

ECMI
HANDBOOK



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FOR
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Compilation of Lectures: Participation of Minorities in Public Life

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The European Centre for Minority Issues (ECMI) is a non-partisan institution founded in 1996 by the Governments of the Kingdom of Denmark, the Federal Republic of Germany, and the German State of Schleswig-Holstein. ECMI was established in Flensburg, at the heart of the Danish-German border region, in order to draw from the encouraging example of peaceful coexistence between minorities and majorities achieved here. ECMI's aim is to promote interdisciplinary research on issues related to minorities and majorities in a European perspective and to contribute to the improvement of interethnic relations in those parts of Western and Eastern Europe where ethnopolitical tension and conflict prevail.

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Introduction

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This handbook is a product of the project carried out in 2014-2017 by the European Centre for Minority Issues (ECMI) in Belarus, Moldova, and Ukraine. The project, officially named the ECMI Eastern Partnership Programme (EPP) and funded by the Ministry of Foreign Affairs of Denmark, envisaged the launch and development of a dialogue between governmental officials in charge of ethnic politics and human rights, representatives of civil society organizations, and academic experts within, as well as between, each of the three countries. The project does not relate to the Eastern Partnership as an institution initiated by the European Union (EU), but is implemented within the same Eastern Partnership geographic area – hence its name. Among the major reasons for choosing these countries were, first, the fact that all three are particularly important for European development of (as they constitute a borderland of the EU), and second, that they have a number of common features related to the ethnic composition of their populations, their linguistic background, and their internal policies addressing ethnic diversity.

The project had two main thematic frameworks, namely, the participation of minorities in public life and human equality on ethnic grounds. These topics were chosen because they are cornerstones for the development of ethnic policies and ethnic relations in any country. The inclusion of people of different ethnic origins, as well as different cultural and linguistic backgrounds, into the political, economic, social, and cultural spheres is crucial for any society that aims to survive and develop as a whole, rather than as a mechanical sum of isolated "communities" that are hostile to each other or to the state. The theme of equality is of the utmost importance because the most complex and significant disputes and conflicts arise around situations and relationships that people assess as unfair – fairness being most often described in terms of equality or equal rights. Decisions made by the state and society within these two major frameworks define whether the established social order will be regarded by a given country's residents – both the majority and minorities – as fair and therefore legitimate. All the political and organizational decisions related to the use of languages, education, public support to ethnicity-based cultural associations, and the protection and development of ethnic cultures are ultimately related to the broader issues of participation and equality.

The seminars were the most important part of the project, bringing together a diverse collection of public officials, civil society representatives, and researchers to address the aforementioned main themes. Each event combined lectures by guest experts with general discussions on accumulated practical experience, achievements in analytical work, future initiatives, and prospects for future work. The participants discussed the possibility of using a variety of mechanisms to ensure the participation of national minorities in public life and the protection of equal rights, as well as the practices taking place in the three countries and their positive and negative outcomes.

The lectures were presented by European and Canadian experts in the field of minority protection and non-discrimination. The topics they discussed were very effective in jumpstarting productive discussions at the seminars. The ECMI has decided that the publication and wider distribution of the lectures would be interesting and useful for a broad audience: both those who

are professionally engaged as well as those who are simply interested in the issues of public administration, human rights, and ethnic relations. The selected lectures are grouped into two volumes. The first, which this publication summarizes, is devoted to the issues of minority inclusion into society and minorities' communication with public authorities. It is composed of lectures, which allow for discussion and deliberation on a wide range of problems associated with the active participation of minorities in public life. The second volume covers the issues of equality and non-discrimination.

The vast majority of European countries and all the countries of North America consider the ethnic, cultural, and linguistic heterogeneity of their populations to be a norm and value, and recognize a need for special legal and other social arrangements that allow people of different ethnic, linguistic, or religious affiliations to live peacefully together and enjoy all rights and freedoms. In order to achieve this, a number of international and national instruments have been developed, and in Europe in particular the protection of minorities has become the main conceptual framework for the description and analysis of problems and the ways to resolve them. Traditionally, the protection of minorities includes two main components: ensuring equality of persons belonging to minorities and creating conditions for the preservation and expression of their cultural and linguistic characteristics. Since the beginning of the 1990s, international organizations and experts theoretically recognize and legally secure a third component, which is encouraging greater minority engagement in society. This final component is inseparably linked with protecting minorities' distinct identity and the need to ensure equal rights and opportunities for all members of society. Participation is a difficult and complex issue, which encompasses several dimensions. These include the lifting of barriers that prevent individuals from fully enjoying individual rights and liberties; creating the opportunity for individuals to express and satisfy their specific needs and requirements as members of ethnic, linguistic, or religious groups; and advocating for such groups to be publicly recognized as an integral part of society. The central issue of the participation agenda is to have minorities play a greater role in the decision-making processes (especially those concerning minorities themselves), and therefore to engage in more frequent and constructive interaction and consultations with authorities.

Thus, the general thematic field covers such basic issues as: (1) what ways there are to ensure the coexistence of different groups and cultures in a single society; (2) what actions and measures, defined as "integration", contribute to social cohesion and the maintenance of internal solidarity without curtailing equal rights and identities of the people; (3) how one can understand, both theoretically and practically, ethnic groups' specific needs and interests as well as the idea of their effective representation; (4) what the legal and organizational forms of ethnic minorities' representation are; (5) in what way the public bodies responsible for ethnic diversity and for interaction with minorities shall be constructed; (6) how might the platforms and organizational forms for such interaction, namely advisory bodies, look; (7) and finally, how state bodies, independent human rights bodies, and minority organizations interact.

The texts presented in this volume reflect all these issues. **Eugenia Relaño Pastor**, a legal adviser to the ombudsman of Spain, examines the key concepts of multiculturalism, interculturalism and integration from the perspectives of political theory and international law in her article "Rethinking the notion of 'integration': building the conditions for cohesive and multicultural societies". She also analyses examples of their interpretation and practical use in individual countries.

Roberta Medda-Windischer, a senior researcher and research group leader at the Institute for Minority Rights of the European Academy in Bolzano, Italy, in her article "Integration as a Tool to Reconcile Diversity and Unity: The Squaring of the Circle?" discusses the theoretical and practical approaches to combining two seemingly contradictory requirements concerning integration policy. On the one hand, how does one secure internal cohesion and solidarity within a given society? On the other, how does one achieve this objective while simultaneously preserving freedom of cultural expression and protecting minorities', and especially immigrants', identities? Medda-Windischer examines different models that rely on suppression of differences, their containment to the private realm, or their adaptation to public institutions in an open and democratic society. She shows under what conditions it is possible to reconcile these conflicting requirements, in particular by establishing mechanisms of social inclusion and intercultural dialogue.

Detlev Rein is a member of the Advisory Committee on the Framework Convention for the Protection of National Minorities in Germany and former head of the unit responsible for national minority issues within the Ministry of Internal Affairs of Germany. His article titled "Functions and competences of public bodies in charge of minority issues at the national and regional levels" examines the functions of executive bodies responsible for ethno-national policy, their interaction with other central executive and independent human rights bodies (ombudsmen, equality commissions, etc.), as well as the coordination between central and regional authorities responsible for minority affairs.

The chapter by **Balázs Dobos**, a research fellow of the Center for Social Sciences of the Hungarian Academy of Sciences, is titled "Consultative and advisory bodies for minorities: a European overview". Dobos analyzes the theoretical foundations of advisory and consultative bodies as a form of minority participation in decision-making and in the existing international legal framework. He also provides an overview of the existing advisory bodies for minorities and minority issues in Europe.

Reetta Toivanen, associate professor of the University of Helsinki and a member of the European Commission against Racism and Intolerance, outlines the international legal framework which guarantees minority participation in public life in her article "European models of communication between governments and minorities: towards respect for human rights standards". She also elaborates on the basic institutional mechanisms of participation in Europe and worldwide, such as advisory structures for joint decision-making and autonomous institutions, which provide an opportunity for minorities to run their own affairs independently.

Petar Teofilović is a professor at Novi Sad University in Serbia and the former Ombudsman of the Autonomous Province of Vojvodina. In his chapter "Some institutional mechanisms for communication between the state and ethnic minorities: the case of Serbia", Teofilović analyses how various state and non-governmental bodies involved in ethno-national policy-making (parliamentary commissions, executive bodies, ombudsmen, minority councils, ethnic councils, and coordinating bodies) are created, and how they operate and interact with each other.

The presented collection, though it encompasses the main aspects and problems related to the integration and participation of minorities, cannot be regarded as a wholly comprehensive reference on the topic as minority issues are too internationally varied and complex for any one such publication to offer universal guidance. Nonetheless, this publication gives clear guidance

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in a theoretical and practical respect and serves as a solid introduction to a complex thematic subject for those who are directly involved or interested in ethnic issues, particularly concerning the Eastern borderland of the European Union. 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.

Rethinking the Notion of ‘Integration’: Building the Conditions for Cohesive and Multicultural Societies

Eugenia Relaño Pastor

1 Identifying and Responding to ‘Difference’: from Multiculturalism to Interculturalism

1.1 Clarifying uncertain terms

Over the last 10 years, we have witnessed rapid and significant developments in how pluralistic societies attempt to live with ‘difference’. Contemporary debates offer a variety of analyses and formulations about citizenship, identity, belonging, and difference. How the idea of difference is translated into both everyday encounters as well as institutional experiences in society has generated numerous debates.

Academic and public debates go in circles when trying to understand the meaning and the extent of concepts such as ‘multiculturalism’ and ‘interculturalism’. One of the current trends is to defend an innovative and realistic ‘interculturalism’ against a discredited and simplistically viewed ‘multiculturalism’. By 2008, many European states had already endorsed the claim that multiculturalism had failed, regardless of whether those states were governed by left-wing or right-wing parties, or were traditionally pro-multicultural (like Britain or the Netherlands) or anti-multicultural (like France or Greece). Political leaders such as Prime Minister David Cameron and German Chancellor Angela Merkel announced the obituary of ‘multiculturalism’ (“State multiculturalism...”, 2011). Angela Merkel, for example, declared that “multiculturalism has failed, utterly failed,” despite Germany never having adopted a multiculturalist policy agenda (“Merkel says...”, 2011). Such statements appear to be a clear political consensus that we may need a post-multicultural alternative, to be called ‘interculturalism’.

Not only have specific countries decided to give up this uneasy concept but the international community as a whole has seemed keen to abandon such controversial terminology. The influential *White Paper on Intercultural Dialogue* (2008) from the Committee of Ministers of the Council of Europe concurred that, due to the failure of multiculturalism, interculturalism should become the preferred model for Europe:

In what became the western part of a divided post-war Europe, the experience of immigration was associated with a new concept of social order known as multiculturalism. This advocated political recognition of what was perceived as the distinct ethos of minority communities on a par with the ‘host’ majority. While this was ostensibly a radical departure from assimilationism, in fact multiculturalism frequently shared the same, schematic conception of society set in opposition of majority and minority, differing only in endorsing separation of

the minority from the majority rather than assimilation to it [...] Whilst driven by benign intentions, multiculturalism is now seen by many as having fostered communal segregation and mutual incomprehension, as well as having contributed to the undermining of the rights of individuals – and, in particular, women – within minority communities, perceived as if these were single collective actors. The cultural diversity of contemporary societies has to be acknowledged as an empirical fact. However, a recurrent theme of the consultation was that multiculturalism was a policy with which respondents no longer felt at ease (Council of Europe, 2008, pp. 18-19)

The intercultural approach, it argues, avoids these failed extremes of assimilation and multiculturalism by both acknowledging diversity and insisting on universal values:

Unlike assimilation, [the intercultural approach] recognises that public authorities must be impartial, rather than accepting a majority ethos only, if communalist tensions are to be avoided. Unlike multiculturalism, however, it vindicates a common core which leaves no room for moral relativism. (Council of Europe, 2008, p. 20)

However, the *White Paper* gives no examples of multiculturalist policies premised on moral relativism, and also does not cite any evidence that the problems of social segregation are worse in countries that embraced multiculturalism than in those that rejected it.

Following the same pattern of the Council of Europe, UNESCO, during its preparation of the *World Report on Cultural Diversity* in 2008, also premised that there was a consensus for a post-multiculturalist alternative at the global level that needed to be framed in the language of interculturalism (UNESCO, 2009). Thus, both the Council of Europe and UNESCO, although previously perceived as standard-bearers for multiculturalism, were seen to support a necessary shift from multiculturalism to interculturalism. As Will Kymlicka points out:

The ‘interculturalism’ as a remedy for failed multiculturalism’ trope is not really intended to offer an objective social science account of our situation, but rather, I believe, is intended to serve as a new narrative, or if you like, a new myth [...] Across Europe, and around the world, we see popular discontent with diversity, but this new narrative tells people that their discontent is not with diversity as such, but with a misguided and naive ‘multiculturalism’. [...] It seems that multiculturalism is offered up as a sacrificial lamb; a handy scapegoat for popular discontent, in the hope that this will undercut support for populist, anti-immigrant or anti-Roma, xenophobic parties. The evidence suggests that popular discontent with immigrants is, in fact, higher in countries that did not embrace multiculturalism, and that there is also no evidence that adopting multiculturalism policies causes or exacerbates anti-immigrant or anti-minority attitudes. (Kymlicka 2012a, pp. 213-14)

It is clear that there is a lot of confusion about what multiculturalism is and what it is not. There is more than one form of multiculturalism and each affects integration in different ways. As Modood (2011) argues, in order to bring people closer to advocating for multiculturalism, as well as understanding their objections, it is important to clarify the key terms of diversity, assimilation, integration, multiculturalism, and cosmopolitanism:

(1) *Difference* refers to how people identify themselves (e.g., as ‘white’, ‘black’, ‘Chinese’,

'Muslim'), how they identify others (again, as 'white', 'black', 'Chinese', 'Muslim' etc) and how they are identified by others ('white' etc). These identities "would fall, or not necessarily, within the grounds of race, ethnicity, religion, culture and nationality" (Modood, 2011, p.47).

(2) *Assimilation* is where the processes affecting change and the relationship between social groups are seen as one-way. As result, newcomers try to become as much like their host citizens as possible. While 'assimilation' has become a less widely used term in favour of 'integration', even today when some politicians use the term 'integration', they actually mean what academics have defined as assimilation.

(3) *Integration* is "where processes of social interaction are seen as two-way, and where members of the majority community as well as immigrants and ethnic minorities are required to do something" (Modood, 2011, p. 48). The host society is the site for the institutions, such as employers, civil society and the government, in which integration takes place. It is important to distinguish between individualist-integration and multiculturalism. The integration of individuals means that institutions may provide adjustments in relation to migrants or minorities as only individual claimants, and the task is then to remove the obstacles that prevent the newcomers to be on equal footing with all the citizens in the host society (Barry 2001). As result, "minority communities may exist as private associations but are not recognised or supported in the public sphere" (Modood, 2017, p. 389).

(4) *Multiculturalism* is where the processes of integration are seen both as two-way and as involving groups and individuals working differently for different groups (CMEB, 2000; Parekh, 2000; Modood, 2007). In this understanding, each group is distinctive; therefore, integration has to consist of multiple templates (Modood, 2011). The integration of groups is in addition to – not an alternative to – the integration of individuals, anti-discrimination measures, and a robust framework of individual rights. Multicultural accommodation of minorities is thus different from individualist-integration because it explicitly recognises the social reality of groups, not just of individuals.

(5) *Cosmopolitanism* emerges by accepting the concept of difference while dissolving the concept of groups. Neither minority nor majority individuals should think of themselves as belonging to a single identity but be free to mix, according to cosmopolitanism. People should be free to unite across communal and national boundaries and should think of themselves as global citizens (Modood, 2011; Ruiz Vieytez, 2014).

It is important to clarify these concepts, not only for the purpose of understanding the real meaning of each term, but because such clarification is also relevant to unveiling possible discrepancies between multiculturalism and interculturalism in rhetoric. Consequently, policymakers and politicians could therefore still retain much of what they have adopted as multiculturalism and simply re-label it as interculturalism.

1.2 What are the key features of interculturalism?

Interculturalist policy is explicitly presented as an alternative to multiculturalism. The *White Paper on Intercultural Dialogue* distinguishes multiculturalism from interculturalism as follows:

Multiculturalism is now seen by many as having fostered communal segregation and mutual incomprehension, as well as having contributed to the undermining of the rights of individuals – and, in particular, women – within minority communities, perceived as if these were single collective actors. The cultural

diversity of contemporary societies has to be acknowledged as an empirical fact. However, a recurrent theme of the consultation was that multiculturalism was a policy with which respondents no longer felt at ease.

Neither of these models, assimilation or multiculturalism, is applied singularly and wholly in any state. Elements of them combine with aspects of the emerging interculturalist paradigm, which incorporates the best of both. It takes from assimilation the focus on the individual; it takes from multiculturalism the recognition of cultural diversity. And it adds the new element, critical to integration and social cohesion, of dialogue on the basis of equal dignity and shared values. (Council of Europe 2008, p. 19).

Interculturalism is about the preservation of diversity, not about exclusion or assimilation – a characteristic that appears to be in line with multiculturalism. From this perspective, policymakers promoting interculturalism want to preserve the key of liberal multiculturalism, which means the affirmation of a culturally diverse polity (as opposed to other exclusionary or assimilationist approaches), while also reacting to, and in fact maintaining, the claim that “multiculturalism failed”. Conforming to this approach, defenders of interculturalism have tried to correct the deficiencies of multiculturalism by:

1. Recognizing the right to individual cultural identity and practice – rather than the collective right to cultural community – so long as these do not infringe on the human rights of others.
2. Promoting intercultural dialogue, mixing, and hybridity (as opposed to a “mosaic” of separate cultures) as a means of overcoming segregation.
3. Ensuring equality of opportunity (rather than guaranteeing social welfare) through measures that are diversity-sensitive – the goal being to overcome “exclusion” via integration into the labour market.¹

If interculturalism is an ‘updated version’ of multiculturalism, the question is: what is being ‘updated’? (Meer & Modood, 2012a; 2012b). If it is not an updated version, in what ways is interculturalism different from multiculturalism?

Modood presents the “interculturalism versus multiculturalism” debate as one strand of a wider discussion concerning the proper ways of reconciling cultural diversity with enduring forms of social unity (2011). There is a need to maintain the key features of interculturalism and to be allied with multiculturalism rather than present it as an alternative (Modood, 2011; Keval, 2014). Meer and Modood (2012a) have gone on in a number of publications to outline four main issues focused on the comparison between these two controversial terms: (1) communication and dialogue as a defining feature of interculturality as opposed to multiculturalism; (2) interculturalism as ‘less groupist and culture bound’, and therefore more interactive; (3) interculturalism as reinforcing a stronger sense of national identity through cohesion; and, (4) interculturalism as more likely to prevent illiberal practices within cultures.

After a number of publications that tackle these issues, the authors (Meer and Modood, 2012a)

¹ See European Web Site on Integration: <https://ec.europa.eu/migrant-integration/main-menu/eus-work/mandate>. The European Web Site on Integration is a unique one-stop resource point for practitioners working on integration issues, both in non-governmental and governmental organizations. The EU Common Agenda for Integration, presented by the Commission in 2005, provides a framework for a series of supportive EU mechanisms and instruments to promote integration and facilitate exchange between integration actors, such as the European Web Site on Integration and the European Integration Forum, which became the European Migration Forum in 2015. There have been identified four areas of integration as priority areas and employment is the most vital part of the integration process.

come to the conclusion that interculturalism and cohesion are concepts that have indeed been historically incorporated into multicultural discourse – hence there is no need to present them alternatives.

I would like to highlight some ideas to keep in mind when we pretend to judge multiculturalism as a “dead policymaking model”:

1. *Communication* is said to be a defining characteristic of interculturalism. The question is to what extent this can be claimed as either a unique or distinguishing quality of interculturalism, when dialogue and reciprocity are also foundational to most accounts of multiculturalism (Meer and Modood, 2012b). In Taylor’s founding essay on multiculturalism in political theory, *The Politics of Recognition* (1992), Taylor characterizes the emergence of modern identity politics as based on an idea of ‘recognition’. In a similar case, Bhikhu Parekh, in *Rethinking Multiculturalism* (2000), argues that cultural diversity has an intrinsic value precisely because it challenges people to evaluate the strengths and weaknesses of their own cultures and ways of life. Communication and dialogue are thus (in different ways) shown to be integral to the political advocacy of multiculturalism.

2. *Interculturalism* is concerned with the task of developing cohesive civil societies by turning notions of singular identities into a shared, common value system and public culture. Here, we need to distinguish between two different geopolitical discourses on interculturalism. On one hand, discourses of interculturalism in Europe tend to be relatively apolitical and rather critical towards multiculturalism, without explicitly offering an alternative political approach. On the other hand, interculturalism in Canada (and Quebec in particular) has developed a distinctive intercultural political approach to diversity that is clearly in opposition to Federal Canadian multiculturalism. These interculturalist theorists from Quebec make a moral argument for the recognition of a distinct sub-state nation and are much less concerned with the diversity of the people. In this sense, the Canadian form of interculturalism, with its emphasis on multi-nationalism, fails to distinguish itself from the radical multiculturalism.

3. *Committed to a stronger sense of whole* is the preferred concept of defenders of interculturalism because it emphasises citizen interaction and participation in a common society. Multiculturalism meanwhile tends to represent minority groups within a society and fails to represent the society as a whole, which may encourage resentment, fragmentation, and disunity. This can be prevented or overcome through a form of interculturalism that promotes community cohesion on a local level. This latter approach, however, ignores two points:

Firstly, the struggle for a prescribed “sense of whole” retains a bias towards the majority, which places the burden of adaptation upon the minority – a characteristic that is inconsistent with ‘mutual integration’. All civic and democratic cultures are inevitably rooted in such ethno-national and religious predispositions (Bader, 2005). Secondly, for these previously stated reasons, it becomes necessary to emphasize a renegotiation of a more inclusive and unifying national identity. Strong multicultural identities are advantageous as they are not fundamentally divisive or subversive. They do, however, require an accompanying framework of vibrant, dynamic, national narratives that give expression to a national identity (Modood, 2007b).

4. *Illiberalism and culture*. The fourth charge is that multiculturalism lends itself to illiberalism and relativism, whereas interculturalism has the capacity to criticise and censure culture as part of a process of intercultural dialogue. This is particularly obvious in the debates concerning the accommodation of religious minorities, especially on issues of gender equality and sexual

orientation. However, some of the most criticized practices are not religious, but cultural in nature. This particular tendency to favour ethnicity and fault religion is typical secularist bias, and has condemned people from many faith traditions, especially Muslims (Relaño Pastor, 2014).

By reviewing these previous points, the answer to the question on whether interculturalism is an 'updated version' of multiculturalism is "no". Many of the positive qualities of interculturalism – in terms of encouraging communication, promoting unity, and challenging illiberality – are qualities already attributed to multiculturalism. As Meer and Modood (2012b) maintain:

...multiculturalism surpasses interculturalism as a political orientation that is able to recognise that social life consists of individuals and groups, and that both need to be provided for in the formal and informal distribution of powers, as well as reflected in an ethical conception of citizenship, and not just an instrumental one. (p. 192)

1.3 Is there a new kind of multiculturalism in Europe?

Before we can decide whether to celebrate or lament the fall of multiculturalism in Europe, we first need to make sure we know how multiculturalism has developed in continental Europe in particular.

Multiculturalism is part of the larger human-rights revolution involving ethnic and racial diversity. Prior to World War II, ethno-cultural and religious diversity in the West was characterized by a range of illiberal and undemocratic relationships of hierarchy, justified by racist ideologies that openly claimed superiority of some cultures and their right to rule over others. After World War II, the United Nations rejected these ideologies in favour of a new ideology promoting the equality of races and peoples. In the late 1960s, the struggle for multiculturalism and minority rights emerged.

The multicultural reforms started from the antidiscrimination principle and went above and beyond it to challenge other forms of exclusion or stigmatization. Yet ethnic and racial hierarchies persist in many societies and are measured in terms of economic inequalities, political underrepresentation, social stigmatization, or cultural invisibility. It is important to distinguish multicultural policies for migrants from the claim of indigenous people. Multicultural citizenship for immigrant groups does not involve the same types of claims as those of indigenous peoples or national minorities (immigrant groups do not typically seek land rights, territorial autonomy, or official language status, for example).

If multiculturalism has been inspired by human rights norms, and seeks to deepen the relations of democratic citizenship (and indeed if there is some evidence that it is working), then why has there been such a retreat from this term?

Rhetoric versus Reality

Part of the answer is that reports on the death of multiculturalism have been exaggerated. The Multiculturalism Policy (MCP) Index ranks the strength of immigrant MCPs across 21 OECD countries at three points in time: 1980, 2000, and 2010. The clear trend has been toward the expansion of MCPs over the past 30 years, including in the last ten although there are some high-profile exceptions (Tolley, 2016).² The retreat may indeed be more a matter of discussion

² There has been a significant reduction in the Netherlands, and modest ones (from a low base) in Denmark and Italy. The last decade has also seen a strengthening of MCPs in a number of countries, including Belgium, Finland,

than of actual policy creation and implementation. In an overview of the situation across Europe, Steven Vertovec and Susan Wessendorf (2010) conclude that while the word multiculturalism “has mostly disappeared from political rhetoric,” it has been replaced with a “pervasive emphasis on so-called integration”. Policies and programs once deemed ‘multicultural’ continue everywhere.

Proliferation of Civic Integration Policies

Something has clearly changed at the public policy level. The main policy change has not been the abandonment of MCPs, but rather the proliferation of “civic integration” policies, typically in the form of obligatory language and country-knowledge requirements. Civic integration has been primarily focused on the integration of immigrants into mainstream society. Australia and Canada were the earliest adopters, and remain the main supporters, of MCPs. The two countries have always had strong integration policies, focusing on learning the national language and shared liberal values.

Consequently, there is no inherent incompatibility between multiculturalism and civic integration. Civic integration policies themselves are, however, very diverse in content and form, and in some cases the shift to civic integration is a rejection of multiculturalist principles and policies. According to Banting & Kymlicka (2012), there are two potential sources of conflict that can be identified:

(1) The first is a shift from “rights” towards “duties”. Some countries have developed voluntary approaches that emphasize immigrants’ right to integrate and provide supportive programs for them to do so. Other countries, however, have made integration a duty, establishing mandatory programs and denying immigrants access to social rights or residency renewals if they fail to pass certain integration thresholds. This shift from rights to duties raises a danger that those groups deemed “unworthy” of being treated as rights-bearing individuals (in particular non-white, non-Christian immigrants) will be targeted. Insofar as perceptions of the unworthiness of immigrants underpin coercive integration policies, some coercive integration strategies negate a multicultural affirmation of diversity.

(2) The second is the change of definitions on “national identity” and national culture. In Germany and France, for example, an immigrant may be refused naturalization if he or she is deemed to have an excessive attachment to his or her home country or religion. In these cases, national identity is implicitly presented as having a zero-sum relationship with immigrants’ prior identities. Immigrants are not invited to add a new identity to their old ones.³

These reflections about the retreat from multiculturalism and the convergence on civic integration obscure the fact that a form of multicultural integration still remains a live option for European democracies.

As Kymlicka points out (2012b), the ideal of *multiculturalism-as-citizenization* should remain a

Greece, Ireland, Norway, Portugal, Spain, and Sweden. Talk of multiculturalism is unfashionable in political circles. (Tolley, 2016)

³ While most countries require that citizenship applicants pass a language test, some countries set the bar much higher than others, requiring immigrants to acquire close to native-born proficiency in language and cultural knowledge. Citizenship tests in Denmark and Canada illustrate this difference. Both countries use citizenship tests to promote a national identity and a national language. The Canadian citizenship test, however, both implicitly and explicitly assumes that many immigrants will want to be multicultural citizens who combine a strong ethnic identity with a strong Canadian national identity, whereas the assimilationist Danish test seeks to exclude such would-be multicultural forms of citizenship. (Banting & Kymlicka, 2012)

salient option in the toolkit of democracies. The crucial question is why multicultural citizenship works at some times and in some places but not in others. The historical record suggests that certain conditions must be in place to have a practice of multiculturalism *as citizenization*.

The first condition is desecuritization. Where states feel insecure in geopolitical terms (fearful of neighbouring enemies), they are unlikely to treat their own minorities fairly. Unfortunately, this fact remains an issue with respect to certain immigrant groups, particularly Arab/Muslim groups after 9/11. The second precondition is human rights protection, especially when regarding minorities. In this case, once again, Muslims are often singled out. Indeed, much of the backlash against multiculturalism is fundamentally driven by anxieties about Muslims in particular, and their perceived unwillingness to integrate into liberal-democratic norms. These two factors are applicable to all forms of multiculturalism. However, there are also factors that have a specific impact on immigrant multiculturalism.

(1) *Control over borders*. Backlash against multiculturalism is generated by countries that are faced with large numbers (or unexpected surges) of “unwanted” immigrants – namely those labelled either as unauthorized or asylum seekers.

(2) *Homogeneity or heterogeneity of immigrants*. Multiculturalism arguably works best when it is genuinely multicultural – when immigrants come from many different countries, rather than from one single country. For example, in Canada, immigrants come from all corners of the world and no single ethnic group forms more than 15 percent of the total immigrant intake.

(3) *Economic (reciprocal) contribution*. Multiculturalism is seen as part of a package of mutual rights and responsibilities in which the state makes good-faith efforts to accommodate immigrants, and immigrants make good-faith efforts to integrate, so as to coproduce new relations of democratic citizenship. The most visible manifestation of this, in most countries, is their economic contribution. Sometimes a threat to multiculturalism arises whenever immigrants are perceived as avoiding work and instead living off the welfare state. In some Northern European countries, it appears that governments show more concern over giving immigrants easier access to the welfare state than to the labour market.

Despite the prior discussion of the retreat from multiculturalism, it seems that multiculturalism has a bright future. Public values and constitutional norms of tolerance, equality, and individual freedom push in the direction of multiculturalism and towards public recognition and accommodation of ethnocultural diversity.

2 Integration and Multiculturalism in Various Countries of Europe

2.1 United Kingdom

2.1.1 The Context of Integration

Despite experiencing large-scale immigrant flows and settlement over the past half century, the United Kingdom has not developed a formal integration program. Nowadays, migration has become more temporary in nature. Since the 1960s, earlier waves of immigration to the United Kingdom (mainly from the Caribbean, India, Pakistan, and Bangladesh) gave rise to the race-relations model of addressing integration. Today however, a major proportion of immigrants are

coming for short periods of time (Saggarr and Somerville 2012). Around three quarters of the population are hostile to immigration (both legal and illegal), which is higher rate of hostility than that seen in Europe and North America (German Marshall Fund, 2010). What British society understands integration to mean is not clear, but there appears to be two identifiable trends. On the one hand, slightly over half of the British public thinks that the integration of immigrants is “poor” and, on the other hand, they tend to view children of immigrants more positively.

2.1.2 The Meaning of ‘Britishness’

The building of a sense of national identity is not the subject of tangible initiatives or public policy programs and is located more in the arena of public debate. The concept of ‘Britishness’ has changed in recent decades and it has been addressed in the following reports:

1. Education for All: Report of the Committee of Enquiry into the Education of Children from Ethnic Minority Groups (Swann Report 1985);
2. Commission on Multi-Ethnic Britain (CMEB/Parekh Report 2000);
3. Commission on the place of Religion and Belief in British Public Life.

These reports focused on the place of immigrants in British society, how they are changing it, and how it should be further changed to accommodate the minorities. It should, however, be noted that *Swann* specifically limited itself to reviewing the disadvantages that Black and Asian children are facing in English schools, as well as how they are making progress. The report’s deliberations on education were cast within a vision of accommodating cultural diversity within a framework of shared values and a pluralised and expanded sense of what it is to be British (Modood, 2014).

The Commission on Multi-Ethnic Britain (CMEB) broke new ground in a number of ways relating to the discourses and understanding of post-immigration minorities and how they should be accommodated in Britain. One of these was the inclusion of religious community identification and needs within the conceptualisation of the ‘multi-ethnic’. The CMEB acknowledges that religion has been neglected within the frame of racial equality. One of most controversial chapters was Chapter 2, where it was argued that there has never been a single conception of Britishness, and Chapter 3, “Identities in Transition”, where it was stressed that Britain’s sense of nationhood must reflect its diversity and not a single collective vision of the “good life” – ethnic minorities are not just passively accepting Britishness, but making it their own (Modood, 2014).

The Commission on the Place of Religion and Belief in British Public Life (CORAB) was not concerned directly with the position of minorities, but examined how ideas of Britishness and national identity may be inclusive of a range of religions and beliefs, which, in turn, may influence people’s self-understanding. It also explores how shared understandings of the common good may contribute to greater levels of mutual trust and collective action.

After the experience of welcoming foreigners in UK, there has since been no public agreement or policy consensus on what the most important indicators of integration or cohesion are. As Saggarr and Somerville (2012) conclude, the most important predictors of unsuccessful communities are not immigration, but socioeconomic deprivation and quality of public services. In other words, the poorer the community, the less people feel it is integrated – irrespective of the presence of immigrants.

2.1.3 Integration Policies

It is important to recognize that the United Kingdom's immigration profile today is very different from the picture prior to 1997. Up until around the turn of the century, a "race-relations" model was the standard shorthand description of UK policy. Integration policy was built around anti-discrimination law. The most potent legal measures came in the form of antidiscrimination law, initiated in 1965 and subsequently strengthened in 1968, 1976, and 2000. The legal framework was reinforced by institutions led nationally by the Commission for Racial Equality and by local governments. It is ethnic diversity – not immigration – that has driven the UK integration agenda. Statistics have traditionally been collected on ethnic minorities (not on place of birth or on parental place of birth), and minorities have been the targets of social and economic policies.

The government's approach to integration has changed substantially since the mid-1990s, with the emphasis shifting towards increasing the obligations of new, first-generation immigrants to integrate (for example, through the introduction of a language examination and citizenship test in 2004). Beginning with the 1997-2010 Labour administration, there has been a clear reaction to the doctrine of multiculturalism (defined as state support for, and funding of, minority groups to preserve their culture, which has been blamed for leading to segregation).

In 2001, three events shook public and government confidence in a race-relations model: (1) Riots involving minority communities in the northern part of UK; (2) the refugee crisis; (3) and the September 11 terrorist attacks (as well as the July 7, 2005, terrorist attacks in London). These events shifted the focus of immigrant integration policies away from a race-relations model. In order to characterize this shift, there are at least six strands of policy to consider: refugee integration policy, community cohesion from 2001 to 2010, a strong and broad emphasis on equality, mainstream policies with some targeting of immigrant groups embedded within them, counterterrorism (CT) policy, and citizenship policy (Saggar and Somerville 2012).

(1) Refugee Integration Policy

A formal immigrant integration policy has been applied in the United Kingdom to only one subcategory of migrants, recognized refugees. A coherent vision was first set out in 2000 (and expanded in 2005), with an aim to raise refugees' awareness of and adjustment to British societal norms and values. The government has been supportive of refugees, and has made efforts to improve the asylum system (with reforms to reduce the number of families in detention). However, there have also been significant cuts to advice services, core support, and training programs directly benefiting refugees.

(2) Community Cohesion Policy

Community cohesion policies are closely associated with a response to the 2001 riots. Unsurprisingly, questions still remain as to whether the promotion of cohesion through programs that increase intergroup interaction is an appropriate way to accommodate social and cultural differences in the United Kingdom. The communities targeted by community cohesion policies (and from whence the anxiety of integration sprang) are not home to many new immigrants (Saggar and Somerville 2012).

(3) Equality and Human Rights Policy and Legislation

Major equality measures have reinforced and extended the anti-discrimination framework: The 2000 Race Relations (Amendment) Act aimed to eradicate institutionalised racism; the 2010 Equality Act brought together existing and proactive legal frameworks for a range of minorities and disadvantaged or vulnerable communities; the 1998 Human Rights Act, which enshrined the European Convention on Human Rights into UK law, has been successfully used to reduce

destitution in asylum cases, to ensure appeal rights in asylum and deportation cases, to remove barriers to family reunion, etc (Saggar and Somerville, 2012).

(4) *Mainstream Policies*

Hidden inside most British mainstream government programs and social policies are deliberate correctives that favour integration, especially that of disadvantaged populations. When applied to immigrants, the most obvious example is in relation to education policy, where early childhood education programs have outreach components dedicated to minorities.

(5) *Counterterrorism Policy (CT)*

The CT strategy has focused on the roots and causes of domestic radicalisation, looking at the problem further upstream than had previously been the case. Tackling extremist ideology was placed at the heart of the new policy, a move designed to create a much larger distinction between general measures to support integration and a strong new push against radical Islamist ideas and values.

(6) *Citizenship Policy*

Citizenship and naturalization – long a policy backwater – has undergone a quiet revolution, with policymakers deliberately encouraging a more proactive, in addition to a longer-horizon and far more expensive, regime to those seeking to acquire citizenship or long-term residency rights. The period required before long-term residence rights are attained has also been extended. The change to citizenship law and practice has been substantial and marks the biggest direct change in immigrant integration policy.

The new and broad integration strategy, named *Creating the Conditions for Integration*, was released in spring 2012 by the Department of Communities whilst Local Government released its integration strategy. It is a slim document that contains no program of action or coordination, but rather a list of government initiatives from a range of departments of varying degrees of relevance. It is also the first statement in nearly three years that establishes a government position on integration and clearly notes that the state's role should be that of facilitator and (as a matter of a principle) an actor only of last resort, an example of which states that the "government will only act exceptionally." (*Creating the conditions...*, 2012).

2.2 Germany

2.2.1 Germany as a recent country of immigration

Over recent decades, transnational migration has become a self-evident characteristic of German society. One-fifth of Germany's 82 million inhabitants have a so-called migratory background, including one-third of children under the age of 6.5 years old (Haug et al., 2009). Only five percent of all migrants or persons with a migration background live in the eastern German states, and yet anti-immigrant sentiments and xenophobia are the highest there. At the national level, one-third of the estimated 16 million people with a migration background living in Germany did not immigrate themselves, but were born in Germany. In some federal states, those labelled as "Germans with a migration background" make up more than 35 percent of all children under the age of 10 (Foroutan 2013). Only one-quarter of German residents with a migration background are Muslim, of which the largest group is of Turkish origin (2.9 million).⁴

⁴ People of Arab origin, so often overrepresented in negative news coverage concerning migration, number around 400,000, less than 1 percent of the German population. According to the Pew Forum on Religion and Public Life,

Where migration is linked to settlement, it leads to changes in the structure of the population. These changes are not only demographic and social, but also reshape the fundamental identities and narratives of a country. While Germany has become a country of immigration in recent decades, the emotional public discourse often presents German society as homogenous, in which those with a migration background cannot fully belong. To this day, racism and negative conduct towards people perceived to be “strangers” are still pervasive in Germany.

The perception of Muslims has also changed. Since the terrorist attacks of September 11, 2001, the image of Muslims as terrorists or anachronistic religious believers has trickled into the German national public discourse. Common attributes and associations linked to Muslims in Germany include terms such as ‘fanatic’ and ‘undemocratic’, as found in a study by the German Institute for Human Rights (Foroutan, 2013).

The Report “Intolerance, Prejudice and Discrimination: A European Report” (Zick et al. 2011) analysed anti-democratic attitudes in eight European countries and concluded that Europeans are largely united in their rejection of Muslims and Islam. The significantly most widespread anti-Muslim attitudes are found in Germany, Hungary, Italy and Poland. These biased attitudes are sometimes expressed violently or aggressively. There have been several attacks on mosques, people perceived to be Muslim have been threatened, Muslim organizations receive daily hate mails, and anti-Muslim Internet blogs are increasingly popular.

2.2.2 Policies on migration and integration

Angela Merkel initiated an integration summit to explore new concepts on how to deal with diversity in a changing Germany. Politicians and policymakers began to address threats to social cohesion around 2006. They realized that not only Islamic fundamentalism, but also rising anti-Muslim racism, had to be monitored and controlled in order to achieve a rapprochement. This was a paradigmatic shift in politics, as well as for the academic community and security agencies. The latter, especially, shifted from only looking at Muslims as a security risk, and adjusted many of their programs, particularly concerning prevention of expressions of bias and bigotry (Foroutan, 2013).

2.2.3 National identity and immigration

In the late 1960s, Germans defined themselves as hard working, proper, and punctual, and the figure of the immigrant, who at the time was a southern European guest worker from Italy, Spain, Greece, or Turkey, was considered unambitious, lazy, and always late. Today, being German is associated with tolerance, democracy, and enlightenment, while the opposing Muslim figure is described as intolerant, antidemocratic, and unenlightened.

The German political sphere has long denied the evolution of Germany into a country of immigration. It has failed to develop a concept for the transformation not only of the political but also of the public debate. The negative perception of “foreigners”, in recent debates on Muslims, goes hand in hand with challenges to Germany’s changing national identity (Foroutan, 2013). In the decades after 1945, the idea of being German was associated mainly with the shame of World War II, not only outside but also inside the country. Thus talking or thinking about the

there are about 4.2 million Muslims living in Germany, comprising about 5 percent of the country’s population. In absolute numbers, Germany ranks second in the European Union, after France, in Muslim population size (The Future Global Muslim Population Projections... 2011).

question of a German identity was, to a certain extent, locked out of the national consciousness and mainly articulated within the context of the trauma of the Holocaust.

For decades, the idea of ‘Germanness’ was founded on the idea of ‘blood and soil’. In 2000, the *ius sanguinis* basis of German citizenship law was partially changed to *ius soli*. However, being German is still linked to specific phenotypes and as a consequence, people who have lived in Germany for 50 years or were born on German soil to migrant parents are still not unconditionally accepted as “normal” members of society. This has led to constant feelings of non-belonging.

One of the factors that has shaped the German identity has been the “generational factor”. The generation born between 1925 and 1955 was socialized in a Germany that was homogenous like never before; a Germany deeply influenced by National Socialist ideas. This generation includes many contemporary decision makers and statesmen, who are now in their mid-50s to 80s.

Later on however, the participants and supporters of the 1968 European protest movements saw themselves as members of a freedom-loving generation. Their dislike for borders opened up room for a new identity beyond exclusive national identities, indeed one of European collective identity. The euro crisis, with shrinking economic growth and rising unemployment, has since impacted this liberal and traditionally open-minded group. Anti-Muslim sentiment can be observed as being argued mainly through post-liberal motives, such as opposing Muslims because “they” are against women, homosexuals, or Jews (Foroutan, 2013).

2.2.4 Are there new inclusive narratives on integration?

Concerns about Muslim fundamentalism and national security issues too often feed into nationalist and anti-Muslim discourse. In addition, anti-Muslim attitudes are linked to a general increase in prejudice and social exclusion taking place in a climate of increased competition, fear of unemployment, and a reduction in social services.

The fact, however, that 78 percent of Germans identified Germany as a country of immigration gives reason for hope. Another opinion poll from the German Council on Migration and Integration shows an increasingly pragmatic attitude among non-immigrant Germans who believe that a peaceful coexistence between people with and without migration backgrounds is possible. These opinions need to become part of a general discourse and a new narrative of collective identity.

To this day, Germany perceives itself as a *Kulturnation* with an essential German culture that is inherently linked to language. Germans perceive knowledge of the language as the most important precondition to obtaining citizenship, much more than other European nations. Even talking with an accent somehow singles one out (Foroutan, 2013).

Instead of such a homogenous and exclusionist concept of national identity, as Foroutan points out: “the idea of a patriotism to the constitution should again be strengthened. This idea was established exactly because there was a need for defining a basis of citizenship through the law and constitution and not through diffuse moments of mythical or ancestral belonging. The constitution offers a set of norms and values that is much more tangible and real than the oft-proclaimed idea of a *Leitkultur* meant to guide immigrants toward German integration” (Foroutan, 2013).

In order to achieve effective integration, Germany needs a strong multicultural narrative similar to the founding myth of the United States as a nation of immigrants. A similar process in Germany would have to take into account the country's specific national history. Hybrid identities and multiple places of belonging are commonplace for post-migrants. They perceive themselves as active members of German society for whom integration is no longer a category of achievement. In fact, they do not feel like outsiders who have to be integrated somewhere themselves. The challenge is how to transport these hybrid constitutions of heterogeneous narratives from the intrapersonal level to the narrative of a society.

According to Foroutan (2013), there are major hurdles that government and society need to address in order to achieve adequate integration:

1) *Challenge racism and xenophobia.* Government programs such as “Diversity is good for us. Youth for Diversity, Tolerance and Democracy”, or the more recent “Advance Tolerance: Improve your Skills”, have done a good job of challenging racism on a local level, having taken specific communal needs and situations into account. These are positive examples of educational programs that need to be continued and strengthened.

2) *Monitor the rise of right-wing populist parties such as the National Democratic Party (NPD).* Right-wing populist Internet blogs must be exposed and their hate speech analysed, just like that of radical Islamist websites and blogs.

3) *Enforce equal employment initiatives and consider the introduction of affirmative action,* which is intended to make people with a migration background more visible in corporations, the media, and public office. It would also help in creating role models for young people. This step should also include long-term support for programs such as the General Equal Treatment Act, which allows people to go to court on the grounds of racially based discrimination.⁵

4) *Continue the Deutsche Islamkonferenz.* The Deutsche Islamkonferenz has been a major step in a sponsored dialogue between German state institutions and members of Muslim communities. Despite inevitable difficulties, this institution has proven relevant and productive, and should be continued.

2.3 The Netherlands

2.3.1 Increasing polarization in the Netherlands

Several years after the emergence, and later murder, of right-wing populist Pim Fortuyn by an animal-rights activist and the killing of director Theo van Gogh by an Islamic radical, the Netherlands is again on the international agenda because of the “political incorrectness” of Wilders’ Party for Freedom. There has been a backlash against what people perceive as “political correctness”. Citizens who no longer feel “at home” in the Netherlands have been voicing their anxieties and demanding acknowledgment of their concerns from politicians (Kremer, 2013). Politicians have tried to reinforce identity by providing a sense of stability and comfort to those who feel anxiety or a sense of loss. They also have encouraged integration and gave immigrants necessary information about their new homeland so they can better

⁵ Currently, just two percent to three percent of government and public service employees have a migration background. Similarly, only about three percent of journalists in public media and 4.5 percent of teachers come from a migrant background, compared to 35 percent of the entire student population. (Foroutan, 2013)

assimilate.

In 2004, the Dutch government stated that the idea of multicultural society had failed. The focus on national identity in the Dutch context meant a farewell to the ideal of the multicultural society and a welcome to the *culturalization of citizenship*, whereby newcomers to the Netherlands must fully adopt Dutch culture in order to become citizens.

Two new definitions have circulated since then: *allochtoon* (meaning not from the Netherlands – literally, “not from here”) and *autochtoon* (meaning from the Netherlands). The concept of *allochtoon* also applies to children born in the Netherlands to foreign-born parents. Comparative European statistics from 2003 show that 61 percent of Dutch people said most societal tensions were between *allochtonen* and *autochtonen*; indeed, far fewer reported tensions between the rich and the poor (25 %) (De verzorgingsstaat herwogen..., 2006).

2.3.2 The role of the political parties

In 2002, Fortuyn’s party (Lijst Pim Fortuyn) won 17 percent of the vote in Dutch national elections (just days after his assassination), becoming the first significant victory for an anti-Islam, anti-immigration party. After forming part of a coalition government, the party collapsed within months and was followed by another, less successful party: Rita Verdonk’s newly formed Trots op Nederland (TON or “Proud of the Netherlands”) Party. In 2010, Wilders’ Partij voor de Vrijheid (PVV, Party for Freedom) received 15.5 percent of the vote for the Dutch Parliament, making it the third largest political party in the Netherlands.

Anti-immigrant attitudes and cultural conservatism are quite extended. People who feel that the multicultural society has failed and that immigrants have overwhelmed the Netherlands may also support another political party that has grown rapidly, namely the Socialist Party. Some Socialist party members have expressed anti-Europe standpoints, and have stressed the importance of national identity. As a result, Dutch society has become deeply polarized. On one hand, since 2004, the Dutch government has officially rejected the ideal of the multicultural society. On the other hand, there is no anti-immigration or anti-Muslim consensus in civic society. 54 percent agreed that immigration and open borders threaten the national identity of the Netherlands, whereas 24 percent disagreed (Kremer, 2013).⁶

2.3.3 Immigration and cultural insecurity

Although multiculturalism topped the list of most cited social problems during the last decade, since the onset of the economic recession, the issue has subsequently dropped from the top five concerns that the public consider most important. The conflict in the Netherlands seems to be about culture rather than economic scarcity. Less educated people have less cultural capital, and are therefore unable to cope smoothly with ethnic and other differences (Sniderman and Hagendoorn, 2007). This cultural insecurity – where people fear their norms and values are being taken over, and that their national identity itself is at stake – leads people to be intolerant toward others.

Although cultural capital has seen rapid growth and 30 percent of the population has benefited from higher education, a substantial number of people with higher education continue to feel

⁶ When asked whether the presence of different cultures represents a gain for society, 41 percent agreed, while only 27 percent disagreed. Dutch society shows much ambivalence, but over the last decade, much of the public has connected immigration with social problems and loss of national identity.

culturally insecure and threatened. The dominant explanation for this is that the Dutch political establishment pushed multicultural policies too far by giving “special treatment” to newcomers.

In 2000, Paul Scheffer published an essay titled “The Multicultural Drama” that inflamed the controversial debate about integration and immigration in the Netherlands. Scheffer argued that the Dutch should develop a greater sense of national consciousness and become less indifferent towards their own society. Doing so would also benefit immigrants, he contended, because if “we” became better at defining and propagating “our” language, history, and culture, immigrants would know into which country they had to integrate (Scheffer, 2000).

In practice, since 2007, a civic integration exam that tests the knowledge of Dutch society and language ability has become compulsory for non-Western, non-EU immigrants entering the Netherlands. Those who do not speak the language and fail the exam on Dutch history and practices are denied admission to the country. For those who are already there, the rules have also become stricter. Social assistance, for instance, can be reduced if one does not speak Dutch. Contemporary integration thus already starts abroad, as it has become a criterion for admission to the Netherlands and for people who immigrated a long time ago.

2.3.4 The common understanding of “being Dutch”

According to Sniderman and Hagendoorn (2007), the common understanding of “being Dutch” is based on four categories: race/ethnicity, roots, cultural practices, and moral disposition. Instead of offering a narrow concept for Dutch national identity, it is more useful to promote the idea that there are several routes towards identification with the country. Three processes can be distinguished: emotional, normative, and functional identification (Sniderman and Hagendoorn, 2007).

(1) *Emotional Identification*

Emotional identification is about a sense of belonging and feeling connected, not only with other people and groups, but also with a country. The public debate in the Netherlands primarily revolves around emotional identification and the ideas of “feeling at home” and feeling pride for the country (Duyvendak, 2011). Being proud of the Netherlands, as 87 percent of the Dutch said they were in 2006, does not automatically lead to the exclusion of others. A thin notion of national identity also allows for dual nationality – understanding dual nationality as an expression of loyalty. In other words, loyalty is not related to passports. Not wanting to renounce their nationality or disconnect fully from their country of origin does not necessarily indicate disloyalty towards the Netherlands. (Sniderman and Hagendoorn, 2007).

(2) *Normative identification*

Normative identification means that people are able to follow norms that are meaningful to them and articulate these publicly. It also means that there is enough space to solve conflicts about norms democratically. Normative identification contains two elements: adjustment “to” the norms (the process by which newcomers adapt to existing cultural practices) and adjustment “of” the norms (the process by which cultural practices are changed, implicitly and explicitly, by immigrant or minority groups). In the former, newcomers must adapt, whereas in the latter, they become agents of change. The current political debate is primarily concerned with adjustment “to” the norms.

(3) *Functional Identification*

Functional identification occurs when a person is no longer seen only as a member of a

particular (ethnic) group, but as an individual with numerous functional relationships. Examples of various functional relationships include being a member of an occupational group, a sports club, or a political party. Such shared interests with others open the way for processes of identification that cut across ethnicity. In the Netherlands, the chance of meeting different ethnic groups at work is exceptionally low.

There are two primary reasons for this lack of interaction among different ethnic groups in the Netherlands. First, the labour market participation of immigrants (and descendants of immigrants) is still comparatively low. Second, immigrants, and even their native-born children, are generally less educated. These two facts are related. Low education means higher likelihood of being unemployed, especially in times of economic crisis.

It is therefore important to highlight the role of schools. Learning together can be a source of functional identification, making schools another crucial meeting site. Children at mixed schools have a more positive attitude toward other ethnic groups than those at “white” schools. *De facto* segregation in education is still very prevalent in the Netherlands.

There is an urgent need for a fluid and open notion of national identity that permits multiple identities. The immigrant population in the Netherlands is likely to become more upwardly mobile, as the education level of the second generation is rising. In order to succeed with integration, the distinctions on the basis of *allochtoon/autochtoon* must be overcome. Such distinction helps to create boundaries.

3 Steps for a Greater Cohesiveness in Multicultural Societies

In many Western European countries, the debate about multiculturalism, cultural difference, and integration has been based on distorted analyses. Unfortunately, the rhetoric of “mainstreaming integration” as a sort of adaptation of ‘super-diversity’ to the mainstream culture has gained a broad support across Europe. I would like to conclude with some observations that surpass the dichotomy between multiculturalism-interculturalism and offer a combination of integration and multicultural policies.

(1) *Being proud of our multicultural past.* If European societies are becoming even more plural, then any plural modes of integration need to build on past successes rather than seek to erase them.

(2) *Equality and diversity go hand in hand.* In both theory and practice, policy makers cannot pursue programmes of equal treatment without registering and accommodating features of cultural, ethnic and religious diversity.

(3) A genuinely democratic public sphere can only grow if minorities, as well as majorities, *feel confident enough to participate*. This includes religious minorities too. Europe is an increasingly religiously diverse continent which, more often than not, has given religion a place within the public square.

(4) Political leaders at local and national levels should *bolster consultative forums* so that minority voices can be heard. This means listening to and encouraging the participation of representative groups from ethnic and religious minority communities, no less than non-ethnic

or religious minority communities.

(5) *Build a sense of “ownership” in the integration process.* The way of assuaging this concern is to involve all citizens in shaping the next generation of cultural norms and values and giving them a sense of ownership over the integration process. Everybody would feel their contribution to redefine social and political life.

(6) *Now more than ever, national identity is about becoming, rather than being.* Countries like Canada and the United States that historically emphasize a process of belonging and “becoming”, rather than a static sense of “being”, are better able to embrace, “digest”, and benefit from diversity than societies whose very actions betray a fear that newcomers will dilute the nations’ core identity. Immigrant integration cannot succeed unless national identity is redefined in an inclusive way.

(7) *Allow multiple identities to coexist.* Efforts to restrict plural identities are counterproductive. Empirical studies in Canada and France show that strong ethnic ties and national pride are not mutually exclusive.

(8) *Offering a practical, non-punitive integration mechanism.* States should provide robust, subsidized integration mechanisms (such as language classes). Governments must thus strike an often-delicate balance between requirements that are aggressive enough to further social cohesion, yet restrained enough that they do not become exclusionary.

9. *Focus on integration in workplaces and schools.* The benefits of emphasizing work amount to much more than earning a living: employment is a vehicle for contributing to society and thus a finding a sense of belonging.

10. *Focus on all disadvantaged populations, not just immigrants.* When a state’s own citizens are suffering, it may be difficult to argue for investments in policies seen as disproportionately benefiting newcomers. It may be both politically advantageous and wise in policy terms for investments in integration to be reframed so that they apply to all disadvantaged populations in society, rather than focus exclusively on the newest arrivals, or those perceived as “newcomers”.

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Integration as a Tool to Reconcile Diversity and Unity: The Squaring of the Circle?

Roberta Medda-Windischer

1 Introduction

It is beyond debate that in recent decades cultural diversity yielded from internal and international migration has increased in Europe and will continue to do so in the future. Although economic actors and decision-makers generally recognize the useful contribution to the labour force and the positive impact on the demographic structure of a steadily ageing population, the presence of large immigrant communities poses manifold challenges in the sphere of integration, cultural differences, protection of individual and group rights, and preservation of social cohesion and unity. As a result, most European states have been searching for models and policies to accommodate diversity claims and integrate minority groups stemming from internal and international mobility flows.

A number of questions serve to exemplify some typical issues present in the public and political debate, as well as in the daily management of diversity in schools, courts, public services providers, and hospitals: Do diversity policies require tolerance of the traditional practices of other cultures even if those practices violate the principles of human rights and gender equality as enshrined in most national and international legislation? Should arranged marriages or so-called *talaq* divorces by repudiation be legally recognized? Should husbands be allowed to cite 'culture' as a defence when charged with beating their wives? Each of these practices is permitted in some parts of the world, and some groups view them as 'honoured traditions'.

In many European countries, these issues are at the forefront of political debate largely due to the increasing number of people with distinctive identities in terms of language, culture or religion who have settled in these countries, with varying degrees of permanence—partly for political and humanitarian reasons, partly as a result of differing economic situations—as well as due to the freedom of movement entailed by the growing economic integration in Europe. Currently these movements unfold even more complex dynamics because in the past many European countries did not focus on the integration of migrants, as these countries tended to be transit countries or even countries of origin.

This increasingly diversified scenario raises two major questions. Firstly, how should the new diversities brought by the most recent migration flows be dealt with? What effective, fair and sustainable integration policies can be devised? As said, most European states have been searching for models to accommodate diversity claims and integrate new minority groups stemming from migration. However, the diversity policies adopted by traditional countries of immigration (Canada, Australia and, to a certain extent, the United States) have been

implemented in contexts that differ from those that currently exist in Europe in terms of economic, political and social conditions.

Accordingly, these policies cannot simply be transposed to European countries, where the current settings are more unstable and volatile, as evidenced by increasing xenophobic and discriminatory attitudes (COE ECRI, 2015; Pew Research Center, 2014, pp. 26–32) and new forms of discrimination, such as Islamophobia (EU FRA, 2009; EUMC, 2006), coupled with harsh criticisms against multicultural policies, such as those expressed a few years ago by German Chancellor Angela Merkel and UK Prime Minister David Cameron (Reuters Deutschland 2010; BBC, 2011). Secondly, states and local communities are in search for a model to deal with the diversities of minorities that combine respect for the identities of minority groups and the individuals belonging to them, and the respect for unity and social cohesion. But how can the problems arising from a combined approach to diversity and unity be overcome?

How to reconcile the demands of cultural diversity and political unity, i.e. how to create a political community that is both cohesive and stable and satisfies the legitimate aspirations of minorities, has been the subject of considerable discussion ever since the rise of the modern state, and particularly during the past few decades. All policies that seek to reconcile social cohesion, unity and diversity are confronted with a veritable minefield of dilemmas. Societies need to evolve their own appropriate models of integration suited to their history, traditions, demographic composition, political requirements, and so on, but which principles should guide their decisions? Fostering a sense of common belonging, unity and respect for diversity are important principles, but to what extent can they be achieved and, at the same time, combined? (EU, 2004b, p. 10 para. 1.5). This is a central challenge in modern societies because seeking to accommodate minority claims implies the need to look for a balance between unity and separation, cohesion and respect for diversity: If one opts solely for unity, the risk is assimilation and the disappearance of a minority as a distinct group; if one chooses only diversity, the result can be the cultural ‘ghettoization’ of a minority group with their consequent separation and marginalization from society.

In this chapter, a variety of political experiments will be analysed in order to assess the failures and successes of policies and institutions as responses to the challenge of diversity and unity. The elements for developing a defensible model of integration will be then identified. This model will be shaped as a response to the criticisms that multiculturalism policies have raised in order to do more justice to the complex dynamics of minority integration and to the dilemmas that diversity and unity pose in contemporary societies. This chapter argues that the international human rights catalogue and the scrutiny by human rights bodies represent a possible and sound limit to tolerance. In particular, the chapter contends that the jurisprudence of the Strasbourg Court is illustrative of a wider conception of minority and human rights norms applicable in a broader European context on which a model of integration can be based.

2 State Responses to Diversity and Unity: The Human Rights Model for Integration

State responses to cultural, linguistic, ethnic and religious diversity that exist in a particular society as a result of the presence of minorities, namely groups that differ from the rest of the

population in terms of language, religion and/or culture, can be analysed from different perspectives. Scholars, mainly from the fields of comparative constitutional law and social and political sciences, have identified a variety of models for accommodating minority claims and cohesion (Toniatti, 1994; Marko, 2006/07; Joppke, 2012; McGarry *et al.*, 2008; Hochschild *et al.*, 2013; Triandafyllidou and Zapata-Barrero, 2012; Rodriguez-García, 2010; Barker, 2015). By combining the analysis developed by scholars in different fields – from studies on so-called old, traditional and historical minorities to migration – the following broad typologies of state responses to diversity and cohesion can be identified: 1) the *repressive* model; 2) the *assimilationist* model; and 3) the *pluralist* model.

The *repressive*, nationalist model (1) denies minority groups civic standing and opportunities to take part in the polity by perpetuating primordial and ethno-nationalist ideologies and by placing an emphasis on factors such as blood loyalty, common ethnic origins and a homogeneous culture, *i.e.* the idea of one people, one nation (Marko 1995, p. 531 *et seq.*). In this model, which has historically led to policies of ethnic cleansing and even genocide, minorities are subject to systematic forms of hostility and aggression. In terms of its prospects for developing a viable option for minority integration in a democratic society, the repressive model can be easily discarded from both a theoretical and historical point of view.

The *assimilationist* model (2) requires minorities to give up their identity in order to be integrated into mainstream society (Alba and Nee, 1977, pp. 826–874; Brubaker, 2003; Ramakrishnan, 2013). This model has two variations: a *radical* version (2a) that requires minority communities to renounce their particular ethnic or cultural identity and embrace the culture of the majority community; and an *intermediate* half-way position—also called the *agnostic, liberal, colour-blind*, or *laissez faire* model (2b)—that tolerates differences in so far as they are confined to the private realm (culture as a private matter following the pattern of institutional separation between church and state).

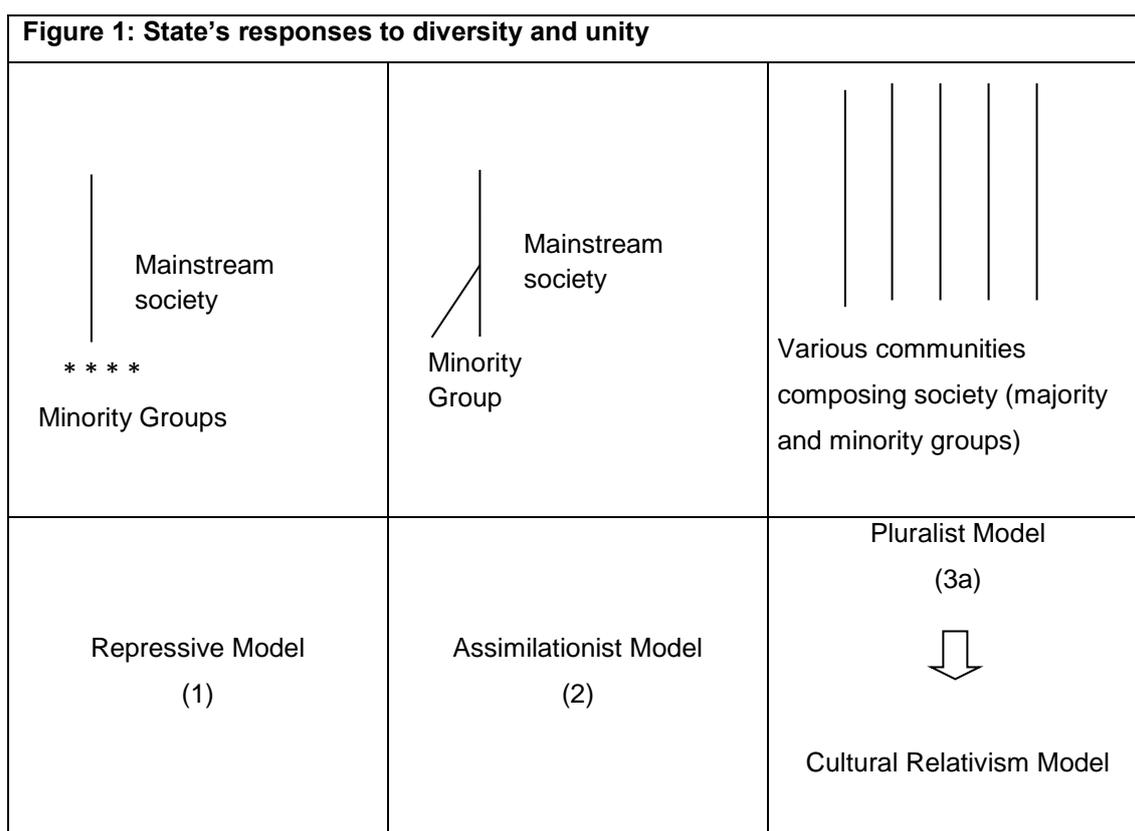
Among the many problems associated with the *assimilationist* model, one is the fact that it is not clear *what* the minorities are to be assimilated into. In fact, although the cultural structure of a society has some internal coherence, it is never a homogeneous and unified whole: it consists of core principles and legal standards, but it is also made up of diverse and conflicting dimensions and several different practices, which can in turn be interpreted and related in several different ways. The *assimilationist* model ignores all this in order to arrive at a homogenized and highly abridged and distorted version of national culture; accordingly, minorities are assimilated not into the collective culture in all its richness and complexity, but into an ‘ideologue’s crude and sanitised version of it’ (Parekh, 1998, p. 75).

Since the assimilation model, in its variations, does nothing to relieve the alienation of minorities from the public realm, it is unable to demand their support and cannot provide a stable basis of unity. Moreover, since it does nothing to reduce the disadvantages of minorities, it runs the risk of encouraging fundamentalism among them.

The *pluralist* model (3) does not condition integration and political belonging on cultural conformity (Taylor, 1994; Kymlicka, 2007; Joppke and Seidle, 2012; Marko, 1997; Bauböck, 1994; Parekh, 1998; Malloy, 2008; Laden and Owen, 2007; Parekh, 2006). As in the previous model, two versions can be identified. The first typology is based on a *radical relativism of values* (3a): according to this model, minorities are, first of all, defined in terms of their group membership, which is usually determined by their national origin or their religion (*e.g.*, Muslims,

Jews). Individuals are, above all, cultural beings and are embedded in specific communities, which are considered the ultimate source of meaning in people’s lives. All that matters to them deeply—their customs, practices, values, sense of identity, historical continuity, norms of behaviour and patterns of family life—is derived from their culture. Individuals owe their primary loyalty to their respective communities and derivatively and secondarily to the state. This version of the pluralist model is based on a perspective of *cultural relativism*: it advocates that all cultures present in a territory, including those of newly arrived immigrants, must be recognized and preserved, and that the state should facilitate minority cultures at any cost. This radical version has two main disadvantages. First, it can lead to the creation of parallel societies with the recognition of, for instance, elements of religion-based legal systems, particularly in relation to family and criminal law, that might contradict democracy and human rights principles. Second, it raises the problem of anti-democratic practices carried out by members of minorities against members of their own minority group. From this point of view, the rights of the most vulnerable members of minority groups, children and women in particular, are sacrificed in the name of cultural relativism.

The following figure summarizes the main characteristics and outcomes of the most common models analysed so far, which, as discussed earlier, should be discarded as models contributing to foster the integration of minorities (Medda-Windischer, 2009, 2010, 2016):



In the repressive model, minority groups—symbolized by stars in the figure—are marginalized and lack civic standing and participation in the polity. In the assimilationist model a minority group—identified with a side line—is required to give up its distinctive ethnic or cultural identity and embrace the majority culture in order to be integrated in the mainstream society. A variation of the pluralist or multicultural model of integration is the cultural relativism model whereby all

groups present in a territory—represented in the figure with a series of parallel lines—must be recognized and preserved on an equal footing with the majority groups even if their culture or traditions are anti-democratic and in breach of human rights.

The second variation of the pluralist model is the intercultural/human rights model (3b) (see Box 1 – Multiculturalism vs. Interculturalism). This model called ‘Human Rights Model for Minority Integration’ or ‘Tree Model’ (see Figure 2) is based on the assumption that, on the one hand, the recognition, protection and promotion of minorities are integral components of a state’s constitution and appear among its fundamental values, and, on the other hand, that in both the private and public realms, minority and majority communities are expected to share some core fundamental principles such as human rights, democracy, rule of law, gender equality, minority rights (EU, 2008, Art. 2; Marko, 2012; Medda-Windischer, 2009, 2010, 2016; Xanthaki, 2010).

BOX 1: Multiculturalism vs Interculturalism

In the last decade, scepticism has increased noticeably, particularly as far as Europe is concerned, with respect to multiculturalism policies, as illustrated by statements of the German Chancellor, Angela Merkel (Reuters Deutschland 2010), followed by the British Prime Minister David Cameron (BBC 2011), both claiming that multiculturalism had failed. Some have also argued that multiculturalism requires ‘a dignified retirement’ (Phillips 2004) because it is said to have: promoted the residential ghettoization and social isolation of immigrants; increased stereotyping and hence prejudice and discrimination between ethnic groups; increased political radicalism, particularly among Muslim youths; and perpetuated illiberal practices among immigrant groups, often involving restricting the rights and liberties of girls and women (CoE, 2008, p. 10; Banting and Kymlicka, 2010, p. 45; Barry, 2001; Vertovec and Wessendorf, 2010; Bauböck, 2002; Uberoi and Modood, 2015).

As a result of these criticisms, in many European countries and in most public discourse within supranational institutions, the framework in which diversity policies are explored has shifted away from *multiculturalism* in favour of *interculturalism*. In this sense, *multiculturalism* is seen as consisting of merely accepting the coexistence of different cultures, whereas *interculturalism* is seen as moving towards dialogue and mutual discovery (Eberhard, 2009, p. 285). Along these lines, the CoE defines ‘intercultural dialogue’ as ‘an open and respectful *exchange* of views between individuals, groups with different ethnic, cultural, religious and linguistic backgrounds and heritage on the basis of *mutual* understanding and respect’ (CoE, 2008, p. 10, emphasis added).

However, while those who advocate political interculturalism wish to emphasize its positive qualities in terms of encouraging communication, recognizing dynamic identities, promoting unity and critiquing illiberal cultural practices, each of these qualities is also an important (on occasion fundamental) feature of multiculturalism (Meer and Modood, 2011). Hence, until interculturalism as a political discourse is able to offer a distinct perspective, one that can speak to a variety of concerns emanating from complex identities and matters of equality and diversity in a more persuasive manner than at present, ‘interculturalism cannot, intellectually at least, eclipse multiculturalism, and so should be considered as complementary to multiculturalism’ (Meer and Modood, 2011, p. 18; Modood, 2013; Uberoi and Modood, 2015).

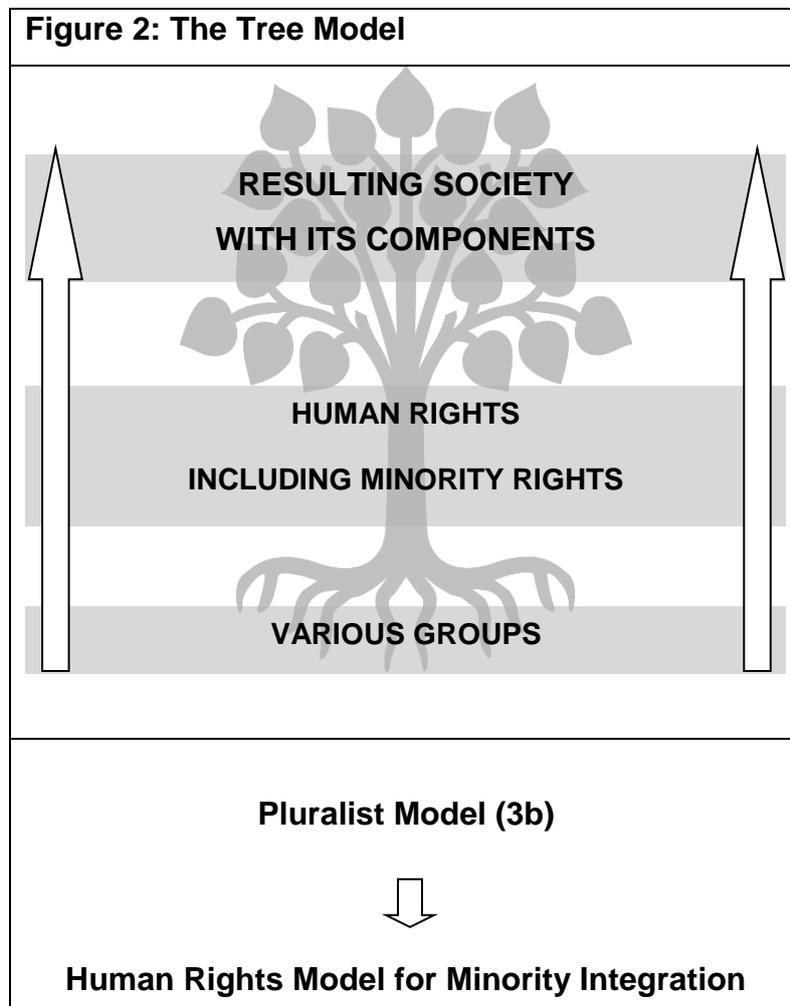
Some have observed that, rather than the multicultural policies themselves, it is perhaps the *discourse* or *rhetoric* of multiculturalism that has lost force and fascination and has become less fashionable (Kymlicka, 2003, pp. 1–8). Most wisely, Canadian philosopher Will Kymlicka suggests that, as the ‘*m* word’, namely *multiculturalism*, is now virtually taboo in some countries, it may not be worth the effort to fight a semantic battle between *interculturalism* and *multiculturalism*.

What matters, in the end, is whether the underlying principles and policies of multiculturalism are taken seriously, and, those principles and policies can be enacted without using the ‘*m* word’. They could instead be adopted under the heading of ‘diversity policies’ or ‘intercultural dialogue’ or ‘community cohesion’ or even ‘civic integration’ (Kymlicka, 2012, p. 21).

These core values constitute the foundation of a stable and prosperous society and the standards against which minority claims will be assessed, recognized and promoted. This model advocates that no polity can be stable and cohesive unless all its members share at least a core of common values that will make it possible to build the necessary bonds of solidarity and a common sense of belonging.

In comparison with similar models such as the Canadian salad bowl and cultural mosaic models, the pluralist model is aimed at building a stable and cohesive community not by emphasizing the differences among individuals and groups, but, rather, by committing to a core of commonly accepted values. The state, under the supervision of supranational bodies such as, in Europe, the CoE’s European Court of Human Rights (ECtHR or Strasbourg Court), is the custodian of these principles and values as enshrined in the main human rights treaties and as further specified by their implementing mechanisms (see Box 2 - Human Rights as Limits for Tolerance).

The following figure sums up the main characteristics of the Human Rights Integration Model for Minority Integration (‘Tree Model’) (Medda-Windischer, 2009, 2010, 2016):



The tree represents permanent dialogue among minority and majority groups present in a society. In the model, the roots symbolize the various groups in society, and the branches and foliage represent the resulting society in which unity and diversity co-exist in harmony. The crown of the tree—a diverse but integrated society—is sustained by a trunk representing the entire catalogue of human rights, including minority rights, such as those enshrined in the

ECtHR and its case law, which all European countries are bound to respect. The human-rights trunk functions as a filter through which only those minority claims, practices or traditions that are compatible with human-rights standards will be admitted and recognized in society.

This model has two strong components: (a) the recognition of diversity, i.e. the recognition of religious, ethnic, linguistic and cultural identity and groups that identify with them, through the extension of the scope of application of certain provisions typical of the protection of historical minorities, such as those from the Framework Convention on National Minorities, to all minority groups, including new minority groups stemming from migration; (b) the preservation of unity and cohesion through the protection of a core of common values based on fundamental human-rights catalogue contextualized and detailed, as far as Europe is concerned, by the European Court of Human Rights and its case law. Hence, according to this model, only minority claims that are in line with human- and minority-rights standards will be recognized as worthy and as having value for building a stable and cohesive community (Medda-Windischer, 2009, 2010, 2016).

Minority rights, along with human rights, represent important tools for the integration of minorities, particularly, the integration of new minority groups, as they create a legal framework in which minorities can see their claims recognized within the limits of the legal provisions enshrined in the texts of relevant international instruments as interpreted and implemented by national and supranational bodies. Moreover, this legal framework is composed of rights and freedoms, but also of limitations and restrictions, thereby providing a guarantee that minority claims will not exceed certain limits. In this way, minority claims for diversity and the more general concern for unity, cohesion, security and public order can be accommodated in the framework of an institutionalized dialogue in which national and supranational bodies, in cooperation with one another, act as objective and neutral third parties.

It should be noted that the models analysed above are ideal, abstract types. The reality is much more complex, as no country provides a perfect example of any of the models. It would thus be incorrect to say, for instance, that France has adopted a pure assimilationist model or the Netherlands a pure pluralist model. The US melting pot model, for instance, contains elements of assimilation and integration. In this model, the majority culture is influenced by the minorities living alongside them, with the consequence being that the overall society that the minority is assimilating to or is integrating within will end up including certain elements of those minority cultures, which, in turn, also change in response to their encounter with the majority culture. While immigrant groups in the United States have been 'melted down' in the sense that they have lost certain characteristics specific to them, the substance that they are made from now forms part of the pot within which others can be melted (Crouch, 2000, p. 291).

Furthermore, these abstract models are neither mutually exclusive, since they overlap in several respects, nor collectively exhaustive, since, although they represent important ways coming to terms with diversity and unity, others ways are not inconceivable. Each state has developed its own unique response to diversity by combining elements from each model according to its specific circumstances. A determining factor in the varying approaches to minority participation in society is, for instance, the historical experience of the country concerned during the process of nation-state formation. Such processes have been strongly shaped by territorial expansion, experiences with minorities, recruitment of migrant labour, reception of refugees, processes of cultural homogenization, and practices of discrimination and exclusion. European practices towards former colonies were, for instance, major influences in shaping later practices towards

minority groups at home. Such historical elements thus need to be kept in mind and linked to current conditions.

BOX 2: Human Rights as Limits for Tolerance

Among the most challenging and problematic questions that diversity policies raise are the *limits that can be placed on tolerance*. Many argue that human rights are too vague to provide any meaningful guidelines to resolve the complex issues that arise from clashes between diversity and unity. The main international human rights instruments, such as the European Convention on Human Rights, set forth relatively broad principles for the protection of human rights. In this regard, they resemble domestic bills of rights or other similar constitutional instruments more so than legal codes. But, if it is true that human rights are often vague and broad in their formulation, it is also true that, through judgments and legal opinions by international monitoring bodies such as the UN Human Rights Committee (HRC), the Strasbourg Court (ECtHR) or the Advisory Committee on the Framework Convention (ACFC), they become more explicit and detailed and can become applicable in broader and different situations beyond the specific case in which a particular judgment or opinion originated. It is indeed the case law and collection of opinions of supervisory bodies that give life to the provisions of these international instruments.

The European Convention on Human Rights, for instance, is one of the oldest international legal instruments purporting to guarantee human rights in Europe. Its system of protection is one of the most developed and provides a rich source of international human rights jurisprudence. It is also a unique system, constituting, as it does, a form of 'international common law' and a self-referential regime. It is a common-law system in that its lifeblood is the case law of the Court (and the former Commission), which is bound by precedent (the principle of *stare decisis*). And it is a self-referential system in that the Strasbourg Court operates independently from the national courts of the states parties to the Convention, for which the European Court is not a 'fourth instance' tribunal, but rather a judicial body that interprets contested domestic law or practice exclusively for its compatibility with the Convention. Despite the independent role of the Strasbourg Court vis-à-vis national courts, the Court's express mandate, to develop and articulate a 'common European standard' for human rights protection (CoE, 1953, preamble), demands that at least some attention be paid to the domestic law and practice in a number of states parties in order to maintain the integrity of the system at the international level.

With several decades of interpretative jurisprudence by the ECtHR, the European Convention on Human Rights has engendered the most sophisticated jurisprudence of any of the international judicial instruments promulgated to protect human rights. The key to understanding the Convention lies in the case law of the Strasbourg Court, whose role it is to interpret the Convention (CoE 1953, Art. 19). Moreover, the Strasbourg Court has often stressed that the Convention is a 'living instrument' that must be interpreted in the light of present-day conditions: this means that, as society and attitudes change, the Court will change and develop the way in which it interprets the Convention. The Strasbourg Court has no jurisdiction to review laws *in abstracto*; rather, it can only consider specific cases brought before it by individuals or, in rare instances, by one or more states parties. In this, the Strasbourg system parallels common-law rather than civil-law judicial systems, the latter of which often have constitutional courts conducting just such abstract reviews.

From specific individual cases brought before the Strasbourg Court, it is possible to infer general principles and guidelines that may be useful to solving the complex dilemmas of contemporary ethnically diverse societies. The Strasbourg system is particularly suitable in this regard because the judgments of the Strasbourg Court are legally binding; thus, their impact is more effective in comparison to the views of the UN HRC or the opinions of the CoE ACFC.

3 Integration Processes: Dimensions and Policies

As seen above, the model advocated in this work to reconcile diversity and unity is based on an inclusive and integrative approach. The very broadness of the integration process, however, makes it hard to define it in any precise way. The integration of minorities in a society takes place at every level and in every sector of society. It involves a wide range of social actors: public officials, political decision-makers, employers, trade union officials, fellow-workers, service providers, neighbours and so on. Members of minorities themselves play a crucial role in this process.

Because integration is such a complex process, it cannot be studied from the perspective of any single social science. Law, economics, political science, history, sociology, anthropology, geography, urban studies, demography and psychology all have a part to play. Moreover, there is no single, generally accepted definition of integration. The concept continues to be controversial and hotly debated.

Generally, integration is often erroneously assumed to be a singular, universal, stage-sequential and regularly paced process to which all members of minorities are exposed. It is with reference to such presumed universal stages and pace that minorities are often judged, in public discourse, 'successfully' or 'unsuccessfully' integrated.

Broadly speaking, integration can be defined along the lines of four dimensions: legal or structural integration as the acquisition of rights and access to positions and status in the core institutions of mainstream society; cultural integration as cognitive, cultural, behavioural and attitudinal change; social integration as building social relations; and identificational integration as the formation of feelings of belonging and identification by minorities towards the community in which they live (Heckmann and Schnapper, 2003, p. 10; Entzinger, 2000; Collett and Petrovic, 2014) (see Box 3 - Integration and Intercultural Dialogue in the European Legal System).

As said earlier, it is important to perceive minorities as active participants in the individual and collective process of integration. They first integrate by way of consolidating their relationships with family and extended kin groups, then sub-groups and wider ethnic groups, then neighbourhoods and cities, and finally into what we might call national society as a whole. This 'nested process' should be recognized in policy terms, since different domains of policy impact on each level or arena of integration in this sense.

When we examine integration and factors conditioning integration, such as demographic characteristics of a group, legal status of its members, labour market and social status, does it make a difference whether the individuals and groups to integrate are members of historical minorities, immigrants, refugees or also asylum-seekers? Certain social processes influencing integration are in fact similar in character for all people coming to terms with another society. However, there are significant differences in processes or trajectories of integration that are largely conditioned by structural factors. First, and perhaps foremost, is the issue of official status. The state assigns members of minorities to specific categories according to whether a specific group obtains official recognition as a minority or, as regards new minorities, their mode of entry as individuals. These categories shape rights and opportunities, and thus have important effects on patterns of integration. Hence, any discussion on integration needs to examine both the general process, and the variants resulting from official classifications and policies. In fact, all countries have a range of policies for different groups: citizens, non-citizens,

officially recognized minorities, skilled immigrants, refugees, dependents of legal entrants, asylum-seekers, undocumented workers, and so on. Consequently, their experiences and the long-term outcomes of integration processes may differ radically (Portes and Rumbaut, 1996).

In general terms, integration policies can be of two types: general policies aiming to improve the position of all people who are marginalized or are at risk of becoming so, and targeted policies

BOX 3:

Integration and Intercultural Dialogue in the European Legal System

The term 'integration' is commonly used in most of the relevant European instruments and public discourse of European institutions. For instance, the FCNM and its Explanatory Report refer to the 'general *integration* policy' that states can implement without any purpose or effect of assimilating minorities into the dominant culture (CoE, 1995, Art. 5 para. 46, emphasis added) and to 'the *integration* into society of persons belonging to ethnic, cultural, linguistic and religious groups whilst preserving their identity' (CoE, 1995, para. 49, emphasis added). More specifically, Article 5(2) of the FCNM protects persons belonging to national minorities from assimilation against their will. It does not prohibit voluntary assimilation, and it does not preclude member states from taking measures in pursuance of their general integration policy (ACFC, 2016, paras. 41 and 46).

According to the CoE Parliamentary Assembly (PACE), integration policies are intended to have the dual aim of providing immigrants with the means to function in the society where they live and developing their potential while preserving their cultural and ethnic identity, and familiarizing the non-immigrant population with the rights of immigrants, their culture, traditions and needs (CoE, 2003, para.7; CoE, 2013). In addition, PACE sets an important limit on the notion of respect for cultural diversity: 'Council of Europe member states should highlight the value of cultural, social and religious differences, but under no circumstances should it be possible to justify violations of human rights on the grounds of cultural tradition or religion. The respect for cultural and religious differences must rest on the respect for human rights by all those who live in a country, immigrants and non-immigrants.' (CoE PACE, 2003, para. 7, CoE, 2013).

Similarly, the OSCE *Guidelines on Integration of Diverse Societies* emphasize two aspects of the integration process: accepting common public institutions and sharing a sense of belonging to a common state and an inclusive society (OSCE HCNM, 2012, p. 8).

This approach is in line with the EU 2005 *Common Agenda for Integration*, in which the European Commission put forward a framework for the integration of third-country nationals in the EU based on the so-called Common Basic Principles on Integration (CBPs), which include the basic values of the European Union and fundamental human rights, frequent interaction and intercultural dialogue between members of society, intercultural dialogue, education about immigrants and immigrant cultures, protection of diverse cultures and religions, promotion of inter- and intra-faith dialogue platforms between religious communities and/or between communities and policy-making authorities, and the participation of immigrants in the democratic process especially at the local level (EU, 2005, 2004a, 2004b; European Commission, 2004, 2007, 2010; Toggenburg, 2005).

only aimed at specific types of disadvantaged persons, e.g. minorities. In Hammar's (1985) terms such a distinction could also be labelled as one between indirect and direct integration policies. Examples of indirect or general policies could be those whereby long-term unemployed persons have access to retraining programmes or job schemes, or, on a different front, urban renewal schemes, improving housing quality, infrastructure and the like, in principle equally benefiting minority and majority groups or immigrants and natives. Good examples of direct

integration policies are those assisting minorities who lack the basic attributes needed to participate on the labour market, e.g. language courses and training to bring an immigrant's skills up to the necessary level.

Some governments have launched integration measures in the form of 'introduction programmes' for the early phase of a migrant's stay. Introduction programmes generally consist of three main components: language tuition, civic orientation and professional labour market training. Especially in countries where newly arriving immigrants and refugees do not yet have knowledge of the local language through colonial or other ties, language teaching constitutes the centrepiece of introduction efforts by governments.

Besides language, introduction courses often also stress the importance of 'social orientation' and giving immigrants knowledge of the functioning and the values of the host society. Courses can cover the fundamental elements of the constitution, such as respect for human rights and democracy, and the functioning of the political system including opportunities for political and civil society participation. Orientation about gender equality and children's rights are also important components of many programmes.

Other integration policies are those that extend the right to vote to non-citizens to increase their political participation and sense of belonging to society, or, to the same end, those establishing institutions in which minorities can voice their specific needs and claims. In addition, policies are also conceivable whereby minorities are offered facilities for retaining some core aspects of their own culture (e.g. religion) or even are encouraged to do so.

The most problematic types of direct integration policies are those which can be brought under the general heading of positive (or affirmative) action (Marko, 2013, pp. 116–117; Gerapetritis, 2015). These consist of forms of preferential and proportionate measures undertaken with the purpose of achieving full and effective equality in practice for members of groups that are socially or economically disadvantaged, or otherwise face the consequences of past or present discrimination or disadvantage. Quotas may be, for instance, laid down in law or be institutionalized practice by which people belonging to disadvantaged ethnic categories are receiving some kind of preference when applying for jobs or for places in the educational system. These policies can be active, for example when employers are under an obligation to give preference to members of such specified population categories in hiring practices, or passive, when they are, for instance, under an obligation to report on the relative numbers of such persons in their work force. Somewhere between active and passive policies are those whereby government institutions prefer to grant projects to employers with a certain minimum number of disadvantaged workers among their employees.

The following scheme (please see Table 1) provides some examples of policies that can be introduced to support minorities' integration. As seen, integration policies touch upon different aspects of the majority-minority relationship, not only the legal, cultural, and social dimension, but also the identificational aspect of it that, with loyalty, complementary identities, sense of belonging and of fellow-citizen, represent a crucial aspect of the integration process.

Table 1: Integration Policies				
Integration Policies ⇒ ↓	<i>Legal/Structural</i>	<i>Cultural</i>	<i>Social</i>	<i>Identificational</i>
Targeted/Direct	<ul style="list-style-type: none"> • Right to vote • Courses on political structures/legislation of country of residence • Multilingual ballots • Quota in education/employment 	<ul style="list-style-type: none"> • Language courses for immigrants/minorities • Orientation/introduction courses for newly arrived migrants on constitutional principles/functioning of political system/gender equality 	<ul style="list-style-type: none"> • Funding for minority associations • Initiatives of mutual assistance on voluntary basis 	<ul style="list-style-type: none"> • Citizenship ceremonies/oaths • Official recognition names in languages other than the official one
General/Indirect	<ul style="list-style-type: none"> • Vocational training for unemployed persons 	<ul style="list-style-type: none"> • Funding for cultural associations 	<ul style="list-style-type: none"> • Urban renewal scheme i.e. street/ housing rehabilitation 	<ul style="list-style-type: none"> • Campaign to improve knowledge national symbols (anthems, national holidays, etc.)

The ‘Tree Model for Minority Integration’ defended in this chapter represents the general framework within which this range of integration policies should be introduced to complement the model and support its functioning. In other words, the Tree Model constitutes the basis for a process, a permanent dialogue between majority and minority groups: limits and thresholds are established so that the majority does not undermine important minority demands and minority groups do not claim unreasonable or illegitimate claims. At the same time, this framework is nurtured and supported by a series of measures and policies aiming to facilitate the integration of minorities in the mainstream society while allowing them to maintain their identities. In other words, along the line of the ‘botanic’ metaphor applied in this present work, we can say that the integration measures in the Tree Model act as a ‘fertilizer’ allowing the tree—symbolizing the broader community—to grow and flourish.

4 Conclusions

The right to identity and diversity represents, in many ways, the essence of the case for minorities within the corpus of human rights: the claim to distinctiveness and the contribution of a culture on its own terms to the cultural heritage of mankind. The identity and diversity to be protected and promoted may be national, ethnic, cultural, religious or linguistic or all of these

together. The concept of identity is a broad and important one for individuals and communities since it concerns their belonging and their way of thinking, feeling and acting. Consequently, respect for, and protection of, identity can be considered as constitutive elements of respect for human dignity, which is clearly a common attribute to all human beings (see CoE, 1995, Art. 5; UN, 1992, Art. 1; UNESCO, 1978, Art. 1(2); UNESCO, 2005).

Cultural diversity and cultural identity, rather than ethnic cementation, together with the right to existence and recognition, are the bases for the respect of human dignity, as unity and participation are the bases for the trust to the public institutions and solidarity. In this sense, diversity and unity are the veritable bases for a stable and cohesive society (Putnam, 2001; Stolle et al., 2008; Portes and Vickstrom, 2011).

One of the central questions of this chapter was whether and how it is possible to develop a defensible model of integration for minorities that reconciles the demands of cultural diversity and political unity—in other terms, a model aimed at a society that is cohesive and stable and satisfies the legitimate aspirations of minorities.

The elements analysed hitherto, namely the respect and commitment to a set of core, non-negotiable principles including minority protection, are the backbone of a model—the Tree Model or Human Rights Model for Minority Integration—that, by engendering a series of guiding principles, contributes to solving major and complex questions arising from conflicts between unity and diversity. In other terms, this model represents a compass to navigate the ‘stormy sea’ of dilemma of contemporary increasingly diverse societies.

Although the Human Rights Model for Minority Integration has been presented as more adequate to accommodate cohesion and diversity than others, it cannot be taken as a detailed model for all societies, in particular outside Europe. A society has to start from where it is and choose a model that best coheres with its history, traditions, self-understanding, moral and cultural resources, level of economic and political development and the nature, number and demands of its minorities, as well as level of cohesiveness among main actors in the country, from individuals to political parties, from civic society to national and local authorities. The Tree Model, with its combination of human and minority rights complemented by general and specific integration measures, possibly represents, paraphrasing Leibniz and his ‘the best of all possible worlds’, the best of all possible models of minority integration, at least as Europe is concerned.

Yet, the Tree Model for Minority Integration is not without difficulties. It is based on a vision of society in which different communities should interact with each other in a spirit of equality and openness, creating a rich, plural and tolerant society. The process is thus burdensome for both parties. Minorities must learn to negotiate often in an unfamiliar or even hostile environment where their minority statuses make them vulnerable to marginalization and segregation. The majority group, on the other hand, must cope with diversity in its schools, workplaces, housing, public spaces, and neighbourhoods and must display tolerance and broadness. The vision is not easy to realise and has its own problems. Some groups might not be open and experimental and others might jealously guard their inherited identities. At the heart of any successful model lies, in the end, a sincere willingness on both sides—majority and minority—for continuous interaction, mutual adjustments and accommodation.

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Functions and Competences of Public Bodies in Charge of Minority Issues at the National and Regional Levels

Detlev Rein

1 Introduction

Nearly every country in Europe has national minorities or – as is preferably said in Ukraine – nationalities. Indeed, even those countries that claim not to have minorities have minorities nonetheless. They are just not willing to accept the concept of special protection for such national minorities.

This being said, there are big differences in the number of minorities as well as the number of their members. Whereas Denmark has one minority (namely the German), with approximately 15 thousand members and Germany has only four minorities, with roughly 200 to 250 thousand members, Ukraine harbours more than 130 nationalities with more than 13 million members altogether (Embassy of Ukraine in the United States of America, 2014).

Another factor that one must keep in mind is the differences in state organizations, even when comparing democratic states under the rule of law. One major difference is that of a federal state versus a central state, within whose definitions many further sub-variants can be found. Austria, Germany, and Switzerland are federal states, but whereas school law and organisation remains a national level competence in Austria, it is referred to as *Länder* in Germany and *Cantone* in Switzerland. This is quite important in respect to national minority administration because, for many minorities, school teaching of and in their own language is very important.

Other differences are variations in administrative cultures, health and health insurance systems, and – very importantly – different distributions of powers between normally three or four levels of administration.

Coming from another state with different framework conditions, it is impossible to present a “best” approach to ideal public organization of minority issues; there are no suitable, readily available models, and each country must therefore tailor their own.

To express this concept in the form of a metaphor, the best approach is not to visit an old-fashioned restaurant (where the chef decides what the menu is), but to go to a buffet, where one is free to select and decide upon their own unique gastronomic concoction.

This being said, we now come to the first chapter of the lecture.

2 Why Is a Ministerial Responsibility Necessary in the Field of National Minorities and, What Should the Tasks of that Ministry Be?

To my understanding, ministerial responsibility in the field of national minorities is necessary. This will be justified with various tasks that are interdependent and are best solved from a single source.

This will be achieved in a top-down sequence, which means international obligations will be considered first. As a member of the Framework Convention for the Protection of National Minorities as well as the Language Charter, one must write a state report on the situation in their specific county every five and three years, respectively, organise country or on-the-spot visits, and write the government's comments to the committees' comments. This is a ministerial job. To fulfil this task, one must be knowledgeable in the factual and legal status of the national minorities in their country. One must also, however, occupy a high position in their country's administrative ladder in order to successfully urge other agencies and lower echelons of the administrative structure to contribute to these reports.

Next are the national implementations of the two international treaties. This is an on-going process: minorities have new wishes, the objective conditions for the survival of the national minorities change, and Council of Europe committees demand progress. There must therefore be an authority that is in the position to successfully propose new laws or change administrative procedures, which (in this instance) can only be a ministry.

In addition, it should be the task of a ministry in charge of nationalities to attend the Council of Europe and the OSCE conferences concerning national minorities in general and Roma in particular. The ministry should also propose candidates to the Council of Europe for the election of members to the two committees for the Framework Convention and the Language Charter.

Two more actions that should fall under ministerial responsibility are making regular contact with the nationalities and their civil law organisations and distributing public money in order to meet their particular needs.

After having discussed these two topics, we now come to the question of horizontal and vertical distributions of duties concerning national minorities.

3 What Forms of Dialogue between State Authorities and Minority NGOs Are Helpful?

Minorities appear to want to engage in dialogue with government and administration "eye to eye". Due to the apparent complexity and convoluted nature of administration, many minorities, rather than relying on an office or institution to negotiate with and field their concerns to, would rather appeal directly to a ranking official.

For this reason, the Government Commissioners for National Minorities was created in Germany in 2002; one for the federal level, and, due to their federal structure, several for the Länder that have the highest minority concentrations.

The Federal Commissioner functions as the: (1) point of contact at the federal level for the national minorities in Germany; (2) representative of the federal government to the relevant contact bodies; (3) responsible person for public information regarding the national minorities in the Federal Republic of Germany; and (4) chair of the consultative committees at the federal Ministry of the Interior for each of the national minorities.

This commissioner is generally a member of parliament, belonging to the same party as the Minister of the Interior, who is in charge of national minorities on the federal level. Within the Ministry, the commissioner has the rank of junior minister or parliamentary secretary of state. The commissioner is supported by the ministerial staff who are in charge of minority affairs. According to official publications, the creation of the post of Government Commissioner for National Minorities underscores the high priority the Federal Government gives to the protection of national minorities (Federal Ministry of the Interior, 2015).

In Romania, one can find a similar institution, but on a larger scale, as it is responsible for a far greater number of minorities and minority members. Within the Romanian government exists the Department for Interethnic Relations, which is subordinated to the Prime Minister and is under the coordination of the Secretary General of the Government. It is headed by a secretary of state and assisted by two undersecretaries of state, appointed or removed from office by the Prime Minister's decision, and funded through the budget of the Secretariat-General of the Government. The two assisting undersecretaries of state are traditionally themselves members of minorities in the country: today one belongs to the Hungarian minority and one to the German minority. These three secretaries of state are the contact points of the government for the civil society organisations of minorities in Romania. The current secretary of state is a member of the Romanian Turkish-Muslim Tatar community.

The question may be posed: why does one need a government commissioner for national minorities or a department for interethnic relations with three secretaries of state, when an ombudswoman already exists? The answer would be that a high ranking institution within the government, being the head of the relevant administration and with the power to draw up the budget, cannot be replaced by an ombudsman appointed by parliament, who (with a significant degree of independence) is charged with representing the interests of the public by investigating and addressing complaints of maladministration or a violation of rights.

The typical duties of an ombudsman are to investigate complaints and attempt to resolve them, usually through recommendations (binding or not) or mediation. Ombudsmen sometimes also aim to identify systematic issues leading to poor service or breaches of people's rights. At the national level, most ombudsmen have a wide mandate covering the entire public sector.

The historical experience of other countries was taken very much into consideration when the ombudsman institution was introduced in Ukraine (The Ukrainian Parliament Commissioner for Human Rights, 2011). Under Article 101 of the Ukrainian Constitution, the establishment of the new body – the Ukrainian Parliament Commissioner for Human Rights – was intended for parliamentary control over the observance of constitutional human and citizens' rights and freedoms. Article 55 of the Constitution proclaims the right of everyone to appeal to the Commissioner for Human Rights for the protection of his rights. The inclusion of this provision in the article of the Constitution, which provides for the basic legal mechanisms of protection of human rights and freedoms, speaks of the constitutional importance of the Commissioner in the control over compliance with human rights and freedoms. The office of the Commissioner for

Human Rights is an integral element of the constitutional system of protection of human and citizens' rights, which includes primarily the courts, the Ukrainian Parliament Commissioner for Human Rights, and international judicial, and other bodies of which Ukraine is a member or participant.

When the Ukrainian model of the Commissioner for Human Rights was devised, allowance was made for the prevalent national and legal traditions, the system of state power, and the expertise of the ombudsmen elsewhere, specifically in the Scandinavian nations and in the countries that embarked on the road to reform – for example, Poland and Hungary.

The Ukrainian Constitution and its derivative Law on the Ukrainian Parliament Commissioner for Human Rights provided for creating a “strong” ombudsman.

To conclude, the ombudsman is the right person to be addressed in cases of irregularities, in cases of disregarding human rights. However, he or she not the right addressee when a minority wants to discuss the amount of subsidies, the curricula for mother tongue teaching, or propose the creating of a minorities' museum.

So, although in Ukraine there is a powerful ombudsman institution, the presence of a similar powerful and personalised government institution that acts on behalf of national minorities is still very necessary.

There are also other good examples on how to keep dialogue between the government and the minorities alive.

In 1965, when the German minority failed to gain a seat in the Danish parliament, Folketing, the Danish Government introduced something new: the creation of a consultative committee for the German minority (Council of Europe, 2010). This committee maintains the contact between the German minority in Southern Jutland and the government and parliament of Denmark. The Committee discuss political and cultural issues that are of interest to the German minority, meeting once a year.

The chairperson is the Minister for Children, Education and Gender Equality, and the vice-chair is the Minister of Social Affairs and the Interior. From every parliamentary group, there is one member in that committee and four leading persons represent the minority.

Soon after the installation of the consultative committee for the German minority in Denmark, Germany erected a similar body in respect of the Danish minority in Germany.

The Committee is to ensure contact between the Danish minority and the federal government and the federal parliament, the Bundestag. It has the task of discussing all important issues of the federal government's domestic policy that concern or affect the Danish minority.

The Consultative Committee is set up at the Federal Ministry of the Interior. The Committee is chaired by the Federal Minister of the Interior, who in most of the sessions is substituted by the Government Commissioner for National Minorities. Further members include two members from each of the parliamentary groups in the German Bundestag, three members of the Danish minority in Germany, and one representative of the province of Schleswig-Holstein, where the Danish minority settles. Representatives of other federal ministries are invited according to the agenda. The commission convenes once a year, and there is the tradition that the meetings take place alternately in the capital and in the settlement area of the minority. This gives an

opportunity for the politicians to visit schools, kindergartens, and meeting houses of the minority.

According to this model, further consultative committees were established at the Federal Ministry of the Interior on issues concerning the Sorbian people, the Frisian ethnic group, the German Sinti and Roma, and the Low German language group as soon as these groups requested it.

These committees have a comparable membership structure to the committee for the Danish minority but there are special differences. The director of the scientific North Frisian Institute is a member of the Frisian Committee, the chairperson for the Foundation for the Sorbian People – which will be discussed below – is a member of the Sorbian Committee, and in the Committee for the German Sinti and Roma, two concurring civil society organisations are represented (Federal Ministry of the Interior, 2015).

Once a year, a conference takes place with the participation of the federal government and the states as well as the minorities and the Low German language group. The conference concerns the Framework Convention for the Protection of National Minorities and on the European Charter for Regional or Minority Languages, and is called the Implementing Conference (Federal Ministry of the Interior, 2015).

These conferences address the implementation of the two relevant treaties of the Council of Europe. Participants are the federal ministries that concern themselves with the protection of national minorities as well as minority and regional languages, the relevant state authorities, and representatives of the umbrella organizations of the minorities and language groups protected by the Convention and Charter and of their research institutions. When a state report to one of those treaties has to be written, the draft, which was previously prepared by the Federal Ministry of the Interior, is discussed and the organisations of the minorities are invited to give a written comment that afterward becomes a part of the state report.

The Advisory Committee to the Framework Convention in the member states promotes the implementation of the recommendations through follow-up activities and dialogue. The implementing conference and its composition has proven to be a good platform to invite representatives from both committees – of the Framework Convention and the Language Charter – to discuss the problems and possibilities of further implementation of both treaties.

The Advisory Committee to the Framework Convention welcomed:

[...] the regular organisation by the German authorities of conferences on implementation of the Framework Convention, during which the representatives of minorities, local authorities, Länder and federal institutions can discuss the implementation of the Framework Convention and the Advisory Committee's recommendations. The Advisory Committee makes the general point that a climate of openness and participation seems to preside over the monitoring procedure as a whole. (ACFC, 2006, p.4)

The minority organisations need a representation in the capital to be in the position to hold a constructive and continuous dialogue with the political sphere. According to an example from Denmark, the Secretariat for Minorities, which gets financial support from the Federal Ministry of the Interior, was founded in Berlin in 2005. Its mission is to facilitate exchange of information with the German Bundestag and the federal government. Simultaneously, the Secretariat for Minorities informs the minority associations about any relevant developments. The Secretariat

has its bureau in a building of the Federal Ministry of the Interior; the actual Secretary is a member of the Sorbian minority (ACFC, 2006).

After having gone over the instruments that Germany and other states use to keep contact with their minorities, one might argue that, in a country with one or four minorities, intense and individual cultivation of contacts would be rather easy, whereas in a country with more than 130 nationalities this remains impossible. Every second working day there would be the meeting of a consultative committee.

There are three solutions in principle, which are not alternatives, but that could be components to a collection of measures that could maintain healthy regular contacts with such a large number of nationalities.

The first component is to convene all minority organisations in sizeable meetings and keep regular contacts with their umbrella organisations – perhaps through a government-sponsored secretariat for minorities. In Poland, the Joint Commission of Government and National and Ethnic Minorities implements this approach on the national level. The institution is the principal body on that level, responsible for structuring the dialogue between persons belonging to national minorities and the authorities.

The second component is to keep especially close contact with those ethnic minorities whose languages fall under the Language Charter. Ukraine declared on the occasion of the ratification of the Charter that the provisions of said Charter shall apply to the languages of the following ethnic minorities of Ukraine: Belarusian, Bulgarian, Gagauz, Greek, Jewish, Crimean Tatar, Moldavian, German, Polish, Russian, Romanian, Slovak and Hungarian – thus only 13 groups. To invite those ethnic minorities to individual conferences might be justified, because these thirteen groups are not only subject to the monitoring process under the Framework Convention (which takes place every five years), but also subject to the monitoring process of the language Charter, which follows a three-year cycle.

The third component is to delegate the contacts to small nationalities, which settle only in one province or even district, to the public administration of the regional or local level.

4 Which Ministry Should Be in Charge of Minorities?

If one compares a number of European governments in order to decipher which ministry is mostly in charge of minorities, one will find different results. To begin with, on the federal level in Germany, the Ministry of the Interior is in charge, whereas for the Länder one can find the State Chancellery of the Prime Minister, in another the Ministry for Science, Research and Culture, and in a third the Ministry for Science and Arts. In Denmark, as explained prior, it is the Ministry for Children, Education and Gender Equality. In Romania, it is the Department for Interethnic Relations (subordinate to the Prime Minister). In Norway, it is the Ministry of Local Government and Modernisation, while in Sweden it is the Ministry of Culture, and in Austria it is the Federal Chancellery.

What does one take away from examining this governing structure? Unfortunately, nothing that can be converted directly into sound advice to a given government. What are the reasons for this?

First, there is no common European governmental structure. Besides some classic ministries for the Exterior, the Interior, Military Matters and Finance, there is a broad variety in the number of ministries and the distribution of competences and powers amongst them. This is partly a result of governmental traditions, and partly the result of coalition negotiations and treaties.

Second, the main areas of political and administrative action, in respect to minorities, vary according to their objective situation and their priorities from country to country. In some countries, the preservation and teaching of the minorities' languages is of highest importance. Therefore, it might be the ministry for schools and universities that leads in minority matters. When the health or social conditions of minority members are of high importance, the Ministry of Health or the Ministry of Social Affairs might be in charge. Conversely, when one wishes to underline the high political importance of the national minorities, one could put the relevant competences directly under the Prime Minister, who is usually always a member of the strongest party of the governing coalition.

Unfortunately, it cannot be suggested which ministry would be the best choice to handle minority questions in a country. However, advisable it should not be the last one in the official or social hierarchy of ministries.

The other question is if it is possible to bundle all competences in respect to minorities into one ministry. This is not possible, because some duties are delegated traditionally and for good reasons to other ministries. The regulation of the languages in court is a matter for the Ministry of Justice, the Ministry for Education is in charge of the compulsory school attendance, and compulsory vaccination is the responsibility of the Ministry of Health.

In no European country can one find a ministry that holds all competences concerning minorities. Good cooperation between the relevant ministries is therefore of the utmost importance, and it must be led by that ministry that has the main competence in the matter of protecting the national minorities.

5 The Parliament and the Minorities

Until now, this paper has concentrated on the relation between the government and the minorities and the way this dialogue should be organised by which structures of government. This does not mean that the dialogue between the parliament and the minorities should be neglected. It is the parliament that decides on laws and the budget. Thus, minorities have a keen interest in maintaining good contacts with the parliament.

We already discussed the ombudswoman of the Ukrainian parliament, who is in charge of protecting all human rights and freedoms, not just minority rights. Apart from this, Hungary was perhaps the first country that introduced the position of a parliamentary commissioner for the rights of national and ethnic minorities. This ombudsman was one of three parliamentary commissioners; the two others were in charge of citizens' rights with respect to future generations. In 2011, Hungary modified this system. Today there is one general parliamentary commissioner with two deputies, one of whom is in charge of national and ethnic minorities (Hungary Fourth Report..., 2015).

Another possibility is a Parliamentary Commission on National and Ethnic Minorities, which for

example, exists in the Polish Sejm (ACFC, 2010). In Germany, with its smaller number of national minorities, there is a round table on national minorities at the German Bundestag. With the support of the chairperson of the Committee on Internal Affairs, this round table brings together members of parliament and representatives of the umbrella organizations of the national minorities for discussions several times a year.

6 Participation of Minorities in Decision-Making in the Field of Funding

National minorities and their organisations need special funding from the responsible public organs and offices in order to be able to, for example, honour their special customs, learn and preserve their minority languages, and exercise political participation. The cost of cultural life, self-organisation, and effective political participation per capita tends to be higher for a minority than for the majority population, when the former wants to attain and maintain equivalent levels with the majority (Rein, 2015a).

The next question could concern the rationale behind the funding of such enterprises. The members of a minority and the majority are inhabitants and citizens of a given state, to which they pay taxes and social charges and in turn receive services of general interest to everybody. The streets, the airports, the railways, or the buses are to serve everybody, whether members of the majority or minorities. Lastly, both majority and minority members can take part in elections on all levels, and thus are actors realizing the principle that all state power emanates from its citizens.

The members of a minority have an identity that differs from that of the majority. They are characterized by a language of their own, a special historical consciousness, the compliance with specific traditions, or the close mental kinship to a kinstate. The members of the minorities argue that because of this specific identity, they have specific needs that cannot be satisfied by general public services and financial assistance from public funds but require special expenditures.

Often, they desire school teaching of and in their minority language; therefore, perhaps special schools or classes are required, dormitories at secondary level schools, and specific teacher training. Teaching pupils of minorities is more expensive than teaching majority pupils per se, because the minority language is taught in addition to the state language and the usual foreign languages. According to the number and regional distribution of the minority members, the classes are often smaller (which influences the ratio of teachers to pupils) and school transport might also be more expensive.

There are quite a number of minority needs – regarding the number and settlement structure of minority members – which can only be satisfied by higher per capita expenses. To take, for example, the daily newspapers of some minorities, those in Denmark and in Germany can only be published because they receive public funding.

Further cultural necessities might be directed towards libraries, museums, theatres and operas. Social necessities may aim at kindergartens, retirement homes, and social services that use the minority language. Even the wishes of different minorities in one country may differ distinctly,

be demonstrated by some examples from Germany: a dance and music theatre is only important to the Sorbian people, and a school system run by a civil law association is only prioritized by the Danish minority. To the German Sinti and Roma, the presentation of their history of persecution is a basic need, while the North Frisians and the Sorbian people put much emphasis on the further research and development of their languages (which are spoken nowhere else) by scientific institutes. The Danes – having very strong relations to a kin state – can have recourse to the linguistic and didactic scientific efforts in Denmark, while the German Sinti do not even wish to have a publication nor any public use of their language at all.

To examine the details of the different wishes and needs of minorities in any one country gives an impression of the complicated situation when the state has to decide on the funding of very divergent projects that may vary greatly in cost and duration. This might be also important for decisions regarding whether long-term basic and perhaps institutional subsidies or short-term project subsidies are appropriate measures.

This review will not delve deeper into the common ways of funding minority activities – it is typically through direct actions by the public administration, and project and institutional funding of undertakings of the civil law associations of one or more national minorities.

Instead, it will discuss the understandable wish of minority organizations to decide for themselves as much as possible what concrete undertakings the public funding earmarked for them should be used for. The public administration, however, is responsible for the respective parliament, and the parliament has the responsibility to ensure that the people use the public money economically and effectively. So a way must be found to negotiate the minorities' wish for self-determination and the duty of the administration to control public expenses. To take a German example (Rein, 2015b):

The Sorbs are a Western Slavic people that live exclusively in Germany, specifically in the federal states of Brandenburg and Saxony, and speak languages (Upper and Lower Sorbian), that are not found anywhere else. Government grants allocated to the Sorbian institutions are distributed via the Foundation for the Sorbian people, a foundation under public law established in Saxony by an intergovernmental agreement between Brandenburg and Saxony. Based on a co-funding agreement, this foundation is jointly financed by the federal government and the federal states of Brandenburg and Saxony, and distributes these funds to civil society associations and Sorbian cultural institutions that are registered corporations under German trade law, such as the Sorbian National Ensemble (*Serbski ludowy ansambl*) and Domowina Publishers (*Ludowe nakładnistwo Domowina*), owned by the foundation.

The foundation is of particular importance with regards to the cultural interests of the Sorbs, because it decides how much of the annual budget will be spent on the different undertakings in (among other things) scientific research, professional theatre, amateur music associations, a daily newspaper, the production of books, and the organization of big public events. The distribution of the financial means for undertakings of and for the Upper Sorbs in proportion to the Lower Sorbs is a permanent aspect of the decisions to be made.

The foundation's board of trustees decide the main parameters of the foundation's activities and its annual budget. Its 15 members include six representatives of the Sorbian people, two members each of the Federal Government, the Länder Saxony and Brandenburg, and three regional/local representatives of public administration. Habitually, the board members sent by the administrations do not intervene in the decisions on the priorities of the Sorbian people, but

they intervene when the wishes of the Sorbs would exceed the given budget or be otherwise unlawful. In its opinion on Germany's first state report in 2002, the Advisory Committee to the Framework Convention came to the conclusion that this foundation made "...a highly positive contribution as a fine example of good co-operation between the federal authorities and the Länder for the benefit of national minorities" (p. 17).

The Advisory Committee noted nonetheless:

that only six of the 15 members of the Foundation's governing board are representatives of the Sorbian minority - the others belong to the majority. The Sorbian members therefore represent less than half of the board and have no right of veto, even on fundamental issues. The Advisory Committee considered that the authorities should examine ways of strengthening the representation of the Sorbian minority in the functioning of the Foundation and in other fora. (ACFC, 2002, pp. 17-18)

7 Division of Functions and Responsibilities between the Federal Body and Its Regional Branches or Respective Sub-Units of Regional Branches

Any modern administration is structured like a pyramid, with some things done at the top and others on the lower echelons. The people of the top level are very hardworking but, of course, cannot know and do everything. This pyramid is also constructed differently depending on the country. The basic decisions of the country's constitution and the tradition of administration are decisive for the number of levels, for the dependency or independency of the lower levels from the higher and so on. When constructing an administration for the minorities, one should follow the general guidelines that tell you what the usual competences of the provinces, the districts, and the local level in other connections are.

In any case, some matters can only be handled on the highest level – the chancellery or a ministry. These matters are:

- 1) All international obligations in respect to the national minorities (especially the contact with the Council of Europe and the OSCE) including the writing of reports and attendance at conferences;
- 2) The development of legislation in respect to minorities, and their implementation and monitoring;
- 3) The design of a budget in favour of the national minorities and the principle control of that budget;
- 4) The high-level consultations with the umbrella organisations of minorities and at least with the larger minorities;
- 5) Maintaining regular contact with the national parliament in minority questions.

Daily administrative tasks can be delegated to the lower levels of pyramid. If one does so, it would be wise to install the institution of commissioners for national minorities on the next level. Either the previously mentioned German example could be applied or the Polish, where in each of the 16 Voivodships a Voivode's plenipotentiary for national and ethnic minorities is established, thus underlining the importance of minorities and demonstrating public interest in their matters.

8 Conclusions

1. A ministerial responsibility is necessary in the field of national minorities. The main tasks of that ministry lie in the fields of international obligations, development and implementation of laws, designing the budget, and keeping a high level contact with the minorities.
2. Where the dialogue between state authorities and minority NGOs is concerned, there are many models. The choice among them is influenced by the number of minorities in the country and their relative importance. In any case, there should be the possibility of direct contact with a high-ranking politician.
3. A strong ministry should be in charge of the minorities. A good cooperation is also needed with other ministries that are in charge of tangential but relevant issues concerning minorities.
4. The parliament, as well as the government, should have suitable institutions to handle minority questions. Institutions of the parliament cannot replace a good and effective governmental administration of minority matters.
5. Since minorities having unique needs for special funding, minorities should participate in budgetary decision-making.
6. When constructing an administration for the minorities, it should follow the general national lines of competences that provinces, districts, and the local level in other connections usually exercise. There are, however, important work areas that should be reserved for the highest ministerial level.

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Consultative and Advisory Bodies for Minorities: A European Overview¹

Balázs Dobos

1 Introduction

The effective involvement of minorities in the policy process and maintaining of regular dialogue between state authorities and minority representatives, for which international organizations have advocated and monitored implementation, have been of growing importance over the past decades in the European context. Since the fall of the communist regimes, in order to address the domestic ethnic diversity, prevent further escalation of ethnic tensions and manage post-conflict situations, in response to internal pressures or foreign criticism or in connection with the desire for European integration, most of the Central and Eastern European states have established various consultative and advisory mechanisms on minority issues and for the minorities usually under their governments. They complemented the similar existing structures in Western Europe, and subsequently they have now become the most frequent forms used in advancing the political participation of national minorities. The institutionalization of regular dialogue between state authorities and minority representatives through the creation of these consultative bodies was strongly encouraged and welcomed by both the Advisory Committee on the Framework Convention for the Protection of National Minorities of the Council of Europe (hereinafter, Advisory Committee or ACFC) and the OSCE High Commissioner on National Minorities (Verstichel, 2002, p. 179, Holt, 2005, p. 182, Eide, 2008, p. 140). In addition, since consultative mechanisms are predominantly conceptualized within the broader context of the effective participation of minorities in public life, which essentially covers minority representation and self-governance, they have received growing attention by academic researchers as well. However, scholars of ethnic politics often need to emphasize that these institutions, which embody softer forms of political participation, can rather serve as supplementary structures to direct political representation and to certain power-sharing and co-decision-making arrangements, such as the territorial or non-territorial forms of minority autonomy.

Nonetheless, by ensuring a certain level of minority representation and by creating the necessary conditions for an open, transparent and institutionalized discussion, supported by sufficient financial resources and technical assistance, these bodies may provide crucial institutional channels to make minorities' voices heard and for them to have an impact in those decision-making processes that affect their lives, especially when it is impossible to achieve adequate representation in elected decision-making organizations at national or local levels, for instance due to their relatively small size (Weller, 2004, p. 277, Ringelheim, 2010, p. 126). Some suggest and experience has demonstrated that, in particular, those consultative and advisory structures that have the opportunity to comment directly on minority-related issues, may be more

¹ This paper is an edited version of the presentation held at the seminar entitled 'Advisory and Deliberative Structures – Models and Their Effectiveness' on 30 November 2015 in Kyiv within the framework of the ECMI Eastern Partnership Programme 'National Minorities and Ethno-Political Issues: Belarus-Moldova-Ukraine'. The author would like to thank to the organizers for the invitation, to Alexander Osipov for his constructive suggestions, and to the participants of the workshop for their useful comments.

effective than representation in legislatures (Holt, 2005, p. 182), where the few number of minority members of parliament (MPs) inevitably have limited influence.² In addition to their purely consultative or advisory tasks, some bodies may even have decision-making powers, for instance, in allocating funds to cultural projects. Regular and institutionalized dialogue with minorities may, furthermore, contribute to satisfaction of minority needs, greater mobilization potential and capacities, better decisions and more effective implementation based on their input and expertise, and building of mutual trust and greater self-awareness, while it can also become an early warning system for conflicts (Holt, 2005, p. 181; Jabareen and Vilkomerson, 2014, p. 49). In managing and administering places of former violent ethno-political conflicts and war-torn territories, like Kosovo or East Timor, the intervening international community also consciously created various forms of consultative mechanisms to have local input to the decisions (Reilly, 2003, p. 178; Caplan, 2005).

Relatively little is known about the set up and everyday functioning of these consultative and advisory bodies, such as their structure, scope of activities, establishment and composition, agenda-setting, transparency and openness, and not least of all their efficiency and consistency. Even less is known from a comparative perspective. The particular European examples vary widely from one country to another even at the national level. Weller has distinguished various kinds of consultative bodies according to their type of activities and to their subject area. As to the former, he has identified co-decision-making, coordination, self-governance and purely consultative mechanisms (Weller, 2010). Some bodies deal almost exclusively with minority issues, others are part of a larger consultative organ, and some are independent, while others are attached either to the executive or to the parliamentary structures. In addition to the bodies focusing on the officially recognized, predominantly traditional national and ethnic minorities at national level, similar bodies may be established at local level (Caluser and Salagean, 2007), and there are also specialized institutions at both levels for certain issues, like minority education, or for distinct minority communities, like the Roma and Roma inclusion.³ Especially in the western part of the continent, and mostly in the target countries of immigration, different types of consultative mechanisms have been established also at various levels to foster the political participation of immigrants, as was distinguished by Mark Miller and Uwe Anderson at the turn of the 1980s and 1990s (cited by Lister and Pia, 2008, p. 54; Vertovec, 1999). Besides those mechanisms, other potential bodies strive for the greater equality and empowerment of other non-dominant and vulnerable layers of the societies—councils on gender inclusivity are typical examples in this respect (see, among others, Krizsan et al., 2012).

The very small number of studies that have been published have sought to investigate the above factors related to institutionalized consultation on and for recognized minority groups (see, for instance, Protysk, 2008; Visoka and Beha, 2011; Asari and Mätlik, 2013), and the country-specific opinions of the Advisory Committee on the implementation of the Framework Convention have revealed that there appear to be serious flaws, including, foremost, the unclear selection process of the members, lack of legitimacy and transparency, filtering of voices from outside, dysfunctionality, problems with the regularity of the meetings, consistency of activities,

² In this context, the OSCE Warsaw Guidelines have pointed out the representation is often not enough, once a minority is represented in a decision-making body, there is no further guarantee that the representative will have any material role (OSCE, 2001).

³ Specialized consultative and advisory bodies on Roma affairs have been established in various Central and Eastern European countries at both the local and national levels (Gheorghe and Mirga, 1997), like in Hungary (Rixer, 2015) or in Romania (Prisacariu, 2013), but also in other European countries, like Spain, which all face the challenge of the socio-economic integration of the Roma population (Ringold et al., 2005, pp. 159–91).

and financial backing. Moreover, these bodies and their contributions are often not taken seriously by state officials and decision-makers (Eide, 2008, p. 140). For these reasons, many argue that consultative bodies alone are not necessarily sufficient to guarantee the effective participation of minorities (see also ACFC Commentary 2008, para. 106), nor to change the nature of political culture (Ringelheim, 2010, p. 127), and without the willingness of the governments to cooperate effectively with the internal minorities, their functioning can often become problematic, and be little more than window-dressing for a country's minority protection regime.

To address the main issues that arise with those political and legal arrangements, the present study seeks to explore, in a comparative perspective, the main features of those consultative bodies in particular that comprise representation of both state authorities and minorities, and to gather the experiences of such European mechanisms with a particular focus on the EU's Central and South Eastern European members (see Annex), by dividing the paper into two main parts. The following section primarily concentrates on the underlying notion of how effective participation plays a key role in defining and understanding these consultative mechanisms. As a first step towards unpacking the concept and its implications, this part provides a brief analysis on how international documents and guidelines offer a legal framework to support consultative rights and foster consultations. Second, it further aims to summarize the main findings of the relevant literature on effective minority participation as they are related to consultative and advisory bodies. Based primarily on the opinions of the Advisory Committee and press releases, the second part of the study, with a comparative outlook to the relevant European cases, takes the analysis further by exploring whether these bodies are elected or appointed, and by examining their agenda-setting, openness, transparency, efficiency and consistency, as well as the major outcomes of their activities.

2 Consultative Mechanisms: Theoretical Foundations and International Standards

The traditional model of representative democracy is principally based on the ideas that the public creates and sustains the state and its government through their elected representatives, that the public should therefore have a say in decisions affecting their lives, and further, that the modern form of democracy is best described as an open market of various opinions and alternatives to which each mobilized and organized social interest may freely enter and compete with each other. In a multiethnic setting, especially in fairly divided societies, however, this can easily lead to the dominance of majority norms, values, and interests over non-dominant segments, systemic distortion, unequal redistribution of resources, and eventually, to paraphrase Tocqueville, 'the tyranny of the majority' (Wheatley, 1999, p. 204), particularly since in this model, to create a political majority, political decisions are theoretically based on an aggregation process by adding together individual preferences (Palermo and Woelk, 2003, p. 225). In addition to dominating decisions, norms, and resources, the overlapping political and ethnic majority also has effective control over political agenda, too, with its authority not only to make decisions, but to define the dominant values, myths, and public interest behind them as well as the political procedures and rules (Bachrach and Baratz, 1962).

Especially since the middle of the 1990s, against the increasing demand by certain minority groups for self-governance and greater autonomy, international organizations have been

preferring the incorporation of minorities into the decision-making process, i.e. the cautious formula of ‘the effective participation of minorities in public life’ (Deets, 2002, pp. 44–5; Holt, 2005, p. 173), sometimes even referred as a new paradigm, new approach of minority protection. The advantages of the term, which sounds undoubtedly democratic, are that it recognizes the legitimacy of minority claims and takes the potential internal divisions of the ethnic groups into consideration (Kymlicka, 2006, pp. 55–6). It is closely related to the concept of deliberative democracy, referring to the idea of full, free and equal participation and permanent consensus-seeking efforts by those involved in policy-making. However, the need for greater civil society participation and providing of channels to make their voices heard is also advocated by most theories of democracy, which conventionally find that getting more people involved in politics implies a greater number of opinions and preferences to be considered, and this in turn leads to better representation and to increased civic consciousness and loyalty.

For some, the term ‘participation’ itself requires bidirectional interaction, not only informing the public but consulting with the public to accommodate preferences, needs and values into the decision-making. According to this logic, participation can be defined as a scale consisting of various levels from informing people, through consulting and involving to collaborating, power-sharing and empowering people and groups. Noting that, although the range of participation clearly varies and results in increasing impacts on decisions at each stage, under different circumstances, different levels can be an adequate solution in citizens’ participation, and not every case necessarily requires full empowerment (Creighton, 2005). However, positioning various levels along the strong/weak dimension of public participation entails not only whether, in our case, minorities have the opportunity to give only their opinions or have more powerful veto rights, but also involves the frequency of consultations as well as the composition of the body (elected, appointed, etc.). From another perspective, ranging from presence to influence, as noted above in relation to parliamentary representation, the degree of representation in a consultative or decision-making body also affects the impact on decisions. Not least of all, participation has a third, direct/indirect aspect concentrating on the issue of whether a body deals only with minority or broader issues, or has a narrow focus on one policy domain (Henrard, 2005, pp. 135–6).

When it comes to effective minority participation, the criterion is expressed mostly by the legally non-binding instruments of the international minority protection system as well as by the recent EU documents on Roma inclusion. However, there is no universal or European agreement on how the term should be defined (Deets, 2005, p. 503), nor a precise scientific definition. In the literature, authors discuss various, minimal and maximal understandings and requirements of the effective participation. According to Kymlicka’s categorization, the minimal level of minority public participation requires that as citizens, group members shall have the right to vote and be elected in a non-discriminatory manner. A broader and more extensive understanding argues that they shall have some kind of, not necessarily proportional, representation by designing an appropriate electoral system in a way that the manipulation of electoral districts and thresholds is strongly prohibited. Finally, the highest level furthermore requires that the effective participation of minorities shall have a certain effect on the political decisions, which could be achieved by adopting certain power-sharing techniques (Kymlicka, 2006, pp. 56–7).

Marc Weller similarly distinguishes three, somewhat different, aspects. The first, on one hand highlights that equal opportunities shall be provided during elections and, on the other, stresses the need for full representation in decision-making processes. The second underlies the importance of cultural or territorial autonomies that enable minorities to make decisions by

themselves. The final aspect calls attention to the internal democracy of the minority communities, notably the freedom to create their own political processes, and the democratic, responsible and transparent way for the minority organizations to operate (Weller, 2005, pp. 430–1). Therefore, the concept, as it is developed and used by scholars, means more than simply representing minority interests and making attempts to influence decisions and have their voice heard (Palermo and Woelk, 2003).

At the international level, the 1992 UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities includes the right of persons belonging to minorities to participate effectively in various dimensions of everyday life:

Persons belonging to minorities have the right to participate effectively in cultural, religious, social, economic and public life.

Persons belonging to minorities have the right to participate effectively in decisions on the national and, where appropriate, regional level concerning the minority to which they belong or the regions in which they live, in a manner not incompatible with national legislation. (Art. 2)

Article 15 of the Council of Europe's Framework Convention for the Protection on National Minorities, a legally binding instrument, which was adopted by the Committee of Ministers in 1994 and came into force four years later, is less general when it talks about the creation of necessary conditions for effective participation, but does not specify how states should achieve this:

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.⁴

Instead, the Framework Convention's Explanatory Report highlights some potential institutional measures that can be considered as good practices in realizing effective participation, and foremost among them, promoting consultation appears:

In order to create the necessary conditions for such participation by persons belonging to national minorities, Parties could promote – in the framework of their constitutional systems – inter alia the following measures:

- consultation with these persons, by means of appropriate procedures and, in particular, through their representative institutions, when Parties are contemplating legislation or administrative measures likely to affect them directly;
- involving these persons in the preparation, implementation and assessment of national and regional development plans and programmes likely to affect them directly;
- undertaking studies, in conjunction with these persons, to assess the possible impact on them of projected development activities [...]. (Council of Europe, 1995, p. 22)

The right to effective participation was also acknowledged by the Central European Initiative Instrument for the Protection of Minority Rights in 1994, while the importance of consultations

⁴ The Advisory Committee explains this approach as follows: "Article 15, like other provisions contained in the Framework Convention, implies for the State Parties an obligation of result: they shall ensure that the conditions for effective participation are in place, but the most appropriate means to reach this aim are left to their margin of appreciation. This Commentary aims to provide the State Parties with an analysis of existing experiences so as to help them to identify the most effective options" (Commentary, 2008, para. 10).

was already part of the 1990 Copenhagen Meeting of the CSCE:

The participating States will protect the ethnic, cultural, linguistic and religious identity of national minorities on their territory and create conditions for the promotion of that identity. They will take the necessary measures to that effect after due consultations, including contacts with organizations or associations of such minorities, in accordance with the decision-making procedures of each State. (Document of the Copenhagen Meeting, 1990)

Later, the commentary of the Working Group on Minorities of the former Commission on Human Rights to the UN Declaration clearly stated in 2005 that:

States should also establish advisory or consultative bodies involving minorities within appropriate institutional frameworks. Such bodies or round tables should be attributed political weight and effectively consulted on issues affecting the minority population. (UN Working Group on Minorities, 2005)

As briefly summarized above, legally binding or non-binding international instruments of the more than two past decades contain general and standard provisions that describe the notion and scope of effective participation, but fail to provide detailed measures of how to set up and organize consultative and advisory mechanisms. In addition to the opinions and commentary of the Council of Europe Advisory Committee (see also Committee of Experts, 2006), the 1999 Lund Recommendations of the OSCE High Commissioner on National Minorities, which summarize and propose various institutional ways by which the effective participation of minorities in public life can be realized, may serve as a useful indicator of the international standards in this context. The latter explains the conditions of these structures as follows:

States should establish advisory or consultative bodies within appropriate institutional frameworks to serve as channels for dialogue between governmental authorities and national minorities. Such bodies might also include special purpose committees for addressing such issues as housing, land, education, language, and culture. The composition of such bodies should reflect their purpose and contribute to more effective communication and advancement of minority interests.

These bodies should be able to raise issues with decision makers, prepare recommendations, formulate legislative and other proposals, monitor developments and provide views on proposed governmental decisions that may directly or indirectly affect minorities. Governmental authorities should consult these bodies regularly regarding minority-related legislation and administrative measures in order to contribute to the satisfaction of minority concerns and to the building of confidence. The effective functioning of these bodies will require that they have adequate resources. (OSCE High Commissioner on National Minorities, 1999, paras. 12–3)

3 Mechanisms for Consultation

Given the relevant provisions at the universal and regional-European levels, what can be observed in practice among the state parties of the Framework Convention in the Council of Europe area is that the general absence of any regulation for minority consultative mechanisms, the failure to create such bodies for special, direct and institutionalized consultation, is relatively rare (see ACFC Third Opinion on Azerbaijan, 2012; ACFC Third Opinion on Sweden, 2012).

However, these cases are particularly remarkable, since if there is no mechanism to enable minority representation in parliament or other elected bodies, there have to be significant deficiencies in effective participation and involvement of minorities in political decision-making.

3.1 Structure and Scope of Consultative Bodies

Consultative and advisory bodies may fulfil various functions, their organizational position and scope of activities vary to a considerable extent, and, in some instances, they are established without a clear legal status, which can be a serious barrier to their effective functioning and commonly raises disputes among their members over structure, the scope and method of their work, appointments and participants' rights. In order to guarantee efficient and consistent operation, the Advisory Committee has urged those countries to guarantee legal personality for such bodies, to clarify their institutional position, and to entrench the obligation for regular and permanent consultation in their laws in a detailed way (ACFC Second Opinion on Romania, 2005). This was, for instance, the case with the Council of National Minorities, a governmental advisory body in Romania, which was established in 2001 and replaced the previous Council for National Minorities.

Unlike the interwar period, when legislative branches proved to be the most important actors in democratic political settings, since the second half of the twentieth century a rise in executive power can be observed. Accordingly, most of the established consultative bodies have been attached to governments.⁵ Other bodies, such as the Roundtable of Nationalities in Estonia or the Consultative Council for Communities in Kosovo, are located under the president.⁶ As part of the government machinery, they seem to have greater chances to influence the formulation and implementation of policies. However, in this respect, elections, policy shifts and curtailments often lead to substantial changes in governmental structures, which also may have negative consequences, especially when reducing governmental responsibilities, eliminating agencies, separating and transferring functions to other ministries/departments, or proliferating governmental units result in downgrading consultative arrangements with civil society members. In certain instances, the agendas of the previously separate consultative bodies, such as the Roundtable in Estonia or the Council for Minorities and Ethnic Groups in Slovakia, have been integrated into broader consultative entities with more diverse and broad memberships and fragmented agendas.⁷ In other cases, restructuring governmental institutions means that there is a lack of clear, fixed contact points for minority representatives to approach and consult (See for example ACFC Third Opinion on Norway, 2011; ACFC Third Opinion on Estonia, 2011; ACFC Third Opinion on Lithuania, 2013).

In a smaller number of cases, consultative bodies are created to contribute to the work of the legislative branch, for example in Bosnia and Herzegovina. Consultative bodies may be created at regional and local levels as well, which can be in many cases more important and closer to the affected people.⁸ Locating consultative bodies within the executive or parliamentary

⁵ As it is the case, for instance, in Albania, Austria, Bosnia, Bulgaria, Czech Republic, Denmark, Estonia, Germany, Hungary, Ireland, Moldova, Norway, Poland, Portugal, Russia, Slovakia, Slovenia, Spain, and Ukraine.

⁶ See also Armenia, Azerbaijan (until 1997), and Ukraine.

⁷ In Estonia, the roundtable was re-founded within the Estonian Cooperation Assembly under the president, which consists of more than 70 various NGOs. In Slovakia, the agenda has been transferred to the newly established governmental Council for Human Rights, National Minorities and Gender Equality. See Slovak Spectator (2013a).

⁸ For instance, in Bulgaria, Croatia, Czech Republic, Finland, Germany, Hungary, Russia, Serbia, Spain, and Switzerland.

structures, however, should not mean that there are no other measures to facilitate access to other decision-making bodies and levels (ACFC Third Opinion on Austria, 2011).

Most of the institutions are designed to deal with the common issues related to all of the officially recognized communities, thereby fostering dialogue among the groups as well, while some others have a specific focus on certain minorities, mostly on Roma and Travellers.⁹ Several bodies have established working groups or subcommittees in order to address certain policy fields or distinct minority groups (see, for instance, Poland and Romania). As to the issues to be discussed, a recurring critique by the Advisory Committee has been that, in many cases, these consultative bodies have a limited scope, often only the raising of issues of concern (ACFC Third Opinion on Kosovo, 2013). A related critique is that their main responsibility is related to the distribution of funds to cultural activities (ACFC Third Opinion on Austria, 2011) or dealing with cultural projects (ACFC Third Opinion on Estonia, 2011; ACFC Third Opinion on Moldova, 2009; ACFC Third Opinion on Russian Federation, 2011), though the Advisory Committee has pointed out several times that the focus of their activities should not be restricted only to cultural aspects.

3.2 Establishment and Composition

Membership in consultative and advisory bodies can be either open or fixed, and both may have advantages and difficulties, closely related to the representativeness of the body. Open membership may result in too many registered members leading to internal conflicts and rivalry, which can easily prompt questions on its legitimacy and over who can speak on behalf of the respective community. State authorities may also tend to cooperate only with moderate actors, thereby further splitting minorities and watering down their impact. In contrast, fixed membership may have the risk that even influential non-members may become disadvantaged and challenge the existing structures. In Bulgaria, the governmental consultative body, the National Council for Cooperation on Ethnic and Integration Issues is open to non-governmental organizations (NGOs) representing both 'old' recognized and 'new' migrant and refugee groups if they fulfil the legal requirements. However, in the recent past, there was significant fluctuation in the membership of the Council, and in April 2013 a number of Roma NGOs left and demanded the creation of a new and more effective institution (ACFC Third Opinion on Bulgaria, 2014; see also Amalipe, 2013). In Romania, with the exception of the largest group, the Hungarian ethnic party, only those organizations that have managed to obtain the guaranteed minority seats in the parliament are represented in the Council of National Minorities. In Moldova, those organizations that have failed to register at the relevant agency have limited communication with authorities (ACFC Third Opinion on Moldova, 2009).

In order to provide and enhance a direct dialogue between state authorities and minority representatives, consultative bodies typically consist of both governmental and minority members,¹⁰ and the Advisory Committee recommends that officials should not dominate their work. Minority positions can usually be filled either by election or appointment. In the majority of cases, minority bodies nominate representatives who are then appointed by the government. In Albania, however, the government alone selects and appoints representatives with prior consultation of minorities (ACFC Third Opinion on Albania, 2011). In this context, the Advisory Committee has often highlighted that the appointment process should be a transparent with

⁹ See, for instance, Bosnia, Czech Republic, Finland, Hungary, Ireland, Portugal, Slovenia, and Spain.

¹⁰ See, for instance, Bosnia, Czech Republic, Finland, Ireland, Poland, and Spain.

mutually accepted procedures.¹¹ When minority members are elected, sometimes this may take time and cause long delays, as it was the case in Poland (ACFC Third Opinion on Poland, 2013).

When the body contains almost exclusively minority members, they are mostly NGO or party leaders and experts. In Croatia (and Cyprus), minority MPs automatically become members of the umbrella body of minorities, the State Council for National Minorities. Minority autonomous bodies, especially those with elected non-territorial arrangements, represent a special form of consultation. This is the case with the Saami parliaments in the Nordic countries as well as in Estonia, Hungary, and some of the former Yugoslav republics, namely Croatia, Serbia, and Slovenia, where registered minority voters have the right to establish their own representative institutions by direct or indirect elections. In Hungary, for instance, a strategic partnership agreement was signed between the competent ministry and the national self-governments in 2011 (Dobos, 2014, p. 293).

3.3 Inclusiveness and Representativeness

The question of which groups and organizations are consulted and represented in the consultative bodies is of also of crucial importance and involves further questions, noting foremost that it is generally left to the discretion of the states concerned to determine which groups should receive official recognition on their territory. Although the Advisory Committee has emphasized in its commentary that all national minorities should be represented, in Central and Eastern Europe in particular, a number of cases can be cited in which the state refuses to acknowledge the very existence of certain communities, and consequently they are not consulted on matters affecting their lives, while co-ethnics may have official minority status and enjoy a wide range of rights in other countries. In this regard, not all minorities are represented in Albania (ACFC Third Opinion on Albania, 2011), Macedonian and Pomak NGOs are rejected from participation in Bulgaria (ACFC Third Opinion on Bulgaria, 2014; see also Independent.mk, 2014) and there are no formal consultation mechanisms for the Russian-speaking community in Finland (ACFC Third Opinion on Finland, 2010), for Roma and Sinti in Italy (ACFC Third Opinion on Italy, 2010), and for indigenous people at the Russian federal level (ACFC Third Opinion on Russian Federation, 2011).

As noted above, some consultative structures also include migrant communities (see also Finland and Moldova). In the Czech Republic, in addition to the 12 minorities already represented, the Belorussian and Vietnamese communities gained official recognition in 2013 (Czech Republic, 2013).¹² The question in this regard is whether and how a distinction should be made between 'old' and 'new' minorities in certain cases.

A further issue concerns the question of how the potentially conflicting interests of numerically larger and smaller communities can be reconciled, because in certain instances, not all recognized minorities are consulted (ACFC Third Opinion on Austria, 2011), or the views of the smaller groups are sometimes not taken into account (ACFC Third Opinion on Lithuania, 2013). The Hungarian minorities living in Romania and Slovakia can serve as an example to illustrate this tension, where they are the largest groups according to census data (6.5 and 8.5 per cent respectively), while other groups, with the exception of Roma, constitute less than 1 per cent

¹¹ See opinions on Albania, Austria, Bosnia, Czech Republic, Kosovo, Slovakia, and Russia.

¹² For more information, see Kascian and Vasilevich (2015).

each. In Romania, Council for National Minorities was set up in 1993 without prior consultation with minority representatives, ‘probably with an eye to the forthcoming deliberations on Romania’s admission to the Council of Europe’ (McMahon, 2007, p. 130). The Romanian Council gave equal representation for 18 recognized communities, but after six months the Hungarian minority left it because the government was unwilling to implement its recommendations. On the contrary, Slovakia initially followed a proportional logic: the Council for National Minorities and Ethnic Groups was established in 1998, in which each recognized group had at least one representative, while there were three Hungarian and two Roma members (Slovak Spectator, 2003). After the 2006 elections, representation in the Council became based on equal footing, meaning that each minority had one seat (ACFC Third Opinion on Slovakia, 2010; see also Slovak Spectator, 2010) and later, when it was reorganized as a subcommittee within a broader consultative council, each minority had one vote, regardless the number of representatives in the 24-member body. Previously, Hungarians had five votes, Roma had four votes and Ruthenians had three votes—those communities strongly disagreed with the reform, while the ten smaller groups supported it (Slovak Spectator, 2013b).

Not least of all, when establishing inclusive consultative mechanisms, the Advisory Committee has also pointed out that particular attention should be paid to the issue of divided communities. Earlier the German government had claimed that the divergent views within the Roma and Sinti communities delayed the establishment of their consultative body (ACFC Third Opinion on Germany, 2010). This issue also becomes crucial when membership is fixed and reserved for the most prestigious organizations, while other non-members do not have access (ACFC Third Opinion on Romania, 2012).

3.4 Agenda-setting

Identifying which themes and documents can be discussed at the meetings of consultative bodies, i.e. whether the body may play a pro- or reactive role, is also of crucial importance. A number of country opinions have highlighted that in certain cases such bodies functions are purely advisory and symbolic, meaning that they can only react to the proposals and reports put forth by the government (for instance in Spain), although it would be more effective if the agenda could be the result of consultation and consensus among members and they could also raise issues, prepare recommendations and monitor the implementation. On the contrary, there are examples in which consultative bodies have the right to determine their own agenda (Lithuania), or minority members have the opportunity to express their own opinions and put forward their proposals (Poland). The latter also concerns the right of individual members. For instance, in Bulgaria, civil society members of the consultative body have been quite active in formulating their demands both within and outside the institution.

3.5 Transparency and Openness

The involvement and consultation with minority representatives in policy-making necessarily involves state authorities sharing the burden and responsibility in relation to relevant decisions, which leads to the need for publicity in order to transmit those decisions and increase their support and legitimacy within the respective social context. In this regard, although the Advisory Committee has encouraged state parties to take measures to enable minority communities ‘to be aware of the existence, mandate and activities of such consultative bodies’ (ACFC Commentary 2008, para. 117), numerous and crucial flaws can be found in this aspect of the consultative mechanisms. Although press releases are often issued on their major meetings,

country experiences suggest that in many cases their activities lack transparency, including failure to build a full-fledged website even in the official languages, let alone in English or minority languages, which would contain, among others, basic information, the statute, key policy documents, the schedule and the proceedings of their meetings. Sometimes it is still questionable whether their statutes have relevant provisions on how to ensure greater transparency at all (e.g. contact with media, issuing press releases, dissemination of information). However, in the Czech Republic, for instance, the Council for National Minorities shall prepare annual reports on its activities to the government, which could also contribute to their effectiveness.

3.6 Efficiency and Consistency of Activities

Like their agenda, consultative bodies usually either have the right to determine their own working procedures or they are specified in the relevant governmental decrees that have established them. What the Advisory Committee has emphasized, in this regard, is that dialogue should be institutionalized and regular, and their meetings should be frequently convened. A number of examples demonstrate that in many cases consultative bodies meet irregularly (see, for instance, ACFC Third Opinion on Ukraine, 2012); sometimes there can be a significant gap, even years, between their meetings, which is clear evidence of their ineffectiveness. Meetings are reportedly rather rare and ad hoc in Azerbaijan and Russia, while, in contrast, in Kosovo or Lithuania, they have a fixed number of annual meetings. In certain cases, too many members (Bosnia and Herzegovina) or, as already noted, fluctuation of members (Bulgaria), can become a barrier to the efficiency of their work. Further, as clearly pointed out by the Advisory Committee, adequate resources and infrastructure should be made available for consultative bodies.¹³ Nonetheless, when it comes to the efficiency of the consultative and advisory bodies, the Advisory Committee could only note it with regret in its country opinions that the actual impact of them was in fact quite limited in many instances¹⁴, and this seems to support the relatively few findings published on consultative mechanisms on their rather symbolic and less effective role in minority policy-making.

4 Conclusions

Understood within the broader approach of effective participation of minorities in public life, the themes of encouraging the creation and monitoring the experiences of existing consultative and advisory mechanisms on minority issues and for minorities have been recurrent in the Advisory Committee's opinions on the implementation of the Framework Convention in the recent past, particularly since consultation with the affected people is of crucial importance, especially if minorities are not directly represented in decision-making bodies or even when consultative bodies serve as a complementary channel to their representation. As demonstrated in the paper, consultative mechanisms are, however, complex systems with various layers and dimensions, and which, as encouraged by the Advisory Committee, can be organized at different national, regional, and local levels. They have the potential to include all minorities in a country and cover key common areas for discussion both with and among the groups, but also to focus and address the needs of particular groups, like Roma. Country opinions, along with the few expert

¹³ See opinions on Armenia, Bulgaria, and Portugal.

¹⁴ See opinions on Austria, Azerbaijan, Bosnia, Bulgaria, Finland, Kosovo, Poland, Portugal, Russia, Spain, and Ukraine.

studies, however, have identified serious flaws and failures in their structures and functioning. Nonetheless, such bodies that are regularly and transparently consulted, are involved in formulation of crucial decisions, have the right to raise issues, prepare recommendations and monitor and report on the implementation of policy programmes, would inevitably lead to more supportable and legitimate decisions by state authorities on one side, and, on the other, would result in more effective minority participation and build greater capacities for engaging in policy-making.

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Annex: Major consultative bodies in the Central and South Eastern European members of the European Union in the 2010s

Country	Name of the consultative body	Institutional position	Year of establishment	Homepage, further information
Bulgaria	National Council for Cooperation on Ethnic and Integration Issues (previously National Council for Cooperation on Ethnic and Demographic Issues)	Government	1997	http://www.nccedi.government.bg/
Czech Republic	Government Council for National Minorities	Government	2001 (originally since 1994)	http://www.vlada.cz/en/ppov/rnm/historie-a-soucasnost-rady-en-16666/
	Government Council for Roma Minority Affairs	Government	1997	http://www.vlada.cz/en/ppov/zalezitosti-romske-komunity/the-council-for-roma-community-affairs--50634/
Croatia	State Council for National Minorities (previously Council of Ethnic and National Communities or Minorities)	Government	2002 (originally since 1998)	http://www.savjet.nacionalne-manjine.info/ (in Croatian)
	National Roma Inclusion Strategy 2013-2020 Monitoring Commission	Government	2013	
Estonia	Cultural Advisory Council of National Minorities	Ministry of Culture	1997	
	Consultative Council of non-Estonian language Education	Ministry of Education and Research	2010	
	Roundtable of Nationalities	Within the Estonian Cooperation Assembly (President)	2010	http://www.kogu.ee/en/
	House of Representatives of National Minorities in Estonia		2007	http://www.evek.ee/en/structure

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Hungary	Roma Coordination Council	Government	2011	
Latvia	Minorities Consulting Council	President	1996	http://www.president.lv/pk/content/?cat_id=6407&lng=en
	National Minorities NGO Committee on the Framework Convention for the Protection of National Minorities	Ministry of Culture	2006	
	Advisory Council for Minority Education Issues	Ministry of Education and Science	2001	
	Advisory Council on Roma Integration Policy	Ministry of Culture	2012	
	Advisory Council for Integration of Third Country Nationals	Ministry of Culture	2013	
Lithuania	Council of National Communities	Government	1995	
Poland	Joint Commission of the Government and National and Ethnic Minorities	Prime Minister	2005	http://ksng.gugik.gov.pl/english/files/act_on_national_minorities.pdf
Romania	Council of National Minorities (previously Council for National Minorities)	Government	2001	http://www.dri.gov.ro/en/consiliul-minoritatilor-nationale/
	Consultative Council within the National Agency for the Roma	Government	2004 (originally since 1997)	http://www.anr.gov.ro/ (in Romanian)
Slovakia	Council for Human Rights, National Minorities and Gender Equality (earlier Council for National Minorities and Ethnic Groups)	Government	2010 (originally since the early 1990s)	http://www.radavladyp.gov.sk/
Slovenia	The Commission for the Protection of the Roma Community	Government	2009	

European Models of Communication Between Governments and Minorities: Towards Respect for Human Rights Standards

Reetta Toivanen

“Only when minorities are able to use their own languages, benefit from services they have themselves organized, as well as take part in the political and economic life of states can they begin to achieve the status which majorities take for granted”

– UN Office of the High Commissioner for Human Rights, 1998, p.2.

1 Minority Rights in the Heart of European Past and Future

From a European perspective, the political turbulence at the end of Cold War in 1989 had dramatic consequences. The tenuous global political climate led to a growing societal need to stabilize Europe and guarantee its peaceful development. For example, the Organization for Security and Cooperation in Europe (OSCE) initiated several projects that stressed the importance of human rights education as a means to increase peace and stability and worked on standard-setting for guaranteeing the participation of national minorities in public life. The OSCE also contributed to the now widely accepted understanding that it is up to minorities to define the societal and cultural areas in which they need special state protection and promotion (Toivanen, 2004). In 1992, the United Nations (UN) adopted the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities. That same year, the Council of Europe adopted the European Charter for Regional or Minority Languages, followed by the Framework Convention for the Protection of National Minorities in 1995. European intergovernmental organisations such as the OSCE, the Council of Europe, as well as organs of the European Union, clearly state that they side with minority cultures, and different cultures and languages have repeatedly been said to form an important part of the European heritage (Kraus, 2008).

In the context of minority protection, the concept of effective participation is increasingly being used as a slogan or even a programme for the future of Europe. As assimilation policies were dismissed by the end of 1980s, a new and popular concept came about: integration. Integration as a notion did not completely preclude the assimilationist goals of governments towards their minorities, but simultaneously called for attention to be paid to the aspects of minority identities that should not (and could not) merely be wiped away (Berry, 1997; 2000). It was emphasised that minorities should have the right to their own culture and that states should not only respect this but also promote the identity maintenance of minority groups. Reality has proved that it is not easy to make integration happen (Saukkonen, 2013). Many intergovernmental organisations have called for a new strategy: participation. Effective participation can be understood as a

program that aims to make integration possible. At the same time, these organisations are rather helpless when it comes to implementing their proposals. The treatment of national minorities is still perceived in many countries as a national concern, despite the fact that it means exactly the opposite: human rights, including the rights of minorities, are at their core a universal, international concern and it is not up to governments to decide how they treat their minorities (Orlin, 2015).

But what does promotion and protection of minorities mean, in theory and in practice?

2 On Minority Rights: Added Protection

Human rights are a common good; in their universal ideal they guarantee the same level of freedom and protection to all human beings (Sen, 2004). Minority rights are a precondition for universal human rights (Scheinin, 2003) and an integral part of basic human rights (De Varennes, 2001). When speaking about the rights of minorities, it is important to emphasize that they are not additional rights, they are nothing extra for minorities that majorities would not be allowed to enjoy. As Martin Scheinin (2003) has put it, “Minority rights are about added protection: their aim is to guarantee that also persons belonging to minorities enjoy the same rights as people belonging to the dominant forces in a societal setting”.

In most instances, a minority must be considered a numerically smaller section of the population in order to be defined as a minority. According to international law, they have to occupy a non-dominant position in society. Minorities commonly have a strong sense of collective identity and possess distinct ethnic, religious, or linguistic characteristics that differ from that of the majority population (for different definitions, see i.e., Capotorti, 1979; Deschenes, 1985; Jackson-Preece, 1998). Jennifer Jackson Preece (2005) has stressed that the size of the minority population is not decisive when defining minorities, but the context of power use is. According to her, precisely the fact that some peoples are denied or restricted in the enjoyment of their rights in the political community on the basis of the fact that their identity markers (ethnicity, language, religion, customs, sense of community) differ from the identity of the majority population makes them a minority. The question of power is immensely important. When minorities are spoken of in the following text, it is meant that they are groups of people who have fewer opportunities to participate in political decision-making and in the sharing of resources.

3 The EU and the Promotion of Minority Rights through Partnership Agreements

The European Union (EU) was the first international organisation to incorporate human rights, including the requirement to protect minorities, into its agreements with external partners (Börzel and Risse, 2004). It pronounces that the promotion and protection of human rights around the world are a legitimate concern of the international community. Since 1993, the EU has applied the ‘Copenhagen criteria’ in its admission policies. The requirement to respect human rights and protect minorities is thus one condition for membership in the European Union. Similar conditions frame the EU’s external relationships.

Whether in trade or development aid, the EU requires from its partners the commitment to these

European values of respecting human rights and protecting minorities. For example, in 1999 the EU adopted the European Initiative for Development and Human Rights (EIDHR) to be applied to all external agreements. The policies of the EU towards possible accession countries and third countries look very similar when it comes to the promotion of human rights and the protection of minorities. There is clearly, as Börzel and Risse (2004) state, an EU cultural script. The EU Strategic Framework and Action Plan on Human Rights and Democracy, adopted in June 2012, are central reference documents of EU External Policy, setting out the guiding principles and main priorities of EU action. These documents aim to improve the effectiveness and consistency of the EU's human rights policy and to place human rights, protection of vulnerable peoples, and democracy at the core of the Union's external actions. In 2014, the External Action Service (EEAS) began a broad process of consultations with other EU institutions (Commission, Council and Member States, European Parliament) and relevant stakeholders (including, in particular, civil society organisations and academic institutions) with the view of preparing a fully renewed Action Plan. The EEAS has also worked on streamlining its internal mechanisms and procedures, with a view of making its actions on human rights more effective. The Council Working Party on Human Rights (COHOM), which is in charge of all human rights aspects of the external relations of the European Union, adopted the EU's strategic priorities in the UN Human Rights Fora. The main task was to produce a concerted approach within EU institutions and partners (EU Delegations, Heads of Missions, EU Institutions and Services, and Member States) to human rights, and on that basis, the Political and Security Committee (PSC) has endorsed 132 Human Rights Country Strategies. The EU also adopted new external financial instruments (2014-2020), in which human rights, and the protection of minorities and democracy feature as key principles and are covered by dedicated programmes.

All this being said, the EU is not a human rights organisation such as the Council of Europe. However, through the immense influence of the EU's agreements and partnerships in the area of economics, trade and politics, it may have much more effective means to improve the situation of vulnerable peoples. According to an EU decision, one key mechanism to promote minority rights is enabling special and functional forms of communication between governmental institutions and the members of minorities (EU, 2014). These are also key to legitimacy and improvement of the quality of democratic decision-making. An explanation of the kinds of means and arrangements that have been put in place in order to increase the inclusion of minorities in different European countries follows.

4 Dialogue between Governments and Minorities

The key to efficient forms of communication between governments and minorities is that the mechanisms chosen are functional and take the specific concerns of various minorities seriously. This means that very different practices can and must be chosen depending on the minority. In the following, I will shortly introduce a few practices that have proven rather successful.

One mechanism is to establish consultation forums. These are meant to support and develop interaction between the governments, relevant authorities in general, and national or ethnic minorities with immigrant backgrounds as well as to support the ministries in developing a diverse society with ethnic equality. For example, in Estonia, the President established a Presidential Roundtable on National Minorities in 1993, when the country was hosting a high

number of persons without citizenship, especially persons who were defined as Russian-speakers. After a short break between 1997-1998, it continued its activities, focusing on promoting long-term development of integration policy while also continuing as a forum for dialogue on immediate political issues. The members of the forum felt at times that, since they had no veto-powers, the forum was useless. Other members highly appreciated the possibility to not only carry out a dialogue with those in power but also to meet other representatives of minorities and work on joint strategies (Toivanen, 2009). Rather similar to this is the Advisory Board for Ethnic Relations (ETNO), founded in its first form 1998 in Finland. Today, the Government appoints the Advisory Board members and it operates under the auspices of the Ministry of Justice. Its main goal, according to the current statute, is to promote cooperation between immigrants, ethnic minorities, public authorities, political parties and NGOs. All of the 34 persons appointed for fixed four-year terms are experts in the field of migration, integration, and non-discrimination, and represent different language, religious, or cultural communities in Finland. The Board can make proposals and offer expertise in circumstances of special need (e.g. reforming legislation). In addition to the national Advisory Board, there are seven regional boards.

Rather similarly, in Norway, the *Kontaktforums*¹ are meetings arranged by the Norwegian government since 2003, where representatives from national minority organisations and representatives from central authorities meet and negotiate on matters concerning the minorities. As a rule, general meetings are held every year and one-on-one meetings with each minority or specific minority organisations are arranged on the side. Another form of dialogue in Norway is KIM, a Committee appointed by the government of Norway to support dialogue between immigrants and authorities in the country. The 35 persons that are selected to join the committee for four-year periods are representatives from immigrant organisations, political parties in the Norwegian parliament and central public administration, and the central municipal union. Its main tasks include supporting authorities in matters regarding immigrants and supporting dialogue between immigrants and the authorities.

In Germany, the Minority Board (*Minderheitenrat*) works under the auspices of the Ministry of Interior. It is composed of representatives of the four recognized autochthonous national minorities and ethnic groups in Germany: Danes, Frisians, the German Sinti and Roma, and the Sorbs. It has a secretary located in the Ministry in Berlin. Its work concentrates on the concerns of the four minorities with the main political goal of including a minority protection article in the German Basic Law. At the same time, it seeks to promote the interests of the minorities by working together to represent the interests of the four minorities in the federal government and the German Bundestag.

Many countries have specific Advisory Boards or Consultation Forums for the most discriminated parts of population. For example, both Sweden and Finland have long housed an Advisory Board on Romani Affairs (RONK). The aim is to enhance the equal participation of the Roma population in their societies, to improve their living conditions and socio-economic position, and to promote their culture. In Finland, the RONK functions in conjunction with the Ministry of Social Affairs. This is due to the fact that, historically, the main challenges faced by Roma were identified as related to social affairs. The board is appointed by the Government

¹ See more about *Kontaktforums* at the website of the Government of Norway: <https://www.regjeringen.no/no/tema/urfolk-og-minoriteter/nasjonale-minoriteter/midtspalte/kontaktforum/id716397/> (in Norwegian).

every three years with 18 members, half of whom must represent the Roma population and the other half of whom represent different ministries. In order to guarantee its efficiency and impact, it employs a full time General Secretary and a secretary. RONK also has several regional offices in Finland.

Advisory boards and consultation forums can be an inexpensive and low-bureaucratic way to foster good inter-ethnic relations. The precondition for their success is, however, that decision-makers and authorities take their work seriously. This requires that they be granted powers to participate in policy-making and propose reforms and practices. For example, the representatives in the Finnish ETNO especially cherish the fact that in this forum they have the chance to change views on issues that are commonly shared by all members of minorities. Sometimes a format concentrating on the grievances of one religious, ethnic, or linguistic group may be what is needed in order to push for reforms in areas of discrimination faced by a single group. For example, in Finland, the Russian-speaking minority has for some time requested for their own advisory establishment for the promotion of their language and culture.

For minorities that are physically concentrated in one region, local autonomy in matters related to culture and language may be the best mechanism to promote the will to cooperate with the central government. This is not so simple in the case of the Finnish Sámi Parliament however, which was guaranteed autonomy in matters pertaining to culture and languages, since at the moment 70percent of Sámi children are born outside of the home territory of Sámi (Länsman, 2008).

5 Autonomy of the Finnish Sámi Parliament

There are about 70,000 to 100,000 Sámi people living in Norway, Sweden, Russia, and Finland. In Finland, the number of Sámi people is estimated at approximately 10,000 persons. The Sámi Homeland is located in the four northernmost municipalities in the Province of Lapland: Utsjoki, Inari, Enontekiö and the northern part of the municipality of Sodankylä. Finnish legislation has introduced a definition of Sámi, which is primarily based on linguistic criteria: A Sámi is a person who identifies himself or herself as a Sámi and they, or at least one of parent or grandparent, learnt Sámi as their first language. In 1995, the Sámi definition was broadened to cover descendants of a person who had been entered in a land, taxation, or population register as a mountain, forest, or fishing Lapp. This amendment was made in order to pay due attention to the fact that many people had lost their language already much earlier in the course of previous assimilation policies. Three of the ten Sámi languages are spoken in Finland: North, Inari and Skolt Sámi. North Sámi is the largest group, spoken by 70 percent to 80 percent of Finnish Sámi. It is thus the natural lingua franca in Nordic Sámi cooperation.

In 1995, the Finnish Constitution was amended in order to provide stronger guarantees for the rights of the Sámi, guaranteeing them cultural autonomy with respect to their language and culture within the Sámi Homeland. A separate Act on the Sámi Language came into effect in 1992 and applies in the Sámi Homeland. A Sámi may use his or her language before courts as well as state and municipal authorities whose jurisdictional or administrative areas cover all or part of the Sámi Homeland. Since 2012, a Sámi resident in Finland may register his or her Sámi mother tongue in the population register. Acts of Parliament and decrees and decisions by the Government or other authorities relating to Sámi issues must be translated into the Sámi

languages. Place names in the Sámi home area should appear also in Sámi languages. This means that in the municipality of Inari, which is home to the three Sámi languages and Finnish, signs are often in four languages.

Sámi languages have been taught in schools since the 1970s, but it was not before 1991 that Sámi acquired the status of an independent mother tongue in the school laws. Since 1999, Sámi children who live in the Homeland and speak Sámi are entitled to receive the main part of their education in grades one through nine in their mother tongue. The municipalities in the Sámi Homeland have 100 percent of their costs for teaching of and in Sámi covered by the national budget. One challenge is that today approximately 70 percent of Sámi children live outside the designated homeland. The state is obliged to organise mother tongue language teaching for these children as well, but schools often face problems such as a lack of teachers or unwillingness of the municipality to finance their education.

At the beginning of 1996, the new Sámi Parliament (Sámediggi) was constituted through an Act of Parliament as a representative body for the Sámi. It is the successor to the Sámi Delegation (the old Sámi Parliament) established in 1973. Elections to the Sámi Parliament are held every four years, last time in 2015. The delegates come from different municipalities and there are no Sámi political parties. The Parliament decides how money set aside in the national budget for the benefit of Sámi culture is to be distributed. Moreover, the Parliament may take initiatives, make propositions, and present statements in matters concerning Sámi languages, culture, and the status of the Sámi as an indigenous people. Even though the Parliament has no strong political powers, it must be consulted in matters such as mining claims, social planning, leasing state land, and establishing nature protection areas and parks.

6 Towards True Dialogue and Cooperation

Based on extensive research over many decades and all over the world, there is substantial scientific and proven knowledge on how to guarantee a society where diversity is seen as an asset and not a threat. I will conclude with this knowledge. It is appropriate to begin by reminding the reader that the responsibility for the respect and realisation of all human rights lies with the government. It is the state that is made responsible for any human rights violations. This is important because too often state authorities tend to blame victims. The state is not left alone in the international community: One reason to ratify the available human rights treaties – and those pertaining to minorities' rights – is that the monitoring bodies and committee of the treaties will, through periodic reviewing mechanisms, advise the state on their effort to comply with human rights requirements. A government that wishes to reduce societal dissatisfaction and tensions does itself a favour by setting a solid anti-discrimination law with a wide scope and concrete remedies and writing, together with civil society actors and minority representatives, concrete tangible national human rights and integration action plans with measures that can be followed and evaluated.

In all this political activity, the members of minorities must have a real presence, meaning that in the forums and advisory bodies, they must have at least 50 percent of seats. They must also have a clear mandate that is clearly adhered to. Representative bodies must have enough resources for themselves. Finally, the allocation of resources should go to the minorities and the bodies must have rather deep self-determination in how funds are used.

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Some Institutional Mechanisms for Communication between the State and Ethnic Minorities – The Case of Serbia

Petar Teofilović

1 Introduction

Since the end of 19th century, the formation of nation-states has been based on the notion that states are founded by ethnic groups that make up the majority population on a certain territory, and thus such states ‘belong’ to that particular ethnic group. One of the consequences of the creation of such states has been the emergence of ethnic minorities, i.e. other ethnic groups that inhabit the same territory but do not fall into the majority ethnic group. There are no universally accepted standards regarding the status of ethnic minorities, so their treatment in different states varies to a large extent. On the one hand, some states do not recognize ethnic minorities at all, or marginalize their members by not recognizing any special collective rights for them. On the other hand, some states acknowledge certain special rights for ethnic minorities’ members and apply measures and mechanisms aimed at empowering the ethnic minorities’ members to fully and effectively enjoy the rights that the majority population routinely enjoy, but the standards for concrete guaranteed minority rights vary among these states.

This article presents an overview of the most frequently used institutions and mechanisms for both the protection of ethnic minorities’ rights and for better communication between various levels of state powers and members of ethnic minorities. These institutions may be a part of the legislative or the executive branch, or act as a part of the ‘fourth branch’, namely as independent institutions. The main features of such mechanisms, their legal regulation, and the possible benefits and flaws in their practical application are analysed for the case of Serbia, a multi-ethnic state that has tested many of those mechanisms in the last decades with various results.

2 Parliamentary Working Bodies

Legislative bodies usually form regular working bodies (boards) with the task of dealing in detail with issues in particular areas. Regular working bodies normally consider and discuss the drafts of legal acts that contain provisions regarding issues within their competences, and are usually authorized to submit amendments to draft laws regulating their area. They may initiate changes to particular legal acts or the adoption of new ones, supervise the execution of governmental policies and the enforcement of relevant legal acts in their area, and deliberate on petitions, initiatives and motions within their competences, among others.

A special parliamentary board may be established to deal with issues in the area of minority rights, either exclusively or in conjunction with issues in some other similar areas (e.g. together with human rights in general, or with some kindred areas such as freedom of religion and the

like). The main goal of the establishment of such a working body is to provide a mechanism that should enable ethnic minorities to influence legislation relating to issues relevant to their status and the enjoyment of their rights, and to secure a specialized and more competent setting for the sharing of expertise and improvement of legal regulations related to minority issues than that of the plenary sessions of the legislative body. The authority of such boards also normally includes regular communication with representatives and organizations of ethnic minorities, which is necessary for the identification of practical problems and possible solutions to them, as well as for the improvement of the status of ethnic minorities. It may also have an important role in exercising the control function conferred to the parliament in this area (primarily regarding the execution of relevant legal acts). The quality of the work of such boards depends, at least to some extent, on the possibility for ethnic minorities' representatives to raise relevant issues before the board and submit proposals for regulations of interest to ethnic minorities. Thus, the composition of such a board should secure the representation of groups directly interested in issues within the board's competences. For instance, it should include some minimum number of members who belong to some of the ethnic minorities, or institutionalized organizations of ethnic minorities may be given the authority to propose a certain number of candidates for this board among the members of parliament.

Since the restoration of the multi-party political system in the Republic of Serbia by its 1990 Constitution, there has always been a regular board within the Assembly of Serbia that has been dealing with ethnic minorities' issues. In the current Assembly it is the Board for Human and Minority Rights and for Gender Equality, consisting of 17 members (Poslovnik Narodne skupštine Republike Srbije, n.d.). In addition to the competences mentioned above, in the area of minority rights it also supervises the execution of international conventions regulating the protection of human rights (including minority rights). The communication between the Board and ethnic minority groups is determined by an explicit provision of the House Rules of the Assembly stating that the Board co-operates with the National Councils of Ethnic Minorities. The usefulness of the idea of having a special parliamentary board dealing with minority issues is somewhat weakened by the fact that the House Rules do not set any criteria in respect of the composition of this Board. Namely, the Board, as stipulated in the House Rules, deals not only with minority issues, but also with issues related to other minorities and to gender equality. No provision in the House Rules secures the representation of interested (ethnic) groups in this Board (e.g. by setting a minimum number of Board members who belong to an ethnic minority group, or through participation of ethnic minorities in the election of Boards members by proposing candidates). Given that minority issues comprise only one of the areas within the competences of the Board, the possible outcome is that they may be marginalized by other issues within the competences of the Board. Also, the quality of the work of a board vested with important authority in the area of ethnic minority rights may be compromised or at least questioned if ethnic minorities are not adequately represented among its members. In practice, the controlling functions of the assembly (mostly relating to the execution of relevant legal acts and policies in this area by the executive branch), which are to some extent conferred to its boards, have been rather limited and lacking so far.

The Autonomous Province of Vojvodina (in the north of Serbia, about 1,932,000 inhabitants) is the most ethnically diverse part of Serbia with a long history of numerous ethnic groups living next to each other, and currently is the only midlevel authority between the state and local self-

governance.² The Assembly of Vojvodina has also had a regular board that has dealt with minority issues since the introduction of a multi-party system (under different names, currently named 'Board for Ethnic Equality'), with authority similar to that of the board at the state level, adjusted to the competences of the Autonomous Province. These boards' activities have mostly focused on debates on draft regulations and on acute practical problems in the area of inter-ethnic relations. The main obstacle in the work of this board is the fact that the Autonomous Province has no legislative powers to regulate any issue within its competences (it may adopt only by-laws); thus, regardless of its experience with a multi-ethnic society and in dealing with wide range of minority issues, Vojvodina still may not autonomously regulate important issues in this area.

3 The Executive and the Protection of Minority Rights

The creation of an executive body that exclusively or primarily deals with minority rights is an often applied mechanism for improving communication between the state and ethnic minorities. The executive is the most operative branch of state powers, so this option is often seen as a rather promising solution. Such an executive body may be a ministry for minority rights, although this task may also be conferred to some other, lower ranking executive bodies, usually formed as special units within a certain ministry or within the government.

Ethnic minorities may benefit from the creation of a special ministry for minority rights. As a high ranking executive body, such a ministry may contribute a lot to the visibility of ethnic minorities, to the states efficiency and effectiveness in dealing with issues related to their status, and to the preservation of their identity. It may further contribute to raising awareness of and sensitivity to the needs of ethnic minorities' members among the general public, and generally to the enjoyment of recognized minority rights. Since in many states ministers are also members of the government, a body that prepares the bulk of the statutes that are submitted to the legislative body, this solution secures ethnic minorities (and issues relevant to them) direct access to the government through the head of such a ministry. It enables high-level communication between the state and ethnic minorities and enhances the possibilities for minorities to raise relevant issues before important decision-making bodies, such as the government and, indirectly, the legislative body. A ministry specialized on minority issues is generally well acquainted with the problems in this area, and is thus a body capable of preparing informed drafts of legal acts or amendments related to minority rights and other pertinent issues. It develops relevant policies in this area and oversees their implementation in practice. It usually has the authority to decide on concrete cases of alleged violations of minority rights (upon complaints, or *ex officio*). In addition the ministry conducts a range of activities within the scope of its authority, which may spare funding from the state budget of other actors used for activities related to minority issues, such as projects by non-profit organizations, scientific organizations, etc. A ministry also usually has a larger number of employees than some other executive bodies that deal with minority issues, who may specialize on particular ethnic groups' needs or on certain minority issues, and thus the ministry may act more proactively in regards to its competences. It submits reports to

² In Serbia, Serbs make up about 83 per cent of the total population. In Vojvodina Serbs make up 2/3 of its population, while other ethnic minorities make up 1/3 of its population. According to the 2011 census Vojvodina is inhabited by 21 ethnic groups that make some 93 per cent of its population, while some 130,000 of Vojvodina's inhabitants have been placed in one of the four other categories ('others', 'without answer', 'regional belonging' and 'unknown') that officially do not belong to any ethnic group. *Republički zavod za statistiku Republike Srbije* (2011).

the parliament on the state of minority rights in a certain period, or upon the request of the parliament or some of its working bodies.

A ministry for minority rights was established twice in Serbia after the fall of the regime of Slobodan Milošević in 2000. The first time it was established under the title of Ministry for Human and Minority Rights in the former Federal Republic of Yugoslavia (2001–2003), and the second time as a ministry under the same title in Serbia some time after the dissolution of the State Union of Serbia and Montenegro (in the period from 2008–2012). Its competences covered a wide range of various executive authority, most of which was mentioned above. However, for various reasons, in practice both of these ministries had failed to meet the expectations put before them. One example of shortcomings manifested in their work is the fact that some important systematic statutes in this area, such as the Act on National Councils of Ethnic Minorities which, among others, sets the rules for the election of representatives in those councils, were delayed for a period so long that it extended through the full first mandate of the first ministry and about 1.5 years into the mandate of the second, including the interim period without such ministry (2003–2008). The consequence of this delay was that the very basis of the system of the protection of minority rights was seriously jeopardized. Another example is related to the second time that such ministry was formed: after the elections for representatives in the National Council of Bosniaks, because of the split within the Bosniak electoral body, two groups claimed the right to form the Council. After a few months the then minister made an arbitrary decision to recognize one of them, which in fact was supported by a minority of the electorate (although the Ministry has no such competences in the elections of National Council's representatives). Since 2012, there has been no such ministry in Serbia (it was replaced by a lower ranking executive body, the Office for Human and Minority Rights within the Government of Serbia).

In the Autonomous Province of Vojvodina, a secretariat that covers a range of areas including minority rights has been continually a part of the provincial government since 2000. It is a part of the provincial government, similar to ministries at the state level in respect to its status, position in the hierarchy, tasks and competences (within the authorities of the autonomous province). The name and concrete competences of the secretariat have been changed several times; its current name is the Secretariat for Education, Legal Acts, Administration, and National Minorities. Since its scope of work covers other areas as well, the internal organization of the secretariat provides for a special sector that exclusively deals with minority rights. It has been mostly dealing with the preparation of by-laws in the area of minority rights, promotion of minority rights, activities related to the prevention of potential inter-ethnic conflicts, and to the investigations and decision-making in minority on issues within the statutory competences of the autonomous province.

Instead of a ministry dedicated to minority issues, a special sector or unit for this area may be formed within the government, or as a lower ranking part of the administration. It is a part of the executive, but normally with a narrower scope of authority than that of a ministry. Consequently, such a unit has less employees and lower budget, and is thus less equipped for the wider proactive approach in its work. The focus of its tasks and competences is generally on the supervision of the implementation of the relevant laws. It usually has a mandate to investigate and decide on concrete cases of alleged violations of minority rights upon complaints or ex officio, and to initiate legal proceedings before other relevant bodies in cases of violations that fall within their competences (e.g. in cases where such violations are also a crime under the criminal law). In the latter case it may even be authorized to represent a plaintiff before the court,

but in most cases its competences do not stretch that far. It usually submits regular reports to the government on the state of minority rights in the particular period, or ad hoc reports in cases when some particularly serious violations have occurred, or when numerous violations have been repeatedly committed in some period.

As for Serbia, such an executive body has been in place in the periods after 2000 when no ministry for minority affairs was established. From 2012 until today it has been formed as the Office for Human and Minority Rights within the government. The head of this office is not a member of the government, and does not have all the authority that a minister does; therefore, the office head may normally participate in the government's sessions only upon its invitation, which generally occurs in cases when the government is dealing with matters in the area of minority rights or issues related to them. Its influence in the area of proposing amendments or new legal acts is consequently lower than that of the ministry.

4 Independent Institutions for the Protection of Minority Rights

Since late 1970, a number of countries introduced a new type of state body into their legal systems: independent institutions, the main task of which is the protection of human rights through the control of the legality and even legitimacy of other state bodies (mainly executive bodies and public services). Due to their features, competences and mode of work, they do not fall within any of the three classic branches of state power, but rather make a separate one, the 'fourth branch', the main function of which is to control the work of other bodies. The most prominent and widely spread among them is the institution of the ombudsman³, although some countries have established similar independent institutions (sometimes under the same name) for the protection of certain rights or groups of citizens with somewhat different authorities than those of ombudsman institutions.

The functions, authority, procedures of the ombudsman, as well as the nature of the legal acts produced, differ from those of other state agencies. It is an independent institution established by the parliament at the level for which it is founded.⁴ Its major functions are to control the work of the administration and public services, and to protect human rights from maladministration by preventing or at least decreasing violations committed by the executive. The ombudsman is elected by the parliament, and is responsible to the parliament for the work of the institution. The parliament may also remove the ombudsperson from office if legal requirements have been met. The same applies to the ombudsperson's deputies, if there are any provided for by the law. Still, an ombudsman is not a parliament's working body, but an independent institution in respect of all aspects of its work, including hiring and dismissing employees and proposing its budget to the parliament.

An ombudsman acts upon complaints from parties who believe that their guaranteed human rights have been violated by the administration and public services; in most countries an

³ Ombudsman institutions may bear different names in various countries, such as 'Commissioner for Human Rights', 'People's Advocate', 'Parliamentary Advocate', 'People's Defender', 'Protector of Citizens', 'The Mediator', 'Defender of People's Rights', ect.

⁴ In some countries, an ombudsman exists only at the state level, but in many others there are also ombudsmen founded at other levels, depending on the vertical division of state authorities (regions/provinces, local self-governance). In federal states, an ombudsman may be established on the federal level, but also in member states. In 1995 the European Ombudsman was established by the Maastricht Treaty for the EU to control the work of the EU's administration, which is the first institution of the kind at the supra-national level.

ombudsman may also start proceedings *ex officio*. After investigating a case, an ombudsman may conclude that no violation of human rights has occurred, or find that there was a violation. In the latter case, the ombudsman shall address the administrative body that committed the violation with recommendations or proposals on what it should do to remedy the violation, and/or how to avoid similar violations in the future. Recommendations, conclusions and proposals of ombudsmen are not legally binding. Their authority rests primarily on the strength of the legal arguments that an ombudsman invokes in the findings on human rights violations, and on the credibility of the institution which can be built up and constantly maintained only through an independent and impartial fulfilment of its tasks. The goal of such recommendations is not only to prevent violations of human rights by the administration, but also to improve the legality, quality and transparency of its work, i.e. to aid it in meeting the requirements of 'good administration' meant to be a service to citizens instead of a mere ruler over them. Therefore, although such recommendations are not binding, administrative bodies are expected to follow ombudsman's well founded recommendations unless they are able to submit relevant legal counter-arguments. If recommendations have not been complied with by the involved administrative body, the ombudsman shall notify the government and/or parliament on such avoidance, and require that they take appropriate legal measures against that administrative body. In cases of repeated in compliance by the administrative body, the ombudsman may also inform the public through the media about those cases and about bodies that continually refuse to follow the institution's recommendations. In many countries the ombudsman is authorized to initiate proceedings for the removal from office of heads of administrative bodies that continue to violate human rights. The ombudsperson may also initiate relevant legal proceedings against functionaries and employees who violated human rights by committing a crime, misdemeanour, or similar punishable offences. In many countries the ombudsman may also start proceedings before the constitutional court or the highest regular courts.

The ombudsman is authorized to submit proposals to the parliament regarding amendments to existing legal acts or enactment of new legal acts on issues within the institution's competences. Once a year the institution submits regular reports to the parliament, and it may submit extraordinary reports on the results of its investigations about certain issues, particularly in cases of serious or massive violations of human rights by the administration. Regular reports contain the ombudsman's findings on the state of human rights in general, on violations of those rights by the administration, on compliance (or non-compliance) of administrative bodies with its recommendations, and on other activities and findings of the institution on issues within its competences. Given that the main purpose of such reports is to inform the representative body about the cases of maladministration resulting in violations of guaranteed human rights and on the measures that should be taken to prevent such violations, the general rule is that the parliament takes notice on those findings and debates upon them, but there is no vote 'for' or 'against' such reports.⁵ Basically, the debate should result in conclusions on measures directed towards the improvement of the work of the executive.

One of the main tasks of the ombudsman is the protection of human rights, which includes ethnic minority rights as well. In order to raise the protection of these rights to an even higher level, some countries have established a general ombudsman office where one deputy deals

⁵ No voting on the acceptance of ombudsman's reports is one of the mechanisms meant to protect the independent and impartial functioning of the institution. If the parliament could reject such reports, there would be no barriers to rejection in cases where its contents are not in the line with interests or liking of particular political parties. In that case the contents of such reports would be exposed to indirect influences of political parties or even other influential groups and individuals who dislike the facts and findings presented there.

specifically with minority rights, who normally leads and coordinates a unit within the institution that is specialized for minority issues (e.g. the Provincial Ombudsman of Vojvodina, state ombudsman offices in Serbia and Greece, etc.). Some others have established a special ombudsman for the protection of rights of ethnic minorities (Hungary, Finland). The aim, procedures and authority of such specialized offices are the same as those mentioned above, but focused on the protection and advancement of ethnic minority rights and improvement of the work and conduct of the administration in the area of ethnic minority rights. In addition, such units and offices frequently operate pro-actively by organizing activities aimed at educating both the citizens and employees in the administration about the guaranteed ethnic minority rights and legal means for their protection, by organizing conferences, roundtables and debates on issues related to ethnic minority rights, and conducting activities aimed at the promotion of minority rights. In doing so, they cooperate with other ombudsman institutions in the country (if there are any) and abroad or with other organizations that deal with minority rights (also domestic and internationally). An advantage of ombudsman institutions in this area is that one of their main functions is the protection of human/minority rights, whereas executive bodies that deal with these issues always take into consideration the 'public interest' as they understand it (which may result in findings of no violation not because there was none, but because they deem that some 'higher interests' justifies such restrictions or violations).

Ombudsman institutions in Serbia exist on all three levels: state, provincial and local. Those on the local level are not mandatory according to the law, so the assemblies of each local unit decide whether they shall establish a local ombudsman or not.⁶ The first ombudsman institution was established in 2003 in the Autonomous Province of Vojvodina, and the state ombudsman was founded in 2007 under the title of the Protector of Citizens. In both institutions one of the deputies is elected for the protection of ethnic minorities' rights. The Provincial Ombudsman, who covers the territory of the Autonomous Province inhabited by the ethnically-mixed population, was particularly busy in dealing with issues in this area. Since the beginning, its activities were often directed to minority rights, and its annual reports on the state of minority rights combined with recommendations for the improvement of the work of the executive in this area have been a valuable source of information both for other institutions and for the public.

Nonetheless, the successful work and adequate fulfilment of the controlling and protective functions of these independent institutions crucially depend on the respect for the rule of law. Unfortunately, besides lip service, such a context is still very far from reality in Serbia. In practice, neglect of these institutions' recommendations or even obstructions of their work were not rare, particularly at the beginning of their work. Over time many executive agencies have comprehended that a new controlling institution had been introduced into the legal system and have increasingly started cooperating with it in investigations or in carrying out recommendations, but previous attitudes are still not rare exceptions—supervisory bodies are often seen by the administration as adversaries rather than partners. In addition, so far there has not been any genuine political will to support this institution. The supervisory function of relevant assemblies over the executive remains underdeveloped; the ombudsman's findings and recommendations intended to improve the performance of the administration and the state of human rights are simply not taken seriously. Parliamentary debates on annual reports are

⁶ About 20 local communities out of 184 in Serbia have founded a local ombudsman office so far. A couple of years after their establishment, however, some communities decided not to keep them (e.g. Sombor, Vladičin Han). Their abolishment occurred in an informal way, after the incumbent ombudsman resigned from office (to join the local executive) and their local assemblies have never elected another one.

usually just a formality and, with rare exceptions among representatives, often focused on all kinds of attacks on the incumbent ombudsman and/or the institution (including even brutal defamatory and denigrating ones), rather than on attempts to find constructive ways to deal with problems detected and reported by the institution. More than once explicit legal requirements regarding conditions that candidates have to meet in order to be elected have been violated (e.g. prohibition for a candidate to be a member of a political party; prohibition for retired people to be candidates). At the local level, regulations adopted by local assemblies often make the institution subordinate to and dependent on the local executive rather than a controlling mechanism over its work.

Besides a general ombudsman or an ombudsman for (ethnic) minority rights, some countries have established institutions for the equal treatment (i.e. against discrimination) of citizens, such as: the Ombudsman against Ethnic Discrimination (Sweden), the Commission for Protection Against Discrimination (Bulgaria, Macedonia), the Equality and Human Rights Commission (Great Britain), the Equal Treatment Commission (Netherlands), the Gender Equality and Anti-Discrimination Ombud (Norway), the Ombud for Equal Treatment (Austria), Board for Equal Treatment (Denmark), the Federal Commission against Racism (Switzerland), the Federal Anti-Discrimination Commission (Germany), and the Commissioner for the Protection of Equality (Serbia), etc. These bodies deal with cases of institutional or individual discrimination, which is frequently manifested as discrimination on ethnic grounds. They are set up either as specialized administrative bodies or separate independent institutions. Most of them have authority similar to those of ombudsman institutions, but some have additional ones (e.g. representing victims of discrimination before the court, making legally binding decisions in concrete cases).

In Serbia, this institution is the Commissioner for the Protection of Equality, which was established by the state Act Against Discrimination of 2009. The Commissioner is elected by the state assembly. Its main duty is to monitor the observance of this Act, i.e. to act upon complaints in cases where discrimination had allegedly occurred on either grounds prescribed by the Act (including ethnic belonging), regardless of whether the perpetrator is an individual, legal person, or public agency. The Commissioner may not start proceedings upon its own initiative. In addition to having similar authority to that of an ombudsman, with the consent of the aggrieved party, the Commissioner (unlike ombudsman) may also press charges against perpetrator of discriminatory acts and represent the victim before the court.

5 National Councils of Ethnic Minorities

Some countries with ethnically diverse populations provide for the establishment of councils of ethnic minorities. The general aim of such councils is to enable ethnic minorities to form an organization which represents a particular ethnic group and through which they can participate more effectively in debates and/or deliberations on issues relevant for them. In Serbia, national councils of ethnic minorities have statutory grounds. Their establishment and some basic issues were first regulated by the Act on the Protection of Rights of National Minorities of 2001 (Službeni list SRJ, br. 11/2002). This statute focuses on the rights of ethnic minorities and contains only a few basic and temporary rules about minorities' national councils. Those provisions prescribe that the election and competences of National Councils of Ethnic Minorities shall be regulated in detail by a separate statute which was to be enacted within 30 days after the Act on the Protection of Rights of National Minorities comes into force. However, matters

related to national councils were finally regulated more than 8 years later, by the Act on National Councils of Ethnic Minorities of 2009 (Službeni list RS, br. 72/2009).

According to the later act, members of national minorities may elect their national councils to exercise their right to self-governance in the areas of the official use of language and alphabet, education, information and culture for national minorities. The councils are formed to represent the particular national minority, to establish institutions of importance to that minority, and to decide or participate in the decision-making processes on issues in the four areas mentioned above. The number of members of those councils is set to 15–35 depending on the size of each minority. The length of the mandate of the members of the national council is 4 years.

National councils have numerous competences in four enumerated areas. However, except on issues related to their internal organization and personal structure, they are only consultative bodies: they may submit proposals or opinions to relevant state or other organs on issues falling within the four areas. Opinions of national councils are not legally binding, so final solutions adopted by relevant state bodies may be completely contrary to those opinions. The only obligation for bodies authorized to decide on such issues is that they formally obtain national councils' opinions on issues specified in the statute; decisions made without obtaining the national councils' opinions and proposals on relevant issues where the law requires so are null and void.

The Act prescribes that the election of national councils' members may be carried out by either of the two electoral models: by direct election, or by indirect election by electoral assemblies. Each national minority autonomously decides which of these models it will apply. Both models require the advance formation of electoral lists of members of national minorities. The decision on the elections for national councils is made by the state ministry whose competences include ethnic minority rights, and that ministry administers all the tasks and activities related to the elections. Given that since 2012 there has been no ministry that deals with the rights of ethnic minorities, these issues are currently within the competences of a governmental office for human rights, which is a necessary but formally illegal solution. The main organs of national councils and the way they decide on issues within their competences are defined by the law. Besides those organs set by the law national councils may create other working bodies.

Councils are financed from the state, provincial and local budgets, donations and 'other sources. The financial resources of national councils are used for their work and to support the institutions and organizations they have founded. The ministry (i.e. the governmental office for human rights) is authorized to supervise the work of national councils, as well as the way they use their financial means. The ministry (i.e. the office) may start proceedings before the constitutional court to require review of constitutionality and legality of national councils' acts, and it may suspend the execution of councils' acts until the constitutional court makes a final decision on the matter.

So far, main challenges in the application of the law and consequently in the functioning of national councils were related to the following issues:

- In one case the ministry for human and minority rights did not recognize the results of the elections for the National Council of the Bosniak minority (a case already mentioned earlier) and it nominated the members of a council by an administrative decision in violation of the law; such a decision induced protests and the Council was boycotted by the members of that community for several years.

- Non-compliance of relevant decision-making bodies with legal provisions which set their obligation to obtain the opinions and/or propositions of national councils on matters enumerated in the law. This kind of conduct was frequently the consequence of ignorance, lack of interest and/or low awareness of the members of those bodies about the significance of certain decisions for some or all ethnic minorities. Yet it seems that in some cases this was done intentionally in order to avoid more complex procedures, or because particular decisions were already made in other centres, so the relevant assemblies or other bodies were expected only to formalize them, or because the majority in the relevant body—in spite of explicit legal requirements—simply did not deem that minorities should participate in the decision-making process on certain issues. However, the sanction prescribed by the law and mentioned above (that legal acts enacted without obtaining an opinion or proposal of national councils of ethnic minorities are null and void), no concrete measures or actions have been taken after such occurrences.

- Unclear legal provisions regarding the competences of national councils of ethnic minorities sometimes generated confusion in practice, and made it nigh to impossible to formulate an adequate budget of these councils; partly, but not exclusively, because of that, financing of the national councils' activities was generally lacking most of the time.

- The model of ethnic minorities councils introduced by the law does not conform equally to needs of all national minorities. The consequence is that sometimes there are huge differences between particular national minorities in respect of the capacities of national councils, or in respect of the scope of their activities, level of their organization, etc. The Act on National Councils of Ethnic Minorities still needs improvements, and practices need to be fully in compliance with the law and its declared goals in order to make the national councils of ethnic minorities a relevant factor in the important areas for their rights and related issues.

6 Councils for Inter-Ethnic Relations

These councils have been introduced in Serbia by the Act on Local Self-Governance of 2002, and are currently regulated by the new act of the same title of 2007. They are formed only at the level of local self-governance. The main goal to be reached by the formation of these councils is defined by a statute, albeit in a very broad and general way: they should deliberate on issues related to the enjoyment, protection and improvement of national equality. Unlike local ombudsmen whose formation is not obligatory, it is mandatory to create these local councils in all multi-ethnic local communities in Serbia, as working bodies consisting of representatives of all national communities in that local community that meet the defined criteria. Details related to the authority, structure and work of local councils are regulated by by-laws adopted by local assemblies. The councils are consultative bodies and do not make legally-binding decisions.

Multi-ethnic local communities are defined by the Act as those where one ethnic minority alone constitutes more than 5 per cent of the total population in that community, or those where all national minorities together make more than 10 per cent of the total population. Under the 2007 Act members of local councils in such communities are the representatives of Serbs (regardless of their number and share in the total population on the local level, the majority population at the state level shall always have representatives in these councils), and the representatives of

each ethnic minority that makes up more than 1 per cent of the total population in the local community.

The assembly of the local community sets the rules for the election of the council's members. The 2007 Act prescribes that 'balanced representation' of Serbs and ethnic minorities that meet the above mentioned criterion must be ensured, and that neither ethnic group alone may have the majority in those councils. The distribution of representatives is not clearly stated and thus solutions adopted in various local communities differ a lot in this respect.

Under the 2007 Act it is not always clear who may propose candidates for council members: it is prescribed that if an ethnic minority has formed its national council, the candidates of that ethnic minority for local councils may be proposed only by their national council, which is a clear in respect to who may propose candidate. However, according to the Act of 2007, Serbs have representatives in all the local councils for inter-ethnic relations, but as a majority population at the state level they do not have their own national council, so this option may not be applied to Serbs. Local assemblies have adopted many different solutions to this issue, so nominations of Serb representatives may come from wide range of subjects which differ from one local community to another: candidates of the majority population may be proposed by political parties, deputies in local assemblies, non-profit organizations, religious organizations (concretely, the Serbian Orthodox Church), defined number of citizens, etc. Thus, the majority community has many different options at hand in respect of those who may propose candidates, but minority communities who have formed their national councils have only one option, while the Act contains no provisions about who is authorized to submit proposals of candidates of ethnic minorities that have not yet established their national councils.

As for the competences and work of local councils for inter-ethnic relations, neither the 2002 nor the 2007 Act contained any details—they are left to be regulated by local assemblies. The consequence of such vague provisions is that local councils for inter-ethnic relations in different local communities have different competences. Councils make decisions within their competences by consensus of all members; a majority of votes of their members is not enough to adopt any conclusion or to make any decision. A council may submit proposals and opinions related to issues relevant for the equality of ethnic groups to its local assembly or other bodies authorized to decide on particular issues. The local assembly or another authorized local body then has to take a stand on those proposals and opinions in the next 30 days. If the local assembly or local administrative bodies have to deliberate on an issue that may affect national equality, they have to ask the local council for inter-ethnic relations for its opinion on the particular issue before making a final decision. If the local council deems that the local assembly's legal act violates the rights of the Serbs or ethnic minorities represented in the council, it may start the proceeding before the constitutional court about the constitutionality and legality of the act. It may also start proceedings before the Supreme Court of Cassation (highest ranking regular court in Serbia) against local assembly's acts which it deems contrary to the statute of the local community (which is the highest ranking legal act at the local level).

Local councils for inter-ethnic relations have been facing various obstacles in practice. In many local communities the deadlines for forming these local councils prescribed by law have not been respected; as a consequence, some local communities have established their local council years before others, whereas some local communities have not formed these councils at all. The vague statutory provisions about agents authorized to propose candidates for its members, on the composition of those councils, and on their competences have led to the creation of

councils that sometimes have very little in common. The unclear separation of competences between national councils of ethnic minorities and local inter-ethnic councils has resulted in overlaps in their competences and general confusion in this respect (because local assemblies often conferred to the local councils the competences reserved by another statute for national councils). Local councils often lack the finances and equipment needed for their functioning; sometimes they are inactive and dysfunctional regardless of the conditions, the consequence of which is that some local councils fail to perform the tasks they were established to do (e.g. they do not consider relevant issues or deliberate on them, they do not submit proposals to local assemblies, and the like), making their existence only formal. Finally, even in communities where local councils have been formed and are capable of performing their tasks, the local assemblies and executive bodies often fail to recognize certain issues as relevant for national equality and thus do not ask local councils for opinions at all, or they ignore local councils' opinions when deciding on relevant matters, so the final decisions of local bodies often do not correspond with councils' opinions.

7 Office for the Inclusion of Roma

This body was established only in the Autonomous Province of Vojvodina, by a decision of the Provincial Assembly. Its main tasks include monitoring the enjoyment and protection of the rights of the Roma, the inclusion of the members of the Roma community in the various social activities, services and institutions including their participation in decision-making bodies, and activities aimed to reduce the discrimination of the members of Roma community as an ethnic minority that is far behind other ethnic groups regarding the level of enjoyment of their rights, which make this ethnic group particularly vulnerable in comparison with others. The main areas of activity of this office are education, employment, social security, information, housing, culture, and inclusion into public offices. The office cannot make legally-binding decisions. It may submit proposals to various bodies regarding the status of Roma and their rights, initiate legal procedures before relevant bodies in cases of discrimination, prepare and supervise projects aimed at the inclusion of Roma, and aid members of the Roma minority in various areas of daily life (such as obtaining documents, dealing with the administration and other state organs in legal matters on behalf of the members of Roma community, and supporting the education of Roma). In general, although mostly dealing with apparently simple and low profile issues, such a body may be very useful in alleviating the generally difficult position of Roma in many important areas of life.

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