

# Participation, representation and minorities

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# Minorities and decision-making

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„minority” – in international law no general definition of the term (nations without states / nationalities...)

„A group numerically inferior to the rest of the population of a State, in a non-dominant position, whose members - being nationals of the State - possess ethnic, religious or linguistic characteristics differing from those of the rest of the population and show, if only implicitly, a sense of solidarity, directed towards preserving their culture, traditions, religion or language” (Capotorti, 1977)

BUT for sure: a numerical relation between two groups

Politically relevant: national or ethnic, linguistic, religious minorities

Modern liberal democracies – national or ethnic minorities: structural minority position in political life

# Human rights approach

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Universal, equal human rights protected by international law

Participation: freedom of speech, prohibition of discrimination, equal voting rights

Universal Declaration of Human Rights (1948)

Art. 19. Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Art. 21. 1) Everyone has the right to take part in the government of his country, directly or through freely chosen representatives. 2) Everyone has the right of equal access to public service in his country. 3) The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

# Conflict potential of ideas, groups...

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## Security approach:

Modern nation-state reflects a hierarchy of national/ethnic identities (national symbols, official language(s), public education, etc.)

Members of national or ethnic minorities may have different view, different preferences on their relation with the State – citizenship-bound loyalty but not identity-bound loyalty

Voting rights, gaining seats through elections, non-discrimination – „having a say” is weak

“Having a voice” in public affairs – some form of influence (weak or strong)

Representation ≠ participation

Minority participation in public life goes beyond electoral rights / freedom of speech

# Right to participation in public life

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Problems: structural minorities, political cleavages along national identity

National or ethnic, linguistic minorities need special guarantees for participation

International instruments on minority rights

„effective participation” - the functions of participation may range from lobbying at one end to making decisions at the other

FCNM 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.**”

# Special forms of participation I.

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OSCE HCNM Lund Recommendations (1999)

special representation in organs of the state (executive, legislative, public service, etc.).

- electoral systems which ensure adequate representation;
- mechanisms to ensure that interests of minorities are considered in state agencies;
- recognition of minority languages in public service;
- institutions to advise on minority issues;
- institutions for consultation;
- control or dominance of decision-making processes.

# Special forms of participation II.

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FCNM Advisory Committee recommendations (2008)

Considering their participation in decision-making, the FCNM AC analyzes various forms:

- participation in the legislative process;
- participation through specialised governmental bodies,;
- participation through consultative mechanisms;
- representation and participation in public administration, in the judiciary and in the executive;
- participation through sub-national forms of government;
- participation through autonomy arrangements.

# Domestic mechanisms implementing the right to participation of minorities

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- domestic legislation

- – result of national constitutional developments
- - international influence (e.g. Bosnia-Herzegovina, N-Ireland, Macedonia)

Domestic constitutional developments a) through improving judicial protection b) through political compromise btw minorities/majority elites

## Non-recognition of ethnic differences

1. agnostic liberal state (French model)
2. repressive nationalist state

## Recognition of ethnic difference

1. pluralist nation-State
2. consociational multinational state



# Political participation - elections

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Basic issues:

Citizenship – precondition to right to vote and stand for election

Freedom of association – ban on political parties on ethnic basis (Greece, 1990s Bulgaria)

Right to vote/stand for election – minority specific rights may be denied from people belonging to non-recognised minority groups

- social preconditions: self-awareness and political mobilisation

Elections:

Plurality-majority

Proportional  
Semi-proportional

+ threshold

party systems:

ethnic minority parties

integration of minority representatives in  
mainstream parties

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## Electoral „privileges” for minority parties and minority representation

Reduced requirements for registration

Favourable delimitation of constituencies

Lowered threshold

Reserved seats – local/national level (e.g. Kosovo, Romania)

Main questions on effectiveness

- accountability and representativeness
- multiple-identities
- freedom of affiliation/free choice of identity
- equal suffrage...?

# Effective participation in legislative decision-making

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Decision-making rules and procedures may be organised in way to take into consideration the interests of minorities.

## - **veto rights or qualified majority rule on minority issues**

- Belgium: special constitutional issues require majority vote from both (Flemish and French) linguistic communities in parliament
- South-Tyrol/Trentino-Alto-Adige (Italy) regional assembly – issues related to equality of ethnic/linguistic groups, citizens' equality, etc.
- Slovenia: absolute veto provided for Hungarian and Italian MPs - never used
- Effectiveness of veto rights – not secured (def. of policy areas / mediation processes activated when veto is invoked)

## - **deliberative democracy**

- Inclusion and consensus → it is difficult for ethno-national groups: there are non-negotiable claims

# Participation in the executive and judiciary

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## **Executive**

- important role in implementing legislation and policies
- ministry or special government agency responsible for minorities (rare)
- co-operation between ministerial units (ministry for education/ministry of interior/ministry of social affairs)
- government commissioner for minorities or for specific minority rights (e.g. Language Commissioner in Kosovo) – impartiality? Independence?
- access to public service: special regulations for minorities – professionalism of public service/representativeness

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## **Judiciary**

- impartiality, independence of judiciary
- power-sharing arrangements may extend to judiciary (see Belgium at the highest courts – parity of French and Dutch speaking judges)

## **Access to public service/judiciary**

- prohibition of discrimination (higher offices)
- affirmative action
- guaranteed representation (e.g. Ohrid Agreement in Macedonia – special guarantees for Albanians OR South-Tyrol – in the regional and provincial government each linguistic group is represented proportionally to their representation in the regional/provincial assembly)

# Round tables, consultative bodies

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Advising the government on minority issues

Members: NGOs, independent experts, government and minority representatives, etc.

- *Ad hoc* – preparing legislation (e.g. minority round-table in Hungary)

- Permanent – (e.g. Consultative Council for Communities in Kosovo, National Minority Self-Governments in Hungary)

Tasks: formulating proposals for legislation, policy recommendations, giving opinions on government's legislative initiatives, monitoring implementation (especially if only minority representatives form the body)

Decision on funding...

# Non-territorial or personal autonomy

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Special form of self-government: control over issues relevant for minorities (education, culture, etc)

Based on citizenship / without territorial limitations on the territory of the state

Powers exercised by representative body (not necessarily elected under public law)

E.g. local minority schools managed by the community of parents

Main challenges: representativeness, legitimacy, and relations with individual members of the community

E.g. Hungary – Nationality self-governments: wide ranging competencies in the field of culture and education (at local, regional and national levels), consultative rights in political issues

- direct elections, registration

- financial dependency from central budget / need for close co-operation with national and local governments

# Territorial autonomy

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Territorial delimitation (where a minority forms majority)

Territorial self-government: extended competencies – economy, environment, tourism etc. political representation

Power-sharing arrangement with central government: budget, public policies, regional development, etc.

most examples in Western Europe – Aaland Islands, South Tyrol, Catalunya,

Constitutional guarantees

Formal representation at central government (not necessarily)



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Thank you!

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