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**Title:** *Effective Participation of Minorities in the Local Government in Western Balkans: Institutional Solutions in a Subsidiary Perspective in the light of International and European Standards*

**Summary:** 1. Introduction; 2. Legal Framework: Effective Participation in International and European Standards; 3. The Definition of Effective Participation and its Multi-level Character; 4. A Classification of Non-electoral Instruments for the Participation of Minorities; 5. National cases of Local Implementation of Effective Participation; 5.1 Serbia and the Republic of North Macedonia: Co-Decision and Coordination Municipal Bodies between Decentralization, Inter-Ethnic Reconciliation and Representation; 5.2 Cultural Autonomy in the Local Government and its Relationship with Territoriality: the model of Local Self-Governing Communities in Slovenia; 6. Conclusions.

## 1. Introduction

In plural constitutional systems the participation of persons belonging to minorities in public life is a key factor for building an inclusive society, where cohesion and diversity are simultaneously guaranteed, through mutual recognition among different groups<sup>1</sup>. The political dimension of participation shall take an anti-segregative function, ensuring that the public debate and decisions recognize a space for minority issues. On the other hand, the richness of the normative documents and organizations that elaborate upon the issue proves its central position within the internationally recognized rights of minorities.

This paper aims to examine some profiles attaching to the right of minorities to effective political participation, analyzing its implementation in local government through non-electoral institutional arrangements in the light of international and European standards as defined in context of the Organization for Security and Cooperation in Europe (OSCE) and the Council of Europe, with a particular attention to the countries in the Balkans' area.

The selection of the research object is based on two premises.

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<sup>1</sup>F. Palermo, J. Woelk, *Diritto costituzionale comparato dei gruppi e delle minoranze*, Padova, 2011, pp. 159-160.

First, the decision to carry out the study on participation in decision making in local government stems from the nature of the participation itself. As it will be further explained below (par. 3), the effective participation of minorities is a right with a necessarily multi-level implementation, and the relevant international documents underline this feature, recommending its implementation in all levels of government. At the same time, however, despite being one of the cornerstones of the Council of Europe<sup>2</sup>, the local government is less considered and analyzed as much in practice, as in the doctrinal reflection on minority governance<sup>3</sup>. The adoption of a subsidiary perspective to effective participation, therefore, allows to explore the potential of local government as a political space to implement good practices disseminated by international standards, and maximizing minority involvement<sup>4</sup>.

Secondly, among all the possible institutional solutions, this study will analyze the non-electoral mechanisms for the participation of minorities in decision-making, and the national systems where they are provided. The dimension of participation as strongly linked to representation in a strict sense, within legislative assemblies or in "ordinary" elective bodies, is a matter widely analyzed in doctrine and explored in practice<sup>5</sup>. The solutions within electoral dynamics are undoubtedly the most direct and effective way (even symbolically) to ensure minority involvement in the most influential decision-making bodies. At the same time, however, their application requires specific conditions, in terms of composition of the population (significant numerical size of minority groups and low level of geographical dispersion) and political understanding, given the "sacrifices" the majority representation that promotional measures involve<sup>6</sup>. Therefore, this paper will not consider the study of considered electoral (electoral systems, reserved seats, etc.) or otherwise related to ordinary

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<sup>2</sup>B. Bowring, *Enhanced Local Self-Government as a Means of Enhancing Minority Governance*, in M. Weller, K. Nobbs (Eds), *Political Participation of Minorities. A Commentary on International Standards and Practice*, Oxford, 2010, p. 681, with reference to the European Charter of Local Government, signed in 1985, CETS no: 122.

<sup>3</sup>Ivi, p. 662.

<sup>4</sup>Subsidiarity, explicitly recalled by Lund Recommendations (on which para. 2) at para. 19, p. 12, is one of the fundamental characteristics of the complex of the "law of diversity", both vertically and horizontally intended, as presented by F. Palermo, J. Woelk, *From Minority Protection to a Law of Diversity? Reflections on the Evolution of Minority Rights*, in European Yearbook of Minority Issues 2003/4, Vol. 3, pp. 6-7.

<sup>5</sup>Among the others U. Haider-Quercia, *La rappresentanza elettorale delle minoranze nazionali in Europa*, Padova, 2014.

<sup>6</sup>F. Palermo, J. Woelk, *Diritto costituzionale comparato dei gruppi e delle minoranze*, cit., pp. 159-160.

elections mechanisms (composition of the executive), but the analysis will focus rather on more flexible instruments, which guarantee to the groups a certain degree of involvement and influence even when there are no conditions for direct representation<sup>7</sup>.

The structure of the paper consists firstly in a presentation of legal framework of this study (par. 2); effective participation will then be defined, in order to highlight its significance and role in the overall minority rights system and its necessarily multilevel character (par. 3). It will then be presented (par. 4) a categorization of the types of non-electoral institutional tools provided by international documents and guidelines. Finally (par. 5), there will be a focus on the analysis of some specific national cases of implementation in the Balkans' area, and particularly to minority consultative mechanisms in local government (Serbia and Republic of North Macedonia) and mechanisms of self-government of minorities (Slovenia)<sup>8</sup>.

## **2. Legal Framework: Effective Participation in International and European Standards**

The legal framework which defines the scope and content of the right of minority groups to participate effectively in decision-making processes is characterized by two main features: convergence and complexity. On the one hand, in fact, many different international legal documents from different organizations (partly with different missions) contribute to the general recognition of the right. On the other hand, its interpretation and implementation descend from a multiplicity of acts of hard and soft law, jurisdictional and monitoring activities, which all contribute to the emergence of standards and best practices.

Giving a brief overview of the United Nations framework, the effective participation of minorities is mentioned at the art. 2 c. 2 and 3 of the *Declaration on the Rights of Persons Belonging to National*

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<sup>7</sup>M. Weller, *Effective Participation of Minorities in Public Life*, in Id. (Ed.), *Universal Minority Rights. A Commentary on the Jurisprudence of International Courts and Treaty Bodies*, Oxford, 2007, p. 479.

<sup>8</sup>On which *see* below para. 2.

or *Ethnic, Religious and Linguistic Minorities* (18<sup>th</sup> December 1992)<sup>9</sup>, and art. 18 of the *UN Declaration on the Rights of Indigenous Peoples* (2<sup>nd</sup> October 2007)<sup>10</sup>.

However, it is within the Council of Europe that the effective participation, as well as the rights of minorities generally considered, are deeply and more acutely ingrained. A central reference in binding law is undoubtedly the *Framework Convention for the Protection of National Minorities* (hereinafter FCNM) of 10<sup>th</sup> February 1995, with the provision of the art. 15 that provides the duty, for State 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». Additionally, the *European Charter for Regional or Minority Languages* of 1<sup>st</sup> March 1998, requires, at the art. 7 c. 4, the consultation of minority groups in the definition of language policies<sup>11</sup>. As a result of this initial evidence, it is possible to consider effective participation as a part of an International and European consensus on fundamental principles of minority rights, relevant for native national minorities, even if considered only on the linguistic level, and potentially also for the so-called new minorities, stemming from migration processes<sup>12</sup>.

On the other hand, the complexity of this legal framework derives from a *functional asymmetry* of the sources of law<sup>13</sup>, which include, alongside binding law documents, institutional mechanisms and soft law documents with interpretative and operational functions.

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<sup>9</sup> Declaration on the Rights of Persons Belonging to Ethnic, Religious and Linguistic Minorities, A/RES/47/135, 18th 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.'

<sup>10</sup> Declaration on the Rights of Indigenous Peoples, A/RES/61/295, 2nd October 2007. Art. 18: 'Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.'

<sup>11</sup> Art. 7 c. 4 "In determining their policy with regard to regional or minority languages, the Parties shall take into consideration the needs and wishes expressed by the groups which use such languages. They are encouraged to establish bodies, if necessary, for the purpose of advising the authorities on all matters pertaining to regional or minority languages."

<sup>12</sup> On the inclusion of new minorities as subjects of the right to effective participation v. R. Hofmann, *Political Participation of Minorities*, in *European Yearbook of Minority Issues* (2006/2007), vol. 6, pp. 15-16; for a more general discussion on these groups from the perspective of minority rights see R. Medda-Windischer, *Old and New Minorities: Reconciling Diversity and Cohesion, A Human Rights Model for Minority Integration*, Baden Baden, 2009.

<sup>13</sup> With the meaning presented in S. Penasa, *La promozione delle minoranze linguistiche via meccanismi di partecipazione. La legge provinciale della Provincia autonoma di Trento n. 6 del 2008 quale laboratorio del sistema multilevel di tutela delle minoranze linguistiche?*, in *Le Regioni*, 2009, 5, pp. 1021-1025.

A first element is the monitoring mechanism provided for the FCNM. Article 26 sets that the Committee of Ministers is assisted by an Advisory Committee, a committee of experts that, within five-year monitoring procedures, give opinions on the implementation of the Convention in the State parties, which then form the basis for the Resolutions of the Committee of Ministers itself. The Opinion expressed by the Advisory committee is characterized as 'soft jurisprudence based on hard law', responding to a dual function of protection (of rights) and standard-setting, as an interpretative tool for national courts who are to apply the FCNM, on the one hand, and promoter of dialogue between political actors of the European area, in order to expand the general knowledge and provide practical solutions to legislators and policy-makers, on the other hand<sup>14</sup>.

A similar role is allocated, within the 'FCNM system', to two soft law documents which specify the scope of Article 15: the *Commentary on the effective participation of persons belonging to national minorities in cultural, social and economic life and in public affairs* (henceforth AC Comm.), published by the Advisory committee the FCNM in May 2008<sup>15</sup>; and the more specialized *DH-MIN Handbook on Minority Consultative Mechanisms* (hereinafter DH-MIN Handbook), published by the Committee of Experts on Issues Relating to Protection of National Minorities, a FCNM working group<sup>16</sup>.

A further contribution to the definition of the regulatory framework of the effective political participation of minorities is provided by the action of the High Commissioner on National Minorities of the Organization for Security and Cooperation in Europe (OSCE)<sup>17</sup>. The Lund Recommendations

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<sup>14</sup>J. Marko, *The Council of Europe Framework Convention on the Protection of National Minorities and the Advisory Committee's Thematic Commentary on Effective Participation*, in M. Weller, K. Nobbs (Eds), *Political Participation of Minorities. A Commentary on International Standards and Practice*, cit., pp. 227-229 and the doctrine cited. For a study on the use of the FCNM as a parameter in the national courts adjudication F. Palermo, *Domestic enforcement and the direct effect of the Framework Convention for the Protection of National Minorities: On the judicial implementation of the (soft?) law of integration*, in A. Verstichel, A. Allen, B. De Witte, P. Lemmens (Eds), *The Framework Convention for the Protection of National Minorities: a Useful Pan-european Instrument?*, Antwerp, 2008, pp. 187-214.

<sup>15</sup> ACFC / 31DOC (2008) 001, 5 May 2008.

<sup>16</sup> DH-MIN (2006) 012, 20 October 2006.

<sup>17</sup>The OECD (the CSCE time) was, among other things, the first organization to include the right of minorities to participate in public life in a document of international law, at para. 35 of the so-called Copenhagen Document of 1990 (Concluding Document of the Copenhagen Meeting of the Conference on Human Dimension). A. Verstichel, *Participation, Representation and Identity. The Right of Persons Belonging to Minorities to Effective Participation in Public Affairs: Content, Justification and Limits*, Antwerp, 2009, pp. 202-207.

on the Effective Participation of National Minorities in Public Life (hereinafter Lund. Rec.), published in September 1999, represented the first attempt to overcome a deficit of standards in international law at the time, through the proposal of good practices<sup>18</sup>.

### **3. The Definition of Effective Participation and its Multi-level Character**

The clarification of the object of the present study, declined in the normative context just described, requires the definition in detail of the meaning of the two lemmas of which it is composed.

Regarding participation, the clause contained in art. 15 of the FCNM highlights its large range of action, due to the presence of two dimensions intimately connected and mutually interdependent<sup>19</sup>. In fact, it refers not only to political participation in the broadest sense ( "public affairs"), which already includes many areas such as elective assemblies, administrative and judicial institutions, public employment, intermediate bodies<sup>20</sup>, but also the basic inclusion in the 'cultural, social and economic life', which is a prerequisite of the former<sup>21</sup>.

Narrowing the analysis to the first dimension, and seeking a notion of participation functional to this research, it can be understood as the participation of minorities in decision-making and policy-making, with the opportunity to take part and put forward their demands, with varying degrees of intensity<sup>22</sup>. The right to political participation stands in between individual and collective dimension, based on the individual's right to identity and self-determination, but acquiring relevance through the collective exercise, which consists in the recognition of some degrees of influence in decisions to the exponential bodies of minority communities<sup>23</sup>.

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<sup>18</sup>Ibid, pp. 213-227; K. Drzewicki, *OSCE Lund Recommendations in the Practice of the High Commissioner on National Minorities*, in M. Weller, K. Nobbs (Eds), *Political Participation of Minorities. A Commentary on International Standards and Practice*, cit., pp. 256-285.

<sup>19</sup>F. Palermo, *The Dual Meaning of Participation: The Advisory Committee's Commentary to Article 15 of the FCNM*, in *European Yearbook of Minority Issues* (2007/8), vol. 7, p. 413.

<sup>20</sup>A. A. Verstichel, *Understanding Minority Participation and Representation and the Issue of Citizenship*, in M. Weller, K. Nobbs (Eds), *Political Participation of Minorities. A Commentary on International Standards and Practice*, cit., p. 75.

<sup>21</sup>F. Palermo, *The Dual Meaning*, cit., P.413.

<sup>22</sup>AC Comm., Para. 69, p. 22; v. also below in this paragraph for the interpretation of effective participation.

<sup>23</sup>J. Marko, *The Council of Europe Framework Convention*, cit., p. 225; F. Palermo, J. Woelk, *Diritto costituzionale comparato dei gruppi e delle minoranze*, cit., pp. 45-48. See also the AC Comm., Para. 6 p. 10, and for a more general

Participation in public decisions has a central role in the complex of measures in favor of minorities, since it enables groups to play an active role in specifying the contents of the other rights conferred to them individually and collectively. Related to this, the text of the FCNM provide a further specification, demanding that State parties create the conditions so that members of minorities can participate in public decisions, with particular reference to «those affecting them»<sup>24</sup>. The involvement in affairs directly affecting 'minority sensitive' areas follows to the logic of minority rights in a strict sense, while a participation in the generality of decisions represents an application of the principles of participatory democracy and good governance<sup>25</sup>.

On the other hand, the concept of effectiveness of the participation may have two different interpretative meanings, not alternative but rather complementary. In a weak sense, it can be understood as the existence of the conditions of participation. The effectiveness of the participation would be ensured, in this regard, respecting two principles: prior definition and adequate funding. The prior legislative definition requires the status of the institutions and special mechanisms adopted for the participation of minorities to be provided in legislative sources of law, preferably constitutional, with adequate accuracy, including indications regarding the role, competence and composition of the organs<sup>26</sup>. The principle of adequate financing imposes, on the other hand, that the actual functioning of participatory mechanisms is made possible by the destination, by public authorities, of adequate economic and human resources<sup>27</sup>.

Therefore, the effectiveness in a strong sense, as an index of the *quality* of participation, is linked to the necessity to ensure not only the presence of communities in decision-making processes, but

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analysis, P. Torretta, *Diritti fondamentali e protezione delle "istanze collettive di diversità": il caso delle minoranze linguistiche*, in *Dir. pubbl. comp. eu.*, 2014, 2, pp. 695-734.

<sup>24</sup>Still art. 15 FCNM.

<sup>25</sup>A. Verstichel, *Participation, Representation and Identity*, cit., pp. 45, 270. See also the White Paper of the European Commission on European governance, July 25, 2001, COM (2001) 428 final.

<sup>26</sup>AC Comm., Para. 107-116, pp. 29-30; Lund Rec., Para. 22 pp. 12-13.

<sup>27</sup>AC Comm., P. 8 for a general consideration, para. 21 p.13, para. 119 p. 31, para. 130 p. 32, para. 138-139 p. 34, about individual mechanisms; Lund Rec., Para. 13-14, p. 10.

effective instruments to influence them, in a scale that moves between the two poles of the non-binding opinion on the one hand, and of the absolute veto power, on the other<sup>28</sup>.

One last, but essential point, needs to be addressed here. Examining the perspective of the local government in relation to effective participation gains a central relevance in the present analysis as a result of the inherent multi-level nature of the right. This statement derives first from a general trait of the 'law of diversity', which requires a multi-level enforcement and implementation, achieving its complete fulfilment in the stratification and interaction of different levels of normative protection<sup>29</sup>.

Additionally, it is undeniable that effective participation is essentially linked to the level of government where it is implemented. Thus, depending on the practical conditions, every political level will have its own mechanisms for the involvement of minority people. With regard to this, international standards clearly highlight the necessity to adopt participatory solutions for minorities not only at national but also at sub-national and local levels. Firstly, the Lund Recommendations, at par. 11, state the following: «States should adopt measures to promote participation of national minorities at the regional and local levels ... The structures and decision-making processes of regional and local authorities should be made transparent and accessible in order to encourage the participation of minorities». Further clarifying this, the Explanatory note (on par. 11) states that «The consistent enjoyment of all human rights by everyone equally means that the entitlements enjoyed at the level of the central government should be enjoyed throughout the structures below». Similarly, the AC Commentary suggests the implementation of decentralisation and devolution processes<sup>30</sup>, and the DH-MIN Handbook recommends provisions to be made «at all levels»<sup>31</sup>.

#### **4. A Classification of Non-electoral Instruments for the Participation of Minorities**

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<sup>28</sup>A. Verstichel, *Understanding Minority Participation*, cit., P. 85.

<sup>29</sup>F. Palermo, J. Woelk, *From Minority Protection to a Law of Diversity?*, cit., 5-13.

<sup>30</sup>AC Comm., para. 129-130, p. 32.

<sup>31</sup>DH-MIN Handbook, para. 23, p. 7.

The next part of the study will provide an analysis of concrete institutional solutions to guarantee the effective participation of minorities in relevant national cases that emerge from the monitoring activity of the Advisory committee of the FCNM.

Drawing from the indications set out in International standards, the main non-electoral (as defined in the previous sections of this paper) institutional solutions consist of *specialised governmental bodies, consultative bodies, and autonomy arrangements*.

*Specialised governmental bodies*, presented in the *Advisory Committee Commentary* at paragraphs 103-105<sup>32</sup>, are governmental structures that are specifically designed to deal with minority issues, initiating and coordinating governmental policies in this field, granting a channel of communication between the government and minorities, and ensuring that minority issues are brought mainstreamed in the public administration. Even if they do not provide direct participation for minorities, these Committees could be complementary instruments<sup>33</sup>.

*The advisory and consultative bodies* have a remarkable relevance within the complex of institutional solutions outlined in International standards, demonstrated by their adoption in many cases and with different variations in practice, and the attention that soft law normative documents reserve to them. They are, in some sense, intermediate measures to guarantee effective participation between the two extreme poles of the recognition of the right to vote to minority components, on the one hand, and equal group representation in political bodies, on the other<sup>34</sup>.

They are minority groups' institutions, with a general purpose of organization and coordination of minority issues, as well as community mobilization. They perform activities of initiative or

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<sup>32</sup> AC Comm., para. 103-105, p. 28.

<sup>33</sup> An example among others are the Commissioner for Sorab affairs in some historical settlement municipalities in Germany, see Advisory Committee, *1<sup>st</sup> Opinion on Germany*, ACFC/INF/OP/I(2002)008, 12 settembre 2002, p. 17 e K. Shoraka, *Human Rights and Minority Rights in the European Union*, Londra, 2010, p. 182.

<sup>34</sup>T. Malloy, R. Medda-Windischer, E. Lantschner, J. Marko, *Indicators for Assessing the Impact of the Framework Convention for the Protection of National Minorities in its State Parties*, report scaricabile da <https://www.coe.int/en/web/minorities/iaconf> (accesso 16/03/2018), p. 73; S. Penasa, *La promozione delle minoranze linguistiche*, cit., p. 1029.

consultation in public decisions' processes, and programming, are entitled to raise issues before the public authorities, are engaged in monitoring actions with both internal and International relevance<sup>35</sup>.

International guidelines focus on various significant issues. First, the composition and the procedures for appointing members of the adopted consultative mechanisms play a key role in ensuring their effectiveness and credibility. The first should « reflect [its] purpose and contribute to more effective communication and advancement of minority interests » (Lund Rec., Para. 12), implementing the criteria of representativeness and inclusiveness (AC Comm., para. 109), which require a direct empowerment of minority communities and their organizations in the selection of components (DH-MIN Handbook, para. 52); this procedure, moreover, must ensure transparency of appointments and independence of members (AC Comm., para. 111). Secondly, International documents emphasize the possibility of several variations in the nature of the processes of consultation, which may be both general, granting a regular consultation over time, and special, activated in order to tackle single issues or initiatives (AC Comm., par. 113-114) , and may be reserved to the participation of only one specific minority, or represent a consultation of all groups in a specific geographical area (DH-MIN, par. 25). Thirdly, significant issues raise related to the necessary legal definition and financing of the activities of participatory organs (see above par. 3), as well as the quality of work processes within them, and their results (DH-MIN, par. 56-65).

Finally, the Lund Recommendations (par. 14-21) as well as the Advisory Committee Commentary (par. 133-137), suggest the recognition of *autonomy arrangements*, and hence of self-governance, to promote the effective participation of minorities. The two options outlined in this regard are those of territorial autonomy (or 'spatial layering of public authority') and cultural autonomy (more generally non-territorial autonomy, or 'functional stratification of the public authority')<sup>36</sup>.

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<sup>35</sup>Lund Rec., Para. 12-13, p. 10; DH-MIN Handbook, para. 39-41, p. 11. For a deeper analysis see P. Weller, *Minority Consultative Mechanisms. Towards best practice*, in Id., K. Nobbs (Eds), *Political Participation of Minorities. A Commentary on International Standards and Practice*, cit., pp. 490-492.

<sup>36</sup>J. Marko, *Effective Participation of National Minorities. A Comment on Conceptual, Legal and Empirical Problems*, downloaded from <https://www.coe.int/en/web/minorities/dh-min-working-documents> (access 03/16/2018), p.4, and M. Weller, *Article 15*, in Id. (Eds), *The Rights of National Minorities. A Commentary on the European Framework Convention for the Protection of National Minorities*, Oxford, 2005, pp. 435 ss.

The link between the plural composition of the population of a given system and devolution processes on a territorial basis is a subject widely analyzed in the literature, demonstrating the promotional function that may have special forms of autonomy for the political participation of minorities in the areas where they are settled<sup>37</sup>.

The role of such institutional solutions to the present study is peculiar. On the one hand, the presence of a certain degree of administrative decentralization in the analyzed systems is the fundamental premise of the research: the analysis of local implementation of effective participation can be meaningful only if the constitutional systems recognize certain decision-making powers to the local government, especially with regard to substantive matters of interest to minority communities. On the other hand, with reference to the international standards and in particular to soft jurisprudence of the Advisory committee of the FCNM, while expressing generally in favor to such solutions, it is actually uncommon that the Advisory committee suggests the adoption of devolution processes not previously disciplined by the national constitutional systems<sup>38</sup>.

Regarding the cultural autonomy model, it is accomplished through the recognition of decision-making powers directly to minorities' institutions, thus achieving a form of self-government of minorities, generally on cultural, linguistic and scholastic matters<sup>39</sup>. This option was originally designed for groups territorially dispersed within a given State<sup>40</sup> and it is based on two principles: no geographical but functional decentralization of decision-making powers, and the empowerment of the minorities itself, invested with powers to be implemented by their representative bodies<sup>41</sup>.

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<sup>37</sup>AC Comm., Para. 134, p. 33; Lund Rec., Para. 19-21, p. 12. About the perspectives of territorial autonomy in the protection of minority rights, see F. Palermo, *Owned or Shared? Territorial Autonomy in the Minority Discourse*, in T. H. Malloy, F. Palermo (Eds), *Minority Accommodation Through Territorial and Non-Territorial Autonomy*, Oxford, 2015, pp. 13-32.

<sup>38</sup>M. Suksi, *Effective participation of minorities in public affairs and public life – European norms and praxis evaluated in the light of the Lund Recommendations*, in B. Vizi, N. Tóth, E. Dobos (Eds), *Beyond International Conditionality. Local Variations of Minority Representation in Central and South-Eastern Europe*, Baden Baden, 2017, pp. 44-45.

<sup>39</sup>AC Comm., Para. 135-137, pp. 33-34. For a detailed discussion of the definitional and theoretical issues underlying the models of non-territorial autonomy (cultural, personal, functional) v. M. Suksi, *Non-Territorial Autonomy. The Meaning of '(Non-)Territoriality'*, in T.H. Malloy, F. Palermo (Eds), *Minority Accommodation through Territorial and Non-Territorial Autonomy*, cit., pp. 83-115.

<sup>40</sup>R. Hofmann, *Political Participation*, cit., P. 11; B. De Villiers, *Protecting Minorities on a Non-Territorial Basis - Recent International Developments*, in *Beijing Law Review*, 2012, Vol. 3, p. 173.

<sup>41</sup> Ibid, p.172.

Furthermore, cultural autonomy can have of local variations too. This form of self-government, in fact, can be provided to communities residing in certain geographical constituencies (Slovenia, see below par. 5.2), or national cultural autonomy systems can be designed as vertical and multilevel systems, integrating the minority self-government in the territorial government layers (as in the famous example of Hungary).

## **5. National cases of Local Implementation of Effective Participation**

Moving to the analysis of concrete examples of implementation of international standards' models, it will be clear how different solutions get mixed up, adapting to the complexity of historical, geographical and legal contexts, and responding to different functions. Practical arrangement of different mechanisms will then show under what conditions and to what extent the local government can be an implementing subject and space for the minority right to effective participation in decision making processes.

Some concrete examples of the adoption of local institutional instruments in the Balkans will be presented, based, in first instance, on state reports and opinions of the Advisory committee in FCNM monitoring procedures. They will be defined in their functions, composition and selection of members, and as far as possible, in their connection with the national context and minority participation system. In particular, the analysis will focus on two types of institutional choice: consultative mechanisms integrated into local government aggregating the various minorities in the area, and cultural autonomy of single groups.

### **5.1 Serbia and the Republic of North Macedonia: Co-Decision and Coordination Municipal Bodies between Decentralization, Inter-Ethnic Reconciliation and Representation**

*a) The Municipal Councils for Inter-ethnic Relations in Serbia*

The Republic of Serbia is a multi-ethnic state, in which more than 15% of the population belong to different minorities, both territorially concentrated (the case of the Hungarian population in Vojvodina) and dispersed (first of all the Roma group)<sup>42</sup>. The political participation of minorities is ensured through a national mechanism of cultural autonomy of minority communities, realized through the National Minority Councils, and, at the municipal level, the establishment of advisory bodies, the Councils for inter-ethnic relations.

At the national level, Councils of National Minorities are regulated by a 2009 law<sup>43</sup>, following the provisions of art. 75 of the Constitution of Serbia of 8 November 2006<sup>44</sup>. The Councils are representative bodies, one for each minority, elected with direct or indirect procedures by members of the groups<sup>45</sup>, and they hold self-government competencies in the fields of education, culture, information and use of language, exercising «an overwhelmingly dominant role in the realization of minority rights in Serbia»<sup>46</sup>. The powers they are entitled with comprise autonomous decision-making powers (statutory and financial autonomy, symbols and holidays, linguistic norms), powers of initiative and monitoring in legislative procedures, proposal for the management bodies of relevant institutions (cultural, educational, media information), opportunity to establish organizations, companies and associations in their areas of action and provide public services directly through them (as in the case of minority schools or media)<sup>47</sup>.

Alongside this configuration of the national context of political participation of minorities, the Serbian local government system provides an additional tool for their involvement. In fact, the general

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<sup>42</sup>T. Korhecz, *National Minority Councils in Serbia*, in T.H. Malloy, A. Osipov, B. Vizi (Eds), *Managing diversity through Non-Territorial Autonomy: Assessing Advantages, Deficiencies, and Risks*, Oxford, 2015, p. 69.

<sup>43</sup>Law on Councils of National Minorities, Official Gazette of the Republic of Serbia, no. 72/09, 20/14 - CC and 55/14.

<sup>44</sup>Art. 75 c. 2 of the Constitution of Serbia. "Persons belonging to national minorities may elect their national councils in order to exercise the right to self-governance in the field of culture, education, information and official use of their language and script, in accordance with the law".

<sup>45</sup> The different election procedures are regulated in the Law on Councils of National Minorities, Title VI, Articles. 29-109.

<sup>46</sup>Advisory Committee, 3th Opinion on Serbia, ACFC / OP / III (2013) 006, 23 June 2014, p. 47.

<sup>47</sup>Law on Councils of National Minorities, Art. 10, 11, 24 (on which see below). On this point see also M. Suksi, *Non-Territorial Autonomy*, cit., pp. 101-103. For a complete analysis of the Councils of National Minorities system v. T. Korhecz, *National Minority Councils in Serbia*, cit., Pp. 69-92, and, more oriented on practice, B. Katinka, S.I. Gergő, *The national councils of national minorities in the Republic of Serbia*, in the online compendium *Autonomy Arrangements in the World*, January 2016, available on [www.world-autonomies.info](http://www.world-autonomies.info) (access 24/03/2018).

Law on Local Autonomy (no. 129 of 2007) sets up, at art. 98, the Municipal Councils for Inter-ethnic Relations (hereinafter Councils)<sup>48</sup>: independent bodies, with consultative functions, which follow the scheme of co-decision, according to the classification given by the DH-MIN Handbook<sup>49</sup>. According to the law, the Councils are established by the municipal assembly, in ethnically mixed municipalities where a single minority represents at least the 5% of the population, or all minority communities exceed the 10%.

The composition of these bodies reveals its aims of inclusion and coordination among the plural issues of all the groups residing in the territories. In fact, the Council, whose members' number vary between four and twelve<sup>50</sup>, must necessarily have representative members from the majority ethnic community (the Serbs), and from the minorities that are more than the 1% of the municipal population, with proportional representation, corrected with the guarantee that none of them holds a majority of the members<sup>51</sup>. Regarding the appointment of the representatives, art. 98 of the Local Autonomy Law imposes that the representatives shall be indicated by the related National Council (at national level, see *above*), for the minorities who have one, or through the procedures established by Municipal assemblies. In these latter cases, the members are generally elected in the Municipal territory, but indications and proposals can come from political parties, religious communities and associations<sup>52</sup>.

The Councils' powers are mostly advisory, as they can deliberate on issues relating to the pursuit, protection and promotion of national equality<sup>53</sup>. In this vague and transversal area of action, the Council makes proposals for the Municipal assembly, which is forced to deliberate on them in the next session and no later than 30 days from their receipt. On the same matters, whenever the executive or deliberative Municipal institutions adopt a measure, they have previously to submit it to the

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<sup>48</sup>Local Autonomy Law, Official Gazette of the Republic of Serbia, no. 29/07, 83/14, 101/16.

<sup>49</sup>DH-MIN Handbook, para. 11-12, p. 5.

<sup>50</sup>Republic of Serbia, 3rd State Report, ACFC / SR / III (2013) 001, 14 March 2013, p. 362.

<sup>51</sup>Ibid, p. 360.

<sup>52</sup>Ibid, p. 362.

<sup>53</sup>Local Autonomy Law, art. 98.

Council for a mandatory opinion. Art. 98 of the Law 129/07 assigns to the Councils two further instruments. They may, in fact, bring cases directly before the Serbian Constitutional Court, against decisions or general acts of the municipal assemblies, if they consider that they infringe the rights of minorities represented in the Councils themselves. Similarly, they can invoke the Supreme Court of Cassation against any violation of Municipal Statutes perpetrated by decisions or general act of Municipal institutions.

In this regulatory framework, there are some critical or potentially critical aspects.

First, the text of the Law establishing Councils for Inter-ethnic Relations does not include any sanction in case of non-activation of the Councils within the Municipalities, and is limited to basic and generic indications, leaving a noticeable space to the Municipal establishing acts and to practice to define concretely the functioning of organs.

On the one hand, this gives to the model a certain degree of flexibility, allowing the adaptation of the structure and working procedures to the specific political conditions of every single Municipality; on the other hand, it weakens its safeguard scope and breach the principle of prior legislative definition analyzed above (para. 3). Moreover, an empirical evaluation reveals an unsatisfactory number of established Councils (about a third of municipalities with mixed ethnic composition, and therefore subjected to this obligation, did not do so), and a generally poor activity for those activated<sup>54</sup>.

However, the model of the Councils for Inter-ethnic Relations has also relevant potential and prospectives.

According to the Advisory Committee in the Opinion of the third monitoring cycle, these institutions may be complementary to the National Councils of National Minorities mechanism. The

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<sup>54</sup>As reported by the 3rd State Report (cit. Above), p. 362, next to the few active Councils, there are many whose activity is almost null, both in terms of number of sessions performed since the creation (which vary from one to twenty-one, with six bodies which, although formally established, have never meet), both in terms of initiatives and resolutions (nearly two-thirds of the established councils have never developed any act). On the critical issues of the practical functioning of the Councils it has recently also expressed the National Ombudsman, with a July 2017 report, available for download (in Serbian) at <http://www.pravamanjina.rs/images/stories/Poseban-izvestaj-o-savetima-za-medjunacionalne-odnose.pdf> (access 03/24/2018).

Councils for Inter-ethnic Relations may serve to balance the system of minority participation both in a territorial and a relational sense. From the first point of view, against the central character of the Councils of National Minorities, they would guarantee the presence of minority issues in the local decision-making level, where a number of matters critical to the rights of minorities are administered. In the second dimension, they could be promoted as a tool for coordinating common interests of all minority groups and for solving tensions among the latter, while at the national level the landscape is fragmented and cooperation is lacking both among different representative bodies, and even within the individual groups themselves, also due to the strong political and party characterization of the National Councils<sup>55</sup>.

In addition, a further demonstration of the relevance, in perspective, of the Councils for Inter-ethnic Relations for the complex of minority rights, emerges in the negotiation process for the accession of Serbia to the European Union. In the context of the *negotiating chapter 23*, concerning the *judiciary and fundamental rights*<sup>56</sup>, The Ministry of Justice of the Republic of Serbia has prepared an *Action Plan for the realization of the rights of national minorities*, in which the local government and Councils are one of the key tools in the minority rights strategy, as advisory and monitoring bodies<sup>57</sup>. These functions are conducted in particular with reference to language rights, both in the enforcement and in actions to spread the consciousness about them in the population (action 5.5, 5.7), scholastic matters (6.13 share, 6.15), direct actions to strengthen the representation and involvement of minorities in public decisions as a value in itself (action 9.10).

*b) The Republic of North Macedonia: Commissions for Inter-Community Relations in a Context of (limited) Territorial Autonomy*

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<sup>55</sup> Advisory Committee, 3th Opinion on Serbia, cit., Pp. 47-48.

<sup>56</sup> See pp. 64-65 European Commission, Serbia 2016 Report, 09.11.2016, SWD (2016) 361 final, annex to the 2016 Communication on EU Enlargement Policy, 09.11.2016, COM (2016) 715 final.

<sup>57</sup> Action plan for the realization of the rights of national minorities, in January 2016, available on [http://www.puma.vojvodina.gov.rs/dokumenti/Engleski/pravni\\_akti/Action%20Plan%20for%20National%20Minorities.PDF](http://www.puma.vojvodina.gov.rs/dokumenti/Engleski/pravni_akti/Action%20Plan%20for%20National%20Minorities.PDF) (access 24/03/2018).

The recent history of the Republic of North Macedonia is linked to the history of coexistence between the ethnic groups that compose its population. It is characterized, in fact, by the presence of the Macedonian majoritarian community (ca. 65% of the population) and a strong Albanian community (just over 25%), with other minor groups, Turkish, Vlachs, Roma, Serbs, and Bosniaks<sup>58</sup>. The entire system of guarantees of political participation at national and local level groups descends and is part of the internal pacification strategies following the 2001 ethnic conflict, determined by the Ohrid Framework Agreement (OFA)<sup>59</sup>.

The Macedonian constitutional order has a rich and complex power sharing system between the two larger groups, which includes several tools<sup>60</sup>. At the national level, firstly, the discipline for the Parliament imposes that the laws directly relating to sensitive matters for minorities (culture, use of language, education, personal documents, symbols) are approved according to the "double majority system", or Badinter principle, which requires the vote of a majority of the members of the assembly and at the same time of the representatives of minority groups (art. 69 Const. Mac., as amended by amendment X)<sup>61</sup>. Among other measures, it is adopted the general principle of equal representation in the civil service (art. 8 Cst. Mac., As amended by Amendment VI), a pure proportional electoral system, and the institution in Parliament, of a Committee for inter-ethnic relations (art. 78 Const. Mac., as amended by amendment XII).

In this context, the administrative decentralization process plays a central role, representing one of the key aspects of the OFA (sec. 1, 3)<sup>62</sup>. In the economy of the national power-sharing system, in fact,

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<sup>58</sup> See the preamble of the Constitution of the Republic of North Macedonia. For the consistency of the various minorities, v. the data presented in S. Pendarovski, I. Dodovski, M. Andeva, *Fearing endless demands and learning to negotiate the change: Minority representation in the Republic of Macedonia*, in B. Vizi, N. Tóth, E. Dobos (Eds), *Beyond International Conditionality. Local Variations of Minority Representation in Central and South-Eastern Europe*, Baden Baden, 2017, pp. 161-162.

<sup>59</sup> Negotiation in Ohrid and Skopje signed in August 13, 2001, available on the OSCE website at <https://www.osce.org/skopje/100622?download=true> (on 25.03.2018).

<sup>60</sup> S. Pendarovski, I. Dodovski, M. Andeva, *Fearing endless demands*, cit., Pp. 164-165.

<sup>61</sup> Constitution of the Republic of North Macedonia, Art. 69 as amended by Amendment X.

<sup>62</sup> Ohrid Framework Agreement, sect. 1 ( Basic Principles): "... The development of local self-government is essential for encouraging the participation of citizens in democratic life, and for promoting respect for the identity of communities"; sect. 3 (Development of Decentralized Government): " A revised Law on Local Self-Government will be adopted that reinforces the powers of elected local officials and enlarges substantially their competencies [...]."

the symmetrical devolution of powers to municipal authorities, perpetrated with the Local Autonomy law of 24<sup>th</sup> January 2002<sup>63</sup>, combined with the territorial concentration of different ethnic groups, involves the definition of municipal districts in which communities which are minoritarian at the national level represent instead the majority of the local population, creating, in fact, a non-formal and "weak" system of territorial autonomy for locally larger groups (Albanians but also Turks and Roma in few cases)<sup>64</sup>. On the other hand, the Badinter system of double majority is also applied to the decision-making processes in municipal assemblies, in accordance with Art. 41 c. 3 of the Local Autonomy Law, extending even here the guarantees for minority groups. The centrality of the municipal level in the constitutional system, finally, is confirmed by his role as special base for the enjoyment of minority rights, primarily those related to the use of the official language<sup>65</sup>.

It is not surprising, then, that with reference to municipalities we will assist to further institutional efforts to protect the effective participation of minorities in decision-making processes.

The Local Autonomy Law imposes, in fact, at the art. 55, the establishment of Municipal Commissions for Inter-community Relations (hereinafter Commissions), advisory bodies with the aim of promoting dialogue between groups<sup>66</sup>.

The discipline presents some common traits with the Serbian model, starting with their integration within the local government institutional system. The Commissions are mandatorily established in Municipalities where at least 20% of the population belongs to a minority community (art. 55 c. 1), although there are cases of voluntary activation by the Municipal authorities in the absence of such conditions<sup>67</sup>.

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<sup>63</sup>Official Gazette, 05/02. According to art. 114 of the Const. Mac., it is a legislative with special procedure, that it shall be approved (and modified) by two thirds of the Parliament components, in addition to being subjected to the rule of "double majority" (v. above).

<sup>64</sup>. Cekik, *Power-Sharing and Informal Autonomy in the Republic of Macedonia*, in L. Salat, S. Constantin, A. Osipov, I. G. Székely (Eds), *Autonomy Arrangements Around the World. A Collection of Well and Lesser Known Cases*, Cluj-Napoca, 2014, p. 228. The powers given to municipalities are established by art. 20-24 Cost. Mac.

<sup>65</sup>Art. 7 Cost. Mac., As replaced by the V amendment. A. Lyon, *Municipal Decentralisation in the Republic of Macedonia: Preserving a MultiEthnic State?*, in *Federal Governance*, vol. 8 n. 3, 2011, p. 32.

<sup>66</sup>Advisory Committee, 4th Opinion on the Former Yugoslav Republic of Macedonia, ACFC / OP / IV (2016) 001, December 20, 2016, p. 32.

<sup>67</sup>Advisory Committee, 4th Opinion on the Former Yugoslav Republic of Macedonia, cit., Pp. 34-35.

Regarding their composition, the members should be, in equal number, representatives of each community present in the Municipality (c. 2), and the procedures of election or appointment of the members are established by Municipal statutes (c.3). According to the guidelines developed in a study under the OSCE auspices, the various possible ways of selecting components would include the appointment by the Municipal Elections Committee after consultation with relevant stakeholders; a public announcement; appointment through public assemblies of the single communities; survey among members of the community; election by the Municipality assembly on a proposal from the Mayor<sup>68</sup>. The latter method is actually the one used in the majority of cases, with a real risk for the independence of the nominees and the genuineness of the representation of minorities, also endangered by the widespread political exploitation of appointments<sup>69</sup>. Additional critical issues could then descend by the common practice of appointing Municipal councilors as members of the Commission, which does not facilitate the functional independence of the latter in the relations with Municipal assemblies, but, on the other hand, especially with regards to modest size municipalities, it is to some extent inevitable<sup>70</sup>.

As in the case of Serbia, the tasks of the Commissions are defined by the law in a very generic way. They have the power to control and provide opinions and proposals on issues affecting the relations between communities (art. 55 c. 4), to which corresponds, for the Municipal assemblies, the duty of their involvement, as well as to consider the proposals received (art. 55 c. 5). In order to clarify through interpretation what substantive matters are concerned by these provisions, an indication comes from another clause of the Local Autonomy Law of 2002, already mentioned. In fact, defining the scope of application of the principle of "double majority" to decision-making

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<sup>68</sup>Committees for Inter-Community Relations: How to be functional, December 31, 2007, available at <https://www.osce.org/skopje/30744?download=true> (access 25/03/2018), pp. 7-9.

<sup>69</sup>A. Lyon, *Decentralisation and the Management of Ethnic Conflict: Lessons from the Republic of Macedonia*, Londra, 2015, p. 67; Advisory Committee, 4th Opinion on the Former Yugoslav Republic of Macedonia, cit., Pp. 34-35.

<sup>70</sup> Ibid.

procedures in Municipal assemblies, the art. 41 c. 3 imposes its use in the matters of culture, use of minority languages, toponymy, Municipal symbols<sup>71</sup>.

Regarding these traditionally sensitive issues, thus, it is outlined a double guarantee scheme for minority communities, with the participation necessary for approval in Municipal assembly decisions (in favor of the Albanian and Macedonian groups, large enough to have elective representatives) and the prior opinion of the Commission for Inter-Community Relations (as a representative of all the groups)<sup>72</sup>.

The critical issues that emerge from an evaluation of the model of Macedonian Commissions reproduce partly what has already been discussed with reference to Serbia. First, even in this case, the law leaves much room for the autonomy of Municipal statutes that establish the Commission, as well as for practice, in the definition of the detailed discipline of appointment procedures and commissions' action, without posing specific guarantees for the minorities involved<sup>73</sup>. Moreover, the analysis reveals a lack of functionality and effectiveness of these institutional instruments, linked to the difficulties of those Commissions themselves in determining practically their tasks, and very few proactive and consultative acts are recorded, along with low frequency in the meetings, as well as issues with insufficient budget furnished by the Municipal authorities<sup>74</sup>.

However, the Commissions for Inter-Community Relations represent a significant enriching element in the perspective maximizing the participation of minorities in public decisions in the Macedonian power sharing system. Through them, in fact, smaller size groups, not involved in the safeguards of the double majority and hardly represented in the electoral processes, may have a space

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<sup>71</sup>Local Autonomy Law, art. 41 c. 3: "The regulations referring to culture, use of the languages and alphabets spoken by less than 20% of the citizens in the municipality, determining and use of the coat of arms and flag of the municipality, Shall be Adopted by the Majority of votes of the present council members, within Which there must be a Majority of votes of the present council members Belonging to the Which communities are not the Majority of population in the municipality. »

<sup>72</sup>For an example of the issues that may arise in these areas matters v. Committees for Inter-Community Relations: How to be functional, cit., Pp. 11-12.

<sup>73</sup>A. Lyon, *Decentralization and the Management of Ethnic Conflict*, cit., P. 67.

<sup>74</sup>A. Petkovski, *The Effects of the Work of Committee and Commissions on Interethnic Relations in Republic of Macedonia*, in *Acta Universitatis Danubius: Relationes Internationales*, vol. 7 n. 1, 2014, 140-156; Advisory Committee, 4th Opinion on the Former Yugoslav Republic of Macedonia, cit., Pp. 34-35.

where being involved in political debate, and an opportunity to bring out their own interests and visions at least with reference to local policies, thereby increasing the degree of inclusiveness of the system globally considered<sup>75</sup>.

## **5.2 Cultural Autonomy in the Local Government and its Relationship with Territoriality: the model of Local Self-Governing Communities in Slovenia**

The Slovenian population presents three small indigenous minorities (Italians, Hungarians and Roma), recognized by the Constitution, in addition to numerous groups of more recent immigration, mainly from other Balkan countries, not mentioned in the Constitution<sup>76</sup>. The system of protection of the rights of such groups is built on three asymmetrical dimensions of decreasing intensity, a rich and relatively complete dedicated to the Italian and Hungarian minorities (with guarantee of individual and collective rights), a different one for the Roma minority (established by a special law<sup>77</sup>), and finally a more rudimentary dimension for all the other groups, deriving from the generally recognized rights to identity and culture<sup>78</sup>.

The tripartite division of the protection is also reflected in the effective participation of instruments provided by the law. In fact, the Italian and Hungarian groups, enjoy an electoral representation guaranteed by a double voting system both in the national parliament, both in the historical settlement towns, with a veto power for their representatives on individual decisions concerning the community (art. 64 Const. Slo.). Regarding Roma group, it is established its right to have at least one representative in the assemblies of twenty Municipalities indicated by the law<sup>79</sup>, and it is involved in a national advisory body, called the Roma Community Council<sup>80</sup>. Finally, it is set up, regarding the

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<sup>75</sup>A. Lyon, *Municipal Decentralization*, cit., Pp. 37-38.

<sup>76</sup>For statistical data M. Komac, P. Roter, *The Autonomy Arrangement in Slovenia. An Established Institutional Framework Dependent on Implementation of Minority Protection*, in T.H. Malloy, A. Osipov, B. Vizi (Eds), *Managing diversity through Non-Territorial Autonomy: Assessing Advantages, Deficiencies, and Risks*, cit., p. 93.

<sup>77</sup>Act on the Roma Community in the Republic of Slovenia, Official Journal. 33/07, 13 April 2007.

<sup>78</sup>Working report on Slovenia, within the Best Practices of Minority Protection project in Central Europe (MIMI), available on <http://www.eurac.edu/en/research/autonomies/minrig/projects/Pages/projectdetails.aspx?pid=4688> (access 03/28/2018), pp. 6-7.

<sup>79</sup>Art. 101a, Local Autonomy Law, Official Journal. 72/93 as amended.

<sup>80</sup>Advisory Committee, 4th Opinion on Slovenia, ACFC / OP / IV (2017) 003, 25 January 2018, p. 31.

"other" minorities, at the national level, the Council for issues concerning the Communities of Members of Nations of the former Socialist Federal Republic of Yugoslavia<sup>81</sup>.

The peculiar trait of the Slovenian model of effective participation of minorities is the ambitious cultural autonomy mechanism designed for the Italian and Hungarian communities. Article. 64 cc. 1-2 Const. Slo. establishes, in fact, that they have «the right to use their national symbols freely and, in order to preserve their national identity, the right to establish organisations and develop economic, cultural, scientific, and research activities, as well as activities in the field of public media and publishing», as well as the «the right to education and schooling in their own languages, as well as the right to establish and develop such education and schooling». So, to implement these rights, «the members of these communities shall establish their own self-governing communities in the geographic areas where they live», which guarantee representation and self-government at the municipal and (consequently) national level.

The local government is the center of this autonomy system, as the self-governing communities are activated by members of minorities in municipalities where they are historically settled, and all these municipal minority institutions form, in their union, the two Italian and Hungarian self-governing communities, as representatives of the entire minority. On the other hand, the centrality of local authorities is confirmed by the fact that the same historical settlement municipalities are, according to the territorial principle, the space where minorities can exercise their special rights, in the linguistic and scholastic field (art. 11 Const. Slo.).

In the light of the classification proposed *above* at para. 4, the Slovenian system is a "mixed" cultural autonomy mechanism on a local basis, with the exclusion of any member of the minority resident in other parts of the national territory.

This model is expressed, therefore, in the activities of National Self-governing Communities, which are disciplined in detailed in the Law n. 65 of 20<sup>th</sup> October 1994<sup>82</sup>. The Communities are

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<sup>81</sup> Ibid.

<sup>82</sup> Law on national self-governing communities, Official Journal. 65/94.

established on a municipal basis, and the members of the executive body (the Community Council, art. 7) are directly elected by the members of the ethnic group, recognized as such in special electoral registers (art. 8). All the municipal Communities are then united in the two Self-governing Communities, with central administrative bodies (art. 9), in a multi-level structure.

From a functional point of view, self-governing local communities have advisory and co-decision competences, along with self-governing powers. First, in fact, they can give proposals, initiatives and opinions on relevant matters for the communities and their identity to the local government authorities, who have to examine and deliberate on them (Art. 12); moreover, the Law imposes that whether the Municipal assembly adopts acts regarding the implementation of special rights of minorities or their financing, it is necessary the affirmative vote of the minority representative in the assembly (on which see *above*, art. 39 c. 3 Law on Local Autonomy 72/93), who must previously discuss his position with the local self-governing community (art. 13 Law 65/94)<sup>83</sup>.

The self-governing powers of local communities, on the other hand, consist in the promotion and organization of cultural activities, research and information, the establishment of organizations and public bodies and carrying out of public duties of the State (art. 4 Law 65/94). These activities are significant particularly in the scholastic field, where the Communities, in partnership with the municipalities, co-establish and co-direct schools and bilingual kindergartens, giving an opinion (although not binding) on the selection of school managers<sup>84</sup>. The Law finally provides the definition of some of the conditions for an effective action of self-governing communities by imposing to municipalities to provide logistical support (art. 14) and finance activities (art. 18).

The Slovenian model for local safeguard to the effective participation of minorities, appears, in an overall evaluation, certainly as a notably advanced system, in which, in addition to the direct management of minority interest, it is ensured a general involvement of minority representative bodies in decision-making processes relating to the community. It has enabled groups to organize

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<sup>83</sup>The national self-governing "umbrella" communities have rather the same function in relation to national authorities, in accordance with art. 15 l. 65/94.

<sup>84</sup>M. Komac, P. Roter, *The Autonomy Arrangement in Slovenia*, cit., Pp. 103-105.

themselves politically and strengthen in this way their collective identity, and led to a widespread perception of the promotion of minorities as an integral and important feature of the entire constitutional system<sup>85</sup>.

At the same time this system has the paradox to be partly unsatisfactory according to two opposing viewpoints. On the one hand, in fact, the mechanism analyzed is designed exclusively for the two “super-protected” Italian and Hungarian minorities, while the Roma community and even more the new minorities have a limited participation in public decisions<sup>86</sup>. On the other hand, the minorities even the Italian and Hungarian minorities report a general dissatisfaction with the effectiveness of their participation in public decisions. However, the issues raised seem more related to single matters and the difficulties of the concrete implementation of the high standards of rights conferred to them (first of all the administrative bilingualism), rather than to the limits of the system of institutional participation<sup>87</sup>.

Moreover, the institutional choice to found the system of participation and cultural autonomy of minorities on municipal community seems to add an element of rigidity in the guarantees to individual members of the minorities, preventing the adaptation to their possible mobility within the national territory. On the other hand, it seems to respond to a specific plan to defend the communities themselves, outlining an identity-constructing function of local government. Regarding two groups of modest and decreasing size, in which personal identities are diluted, the collective one is grounded to the municipality, which thus becomes not only the space where minority rights are enjoyed, but a symbol and instrument for the community conscience interests.

## 6. Conclusions

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<sup>85</sup>Ibid, p. 108.

<sup>86</sup>And on the condition of these two categories of minorities are concentrated to a large extent the Opinions of the Advisory Committee of the FCNM, v. most recently Advisory Committee, 4th Opinion on Slovenia, cit., pp. 29-32.

<sup>87</sup>For clarification of specific problems v. M. Komac, P. Roter, *The Autonomy Arrangement in Slovenia*, cit., Pp. 109, 111-114.

The study shows how in practice the implementation of effective participation of minorities in public decisions can also be pursued through spaces and tools different from electoral, national and regional level, materializing the subsidiary perspective that international documents propose, as a result of the nature of participation itself. In this sense, the local government may be an additional actor for the full satisfaction of this fundamental right, and carry out the various functions that emerge from the analysis of national cases.

First, the local implementation contributes to maximizing and generalizing the participation, enabling minority communities to be involved in defining municipal policies and micro-policies, especially when from them depends the enjoyment of special rights recognized them.

On the other hand, in all cases presented, albeit different configurations, municipal institutions represent the minority political participation instrument par excellence for the minorities too small to access more incisive instruments, due to not only the fact that small numbers in the global national population may be relevant in more limited districts, but also because of the the lower conflict potential of micro-decisions and local policies. Based on this assumption, the effective participation in local government assumes, moreover, a reconciling and coordination function between the demands of different minority groups, as emerged in the case of Serbia and especially the Republic of North Macedonia.

With reference to the powers of the different organs activated in the national orders studied, the analysis is divided between systems that minority consultative bodies and common to various resident groups, and cultural autonomy systems. It is clear nevertheless that in practice there are no pure models, so the self-government bodies of minorities itself have important initiative and consultation powers, as a complement of their autonomous functions, because not all the matters potentially relevant for minority communities can, by nature or political choice, be subjected of the direct administration of the minorities.

Therefore, concerning the appointment and selection procedures of minority representatives, national cases bring out the close link that always exists between the mechanisms introduced and

local public authorities. In the case of elective bodies, the procedures for the selection of minority institutions components occur at the same time as those for the municipalities, creating a functional link between the two mandates. In cases where the members of minority bodies are nominated, it can be assigned to municipal authorities themselves the selection. This provision can jeopardize, as pointed out, the independence of minority institutions, but at the same time it can facilitate the cooperation between the organs, so that the balance must be refined from time to time in practice. The fact that this is designed in local community, and therefore of limited dimensions, should facilitate a lesser degree of political manipulation of appointments, even if it is not obvious in practice (see in fact *above* in the Macedonian case).

Finally, a question that emerges in each of the cases analyzed, is how essential is the loyal cooperation between all actors involved, so that the established mechanisms can operate effectively. The difficulties encountered in the practical implementation of the participation of minorities, however, cannot be faced just through the institutional design, and the central role of cooperation enlightens the general character of the “law of diversity”, that needs continuous negotiation and accommodation, that once again could be facilitated by the small size of the local political arena.

The prospects for a broader future elaboration of the issues discussed in this paper follow two tracks. On the one hand it could be analyzed the current of potential role of minority NGOs or associations minority for the effective participation of the groups, in an horizontal subsidiarity perspective. On the other hand, effective participation of minorities could be studied as a part of the issues related to the legal status of so-called new minorities (those stemming from migration), which represent the main challenge that the diversity management is facing in the present. Even in this context, the low political impact mechanisms elaborated in international standards, and their implementation in local authorities, could contribute, with their flexibility and adaptability, to expand the instruments available, in the common perspective of an increasingly plural political dialogue.

## Bibliography

- Bowring B., *Enhanced Local Self-Government as a Means of Enhancing Minority Governance*, in M. Weller, K. Nobbs (Eds), *Political Participation of Minorities. A Commentary on International Standards and Practice*, Oxford, 2010
- Cekik A., *Power-Sharing and Informal Autonomy in the Republic of Macedonia*, in L. Salat, S. Constantin, A. Osipov, I. G. Székely (Eds), *Autonomy Arrangements Around the World. A Collection of Well and Lesser Known Cases*, Cluj-Napoca, 2014
- De Villiers B., *Protecting Minorities on a Non-Territorial Basis - Recent International Developments*, in *Beijing Law Review*, 2012, Vol. 3
- Drzewicki K., *OSCE Lund Recommendations in the Practice of the High Commissioner on National Minorities*, in M. Weller, K. Nobbs (Eds) *Political Participation of Minorities. A Commentary on International Standards and Practice*, Oxford, 2010
- Hofmann R., *Political Participation of Minorities*, in *European Yearbook of Minority Issues* (2006/2007), vol. 6
- Komac M., Roter P., *The Autonomy Arrangement in Slovenia. An Established Institutional Framework Dependent on Implementation of Minority Protection*, in T.H. Malloy, A. Osipov, B. Vizi (Eds), *Managing diversity through Non-Territorial Autonomy: Assessing Advantages, Deficiencies, and Risks*, Oxford, 2015
- Korhecz T., *National Minority Councils in Serbia*, in T.H. Malloy, A. Osipov, B. Vizi (Eds), *Managing diversity through Non-Territorial Autonomy: Assessing Advantages, Deficiencies, and Risks*, Oxford, 2015
- Lyon A., *Decentralisation and the Management of Ethnic Conflict: Lessons from the Republic of Macedonia*, Londra, 2015, p. 67
- Lyon A., *Municipal Decentralisation in the Republic of Macedonia: Preserving a MultiEthnic State?*, in *Federal Governance*, vol. 8 n. 3, 2011, p. 32
- Marko J., *The Council of Europe Framework Convention on the Protection of National Minorities and the Advisory Committee's Thematic Commentary on Effective Participation*, in M. Weller, K. Nobbs (Eds), *Political Participation of Minorities. A Commentary on International Standards and Practice*, Oxford, 2010
- Medda-Windischer R., *Old and New Minorities: Reconciling Diversity and Cohesion, A Human Rights Model for Minority Integration*, Baden Baden, 2009.
- Palermo F., *Owned or Shared? Territorial Autonomy in the Minority Discourse*, in T. H. Malloy, F. Palermo (Eds), *Minority Accomodation Through Territorial and Non-Territorial Autonomy*, Oxford, 2015
- Palermo F., *The Dual Meaning of Participation: The Advisory Committee's Commentary to Article 15 of the FCNM*, in *European Yearbook of Minority Issues* (2007/8), vol. 7
- Palermo F., Woelk J., *Diritto costituzionale comparato dei gruppi e delle minoranze*, Padova, 2011
- Palermo F., Woelk J., *From Minority Protection to a Law of Diversity? Reflections on the Evolution of Minority Rights*, in *European Yearbook of Minority Issues* 2003/4, Vol. 3
- Penasa S., *La promozione delle minoranze linguistiche via meccanismi di partecipazione. La legge provinciale della Provincia autonoma di Trento n. 6 del 2008 quale laboratorio del sistema multilevel di tutela delle minoranze linguistiche?*, in *Le Regioni*, 2009, 5
- Pendarovski S., Dodovski I., Andeva M., *Fearing endless demands and learning to negotiate the change: Minority representation in the Republic of Macedonia*, in B. Vizi, N. Tóth, E. Dobos

(Eds), *Beyond International Conditionality. Local Variations of Minority Representation in Central and South-Eastern Europe*, Baden Baden, 2017

Petkovski A., *The Effects of the Work of Committee and Commissions on Interethnic Relations in Republic of Macedonia*, in *Acta Universitatis Danubius: Relationes Internationales*, vol. 7 n. 1, 2014, 140-156

Shoraka K., *Human Rights and Minority Rights in the European Union*, London, 2010

Suksi M., *Non-Territorial Autonomy. The Meaning of '(Non-)Territoriality'*, in T.H. Malloy, F. Palermo (Eds), *Minority Accommodation through Territorial and Non-Territorial Autonomy*, Oxford, 2015

Verstichel A., *Participation, Representation and Identity. The Right of Persons Belonging to Minorities to Effective Participation in Public Affairs: Content, Justification and Limits*, Antwerp, 2009

Weller M., *Effective Participation of Minorities in Public Life*, in Id. (Ed.), *Universal Minority Rights. A Commentary on the Jurisprudence of International Courts and Treaty Bodies*, Oxford, 2007

Weller M., *Minority Consultative Mechanisms. Towards best practice*, in Id., K. Nobbs (Eds), *Political Participation of Minorities. A Commentary on International Standards and Practice*, Oxford, 2010