

Volume 2, Issue 1, March 2018

**Effective Participation of Minorities in Public Affairs  
in the Local Government: Towards a Subsidiarity in  
Diversity Accommodation? The Case of Law No. 6/2008  
of the Province of Trento**

*Matteo Daicampi*

**Research Articles\***

**DOI:**

10.14658/pupj-phrg-2018-1-5

**How to cite:**

Daicampi, M. (2018), Effective Participation of Minorities in Public Affairs in the Local Government: Towards a Subsidiarity in Diversity Accommodation? The Case of Law No. 6/2008 of the Province of Trento, *Peace Human Rights Governance*, 2(1), 97-117.

**Article first published online**

March 2018

\*All research articles published in PHRG undergo a rigorous double-blind review process by at least two independent, anonymous expert reviewers

## **Effective Participation of Minorities in Public Affairs in the Local Government: Towards a Subsidiarity in Diversity Accommodation? The Case of Law No. 6/2008 of the Province of Trento**

*Matteo Daicampi\**

### **Abstract**

Effective participation in political affairs has an essential position within minority rights. International documents recommend the guarantee of it at every political level. However, the local government is often neglected in practice and academic debates regarding minority governance. The present paper aims to explore the role of the local government as an appropriate political space for the implementation of good practices in order to maximise the enforcement of minority rights. This aim will be pursued through the analysis of law No. 6/2008 of the Province of Trento, which deals with the promotion of local historical linguistic minorities, as an example of implementation of international standards of effective participation within the local government through non-electoral institutional mechanisms. As a preliminary step, the legal framework of the analysis will be presented with attention to hard and soft law documents relevant in setting international and European (CoE – OSCE) standards. Thereafter, effective participation will be defined, highlighting its multi-level nature. In the second part of the paper, law No. 6/2008 will be analysed. Emphasis will be placed on the institutional framework designed by the law for ensuring the involvement of historical minorities in the decision-making processes in three different dimensions.

**Keywords:** *Minority rights, Effective participation, Local government, Autonomous Province of Trento*

## Introduction<sup>1</sup>

The effective participation of persons belonging to minorities in public life is a key factor for building an inclusive society, where diversity and cohesion are guaranteed, and everyone considers themselves as part of a whole community. In this manner, the political dimension of participation has an anti-segregation function, ensuring that public decisions are made by taking into account the views of minority groups. Furthermore, the complexity and richness of international normative documents that elaborate upon the same prove its central position within the internationally recognised system of minority rights.

The idea of establishing a link between diversity management and promotion of decentralised political levels is fairly common, such that in certain senses, ‘in a comparative perspective, most of the solutions to ethnic conflicts are indeed territorial’ (Palermo 2011, 25). However, with regard to guaranteeing the effective participation of minorities in public life, the local government is usually not considered as much as the national and sub-national/regional ones. This holds true both in practice and academic discussions on enhancing minority governance (Bowring 2010, 662). At the same time, international standards recommend the adoption of institutional solutions at every political level, including the local government (see para. 2.1). Hence, it seems highly relevant to reflect on the role of subsidiarity in the implementation of this right.

Subsidiarity is generally intended as a ‘normative framework for assessing how to allocate and exercise authority within a multilevel political and legal order’, with ‘a presumption of authority at more local levels’ (Føllesdal 2016, 147-148)<sup>2</sup>. Therefore, a subsidiary perspective to effective participation of minorities in the decision-making processes enables to explore the potential, the local government, of becoming an additional political space where good practices can be implemented.

Consequently, the study conducted aims to contribute to the enrichment of the available tools for diversity management in public decision making, verifying in detail an example of implementation of international standards of effective participation within the local government through the legal

---

<sup>1</sup> The author would like to thank the two anonymous reviewers for their valuable comments and suggestions for improving the quality of the paper.

<sup>2</sup> Consistent also with art. 4.3 of the European Charter of Local Self-Government, ETS No.122, 15th October 1985: ‘Public responsibilities shall generally be exercised, in preference, by those authorities which are closest to the citizen’. For a more comprehensive analysis of subsidiarity in international human rights law, see, among others, Carozza 2003.

analysis of the system designed by the ‘law on linguistic minorities’ of the Province of Trento, 19th June 2008, No. 6.

A second premise contributes to the same purposes, that is, to valorise the whole institutional toolbox provided by international standards. As it will be extensively explained in para. 2, the present paper will not analyse instruments to promote minority political participation with regard to electoral dynamics and the concept of political representation in a strict sense. These solutions have been widely investigated in academic research and require specific political conditions and impose specific political costs. However, using the case presented, the study will focus on more flexible instruments, such as specialised governmental bodies, consultative bodies, and autonomy arrangements.

The theoretical and methodological premises clarify the reasons behind the selection of the case for in-depth analysis and reveal its relevance as an innovative model within the adopted perspective.

In fact, law 6/2008 of the Province of Trento could be considered as a paradigm from two different points of view. On the one hand, it is a remarkable example of the circulation of good practices established in European and international standards, which have explicitly cited in the explanatory report text attached to the draft law, and evidently inspires the use of textual expressions (Woelk 2014, 2).

On the other hand, it embodies what I define as *subsidiarity in diversity accommodation* or, even better, as *a double subsidiarity*. As a matter of fact, it is not merely the application of effective participation tools at a regional level but rather, the design of a complex institutional framework. This framework incorporates the involvement of local authorities at the level closest to minority communities, integrated in a wider constitutional recognition of subnational self-government. Thus, the level of government that is already a form of territorial autonomy (the Province) in the national perspective, actually acts as the legislator and the central counterpart of the inter-institutional and multilevel dialogue with the groups in the minority accommodation system.

Therefore, this article will begin with a theoretical and introductory section, including the presentation of the legal framework of the right to effective participation in international law, particularly in the European context (par. 1) and the definition of the attributes and instruments of effective participation (par. 2).

Afterward, the analysis of the Province of Trento case will be presented (par. 3), along with some brief conclusions.

## 1. Legal Framework: the Effective Participation in International Law and Standards

The legal framework of the study, such as the entire area of minority rights, is twofold. First, it is characterised by the convergence of legal documents from different organizations partly with different missions. Second, it presents the stratification of hard and soft law provisions with interpretative and operative purposes as well as for the dissemination of good practices. All these normative references are complementary and contribute to the definition of international standards on effective participation, additionally providing a toolbox for legislators and policy makers (Marko 2010, 225-229; Palermo 2010, 422-424).

Giving a brief overview of the United Nations framework, the right to effective participation in public life is mentioned in art. 2 par. 2 and 3 of the 1992 *Declaration on the Rights of Persons Belonging to Ethnic, Religious and Linguistic Minorities*<sup>3</sup> and in art. 18 of the *Declaration on the Rights of Indigenous People*<sup>4</sup>.

In the European context, the effective participation of minorities is deeply and more acutely ingrained. In the Council of Europe area, the fundamental reference, in binding law is art. 15 of the *Framework Convention for the Protection of National Minorities* (FCNM) of 1995<sup>5</sup>, which establishes the State parties' duty 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 1992 also has certain provisions regarding the same. Consistent with its narrower purposes related to the promotion of cultural and linguistic diversity rather than individual or collective rights (Beqiraj 2016, 3), the Charter requires, in art. 7 par. 4, consultation with minority

<sup>3</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>4</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>5</sup> Framework Convention for the Protection of National Minorities and Explanatory Report, H (95) 10th February 1995.

groups while defining linguistic policies and even to establish advisory and consultative bodies<sup>6</sup>. As a result of this initial evidence, it is possible to consider effective participation as a part of the European consensus on the fundamental principles of the law of diversity (Palermo and Woelk 2003a), which applies both to national and historical minorities.

In an interpretative and operative perspective, soft law documents are exceptionally relevant, as anticipated, because they explain and provide concrete substance to legal clauses that have previously been recalled. For the present study, the most relevant documents, which will be quoted along with the analysis, are the *Commentary on the effective participation of persons belonging to national minorities in cultural, social and economic life and in public affairs* (AC Commentary)<sup>7</sup> published in 2008 by the Advisory Committee on the FCNM and the more specialised *DH-MIN Handbook on Minority Consultative Mechanisms* (DH-MIN Handbook)<sup>8</sup> published by the Committee of Experts on Issues Relating to Protection of National Minorities.

In addition, in Europe, another relevant actor for minority rights and, more specifically, the definition of the legal framework of effective participation is the OSCE High Commissioner on National Minorities<sup>9</sup>. *The Lund Recommendations on the Effective Participation of National Minorities in Public Life* (Lund Recommendations) with their Explanatory Note 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, and act as an influential instrument and remarkable guideline for political actors in Europe (Drzewicki 2010, 263; Verstichel 2009, 213-227).

<sup>6</sup> European Charter for Regional or Minority Languages, ETS No.148, 1st March 1998, art. 7.4: '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>7</sup> ACFC/31DOC (2008)001, 5th May 2008.

<sup>8</sup> DH-MIN (2006)012, 20th October 2006. The handbook is based on contributions prepared by prof. Marc Weller. Even though in the very first page of the handbook, the Committee of Experts declared that 'the handbook is not a normative document, and its dissemination does not necessarily imply that all the Member States agree with its content', it is undoubted that the indication of good practices consistent with international legal standards may have some extent of influence on States' arrangements, at least in the selection of practical mechanisms to establish.

<sup>9</sup> Indeed, the OSCE (CSCE at the time) was also the first organization to include the right of minorities in public life in an international instrument, at par. 35 of the 1990 so-called Copenhagen Document (Concluding Document of the Copenhagen Meeting of the Conference on Human Dimension), see Verstichel 2009, 202-207.

## 2. Attributes and Instruments of Effective Participation

The circumscription of the present study's object requires a preliminary effort in order to define effective participation.

This right has quite a broad scope of action, since it includes participation in elected bodies, administrative and judiciary bodies, public service, semi-state bodies as chambers of commerce, trade unions, public broadcasting companies, as well as in various autonomy arrangements (Verstichel 2010, 75)<sup>10</sup>.

Drawing from the indications provided by the AC Commentary<sup>11</sup>, participation may be considered as the involvement of minority groups in the decision – and policy-making processes with the possibility of taking part, or at least addressing, their own views<sup>12</sup>.

In addition, the attribute of *effectiveness* can be understood, in a weak sense, as defining the *conditions of participation* as a clear legal and binding definition of the special mechanisms adopted (including the legal status of minority institutions and the allocation of adequate resources to them<sup>13</sup>). On the other hand, in a strong sense, *effectiveness* refers to the *quality of participation*, which is otherwise related to the offer to minorities not only of the presence in decision-making processes but rather to the possibility of substantively influencing them (Verstichel 2010, 84-85).

As anticipated in the introduction, most scholars and even international monitoring institutions (for instance, the Advisory Committee on FCNM) focus their attention, both in theoretical construction and practical enforcement, on effective participation as strongly linked to political representation of minorities in a strict sense, that is, their representation in elected legislative bodies (Palermo 2010, 411; Palermo and Woelk 2003b).

<sup>10</sup> Even if it does not belong to this paper's objects, it has to be highlighted that effective participation of minorities in political life is moreover strongly linked both from normative (see art. 15 of the FCNM) and practical points of view, to the participation in cultural, social and economic life, which represents, in some senses, the precondition for an effective political participation; on the point see Palermo 2007/8.

<sup>11</sup> AC Commentary par. 69, p. 22: 'The Advisory Committee, while considering whether persons belonging to national minorities effectively participate in public affairs, has examined their overall involvement in decision-making'.

<sup>12</sup> Verstichel 2009, 270, draws a differentiation between minorities' participation in decision-making processes that have an importance or impact on the protection or promotion of minority identity ('... those affecting them' again from art. 15 of the FCNM), which would be part of minority rights *sensu stricto*, and participation in all other decisions, which would just be an implementation of the principle of participatory democracy and good governance.

<sup>13</sup> On legal status of minority institution see AC Commentary, par. 107, 116, p. 29-30. On the allocation of adequate resources see AC Commentary p. 8, for a general consideration, and par. 21 p.13, par. 119 p. 31, par. 130 p. 32, par. 138-139 p. 34, in relation to individual mechanisms.

The special solutions typical of electoral dynamics are undoubtedly the most direct and efficient way to ensure an involvement of minorities in the political sphere. However, at the same time, their enforcement requires specific political conditions in terms of both population composition (in particular, concerning the size of minority groups) and political agreement.

Hence, the purpose of the present study is not to analyse the electoral mechanisms (design of the electoral systems, reserved seats, etc.) or electoral dynamics (composition of executives). Rather, it aims to concentrate on softer instruments that can contribute to effective participation, even where direct representation is not possible, offering the groups a forum of engagement and some extent of influence (Weller 2007, 479), and implementing the provisions of the FCNM *Explanatory Report* (attached to the Convention), which suggests *inter alia*: consultation of minorities when contemplating measures that are likely to affect them, involving them in the preparation, implementation, and assessment of development plans and programs, and participation in decision-making processes<sup>14</sup>.

The main institutional solutions of this kind, based on international standards, consist of *specialised governmental bodies*, *consultative bodies*, and *autonomy arrangements*<sup>15</sup>.

*Specialised governmental bodies* 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<sup>16</sup>.

*Consultative bodies*, divided by the DH-MIN Handbook into four categories (co-decision, consultation, coordination and – questionably – self-governance), are minority representative bodies, with the purpose of organisation, mobilisation, and coordination of groups' issues; contribution to legislation drafting; contribution to governmental programming; and participation in reporting to international mechanisms<sup>17</sup>. Lastly, *autonomy arrangements* include territorial or non-territorial (*i.e.* cultural or personal

<sup>14</sup> FCNM Explanatory Report, par. 80.

<sup>15</sup> Consistent with the understanding of effective participation adopted in this paper, participatory mechanisms not directly related to participation in decision-making processes (participation in the judiciary, public service, etc.) have not been considered.

<sup>16</sup> AC Commentary, par. 103-105, p. 28.

<sup>17</sup> DH-MIN Handbook, par. 39-41, p. 11. See also Lund Recommendations, par. 13, p. 10: 'These bodies should be able to raise issues with decision makers, prepare recommendations, formulate legislative and other proposals, monitor developments and provide views on proposed governmental decisions that may directly or indirectly affect minorities.' For an analysis of the four categories of consultative bodies see DH-MIN Handbook, par. 9-21, p. 5-7 and Weller 2010.



autonomy) mechanisms of minority self-governance, involving the devolution of competences to local authorities in areas where minorities have settled or to minority organisations<sup>18</sup>.

These mechanisms, owing to their flexibility, may be innovative solutions in the perspective of maximising minority promotion and protection via institutional solutions. They can be supplementary, but even complementary, to electoral instruments and can enhance or create participation where there is none.

### ***2.1. Effective Participation as a Necessarily Multilevel Right***

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 (Palermo and Woelk 2003a, Penasa 2009).

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. First, 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 in the Explanatory note (on par. 11), it also states:

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.

---

<sup>18</sup> Lund Recommendations, par. 14-21, p. 10-12.

Similarly, the AC Commentary suggests the implementation of decentralisation and devolution processes<sup>19</sup>, and the DH-MIN Handbook recommends provisions to be made ‘at all levels’<sup>20</sup>.

The reflection conducted up to this point illustrates the relevance of the following case analysis of the law for protection and promotion of historical linguistic minorities in the Province of Trento. It acts as a model that practically develops an integrated system of different institutional mechanisms at the local level, which is consistent with the recommendations of the international standards of minority rights.

### **3. The Law on Minorities, No. 6/2008, in the Province of Trento**

In the Italian constitutional order, the autonomous Province of Trento holds a peculiar position. Congruous with the Italian asymmetric (and even quasi-federal) regionalism, the Province has wide legislative and administrative autonomy within the framework of the Region Trentino Alto Adige/Südtirol. Linguistic diversity is one of the most prominent characteristics of the territory. In fact, the Province of Bolzano (the other part of the region) is universally recognized and extensively studied as a model of accommodation among the three linguistic groups in the Province (German, Italian, and Ladin)<sup>21</sup>.

In the Province of Trento, however, the linguistic composition of population is nearly uniform, with the presence of three small historical linguistic minorities that are territorially concentrated – the Ladin speakers (8000 people ca in the Fassa Valley) and two different groups speaking two upper Germanic idioms, the Mocheni and Cimbri groups (respectively 900 and 250 ca)<sup>22</sup>.

For their protection and promotion, in June 2008, the Province adopted law No. 6. It is an ambitious and systematic text that includes provisions on various extremely relevant aspects. First, it primarily establishes a rich set of institutional mechanisms for the entrenchment of the groups in decision-making processes. Furthermore, it grants significant rights related to

<sup>19</sup> AC Commentary, par. 129-130, p. 32.

<sup>20</sup> DH-MIN Handbook, par. 23, p. 7.

<sup>21</sup> For a general and complete analysis of the case of the Province of Bolzano/Bozen, see Woelk et al. 2008.

<sup>22</sup> 2011 General Census data, as elaborated in the Communication from the Statistical office of the Autonomous Province of Trento: ‘Rilevazione sulla consistenza e la dislocazione territoriale degli appartenenti alle popolazioni di lingua ladina, mòchena e cimbra’, March 2014. The data refer to the minority population within the ‘historical settlement municipalities’ (see par. 4.1).

minority languages. These include the right to use them in territorial public administration; special provisions for schools, toponymy, and media; and promotional solutions regarding the access to public service.

In the global system designed by the law, the institutional mechanisms represent a guarantee frame for minority rights. This is because they enable, to a certain extent, the participation of communities in defining concrete policies to put them into effect<sup>23</sup>.

### ***3.1 Funding Principles of the Institutional System for the Protection and Promotion of Minorities in the Province of Trento***

From the perspective of effective participation, the most prominent traits of institutional framework designed by the law can be identified in the following:

*a. The key role assigned to local government and the territorial principle:*

The territorial element is mainly significant in light of the general approach of the Italian constitutional order towards minority protection. In fact, the Italian Constitution adopts the territorial principle that entails that minority rights can be enjoyed only within certain territories as defined by the law (Palermo and Woelk 2011; Penasa 2009, 1019-1020). In the case of the provincial law No. 6/2008, art. 3 identifies the relevant minority territories using the so-called ‘historical settlement municipalities’ – one municipality for the Cimbri people (Luserna), three municipalities in Bernstol Valley for the Mocheni people, and six municipalities, forming one entire Valley Community (see below), for the Ladin people. Further, a process of identification of the minority community with the corresponding local governments (and municipalities in the first place) can be noticed. Local authorities act, in the relations with other institutions, as the spokespeople of the communities. The mechanisms for political participation of persons belonging to minorities become, in that manner, mechanisms of participation for the relevant municipalities in central decision – and policy-making processes. If the municipalities are the first and basic layer of representation of minorities, law No. 6 delineates a second layer, defining unitary representative bodies for the three groups

<sup>23</sup> For the sake of completeness, it must be pointed out that, along with the institutional mechanisms analysed in the present paper, the minority protection system of the Province of Trento is enriched by the further provision of one reserved seat for a Ladin representative in the Provincial legislative assembly (Provincial Council), and not for the other two smaller groups, in accordance with art. 48 of the Autonomy Statute of the Region Trentino Alto Adige/Südtirol – the fundamental law of the region (and Province).

(except for the Cimbri people who are settled only in the municipality of Luserna). For the Mocheni people, the law (art. 30) creates the *Mocheni Assembly*, which unites the councils of the three historical settlement municipalities with monitoring and planning functions, and the *Mocheni Council*, composed of the three mayors. The Ladin speaking community is represented by the *Comun General de Fascia*, which is one of the Valley Communities (inter-municipal associative forms) of the Province and unites all historical Ladin municipalities. Unitary representative institutions of the groups will be further analysed as the second participatory dimension of the institutional system of law 6/2008 (see par. 3.3).

- b. *Responsibility* assumption by minorities through entrenchment both in drafting and implementing the law (Woelk 2014, 3). In addition to the institutional framework analysed below, it is important to outline the drafting procedure of the law itself, which was done through an *ad-hoc* working group. Both experts and representative institutions of the linguistic minorities participated, balancing expertise and experience (Penasa 2009, 1036).
- c. *Extreme multiplicity of institutional mechanisms*, which enables the participation of persons belonging to minorities in decision – and policy-making processes, designing a multi-dimensional system that includes a large variety of tools derived from international standards<sup>24</sup>.
- d. *Dynamism and flexibility of provisions*, ensuring the potential to shape normative instruments in accordance with the concrete peculiarities of single groups, as suggested even in the conclusions of AC commentary<sup>25</sup>. With regard to this, for instance, the different involvement of minority associations in consultative bodies, depending on the presence of historically established associative forms within the relevant communities, must be considered (that is, the case of Ladin speakers, while no provisions have been made for Mocheni and Cimbri associations). Another differentiation may be found in the forms of (slight) cultural self-governance, which, just for the Ladin community, involves a form of territorial autonomy, with the autonomous exercise of competence on cultural and linguistic policies at the level of Valley Community (Comun general de Fascia) (see below).

Coming to the detailed analysis, the institutional mechanisms provided by the law develop three participatory dimensions – general institutions, including all the three minority groups (the *Conference of Minorities*,

<sup>24</sup> As suggested in DH-MIN Handbook, par. 46, p. 13.

<sup>25</sup> AC Commentary, par. 148, p. 36.

*Authority for Minorities, Department for the Promotion of Local Linguistic Minorities*); individual representative institutions of each group; *ad hoc* specialized bodies designed for single minority issues for each group (culture and language, toponymy).

### **3.2. The First Participatory Dimension: General Institutions for Minorities**

The *Conference of minorities*, according to art. 9 of the law, is a collegial body that provides an opportunity for minority policies' concertation and planning. Its composition is diverse, which guarantees the highest degree of representation and balance within the assembly. Indeed, every political and administrative authority is involved in this, the central (*i.e.* provincial) government, in conjunction with the President and the entire cabinet (Giunta), the intermediate level, with the Presidents of the Valley Communities where minorities are settled, and the municipality, with all the major actors of minority municipalities. The minority issues are further represented by the Ladin representative in the Provincial Council (the legislative assembly) and representatives of minority cultural institutes (see below), territorial schools, and Ladin speakers' cultural associations.

The political and deliberative role of the Conference along with its function of coordinating every relevant actor at the Provincial level emerges from this plural composition (Guella 2014, 31): it defines the programmatic guidelines for promotion and protection policies; monitors the implementation of relevant legislation; and delineate new interventions (art. 9.2 let. a). Moreover, this institution has a significant consultative function, which entails a mandatory opinion to be provided for public actions on media and, especially, a mandatory and binding opinion on the partition between the three minority groups of the 'provincial fund for the protection of minorities' (art. 24).

Considering the classification of the Conference within the *genus* of minority consultative bodies and according to international standards as established by normative and interpretative acts and through relevant scholarship, this mixed composition recalls the features of the model of *consultation mechanisms*<sup>26</sup>, whereas its functions could be more effectively framed in the *co-decision* scheme<sup>27</sup>. However, the institutional design

<sup>26</sup> DH-MIN Handbook, par. 13-18, p. 5-6: 'A second model would establish a minority consultative council around a high-ranking governmental official, or a governmental contact office for minority issues ... the membership ... tends to be mixed, being composed of both governmental representatives and minority representative groups'.

<sup>27</sup> Idem, par. 11-12, p. 5: 'Co-decision occurs where minority consultative councils must be

appears consistent with the purposes (see above) generally ascribed on these mechanisms, and particularly, the composition in addition to the majority rule adopted within the Conference (art. 7 c. 3 of the Internal Regulation) aligns with the intention to create not only a tool to address minority issues in the decision-making process but also a space for coordination and dialogue between minorities and central provincial government as well as among the three groups<sup>28</sup>.

The *Authority for minorities* (art. 10) was one of the most innovative solutions in the framework of law No. 6/2008. However, it quickly turned into a severity since it was implemented only in March 2014 due to lack of political will. It comprises three members, who are appointed by the legislative council of the Province (with a large majority of 2/3 of its members) from among people with acknowledged 'legal, social, and cultural expertise' (art. 10.2). The requirements of the law emphasize the choice for an autonomous and impartial body, which can be seen as an institutional guarantee for minority issues, and that can technically be considered an independent administrative authority. From a functional point of view, the Authority has monitoring and advisory roles (art. 10.7): on the one hand it evaluates, monitors, and inspects the implementation of minority legislation – especially the efficiency of economic resources assigned to minority policies – and presents an annual report to the legislative Council of the Province. Through this, it may present proposals and underline the weaknesses of the global set of protection and promotional policies and activities. On the other hand, it provides opinions to the Provincial Cabinet and local authorities regarding the transposition of international, European, national, and regional legislation on linguistic minorities as well as to the provincial Ombudsman.

Once again, the analysis of the institutional design, in the light of international standards, reveals a few critical aspects: the responsibilities of the Authority recall almost entirely what the Lund Recommendations indicate for minority advisory and consultative bodies<sup>29</sup>, but at the same time, the appointment procedure and expertise requirements prevent its classification as a genuine minority representation institution. Thus, Penasa

---

heard before certain decisions can be taken or where minority consultative councils have original decision-making powers'.

<sup>28</sup> According to the explanatory report on the draft law at p. 10, the Conference is intended as a mean for 'direct representation and balance of minority issues'.

<sup>29</sup> Lund Recommendations, par. 12-13, p. 10: 'These bodies should be able to raise issues with decision makers, prepare recommendations, formulate legislative and other proposals, monitor developments and provide views on proposed governmental decisions that may directly or indirectly affect minorities'. For further indications on consultative mechanisms, see par. 2 above.

(2009, 1042-1047) defined the authority as a hybrid of consultation and coordination bodies<sup>30</sup>; in addition, it has to be considered that, according to the AC Commentary, the consultation of independent experts should be a complement of minority consultation not a substitute of it<sup>31</sup>.

The apparent dissociation between the functions and the composition has been partially recomposed through practice, considering that the first batch of members (appointed in 2014 and in charge until 2021) actually comprises people who are at least part of the three linguistic minorities, even though leaning-on practice contradicts the 'previous legislative definition' required by international standards as a guarantee of the effectiveness of minority participation mechanisms<sup>32</sup>.

The *Department for the promotion of local linguistic minorities* (art. 11, l. 6/2008) is, of course, a department of the provincial administration and does not include any direct representatives of minority groups. Nevertheless, it is important that the functions and especially the role of this specialized governmental body is not underestimated (Toniatti 2011, 361); it is an administrative tool for the promotion of minority issues, a central interlocutor for everyday matters. The following are its activities: direct administration of minority policies within the territory of the Province (let. a); coordination and incentive provision in the implementation of minority legislation (let. b); advising and consulting for other public authorities (let. c); systematic collection of international, European, National, Regional, and Provincial legislation that could affect minority interests (let. d); *internal relations* – receiving requests or hearing complaints from people belonging to the minorities (let. e); *external relations*, with other relevant institutions – working for minority promotion (let. f).

Moreover, the various features of the Department adhere with international standards, since the Advisory Committee on the FCNM, in its thematic commentary, suggests the establishment of specialized governmental bodies to ensure that 'the needs of minorities are consistently integrated into governmental policies' (par. 73) and to 'identify contact points for minority issues within public services' (103), 'initiate and coordinate governmental policy in the field of minority protection' (105), and ensure that all minority issues are 'mainstreamed in the work of the other governmental services' (*idem*).

<sup>30</sup> Referring, once again, to the classification proposed in the DH-MIN Handbook, par. 9-21, p. 5-7, in which mechanisms of coordination are defined as: 'inter-ministerial working parties, charged with ensuring that minority policy is delivered in a consistent way throughout all relevant branches of government'.

<sup>31</sup> AC Commentary, par. 114, p. 30.

<sup>32</sup> See above no. 10.

### ***3.3. The Second and Third Participatory Dimension: Institutional Representation of Individual Groups and Specialized Bodies***

As anticipated above, in the institutional framework of law No. 6/2008, a second participatory dimension of persons belonging to minorities is provided through the identification of unitary representative bodies for each of the three groups (art. 7.2; 25; 30; 31). The *Comun General de Fascia* (Ladin minority), the *Mocheni Assembly and Council*, and the municipality of *Luserna* (Cimbri) represent the corresponding communities as members of the CAL<sup>33</sup>. They monitor and plan functions of the implementation of minority policies to the extent of the municipal competence. They also supervise and offer opinions on the directives given by the Provincial Council to Minority Cultural Institutes (see below) and appoint the members of Toponymy Commissions (see below).

The third participatory dimension entails the entrenchment of minorities in two specific and crucial issues that directly affect them – cultural and linguistic policies and toponymy.

On toponymy matters, the law 6/2008 framework provides three different specialized bodies for every minority group, the *Toponymy Commissions* at art. 28, 33, and 34 respectively. The Commissions have initiative functions on the institution, update and modifications of a toponyms inventory in a minority language. Furthermore, they have consultative functions, exercised through opinions on the name of the possible new hamlet, streets, squares or public buildings. The participation of minorities is guaranteed by the appointment of a part of the members by the minorities' representative institutions (see above) and, for Ladin speakers, even by the historical association. The remaining members (the expertise part of the Commission) are instead appointed by each Cultural Institute and by the competent Provincial Department on toponymy.

In the cultural and linguistic field, a first central provision is art. 12 of the law that recalls the Minority *Cultural Institutes* (again, one for each group). These bodies have a general mission to defend and promote minority language and culture. Moreover, they have the essential role as scientific authorities on the standardisation of minority languages, setting and updating linguistic and writing rules, which represents the basis of all the complex of linguistic rights granted to the groups. From an institutional point of view, the Institutes are part of the provincial administration as administrative agencies and present a board with general and economic management functions, and a scientific

---

<sup>33</sup> Local Autonomies Council, an inter-institutional coordination body among the local authorities (the Province, the inter-municipal associative forms, municipalities).



committee with an expertise composition of professors or researchers in linguistic, cultural or minority studies. The entrenchment of minority communities in the institutional framework of the *Cultural Institutes* is limited to the reservation of a seat in the management board (appointed by the Provincial Cabinet) for a member of the minority community<sup>34</sup>. It is also limited to giving opinions and making proposals (without any further guarantees) by means of minority representative institutions on political and administrative directives addressed by the Provincial Cabinet, as the holder of executive power within the Provincial political system (art. 12.2).

Besides that, the legislator provides a considerable autonomy space to the Ladin speaking minority on art. 25 and 26. The Provincial administrative functions on the whole spectrum of linguistic and cultural policies (local customs and traditions, local cultural institutions, artistic events and activities, cultural and didactic policies, policies on preservation and promotion of Ladin language) are devolved to the direct governance of the *Comun General di Fascia*. This designs an administrative solution that identifies the local government (at inter-municipal level) as the main actor and policy maker, substantiating the subsidiary perspective that inspires the present paper.

The provision of specialized institutions in the third participatory dimension of law 6/2008 expresses the aspiration, to a certain extent, of the entrenchment of the communities in these matters, even considering the weighty mediation of the Provincial administration imposed to its functioning. However, it is not easy to classify this effort and the solutions adopted in the international standards frame. International good practices encourage the establishment of specialized consultative mechanisms<sup>35</sup> with mixed membership between experts (appointed by government) and minority representatives. This could be considered the reference for Toponymy Commissions. Cultural Institutes have direct administration competences instead of consultative functions and therefore, they must be compared to the international model of cultural autonomy or non-territorial self-governance solutions<sup>36</sup>. However, Minority Cultural Institutes, as seen above, are factually a part of the Provincial administration and are subject to the Provincial Cabinet's directives. Taking this into consideration, the possibility for minority groups to express opinions regarding these directives and reserve seats in management boards (both by means of territorial representatives, i.e., the second participatory dimension)

<sup>34</sup> According to the provisions of the Statutes of the three Cultural Institutes.

<sup>35</sup> DH-MIN Handbook par. 24, p. 8.

<sup>36</sup> AC Commentary par. 133-137, p. 33-34; Lund Recommendations par. 17-18, p. 11.

appear to merely be a participatory mitigation of central governance on the underlying matters.

A different assessment should be made regarding the Ladin-speaking community. In this case, self-governance of competences related to cultural and linguistic policies at an inter-municipal level can undoubtedly be subsumed under the autonomy arrangements model, as it is delineated by both the AC commentary and Lund Recommendations. In light of the territorial principle adopted by the Provincial legislator, inspiring the entire Italian minority constitution and imposing the mediation of the local government with regard to exercising minority attributions, we can conclude that the case of the *Comun General de Fascia* is a form of territorial autonomy on cultural matters rather than a pure form of cultural autonomy<sup>37</sup>.

### ***3.4. Critical Issues and Final Remarks***

The overview of the institutional framework for promoting the effective participation of minorities in decision-making processes in the Province of Trento represents a global image of a complex but compact system. According to the aforementioned fundamental traits of the legislation, the layers and places for concertation and negotiation increase and become stratified within this system.

However, certain limits or critical aspects remain. First, many dynamics rely on the goodwill of political actors (one example above all would be of the late appointment of the Authority for minorities). Then, the institutions that represent the core of the system (the Conference and especially the Authority) and that should ensure the political participation of minorities at its highest level, are not entirely expressions of the groups. Furthermore, the diversity and richness of the institutional mechanisms of law 6/2008 inevitably carry the possibility of causing overlaps between functions and competences and require a huge effort for coordination. Nevertheless, this risk is weakened by the small size of the involved political communities (the provincial, in relative terms, and the minority groups, in absolute terms). As a matter of fact, the individuals involved in the different processes are often the same people. Hence, issues that the institutional design cannot answer to, are solved through practice (Guella 2014, 44).

Small numbers of minority groups may contribute as well to a less critical evaluation of another slippery aspect related to the role of local authorities in the legislation analysed here. Founding the participation system on elected representatives in the relevant municipalities obviously implies

---

<sup>37</sup> Lund Recommendations, par. 19-20, p. 11-12.

a previous electoral competition. However, abstractly, political dynamics could lead to public debate on themes far from minority matters, which is just one of the issues that a public authority has to face. The consequence would be a dilution of the representation of minority (which is not only the municipal political community) through elected people. This would result in a decreased incisiveness of participation mechanisms, more so in the case of different party memberships among the elected persons in different municipalities within the unitary representative institutions. Nevertheless, the compactness and the small dimension of the minority communities leads to the tendency of avoiding this risk.

Beyond critical notes (that still deserve appropriate reflection), the overall system designed by law 6/2008 for the effective participation of persons belonging to minorities in public affairs undoubtedly represents a meaningful example and an inspiration for further analysis.

The successful translation and implementation of international standards and good practices within the national constitutional minority protection system across the territorial autonomy of the Province, constitutes a paradigmatic portrayal of the multi-level character of the promotion of minority rights. Further, alongside the original mix of various tool, it justifies the definition of the Province of Trento as a 'laboratory of the law of diversity' (Toniatti 2014).

## Conclusions

The experience with legislation pertaining to historical minorities in the Province of Trento confirms that, given the political conditions, the local government may have a considerable potential for implementing effective participation of persons belonging to minorities in the political sphere.

In the system designed by law 6/2008, the local government significantly and simultaneously represents the *space* where accommodation mechanisms emerge and the *subject* that directly participate to various inter-institutional cooperation systems, as a consequence of the identification of the communities with the corresponding local authority. By means of this construction, the study proves the possibility of the existence of a system founded on the entrenchment of local authorities. This guarantees the participation of minorities that are extremely small in size in defining decisions and policies that affect them. Moreover, the contextual use of non-electoral mechanisms and the concentration of the entrenchment at the local level enables these results at a low political cost in terms of the sacrifices made to majority representation.

Even though, on a comparative basis, the subsidiary application of minority entrenchment mechanisms often stops at the regional/sub-national level (owing to administrative resource and capacity, the experience presented here may play an inspirational role towards examining the potential of a *local government-based* model of effective participation as an instrument to further enforce international standards. Its main attribute would be its flexibility and adaptability as compared to the variables in practical and historical contexts in terms of the numbers of minority people, geographical concentration, conflicts among groups, and strong or weak group identities.

## References

- Beqiraj, J. (2016) 'La Carta europea delle lingue regionali e minoritarie: potenzialità e freni', *Osservatorio sulle fonti*, 1, retrieved from: <https://www.osservatoriosullefonti.it/mobile-saggi/mobile-neri-speciali/speciale-convegno-prin-2010-11-bolzano> (accessed: 10/03/2018).
- Bowring, B. (2010) 'Enhanced Local Self-government as a Means of Enhancing Minority Governance' in Weller M., Nobbs K. (eds.), *Political Participation of Minorities. A Commentary on International Standards and Practice*, Oxford: Oxford University Press, 661-681.
- Carozza, P. G. (2003) 'Subsidiarity as a Structural Principle of International Human Rights Law', *The American Journal of International Law*, 97 (1), 38-79.
- Consiglio della Provincia autonoma di Trento, 'Relazione illustrativa al disegno di legge "Norme di tutela e promozione delle minoranze linguistiche locali"', (2008), retrieved from: [https://www.consiglio.provincia.tn.it/doc/IDAP\\_52707.pdf?zid=56ced951-8c48-4581-8a3c-48882cf3d324](https://www.consiglio.provincia.tn.it/doc/IDAP_52707.pdf?zid=56ced951-8c48-4581-8a3c-48882cf3d324) (accessed: 26/02/2018).
- Drzewicki, K. (2010) 'OSCE Lund Recommendations in the Practice of the High Commissioner on National Minorities', in Weller M., Nobbs K. (eds.), *Political Participation of Minorities. A Commentary on International Standards and Practice*, Oxford: Oxford University Press, 256-285.
- European Centre for Minority Issues – ECMI (2016), 'Participatory Mechanisms for National Minorities', retrieved from: <http://www.ecmi.de/publications/detail/participatory-mechanisms-for-national-minorities-344/> (accessed: 26/02/2018).
- Føllesdal, A. (2016), 'Subsidiarity and International Human-Rights Courts: Respecting Self-Governance and Protecting Human Rights – or Neither?', *Law and Contemporary Problems*, 79 (2), 147-164.

- Guella, F. (2014) 'L'organizzazione amministrativa nelle aree di minoranza. Il modello della legge trentina tra rappresentanza ed efficienza', in Woelk J., Penasa S., Guella F. (eds.), *Minoranze linguistiche e pubblica amministrazione. Il problema dei piccoli numeri: modello trentino e esperienze comparate*, Padova: CEDAM, 13-46.
- Marko, J. (2010) 'The Council of Europe Framework Convention on the Protection of National Minorities and the Advisory Committee's Thematic Commentary on Effective Participation', in Weller M., Nobbs K. (eds.), *Political Participation of Minorities. A Commentary on International Standards and Practice*, Oxford: Oxford University Press, 222-255.
- Palermo, F. (2010) 'The Dual Meaning of Participation: The Advisory Committee's Commentary to Article 15 of the FCNM', *European Yearbook of Minority Issues*, 7, 409-424.
- Palermo, F. (2011) 'Territorial solutions for managing diversity and their changing role', in Venice Commission (2011), *The participation of minorities in public life*, Council of Europe Press, 25-44.
- Palermo, F., Woelk, J. (2003a) 'From minority-protection to a Law of Diversity? Reflections on the Evolution of Minority Rights', *European Yearbook of Minority Issues*, 3, 5-13.
- Palermo, F., Woelk, J. (2003b) 'No representation without recognition: The right to political participation of (National) Minorities', *Journal of European Integration*, 25 (3), 225-248.
- Palermo, F., Woelk, J. (2011), *Diritto costituzionale comparato dei gruppi e delle minoranze*, Padova: CEDAM.
- Penasa, S. (2009) '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?', *Le Regioni*, XXXVII (5), 1017-1056.
- Penasa, S. (2014) 'From Protection to Empowerment through Participation: The Case of Trentino—a Laboratory for Small Groups', *Journal on Ethnopolitics and Minority Issues in Europe*, 13 (2), 30-53.
- Servizio statistica della Provincia autonoma di Trento (2014), 'Rilevazione sulla consistenza e la dislocazione territoriale degli appartenenti alle popolazioni di lingua ladina, mòchena e cimbra', retrieved from: [http://www.statistica.provincia.tn.it/binary/pat\\_statistica\\_new/popolazione/RilevazionePopolazioniLadinaMochenaCimbra.1394031752.pdf](http://www.statistica.provincia.tn.it/binary/pat_statistica_new/popolazione/RilevazionePopolazioniLadinaMochenaCimbra.1394031752.pdf) (accessed: 26/02/2018).

- Toniatti, R. (1996) 'Minorities and protected minorities: constitutional models compared', in Bonazzi T., Dunne M. (eds.), *Citizenship and rights in multicultural societies*, Keele: Keele University Press, 45-81.
- Toniatti, R. (2011) 'La definizione progressiva di un modello di "garanzia asimmetrica" delle minoranze linguistiche del Trentino', in Marcantoni M., Postal G., Toniatti R. (eds.), *Quarant'anni di autonomia* (Vol. I), Milano: FrancoAngeli, 313-365.
- Toniatti, R. (2014) 'Il Trentino quale laboratorio del diritto delle diversità: le «piccole minoranze» come minoranze garantite', in Woelk J., Penasa S., Guella F. (eds.), *Minoranze linguistiche e pubblica amministrazione. Il problema dei piccoli numeri: modello trentino e esperienze comparate*, Padova: CEDAM, 295-320.
- Verstichel, A. (2009) *Participation, Representation and Identity. The Right of Persons Belonging to Minorities to Effective Participation in Public Affairs: Content, Justification and Limits*, Antwerp: Intersentia.
- Verstichel, A. (2010) 'Understanding Minority Participation and Representation and the Issue of Citizenship', in Weller M., Nobbs K. (eds.), *Political Participation of Minorities. A Commentary on International Standards and Practice*, Oxford: Oxford University Press, 72-94.
- Weller, M. (2004), 'Creating the conditions necessary for the effective participation of persons belonging to national minorities', *International Journal of Minority and Group Rights*, 10 (4), 265-290.
- Weller, M. (2007) '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: Oxford University Press, 477-516.
- Weller, M. (2010) 'Minority Consultative Mechanisms. Towards Best Practice', in Weller, M., Nobbs, K. (eds.), *Political Participation of Minorities. A Commentary on International Standards and Practice*, Oxford: Oxford University Press, 477-502.
- Woelk, J. (2014), 'Amministrazione, minoranze e piccoli numeri. Introduzione', in Woelk, J., Penasa, S., Guella, F. (eds.), *Minoranze linguistiche e pubblica amministrazione. Il problema dei piccoli numeri: modello trentino e esperienze comparate*, Padova: CEDAM, 1-10.
- Woelk, J., Palermo, F., Marko, J. (eds.) (2008), *Tolerance Through Law: Self Governance and Group Rights in South Tyrol*, Leiden: Martinus Nijhoff Publishers.