

Public financing of national minority organisations: policy paradigms, policy regimes and good practice

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Frequently Used Abbreviations

AC FCNM Commentary 2	Commentary on the Effective Participation of Persons Belonging to National Minorities in Cultural, Social and Economic Life and in Public Affairs
FCNM	Framework Convention for the Protection of National Minorities
Lund Recommendations	1999 Lund Recommendations on the Effective Participation of National Minorities in Public Life
NMOs	National Minority Organisations

1. Introduction

This paper is a follow up to an earlier paper commissioned by the Committee of Experts on Issues Relating to the Protection of National Minorities (DH-MIN).¹ Like its earlier version, it focuses on the public financing of national minority organisations (NMOs) in the member states of the Council of Europe. States tend to use the term ‘national minority organisations’ widely to include, among others, public institutions focusing exclusively on minority issues, minority political parties, membership organisations representing minorities or NGOs specialising in minority issues.² In this inquiry, the term national minority organisation (NMO) is used to refer to *civil society organisations* focusing exclusively on minority issues. As specified in the terms of reference of this inquiry, this study aims at developing a conceptual framework for the systematic analysis of the public financing of NMOs. Further, it applies this conceptual framework to country cases to illuminate its distinguishing logic. Finally, some propositions are made for the practical use of the conceptual framework in the analysis and design of NMO financing mechanisms by states, NMOs and any other actors involved in minority protection.

The challenge of identifying good practices in the public financing of NMOs lies in the fact that financing mechanisms have no intrinsic value but are means for implementing policy objectives. Therefore, any assessment of such financing mechanisms must start with the identification of the specific policy objectives these mechanisms were designed to implement. States establish minority policy regimes based on their broader responses to ethnocultural diversity and their specific policy objectives they plan to achieve. If states have subscribed to international minority rights norms, their minority protection policies have to comply with the standards enshrined therein. In the member states of the Council of Europe (CoE), the unique combination of historic traditions, broader approaches to ethnocultural diversity and related policy objectives as well as the contextualization of international minority rights standards have resulted in very diverse minority policy regimes. Thus, it is expected that NMO financing mechanisms will differ across the various minority policy regimes.

In order to draw some conclusions on good practices on the public financing of NMOs, we propose a conceptual framework that combines a minority rights perspective with a public financing approach. The first part of this paper introduces this conceptual framework.

¹ See: Anna-Mária Bíró and Katalin Pallai, “*Distribution of Public Financial Support (Subsidies) for National Minority Associations*”, Paper Commissioned by the Committee of Experts on Issues Relating to the Protection of National Minorities (DH-MIN), 2010, Council of Europe, Strasbourg. Available upon request.

² See 22 state responses to Question 1 in the document “*Information provided by the DH-MIN Members on the Questionnaire on the “distribution of public financial support (subsidies) for national minority associations”*”, DH-MIN(2009)007 rev 1, Strasbourg, 28 January 2010

2. The conceptual framework: minority policy paradigms and minority policy regimes

As noted before, the proposed conceptual framework combines a rights-based approach to minority protection with a descriptive approach to public finance. Its main purpose is to create a frame of reference for the analysis of existing political practices in the field of the public financing of NMOs. To illuminate the distinctive decision-making logic underlying the choice of NMO financing schemes, we construct minority policy paradigms and distinguish them from minority policy regimes. A minority policy paradigm is a conceptual schema which, by abstracting from the complexities of the real world, sets out an internally consistent decision-making system in the field of minority protection and public financing. Minority policy paradigms differ significantly from the actual minority policy regimes which are far messier. Indeed, minority policy regimes consist of a patchwork of policies which have evolved historically, are often inconsistent, and are aimed at balancing state and minority interests which change continually. In this study, we use minority policy paradigms - interpretative structures based on internally consistent set of choices - as evaluative criteria in the analysis of actual minority policy regimes. As frames of references, minority policy paradigms help to identify inconsistencies among the various policy components of the minority policy regime and give clues for enhancing their coherence and effectiveness. They also help reveal misfits between the declared goals of the regime and the policy tools used for their achievement.

Minority policy paradigms have five major characteristic, as follows:

- rely on specific state responses to the accommodation of ethnocultural diversity, such as the 'integrationist' or 'accommodationist' approaches;
- describe policy goals in the field of minority protection in reference to existing international minority protection standards (e.g. equality and non-discrimination of persons belonging to ethnic, linguistic and religious minorities);
- acknowledge the existence of various NMO types with characteristic purposes (e.g. minority membership associations focusing on self-representation or NGOs specialising in principled action for minorities);
- employ distinctive financing schemes in order to support various types of NMOs (e.g. general subsidies or project based schemes)
- distinguish between various types of participatory mechanisms enabling minority input into the financing policy process.

In the following, the five key dimensions of minority policy paradigms focusing on the public financing of NMOs are presented.

2.1. State responses to ethnocultural diversity: the macro-political context of policy choices

Commentators argue that democracies have two broad choices in the management of ethnocultural diversity: integration and accommodation (McGarry *et al.* 2008).³ These

³ This study does not discuss state responses to ethnocultural diversity which are incompatible with a democratic state. We understand that democratic states respect human and minority rights and refrain from

two state responses differ significantly in the ways they relate to the fundamental values of stability, fairness/justice, and democracy. In relation to stability, integrationists believe that conflict results from group-based partisanship. Hence, they posit that social cohesion can be achieved by public homogenization through common citizenship and the restriction of ethnocultural diversity to the private domain. In contrast, accommodationists hold that in deeply diverse societies equal citizenship in itself is a source of instability, and it is the public recognition and institutionalization of ethnocultural difference which creates long-term stability (McGarry *et al.* 2008:41-42). With regard to fairness, integrationists claim that group rights promote privilege and may empower groups to repress their own members. On the other hand, accommodationists insist that the privatization of culture and the claim of neutrality and impartiality disguise the interests of the dominant group whose culture and language form the basis of state identity. Finally, in reference to democracy, both integrationists and accommodationists worry that the institutional arrangements favoured by their counterparts undermine democracy. It has to be pointed out that these two broad strategies are not mutually exclusive and they are often used jointly by states. For instance, western liberal democracies often use integrationist policies for immigrants and accommodationist policies towards mobilized national minorities or indigenous peoples (McGarry *et al.* 2008, Kymlicka 2007, Keller 1998). Further, integrationist models often involve some degree of accommodation of cultural diversity within common institutions. On the other hand, an accommodationist strategy for a group may have an integrationist function in the broader context of the state. In fact, the two approaches can be placed at the two ends of a continuum rather than viewed as dichotomous. Many state responses to ethnocultural diversity lie in the middle of this spectrum.

Commentators argue that both integration and accommodation are different from assimilation (McGarry *et al.* 2008:42). Assimilation aims to erode ethnocultural differences in both the public and private spheres. Integration and accommodation do not require conformity across the public and private dimensions of life. Integration promotes a common public space but remains indifferent towards diversity in the private domain. Accommodation promotes the maintenance of cultural difference in both the public and private spheres. Scholars associate the integrationist state response to ethnocultural diversity with affirmative remedies for cultural and socio-economic injustice (Fraser 1997). In their view, affirmative remedies seek to address the *outcomes* of cultural misrecognition and socio-economic maldistribution without changing the underlying political-economic structure. In contrast, the accommodationist model applies transformative remedies. It is posited that while transformative remedies change everyone's identity by creating equal public status and participatory parity for groups⁴,

the forced elimination of ethnocultural diversity including genocide, expulsion, forced assimilation and territorial downsizing. These state responses to ethnocultural diversity management are discussed in detail in McGarry and O'Leary (1993).

⁴ Kymlicka emphasises that "The liberal view of multiculturalism is inevitably, intentionally, and unapologetically transformational of people's cultural traditions. It demands both dominant and historically subordinated groups to engage in new practices, to enter new relationships, and to embrace new concepts and discourses, all of which profoundly transform people's identities and practices" (Kymlicka 2007:99). Nancy Fraser (1997) defines 'participatory parity' as the possibility of individuals and groups to participate on a par with others in social interaction. In her view, participatory parity has three basic conditions. First,

they also address unjust socio-economic distribution by transforming the underlying political-economic structure (Fraser 1997, Kymlicka 2007). The major differences between the two approaches are summarized in the Table below.

Table 2.1. Integration and accommodation: key characteristics as underpinned by minority rights

	Integration	Accommodation
Subjects of arrangements	Individuals	Groups
Means by which stability is achieved	Equal citizenship Affirmative remedies	Group rights and differentiated citizenship Transformative remedies
Institutional repertoires	Institutions that transcend, cross-cut and minimize differences	Institutionalized expression of differences in the public realm including various forms of self-governance for groups
Social outcome	Public homogenization; stands against the public institutional recognition of group identities Unequal status of ethnocultural groups	Multiple public identities Equal status of groups Participatory parity of ethnocultural groups
Feasibility	Minorities are numerically small, interspersed; the state is comprised of many ethnic communities none are dominant; social divisions in a state are cross-cutting rather than reinforcing	Minorities are large and territorially concentrated; they are mobilised; they possess the political resources to resist integration

For the most part, international organisations promote integrationist approaches. Occasionally, they support accommodation, albeit often as a response to bloody conflicts (McGarry and O’Leary 2007, Kymlicka 2007).⁵

2.2 International minority rights: the normative dimension of policy choices

International minority rights norms, together with the basic norms of liberal democracy in which they are embedded⁶, guide and constrain the scope and process of minority

the establishment of formal legal equality is a necessary, albeit insufficient condition. Second, the distribution of material resources needs to ensure participants’ independence and voice. Third, institutionalised cultural patterns of interpretation and evaluation must ensure equal respect for all participants and equal opportunity for achieving social esteem.

⁵ For an analysis of international organisation’s ambiguous and inconsistent position on integration and accommodation, see Kymlicka 2007, 2008 and 2011.

⁶ The interconnectedness of minority rights and the values of liberal democracy are firmly established in global and regional minority protection instruments. In its Preamble, the Framework Convention for the Protection of National Minorities describes a “genuinely democratic society” is one that not only respects,

policies. Importantly, they prohibit the elimination of ethnocultural diversity by force, and set out minimum standards for the management of national or ethnic, linguistic and religious difference. There is only one legally binding minority rights instruments globally. This is the 1998 Framework Convention for the Protection of National Minorities (FCNM) elaborated by the Council of Europe. The rest of minority rights instruments pertain to the realm of 'soft law', which are not binding in a legal sense, however, they carry some authority. Soft law instruments include, *inter alia*, declarations, commentaries, resolutions and recommendations elaborated by relevant organs of international organisations. Not all governments share a view of 'graduated normativity'⁷ in their reading of legal instruments and they routinely omit soft law in their interpretation of minority rights.⁸ The margin of appreciation available for states in international law, especially if the law in question is programmatic, makes this disregard for soft law possible. To make justice to both possible approaches in the interpretation of minority rights, we make reference to existing soft law in the field of minority protection, since we recognize that, being broader in scope and contents and more specific than legally binding minority rights, soft law describes more adequately the practices of those states which go beyond the minimum standards enshrined in the single legally binding international minority protection, the FCNM.

With the exception of the 2007 UN Declaration on the Rights of Indigenous Peoples (UNDRIP)⁹, minority rights are overwhelmingly integrationist (McGarry *et al.* 2008, Kymlicka 2007, Kovács 2003). It is in the framework of soft law that an accommodationist tendency in the interpretation of minority rights has evolved. With the exception of UNDRIP, this accommodationist tendency has emerged most explicitly and robustly under the fourth pillar of minority rights: "the effective participation of persons

but enables minority individuals to express, preserve and develop their identities. Similarly, in its Preamble, the UN Declaration on Minorities puts forward that the "constant promotion and realisation" of minority rights are an integral part of the society as a whole and are carried out "within a democratic framework based on the rule of law".

⁷ Unlike the 'binary view' according to which a prescription can be legally binding or not, 'graduated normativity', also known as the 'continuum view', holds that law can have a variety of legal impacts and effects, direct and indirect ones, stronger and weaker ones. "Graduated normativity means that law can be harder and softer, and that there is a continuity between hard and soft (and possibly other qualities) of law" (Peters and Pagotto 2006:8).

⁸ For instance, in its General Comment No. 23 , "Rights of Minorities (Article 27), adopted 8 April 1994, para 5.1. and 5.2. , the Human Rights Committee ruled that even visitors in country can claim certain minority rights under Article 27 of the International Covenant on Civil and Political Rights (ICCPR). However, as the numerous declarations and reservations attached to the signature of the FCNM show, many states ignore the ruling set out in this Commentary, and refuse to include immigrant minorities among the beneficiaries of the FCNM. Or, many states simply ignore the 1999 Lund Recommendations on the Effective Participation of National Minorities in Public Life put forward by the High Commissioner on National Minorities of the OSCE.

⁹ As it is widely known, UNDRIP recognises indigenous groups as peoples and enshrines their right to (internal) self-determination. Special measures for the realisation of the right to self-determination include: autonomy or self-government over their own internal and local affairs coupled with participation through free, prior and informed consent in the adoption of legislative or administrative measures that may affect them; collective land rights; use of natural resources and territories; the practice of customary law; the protection of traditional knowledge, intellectual property, and cultural heritage; and environmental conservation. A more detailed analysis of the rights enshrined in the UNDRIP see in Errico 2007.

belonging to national minorities in cultural, social and economic and in public affairs, in particular those affecting them” (Article 15, FCNM). In conceptualizing the major forms of minority policy paradigms we rely on all four pillars of minority rights as they have emerged historically. We point to these rights to evaluate minority policy goals set forth by states from a normative perspective. In the following, we present the four pillars of minority rights and the ways they relate to integrationist and accommodationist approaches.

The rights of minorities have evolved historically along four major themes including the right to existence; equal treatment and non-discrimination; the right to identity and diversity; and, finally, the right to participate in cultural, social, economic life and public affairs (Malloy *et al.* 2008; Medda-Windischer 2010). The oldest, and most basic minority rights focus on the *existence of minorities* and oppose their physical destruction including genocide, ethnic cleansing, policies of demographic change, territorial reorganisation or coercive assimilation.¹⁰ The existence of minorities in a state does not depend upon a decision by that state. Rather, it is a question of fact, i.e. it needs to be established by objective criteria. However, the recognition of minorities by states, directly or indirectly, makes a vital difference since it is a precondition for the establishment of minority policies. Hence, the recognition of the existence of ethnocultural minorities by a state is an important step in the implementation of minority rights and the design of minority policies. Nevertheless, it has to be pointed out that some states have designed minority policies without their explicit recognition (e.g. Bulgaria or France).

Non-discrimination and equal treatment are the second crucial dimension of minority protection. In its most basic and most dominant form, the principle of non-discrimination and equal treatment is associated with the achievement of formal equality between individuals, i.e. the consistent treatment of likes alike. This approach focusing on formal equality before the law has been legitimated on the ground that it advances the liberal goals of state neutrality, individualism and the promotion of autonomy and, as such, it lies at the foundation of the integrationist approach. However, in the context of minority protection this concept of formal equality has been found insufficient since, besides its concern with the elimination of unsolicited difference on an individual basis, it does little for the preservation of those group-based differences which are to be voluntarily maintained. Hence, the concept of formal equality has been complemented with the notion of substantive equality (or full and effective equality) which acknowledges differences in starting positions and recognises differential treatment. Substantive equality is based on the acknowledgement that apparently identical treatment can in practice reinforce inequality because of past or on-going discrimination (Fredman 2007:11). In its Article 4 the FCNM takes on board the concept of full and effective equality and recognises the legitimacy of differential treatment. In this approach, equality as consistency is complemented with ‘adequate’ or ‘special measures’ which take into account the specific conditions of persons concerned. The Explanatory Report of the FCNM stresses that the FCNM takes a ‘classical approach’ to equality and non-

¹⁰ See, among others, the Genocide Convention, Art 7(d) of the Statute of the International Criminal Court and Art 16 of the FCNM.

discrimination, i.e. special measures taken need to be in conformity with the proportionality principle which, requires, among others, that such measures do not extend, in time or scope, beyond what is necessary in order to achieve the aim of full and effective equality. With its individualist approach, the FCNM fits well into the integrationist state response to ethnocultural difference, albeit it does have an accommodationist dimension through the recognition of special measures stemming from group-based differences. However, unlike parallel provisions, such as Article 2(2) of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) or Article 2 of the UN Declaration on the Rights of Indigenous Peoples, it does not refer to both individuals and groups. Hence, it does not promote the equality of minorities as groups with the dominant society which is the starting point of accommodationist state responses to ethnocultural diversity (Alfredsson 2005:150-151). Hence, as it is, the right to equality and non-discrimination is more adequate for fighting individual segregation based on ethnocultural difference rather than cultural assimilation. Overall, it can be concluded that, as enshrined in the FCNM¹¹, the right to non-discrimination and equal treatment posits a rather minimalist approach to substantive equality which can be satisfied with integrationist public policies for minorities.

To counteract the danger of assimilation, minority protection standards promote *the right to identity and diversity*, that is the right to maintain and develop their distinct linguistic, ethnic and religious characteristics and cultural practices within a diverse society. The obligation to protect and promote identity has an individual and collective dimension as both individuals and communities benefit from it (Medda-Windischer 2010). Hence, the realization of the minority right to identity brings ethnocultural diversity into the public sphere more emphatically, albeit very cautiously. For instance, in the domains of linguistic rights and education minority rights are overly qualified. In order to use minority languages with administrative authorities and in public services, Article 10(2) FCNM requires ‘appropriate circumstances’, such as being a minority ‘traditionally or in substantial numbers’, or, if those persons ‘so request’ and where such request corresponds to a ‘real need’. Further, in accordance with Article 11(3) FCNM, local names, street names and other topographical indications intended for the public can be displayed in minority languages in “areas inhabited by significant numbers of persons belonging to a national minority” and when there is “sufficient demand”. In terms of education in minority languages, the FCNM sets out squarely that minorities have the right to “set up and manage their own private educational and training establishments” (Article 13 (1)). However, the exercise of this right does not entail any financial obligation for the state (Article 13(2)). Similarly, state-funded education in minority languages is restricted to “areas inhabited by persons belonging to national minorities traditionally or in substantial numbers”; by “sufficient demand” and “as far as possible and within the framework of their education systems” (Article 14(2)). Finally, the FCNM and its Explanatory Report spell out explicitly that the preservation of minority identity goes hand in hand with integration into the overall national society through the proper “knowledge of the culture, history, language and religion of both national minorities and the majority population in an intercultural perspective” (paragraph 71.,

¹¹ See in this respect the analysis of existing case law on non-discrimination and equal treatment by Henrard (2007 and 2008).

Explanatory Report). Overall, it can be said that the FCNM construes the right to identity in an integrationist approach, although, through rather ambiguous and vague qualifications, it allows for the shifting of ethnocultural diversity into the public sphere to a certain degree. In principle, the right to identity and diversity can describe the policy goals of both integrationist and accommodationist approaches, depending on the concrete realization of this right. As they exist, minority rights stay firmly within an integrationist approach. However, the recognition of the right to maintain and promote a distinct culture in the public realm opens up avenues for a more proactive interpretation and implementation of this human right. Hence, there is a definite move from negative obligations based on non-interference in the private sphere towards positive undertakings in the public sphere. In case minorities have the resources to negotiate with the state a more robust presence in the public sphere, they can push for a more accommodationist state approach in certain issue areas, such as the public financing of minority universities or the use of minority languages as official languages in certain regions. Hence, whilst the right to non-discrimination and equal treatment favours integrationist public policies for minorities, the recognition of the right to identity can be seen as a critical condition for the shift of state policies towards accommodationist responses to ethnocultural diversity.

With regards to the ***full and effective participation of minorities in economic, social and cultural life and public affairs*** (participation *hereafter*) Article 15 of the FCNM and the Explanatory Report presents a non-exhaustive list of measures that member states can promote in order to create the conditions necessary for the effective participation of minority individuals in particular in decisions that directly affect them. These measures include: consultation of minorities - by means of appropriate procedures and through their representative institutions - in the design of legislation or administrative measures that affect them directly; the involvement of minority persons in the preparation, implementation and assessment of national and regional development plans and programmes that affect them directly; the undertaking of studies with the involvement of minority persons in order to assess the possible impact on them of projected development activities; the effective participation of minority persons in decision-making processes and elected bodies both at national and local levels; and, the establishment of decentralized or local forms of government (paragraph 80, Explanatory Report). It is clear from the list that the proposed forms and levels of participation include both integrationist and accommodationist tools. Existing soft law¹² expands significantly this institutional participation repertoire to include robust forms of minority accommodation based on co-governance. Further, it is also clear from the ‘article by article’ approach of the FCNM and existing minority rights commentaries that entitlements depend on the

¹² See, at a minimum, the 1999 OSCE Lund Recommendations, AC FCNM Commentary 2, the documentation of the meeting on “Minorities and Effective Political Participation” of the UN Forum on Minority Issues, 12-13 December 2009 available at: http://www2.ohchr.org/english/bodies/hrcouncil/minority/documentation_2ndsession.htm and the special issue of the International Journal on Minority Group Rights (IJMGR) ‘Ten Years of the Lund Recommendations on the Effective Participation of National Minorities in Public Life - Reflections on Progress and Unfinished Business, Vol. 16 No.4, 2009, Martinus Nijhoff Publishers.

type of minority concerned.¹³ Sizeable and compact historical minorities are entitled (although do not have the right) to various forms of territorial autonomy, while smaller, dispersed autochthonous minorities can avail of cultural autonomy. ‘New’ minorities stemming from migration generally do not claim such forms of autonomy but rather opt for some integrationist variants of participation including representation (Eide 2005, Malloy *et al.* 2008). Overall, it can be said that the right to full and effective participation includes both integrationist and accommodationist forms of minority participation in governance.

2.3. National minority organisations and organisational identities

The public financing of national minority organisations stands in the centre of this inquiry. Do NMOs have any characteristics which need to be taken into account when taking decisions on their public financing? As noted before, in this inquiry NMOs are defined as *civil society organisations* which focus exclusively on minority issues. Based on their composition, empirical studies on NMOs distinguish between two types of NMOs. First, there are structures that are comprised of individuals who only self-identify as minorities. These are the ‘minority membership’ NMOs. Second, there are NMOs which are formed of individuals who may self-identify as non-minorities or as minorities. These are the NMOs of ‘universal’ composition, or, for the purposes of this study, simply NGOs. It is posited that these two types of NMOs have distinct organisational identities, with the minority membership NMOs pursuing self-representation through direct participation and the ‘universal’ composition NMOs (or NGOs) operating on the basis of universal normative values not necessarily linked to the self-interest of participating actors (Bíró and Lennox 2011). This study employs this analytical distinction between minority membership NMOs and NGOs, since these two types of organisations have different functions in the decision-making of minority policies. While NMOs representative of minorities can ensure participation in decisions directly affecting them, NGOs of universal composition engaging in activism *for* minorities cannot perform this function. Hence, it is posited that the sustainable financing of representative minority NMOs enables their participation in public affairs and helps accommodating their interests. It is expected that in accommodationist approaches to ethnocultural diversity, the distinct organisational identity and political function of minority membership NMOs are acknowledged and their appropriate financing enables them to perform this particular political function linked to self-representation. It has to be pointed out, that while this paper focuses primarily on NMOs located in the civil society, we also look at the changing political functions of NMOs across the various paradigms as they increasingly reach into the public sphere and sometimes change into political parties, government structures or public institutions. Finally, it is worth noting that in addition to self-representation, NMOs can perform additional functions. They often deliver public services in the domains of the economic and social rights of minorities. Similarly to the DH-MIN Questionnaire, this paper focuses primarily on the political function of NMOs. The possible economic and social services provided by NMOs are beyond the scope of this paper.

¹³ Reference: Eide UN Commentary; See the explanation of the ‘article by article’ approach adopted by the Advisory Committee of the FCNM in XX

2.4. Public finance principles and mechanisms underlying NMO subsidies

In this section we review briefly those public finance principles and concepts which are used for the construction of paradigms. First, we present those types of subsidies which are widely used for financing NMOs. We then review the policy logic which informs their application from the perspective of financing authorities. These considerations will help us connect financing instruments to the specific minority policy goals of states. Finally, we will assess how the various financing mechanisms influence NMO sustainability and their capacity to develop and implement strategies for the representation and protection of minority interests. With this approach we aim to identify those financing instruments which are consistent with the philosophy and objectives of the different paradigms.

2.4.1. Key types of subsidies

A subsidy is a monetary assistance granted by a government to a person or organization regarded to supply some functions that are in the public interest. We order the subsidies which are widely used for financing NMOs in three types. These are: (a) basic or general-purpose subsidies, (b) thematic subsidies, and, (c) and project based subsidies. Below we discuss each of these types of subsidies according to four criteria including definition; policy discretion of the state; the logic behind the use of subsidies and, finally, the impact on NMOs.

(a) *General-purpose subsidies* are funds provided for an organization in the form of a general budget support. This financing instrument transfers the discretion over the use of the funds to the recipient organization. It is logical for the government to offer general subsidies for those organizations whose existence and missions are in the public interest, and when it is desirable that the organisation has wide discretion over its strategy and operation.

The amount of general-purpose subsidies can be determined by multi-year schemes or they may be allocated by yearly decisions. If the law secures some degree of multi-year predictability for the amount of such subsidies, the recipient organization can build multi-year strategies for achieving its mission. In case general subsidies are allocated on a discretionary basis, and the practice is that the amount is volatile (i.e. changes considerably on a yearly basis), multi-year strategizing is more problematic.

It has to be pointed out, however, that, in itself, the existence of general purpose subsidies is insufficient for creating sustainability and strategy discretion for the recipient organization. For securing an adequate degree of discretion, an additional condition is necessary: the adequacy of the amount of the general subsidy.¹⁴ In sum, a predictable

¹⁴ It was noted earlier that the financing mechanisms and schemes are tools to implement policy objectives. Whether these mechanisms can effectively do their job depends not only on the architecture of the mechanisms (internal logic and consistency, adequacy for the purpose, etc.) but it also depends on the

amount of general subsidy that is adequate to fulfil the organization's mission, creates the possibility for the organization (NMO in our case) to preserve its existence and develop its own strategy for achieving its mission.

(b) '*Thematic subsidy*' is the second category we introduce.¹⁵ We use this term for all those subsidies that offer support for an organization in providing services in a given activity domain (e.g. education or media). While the role of general subsidies is to secure sustainability of NMOs that provide political representation for minorities, thematic subsidies are tied to the delivery of specific services in the issue areas related to economic, social and cultural rights.

In the case of this subsidy the government keeps the discretion over the definition of services and activity domains¹⁶ it supports. Nevertheless, it transfers the discretion over the allocation of funds among specific uses within the designated domain to the recipient. With the use of this financing instrument the government can secure the provision of certain services (e.g. primary education in a minority language) it sees important¹⁷, and, at the same time, it allows the recipient to determine the exact content and specifics of these services. Thematic subsidies are supplied for specific service provision activities in the domain of minority protection. Hence, the recipients of these subsidies are often not those NMOs which engage in political representation and take part in political negotiations with the government. Rather, these are specialized service provision units, such as minority schools, minority cultural centres or minority media. The economic, cultural and social services provided for minorities by NMOs and other organisations are crucial elements of a minority policy regime. However, they are beyond the scope of this paper. This analysis identifies the existence of thematic subsidies a given financing system without analysing them in-depth.

Similarly to general subsidies, in addition to conditions attached to the use of the thematic subsidy, the amount and predictability of yearly allocations also influence recipients' possibilities to develop sustainable services and multi-year strategies for the development of these services.

amount of money that they distribute. Financing mechanisms can only be effective if they are coupled with an adequate level of funding. This is an obvious conclusion in public finance, and it is one that is explicitly referred to in AC FCNM Commentary 2, for instance. While the adequacy of funds is crucial, it is very difficult to define in general terms what it means in a specific situation. The definition of the adequate amount is well beyond the scope of this paper.

¹⁵ The most common form of these subsidies are 'block grants' that are lump sum contributions from the government for a specific activity domain. In the majority of countries minority education, media and other functions are effectively supported by lump sum block grants. We introduced the term 'thematic subsidy' instead of 'block grants' because there are some countries (e.g. Hungary) where minority education is supported by per capita normative transfers. In these cases the normative transfer for minority education is the subsidy for the specific activity domain. The 'thematic grant' term includes both types of subsidies and focuses attention on the subsidy's function rather than the type of mechanism.

¹⁶ The distinctive feature of this type of subsidy is the definition of the domain. This does not imply, however, that other conditions of the services provided cannot be determined by the government.

¹⁷ The decision on thematic subsidies may also be based on an agreement with the minorities, i.e. a decision made as a result of a successful consultation or a shared decision.

(c) *Project based subsidies* form the third type of financing instruments. Project based subsidies are intended to provide incentives for organizations (NMOs in our case) to undertake specific programs, projects or activities that fall within the policy objectives of the central government. The government makes the decision on goals and objectives and the NMOs are practically implementation agencies which can fill the implementation strategy with ideas and expertise. When governments apply this type of subsidy alone they do not take any responsibility for the sustainability or stability of NMOs or for the services they provide for their constituencies. They just purchase specific services from them, and in most cases they allow for the recipient organization to cover only direct project costs. When only project based subsidies are available for NMOs, their existence is less secure as it depends on how many successful project proposal they can develop in one year. This lack of security limits the possibilities of NMOs for running highly professional and effective organizations and for developing independent strategies.¹⁸

2.5. Mechanisms for minority participation in public affairs

The analysis of democratic policy making incorporates both substantive and procedural elements. Hence, we see participation as a constitutive element of the minority policy and public financing paradigms we conceptualise. Following the brief overview of financing schemes, we now consider the participation of NMOs in the financing policy process – a procedural element.

Our proposition is that the type of participatory mechanism employed in a policy process is of crucial importance, since it strongly influences both the actual outcome of the given policy process as well as the stability of results and the prospects for later changes. For instance, when the participation of NMOs is restricted to issue-based schemes initiated by state actors, the state/minority (or majority/minority) relation is rather asymmetric. When stable, institutionalized participatory mechanisms are established, the power relation can become more balanced and an ongoing democratic dialogue can be established. This democratic dialogue then shapes the culture and identity of both minorities and the dominant society. Thus, a longer term transformative policy processes can be induced which develops the conditions for participatory parity and can always adjust the political and social arrangements to the dynamically changing context. In this part we discuss the participation of NMOs in the policy process from two angles. First, we consider the types of participatory mechanism employed. Second, we examine the levels of NMO involvement in decision-making on minority related policies.

2.5.1. Types of participatory mechanisms

We distinguish two main types of participatory mechanisms: issue-based and institutionalized. The purpose of issue-based participatory mechanisms is to build agreement on a specific issue. In most cases, these are convened on an occasional basis in order to discuss a specific policy design or implementation mechanism. In issue-based

¹⁸ For effective functioning, organizations need staff, infrastructure and some reliable system of communication. Creating all these conditions entail expenses and oblige organizations to incur relatively large indirect costs which cannot be charged against project grants (Telgarsky, 2002).

mechanisms the convener has the power to limit the scope and timeframe of the discussion. Such limitation is feasible, as agreement on a specific issue is possible without harmonizing cultures, values or all expectations of participants.

Issue-based mechanisms are perfectly adapted to support affirmative policy processes or decisions on implementation mechanisms for an already determined policy. They are in line with the minimum requirement enshrined in the letter of the FCNM, Art 15 in particular. However, CoE AC Commentary 2 on participation calls for more:

“Promoting the effective participation of persons belonging to national minorities in the society requires continuing and substantive dialogue, both between persons belonging to national minorities and the majority population and between persons belonging to national minorities and the authorities. These two dimensions of dialogue can be achieved only if effective channels for communication are in place.” (p.12).

We call the second type of participatory mechanism ‘institutionalized’ since it refers exactly to the formal institutional frame of such “continuing and substantive dialogue” and its ‘effective channels for communication’ (quoted from above). This is a permanent mechanism whose primary role is to maintain an on-going democratic dialogue over different themes and issues. It can sustain discursive processes in which understandings, learning and making sense of the processes happen and through which issues of public concern emerge and are dealt with. This institutionalised dialogic process can have a transformative capacity, i.e. it can result in the change of identities and the distribution of power over identities. However, when needed, it can also accommodate periods of intensive debates or negotiation of certain themes or issues. The primary aim of institutionalized participation is not necessarily consensus building on all major issues and affairs that were raised. This may not even be possible. Rather, its primary aim is the creation of a safe place for public dialogue that is based on participatory parity.

Institutionalized and issue based mechanisms establish different types of relation between governments and NMOs. The exclusive use of issue-based participation establishes asymmetric power relations between the state and minorities. In this case, the state invites NMOs to share information or consult. It keeps in its discretion not only the subject of the discussion but, often, also limits the range of expressible opinions. Further, when participation depends on invitation, invited participants often self-censor in order to keep the willingness of the state to maintain, at least, a limited dialogue. In contrast, permanent participatory mechanisms, being often regulated by laws, create safer places for dialogue since their next sessions do not depend entirely on the political will of state actors. Such places for public dialogue are crucially important for maintaining working minority/majority relations.

2.5.2. Levels of minority participation in policy decisions

While international minority rights standards and their authoritative interpretations address the different forms of minority participation in public life in detail¹⁹, the various levels of participation in the public policy process remains an issue-area that needs to be

¹⁹ For most recent authoritative interpretations on participation see *supra* note 12.

further specified. Policy analysis provides categories of participation which can be useful for assessing the degree of NMO involvement in the allocation process. Based on the typology of participation which is used in public policy and international development literatures, we propose a simple set of categories that could render the analysis of the public financing of NMOs more accurate. The various levels of participation are, as follows:

- *Information-sharing* is a one-way flow of information from the government towards NMOs. Such one way channel of information keeps NMOs informed, provides transparency and builds government legitimacy but does not secure effective involvement in the process and in the shaping of outcomes.
- *Consultation* involves information sharing and the gathering of NMO reactions and feedbacks. Albeit the mechanisms belonging to this level establish a two-way information flow, this is an asymmetric one since the results of consultations are non-binding for decision-makers. Consultation is stronger than information-sharing, as the consultation process increases the political cost of neglecting the opinions expressed by NMOs. At the same time, it is weaker than the next level, (joint decisions) where the decision-making power remains with the initiator.
- *Joint (shared) decisions* mean that there is a shared control over the decisions made. In most cases, and by the logic of this mechanism, involvement is not restricted only to the decision itself but includes other activities pertaining to the policy process. Shared decisions made by the government and NMOs allow for the agreement on policy objectives and their implementation.
- *Devolved decision* is a mechanism that transfers the control over decision-making, resources, and activities from the government to NMOs. A devolved decision means that the assigned representatives, acting autonomously according to their interests, can make decisions on a given issue without the significant involvement of the government.

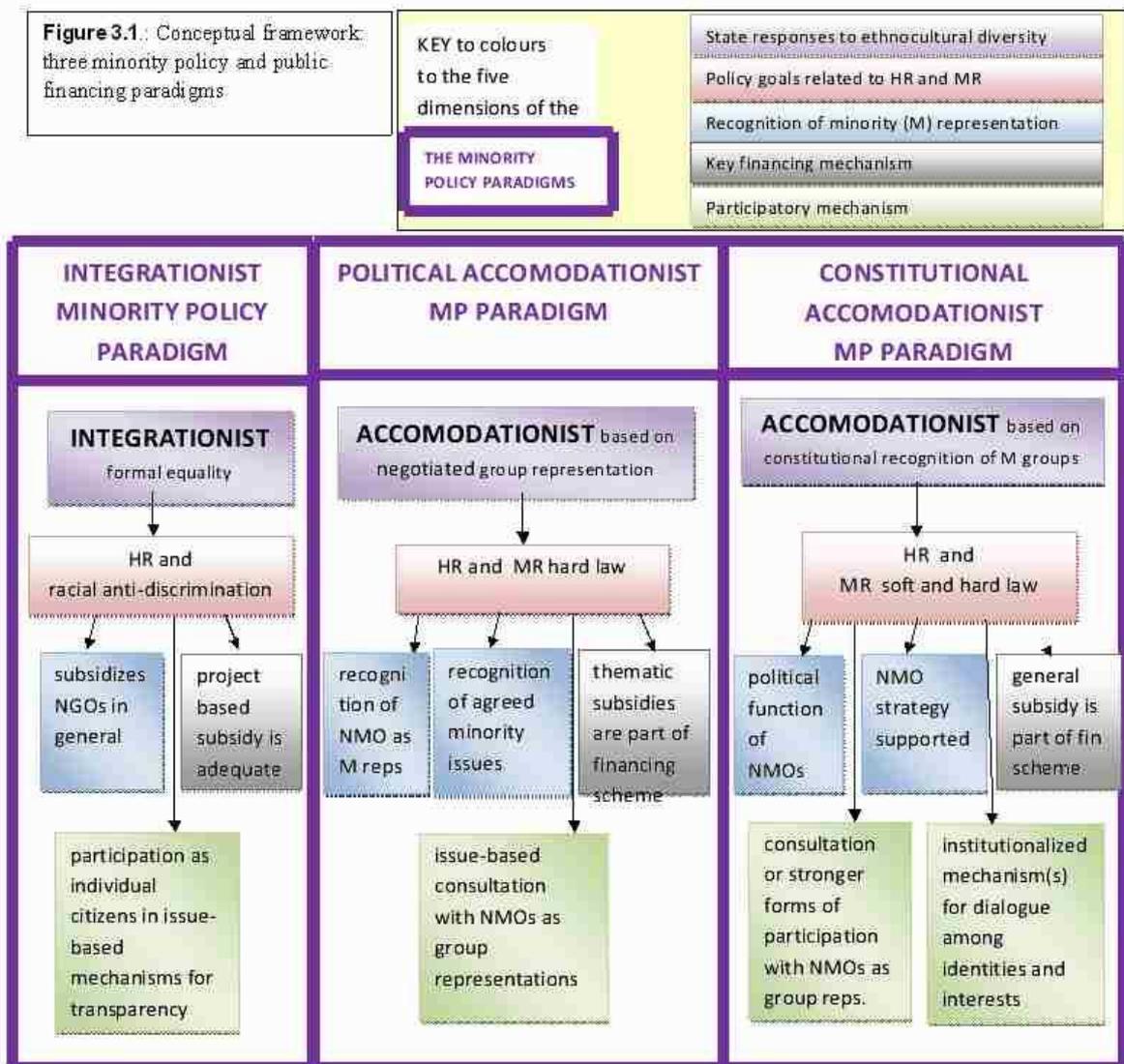
This terminology helps to distinguish between the various possible levels of minority participation signalling significantly different possibilities for influence, i.e. different power relations.

3. Description of policy paradigms

Following the brief presentation of the five constitutive elements of minority policy and public financing paradigms, we have distinguished three distinctive logics of policy making in this particular field. These distinctive logics underpin the three minority policy and public financing paradigms we introduce. These paradigms are: (a) the integrationist; (b) the political-accommodationist and, finally, (c) the constitutional accommodationist paradigms. The proposed minority policy paradigms are underpinned by two major state responses to ethnocultural diversity in democracies: integration and accommodation. The policy goals of each paradigm are related to the four generations of minority rights as they mark new openings and potentials on the continuum between these two macro-political approaches. It is the state's macro-political response to

ethnocultural diversity and its minority policy goals as related to human and minority rights which are the foundations of the minority policy paradigms we introduce. These create the policy context in which the financing policies of NMOs are framed. Thus, the states' approaches to ethnocultural diversity management and their policy goals are discussed jointly in the description of these paradigms. The additional elements of the conceptual framework include the types of NMOs characteristic of each paradigm and the financing schemes states utilise for subsidising NMOs. Finally, the participatory mechanisms employed in each paradigm are presented to assess the levels and sustainability of NMO involvement in the financing policy process. It is important to point out that the principal purpose of these paradigms was to create an evaluative framework in which the appropriateness of an NMO financing policy can be established through understanding how policy choices influence the design of financial policies. These minority policy paradigms were not constructed for the normative assessment of minority policies as such. The constitutive elements of the three paradigms are summarised in **Figure 3.1.** below.

Figure 3.1: Conceptual framework: three minority policy and public financing paradigms



3.1. The Integrationist Paradigm

The first minority policy and public financing paradigm is integrationist, since it tries to achieve stability through public homogenization and it refutes group-partisanship. It is based on an individualist approach and, for the most part, it restricts ethnocultural diversity to the private domain. Whilst the integrationist paradigm may recognize the existence of minorities and refrains from coercive assimilation, it relies primarily on general human rights. In this paradigm ethnocultural diversity is managed through reference to the right of equality and non-discrimination which is translated into antidiscrimination policies prioritizing formal equality or equal opportunity at a maximum. Democracies which do not recognize national minorities and rely solely on human rights (like France or Greece), or states which interpret the FCNM narrowly, belong to this paradigm.

If issues related to ethnocultural identity are considered as private matters, than, logically, minority membership NMOs are not distinguished from NGOs of universal composition specializing in minority issues. Neither they are treated differently from any other NGO supplying similar services. As public subsidies are instruments to support activities in public interest, as long as ethnocultural identity is a private matter, specific funds for minority protection are not necessary. The provision of specific funds would be inconsistent with the state philosophy. Since in this paradigm the existence of minority membership NMOs engaging in self-representation is not seen as a public interest, a claim for general subsidies cannot be supported. Integrationist states can fulfill their policy goal of antidiscrimination simply by creating identical conditions for NGOs and NMOs in the allocation process of project-based or thematic subsidies. Overall, the financing instrument consistent with the integrationist paradigm is the project-based subsidy allocated on equal terms to all NGOs.

Finally, since in the integrationist paradigm no distinction is established between NMOs and NGOs, specific expectations for the participation of NMOs in the policy process cannot be supported. In a given country, the type and level of NMO participation is dependent on the political culture and normal mechanisms which have developed in the context of basic democratic transparency, and include, at a minimum, information sharing.

3.2. The Political Accommodationist Paradigm

The second paradigm is located between the integrationist and accommodationist paradigms. To point to its highly political character, we refer to it as the political accommodationist paradigm. While this paradigm holds public homogenization the source of social cohesion, it applies some special measures which bring group identities into the public sphere. In practice, the move from the integrationist philosophy to the political accommodationist approach, does not happen as a principled reconstruction of state approaches to ethnocultural diversity. Rather, it occurs as a pragmatic shift in response to minority demands often coupled with external pressure for adherence to international norms. The results of bilateral or multilateral bargaining with minorities and external pressure are often agreements on some special measures for minority

protection. These agreements normally depend on the actual state-minority power relations. Overall, the key feature of the political accommodationist paradigm is the establishment of some minority protection measures resulting from political bargaining and external pressure. For the most part, these measures are based on political agreements. However, once established, they can be formalized in various laws, such as laws on education or public administration. Nevertheless, even if they are legalized, these measures do not change the overall identity of the state from unitary to multicultural. Neither they imply the radical political-economic restructuring of state power in order to establish participatory parity for multiple ethnocultural groups. As international minority rights, these special measures focus mainly on cultural issues.

Although largely based on an individualist approach to human rights, the political accommodationist paradigm acknowledges publicly the group-based dimension of minority existence to a limited degree. It subscribes to the right to identity and diversity without guaranteeing more robust forms of participation for minorities in the economic, social, cultural life and public affairs of the country. Those countries belong to these groups which interpret the rights of the FCNM on education and linguistic rights more broadly, without, however, granting any form of self-governance for minorities or funding of tertiary minority language education.

In terms of NMO subsidies, the state/minority agreements can include any of the three types of subsidies, but a typical result of such state/minority negotiations is the introduction of different thematic grants for certain minority related activities, such as minority language education or support for minority media. Such a decision implies that the state accepted that certain minority issues are in the public interest. In addition to thematic grants which are seen as the most consistent financing instrument in this paradigm, general purpose subsidies can also be part of such negotiated financial support systems. When general purpose subsidies are offered to NMOs it means that the state implicitly accepted the necessity of NMOs existence and their role in majority-minority relations.

Finally, whilst in the political integrationist paradigm the group dimension of minority rights is acknowledged, group participation in the public sphere remains the subject of political negotiations. Hence, minority participation in policy processes depends on state approval. In case state/minority negotiations are successful, they result in issue-based participatory mechanisms for NMOs. Successful negotiations can also lead to the creation of some institutionalized forms of MNO participation, but these participatory mechanisms are rarely guaranteed constitutionally. Hence, they are installed without transforming the official identity and the political and economic structure of the state. In this paradigm, when states invite NMOs to participate in policy-processes, the level of minority involvement is most often consultative. However, collaborative and delegated decisions can also be part of such participatory schemes.

3.3. The Constitutional Accommodationist Paradigm

The third paradigm is the constitutional accommodationist paradigm which acknowledges minorities as groups and promotes multiple public identities. In case

participatory parity is established for ethnocultural groups, the minority status is changed into that of a constituent people who participates in the self-determination process of the state. This approach claims that enduring peace can only be built on the recognition and accommodation of ethnocultural group identities and interests. Thus, it institutionalizes ethnocultural diversity in the public domain and establishes structures of co-governance. Often, it employs special mechanisms for continuous multilateral mediation among identities and interests. This paradigm is in line with the broad interpretation of minority participation as established in soft law instruments like the 1999 OSCE Lund Recommendations or the AC FCNM Participation Commentary 2.

Minority membership, representative NMOs are crucial in the articulation and promotion of multiple public identities. In order to fulfill this function, NMOs need to be capable to represent their constituencies and to have stability and sustainability in their missions and functioning. In the constitutional accommodationist approach which considers the existence of representative, minority membership NMOs desirable, those financing mechanisms are favoured which include an adequate level of general purpose subsidy for select NMOs with multi-year predictability. These subsidies create the possibility for organizations to establish sustainable operation and effective representation of constituencies.

In the constitutional accommodationist paradigm, NMO participation is provided for by the constitution and other legal instruments. In this paradigm minorities are constitutive political communities of the nation participating in the right to self-determination. In order to realise this right, permanent forums have to be established for the political dialogue of overlapping political communities. These institutionalized forums and channels create the space for a transformative process of both majority and minority identities into a dynamic multicultural state identity. Thus, the key qualifier of this paradigm is the existence of institutionalized mechanisms which create participatory parity in the political dialogue.

The major conclusions on each paradigm in relation to their constitutive elements are summarized below:

1. Integrationist minority and public financing policy paradigm

State response and policy goals:

- State complies with general human rights including racial antidiscrimination provisions;
- It aims to establish formal equality among citizens. Thus, members of minorities are treated exclusively as equal citizens of the state. Minority membership is considered as a private matter;

Types of recognised NMOs:

- Specialised NGOs and minority membership NMOs are treated identically to any other NGOs. No distinction is made between them;

Typical financing mechanism:

- Minority organizations can compete for project-based subsidies which are offered to them on equal terms to any other NGO;

Typical participatory mechanism:

- Issue-based mechanisms complying with basic democratic transparency rules (i.e. information sharing) are applied;
- Participation of persons belonging to minorities is possible as individual citizens only.

2. Political accommodationist minority and public financing policy paradigm

State response and policy goals:

- There is a pragmatic shift towards accommodationist mechanisms which are politically agreed and can be formalised in some laws. States adopt general human rights, antidiscrimination laws and minority rights hard law;

Types of recognised NMOs:

- States recognise the political function (interest- representation) of minority membership NMOs;
- Minority membership NMOs are recognised as a distinct type and are differentiated from universal composition NGOs specialising in minority issues;
- States recognise minority issues (e.g. minority education, minority language use, minority media) as public interests, hence, these are shifted into the public sphere.

Typical financing mechanism:

- The new financing mechanism is some type of thematic subsidy which supports the agreed upon minority issue;
- Project-based subsidies also remain part of the system;
- General purpose grants for NMOs can also be part of the system as negotiated solutions for NMO financing.

Typical participatory mechanism:

- At a minimum, states establish issue-based consultations with NMOs which are regarded as group representatives.

3. Constitutional accommodationist minority and public financing policy paradigm

State response and policy goals:

- Group interests enter the public sphere and gain constitutional recognition. Minorities acquire equal status with the dominant society and, often, they are recognised as peoples. In their responses to ethnocultural diversity states adopt political-economic arrangements which go beyond the provisions of minority rights law but are referred to in the relevant soft law;
- In addition to general human rights, antidiscrimination laws, states can adopt minority rights law;

Types of recognised NMOs:

- The political function (self-representation) of minority membership NMOs is a *sine qua non* constituent element of the system.

Typical financing mechanism:

- The sustainability and active political role of NMOs is supported by predictable general subsidies;
- In addition to general subsidies, thematic and project-based grants can also be part of the financing scheme;

Typical participatory mechanism:

- State establishes institutionalised mechanisms for the participation of representative NMOs to ensure on-going political negotiation.

4. Analysis of selected cases

The terms of reference of this paper require authors to “identify, *inter alia*, good practice with regard to the system for the allocation of funding, applied criteria and the actors involved”.

We stated in the introduction of this paper that financing mechanisms have no intrinsic value, hence, it is not possible to identify good practices in relation to funding mechanisms in isolation. Financing mechanisms are the implementation tools of specific policy goals. Therefore, the adequacy of funding mechanisms can only be discussed in relation to the policy goals the state in question has determined. The choice of macro-political responses to ethnocultural diversity and of minority policy objectives are the sovereign decisions of a state and, as such, cannot be questioned as long as they comply with international human and minority rights norms to which the state had subscribed. In the case of minority rights law, states enjoy a considerable margin of appreciation in the interpretation of ‘programmatically’ minority rights and they can also choose which aspects of the relevant soft law they observe.²⁰ The conceptual part of this paper identified five relevant issue-areas in which states have considerable discretion when making choices on the public financing of NMOs. The three paradigms introduced in this study conceptualised three substantially different and internally consistent sets of choices in these five issue-areas. These internally consistent conceptual schemes allowed us to avoid value judgements on minority policy regimes and focus exclusively on the consistency of financing decisions in relation to policy goals.

In this section we analyse one selected case for each paradigm in order to demonstrate the applicability of the proposed conceptual framework. Each case is presented along the five constituent elements of paradigms based on information provided by states in their responses to the Questionnaire on the “*distribution of public financial support (subsidies) for national minority associations* prepared by the DH-MIN. In case it was needed, additional information was acquired from state reports submitted under the FCNM and from the related Opinions and Resolutions issued by the Advisory Committee and adopted by the Committee of Ministers, respectively. As the Questionnaire and information was assembled before the elaboration of this conceptual framework, it can

²⁰ Indeed, some commentators are concerned about the application of the doctrine of ‘margin of appreciation’ in minority protection contexts. As Eyal Benvenisti (1999) notes: “One of the main justifications for an international system for the protection of human rights lies in the opportunity it provides for promoting the interests of minorities. This system is an external device to ameliorate some of the deficiencies of the democratic system. (...) Whereas “national” interests (defined as such by majority-controlled institutions) often prevail in national courts, they may be deemed less compelling when reviewed by detached external decision-makers. To grant margin of appreciation to majority-dominated national institutions in such situations is to stultify the goals of the international system and abandon the duty to protect the democratically challenged minorities.” *International Law And Politics*, Vol. 31:850.

happen that some parts of the necessary information are missing or they allow for misinterpretation in their present form. Hence, all our conclusions referring to specific state practices in the analysis of cases must be validated by state representatives. We treat our paper as a first draft to be improved considerably by feedbacks from experts sitting in the DH-MIN. A deeper analysis of cases is beyond the scope of this paper. We expect that a more detailed analysis of relevant cases is conducted with the support of experts following the critique and improvement of the conceptual framework submitted herein.

4.1. The Integrationist Paradigm: Azerbaijan

According to the 1999 census 90.6 per cent of the population of Azerbaijan are Azeri. The remaining 9.4 per cent of the population belongs to more than fourteen minority groups including Lezgins 178,021 (2.2%), Russians 141,687 (1.8%), Armenians 120,745 (1.5%), Talysh 76,841 (1.0%) and Avars 50,871 (0.6%). Despite some constitutional and legislative guarantees for persons belonging to national minorities, the legal and institutional framework available for the protection of persons belonging to national minorities is very limited. Article 5 of the Constitution states that “The unity of the people of Azerbaijan constitutes the basis of the Azerbaijan State. The Republic of Azerbaijan is a common and indivisible motherland for all citizens of the Republic of Azerbaijan”.²¹ The constitution does not define the term ‘national minorities’. Neither there is a law on national minorities in Azerbaijan. Minorities have a very limited space in the public sphere. For instance, the teaching of minority languages is available only during the first four grades, except for the Lezgin language.²² The state ratified the FCNM and signed the CoE Charter for Regional and Minority Languages.

In Azerbaijan no difference is made between minority membership NMOs and any other NGO. All civil society organisations are treated equally as NGOs. This is reflected in the financial support given for NMOs. As spelled out in the DH-MIN Questionnaire, it is the Council of State Support to Non-Governmental Organizations under the President of the Republic of Azerbaijan (CSSN) which allocates financial support to non-governmental organizations. The criteria the CSSN uses in the allocation of funds are equally applied to all NGOs. There are no specific criteria to determine the amount of subsidy to NMOs.

There have been very few mechanisms for ensuring the participation of national minorities in the public life. Hence, there are very limited possibilities for persons belonging to national minorities to channel their views and concerns to authorities. For instance, the meetings of the Council for National Minorities, an advisory body, have not been convened for a number of years and the Co-ordination Council of the Cultural Centres of national minorities does not play a role in decision making. There is no

²¹ Quote taken from the first state report of Azerbaijan submitted to the Advisory Committee of the FCNM, on page 22. Available at: http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/PDF_1st_SR_Azerbaijan_en.pdf, (accessed 29 September 2011).

²² See Opinion etc

specific forum where persons belonging to national minorities can discuss, on a regular basis, issues of relevance for them with the authorities.²³

Overall, Azerbaijan can be considered as an example of the integrationist minority policy and public financing paradigm, since minority membership NMOs are regarded and treated as any other NGO, there are only project-based subsidies available for them, and minority participation is not considered in the design of financing policies.

4.2. Political Accommodationist Paradigm : Romania

According to the 2002 census, minority groups in Romania include Hungarians 1, 434, 377 (6.6 per cent), Roma 535,250 (2.5 per cent)²⁴, Ukrainians/Ruthenians 61, 091 (0.3 per cent) and Germans 60, 088 (0.3 per cent). Over the course of post-communist transition, Romania's response to ethnocultural diversity can be described as a cautious and controversial shift towards an accommodationist model, primarily as a result of the combined pressure of international organisations and political bargaining with minorities. This shift towards the accommodation of ethnocultural diversity is characterised by a limited recognition of the group dimension of minority existence and the representation of some minority issues and interests (e.g. use of minority languages in public, minority language education, minority language media) in the public sphere. However, despite numerous attempts, a law on the status of national minorities recognising minorities as groups and granting them cultural autonomy has not yet been passed by the parliament.²⁵

The Constitution defines Romania as a unitary and indivisible nation state (Constitution, Article 1, paragraph (1)). It is grounded on an individualist approach to minority protection. It recognises the existence of *persons* belonging to national minorities and, at the same time, recognises and guarantees the right of those persons to their identity (ethnic, cultural, linguistic and religious). The groups or national minorities are not recognised as collective entities.²⁶ However, in practice, the state recognises the group dimension of individual minority rights, i.e. the fact that these individual rights are exercised in community with other members of the group. Further, the Constitution affirms the equality of rights and freedom from discrimination. It also guarantees persons belonging to national minorities education in their mother tongue and provides for a seat in parliament for all recognised national minorities. Romania is party to all important international minority protection instruments including the FCNM and the CoE's European Charter for Regional and Minority Languages. Overall, based on its practice, it can be said that in its interpretation of international minority protection law, Romania

²³ Information retrieved from *Resolution CM/ResCMN(2008)11* on the implementation of the FCNM by Azerbaijan adopted by the Committee of Ministers on 10 December 2008. Available at: <https://wcd.coe.int/wcd/ViewDoc.jsp?id=1387009&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383>. (accessed 29 September 2011).

²⁴ Alternative estimates, such as the European Commission (2004), put the Roma population at between 1,800,000 and 2,500,000. See Minority Rights Group, World Directory on Minorities. Available at: <http://www.minorityrights.org/3521/romania/romania-overview.html>. (accessed 29 September 2011)

²⁵ See the discussion of the Romanian draft law on the status of national minorities in Decker 2007.

²⁶ See p. 15 of Romania's first state report submitted under the FCNM. Available at http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/PDF_1st_SR_Romania_en.pdf. (accessed 29 September 2011).

sticks to the letter of hard law, and so far it has not moved towards the explicit recognition of group rights for minorities including some forms of self-governance.

In Romania the role of minority membership NMOs in the protection and promotion of minority *cultures* is recognised. Hence, they are distinguished from universal composition NGOs engaging in principled activism for minorities. Nineteen national minority associations are represented in the Chamber of Representatives through set-aside seats. The same NMOs also sit on the Council for National Minorities, an advisory body to the Government.

The NMOs distinct role in the protection and promotion of minority cultures is also reflected in the financing system of minority membership NMOs. They receive subsidies from the national budget on a yearly basis which makes their existence and operations relatively sustainable. These yearly subsidies can be categorised as general purpose subsidies since their objective is to support NMOs as sustainable organisational structures within the minority protection issue areas specified by the government. Hence, these funds can be used for covering the general costs of the organisation as well as for carrying out activities in the domains of minority culture, inter-ethnic relations and antidiscrimination.²⁷ In addition to these annual general subsidies, NMOs can also receive project-based funds. It has to be pointed out that beside these subsidies, the Romanian state allocates considerable thematic subsidies to NMOs and other institutions specialising in minority protection.²⁸

In Romania, the existing participatory mechanisms designated for minorities, such as the Council for National Minorities or the Roma County Councils, have a consultative role in issues pertaining to minority protection. However, through set-aside seats in the parliament and the use of general participatory mechanisms, minorities have achieved considerable representation in the public sphere in Romania.

Overall, it can be said that Romania can be regarded as a case that fits into the political accommodationist paradigm since, increasingly, it has recognised the distinct political function of minority membership NMOs and it has applied financing mechanisms which ensure NMOs' organisational sustainability and stability of mission. However, these special measures for the protection of minorities, while important, have not created participatory parity with the dominant society. Both in its state identity and political economic structure, Romania has remained a unitary nation state.

4.3. Constitutional accommodationist paradigm: Hungary

Hungary is a country with 10 million inhabitants where the share of self-identified minority persons is less than 3 %. The recognized minorities are the Armenians,

²⁷ See the detailed description of the purpose of subsidies under Question 8 on page 103 of the DH-MIN Questionnaire.

²⁸ For instance, in the case of the Hungarian minority the *Communitas* Foundation was established for the distribution of thematic subsidies in the fields including minority press, culture, youth or internal diaspora. This is a public foundation run by representatives of the Hungarian minority.

Bulgarians, Croats, Germans, Greeks, Poles, Roma, Romanians, Ruthenians, Serbs, Slovaks, Slovenes, and Ukrainians.²⁹

According to the Hungarian Constitution, national and ethnic minorities living in the Republic of Hungary participate in the sovereign power of the people: they represent a constituent part of the state.³⁰ The Hungarian state ensures their collective participation in public affairs and the right to form local and national bodies for self-government. The Act on National and Ethnic Minorities (ANEM), passed in 1993, established a coherent minority rights system, based on cultural autonomy and the free choice of identity. The constitutional decision that a majority of two-thirds of the votes of the members of parliament present is required to pass or amend the law on the rights of national and ethnic minorities was also meant to secure their status.³¹ (Vizi 2009: 120-121)

In the 1993 Act on National and Ethnic Minorities (ANEM) Hungary goes beyond the guarantees of international minority rights and recognizes the group rights of minorities. It guarantees the right to establish a national network of educational, cultural and scientific institutions, as well as access to radio and television programs in minority languages. The Hungarian ANEM is in line with existing soft law, such as the AC FCNM Commentary 2 or the 1999 Lund Recommendations. Over the course of post-communist transition, Hungary's response to ethnocultural diversity was a determined shift to a constitutional accommodationist model.³²

Regarding their organizational form, we can say that NMOs are clearly defined in the form of Minority Local Self Governments (MLSG), and their participation in local public affairs is guaranteed.³³ MLSGs are elected on the level of local government and are subsidized by the Central Government. All citizens, who self-declare as minorities, are residents of a given jurisdiction and are registered, can vote for the MLSG. MLSGs participation in the local affairs is guaranteed. MLSGs also delegate members to the National Minority Self Government (NMSG) of their minority. Thus, the participation of minority representatives is institutionalized at both levels of government.

Minority Local Self Governments and the National Minority Self Government receive general purpose state subsidies. The institutions and service delivery units established for minority education, culture and media also receive different types of thematic subsidies and can compete for project grants. The full range of financing mechanisms is the

²⁹ According to the 2001 census are Hungarians: 92.3%, Did not answer: 5.3%, Roma: 1.9%, German: 0.6%, Unknown: 0.3%, Slovakian: 0.2%, Croatian: 0.2%, Rumanian: 0.1%.

³⁰ This clause is equally part of the 2011. Amendment of the Constitution.

³¹ Currently the governing coalition has more than 2/3 majority in Hungary.

³² It must be noted that the small number and dispersed nature of the minorities in Hungary creates a different political situation than the neighboring states have. Moreover, relatively large and politically active Hungarian minority groups live in neighboring states. Analysts have often pointed out that concern over the situation of Hungarian minorities abroad greatly contributed to the wide public consensus behind this coherent accommodationist approach.

³³ Minority Self Governments are elected at the local level as this is the logical solution for the territorial distribution of minorities. I.e. minorities live dispersed in the national territory but their concentration is high in certain localities.

positive element of the Hungarian system. At the same time, it is often subject of debate whether the level of allocations is adequate for ensuring a good level of minority services.

As we determined that the analysis of the adequacy of funds is beyond the possible scope of this paper, we can say that – at the moment - the Hungarian minority policy regime satisfies the expectations of the constitutional accommodationist paradigm across all its five dimensions. Minorities are recognized as constituent parts of the state whose collective participation in the public life is guaranteed. Minority self governments are supported by general purpose subsidies. Thematic and project subsidies are available for NMOs and service provision organizations in issue areas areas related to the economic and social rights of minorities. Institutionalized mechanisms are established for the dialogue between MLGSs and local and central governments.

The conditions mentioned above indicate that Hungary has established a minority policy regime that, for the most part, fits into the constitutional accommodationist paradigm. Two conditions seem to contradict this claim. Firstly, the dialogue between Minority Self Governments and the relevant government levels is not meaningful in many cases and, in general, it has deteriorated over the last decade. Secondly, minorities could not challenge the identity and political economic structure of the unitary nation state. The relatively small size of minorities limits the possibilities for multiculturalism and the establishment of participatory parity among ethnic groups. However, these two conditions are both the results of the implementation of the minority law and policies, rather than political, legal and financing arrangements that the paradigms aim to capture.

5. Recommendations

Two constituting components of the financing policy determine its effectiveness. These are (i) the applied financing mechanism; and (ii) the political process of policy making. In the context of minority protection these are path-setting, strategic decisions. Thus, our paradigms focus exclusively on the types of financing mechanisms and the involvement of minorities in the policy process. Although there are additional technical elements which influence the outcomes of financing policies, their discussion is beyond the scope of this paper.

Financing policies are not inherently good or bad. They are either appropriate or inappropriate to implement the policy goals behind their applications. The same mechanism can be perfectly appropriate for the effective implementation of one policy goal but inappropriate for the realization of another goal. The key question, therefore, is ‘whether the financing policy is appropriate for the effective implementation of the philosophy and goals that the sovereign state selected’.

5.1. Recommendation 1:

The policy goals financial mechanisms aim to realise need to be consistent with international minority rights states have subscribed to.

Even if the focus is on financing mechanism, it is crucial to examine whether the minority policy goals financing mechanism aim to realise are in line with international minority rights. Policy goals need to be stated explicitly.

5.2. Recommendation 2:

Consistency needs to be established between declared policy goals and the financial mechanisms used for their achievement.

Paradigms support the analysis of the internal consistency of any existing minority policy regime. They can help identify where are inconsistencies in the system, (i.e. where effectiveness is lost, decreased) and what kind of changes are needed for establishing a more internally consistent, thus, more effective policy regime.

Consistency needs to be established between the declared minority policy goals and financing policies. For instance, in case a state declares accommodationist minority policy goals and recognises the importance of NMOs in the public sphere, it cannot use project based subsidies exclusively when financing NMOs. Once the public importance of NMOs is recognised in the protection and promotion of minority identities and interests, their organisational sustainability and stability of mission needs to be guaranteed through adequate financing mechanisms. Hence, in addition to project-based subsidies NMOs need to be supported by general purpose subsidies.

5.3. Recommendation 3. Inter-ministerial work in the design of NMO financing policies combining and coordinating expertise in both minority protection and financing is needed.

The ministry of finance and minority affairs work on the basis of distinct expertise and in most cases they do not communicate. Experts and bureaucrats who design the financing mechanisms have very limited understanding of minority policy goals and their normative underpinnings. Gaining in-depth knowledge and understanding of minority policies and minority rights is crucial for the design of appropriate NMO financing mechanisms.

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