‘Participation’, ‘Representation’ and ‘Autonomy’ in the Lund Recommendations and their Reflections in the Supervision of the FCNM and Several Human Rights Conventions

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1. Introduction

The effective participation of national minorities in the governance of States emerged in the 1990s as a recurrent theme for the OSCE High Commissioner on National Minorities. In an effort to obtain more clarity about the content of minority rights and other relevant standards pertaining to this theme a group of international experts was commissioned to draft a set of Recommendations, the result of which were the 1999 Lund Recommendations on the Effective Participation of National Minorities in Public Life. Now that these recommendations have been in existence for five years, it seems appropriate to take stock of the extent to which these are explicitly or implicitly reflected in the supervisory practice under the minority rights instrument par excellence, the Framework Convention for the Protection of National Minorities, as well as a number of human rights conventions.

Various theoretical considerations about (degrees of) participation, representation, democracy and minority protection form the framework against which the Lund Recommendations are discussed. Subsequently, the supervisory practice under several conventions is assessed in terms of this framework. Since the Framework Convention has an explicit minority focus, it is not surprising that the practice of its supervisory machinery reveals in addition to certain broad similarities also more specific reflections of the Lund Recommendations. The evaluation of the supervision of the ‘participation’ provisions of more general human rights conventions may not be equally reminiscent of the Lund Recommendations, also here certain common themes can be identified. Finally, it should be noted that the practice of the supervisory organs tends to address certain participation related issues that are not covered (explicitly) by the Lund Recommendations. Since the Lund Recommendations are meant to have their roots in the existing minority and human rights standards, a possible revision of these Recommendations should also take up the interesting developments of the relevant supervisory practice.

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2. Theoretical Considerations: Setting the Framework

2.1. Participation

As the Lund Recommendations focus on participation of national minorities in public life, it seems relevant to first of all elaborate on the concept ‘participation’. This is particularly relevant because there does not exist, as yet, a legal definition of this concept. Nevertheless, it is generally agreed that it potentially has a very broad reach. A brief look at the Lund Recommendations themselves, which are said to be rooted in “minority rights and other standards generally applicable in the situations in which the HCNM is involved”, one immediately notices that two major dimensions of participation are distinguished, namely “participation in decision-making” and “self-governance”. Arguably, “self-governance” can be renamed ‘autonomy’ while “participation in decision-making” actually is mostly concerned with issues of ‘representation’, as it addresses representation in parliament, government, courts, advisory bodies and in civil service, election systems more broadly and the establishment of advisory bodies and other consultation mechanisms. In other words, “participation in decision-making” is concerned with ‘having a say’, while “self-governance” is concerned with ‘having (some) control’.

The representation and autonomy dimensions can actually be related to the fact that minorities on the one hand have certain views and interests which are related to the polity as a whole, and on the other hand have ideas and concerns that are related only to themselves. An optimal inclusion or “integration without forced assimilation” of minorities arguably requires as regards the former that members of minorities should at least ‘have a say’ through mechanisms of representation (shared rule), while in relation to the latter “minorities should, as far as practicable, have control (or a significant measure of control or self-rule) over those decisions which affect especially or only themselves through forms of self-government”. Furthermore, both the representation and the autonomy dimension can be related to the right to internal

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1 See also Y. Gai, Public Participation and Minorities (Minority Rights Group International, London, 2001) p. 5.
4 For further elaboration on this concept ‘representation’ see infra. Pitkin’s work (H.F. Pitkin, The Concept of Representation (University of California Press, Berkeley, 1967)) already signaled the multitude of understandings of this concept, which has been intensely debated ever since.
7 Packer, supra note 5, p. 39.