minority party successfully entering a variety of governing coalitions is *Uniunea Democrată Maghiară din România* (the Democratic Alliance of Hungarians in Romania - UDMR), the largest party representing the ++Hungarian minority in Romania. In 1996, for the first time after the fall of communism, when the Democratic Convention of Romania - the anti-communist coalition that until then had been in opposition - took office, it invited UDMR to become part of the governing coalition. UDMR's participation in government however extended beyond 2000, when the Democratic Convention left office. Thus between 2000-2004 UDMR formed a parliamentary coalition with *Partidul Social-Democrat* (Social Democratic Party – PSD), formerly PDSR, the effective successor to the Romanian Communist Party; between 2004-2008, it entered a governmental coalition with *Alianța 'Dreptate și Adevăr'* ('Justice and Truth' Alliance), formed between *Partidul Național Liberal* (the National Liberal Party – PNL) and *Partidul Democrat* (Democratic Party – PD). Between 2008-2012 UDMR continued to form part of the governmental coalition together with *Partidul Democrat Liberal* (Liberal Democratic Party - PDL), albeit intermittently, as it went twice into opposition. While initially in opposition after the general elections of 2012, UDMR entered the governing coalition together with PSD in March 2014, and continues to be a coalition partner presently. UDMR's remarkable ability to form coalitions with parties on both the right and the left range of the political spectrum has allowed it over time to successfully pursue a wide range of cultural and educational rights for the Hungarian minority.

Finland

The Swedish People's Party of Finland (originally *Svenska folkpartiet i Finland*, *SFP*) is a political party seeking to represent the interests of the Swedish speaking minority in Finland. Since its foundation the main articulated issue has been the right to Swedish language and its protection in Finland. The SFP has been in governmental positions since 1979 (with one or two seats in the cabinet of ministers) and allied with the centre-right or the centre-left in the Parliament of Finland. The party is a fully fledged member of the Liberal International.

Lithuania

Since 1990 there was one case when the ethnic minority party has been part of a governing coalition. This happened in 2012 when the government coalition of the Lithuanian Social Democratic Party (LSDP), Labour Party and the party "Law and Justice" included *The Electoral Action of Poles in Lithuania* (originally *Akcja Wyborcza Polaków na Litwie*, *AWPL*), representing the Polish minority of Lithuania⁸⁷. The AWPL got a position of the cabinet minister for energy, however, withdrew from the governing coalition in 2014⁸⁸.

⁸⁷ The Polish ethnic party received a serious invitation to join a governing coalition after the parliamentary elections at least once long before 2012, but the offer was declined by it

⁸⁸ The Union of Lithuanian Russians came to parliamentary power in 2000 as a part of the electoral A. Brazauskas Social Democratic Coalition, however, there were no representatives from the Union of Lithuanian Russians who would receive at least one position in the cabinet of ministers.

B. Political participation based on consultation processes

Consultation with minorities is particularly important in countries where there are no arrangements to enable participation of minorities in parliament and other elected bodies. As such, states can establish advisory or consultative bodies within appropriate institutional frameworks to serve as channels for dialogue between governmental authorities and minorities. In order to ensure the credibility of consultative bodies, it is essential that their appointment procedures be transparent and inclusive allowing for minorities to maintain their independence. Specific types of consultative bodies that include *ad hoc* consultations can be useful to address a *particular issue* while *special purpose committees* may be useful for addressing issues as housing, land, education, language, and culture.

1. Consultative bodies

Consultative bodies are a fairly popular option for ensuring the participation of national minority communities to public life across Europe and beyond. While such a system of consultative bodies may sound burdensome to governments due to the need to create laws, allocate resources, and create ongoing communication and consultation processes in this regard, they are usually the least costly for governments to implement. Consultative bodies exist in numerous countries across Europe, including but not exclusively in Belarus, Czech Republic, Denmark, Finland, Germany, Moldova, The Netherlands, and Romania.

When selecting consultative bodies as a means to ensure the participation of national minorities to public life, it is essential that their legal status, role, duties, membership and institutional position are clearly defined.

When selecting consultative bodies as a means to ensure the participation of national minorities to public life, it is essential that their legal status, role, duties, membership and institutional position are clearly defined. Additionally, the activity of these bodies should be adequately advertised, so as to enhance transparency, thus contributing to relationships of trust between majorities and minorities, and also between minority communities and their representatives in these consultative bodies.

In terms of the legal status, it is important that these consultative bodies have legal personality, as the absence of this may undermine their effectiveness and capacity to fulfil their mission. Also, the role and duties of these consultative bodies should be clearly spelled out; most common are the capacity to raise issues with decision makers, prepare recommendations, formulate legislative and policy proposals, monitor developments, and provide views on proposed governmental decisions that may directly or indirectly affect minorities. Very importantly, the legislation should spell out a very clear consultation procedure, whereby governments have the obligation to engage in a meaningful dialogue concerning changes in legislation and policies impinging on the rights of minority communities, and then duly heeds the opinions and recommendations expressed by these consultative bodies. Concerning membership, these bodies normally consist of representatives of national minorities, and are sometimes joined by representatives of relevant ministries and governmental bodies. The effective functioning of these bodies will require that they have adequate financial and human resources. Moreover, consultative bodies need to be duly consulted in the process of drafting new legislation, including constitutional reforms that directly or indirectly affect minorities.



In practice, while a very good tool for ensuring the participation of national minorities to public life, consultative bodies also present a few challenges. Critiques of this type of arrangement point towards the fact that sometimes such bodies are financially dependent on governments, making them less inclined to be critical of the decisions taken. Another criticism relates to the fact that governments sometimes perform these consultations only symbolically, without engaging in meaningful debate and negotiation with these advisory bodies.

Romania

The Council for National Minorities was set up in 1993 under the direct authority of the General Secretary of the Government (it was later renamed '*the Council of National Minorities*').⁸⁹ The Council is a consultative body of the government, however without having the status of a legal person. It is composed of representatives of all minority organisations represented in the Parliament of Romania.

The powers of the Council of National Minorities include making proposals for the drafting of relevant legislation, proposing measures for improving the social and cultural life of national minorities, as well as measures concerning the improvement of the system of education in the languages of national minorities, as well as submitting proposals for administrative measures concerning the various problems faced by minority communities. The Council meets in plenary sessions trimestrially, as do the sub-commissions of the Council (for culture, religion, and mass-media; for financial issues; for legislation and public administration; for education and youth; for social and economic problems; for relations with civil society and international organisations).

While the dialogic value of the Council cannot be denied, several critiques have been expressed variously in Opinions of the AC-FCNM, as well as in scholarly articles and civil society reports. These critiques refer to the membership of the Council, which includes just one organisation per national minority, and excludes all representatives of ethnic groups that are not represented in Parliament. The fact that the Council does not have a legal person, staff, or headquarters means that its efficiency is impeded; finally, it has been noted that the government does not always adequately consult the Council when adopting new legislation that impinges on the rights of national minorities.

Moldova

The Coordinating Council of Ethno-cultural Organizations operates under the auspices of the Bureau for Interethnic Relations.⁹⁰ In 2009, there were 93 organizations (representing 19 national minorities) participating in the work of the Council. The Coordinating Council has the status of the public consultative body, informing national minority organizations and involving them into the decision-making process on the state level in the spheres of their interest. The Council is designed to provide an opportunity for ethno-cultural associations to establish contacts, discuss their problems together, to take part in reaching relevant decisions and to co-operate in implementing them.

⁸⁹ See the Romanian Government Decision 137/1993 concerning the setting up and functioning of the Council for National Minorities, 74 *Monitorul Oficial*, 12 April 1993 and the Romanian Government Decision 589 /2001, concerning the setting up of the Council of National Minorities, 365 *Monitorul Oficial*, 6 July 2001.

⁹⁰ See Law 382/2001 concerning the rights of persons belonging to national minorities and the legal status of their organisations, *Monitorul Oficial al Republicii Moldova*, 107/4 September 2001.

The Czech Republic

The Council for National Minorities is a consultative body of the Government of the Czech Republic.⁹¹ It is currently made up of representatives of the following national minorities: Bulgarians, Croats, Hungarians, Germans, Poles, Roma, Ruthenians, Russians, Greeks, Slovaks, Serbs and Ukrainians. In addition, deputy ministers whose competencies include issues concerning national minorities are also members of the Council. The functions of the Council include participating in the preparation of measures of the Government which concern the rights of national minorities in the Czech Republic; commenting on drafts of laws, Government resolutions and measures which concern the rights of national minorities in the Czech Republic; preparing summary reports about the situation of national minorities in the Czech Republic for the Government; issuing recommendations focused on securing the needs of persons belonging to national minorities especially with regard to education, use of mother tongue, and matters concerning social and cultural life; coordinating the practical implementation of the Government's policy concerning national minorities by individual ministries and other government authorities.

The Council meets at quarterly intervals and reports each year to the government on its activity and on the key issues under its consideration, thereby placing the minority concerns within the realm of public debate.

2. Advisory roles in executive structures for minority representatives

Another option for governments wishing to ensure that national minorities have a say in the public realm is that of appointing representatives of minority communities in certain executive structures, thus allowing a direct input in all relevant decisions and draft legislation. Such an arrangement represents a good opportunity for mainstreaming minority issues, as such an appointee can both offer relevant and timely guidance and serve to increase the visibility of the minority s/he represents. Such an arrangement however is not without challenges. Usually, where such appointments are made, they are made for selected minorities, as those minorities that are perceived as "unproblematic" are excluded from this procedure. Furthermore, as is the case with all consultative bodies, there is a risk that such an appointment in an advisory role could be simply symbolic, without meaningful decision making powers.

Romania

The Roma minority in Romania benefits from a high-level representative within the governmental apparatus, as a State Councillor for Roma Issues to the Prime Minister of Romania was appointed in 2012 from the Roma community. However, as this was an honorary, unpaid position, the effectiveness and impact of such an appointment appears as less than ideal.

3. Ad hoc consultative processes

Sometimes states can choose to create *ad hoc* consultative processes dedicated to certain issues related to national minorities. These are a good opportunity for the coordination of policies and mainstreaming minority issues, but since they are created to address certain, selected topics, usually cannot replace permanent mechanisms for consultation.

⁹¹ Council of Europe, Report submitted by the Czech Republic pursuant to article 25, paragraph 1 of the Framework Convention for the Protection of National Minorities, 1 April 1999, 7, at <http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/PDF_1st_SR_CzechRepublic_en> (Accessed: October 12 2015)



Sweden

For minorities other than the Sami, Sweden has created no general consultation structures, relying instead on occasional meetings and *ad hoc* consultations between national minorities and relevant authorities. This method of consultation was assessed by the Advisory Committee as not fully effective in all the relevant sectors, recommending instead the creation of a more consolidated structure for such consultations.⁹²

4. Topical consultative processes

A further option for ensuring that national minorities are consulted in matters relevant to their community life is to organise consultative processes related to specific issues. This again allows for a better coordination of policies and improved selection and coordination of policies, but, as in the case of *ad hoc* consultative processes, cannot replace permanent, all-encompassing structures for minority consultation.

Denmark

Danish authorities chose to set up an informal Working Group for the facilitation of ongoing follow-up and discussions on the implementation of the Framework Convention and the European Charter for Regional or Minority Languages, which in the Opinion of the Advisory Committee has further strengthened the level of consultation between Government departments and the German minority.⁹³



⁹² See Advisory Committee on the Framework Convention for the Protection of National Minorities, "Opinion on Norway" (Council of Europe, Strasbourg, 2002), at http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/PDF_1st_OP_Norway_en.pdf (Accessed: October 12, 2015)

⁹³ See Advisory Committee on the Framework Convention for the Protection of National Minorities, "Opinion on Sweden" (Council of Europe, Strasbourg, 2002), at http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/PDF_1st_OP_Sweden_en.pdf (Accessed: October 12, 2015)

C. Non-territorial autonomy

National cultural autonomy is a concept developed in the 19th century by Otto Bauer and Karl Renner, as a proposed arrangement for managing the multiple and often conflicting claims of the ethnic groups living in the Austro-Hungarian Empire. Under the arrangement proposed by them, on the one hand, historic crown lands or provinces would be recognized as central elements in a system of territorial federalism. On the other hand, power would also be devolved to a national council (consisting of elected representatives) of each nation, particularly in matters pertaining to education, culture, the arts, sciences, museums.⁹⁴ While the practical application of their theories was limited, some of the arrangements proposed by Renner and Bauer appear to have become particularly useful in recent years as a means to accommodate ethnic diversity in modern societies in the form of *non-territorial autonomy* or *cultural autonomy*. Such an arrangement refers to a devolution of political powers to national minorities on a non-territorial basis and through voluntary individual affiliation, and presents a series of advantages: it can be used in the case of both regionally concentrated and dispersed groups; it protects minorities against coercive assimilation by regionally dominant groups; and it formally acknowledges the multinational character of a state without giving rise to territorial claims.⁹⁵

Non-territorial autonomy refers to a devolution of political powers to national minorities on a non-territorial basis and through voluntary individual affiliation. It can be used in the case of both regionally concentrated and dispersed groups; it protects minorities against coercive assimilation by regionally dominant groups; and it formally acknowledges the multinational character of a state without giving rise to territorial claims.

The case of the Schleswig-Holstein region (Land) in Germany is outlined in detail below, providing the reader with an example of the functioning in practice of a non-territorial autonomy approach.

Schleswig-Holstein

The approach applied in Schleswig-Holstein ranges between the weak and the middle of the continuum representing accommodation based on non-territorial private minority institutions. The Land of Schleswig-Holstein consists of two regions, which have historically been together since the 1200s and were constituted together as a federal unit after World War II. The double region was under Danish reign until 1867 when it was incorporated into the Prussian Confederation. In 1920 the region of Schleswig was divided in two after a referendum where the northern part voted for returning to Denmark and the southern did not. This redrawing of the Danish-German border created a minority of Danish citizens in the southern part and a minority of German citizens in the northern part, which became Danish. Today the Danish minority in Schleswig-Holstein constitutes around 50.000, whereas the German minority in Denmark numbers around 18.000. With Schleswig-Holstein's population totalling 2.8 million, the Danish minority constitutes 1.9% of the total population and in Schleswig alone around 7.8%. In the town of Flensburg, the Danish minority constitutes 20% of the population. Nevertheless, the minority lives dispersed among the German majority population. The Danish minority is fully bilingual and is recognized in the Schleswig-Holstein constitution but the main and only official language is German.

⁹⁴ Otto Bauer, *The Question of Nationalities and Social Democracy* (University of Minnesota Press, Minneapolis and London, 2000), 259-308.

⁹⁵ Rainer Bauböck, "Territorial or cultural autonomy for national minorities?", No 22 *IWE-Working Paper Series* (2001).



The current approach to accommodation is best described as a *functional cultural autonomy*, which has been developed after World War II. As a result of negotiations between the Danish and the German governments in 1954 regarding Germany's NATO membership, the two governments agreed to enter into co-operation on the protection of their kin-minorities on both sides of the border. They did not, however, sign a bilateral treaty but rather issued identical statements of intent to protect minorities in their territories. Thus, simultaneously the Prime Minister of Denmark and the Chancellor of Germany issued the so-called Bonn-Copenhagen Declarations in 1955. These Declarations are not legally binding but refer to the constitutions of the two countries and are implemented through statutes in public and private law as well as programmes.⁹⁶ The principles enshrined in the Declarations are derived from international human rights law and the European Convention on Human Rights, including the freedom of choice about membership, Part II, Article 1 of the Bonn Declaration:

It shall be possible freely to profess one's loyalty to the Danish people and Danish culture and such a profession of loyalty shall not be contested or verified by an official authority.

With regard to public policy the following points of the Bonn Declaration constitute the main pillars:

- Political representation
- Linguistic rights
- Access to media
- Cross-border activities
- Equality in public funding

Moreover, since 1990, the Danish minority has been recognized in the Schleswig-Holstein constitution, Article 5, which reads:

- (1) Declaring membership of a national minority is a free choice; such does not exempt anyone from general citizen's duties.
- (2) The state, the local municipalities and communities protect the cultural characteristics and political participation of national minorities and Volksgruppen. The national Danish minority, the German Sinti and Roma minority, and the Frisian group are entitled to protection and promotion.

1. Political participation

The right to establish a political party was first granted already in 1948 by the British occupying forces in Schleswig-Holstein. Legally, the right was established by the electoral law of 1991. The legislation includes a clause exempting the Danish minority's political party from the 5% threshold that political parties in Germany must pass to enter legislative bodies. The party must, however, secure the normally required votes per mandate in order to secure seats in the local assembly, the *Landtag*. At the last election in 2012, the minority party attracted a number of cross-over votes and was invited to join a coalition government with SPD and the Greens. Currently, it holds one cabinet seat in the government, and three seats in the legislative assembly. Thus, the level of protection in terms of political participation is currently very high. With regard to the local level of municipalities and counties, the party is also allowed to participate and currently 200 representatives of the party are members of local councils. In addition, members of

⁹⁶ Every five years the Schleswig-Holstein government issues a minority report detailing the contemporary situation and status of the minority and its institutions. See "Competence Analysis: National Minorities as a Standortfaktor in the German-Danish Border" (European Academy, Bolzano, 2007).

the minority at times win posts as mayors, and currently the lord mayor of Flensburg is a member of the Danish minority. The 5% rule also pertains to the federal level but the minority party is currently not pursuing representation at the federal level.

To compensate for the lack of representation at the federal level, a committee for the Danish minority was established in the German Federal Ministry of the Interior in 1965. The committee consists of representatives from the federal parliament, the Bundestag, from the Land Schleswig-Holstein and from the minority. It meets at least once a year and discusses matters of internal German policy with regard to human and minority rights. The Danish minority also participates in the cross-border political work and holds seats in a cross-border assembly, which, however, has no legislative powers.

2. Linguistic rights

The Land of Schleswig-Holstein is a monolingual state and all legislation, public administration and communication is in German. There is no requirement of public servants to speak the minority language, although the Bonn Declaration suggests that the use of Danish in courts and administrative agencies should be regulated. However, the state recognizes that the members of the Danish minority have the right to speak and write in the language of their choice, and in some cases, the public administration in those areas where the ratio of minorities is high will encourage civil servants who speak the minority language to use it. In practice, most members of the minority are bilingual as the minority schools teach both languages so the need to establish specific regulation is diminished.

The minority language is taught in the minority schools, and it is also a main aim of the minority's cultural organizations to expand the knowledge of the Danish language. The minority has the right according to the Schleswig-Holstein law on education to establish its own kinder gardens, schools and specialist adult education, including high schools. The schools are registered as private schools under private law but recognized as holding the function of public schools (*Ersatzschulen*) and must align curricula and grades to the Schleswig-Holstein system. Teaching materials in Danish come from Denmark mainly. Diplomas are recognized and honoured in both Denmark and Germany. The minority does not have its own university but a department of Scandinavian languages at the Christian Albrechts University in Kiel teaches Danish language and culture. Flensburg University has also started to teach Danish. In connection with the minority school system, the Danish minority has established a health organization to monitor the health of pupils. This organization also provides eldercare.

Bilingual signage is not the norm in Schleswig-Holstein but is encouraged by legislation adopted in 2007. Since 2008, the town of Flensburg has aimed at bilingual signs. Heretofore, bilingual signs are seen mainly in the private sector according to demand.

As noted, the Danish minority administers quite a number of cultural organizations. These are mainly youth clubs, sports clubs and entertainment associations as well as social clubs for retirees. There are a number of Danish churches in the region but these are administered and funded as part of Denmark's global network of seamen's churches abroad.



EQUALITY DIGNITY HUMAN RIGHTS

3. Access to media

The Bonn Declaration provisions access to the public media for the minority and publishing of public notices in newspapers in Danish. In practice, this is not followed primarily because the minority has its own newspaper and access to Danish broadcasting from across the border is readily available. Consultations exist between the two countries national media agencies, and in connection with digitalization representatives of the minorities have been included in various commissions to ensure access to Danish language media from Denmark.

4. Cross-border activities

The right to cross-border activities is a norm now in Europe although international law holds that the protection and promotion is the responsibility of the home state (as opposed to the mother state). Activities across the border are seen as relevant for the protection of identity and the promotion and maintenance of linguistic abilities. Thus, joint activities with organizations in Denmark are quite the norm for the minority organizations, especially in the area of youth and education but also with regard to cultural events focused on music and theatre.

5. Finances

The Danish minority organizations are financed mainly with subsidies from Denmark whereas the schools are co-financed with Schleswig-Holstein, usually at a rate of 60/40%. Schleswig-Holstein aims at parity between subsidies to public schools and the minority schools. This is not always achieved. In 2010, the rate was lowered to 85% due to the economic crisis; thus, the suggestion by the Bonn Declaration that the minority should be treated equally in terms of public funding was violated. With the change of government in 2012, this is, at least for now, history. Churches are fully financed by Denmark. The Danish subsidies are negotiated every year with a committee assigned to the minority by the Danish parliament, *Folketinget*, whereas the German subsidies are appropriated on the basis of number of pupils.



D. Territorial autonomy

In those cases where a minority group is situated within a specific geographical region, *territorial autonomy* may be a compromise solution whereby legislative and executive powers are shared between the central states and the respective national minority. Such a compromise on the one hand preserves the integrity of a state, while at the same time ensures the minority's self-government in the respective region.

Territorial accommodation takes a variety of shapes, which differ in several respects. A territorial solution may be a part of federal system, whereby one or more sub-state units enjoy higher degree of autonomy and self-government than the main group of federal units. Usually such devolution of powers is connected with specific characteristics of the region or the majority of the people inhabiting the region, such as for instance a separate language than the language spoken by the majority. For the same reasons, a government can also decide to devolve powers to a certain group inhabiting a homeland region, which is not however a federal unit. Such arrangements usually also provide for autonomy albeit not on the basis of the territory but qua the group. Thus, both these are explicitly justified as arrangements for specific ethnic groups, often based on history. Territorial autonomy combines self-government with the option to devolve powers on the basis of territorial management. However, it goes beyond the need to decentralize in order to accommodate the need of minorities to remain empowered in a specific region of importance to their identity. Territorial arrangements provide for a high degree of self-determination and are usually framed both constitutionally and in statutes regulating the many aspects of territorial management as well as social and cultural aspects of civil liberties. It is place at the very high end of the scale of protection, and thus on the continuum it is indicated as a strong approach to accommodation. With the strong legal framework needed, it is likely to be seen as onerous both legally and financially by governments. In addition, many governments consider awarding territorial autonomy a slippery slope towards secession and independence. Empirically, this is however not proven, as most territorial arrangements are usually to dependent on subsidies and support from greater powers. Territorial arrangements have been successfully implemented in Belgium, Canada, Denmark, Finland, Italy, Moldova, Serbia, Spain, United Kingdom, and Ukraine (before the annexation of Crimea).

*In those cases where a minority group is situated within a specific geographical region, **territorial autonomy** may be a compromise solution whereby legislative and executive powers are shared between the central states and the respective national minority.*

In the following, in-depth analyses of the Alto Adige / South Tyrol and the Aland Islands cases will be provided, as good examples of territorial autonomies.



Alto Adige/South Tyrol

The classic example of a successful territorially autonomous region is that of South Tyrol in Italy, which is often presented as a model for settling interethnic conflicts and for the successful protection of linguistic minorities.

The approach applied in South Tyrol ranges at the 'expensive' end of the continuum representing accommodation based on territorial autonomy in a region with a large linguistic minority. South Tyrol is together with Trentino one of Italy's five autonomous regions. The region consists of two provinces, both autonomous, of which South Tyrol is one.⁹⁷ South Tyrol is 69.5 % German speaking, 26% Italian speaking and 4.5% Ladin speaking. The German speaking population constitutes the majority in many rural areas, whereas in the major cities like Bolzano, Italians are in the majority. South Tyrol was separated from North Tyrol (Austria) at the Peace of Saint Germain in 1919 and never united with it again. After World War II, a bilateral treaty with Austria was negotiated and signed, the so-called Gruber-De Gasperi Agreement of 1946. This Agreement achieved international backing when it was incorporated in the Paris Peace Treaty of 1947. The Agreement included the following main points, which became part of the Autonomy Statute:

- Equality of rights
- Special safeguard provisions
- Autonomy for German speaking population
- Appropriate ethnical proportions in public service
- Education in mother tongue
- Equal status of German and Italian languages

Initially, the Agreement covered both South Tyrol and Trentino but this essentially put the German-speaking group in a minority situation, which prevented implementation of their autonomy rights. Unrest and sabotage erupted in the 1950s and 1960s. Austria took the matter to the UN, and two UN resolutions in 1960 and 1961 encouraged bilateral negotiations. This led to a second Autonomy Statute adopted in 1972 which elevated the autonomy to the constitutional level (Article 6 of Italian Constitution), secured representation in the parliament in Rome, and it set a number of goals on transfer of powers from the region to the provinces, among these:

- Transfer of executive powers from region to province
- Transfer of legislative powers from region to province
- Cultural and language rights implemented
- Principle of ethnic proportions implemented

The powers to South Tyrol are devolved at three levels:

1. Primary competences, such as regulation of provincial offices and personnel, toponomy, local culture, town and country planning, housing, environment, handicrafts, disaster-prevention, tourism, agriculture, welfare, professional education, etc.
2. Secondary competences to be exercised within the national framework legislation, such as local police, commerce, employment, industry, primary and secondary education, water supplies, public health, sport, etc.
3. Specific, shared competences with the central government by all regions as part of the co-sovereignty of Italy, such as immigration, defence and armed forces, religious matters, currency and markets, electoral laws, public order and security, civil status, judicial system, entitlements, social security, environment and cultural heritage, customs, etc.

⁹⁷ For a good, brief description of the autonomy and the history of South Tyrol, see Antony Alcock, "The South Tyrol Autonomy: A Short Introduction", at <<http://www.provinz.bz.it/en/downloads/South-Tyrol-Autonomy.pdf>> (Accessed: August 8, 2014)

In 1992, Austria and Italy jointly reported to the UN that the resolutions had been followed and a conflict settlement had been reached after assessing that all goals had been reached. A very sophisticated set of institutions have been put in place to secure continued implementation and a process whereby the legislative process in South Tyrol may also bypass the national parliament in Rome.

Article 2 of the Statute forms the basis for the autonomy of the province:

In the region all citizens are granted equal rights, regardless of the linguistic group to which they belong, and their respective ethnic and cultural characteristics are safeguarded.

From this, there are four main pillars that secure minority rights in South Tyrol:

- Cultural autonomy
- Linguistic rights
- Ethnic quota systems
- Veto right

1. Cultural autonomy

Cultural autonomy rights are implemented as a *territorial* principle with regard to the Italian constitution and as a *personal* principle with regard to the province of South Tyrol.⁹⁸ With regard to education, this means that German and Italian speakers have separate school systems where children are taught their mother tongue as primary language and the other official language as a second language. Thus there is a right to education in the mother tongue but an obligation to learn the language of the other national group. It should be noted that there is also the smaller minority, the Ladins whose language is also recognized as an official language. The province is, however, primary bilingual but trilingual according to the Statute. Parents are free to choose the school of their choice as long as they can prove that they speak the language of the school they select. The two language groups also have separate cultural institutions, including sports clubs. Health services are not separated, neither is higher education.

2. Linguistic rights

The German and Italian languages are the co-official languages of the region and they enjoy equal standing in public institutions, including courts and official administration. All legislation and communication appears in the two languages, and all public servants must master both languages. This is administered through a bilingualism exam for entering public service. Bilingualism is implemented in the public space, among others through bilingual signage.⁹⁹ The private sector is by and large also bilingual but there is no legal requirement other than what the market demands. Most recent the privatization of the railroad company and the postal service has created some issues with regard to bilingualism in the public space.

⁹⁸ For a good legal examination of the South Tyrol autonomy, see Jens Woelk, "Tolerance by Law".

⁹⁹ Signage erected by the provincial government is always trilingual



3. Ethnic quota system

The quota system aims at securing proportional representation in the public sector. It is based on the numerical strength of the language groups adjusted according to census data collected every ten years. The quota system does not apply to the federal system of services in South Tyrol, such as the Carabinieri (federal police). The quota numbers also determine distribution of funds for housing and cultural activities. In practice, young people must make a declaration at the age of 18 to the authorities as to which language group they wish to belong in terms of seeking public office or funding. It is possible to change language group every five years by making a new language declaration.

4. Veto right

The veto right exists in the local parliament, the Provincial Council or *Landtag*. The Council consists of 35 members, currently 25 German speakers, 9 Italian speakers, and 1 Ladin speaker. The veto right is not, however, absolute. If a bill is considered prejudicial to the equality of rights between citizens of the different linguistic groups or to the ethnic and cultural characteristics of the groups themselves, the majority of the Councillors of a linguistic group in the Council may request a vote by linguistic groups. If the request for separate voting is not accepted, or if the bill is approved notwithstanding the contrary vote of two-thirds of the members of the linguistic group which had put forward the request, the majority of that group may contest the law before the Constitutional Court within 30 of its publication. The appeal shall not have the effect of suspending the law. If the petitioners win the case before the Court, the veto takes effect.

5. Finances

South Tyrol covers 85% of its expenses through the tax revenue returned from the central government. This is divided by 90% from income tax revenue and 70% from VAT revenue. The remaining 15% of expenses used to be negotiated on an annual basis between the President of South Tyrol and the government in Rome; these included main federal services such as federal roads, railroads, parts of the health system etc. This has been abolished in 2009 due to the economic crisis and Italy changing its fiscal federal structure.

The Åland Islands

The Åland Islands are an autonomous territory in Finland inhabited predominantly by Swedish-speakers¹⁰⁰ and are unique in one respect: "The Åland Islands is today the only area in Europe which is both demilitarised and neutralised and where the population has an autonomous status".¹⁰¹ The autonomy arrangements were settled through international arbitration between Sweden and Finland after World War I in 1921, according to which the Islands were demilitarised and acquired a self-government through the Åland Parliament.¹⁰² The autonomy arrangements

¹⁰⁰ The absolute majority of the Åland population speaks Swedish, however, the percentage of Swedish-speakers gradually fell from 96.5 per cent in 1960 to 88.3 percent in 2014 ("Statistical Yearbook of Åland 2015", 36).

¹⁰¹ Christer Ahlström, "Demilitarised and Neutralised Zones in a European Perspective", in Lauri Hannikainen and Frank Horn (eds.), *Autonomy and Demilitarisation in International Law: The Åland Islands in a Changing Europe* (Kluwer Law International, The Hague, 1997), 52.

¹⁰² John Loughlin and Farimah Daftary, "Insular Regions and European Integration: Corsica and the Åland Islands Compared" (ECMI Report No. 5, Helsinki and Mariehamn, 1999), 20.

continue to be well anchored in international law and “can be altered or repealed only with the agreement of both the Finnish and Åland Parliaments, with the latter requiring a two-thirds majority”.¹⁰³

The main features of the autonomy of the Åland Islands – (1) demilitarisation and neutralisation, (2) the regional citizenship or the right of domicile, (3) self-government and (4) the Swedish language - are worth a more detailed description.

1. Demilitarised and neutralised zone

The demilitarisation and neutralisation of Åland Islands mean that the territory “is free from permanent military installations and forces”¹⁰⁴ and that there is an “additional obligation to keep the territory outside war operations in time of armed conflict”¹⁰⁵; inhabitants are also exempt from conscription to the Finnish military service.

The demilitarisation of Åland Islands dates back much deeper than the 1921 year. Already in 1856 a treaty under international law between Russia, Great Britain and France demilitarised the Åland Islands. However, the demilitarisation of Åland Islands was in danger during the First World War when Russia deployed troops and built military installations on the islands and when in 1918 the units of the Finnish, German and Swedish military forces were present there.¹⁰⁶ Therefore, a new solution and a new treaty for demilitarisation was needed.

After it became clear that the autonomy of Åland would fall under sovereignty of Finland, Sweden was especially interested in its demilitarisation and neutralisation. This was achieved by the final decision by the Council of the League of Nations in June 1921.¹⁰⁷

2. The right of domicile (regional citizenship)

The Autonomy Act¹⁰⁸ also regulates the regional citizenship (the so-called right of domicile) which is mandatory for voting (and standing) in local and regional elections in Åland.¹⁰⁹ The right of domicile is granted on application to the citizens of Finland who have taken up residence in Åland, have without interruption been habitually resident in Åland for at least five years and who are satisfactorily proficient in the Swedish language (Section 7 of the Autonomy Act). Forfeiture of the Finnish citizenship means an automatic forfeiture of the right of domicile.

The Autonomy Act (Section 10) also privileges the Åland citizens in terms of real property.

¹⁰³ *Ibid*, 21.

¹⁰⁴ Allan Rosas, “The Åland Islands as a Demilitarised and Neutralised Zone”, in Lauri Hannikainen and Frank Horn (eds.), *Autonomy and Demilitarisation in International Law: The Åland Islands in a Changing Europe* (Kluwer Law International, The Hague, 1997), 23

¹⁰⁵ *Ibid*

¹⁰⁶ Markku Suksi, “The Åland Islands in Finland”, in *Local Self-Government, Territorial Integrity and Protection of Minorities: Proceedings of the UniDem Seminar organized in Lausanne on 25-27 April 1996 in co-operation with the Swiss Institute of Comparative Law* (Council of Europe Publishing, Strasbourg, 1996), 20-21.

¹⁰⁷ Gunnar Jansson, “Introduction”, in Lauri Hannikainen and Frank Horn (eds.), *Autonomy and Demilitarisation in International Law: The Åland Islands in a Changing Europe* (Kluwer Law International, The Hague, 1997), 3.

¹⁰⁸ The Act on the Autonomy of Åland of 1991, at <<https://www.finlex.fi/fi/laki/kaannokset/1991/en19911144.pdf>>

¹⁰⁹ Since 1975 the land property rights belong to those only who possess the Åland citizenship.



Thus, the right of domicile guarantees the right to political participation and the right to own and possess real property in the Åland Islands. In addition to this, it also allows to fully enjoy the right to exercise a trade or profession and exempts from military service.¹¹⁰

3. Self-government

The provisions for self-government are listed in the Autonomy Act (initially accepted in 1920 and modified in 1951) which has been passed by the Parliament of Finland in 1991 and came into force in 1993. According to it, the Åland has its own taxation system and its own police. The employment in Åland police requires a Finnish citizenship, whereas the employees of municipalities and officials of Åland could also hold a citizenship of Iceland, Norway, Sweden or Denmark (Section 24).

The main institutions are the Åland Parliament (the first elections to the Åland Parliament took place in 1922) and the Government of Åland. The Governor of Åland, representing the Government of Finland, is being appointed by the President of Finland after having agreed on the candidate with the Speaker of the Åland Parliament. One more contemporary institution – the Åland Delegation – is a joint organ of Åland and the Republic of Finland.

Twenty years ago (as a consequence of the Ålandic advisory referendum in November 1994) the status of Åland Islands was modified in respect of European law: “Åland decided to join Finland’s membership in the European Union. It is the wish of the Ålanders that the future Europe will regard autonomous regions as subjects of European law”.¹¹¹

4. Swedish as the only official language of communication

The Autonomy Act secures a monolingual regime at the islands, “whereas the rest of Finland is bilingual”¹¹²: only Swedish serves as the language of official communication and school curricula, “Finish authorities must correspond with those in Åland in Swedish”.¹¹³ Since the language of instruction in public schools is Swedish, children of the Finnish-speaking immigrants are encouraged to learn Swedish as soon as possible.

In order to prevent the use of Finnish in the public life, the Ålandic newspapers do not accept and do not publish announcements or advertisements in Finnish (which is not the case with the announcements/advertisements in English or German)¹¹⁴. The role of the Swedish language is also emphasised in consumer protection: fines are imposed on shopkeepers if the products imported from the Finnish mainland have instructions on their use only in Finnish.¹¹⁵

The Swedish character of Åland Islands is also confirmed by the research studies showing that “the inhabitants of the Åland Islands display a strong “Ålandic” national identity in comparison with the Swedish-speaking population in Finland, which in general strongly identifies itself with Finland”.¹¹⁶

¹¹⁰ Kristian Myntti and Martin Scheinin, “The Right of Domicile in the Åland Islands in the Light of Human Rights Treaties and the European Integration Process”, in Lauri Hannikainen and Frank Horn (eds.), *Autonomy and Demilitarisation in International Law: The Åland Islands in a Changing Europe* (Kluwer Law International, The Hague, 1997), 136-137.

¹¹¹ Jansson, *ibid*, 1

¹¹² *Ibid*, 5.

¹¹³ Loughlin and Daftary, *ibid*, 21.

¹¹⁴ Lauri Hannikainen, “Cultural, Linguistic and Educational Rights in the Åland Islands: An Analysis in International Law”, No. 5 *Publications of the Advisory Board for International Human Rights Affairs* (1993), 60.

¹¹⁵ Hannikainen, *ibid*, 62-63

¹¹⁶ Suksi, *ibid*, 21-22.

V. CONCLUSIONS

As hopefully made clear throughout this Handbook, there is a wealth of arrangements for facilitating the participation of national minorities to public life; this in turn shows that regardless of the size, geographical distribution, or socio-economic status, there are always options for ensuring that their voices are heard and their needs and desires are taken into account.

What this Handbook attempted to provide was a tool in the hands of policy makers, minority communities, and minority stakeholders generally, enabling them to select the best method for achieving the participation of national minority communities to public life. We have tried to present a comprehensive, structured overview of the most common means of political participation identified across European countries; however, we are aware both of the fact that our list is not exhaustive, and that the discussion can be also structured in other, equally valid, ways.

In a sense, an enterprise such as this Handbook is always a work in progress; as the system of minority protection evolves, and as governments and minority communities accumulate more experience in this field, so will the arrangements for participation evolve and hopefully improve. Consequently, such an overview of the mechanisms of participation will constantly need updating, as our understanding of the advantages and challenges of each method will gradually improve, as based on the experience in various domestic contexts.

It is, to an extent, an open-ended question: how can you make sure that all voices are heard and such diverse societies as those of today? There is no single answer to that, but rather many complementary, and sometimes overlapping, answers to many more particular contexts. We hope we have succeeded in providing a useful tool to the interested readers, helping them to make sense of the many options at hand for successfully implementing the right to participation in public life of national minorities.

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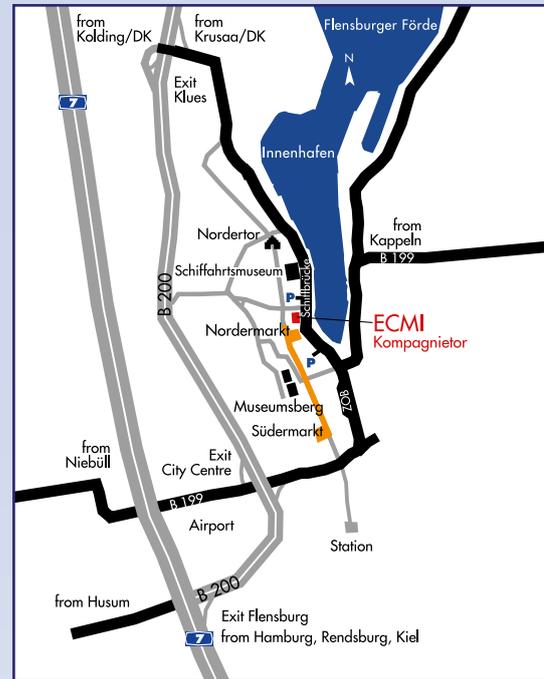
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NOTE: The case studies analysed in this Handbook reflect the legal and institutional setup at the time of writing. We welcome any comments, updates, suggestions, and corrections. Please write to carstocea@ecmi.de.



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