

- Arařtırma Makalesi -

≠ INCLUDING MINORITIES:

**PARTICIPATORY CONSTITUTION-MAKING AND LEGAL
FRAMEWORK FOR THE EFFECTIVE PARTICIPATION***

(AZINLIKLARI DAHİL ETMEK: KATILIMCI ANAYASA YAPIMI VE ETKİN KATILIM
İÇİN YASAL ÇERÇEVE)

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Abstract

In multicultural societies, citizens from the different ethnic and religious backgrounds may face particular constraints which restrict their citizenship rights and their free participation in society. Political participation of minorities is a crucial element for the prevention of discrimination based on religion, race, language, and ethnicity. In this sense, the right to political participation is considered embedded in the minority rights documents because guaranteeing minority voice in public affairs and protecting rights can be realised through developing special legal, political and institutional mechanisms.

Minority participation in decision-making processes within the conceptual and legal dimensions will be the main focus of this paper. Participatory processes in diverse societies, mechanisms and the role of civil society will be discussed first. Then, these notions will be embodied within the example of participatory constitution-making mechanisms. Finally, international legal instruments referring to the minority

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participation in decision-making processes will be discussed with a special focus on the Lund Recommendations.

Keywords: Minority Participation, Participatory Constitution-Making, Lund Recommendations

ÖZ

Çok kültürlü toplumlarda, farklı etnik ve dini kökenlerden gelen vatandaşlar, yurttaşlık haklarını kısıtlayacak biçimde, siyasi katılım haklarını engelleyen kimi durumlarla karşılaşabilirler. Azınlıkların siyasi katılımı din, ırk, dil ve etnik kökene dayalı ayrımcılığın önlenmesi için çok önemli bir unsurdur. Bu anlamda, siyasi katılım hakkı azınlık hakları hükümleriyle direkt bağlantılı olarak kabul edilmektedir çünkü azınlıkların sesinin kamusal alanda güvence altına alınması ve haklarının korunmasında uluslararası özel hukuksal, politik ve kurumsal mekanizmalar geliştirilmesi önemli rol oynar.

Kavramsal ve hukuksal boyutta karar verme süreçlerine azınlık katılımı bu çalışmanın ana odağını oluşturacaktır. Öncelikle, çok kültürlü toplumlarda katılımcı süreçler, çeşitli mekanizmalar ve sivil toplumun rolü çerçevesinde tartışılacaktır. Sonrasında bu kavramlar, katılımcı anayasa yapma örneği üzerinden somutlaştırılacaktır. Son olarak, başta Lund Tavsiyeleri olmak üzere azınlık katılımını düzenleyen uluslararası anlaşmalar, ilgili maddeler bağlamında tartışılacaktır.

Anahtar Kelimeler: Azınlık Katılımı, Katılımcı Anayasa Yapımı, Lund Tavsiyeleri

Introduction

Whether as the results of mass migration waves or collapse of the empires, most nation-states embody minority groups from different ethnic and religious backgrounds. In such diverse societies, minorities may encounter such problems in practicing their citizenship rights, depending on the level of democratic culture in the subjected state. Among those rights, the right to participate raises as an important element in order to realise democratic citizenship politically. Participatory rights are gener-

ally considered within the framework of voting and standing as candidate. However, including citizens in decision-making processes is muchly overlooked yet an important part of participatory practices.

Considering participatory and consultative processes as limitedly practiced implementations, including minorities in such processes remains a rare practice especially in law-making periods. Particularly, if the status of those communities will be affected by the outcome of the draft law, then their contribution becomes more important.

Minority participation in decision-making processes within the conceptual and legal dimensions will be the main focuses of this paper. Participatory processes in diverse societies, mechanisms and the role of civil society will be discussed first. The importance of participatory policies will be explained and the mechanisms enabled such practices will be detailed. Also, the role of civil society organisations will be discussed in realising participation process as a medium. Then, these notions will be embodied within the example of participatory constitution-making process. In multi-cultural societies, constitution-making periods raise as a unique moment to reach a consensus, constitute a fully functioning democratic order. In this sense, including minorities to the drafting process enables to reach a consensual constitution. Finally, international legal instruments, as a guarantee to protect the participatory rights of minority citizens will be explained. Whether legally binding or non-binding, instruments referring to the minority participation in decision-making processes in general and specific terms will be discussed along with a special focus on the Lund Recommendations.

Minority Participation in Diverse Societies

In multi-ethnic and religious societies, citizens from different ethnic and religious backgrounds may face particular constraints that restrict their citizenship rights and their free participation in society. These constraints originate from the state's perception regarding minorities as the subject of the state instead of equal citizens. As such, several states have preferred to impose the identity of the dominant community on minorities to realise the assimilation process.¹

¹ James Tully, *Strange Multiplicity: Constitutionalism in An Age Of Diversity* (Cambridge University Press 1995) 216

In a political platform, dominated by a particular group, the decision-making process will likely reflect the perspectives and priorities of the majority. On the other hand, inclusion of different groups can contribute significantly to the nature of the political decision-making process. Especially, if minorities will be affected by the result of a particular policy, their contribution becomes crucial for achieving democratic society. It is the minorities who can address their problems and propose possible solutions best. In this sense, they should participate effectively and be represented in decision-making periods which will affect their status, such as drafting minority rights provisions or making a new constitution.²

Political participation of minorities is a crucial element for the prevention of discrimination based on religion, race, language, and ethnicity. In this sense, the right to political participation is considered embedded in the minority rights provisions. Minority participation based on the equality principle, helps to improve the mechanisms against assimilation and creates the opportunity to protect minority identities. In this sense, a basic electoral representation may remain inadequate in including minority groups through decision-making processes. Guaranteeing minority voice in public affairs and protecting their rights can only be realised through developing special legal, political and institutional mechanisms.³ Mechanisms for the prevention of discrimination, such as including minority individuals in the parliament or administrative levels, maybe a temporary solution. In this context, Verstichel makes a differentiation between participation and representation. Accordingly:

“Participation involves minority persons actually sitting in parliament, taking up positions as civil servants or working for the police service, in order to contribute to the aim of combating underrepresentation and discrimination. On the other hand, mechanisms intended to further the participation and representation in decision-making processes affecting minorities, in order to protect and promote minority identity, consti-

² Annelies Verstichel, *Participation, Representation and Identity* (Intersentia 2009) 60, 66

³ Zdenka Machnyikova and Lanna Hollo, “The Principle of Full and Effective Equality and Political Participation”, in M. Weller and K. Nobbs (eds.), *Political Participation of Minorities A Commentary on International Standards and Practice* (Oxford University Press 2010) 97

tute minority representation.”⁴ Although these terms can be used interchangeably in this paper, it is necessary to say that, both participation and representation is crucial for the existence of persons belonging to the minority groups in political, social and economic spheres.

During decision-making procedures, various consultative methods are adopted in order to enhance minority participation. Weller⁵, classified four categories of minority consultative mechanisms: 1) co-decision mechanisms, 2) consultation mechanisms, 3) coordination mechanisms and 4) minority self-governance mechanisms. **Co-decision mechanisms** function where a minority council is attached to the government. This council officially has the right to review the draft legislation before any decision is made by the parliament. Therefore, the final decision cannot be made without the minority council’s review. **Consultation mechanisms** can occur in three different forms. The first form, minority consultative councils, which composed of different minority NGOs, can organise such consultation mechanisms. These organisations provide assistance as an umbrella institution and represent the demands and expectations from different levels of their communities. They also mobilise their communities and act as a discussion platform for the articulation of their interests. The second form of consultation mechanism can function in coordination with high-ranking governmental officials. In this way, a minority representative can associate with the state president and therefore, have direct access to state in case of any necessary situation. The third form of consultation mechanism operates through the governmental representatives. This form can lead to a dominance of the majority when selecting the members of the council. In this sense, the quality of representation could be suspicious in terms of minority interests. Although they cannot be counted as the genuine minority consultative bodies, the third category, **coordination mechanisms**, function as inter-ministerial

⁴ Annelies Verstichel, “Understanding Minority Participation and Representation and the Issue of Citizenship, The Principle of Full and Effective Equality and Political Participation”, in M. Weller and K. Nobbs (eds), *Political Participation of Minorities A Commentary on International Standards and Practice* (Oxford University Press 2010) 79

⁵ Marc Weller, “Minority Consultative Mechanisms: Towards Best Practice” in M. Weller and K. Nobbs (eds), *Political Participation of Minorities A Commentary on International Standards and Practice* (Oxford University Press 2010) 483-486

parties responsible for the minority policies for each unit of the government. They can also invite experts and minority representatives to give briefings and presentations about a specific subject. The last category, **minority self-governance mechanisms** operates through minority councils as an external representative responsible for the mobilisation and organisation of minority communities. These councils also have decision-making powers in cases of functional or cultural autonomy for minorities at local, regional or national levels. Considering all four of the consultation mechanisms, minority organisations play a key role in enhancing the scope of participatory practices because participatory practices operate in a communal way rather than the individual.

The Role of Minority Organisations

During participatory decision-making processes, minority organisations play an important role in representing and expressing the views of their community. They operate in various forms with different aims, ultimately to represent a particular community. Weller⁶ sorted the functions of minority associations as follows:

- Assisting in organising and mobilising individual minority communities
- Enhancing capacity-building among minority representative groups
- Ensuring coordination on interests among different minority groups and minority representative organisations
- Contributing to the standards of democratic and transparent governance of minority representative organisations in seeking representation in consultative bodies
- Requesting and receiving information from public authorities
- Assisting in maintaining contacts between minorities and other populations across borders

Minority NGOs serve in the consultative bodies along with independent experts, minority MPs, churches, academics, political parties, and even government. This composition can differ from one country to another yet the important point is to achieve the effective representation

⁶ Ibid 490

of the minority. This depends on the proportion of the minority representatives and whether these representatives are elected by their community or selected by the government.⁷

Minority participation is generally considered as a communal action rather than individual involvement. In this sense, minority organisations and associations stand as the crucial bodies in the public consultation processes. Accordingly, international norms also accept minority NGOs as the subjects of minority participation. The 1990 Document of the Copenhagen Meeting on the Human Dimension, organised by the Organisation for Security and Cooperation in Europe (OSCE), indicates the protection of cultural, ethnic and religious identities of minorities “after due consultations, including contacts with organisations or associations of such minorities.” (Art. 33) The significance of minority organisations in political participation can be explained with conceptual reasons. Those organisations are actors because they are organised for specified aims, have membership criteria, leaders and organisation structure. While it is not likely to have contact with the whole minority community for a meaningful discussion, it is more practical and easier to deal with an association representing a minority. Considering the role of civil society in realising deliberative democracy, minority organisations become a *sine qua non* in political participation and representation of persons belonging to an ethnic, religious or cultural group.⁸

Minority representation and participation also play a vital role in terminating the inequality. This includes defeating social and structural inequality and systemic discrimination. In this sense, including these groups in decision-making processes may help to deal with socio-economic inequality and provide societal peace and stability. According to Williams, structural inequality is about social injustice. In this sense, the presence of marginalised groups in legislative mechanisms is substantial to overcome structural inequality. As she stated,

Legislative presence of historically marginalised groups will help significantly in ameliorating structural injustice, not that it will complete

⁷ Verstichel (n 2) 453

⁸ Peter Vermeersch, “Minority Associations: Issues of Representation, Internal Democracy and Legitimacy” in M. Weller and K. Nobbs (eds), *Political Participation of Minorities A Commentary on International Standards and Practice* (Oxford University Press 2010), 683- 685

the job (...) If a substantial proportion of organisations in civil society incorporated principles of marginalised group representation into their decision-making processes, this might do far more to ameliorate structural injustice than changes in the system of political representation. But legislative institutions are, and for the foreseeable future will remain, immensely important in shaping our individual and collective lives. So long as they remain so, the legislative presence of marginalised groups promises an important source of social change and of increased political legitimacy⁹

Finally, minority organisations play crucial role in the existence and the continuity of the community. In this sense, if the small minorities can organise well and cooperate with other minorities, they can make their voice heard by the political authority.¹⁰ Although each association can participate separately, they can also join their forces to strengthen their effect as it happened in Turkey's last constitution-making attempt in 2012. Official minorities of Turkey prepared a joint report to express their views and expectations about the new constitution through the public consultation period for the new constitution-making process in 2012¹¹

Minority policies cannot be designed or implemented in a top-down way without the monitoring and the consent of subjected citizens. However, including only particular minorities might also be risky in terms of dealing only with the interests, views and representatives of that community and neglecting the other social determinants of minority representation. In fact, this dilemma generates from the core of democracy which has its own challenges over the issue of representation. In this context, certain questions must be asked in order to avoid facing any ineffectiveness in minority representation or participation during a policy-making process.¹² The quality of representation of a particular minor-

⁹ Melissa Williams, *Voice, Trust and Memory* (Princeton University Press 1998) 19

¹⁰ Verstichel (n 2) 459

¹¹ Elif Gözler, "Turkey's New Constitution-making Attempt and the Participation of Minority Organisations during the Public Consultation Process" in Meltem Ersoy, Esra Ozyurek (Eds.), *Contemporary Turkey at a Glance II* (Springer 2017) 82

¹² Francesco Palermo, "At the Heart of Participation and its Dilemmas: Minorities in the Executive Structures", in M. Weller and K. Nobbs (ed), *Political Participation of*

ity organisation is one of the problems. To what extent governments can acknowledge whether a minority organisation is the representative of the subjected minority? Moreover, after the organisations are selected to cooperate, is it possible to ensure the legitimacy of the organisation? It is also important to know the level of internal democracy of the minority associations. In this context, transparency, legitimacy and the way they choose their spokespersons or representatives are the issues to be considered carefully to reach full and effective participation. Especially in times of consultation, there might be a conflict between the interests of each minority association representing the same minority group. In this case, considering only one representative per minority group may cause injustice and distrust among the participant communities.¹³ In the last constitution-making attempt of Turkey, different associations representing a minority community preferred to participate independently and Constitutional Commission tried to hear each of these organisations in order to understand different concerns of each NGO belonging to the same minority.¹⁴

Participatory Constitution-making and the Inclusion of Minorities

A well-functioning public consultation process for a new constitution should involve the basic elements such as inclusion and freedom of speech. The selection of the participants might be difficult in ethnically or religiously diverse societies. If these basics cannot be provided in a public consultation process, some citizens might have a feeling of exclusion. Therefore, the quality of the process will be affected adversely.¹⁵ Especially, in multi-cultural societies, constitution-making periods become a unique moment in a country's history as an opportunity to reach a consensus and solve the significant problems. In order to accomplish these ideals, constitution-makers must open up the whole process and consider the citizens' views as a serious reference point. In this sense, citizens from different ethnic and religious communities must be in-

Minorities A Commentary on International Standards and Practice (Oxford University Press 2010) 436

¹³ Vermeersch (n 8), 683, 689

¹⁴ Gözler (n 11)

¹⁵ James Fishkin, *When the People Speak, Deliberative Democracy and Public Consultation* (Oxford University Press 2009) 160

involved with a sense of responsibility for the new constitution-making process. Many experiences have indicated that when the particular actors are excluded from the decision-making processes, political stability becomes more likely to collapse. Thus, the exclusion of key actors can undermine such a crucial moment.¹⁶ To avoid such problems, subjects regarding the content of the new constitution must be discussed by citizens through the inclusion of civil society. To that end, a platform for constitutional discussions should be founded which gives citizens a chance to express their opinions over the process. According to Tully, “if the cultural ways of the citizens were recognised and taken into account in reaching an agreement on a form of constitutional association, the constitutional order, and the world of everyday politics it constitutes, would be just, with respect to this dimension of politics. Since the diverse cultural ways of citizens are excluded or assimilated, it is, to that extent, unjust.”¹⁷ In this sense, making a constitution in ethnically, culturally or religiously diverse societies may be problematic in reaching a consensual constitution at the end.

Ethnically or religiously diverse societies may encounter some problems in reaching mutual respect between the opposite groups during the constitution-making process. In this sense, the honesty of participants from different ethnic and religious backgrounds plays an important role in achieving successful public discussions. All the participants should weigh their words in order to avoid a serious dispute which might undermine the whole process. Indeed, ethnic or religious divisions may influence the participants and blind them in creating their proposals. In this case, the main focus will be only on their community’s interests and ignore the real purposes of the public consultation process. Hence, communities should be willing to evaluate the opinions which are expressed by the other groups in mutual respect for the continuity of the process.¹⁸

During the public consultation period for the last constitution-making attempt in Turkey particular mechanisms were practiced in terms

¹⁶ Michele Brandt et al, *Constitution-making and Reform: Options for the Process*, (Interpeace 2011) 4, 108

¹⁷ Tully (n 1) 6

¹⁸ Fishkin (n 15) 161

of minority representation. During the public consultation period, almost all ethnic and religious-based minority NGOs were organised through the discussion forums, meetings and panels to express their demands and expectations from the new constitution. While some NGOs applied individually to present their views for the Constitutional Commission, other NGOs preferred to constitute an umbrella organisation to present their views.¹⁹

Although it depends on the country's political culture, minority consultation, and participation processes should be designed to be as pluralist as possible allowing the maximum number of persons from minority groups. Therefore, pluralist procedures can lead to a more effective participation in a minority public consultation process.²⁰ As Lattimer concludes, involving different communities through public consultation activities and raising awareness about the content of the new constitution, turns constitutions from a piece of paper, into a powerful tool to protect human rights and provide accountable government.²¹

Legal Framework for the Effective Participation of Minorities

Participation of ethnic and religious groups is generally associated with the area of “public affairs” and with the adjective of “effective” in international legal documents. “Effective participation in public affairs” may embody various ways of participation in the political sphere. This may occur as a representative position in elected bodies such as parliament or local administrations in a narrow sense. “Public affairs” also refers to the participation in executive state institutions, public councils, advisory bodies as well as labour unions and public broadcasting agencies.²² If the participation of ethnic and religious groups in the mentioned platforms is limited to the “presence” of these groups, then the “effectiveness” may raise as an important issue to consider. As Verstichel puts it, “The qualifier ‘effective’ refers to the fact that the ‘presence’ of the minority representatives in decision-making process should

¹⁹ Gözler (n 11)

²⁰ Palermo (n 12) 436

²¹ Mark Lattimer, “Minority Participation and New Constitutional Law” (2005) *International Journal on Minority and Group Rights*, Vol 12 No. 2/3 pp 227-244 Brill, 244

²² Verstichel (n 4) 75

be translated into ‘influence’ on the outcome of the decision-making. It is not enough that minorities have one or more reserved seats in the Parliament. They can still be outvoted.”²³ In this sense, “effectiveness” becomes a crucial condition to realise minority rights in the political sphere. The existence of such emphasis on effectiveness actually shows the lack of participation in existing political structures. Therefore, it is also crucial to monitor the present implementations through international legal arrangements.

The history of the international legal arrangements for the protection of minority participation through human rights instruments dates back to the 1990s. However, one exception is the Treaty of Sèvres signed in 1920, after the First World War, between Turkey and Allies. The Treaty recognised the right of ethnic and religious communities to be represented in elected bodies. It also proposed an election system considering the rights of the minorities. However, the Treaty of Sèvres was never signed and implemented. After Turkey’s victory of War of Independence, the Treaty of Lausanne, which did not propose such representation right for minorities was ratified and replaced the Treaty of Sèvres²⁴

A fundamental document referring to the participation of minorities was produced following the Second World War: Universal Declaration of Human Rights. Although it sets out general principles considering the participation, as minorities are assumed to be citizens, Article 21 can be considered as related to the participation of minorities.

(1) Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.

(2) Everyone has the right of equal access to public service in his country.

(3) The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

²³ Verstichel (n2) 33

²⁴ Benoit Rohmer and Hilde Hardeman, “The Representation of Minorities in the Parliaments of Central and Eastern Europe” (1994) *International Journal of Group Rights*, 95-111 94

This perception was elaborated in later treaties, yet still without a special reference to minority participation.²⁵ Especially, in the Article 25 of the International Covenant on Civil and Political Rights²⁶ (ICCPR). In fact, political participation was considered here in general terms but in a more specific meaning: Every citizen shall have the right,

(a) To take part in the conduct of public affairs, directly or through freely chosen representatives;

(b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;

(c) To have access, on general terms of equality, to public service in his country.

Along with ICCPR, European Convention of Human Rights (ECHR) guaranteed political participation and other related freedoms such as freedom of association and assembly (ICCPR Art. 21 and 22 and ECHR Art. 10), freedom of expression (ICCPR Art. 19 and ECHR Art. 10) and the right to vote and to stand for election (ICCPR Art. 25 and ECHR Art. 3 Protocol No. 1)²⁷ Finally, although Article 27 of ICCPR refers to the cultural rights of minorities, it does not mention any provision about political participation. However, along with the minority rights instruments such as United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities²⁸ and Framework Convention for the Protection of National Minorities²⁹, the participation of minority groups in public affairs has become a matter of international legal agenda. United Nations Declaration of Minority Rights, issued in 1992, mentions minority participation in public affairs through articles 2 and 4:

2(2). Persons belonging to minorities have the right to participate effectively in cultural, religious, social, economic and public life.

²⁵ Machnyikova and Hollo (n 3) 103

²⁶ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR)

²⁷ Verstichel (n 2) 96

²⁸ Hereinafter “UN Declaration on Minorities”, A/RES/47/135,92nd Plenary Meeting, 18 December 1992

²⁹ Hereinafter “FCNM”, H(95) 10, February 1995.

2(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.

4(5). States should consider appropriate measures so that persons belonging to minorities may participate fully in the economic progress and development in their country.

FCNM came into force in 1998 as the first legally binding international minority protection instrument. Articles 15 and 17 guarantees the participation of minorities in every course of life including economic, social, and cultural through governmental and non-governmental organisations in both national and international level:

15. The Parties shall create the conditions necessary for the effective participation of persons belonging to national minorities in cultural, social and economic life and in public affairs, in particular those affecting them.

17(2). The Parties undertake not to interfere with the right of persons belonging to national minorities to participate in the activities of nongovernmental organisations, both at the national and international levels.

FCNM has been signed and ratified by 39 countries and signed, yet waiting to be ratified by 4 countries. Currently, four countries including Turkey have neither signed nor ratified the Convention. In addition to the FCNM and UN Declaration on Minorities, the right to participation is specified and elaborated in international minority rights catalogues such as Council of Europe (CoE), United Nations (UN) and Organisation for Security and Cooperation in Europe (OSCE).

Among all these instruments listed above, Lund Recommendations, issued by the OSCE High Commissioner on Minorities (HCNM), covers “general principles; participation in decision-making, including arrangements at the central, regional and local levels, elections, and advisory and consultative bodies; self governance, covering territorial and non-territorial arrangements; and guarantees, including constitutional and legal safeguards, and remedies” (OSCE, 1999).

Lund Recommendations are set under the four subheadings as, General Principles, Participation in Decision-Making, Self-Governance and Guarantees. Additionally, the explanatory note to each recommenda-

tion was provided at the end of the text. Although the Recommendations cover the participation in cultural life with the medium of cultural autonomy and local governance, they deal less with the participation of minority persons in social and economic life. This limited approach should be considered with the other recommendations issued by the OSCE, HCNM dealing with issues such as education, linguistic rights, and access to media through the 1998 Oslo Recommendations and the 1996 Hague Recommendations.³⁰ While The Hague and Oslo Recommendations deal with object-oriented solutions like language and education rights, The Lund Recommendations covers process-oriented solutions such as participation in decision-making procedures and consultative mechanisms.³¹

General Principles of the Lund Recommendations specify the necessity for the inclusion of minorities in the decision-making process at all levels. In context with public consultation periods and participation of minorities, Article 5 emphasises the importance of the “making period” as well its content:

When creating institutions and procedures in accordance with these Recommendations, both substance and process are important. Governmental authorities and minorities should pursue an inclusive, transparent, and accountable process of consultation in order to maintain a climate of confidence. The State should encourage the public media to foster intercultural understanding and address the concerns of minorities.

Part 2 and 3 of the Recommendations outline the related procedures and institutions to promote the effective participation of minorities in public life. While Part 2 deals with the presentation of minorities in local and central governments, it makes a special emphasis on “Advisory and Consultative Bodies” through Articles 12 and 13. Accordingly, these articles recommend the establishment of suitable institutions to work for the mutual dialogue between the state and the minority groups on the issues which affect them such as land, housing, education, culture and language. These institutions should also be able to produce proposals for legislative processes i.e. constitution-making and monitor these process-

³⁰ Machnyikova and Hollo (n 3) 107

³¹ John Packer, “The Origin and Nature of the Lund Recommendations on the Effective Participation of National Minorities in Public Life”, 4 (Helsinki Monitor 2000) 30-31

es until the final product is made. Therefore, the confidence between state and minority groups will be enhanced through these interactions. Part 2 also describes the type of electoral system that can facilitate a proper minority representation at the local and central level. Article 9 especially emphasises the necessity of lower numerical threshold to enhance higher levels of minority representation in the parliament. In this context, Turkey represents a significant example with an electoral threshold as high as 10%.

Part 3 outlines the non-territorial and territorial arrangements under the subtitle of “Self-Governance”. It describes non-territorial arrangements suitable for the continuity of the minority culture and identity, such as choosing names in minority language, setting educational curricula and enjoying cultural symbols. On the other hand, territorial forms are specified in the framework of the principle of subsidiarity, the decentralisation of central administration from the capital to regional centres. Thus, minorities will have the opportunity to realise their will over the issues affecting them. It will also help local administrations to be responsive to the demands of minorities particularly residing in that region.

Finally, Part 4, under the title of “Guarantees” covers the legal arrangements to enhance the participation of minorities in decision-making processes. Accordingly, these arrangements should not be subject to change easily and should be protected through the constitution. Moreover, these arrangements should be reviewed and adjusted periodically according to the problems and changing conditions that occur in the meantime. Part 4 also proposes remedies for the prevention of conflicts such as alternative mechanisms like negotiation and ombudsman for national minorities and arbitration.

Overall, it can be said that The Recommendations are written in a way to set a balance between state and minorities. According to Drzewicki, “they were drawn up in a very balanced and cautious way without imposing its provisions in strongly demanding terms.”³² In fact, the content of the Recommendations also represents a transformation on minority rights discourse from self-governance forms such as autonomy to in-

³² Krzysztof Drzewicki, “The Lund Recommendations on the effective Participation of Minorities: Five Years After and More Years Ahead” (2005) *International Journal of Minority and Group Rights*, 12 (2/3), 123-267 128

clusion via participation in decision-making procedures. As stated by Holt, this approach is also parallel with the HCNM's attitude which emphasises integration rather than separation.³³ Although Lund Recommendations can be counted as the most extended legal document referring to the political participation of minorities, it mainly covers the issues regarding the parliamentary representation of minorities. However, it is also important regarding the inclusion of minorities in the decision-making processes occurring outside the parliament.³⁴ There is indeed a lack of attention to the participation of minorities in decision-making processes such as public consultations on any prospective policy regarding their interests. Apart from the representation of minorities in central and local administration, one should also focus on the equal participation of minorities in public affairs as first-class citizens.

In addition to the major instruments protecting the participatory rights of minorities, certain regional and international instruments which protect the right to consultation can be mentioned here such as Convention on the Elimination of Racial Discrimination (CERD)³⁵, American Convention on Human Rights (ACHR)³⁶ and African Charter on Human and Peoples' Rights (ACHPR)³⁷. While CERD deals with participatory rights particularly on the basis to eliminate racial discrimination, others regulate with general terms based on human rights.

Article 5(c) of the CERD which came into force in 1969 regulates the political participation, especially the right to participate in elections such as voting and standing as a candidate and accessing public services equally. The Convention seeks to eliminate racial discrimination and guarantee the rights of people without any distinction based on colour, race or ethnic and national origin.

(c) Political rights, in particular the right to participate in elections-to vote and to stand for election-on the basis of universal and equal suffrage, to take part in the Government as well as in the conduct of public affairs at any level and to have equal access to public service.

³³ Sally Holt, "The Lund Recommendations in the Activities of the HCNM" (2005) *International Journal of Minority and Group Rights*, 12 (2-3) 169-188 173

³⁴ Vertcihel (n 2), 219

³⁵ Convention on the Elimination of Racial Discrimination 12 March 1969, No. 9464

³⁶ American Convention on Human Rights, OAS Treaty Series, 1144 UNTS 123, 22 November 1969

³⁷ African Charter on Human and Peoples' Rights, 1520 UNTS 217, 27 June 1981

Similarly, American Convention on Human Rights, adopted in 1969, deals with conducting public affairs, voting and electing and accessing public services in general terms under the article 23, titled Right to Participate in Government:

1. Every citizen shall enjoy the following rights and opportunities:
 - a. to take part in the conduct of public affairs, directly or through freely chosen representatives;
 - b. to vote and to be elected in genuine periodic elections, which shall be by universal and equal suffrage and by secret ballot that guarantees the free expression of the will of the voters; and
 - c. to have access, under general conditions of equality, to the public service of his country.

Article 13 of the ACHPR which came into force in 1986, regulates participatory rights based on equality as a basic human right in line with the others:

1. Every citizen shall have the right to participate freely in the government of his country, either directly or through freely chosen representatives in accordance with the provisions of the law.
2. Every citizen shall have the right of equal access to the public service of the country.
3. Every individual shall have the right of access to public property and services in strict equality of all persons before the law.

Last but not the least, the Venice Commission, another institution which is influential in processes such as constitution-making. The Venice Commission is also known as “The European Commission for Democracy through Law”³⁸ is the advisory body of the Council of Europe on constitutional issues. It is the duty of the Commission to advise member states on the process of constitution-making. Besides the constitutional advice, the Commission gives assistance about elections, referendums, constitutional courts, party closures and constitutional provisions for the protection of minorities.³⁹ The reports prepared by the Venice Commission have no direct enforcement power on member states. However, these reports are used in the decisions of the European Parliament, Council of Europe and Parliamentary Assembly of the Council of

³⁸ Resolution (2002)3 adopting the Revised Statute of the European Commission for Democracy through Law (adopted by the Committee of Ministers on 21 Feb. 2002

³⁹ Verstichel (n 2) 339

Europe. Therefore, the reports of the Venice Commission become crucial especially for the states in the European Union accession process like Turkey.

At this point, Lattimer asks a very notable question, “Does the successful legislative implementation of standards on minority participation depend on the promotion of diversity or multi-culturalism being an explicit aim of the legislator?”⁴⁰ because there is not any certain rule in this area when it comes to enforcement. Primarily, it is not clear who will decide to make necessary adjustments to keep up with. Therefore, there will be differences when it comes to practice unless it is protected by the constitution.

Conclusion

The right to participate has various dimensions ranging from voting to being consulted in decision-making processes. In this respect, participation can be defined as the main essence of a functioning democratic state. If the general politics of a state is determined by the majority groups, minorities may develop a sense of exclusion which will eventually damage the stable democratic order.

Legally binding or non-binding international legal instruments generally guarantee the participatory rights of minorities within the framework of voting, stand for elections or political party matters. These activities are the core of democracy and important to realise democratic citizenship. However, participating or to be consulted in decision-making processes is just as important for all citizens including minorities because minority participation helps to create more equal policies and prevent prejudice and discriminatory acts in society. As concluded by Verstichel, minorities should participate in social, economic and political life equally as the rest of the citizens. Past unfair policies and underrepresentation of minority citizens should be compensated by special policies such as quotas or affirmative action policies.⁴¹ This form of inclusion should be applied on every kind of “other” such as the women, LGBTI individuals or the environmentalist along with the ethnic, religious or cultural communities. Providing equality will also allow minority citizens to preserve and maintain their culture, language and religion as the basics of their identity. Thus, when minorities are involved in the

⁴⁰ Lattimer (n 21) 228

⁴¹ Verstichel (n 4) 78

decision-making process, they will have the chance to decide on the fate of their own identity. In this sense, their inclusion is substantial in drafting, ratifying and implementation of policy or law-making affecting their circumstances.

Considering participatory methods as a muchly overlooked area in general terms, using them for minorities becomes a rare practice. Even if the minorities are included via the participatory mechanisms, it may remain as a “public relations” activity in order to promote the quality of consultation processes. In this respect, these kinds of activities should be monitored carefully and must be protected through the national and international legal arrangements to keep them “effective”.

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