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European modes of communication between public authorities and national minorities

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**Advisory and Deliberative Structures – Models and Their
Effectiveness**

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Outline

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2. The international standards concerning the political participation of minorities and consultative mechanisms
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I. THEORETICAL BACKGROUND: THE POLITICAL PARTICIPATION OF MINORITIES

The traditional model of democracy and divided societies

- **Open and free market of opinions and interests**
- The public should have a say about decisions affecting their lives
- Majoritarian will derives from individual preferences: decisions made in an **aggregation process**
- Political majority:
 - determination of political agenda, reflecting to a specific concept of public interest
 - Dominance of public good, decisions, resources, norms, discourses
 - **Political inequality** for minorities
- Principle of „one man, one vote“, majoritarian rule is not appropriate
- **Solution:** regulated competition of social interests and power-sharing arrangements

(Lindblom 1993; Palermo-Woelk 2003; Rossell 1993; Wheatley 1999, 2002; Young
2000)

The context of political participation

- Traditional representative structures tend to be complemented by **participatory- consultative mechanisms**
- **Theories of democracy:**
 - Participation is good and desirable
 - Increases stability, legitimacy, and citizens' capacity and loyalty
 - Better decisions, greater equality and justice
- **Debate:** disadvantageous situation increases or decreases political activity
 - Correlation with the socio-economic status (**SES model**)
- **Political opportunity structure** (H. Kitschelt): configuration of minority features, historical background, institutional arrangements, political rules for social mobilization etc.

The effective participation of minorities in public life

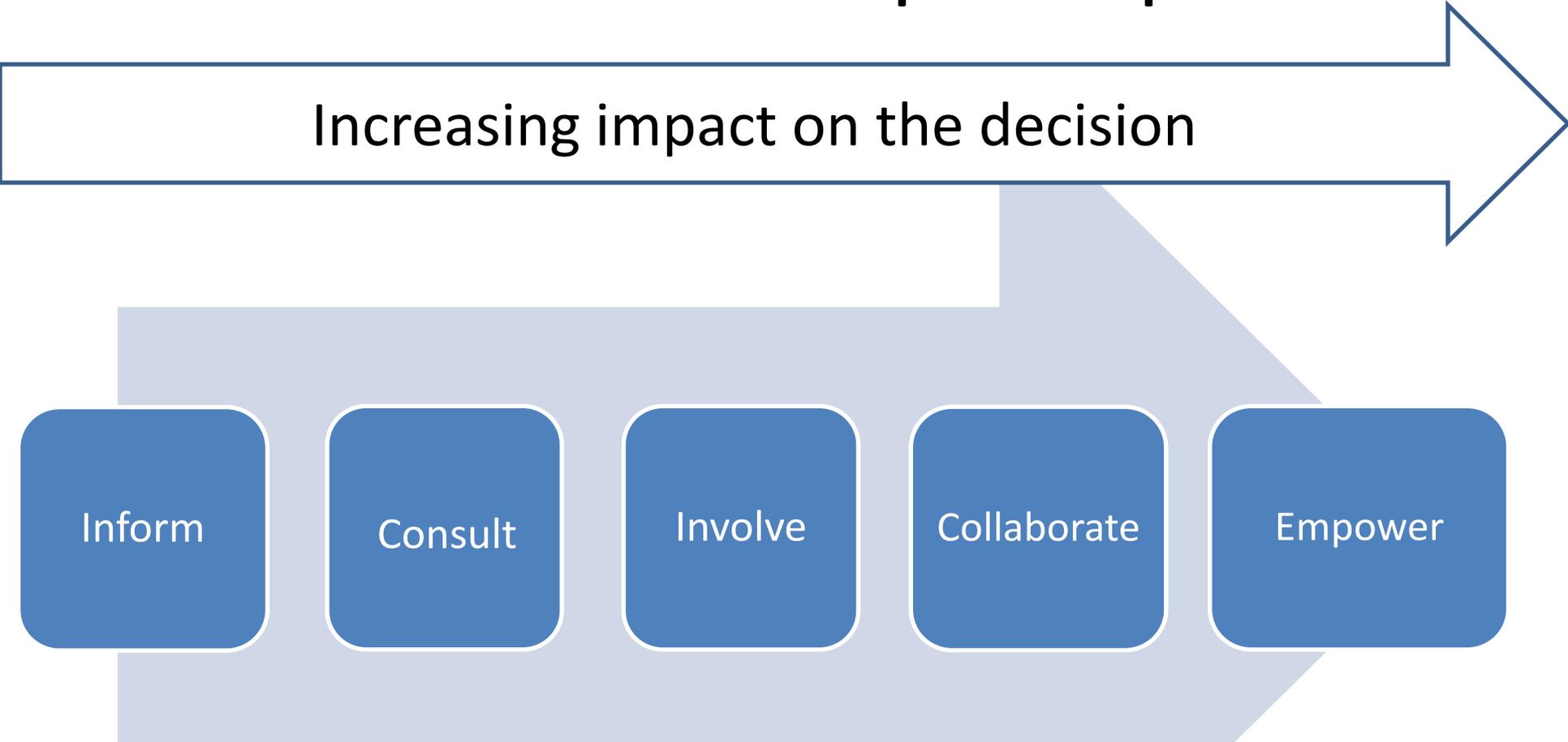
- A new approach in minority protection?
 - International organizations have been preferring the usage of term '**effective participation**' since the mid-1990s
- Closely associated with '**deliberative democracy**'
 - Full, free and equal participation of those involved
 - Mutually accepted proposals
 - Consensus-seeking
- '**Good governance**': inclusion and participation
- **Democratic concept**
 - Recognizes and justifies minority claims
 - Recognizes possible internal divisions
- Lack of widely accepted, precise, scientific **definition**
 - Not only representing interests and influencing decisions

The effective participation of minorities in public life: interpretations

- **W. Kymlicka - levels:**
 1. Right to vote and be elected
 2. Certain extent of representation in the parliament
 3. Minorities shall have *effect* on the decisions – shall be excluded from the majoritarian principle, minority interests shall be accommodated
- **M. Weller - aspects:**
 1. Equal chances at the elections and full representation in decision-making
 2. Own decision-making in relevant issues (autonomy)
 3. The internal democracy of minorities + to create the own decision-making processes freely, independently

The continuum of participation

Increasing impact on the decision



Inform

Consult

Involve

Collaborate

Empower

Source: Creighton 2005; The IAP2's Public Participation Spectrum

http://c.ymcdn.com/sites/www.iap2.org/resource/resmgr/Foundations_Course/IAP2_P2_Spectrum.pdf

Main dimensions of political participation

- Different situations require different levels of participation
- Strong-weak dimension:
 - From the opportunity to give opinion to veto rights
 - Frequency of consultations
 - Composition of the body (elected/appointed)
- Presence-influence dimension:
 - the degree of minority representation
 - e. g. 1 representative in a body with 50 members can hardly have any effect
- Direct-indirect dimension:
 - e. g. whether the body deals only with minority issues; one policy area or horizontally
- **Q**: the extent to which decisions reflect the input of minority participation

(Henrard 2005; McLaverty 2010)

The minority claim to representation

- Either **underrepresented** or not represented in political processes, it does not reflect social heterogeneity
- Representative shall share the same characteristic features with the constituents (**„mirror-“, descriptive or „presence“-representation**)
 - Arguments: systemic discrimination and self-governance
 - Majority does not want to understand and represent others' interests
 - **Problems:** they may rather be selected by drawing lots?
 - It tells nothing about what the representative does
 - Internal divisions, different features, presupposes common interests and opinions
- **Different interpretations of the term 'representation'**

The main questions of minority representation

- **Which groups shall be represented?**
 - Unlimited escalation of demands
- **How many mandates shall they have?**
 - Proportionally or threshold
- **How can they be accountable?**
- Representation is a process of: **authorization, representation, and accountability** (usually the weakest)
 - Will less number of MPs support minority initiations?
 - Representation may be passive and only position-oriented („lazy” politics)
 - With few number of mandates and in opposition – is this the effective participation? (see *OSCE Warsaw Guidelines*)
- Representation as a ‘**window-dressing**’ institution

(Kymlicka 1995)

II. THE INTERNATIONAL STANDARDS CONCERNING THE POLITICAL PARTICIPATION OF MINORITIES AND CONSULTATIVE MECHANISMS

The international standards concerning political participation of minorities and consultative mechanisms: the UN

- **Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities**
 - Adopted by General Assembly resolution 47/135 of 18 December 1992
- Art. 2.
 - (2): *Persons belonging to minorities have the right to participate effectively in cultural, religious, social, economic and public life.*
 - (3) *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.*

The international standards: the Council of Europe

- Framework Convention for the Protection of National Minorities (1995)
- Art. 15.
 - *„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.“*

CoE Framework Convention

Explanatory Note

- This article requires Parties to 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. It aims above all to encourage real equality between persons belonging to national minorities and those forming part of the majority. 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;
 - effective participation of persons belonging to national minorities **in the decision-making processes and elected bodies both at national and local levels**;
 - **decentralised or local forms of government.**

Central European Initiative Instrument for the protection of minority rights (1994)

- Art. 20.
 - *„States shall guarantee the right of persons belonging to national minorities to participate without discrimination in the political, economic, social and cultural life of the society of the State of which they are citizens and shall promote the conditions for exercising those rights.“*
- Art. 22.
 - *„In accordance with the policies of the States concerned, States will respect the right of persons belonging to national minorities to **effective participation in public affairs**, in particular in the decision-making process on matters affecting them. Therefore, States note the efforts undertaken to protect and create conditions for the promotion of the ethnic, cultural, linguistic and religious identity of certain national minorities by adopting appropriate measures corresponding to the specific circumstances of such minorities as foreseen in the CSCE documents.“*

The international standards: the CSCE/OSCE

- Document of the Copenhagen Meeting on the Human Dimension (1990)
- Par. 33.
 - *„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 organisations or associations of such minorities, in accordance with the decision-making procedures of each State. Any such measures will be in conformity with the principles of equality and non-discriminations with respect to the other citizens participating State concerned.”*
- Par. 35.
 - *„The participating States will respect the right of persons belonging to national minorities to **effective participation in public affairs**, including participation in the affairs relating to the protection and promotion of the identity of such minorities.”*

The Lund Recommendations on the Effective Participation of National Minorities in Public Life (1999)

- Max van der Stoep OSCE High Commissioner on National Minorities
- Two main parts (4 subtitles, 24 recommendations):
 - Participation in decision-making (having voice, **representation**): interests, views about the political system in general
 - Self-governance in local and own minority issues (**autonomy**): issues related to the minorities

The Lund Recommendations on the Effective Participation of National Minorities in Public Life (1999)

- 12) 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.
- 13) 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.

III. PARLIAMENTS, GOVERNMENTS, AND MINORITIES

The parliamentary representation of minorities

- **Basic requirement:** freedom of association to form organizations and (ethnic) parties
- **I. Systems not privileging minority representation:** integration into mainstream structures
- **II. Direct or indirect privileges for minority representation:**
 - II. 1. Lower thresholds for entering in PR systems
 - II. 2. Reserved seats
- **III. Reduction in the quorum for registration of a party**
- **IV. Favourable delimitation of the constituencies** (majoritarian systems)
- **V. Privileged funding for ethnic parties**

Position and rights of minority MPs

- **Special procedural rights**, e. g. veto right on minority issues (*Slovenia*)
- **Group status**, e. g. to form parliamentary group with fewer MPs (*Schleswig-Holstein*)
- **Parliamentary committees, subcommittees for minority issues**
 - Proposals, recommendations, monitoring, hearings etc.
 - Reserved seats for minority MPs (*Slovenia, Croatia*)
- **Minority parliaments**, limited powers
 - Elected by minority voters (*Saami - Norway, Finland*) or indirectly elected by regional and local bodies (*Swedish-Finnish Assembly in Finland*)
- **Bodies appointed by parliament**
 - E. g. parliamentary commissioner for minority rights (*Hungary before 2012*)

Minorities and the governments

- I. Exceptional that **there is no specialized governmental body**
- II. **Ministerial responsibilities for minority issues**
 - Special ministry is rare (*Estonia until 2009*), assigned to one or more ministries, special divisions, agencies etc.
 - Inter-ministerial working groups (*Poland*)
- III. **Minorities as civil servants**, employment policy
- IV. **Government commissioner**, ombudsperson, committee
 - Cover one specific or all minorities, channel of communication between the government and the minorities, or e. g. combating discrimination
 - Less independent from the executive

Minorities and the governments

- **Ministries**, such as
- Social affairs, employment, equal opportunities (*Albania, Azerbaijan, Finland, Spain, Sweden*)
- Culture, education (*Azerbaijan, Estonia, Lithuania, Slovakia, Ukraine*)
- Interior, administration (*Germany, Norway, Poland*),
- Justice (*Serbia*)
- Regional development (*Russia*)
- Human rights, refugees (*Bosnia*)

IV. OMBUDSMAN INSTITUTIONS AND MINORITIES

Ombudsman institution: general overview

- Various institutional arrangements: parliamentary commissioners, but commissions, committees, also at regional and local levels
- **Reactive role:** investigation of complaints (maladministration, human rights abuses)
- **Proactive role:** investigations, analysis, raising public awareness, contact with media, lobbying
- Improving **relations between (state) authorities and civil society**
- European Commission Against Racism and Intolerance (ECRI): recommended to establish specialized bodies
- Two EU directives on non-discrimination (in 2000)
- Specialized ombudspersons on the protection of minorities:
Finland, Hungary (until 2012)

Mandate, functions and powers

(Lloydd 2005)

- Individual complaints and investigations
- Own-initiative investigations and studies
- Initiating or pursuing legal actions in the courts
- Impact on legislation
- Encouraging governmental planning, programming, monitoring, evaluation
- Promotion, education

Establishment and organization

(Lloydd 2005)

- Political independence and legislative establishment (entrenched)
- Minority involvement in the appointment/electoral procedure
- Personal requirements, employment conditions, immunities in order to
 - Integrity, moral standing
 - Accountability, transparency
 - Confidentiality, data protection
 - Efficiency
 - Language use
 - Close links, cooperation with similar bodies, institutions
 - Bringing international standards to bear
 - Training, dissemination

V. MECHANISMS FOR CONSULTATION

Advisory and consultative bodies: introductory notes

- **Advisory bodies** to the governments, compositions vary by countries
- The degree of **minority representation** + are they elected or picked by the government
- **Competences:** addressing full range of minority issues or specialized to one; focus on special topics
- Generally recommendations, consultations, monitoring, and even decisions on certain issues
- **Contact** between the minorities and government, parliament-minority, or among three actors
- Regular consultations with minority NGOs
- Provision of adequate resources, effective functioning of these bodies

Mechanisms for consultation

- **Co-decision mechanisms**
 - Councils either must be heard before decisions or
 - Councils have decision-making powers, attached to parliaments and governments
- **Consultation mechanisms**
 - Self-organizing councils articulate and represent interests
 - Councils organized around a governmental office, mixed membership
 - Councils led by officials, like contact offices
- **Co-ordination mechanisms**, like inter-ministerial working groups, expert bodies, round tables
- **Self-governance mechanism**: individual minority representation bodies with decision-making powers – non-territorial autonomy

The structure of consultative and advisory bodies

- Lack of special, direct, institutionalized consultative mechanism (*Azerbaijan, Sweden*)
- Scope, structures and rules of consultation to be clearly defined
- **Clear legal status:** entrenchment in legislation (*Romania, Ukraine*)
- **Government** (*Albania, Austria, Bosnia, Bulgaria, Czech Republic, Denmark, Estonia, Germany, Hungary, Ireland, Moldova, Norway, Poland, Portugal, Russia, Slovakia, Slovenia, Spain, Ukraine*)
 - Changes in governmental structures, need for fixed contact points (*Estonia, Finland, Italy, Norway, Sweden*)
 - Inter-ministerial working groups (*Macedonia*)
- **President** (*Armenia, Azerbaijan (until 1997), Estonia, Kosovo, Ukraine*)
- **Parliament** (*Bosnia, Slovenia*)
- Part of a **broader consultative body/bodies** (*Lithuania, Ukraine*)

The structure and scope of consultative and advisory bodies

- **Specific focus on certain minorities** (Roma/Traveller):
 - *see Bosnia, Czech Republic, Finland, Hungary, Ireland, Portugal, Spain*
- **Limited scope** (culture, allocation of funds, etc.):
 - *Austria, Estonia, Kosovo, Lithuania, Moldova, Russia*
- **Regional/local consultative bodies:**
 - *Bulgaria, Croatia, Czech Republic, Finland, Germany, Hungary, Russia, Serbia, Spain, Switzerland*
- **No access to other decision-making bodies/levels** (*Austria*)

The establishment of consultative and advisory bodies

- **Open or fixed membership**
- Varying practices: **election or appointment**
 - Appointment in a transparent and mutually accepted procedure (*Albania, Austria, Bosnia, Czech Republic, Kosovo, Russia*)
 - Lengthy procedure (*Poland*)
- Typically proportion of **both governmental and minority members** (*Bosnia, Czech Republic, Finland, Ireland, Poland, Spain*)
- **Majority of cases:** minority bodies nominate representatives which are then appointed
- Or government alone selects and appoints representatives (*Albania*)

The composition of consultative and advisory bodies

- **Exclusively minority members**
 - NGOs (*Bulgaria, Kosovo*)
 - Minority parliamentary members (*Croatia, Cyprus*)
 - Elected minority councils (*Croatia, Estonia, Hungary, Serbia, Slovenia, Saami parliaments*)
- Including **migrant communities**, too (*Finland, Moldova*)
- **Inclusiveness and representativeness:**
 - Which groups and minority representative organizations are consulted/represented (*Albania, Austria, Bulgaria, Estonia, Finland, Ireland, Italy, Moldova, Russia*)
 - Issue of divided communities (*Germany*)
 - Issue of larger or smaller communities (*Lithuania, Romania, Slovakia*)

Agenda-setting in consultative and advisory bodies

- Agenda = result of consultation and consensus among the members
- Right to determine their own agenda (*Lithuania*)
- Purely advisory functions (*Cyprus, Ireland, Poland*)
- Pro- or reactive role? (see *Spain*)
- Minority members' right to own opinions, proposals (*Poland*)
- Right of individual members
- Working groups, subgroups (on certain policy fields or minority groups, see *Poland*)

Transparency and openness

- Sharing the burden and responsibility in relation to relevant decisions leads to the need of **publicity** in order to transmit those decisions
- The involvement of parliament broadens legitimacy and openness to society
- Provisions for ensuring transparency (**contact with media, press releases, dissemination of information**)

Efficiency and consistency of activities

- Ordinarily, bodies determine their own **working procedures** or specified in governmental decrees
- **Institutionalized and regular dialogue** (*Finland, Ukraine*)
- Fixed number of annual meetings with infrastructure (*Kosovo*)
 - Rare and ad hoc meetings (*Azerbaijan, Russia*)
- Too many **members** (*Bosnia*), fluctuation of members (*Bulgaria*)
- **Annual reports** to the government (*Czech Republic*)
- **Adequate resources**: infrastructure costs, funding for projects and activities, financing for minority organizations (*Armenia, Bulgaria, Portugal*)
- **Limited impact** (*Austria, Azerbaijan, Bosnia, Bulgaria, Finland, Kosovo, Poland, Portugal, Russia, Spain, Ukraine*)

Conclusions

- Recurrent theme in the Advisory Committee's opinions on the implementation of FCNM
- Consultation is particularly important if minorities are not directly represented or as a complementary mechanism
- Complex systems: multi-layered and multi-dimensional mechanisms are needed: national, regional and local levels
- Covering key areas
- Including all minorities but also focus on particular groups, Roma
- Regularly consulted, raise issues, prepare recommendations, and monitor and report implementation
- Capacity-building, coordination of interests, contribution to transparency

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Thank you for paying attention!

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References

- Addis, A. (2009): Deliberative Democracy in Severely Fractured Societies. *Indiana Journal of Global Legal Studies*, 1.
- Creighton, J. L. (2005): *The Public Participation Handbook. Making Better Decisions Through Citizen Involvement*. Jossey-Bass, San Francisco.
- Deets, S. (2002) Reconsidering East European Minority Policy: Liberal Theory and European Norms. *East European Politics and Societies*, 1.
- Deets, S. (2005): Constitutionalism and Identity in Eastern Europe: Uncovering Philosophical Fragments. *Nationalities Papers*, 4.
- Frowein, J. A. – Bank, R. (2000): *The Participation of Minorities in Decision-Making Processes*. Max Planck Institute, Heidelberg.
- Henrard, K. (2005): 'Participation', 'Representation' and 'Autonomy' in the Lund Recommendations and their Reflections in the Supervision of the FCNM and Several Human Rights Conventions. *International Journal on Minority and Group Rights*, 2-3.
- Holt, S. (2005): The Lund Recommendations in the Activities of the HCNM. *International Journal on Minority and Group Rights*, 2-3.
- Irvin, R. A.– Stansbury, J. (2004) : Citizen Participation in Decision-Making: Is It Worth the Effort? *Public Administration Review*, 1.
- Kymlicka, W. (1995): *Multicultural Citizenship. A Liberal Theory of Minority Rights*. Oxford UP.
- Kymlicka, W. (2006): The evolving basis of European norms of minority rights. Rights to culture, participation and autonomy. In: McGarry, J. – Keating, M. (eds.): *European Integration and the Nationalities Question*. Routledge, London-NY.
- Lindblom, C. E.; Woodhouse, E. J. (1993): *The policy-making process*. Englewood Cliffs, New Jersey: Prentice Hall.
- Lloyd, M. ed. (2005): *Ombudsman Institutions and Minority Issues. A Guide to Good Practice*. ECMI.
- McLaverty, P. (2010): Participation. In: Bevir, M. (ed.): *The SAGE Handbook of Governance*. Sage .
- Palermo, F. – Woelk, J. (2003): No Representation Without Recognition: The Right to Political Participation of (National) Minorities. *European Integration*, 3.
- Rossell, C. H. (1993): Using Multiple Criteria To Evaluate Public Policies: The Case of School Desegregation. *American Politics Quarterly*, 2.
- Sanchez, G. R. (2006): The Role of Group Consciousness in Political Participation Among Latinos in the United States. *American Politics Research*, 4.
- Sandovici, M. E. – Listhaug, O. (2010): Ethnic and Linguistic Minorities and Political Participation in Europe. *International Journal of Comparative Sociology*, 1-2.
- Weller, M. ed. (2005): *The Rights of Minorities in Europe. A Commentary on the European Framework Convention for the Protection of National Minorities*. Oxford UP.
- Wheatley, S. (1999): Minority Rights, Power Sharing and the Modern Democratic State. In: Cumper, P. – Wheatley, S. (eds.): *Minority Rights in the 'New' Europe*. Martinus Nijhoff Publishers, The Hague.
- Wheatley, S. (2002): Non-Discrimination and Equality in the Right of Political Participation for Minorities. *JEMIE*, 3.
- Young, I. M. (1997) : Deferring Group Representation. In: Shapiro, I. – Kymlicka, W. (eds.); *Ethnicity and Group Rights*. New York UP.
- Young, I. M. (2000): *Inclusion and Democracy*. Oxford UP.