

## RESEARCH PLAN

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### **The right of minorities to political participation in Europe - new perspectives and practices in Central and South-Eastern Europe**

#### **1. Background and unresolved problems**

Since 2006 we have been involved in doing research regarding ethnopolitical issues at the Institute for Ethnic and National Minority Studies of the Hungarian Academy of Sciences under the guidance of Prof. László Szarka. Our previous (it will be closed at the end of 2012) OTKA research project focused on the parliamentary, electoral and governmental role of minority ethnic parties in four Central and Eastern European countries (Bulgaria, Serbia, Slovakia, and Romania). Balázs Vizi has done research on the political representation of minority parties at international forums, and Zoltán Kántor focused on the theoretical aspects of ethnic political movements. This research raised our interest in a deeper investigation of political participation rights, which are determining in structuring minority-majority relations.

Organising power-sharing structures and representation along ethno-national or linguistic lines is not new. Existing state practices in Belgium, Finland or Schleswig-Holstein in Germany and in many other countries have been developed in the 20<sup>th</sup> century. What is new however is the appearance of an international right for persons belonging to minorities to effective participation in public affairs in the minority rights instruments from the 1990s. The codification of minority rights at international level was a novel and furthermore minority rights protection has become a solid part of membership policy of international organisations, like the Council of Europe and the European Union. International documents relevant to minority rights firmly establish minorities' right to effective participation in public affairs. The 1990 Concluding Document of the Copenhagen Meeting of the Conference on the Human Dimension (para. 35), the 1992 UN Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities (Art. 2(2) and (3)) and the Framework Convention for the Protection of National Minorities (Art. 15) offer a political and legal background for state obligations regarding the guarantees of minorities' participation in public affairs. The effective participation of minorities has become a matter of international concern. Moreover, the international standards have become the guidelines for domestic legal and political developments in this field, especially in post-conflict societies of South-East Europe. The content of international standards however is rather blurred, "effective participation in public affairs" covers a broad concept and is open to different interpretations. International bodies have made attempts to clarify its basic principles. The OSCE High Commissioner on National Minorities issued the Lund Recommendations and the Warsaw Guidelines,<sup>1</sup> the UN Working Group on Minorities decided to draft a general comment<sup>2</sup> on it (though the Working Group was abolished before it finished this comment) and the Advisory Committee on the Framework Convention has also published a thematic commentary on effective participation.<sup>3</sup>

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<sup>1</sup>The Lund Recommendations on effective participation of national minorities in public life, September 1999. and Guidelines to Assist National Minority Participation in Electoral Process, January 2001 Warsaw

<sup>2</sup> Report of the Working Group on its 10th Session, 2004. E/CN.4/Sub.2/2004/29, para. 66.

<sup>3</sup> Advisory Committee on the Framework Convention for the Protection of National Minorities Commentary on the Effective Participation of Persons Belonging to National Minorities in Cultural, Social and Economic Life and in Public Affairs. Adopted on 27 February 2008

In political science the concepts of representative democracy and direct democracy give a parallel theoretic framework for interpreting political participation.<sup>4</sup> Due to this context it becomes clear the participation at general elections as the basis of political representation is not enough to visualize the interests of minority groups. Democratic representation based on equal suffrage as a classical institution of majority democracy does not guarantee automatically the effective representation in public life of national and ethnic minorities. In fact, leading contemporary scholars see two options for solving this problem. One of them is the so-called consociation model of democracy based on the work of Lijphart, while the other one is the model of integration. The former model can imagine the various ethnic communities' cohabitation by separate structures (for example by means of territorial or cultural autonomy, ethnically based political representation etc.), whilst the other one considers constitutional stimuli proper like forcing the various ethnic, national communities to cooperate each other (joint party-lists, etc.)<sup>5</sup> The framework for the examination of the right of minorities to participate in public affairs is offered by the concept of pluralist democracy. The various arrangements for participation rights fit well in this broader concept. The different power-sharing structures can be described in many ways, see here below two typologies.

Coakley's typology of accomodist ethnic management strategies<sup>6</sup>

LOCATION OF POWER	DOMAIN	
	Political	Cultural
<b>Centralised</b>	Consociation	Group rights
<b>Decentralised</b>	Federalism, territorial autonomy	Cultural autonomy

Ethnopolitical self-government, Myntti's typology<sup>7</sup>

LOCATION OF POWER	DOMAIN		
	POLITICAL CULTURAL	POLITICAL/CULTURAL	
<b>Centralised</b>	Consociation	Political group rights	Cultural group rights
<b>Centralised/Decentralised</b>		Ethnopolitical self-government	
<b>Decentralised</b>	Federalism, territorial autonomy		Cultural autonomy

<sup>4</sup> See e.g.: Osburn, Lee Ann: *The Problem of Participation. A Radical Critique of Contemporary Democratic Theory*. Lanham-NewYork-London, University of America Press, 1985.

<sup>5</sup> Sisk, T.D., *Power Sharing and International Mediation in Ethnic Conflicts*, Washincjton, DC, US Institute of Peace, 1996. Furthermore see Horowitz, D. 'Encouraging electoral accommodation in divided societies', in B. L~l and P. Larmour (eds): *Electoral Systems in Divided Societies: The Fiji Constitution Review*, Canberra. Research School of Pacific and Asian Studies, ANU, 1997.

<sup>6</sup> Coakley, John: The Resolution of Ethnic Conflict – Towards a Typology in: *International Political Science Review* 1992 (vol. 13.) no. 4. 347. o.

<sup>7</sup> Based on Myntti, Kristian: National minorities, indigenous peoples and various modes of political participation. in: Horn, Frank (szerk.): *Minorities and Their Right of Political Participation*. Rovaniemi, University of Lapland, 1996. 25. o.

Power-sharing and ethnopolitical self-government, especially territorial autonomy has received some attention in political science, just like the interpretation of international standards on minorities' participation rights. **However recent developments in South East and Central Europe have not been analysed yet in this context. In a similar way, the compliance of domestic instruments with international standards needs a closer observation in our region.** The past decade has shown great changes in the accommodation of minority communities in South-East Europe and in Central Europe as well. New measures and instruments adopted in these countries often rely on international standards and on the recommendations of international organisations. International attention as well as the dynamics of internal politics has raised new ways of solution. These types of solutions have strengthened the self-sufficient models of representations sheltered by legal guarantees. New bodies of minority self-governments, of elected and non-elected consultative bodies and new solutions for parliamentary representation have emerged. Domestic developments in Bosnia-Herzegovina and Kosovo are directly influenced by the presence of international organisations in these countries. In other cases, like Serbia, the EU's conditionality policy plays an important role in this regard as well. The analysis of these new legal structures and the political debates around the participation of minorities in the light of existing international standards is largely missing in literature both in Hungary and at international level. Disclosing and examining the political and legal context of these phenomena might help us to understand the problems of representation of minorities in public life and its role in the social integration of minorities more properly.

## **2. Hypothesis, research questions and aims of the project**

The hypothesis put forward in this research is based on the argument that the compliance of domestic legal instruments with international standards alone does not unveil the real effectiveness of minorities' participation in public life. Thus the analysis of the implementation of these standards and the social and political environment in which these new institutions have been developed may offer answers for a more objective criteria of participation in public life.

The research would focus on finding answers for the following questions:

- 1.) How should „effective participation” of minorities in public life be interpreted in light of international documents and domestic legislations?
- 2.) What is the role of language rights in effective participation of minorities in public life? What lessons can be learned from international documents and relevant state practices?
- 3.) What are the main strengths and weaknesses of the different types of consultative rights?
- 4.) How effective are parallel representative institutions (like preferential seats in parliament and non-elected consultative bodies) in one constitutional structure (e.g. in Kosovo)?
- 5.) What are the dilemmas and what is the progress in promoting social integration of minorities through minority participatory rights in the countries under observation?

### 3. Methodology and research design

One needs not only the essential methods of comparative political science and law, but analysis on the ground of constitutional and administrative law, furthermore examinations in legal theory and political philosophy that can analyze the verifiability of the distinct institutions of law are also necessary. Some topics can be examined only by using field-work methods (interviews, surveys, collecting relevant laws and acts and their framework of effectiveness), whilst other issues should be thoroughly disputed at various symposia by inviting foreign colleagues.

The main issues addressed here cover the following topics:

#### *Detailed description of the different research topics:*

1. International documents relevant to the political participation of minorities form the basic conceptual and terminological background to this research. The basic standards set up in various treaties, recommendations and soft-law documents of the UN, the OSCE, and the Council of Europe offer the identification of the principal models of inter-ethnic power-sharing mechanisms. Especially the analysis of CoE Framework Convention Advisory Committee's country specific recommendations and general commentaries, just like the recommendations of the Language Charter Expert Committee are important references in understanding the path of domestic legislative developments. The vast literature on international protection of minority rights in general and participatory rights in particular offers solid background to this part of the research.

From a different perspective, international organisations have been active in influencing domestic legislation as well. Especially the European Union's partnership and membership policy strategy is seen as an influential factor. Conditionality policy in the field of minority rights protection has changed since the last Eastern enlargement of the EU. How can we see the norm-transfer potentials of EU policies in the region? Is the EU more successful in disseminating international standards and best practices in minority rights protection?

2. Particular attention is paid to the interrelation of language rights and participation. The term 'public life' is used only once in the provisions of the European Charter for Regional or Minority Languages. According to Article 7 of the Charter „the Parties shall base their policies, legislation and practice” on certain objectives and principles among which one is the “the facilitation and/or encouragement of the use of regional or minority languages, in speech and writing, in *public* and private *life*”. The term is used again in the title of Part III where concrete measures to promote the use of regional or minority languages in *public life* are enumerated.

Indeed the possibility to use a minority language in public life is of utmost importance in the preservation and development of the language. In case the use of a language is limited to a narrow personal sphere, its wider, communal functions would inevitably be lost in time. The Explanatory Report appended to the Charter emphasizes therefore that promotional activities of States “must include action in favour of the possibility to use regional or minority languages freely, both orally and in writing, not only in private life and in individual relations, but also in community life, that is to say within the framework of institutions, social activities and economic life” (para. 62).

Part III of the Charter defines those measures that States should adopt to ensure the use of regional or minority languages in public life. These refer to education, judicial authorities, administrative authorities and public services, the media, cultural activities and facilities, economic and social life, and transfrontier exchanges.

Based on the legislation, policies and practice of some selected European States, the present study would examine the position of regional or minority languages in public life.

2. The post-conflict societies of South-Eastern European countries under investigation have been actively assisted by international organisations in setting up new structures of inter-ethnic power-sharing mechanisms. Even though, the experiences of the past decades call the attention on the problems of implementation and on the lasting social cleavages along ethnic lines. Thus there is a need to overview in a comparative perspective the effectiveness of the legal instruments adopted in these countries for the political inclusion of minorities: preferential electoral laws, self-government arrangements, elected and non-elected consultative bodies, new citizenship laws, etc. The main question here is to what extent can these instruments deemed to be successful in promoting social integration and cohesion?

2/a In Kosovo the integration of Serbs living north of the Ibar river in relatively compact settlements poses a serious challenge to the Kosovo government in Prishtina. The research will have to address the impact of the results of the advisory referendum on accepting the institutions of the Republic of Kosovo held in the Serb-dominated regions of North Kosovo on 14 and 15 February 2012 as well as the Serbian parliamentary election in 2012 on the Serbian attitudes towards Prishtina's authority. A comparative focus is fruitful in uncovering different micro- and macro-level strategies of Serbs living in the south in enclaves and Serbs living in the north concerning participation in Kosovo political institutions and public sphere.

2/b In Bosnia and Herzegovina, the combination of ethnic and territorial principle generates conflict on the legitimacy of representation of territorial entities and the three constituent national communities. It has also a paralysing effect on state functionality and undermines viability of the Bosnia-Croat Federation beside the secessionist aspirations of the Serbs in Bosnia. Focus on the present situation in Bosnia and Herzegovina is fruitful in uncovering the relations between legitimacy, representation and effective decision-making in ethnically divided societies.

2/c In Serbia, the evolvement of the minority national councils show that offering formal self-government in cultural issues for minorities does not necessarily entail the transmission of effective decision-making powers. The debates regarding the electoral lists, the financing of these national councils and their effective empowerment have not been analysed yet. Discovering the inter-relation between political representation and cultural autonomy in this context may bring new perspectives in unveiling the general strengths and weaknesses of cultural self-government.

4. In Romania there has been a heated discussion over the regionalisation of the state. The reform ideas and programs regarding the redesigning of territorial self-government, and territorial public administration structures have significant impact on the Hungarian minority community. While the strengthening regionalism may be seen as a positive development for the regions where Hungarians live in majority, the political debate and legislative proposals emerged so far show a strong resistance in majority political elite towards creating a new region with Hungarian majority. On a different track, the discussion on cultural autonomy is also vivid, the draft law on minority rights protection has not been withdrawn from

parliament. Another important development is the electoral reform and its relation to citizenship laws, recent changes in this field may help to uncover the dynamics of ethnic domination in public life.

5. Analysing the experiences of the countries under investigation, may offer new perspectives for the analysis of other state practices as well. The new Hungarian law on the rights of nationalities is firmly anchored in the concept of cultural autonomy. Furthermore the new law offers a special opportunity for preferential parliamentary representation of minorities. What could be the useful conclusions from the practices of the Balkans? How effective can be the new regulation in improving the participation of minorities in public life?

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