

**A Commentary
to the Lund Recommendations
on the Effective Participation
of National Minorities in Public Life**

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FOREWORD

This booklet is a result of and a natural continuation to the good relations of cooperation between the Office of the OSCE High Commissioner on National Minorities and the Åbo Akademi University Institute for Human Rights. Over the years, several members of the academic staff at Åbo have had the honour to follow the development of this invaluable OSCE institution and to meet in person the first High Commissioner, Mr Max van der Stoel. Likewise, it has always been simultaneously a challenge and a pleasure to receive a telephone call by Mr John Packer, now Director at the High Commissioner's Office, proposing various forms of cooperation in the field of expertise related to minority rights.

On behalf of the Åbo Akademi University Institute for Human Rights I wish to express my gratitude to the Office of the High Commissioner on National Minorities and to professor Gudmundur Alfredsson, of the Raoul Wallenberg Institute of Human Rights and Humanitarian Law, for making it possible for our institute to produce a commentary on the 1999 Lund Recommendations on the Effective Participation of National Minorities in Public Life.

Dr Kristian Myntti deserves due credit for his commitment to the project. As always, he produced the manuscript well before the deadline and has since then been willing to take into account all suggestions for improvement. Professor Markku Suksi, who participated as an Åbo expert in the preparation of the Lund Recommendations, Ms Raija Hanski as editor and Ms Allison Damiano checking the English language have together constituted a fine support team to Dr Myntti.

We wish that the booklet will help to disseminate information on the contents and potentials of the Lund Recommendations, with a view to promoting and facilitating various forms of effective participation by minorities and their members in public life.

Turku/Åbo, 30 April 2001

Martin Scheinin
Director of the Institute for Human Rights,
Åbo Akademi University

1. INTRODUCTION

In 1992, the Organization for Security and Cooperation in Europe (OSCE) established the position of High Commissioner on National Minorities to be an instrument of conflict prevention at the earliest possible stage. This mandate was created largely in reaction to the situation in the former Yugoslavia, which some feared would be repeated elsewhere in Europe, especially among the countries in transition to democracy. Mr Max van der Stoep was appointed the first OSCE High Commissioner on National Minorities (HCNM).

In addressing the substance of tensions involving national minorities, the HCNM approaches the issues as an independent, impartial and co-operative actor. The HCNM is not a supervisory mechanism, but employs the international standards to which each state has agreed, as his principal framework of analysis and foundation of recommendations. The commitments undertaken by the OSCE Participating States, in particular those of the 1990 Copenhagen Document of the Conference on the Human Dimension, include detailed standards relating to national minorities. The OSCE States are also bound by United Nations obligations relating to human rights, including minority rights. The great majority of these states are further bound by the standards of the Council of Europe.

Among the recurrent issues and themes which have become the subject of the attention of the HCNM are minority education and use of minority languages, in particular, as matters of great importance for the maintenance and development of the identity of persons belonging to national minorities. With a view to achieving an appropriate and coherent application of linguistic minority rights in the OSCE area, the HCNM requested the Foundation on Inter-Ethnic Relations—a non-governmental organization established in 1993 to carry out specialized activities in support of the HCNM—to bring together two groups of internationally recognized independent experts to elaborate two sets of recommendations. The Hague Recommendations regarding the Educational Rights of National Minorities were adopted in 1996 and the Oslo Recommendations regarding the Linguistic Rights of National Minorities in 1998. Both of these sets of recommendations have subsequently served as references for policy- and law-makers in a number of states.

A third recurrent theme which has arisen in a number of situations in which the HCNM has been involved is that of forms of effective

participation of national minorities in the governance of states. In order to gain a sense of the views and experiences of OSCE Participating States on this issue and to allow states to share their experiences with each other, the HCNM and the OSCE Office for Democratic Institutions and Human Rights convened a conference of all OSCE States and relevant international organizations, entitled 'Governance and Participation: Integrating Diversity' which was held in Locarno, Switzerland, in October 1998.

As a follow-up to the Locarno conference the HCNM called upon the Foundation on Inter-Ethnic Relations, in co-operation with the Raoul Wallenberg Institute of Human Rights and Humanitarian Law, to bring together a group of internationally recognized independent experts to elaborate recommendations and outline alternatives on the right of national minorities to effective participation in line with the relevant international standards.

The result of the above initiative is the Lund Recommendations on the Effective Participation of National Minorities in Public Life, adopted in 1999.¹ The Recommendations are named after the Swedish town in which the experts last met and completed the recommendations under the Chairmanship of the Director of the Raoul Wallenberg Institute, professor Gudmundur Alfredsson. Among the experts were jurists specializing in relevant international law, political scientists specializing in constitutional orders and electoral systems, and sociologists specializing in minority issues.

The purpose of the Lund Recommendations is to encourage and facilitate the adoption by states of specific measures to alleviate tensions related to national minorities and thus to serve the ultimate conflict prevention goal of the HCNM. The Recommendations attempt to clarify the content of minority rights and other standards generally applicable in the situations in which the HCNM is involved. The standards have been interpreted specifically to ensure the coherence of their application in open and democratic states.

The Recommendations are divided into four sub-headings, which group the twenty-four recommendations into general principles,

¹ A booklet entitled The Lund Recommendations on the Effective Participation of National Minorities in Public Life & Explanatory Note (June 1999) has been published by the Foundation on Inter-Ethnic Relations. Prinsessegracht 22, 2514 AP The Hague. Tel. +31 (0)70 312 5555, Fax. +31 (0)70 346 5213. E-mail. FIER@Euronet.nl

participation in decision-making, self-governance and ways of guaranteeing such effective participation in public life. The basic conceptual division within the Lund Recommendations follows two prongs: participation in governance of the state as a whole, and self-governance over certain local or internal affairs.

The Lund Recommendations are to be interpreted in accordance with the General Principles in Part I of the Recommendations. These General Principles read:

- 1) *Effective participation of national minorities in public life is an essential component of a peaceful and democratic society. Experience in Europe and elsewhere has shown that, in order to promote such participation, governments often need to establish specific arrangements for national minorities. These Recommendations aim to facilitate the inclusion of minorities within the State and enable minorities to maintain their own identity and characteristics, thereby promoting the good governance and integrity of the State.*
- 2) *These Recommendations build upon fundamental principles and rules of international law, such as respect for human dignity, equal rights, and non-discrimination, as they affect the rights of national minorities to participate in public life and to enjoy other political rights. States have a duty to respect internationally recognized human rights and the rule of law, which allow for the full development of civil society in conditions of tolerance, peace, and prosperity.*
- 3) *When specific institutions are established to ensure the effective participation of minorities in public life, which can include the exercise of authority or responsibility by such institutions, they must respect the human rights of all those affected.*
- 4) *Individuals identify themselves in numerous ways in addition to their identity as members of a national minority. The decision as to whether an individual is a member of a minority, the majority, or neither rests with that individual and shall not be imposed upon her or him. Moreover, no person shall suffer any disadvantage as a result of such a choice or refusal to choose.*
- 5) *When creating institutions and procedures in accordance with these Recommendations, both substance and process are important, Governmental authorities and minorities should pursue an inclusive, transparent, and accountable process of consultation in order to maintain a climate of confidence.*

The State should encourage the public media to foster intercultural understanding and address the concerns of minorities.

A more detailed explanation of each of the Lund Recommendations is provided in an accompanying Explanatory Note, wherein express reference to the relevant international standards is found.

Although several of the Recommendations suggest alternatives, and a wide variety of arrangements are possible, the Lund Recommendations are generic in the sense that they provide only few concrete examples as to how they could be implemented in practice.

The purpose of this commentary is to explain the various Recommendations with reference to specific examples and known practices within the OSCE Participating States and other states with national minorities. The objective is to make the Lund Recommendations more understandable for non-specialists.

Finally, it may be observed that the Lund Recommendations are gender neutral in that they do not specifically address the right of minority women to effective participation in public life.

2. LUND RECOMMENDATION NO. 6

Lund Recommendation No. 6 reads:

States should ensure that opportunities exist for minorities to have an effective voice at the level of the central government, including through special arrangements as necessary. These may include, depending upon the circumstances:

- *special representation of national minorities, for example through a reserved number of seats in one or both chambers of parliament or in parliamentary committees; and other forms of guaranteed participation in the legislative process;*
- *formal or informal understandings for allocating to members of national minorities cabinet positions, seats on the supreme or constitutional court or lower courts, and positions on nominated advisory bodies or other high-level organs;*
- *mechanisms to ensure that minority interests are considered within relevant ministries, through, e.g., personnel addressing minority concerns or issuance of standing directives; and*

- *special measures for minority participation in the civil service as well as the provision of public services in the language of the national minority.*

Lund Recommendation No. 6 is concerned with the issue of explicit recognition of minority groups in public life, particularly with the formal inclusion of such groups within the political decision-making structure through special measures. The aim of such special measures is the effective representation of minority groups at the highest level of public life in their respective country.

A. Reserved seats for national minorities in national Parliaments

One approach to safeguard minority representation in national legislatures is to reserve one or more seats for identifiable national minorities. Although such arrangements are not very commonly found in the OSCE Participating States, reserved seats or similar special arrangements for minority representation exist at least in Croatia, Romania and Slovenia.

Croatia. The Croatian House of Representatives of the National Assembly has up to 151 members. Of these, 140 are elected from multi-seat constituencies. Up to six members, who are chosen by proportional representation, represent Croatians residing abroad. Also ethnic and national communities or minorities are entitled to be represented in proportion to their number, provided that their share of the country's population exceeds 8 per cent.² These representatives are chosen by simple majority from party lists. At the elections held in January 2000, Croatian national minorities obtained four seats, among which the Serbian National Party (Serbian minority) and the Hungarian Democratic Community of Croatia (Hungarian minority) obtained one seat each.

Romania. The Romanian Constitution of 1991 recognizes the right of representation in the Romanian Chamber of Deputies of organizations of

² In 1992, the population of Croatia amounted to 4,79 million. According to the 1991 census, the main minority groups were: Serbs 581,000 (12%), 'Yugoslavs' 104,700 (2.2%), Muslims 48,000 (1%), Hungarians 24,000 (0.5%), Slovenes 24,000 (0.5%), Italians 19,000 (0.4%) and others 223,738 (4.7%).

citizens belonging to national minorities.³ Legally constituted organizations of citizens belonging to a national minority have the right to one seat in the Chamber of Deputies, provided that they have obtained at least 5 per cent (throughout the country) of the average number of votes needed for the election of a Deputy.

At the elections held in 1996, the Hungarian Democratic Union of Romania received 6.46 per cent of the votes which gave them 25 (of 343) seats in the Chamber of Deputies. In addition, 15 other organizations of citizens belonging to other national minorities obtained one seat each. Together these representatives form a special Faction of National Minorities within the Romanian Chamber of Deputies.

Slovenia. The Slovenian Constitution (1991) recognizes some special rights of political representation for the Italian and Hungarian minorities.⁴ The Slovenian National Assembly has 90 members. Of these, 11 are elected from eight multi-member constituencies, and two from two single-member constituencies representing the Italian and Hungarian minorities. The Deputies representing the Italian and Hungarian minorities are elected by simple majority preferential vote.

In addition to the OSCE States mentioned above, countries such as Jordan, India, Pakistan, Colombia, Western Samoa, Niger and the Palestinian Authority have guaranteed mandates for some of their minority groups.

The Åland Islands. The self-governing and Swedish-language Åland Islands form an election constituency from which one member of Parliament (200 members) is elected by a modified list proportional

³ According to the 1992 census, the total population of Romania amounted to 22,7 million. Following this census the main minority groups in Romania are: Hungarians 1,620,000 (7.1 %), Roma 409,700 (1.8%) [another estimate is that there are up to 1,8 million Roma], Germans 120,000 (0.5%) and others 258,000 (1%). The group 'others' includes Ukrainians/Ruthenes, Lipovans (Russians), Serbs, Czechs, Slovaks, Turks, Tatars, Bulgarians, Greeks, Armenians and Jews.

⁴ In 1992, the population of Slovenia amounted to 2 million. According to the 1991 census, the main minority groups of Slovenia were: Croats 54,000 (2.7%), Serbs 47,000 (2.4%), Muslims 26,000 (1.4%), Hungarians 8,500 (0.4%), Italians 3,000 (0.1%) and unknown and undeclared 117,000 (6%).

representation system. This means in practice that the Åland Islanders have a guaranteed seat in the Finnish Parliament.

Instead of reserved seats, certain regions can also be over-represented in order to facilitate the increased representation of minority groups. The mountainous regions of *Nepal* are examples of such a solution.

B. Power sharing

The second point of Lund Recommendation No. 6 concerns itself with formal or informal understandings for allocation to members of national minorities cabinet positions, seats on the supreme or constitutional court or lower court as well as positions on nominated advisory bodies or other high-level organs.

Consequently, this part of the Recommendation refers to so-called power sharing (or 'consociational democracy'). The four major elements of power sharing/consociational democracy are:

- a grand coalition, referring to an executive in which the political leaders of all significant segments of society participate;
- segmental autonomy, meaning that as much decision-making as possible should be delegated to the separate segments;
- proportionality of political representation in civil service appointments and the allocation of public subsidies;
- a minority veto to protect the most vital interest of the minority groups.

Often mentioned examples of such democracies are Austria (1945 to 1966), Cyprus (1960 to 1963), Lebanon (1943 to 1975), Netherlands (1917 to 1967), Malaysia (1955 to 1969) and Switzerland (from 1943).

Contemporary examples of states the governments of which are based on power sharing are Belgium (from 1914) and Bosnia and Herzegovina (from 1995).

Belgium. *See below*, under the title of 'Federalism'.

Bosnia and Herzegovina. Under the Constitution of Bosnia and Herzegovina,⁵ Bosnia and Herzegovina consists of two entities, the Federation of Bosnia and Herzegovina and the Republika Srpska.

The federal government of Bosnia and Herzegovina is divided on a tripartist basis along ethno-national lines. According to the Constitution, the Bosniacs (Muslims), Croats and Serbs are, along with 'Others', the constituent peoples of Bosnia and Herzegovina.

The Parliamentary Assembly of Bosnia and Herzegovina consists of two chambers: the House of Peoples and the House of Representatives:

The House of Peoples

- comprises 15 delegates, of which two-thirds are from the Federation (including five Croats and five Bosniacs) and one-third from the Republika Srpska (five Serbs).
- the Croat and Bosniac delegates from the Federation are selected, respectively, by the Croat and Bosniac delegates to the House of Peoples of the Federation.
- the Delegates from the Republika Srpska are selected by the National Assembly of the Republika Srpska.
- nine members comprise a quorum, provided that at least three Bosniac, three Croat, and three Serb delegates are present.
- selects from its members one Serb, one Bosniac and one Croat to serve as its Chair and Deputy Chairs, with the position of Chair rotating among the three persons selected.

The House of Representatives

- comprises 42 members, two-thirds elected from the territory of the Federation, one-third from the territory of the Republika Srpska.
- its members are directly elected from their entity in accordance with an election law adopted by the Parliamentary Assembly.
- a majority of its members comprises a quorum.

⁵ This Constitution forms Annex 4 to the General Framework Agreement for Peace ('the Dayton Peace Accord') initiated in Dayton, Ohio, 21 November 1995 and signed in Paris, 14 December 1995.

- selects from its members one Serb, one Bosniac and one Croat to serve as its Chair and Deputy Chairs, with the position of Chair rotating among the three persons selected.

In Bosnia and Herzegovina, all *legislation* requires the approval of both the House of Peoples and the House of Representatives. The decisions in both chambers are taken by a majority of those present and voting.

The delegates are required to make their best efforts to see that the majority includes at least one-third of the votes of delegates or members from the territory of each entity. If a majority vote does not include one-third of the votes of delegates or members from the territory of each entity, the Chair and Deputy Chairs must meet and attempt to obtain approval within three days of the vote. If these attempts fail, decisions are taken by a majority of those present and voting, provided that the dissenting votes do not include two-thirds or more of the delegates or members elected from either entity.

The Constitution also provides for a right of *veto*, which means that a proposed decision of the Parliamentary Assembly may be declared to be destructive of a vital interest of the Bosniac, Croat or Serb people by a majority of, as appropriate, the Bosniac, Croat or Serb delegates.⁶

Also the *Presidency* of Bosnia and Herzegovina is divided between the three main population groups:

- the Presidency consists of three members, one Bosniac, one Croat, directly elected from the territory of the Federation, and one Serb directly elected from the territory of Republika Srpska. The method of selecting the Chair, by rotating or otherwise, is determined by the Parliamentary Assembly.

⁶ Such a proposed decision shall, however, require for approval in the House of Peoples a majority of the Bosniac, of the Croat and of the Serb delegates present and voting. When a majority of the Bosniac, of the Croat or of the Serb delegates objects to such a declaration, the Chair of the House of Peoples must immediately convene a joint commission, comprising three delegates, one each selected by the Bosniac, Croat and Serb delegates, to resolve the issue. If it fails to do so within five days, the matter is referred to the Constitutional Court which is to review it for procedural regularity.

- the Presidency is supposed to act by consensus. If that fails, two members may adopt a decision, but the dissenting member may then declare that decision destructive of a vital interest of the entity from the territory from which he is elected.⁷
- the Presidency nominates the Chair of the Council of Ministers, a Foreign Minister, a Minister for Foreign Trade and other appropriate ministers. The ministers take office upon the approval of the House of Representatives. No more than two-thirds of all ministers may be appointed from the same territory of the Federation. Together the ministers constitute the Council of Ministers.

The *Constitutional Court* of Bosnia and Herzegovina has nine members, four of which are selected by the House of Representatives of the Federation, and two by the Assembly of the Republika Srpska. The remaining members are selected by the President of the European Court of Human Rights after consultation with the Presidency.

Finland. It should be observed that Recommendation No. 6 provides that the allocation of cabinet positions to members of national minorities may also be based on political practice.

The proportional representation election system used in Finland often results in coalition governments. Due to the election system, none of the three principal political parties has managed to gain more than some 28 per cent of the votes in parliamentary elections. The existence of three almost equally strong parties makes the formation of governments a rather complicated process, a fact that has favoured the *Swedish People's Party (SFP)*. In Parliamentary elections the SFP draws some 5 per cent of the votes cast, which gives it 10 to 11 seats out of 200 in Parliament.

Regardless of its relatively limited number of seats in Parliament the party has been represented in 30 of the total of 38 governments between 1939 and 2001, usually with one to three cabinet ministers. For

⁷ Such a decision shall be referred immediately to the National Assembly of the Republika Srpska, if the declaration was made by the member from that territory; to the Bosniac delegates of the House of Peoples of the Federation, if the declaration was made by the Bosniac member; or to the Croat delegates of that body, if the declaration was made by the Croat member. If the declaration is confirmed by a two-thirds vote of those persons within ten days of the referral, the challenged Presidency decision shall not take effect.

instance, from 1979 and 1999 the SFP with nine seats in Parliament had two ministers in the cabinet. In the 1999 elections, the SFP with 5.1 per cent of the votes (and 11 seats) gained one ministerial post and had to share another one.

C. Mechanisms for dealing with minority issues within ministries and nominated high level advisory bodies

In some countries minorities are represented by ministries (or by offices of like competencies). In Slovakia, the government has set up a Deputy Prime Minister in charge of minority affairs. Other OSCE countries with special ministers for minority issues are the Czech Republic, Estonia, Romania, Russia and the Ukraine. However, the ministers and corresponding agencies have varying powers and competencies.

In a number of OSCE States minority affairs are managed by special governmental offices. Governmental offices for minority affairs are found, for instance, in Croatia, the Czech Republic, Hungary, Lithuania, Poland, Romania, Slovenia and the Ukraine. Some of them have direct or indirect minority representation. The typical functions of these special governmental offices include:

- intermediation between ethnic minorities;
- confidence-building;
- the development of programmes and political concepts;
- the training of political leaders and experts, etc.

Croatia. In Croatia, an Office for Ethnic and National Communities or Minorities within the Government was established in 1991. The main task of this Office is to propose measures for the implementation of rights of ethnic and national minorities and to monitor the application of relevant international instruments.

In its work the Office is assisted by the Council of Representatives of Ethnic and National Communities or Minorities, in which all national communities and minorities in Croatia are represented.

Czech Republic. In the Czech Republic, the Council for National Minorities of the government is a consultative, law-initiating and co-ordinating body for matters of government policies toward members of ethnic minorities in the Republic. Its Chairman is appointed by the

government and its members represent various ministries and ethnic minorities. The representatives of the ethnic minorities are appointed on the basis of proposals from minority organizations. Each ethnic minority is represented in the Council by one to three members.

Also the Czech Interministerial Commission for Romany Affairs comprises government and Roma representatives. The task of this Commission is to provide advice on and to evaluate governmental policies and measures concerning Roma; collect information on the situation and development of the Roma community and the allocation of government subsidies designed for this population. It works under the Government Commissioner for Human Rights, whose office was set up in 1998.

Hungary. The Hungarian Office for National and Ethnic Minorities is an autonomous organ of state administration with a nation-wide jurisdiction. It operates under the guidance of the government and is supervised by the Minister of Justice. It is headed by a president appointed by the Prime Minister. Its tasks are, *inter alia*;

- to prepare government minority policy decisions and decisions concerning minorities;
- to evaluate the interests and the situation of national and ethnic minorities;
- to maintain contacts with the Parliamentary Commissioner for Minority Rights and the national self-governments of minorities and minority organizations;
- to provide information on minorities and the implementation of minority rights and to maintain relations with international organizations and institutions dealing with the protection of the rights of minorities.

The Chairman of the Board of Trustees of the Public Foundation for Minorities is the director of this Office. One representative of the Board of Trustees of the Public Foundation for Gypsies and one representative of the Gandhi Foundation are among its members. The Office itself is represented in the Hungarian-Croatian, the Hungarian-Romanian, the Hungarian-Slovenian and the Hungarian-Ukrainian inter-state minorities' committees.

Kazakhstan. The Assembly of the Peoples of Kazakhstan was founded in 1995 by a Presidential Decree. This Assembly is a consultative/ advisory body under the President of the Republic of Kazakhstan, who is also its Chairman.

Among its functions are to promote the maintenance of inter-ethnic concord and social stability, to draft proposals for state policies for the development of the friendly relations between the peoples of Kazakhstan and to search for compromises to settle social conflicts arising in the society. Its decisions have the character of recommendations.

Lithuania. In Lithuania, there is a Division of National Minorities at the Ministry of Culture and Education. There are also a Department of Regional Affairs and Ethnic Minorities and a Nationalities Section at the Lithuanian National Heritage Inspectorate.

Poland. In Poland, there is a Bureau for National Minorities within the Ministry of Culture and Arts. The Bureau gives supplementary financing to the socio-cultural projects of minority organizations, and co-ordinates the efforts involving national minorities with central government and local administration. It also co-operates with the municipal councils.

Romania. In Romania, there is a Department for the Protection of Minorities (DPMN). The Department, which works under the Prime Minister, prepares draft legislation in its sphere of competence, issues statements on draft legislation and other legal acts concerning the rights and obligations of persons belonging to national minorities and monitors international legal standards on the rights of minorities. Within the DPMN there is a Council of National Minorities with consultative functions. The Council co-ordinates and supports organizations of national minorities.

Within the framework of the DPMN, a National Office for Roma has been established.

Slovakia. In Slovakia, the Office of the Plenipotentiary of the Government of the Slovak Republic for the Solution of the Problems of the Roma/ Gypsy Population was set up in 1999. The Office, which is headed by a member of the Slovakian Roma community, reports directly to the government. It has submitted a programme to the government covering

the situation of the Roma community in all fields of life. The programme was later adopted as a strategy for the government and is conceived of as a long-term plan open to a regular evaluation of the measures taken by the various ministries.

The Minority Cultures Section of the Slovakian Ministry of Culture finances projects in the field of minority cultures by means of an expert commission consisting of 19 representatives of national minorities.

Slovenia. Within the Slovenian Government, minority issues are dealt with by the Office of Nationalities.

Ukraine. The Ukrainian Ministry on National Minorities and Migration was established in 1993. In 1996, this institution was renamed the Governmental Committee of Ukraine on Nationalities and Migration. The Committee is a central body of the executive branch responsible for the implementation of the state policy in the sphere of rights of national minorities.

In the Ukraine, there is also a State Committee on Religions responsible for the elaboration and the implementation of state policy in regard to the various religions.

3. LUND RECOMMENDATIONS NOS. 7 TO 10

Lund Recommendations Nos. 7 to 10 read:

7) Experience in Europe and elsewhere demonstrates the importance of the electoral process for facilitating the participation of minorities in the political sphere. States shall guarantee the right of persons belonging to national minorities to take part in the conduct of public affairs, including through the rights to vote and stand for office without discrimination.

8) The regulation of the formation and activity of political parties shall comply with the international law principle of freedom of association. This principle includes the freedom to establish political parties based on communal identities as well as those not identified exclusively with the interests of a specific community.

9) The electoral system should facilitate minority representation and influence.

- *Where minorities are concentrated territorially, single-member districts may provide sufficient minority representation.*
- *Proportional representation systems, where a political party's share in the national vote is reflected in its share of the legislative seats, may assist in the representation of minorities.*
- *Some forms of preference voting, where voters rank candidates in order of choice, may facilitate minority representation and promote inter-communal cooperation.*
- *Lower numerical thresholds for representation in the legislature may enhance the inclusion of national minorities in governance.*

10) The geographic boundaries of electoral districts should facilitate the equitable representation of national minorities.

A. Various electoral systems

On a general level states have a considerable latitude in choosing the specific manner in which to comply with international human rights provisions on the right to political participation. They must nevertheless do so without discrimination on any ground. Furthermore, they should aim for as much representativeness as possible. In this regard the choice of electoral system may be of importance.

Important dimensions of electoral systems, with consequences for the proportionality of election outcomes, are:

- the electoral formula (or system);
- the electoral district magnitude;
- use of electoral thresholds;
- the size of the elected assembly;
- ballot structure;
- the drawing of electoral constituency boundaries.

Following, for instance, the *International IDEA Handbook of Electoral Systems Design*, electoral systems can be categorized into three families:

- plurality-majority systems;
- semi-proportional systems;
- proportional systems.

The *plurality-majority* voting system employed, for instance, in the United Kingdom and the United States, the so-called *first-past-the-post system*, is based on a 'winner-takes-all' approach and single-member electoral constituencies.

Due to the 'winner-takes-all' principle the plurality-majority electoral system produces a clear electoral winner. Therefore, elections according to this system usually result in strong governments with a large political majority.

One of the disadvantages of the plurality-majority electoral system is that significant political or other minorities may, unless they are extremely concentrated geographically, be left out from parliament. Particularly if the minorities are ethnic, linguistic or religious in composition, the plurality-majority system may not be perceived as truly legitimate.

On the other hand, the establishment of single-member electoral constituencies for a particular region where a minority is concentrated may promote its political representation.

Proportional electoral systems aim at the reduction of the disparity between a party's share of national votes and its share of parliamentary seats. In other words, proportional electoral systems emphasize representativeness. Such systems are therefore appropriate in circumstances where a parliament truly reflecting the ethnic composition of the population of a state is of greater concern than the stability of the government which may result from a large majority.

As proportional electoral systems tend to produce coalition governments, these generally give minority parties a better chance to participate in the government than plurality-majority electoral systems, particularly if their programmes are moderate and focus on major socio-political issues.

The fragmentation of the party system and government instability are the major disadvantages of proportional electoral systems.

Semi-proportional electoral systems translate votes cast in elections into seats won in a way that falls somewhere in between the proportionality of proportional electoral systems and the majoritarianism of plurality-majority systems.

The three families of voting systems can further be divided into nine sub-categories:

1. Plurality-majority voting systems

First Past the Post (FPTP)

- FPTP is the simplest form of plurality-majority electoral systems;
- single-member electoral districts;
- categorical ballot and candidate-centered voting;
- the winning candidate is the one who gains more votes than any other candidate (but not necessarily a majority of the votes);
- of the OSCE States, the FPTP is used in Canada, Kazakhstan, the United Kingdom and the United States of America.

Block Vote (BV) (or Multiple Vote, MV)

- multi-member districts, in which electors have as many votes as there are candidates;
- voting can be either candidate-centered or party-centered;
- the counting of votes is identical to the FPTP system, with the candidates with the highest vote total winning the seat(s);
- BV is used, for instance, in Kuwait, Lebanon and the Philippines.

Two-Round System (TRS)

- a plurality-majority system in which a second election is held if no candidate achieves an absolute majority of the votes in the first election;
- of the OSCE States, TRS is used in Belarus, France, Kyrgystan, Macedonia, Moldova, Monaco, Tajikistan, Turkmenistan, the Ukraine and Uzbekistan.

Alternative Vote (AV)

- a preferential, plurality-majority system;
- uses single-member constituencies, in which voters use numbers to mark their preferences on the ballot paper;

- a candidate who receives more than 50 per cent of first-preferences is declared elected. If no candidate achieves an absolute majority of first-preferences, votes are re-allocated until one candidate has an absolute majority of votes cast;
- AV is used in Australia.

2. Semi-proportional voting systems

The Parallel System

- a system of proportional representation (PR) used in conjunction with a plurality-majority system;
- unlike in the Mixed Member Proportional (MMP) system, the PR seats do not compensate for any disproportionality arising from elections to the plurality-majority systems;
- of the OSCE States, the Parallel System is used in Albania (Parallel-TRS), Andorra (Parallel-Block), Armenia (Parallel-TRS), Azerbaijan (Parallel-TRS), Croatia (Parallel), Georgia (Parallel), Lithuania (Parallel-TRS) and the Russian Federation (Parallel).

Single Non-Transferable Vote (SNTV)

- a semi-proportional system which combines multi-member constituencies with a first-past-the-post method of vote counting, and in which electors have only one vote;
- used in Jordan and Taiwan.

3. Proportional voting systems

The Mixed Member Proportional (MMP)

- a voting system in which a proportion of the legislature (usually half) is elected from plurality-majority single-member districts, while the remaining are chosen from proportional representation lists;
- under the MMP, the PR seats compensate for disproportion produced by the district seat results;
- of the OSCE States, MMP is used in Germany, Hungary and Italy.

List Proportional Representation (List-PR)

- in its simplest form each party presents a list of candidates to the electorate, voters vote for a party, and parties receive seats in proportion to their overall share of the national vote;
- of the OSCE States, List-PR is used in Austria, Belgium, Bosnia and Herzegovina, Bulgaria, Cyprus, the Czech Republic, Denmark, Estonia, Finland, Greece, Iceland, Latvia, Liechtenstein, Luxembourg, Moldova, the Netherlands, Norway, Poland, Portugal, Romania, San Marino, Slovakia, Slovenia, Spain, Sweden, Switzerland and Turkey.

The Single Transferable Vote (STV)

- a preferential proportional representation system used in multi-member election districts;
- to be elected candidates must surpass a specified quota of first-preference votes. Voters' preferences are re-allocated to other continuing candidates if a candidate is excluded or if an elected candidate has surplus;
- of the OSCE States, STV is used in Ireland and Malta.

B. Voting district magnitude

The single most decisive factor for the degree of proportional representation in elections is the voting district magnitude (size). District magnitude can be defined as the number of representatives elected in an election district (constituency).

In states with one-seat districts only the two largest parties have a fair chance of winning seats, while PR with multi-seat district usually favours minority parties. Under multi-seat PR rules even small parties can win a fair number of seats. A large district magnitude favours minority parties. The more seats an election district has, the more parties can be expected to win seats in the legislature.

In countries with multi-member constituencies, district magnitude tends to vary as the constituencies often follow existing administrative boundaries such as provincial boundaries. Therefore, the term 'average' district magnitude is often used in comparisons between various PR systems. Average district magnitude is defined as the average number of

seats (or representatives) per district. It can be calculated by dividing the total number of seats in the legislature by the number of districts.

Moldova. In Moldova, the 101 members of the 'Parlamentul' are elected from one nation-wide constituency (but a 4 per cent voting threshold is used; *see below*).

Slovakia. The 150 members of the 'Národná rada Slovenskej republiky', the legislature of the Slovak Republic, are also elected from one nation-wide constituency (but a 5 per cent voting threshold is used; *see below*).

C. Electoral thresholds

Electoral thresholds are used in many states in order to reduce the number of parties represented in the legislature. As noted above, there is, for instance, in Slovakia a 5 per cent voting threshold.

The electoral threshold is the minimum level of support that a party or a list needs in order to gain representation. The threshold is often applied at the national level, but may also be imposed on the district or regional level. The minimum level may be defined in terms of certain number of votes, a percentage of the votes, or some other similar criterion.

Electoral thresholds and district magnitude can be seen as two sides of the same coin. A high threshold has the same effect as a low voting district magnitude: both limit proportionality and, thus, the opportunity for small parties such as minority parties to win seats. Again, as the threshold decrease and district magnitude increase, proportionality and the chances for small parties to gain seats improve.

Of the OSCE States with a PR electoral system the following have a legal threshold for gaining representation in the legislature:

Country	Threshold
Austria	4 %
Bulgaria	4 %
Cyprus	1.8 % ⁸
Denmark	2 %
Estonia	5 %
Germany	5 % (<i>see below</i>)
Greece	3 %
Hungary	5 %
Italy	4 %
Latvia	5 %
Liechtenstein	8 %
Moldova	4 %
Netherlands	0.67 %
Poland	5 or 7 % (<i>see below</i>)
Romania	3 to 8 %
Slovakia	5 %
Sweden	4.8 or 12 %
Turkey	10 % ⁹

There are voting thresholds in states with mixed voting systems as well, such as in Albania (2 per cent), Armenia (5 per cent), Azerbaijan (8 per cent), etc.

The following OSCE States with a PR system do not have any legal thresholds for gaining representation in the legislature: Belgium, Bosnia and Herzegovina, the Czech Republic, Finland, Iceland, Ireland, Luxembourg, Malta, Portugal, San Marino, Slovenia, Spain and Switzerland.

Germany. In Germany, the lists of national minorities are exempted from the 5 per cent threshold imposed on other lists or parties.

Poland. In Poland, the lists of national minorities are exempted from the 5 to 7 per cent threshold imposed on other lists or parties. In the latest

⁸ Up to 20 % for coalitions.

⁹ In certain cases.

elections held in 1997, the German Minority of Lower Silesia gained, due to its dense settlement in one region, two seats in Parliament.

D. Assembly magnitude

The total number of seats of the elected assembly, for instance, the national legislature, may have an influence on the proportionality of the elections. The more seats available, generally the more proportionate are the elections.

E. Ballot structure

In elections categorical ballots are the rule. In a categorical ballot a voter may vote for candidates of one party only.

In some states ordinal ballots are used instead of categorical ballots. This means that a voter may cast his or her vote among more than one party. The STV system used in Ireland and Malta is an ordinal voting system since it entails the rank-ordering of candidates by the voters. The voters may vote for candidates of more than one party.

Ireland. In Ireland, each voter receives a ballot paper containing the names of all the candidates in his/her constituency. He/she votes for one of these by writing the figure 1 opposite the name of his/her choice. The voter is then at liberty to indicate an order of preference for the other candidates by adding the figures 2, 3, 4, etc. against their names.

At the opening of the count, the ballot papers are mixed and sorted according to the first preferences recorded. The total number of valid papers is then computed, and from that figure the electoral quota is filled, plus one. Candidates who obtain a number of first preferences equal to or greater than this quota on the first count are declared elected. If no candidate has reached the quota, the candidate who received the lowest number of votes is eliminated and his/her votes are transferred to the candidate for whom a second preference is recorded.

If a candidate receives more than the quota required for election, the surplus votes are transferred proportionally to the remaining candidates in accordance with the subsequent preferences expressed by the electors.

When the number of remaining candidates neither elected nor eliminated equals the number of vacancies to be filled, those candidates are declared elected, although they may not have reached the quota.

Malta. In Malta, each elector indicates his/her order of preference among all the candidates in his/her electoral division. In the first count, those who satisfy the Hagenbach-Bischoff quotient (*see below*) are declared elected. Should any seats remain to be filled, the surplus votes polled by candidates already elected are transferred proportionally to the remaining candidates on the basis of the second preferences indicated.

The votes thus referred are added to those polled by each remaining candidate; the candidate/candidates who now possesses/possess a number of votes equal to or greater than the quotient is/are elected. Candidates with the lowest number of votes are eliminated and their votes are transferred to the remaining candidates according to the next preference shown on the ballot paper.

The same operation is repeated until there are no more seats to be filled. If necessary, 'bonus seats' are allocated to any party receiving more than 50 per cent of the total votes cast in an election to ensure that it secure the greatest number of House seats.

Switzerland. Switzerland has the special feature of *panachage*: each voter is given as many votes as there are seats in the district and he/she is allowed to distribute these votes over two or more parties, equally or preferentially.

The Swiss voting system is proportional representation (and a majority system for five single-member constituencies) using the Hagenbach-Bischoff method, with remaining seats being distributed according to the rule of highest average, in multi-member constituencies. Each elector can vote for a list as it stands or modify it by crossing out or repeating names appearing on it; he can moreover split his vote between different lists or select names from different lists in forming his own on a blank ballot paper.

F. Open and close lists in List-PR and Mixed systems

In a List-PR system the lists of candidates can be either closed or open. A *closed* list means that the party leadership ranks the candidates on the slate and the voters cannot indicate any preference for individual

candidates. This system is applied in a number of states, such as Albania (mixed system), Azerbaijan (mixed system), Bulgaria, Croatia, Germany, Spain, Portugal and Romania (mixed system).

An *open* list means that a party may list its candidates in any order, but the voters' preference determines their intraparty ranking.

Open-list PR tends to favour underrepresented groups such as minorities and women. The reason is that the political parties in states with a closed list system tend to include minority candidates at the bottom of the lists in order to attract minority votes, and favour more 'secure' candidates—typically male candidates belonging to the majority population.

Finland. In Finland the list is so open that the voting system could be called 'quasi-list' PR (or 'personalized' PR). A voter must vote for an individual candidate. Seats are distributed among the individual parties, lists or alliances of several parties. For the distribution of seats within each list, candidates are ranked according to the number of personal votes they have polled.

G. Electoral constituency boundaries

The drawing of constituency boundaries has a decisive impact on the result of an election. The principle of equality of electoral force requires that seats be distributed evenly between constituencies in accordance with a given formula, which may be the number of inhabitants, nationals, or voters, etc.

In a number of OSCE countries, the decisions by the body responsible for the drawing up of the constituency boundaries are subjected to a judicial review. Among such countries are, for instance, Azerbaijan, Belarus, Belgium, Croatia, the Czech Republic, Germany, Hungary, Italy, Latvia, Lithuania, Portugal, Slovakia, Slovenia and the Ukraine.

H. Allocation formulas in List-PR systems

In all List-PR electoral systems seats are awarded in proportion to votes. Various divisor methods or so-called allocation formulas are used to allocate seats to party lists. Some of these lead to a more proportional election result than others. In List-PR electoral systems the choice of allocation formula may have relevance for the chance of numerically and

proportionally small and very small minorities to gain political representation.

There are two main groups of allocation formulas: so-called highest averages and largest remainder.

- Among the highest averages is the *d'Hondt* formula, which uses the divisors 1, 2, 3, 4, etc. Of the OSCE States, the d'Hondt allocation formula is used in Belgium, Bulgaria, Estonia, Finland, the Netherlands, Poland, Portugal, San Marino, Spain and Turkey.

The *Sainte-Lague* formula, which uses the odd-integer divisor series 1, 3, 5, 7, etc., approximates proportionality very closely and treats large and small parties equally. However, in practice, the formula is used in a modified version that uses 1.4 instead of 1 as the first divisor. This makes it more difficult for small parties to gain their first seat. Of the OSCE States, the Sainte-Lague formula is used in Denmark, Latvia, Norway and Sweden.

- Similar differences occur within the so-called largest (highest) remainder (LR) systems.

Of the LR systems the *Hare* formula is the oldest and the best known. It uses as its quota the total number of valid votes cast in a district divided by the district magnitude (m , the total number of seats available in the district).

The *Droop* quota divides the votes by $m+1$ instead of m . A method used especially for districts with many seats is first to award all parties the number of seats that equals to their Droop quota, and then to continue by using the number of seats already won plus 1 as the next divisor. This procedure is called the *Hagenbach-Bischoff (H-B)* method.

Lastly, the *Imperiali* quota uses $m+2$ as denominator. The Droop quota and the Imperial quota produce somewhat less proportional results than the Hare quota.

Of the OSCE Participating States, largest remainder systems are used in Austria (H-B), the Czech Republic (H-B), Greece (H-B), Iceland, Liechtenstein, Luxembourg (H-B), Slovakia (H-B) and Switzerland (H-B).

In conclusion, of the List-PR allocation formulas the LR Imperiali and the d'Hondt formulas are considered the less proportional divisors. For instance, the d'Hondt system tends to favour larger political parties, although its bias is less pronounced in large election districts. The modified Sainte-Lague and the Droop quota (H-B) form an intermediate category. The Hare formula is generally considered the most proportional of the divisor methods used.

I. Other measures which may improve the political representation of minority groups

The representation of minority groups in legislative assemblies may, at least in theory, be achieved in other ways as well, such as by:

- establishing special constituencies in which only representatives of specific groups may vote and run as candidates;
- establishing multi-member constituencies where one or several seats in each constituency must be filled by a member of a particular group in society.

In a system of communal representation seats in the legislative assembly are not only divided on a communal basis but the entire system is based on communal considerations. This means that each defined community has its own electoral roll, and elects only members of its own group to Parliament. Today only Fiji, and partly also New Zealand use this system.

New Zealand. The system with special constituencies remains as an optional choice for *Maori* voters in New Zealand. In this country the mixed-member proportional voting system (MMP) is used. Voters have two votes, known as a party vote and an electoral vote. Of the 120 members of the House of Representatives, 60 are elected by simple majority vote from single-member general electoral districts, and five from single-member *Maori* electoral districts. The remaining 55 members are elected from nation-wide party lists, according to each party's share of all the party votes. The *Maori* Roll is an electoral option. After each census, the process of redrawing electoral boundaries begins with a four-month *Maori* Electoral Option. During this period, electors who are registered on the *Maori* roll and those on the general roll who indicate on their enrolment forms that they are of *Maori* descent, are sent a letter asking

them to choose which of the two rolls they want to be registered on, the general roll or the Maori roll. Once a person has made his/her choice, he/she cannot change the type of roll he/she is registered on until the next Maori Electoral Option is held in five years time. The results of the Maori Electoral Option form the basis for calculating the Maori electoral population and the general electoral population. The results also affect the number of Maori seats there will be for the next five to eight years. The number of Maori electorate seats can rise or fall depending on the number of Maori who choose to be registered on the Maori electoral roll.

One of the problems with communal representation systems is how to define a member of a particular group. Furthermore, such systems tend to undermine accommodation, as there is little incentive for political intermixing.

J. Conclusions

In conclusion, relatively few states provide for special political representation of persons belonging to national minorities. In many states the political representation of minority groups is achieved through the application of the ordinary electoral laws, which do not distinguish between persons belonging to national minorities and other citizens. Such countries are, among others, Albania, Belarus, Bulgaria, the Czech Republic, Estonia, Latvia, Lithuania, Macedonia, Moldavia, Slovakia, the Ukraine and Yugoslavia.

In comparing various dimensions of electoral systems the most important ones for proportionality of election outcomes and, thus, for minority representation in the legislatures appear to be the electoral formula (or system), the district magnitude and the electoral threshold. The so-called effective electoral threshold is often seen as the strongest single explanatory variable in regard to proportionality or disproportionality of election outcomes.

Generally speaking, proportional representation, together with a high district magnitude, tends to favour ethnic and linguistic minorities, in particular small and dispersed minorities. On the other hand, if the minorities are sufficiently numerous and geographically concentrated they may also gain representation with a plurality-majority voting system (TRS). This is the case, for instance, in Belarus, Macedonia, Moldova and the Ukraine.

As noted above, a characteristic that distinguishes various proportional representation systems from each other as for the political representation of national minorities is whether they use closed party lists, where the party determines the rank order of candidates, or open party lists, where the voters are able to influence which of the candidates are elected via personal voting. Open lists generally favour minorities.

4. LUND RECOMMENDATION NO. 11

Lund Recommendation No. 11 reads:

States should adopt measures to promote participation of national minorities at the regional and local levels such as those mentioned above regarding the level of central government (paragraphs 6–10). 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.

Lund Recommendation No. 11 applies to all levels of government below the central authorities (for example, provinces, departments, districts, prefectures, municipalities, cities and towns, whether units within a unitary state or constituent units of a federal state, including autonomous regions and other authorities). 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 regional and the local level.

A. National practices

Italy. *See below*, under the title of 'Territorial autonomy'.

Finland. Under the Finnish Constitution, suitable territorial divisions shall be the objective in the organization of administration so that the Finnish-speaking and Swedish-speaking populations have an opportunity to receive services in their own language on equal terms.

The principles governing the municipal divisions are laid down by an Act. In Finland, a municipality can be either unilingual Finnish, unilingual Swedish, bilingual with a Finnish majority or bilingual with a Swedish majority. A municipality becomes bilingual if the number of

speakers of the other language reaches 8 per cent of the total population or is at least 3,000 persons. However, a bilingual municipality becomes unilingual only if the number of speakers of the other language decreases to 6 per cent or falls below 3,000 persons. The language status of municipalities is determined every ten years.

5. LUND RECOMMENDATIONS NOS. 12 AND 13

Lund Recommendations Nos. 12 and 13 read:

12) States should establish advisory or consultative bodies within appropriate institutional frameworks to serve as channels for dialogue between governmental authorities and national minorities. Such bodies might also include special purpose committees for addressing such issues as housing, land, education, language, and culture. The composition of such bodies should reflect their purpose and contribute to more effective communication and advancement of minority interests.

13) These bodies should be able to raise issues with decisionmakers, prepare recommendations, formulate legislative and other proposals, monitor developments and provide views on proposed governmental decisions that may directly or indirectly affect minorities. Governmental authorities should consult these bodies regularly regarding minority-related legislation and administrative measures in order to contribute to the satisfaction of minority concerns and to the building of confidence. The effective functioning of these bodies will require that they have adequate resources.

A. General explanation

Lund Recommendations Nos. 12 and 13 concern so-called participatory democracy. According to the ideals of participatory democracy, all voices should be heard and the government should govern in the interest of the whole people, minority groups included. Ideally, various groups should have their own representative or non-representative institutions; these institutions should receive subsidies from public funds if necessary; and they should be consulted by the authorities before the authorities take any legislative or administrative measures that directly affect the groups or the regions in which they live.

The advisory and consultative bodies may be standing or ad hoc. They may form part of or be attached to the legislative or executive branch or be independent therefrom. They can and do function at all levels of government, including self-government arrangements. In order to be effective, these bodies should be composed of minority representatives and others who can offer special expertise, be provided with adequate resources, and be given serious attention by decision-makers. Such bodies may also perform specific tasks related to the implementation of programmes, for example, in the field of education.

B. National practices

One example of advisory and consultative and preparatory bodies referred to in Lund Recommendations Nos. 12 and 13 are the *minority round tables* known in some OSCE Participating States.

The round table discussions usually involve representatives of all major national and ethnic minorities in a country. A common feature of round tables is that the minority representatives work alongside with representatives of the state authorities. Their key functions include:

- the preparation of statutes and governmental measures and recommendations of the minority policy of the state (Croatia, the Czech Republic);
- consultations between governmental and non-governmental organizations (Bulgaria), collection of information, encouraging and assistance of civil organizations (Latvia), assessment and improvement of inter-ethnic relations (Macedonia);
- the controlling and monitoring of the enforcement of statutes pertaining to minorities (Poland).

Estonia. In Estonia, a consultative round table was established in 1993 to deal with questions concerning national minorities. The consultative round table includes members from the Russian-speaking communities, the Minorities' Union and various political parties. It prepares recommendations and proposals in a number of fields.

Slovakia. In Slovakia, a round table has been set up on the initiative of the President of the Republic. The round table provides a forum for

discussing issues relating to national minorities and ethnic groups in the country.

Other examples of advisory or consultative bodies serving as channels between the authorities and national minorities are various types of *consultative councils* and *parliamentary commissions*.

Austria. In Austria, Ethnic Advisory Councils deal with matters pertaining to national minorities and have competence to advise the Federal Government and the Federal Ministers in this field and to make proposals.

Bulgaria. The National Council on Ethnic and Demographic Issues (NCEDI) is a governmental office established in 1997. It is composed of representatives of ten ministries at a vice-ministerial level, four relevant governmental agencies and non-governmental organizations representing minority groups.

The National Council is responsible for consultations, co-operation and co-ordination between governmental organs and non-governmental organizations in the elaboration and implementation of the national policy with respect to ethnic and demographic issues and migration, as well as the promotion and protection of tolerance and understanding between Bulgarian citizens of different ethnic and religious groups. The NCEDI forms part of the Council of Ministers. Its recommendations are not binding, it does not investigate individual complaints, and it does not have subpoena authority.

Czech Republic. In the Czech Republic, the Council of Nationalities of the Government has a prominent position. The Council, which is headed by a member of the government, is an advisory body. It works to promote, in particular at the ministerial level, measures designed to suppress racism and intolerance.

There is also an Interministerial Commission for Romany Affairs. The Commission consists of representatives of the government and the Roma population. Its tasks include advice on and evaluation of government policies and measures concerning Roma, collection of information on the situation and development of the Roma community as well as the allocation of government subsidies for this community.

Denmark. In Denmark, a Contact Committee between the political party of the German minority in Denmark, the Schleswig Party, and the Danish Parliament was established in 1965. All parties in Parliament are represented in the Contact Committee and it is chaired by the Minister of the Interior. The Committee discusses questions that concern the German minority directly.

Since 1983 there is also a Secretariat of the German minority with the task to represent the interests of the German minority in relation to the Danish Parliament and Government.

Finland. In Finland, the Advisory Board for Ethnic Relations (ETNO), formerly the Advisory Board on Refugee and Migration Affairs, operates in connection with the Ministry of Labour as a broadly-based advisory body in issues related to refugees and migration as well as to racism and ethnic relations.

Being a cross-administrative body, the Advisory Board assists the ministries in co-ordinating refugee and migration affairs in state administration and in developing, planning and monitoring refugee and migration policy. The Advisory Board also promotes interaction between authorities, civic organizations operating in the field, migrants and Finnish ethnic minorities. It has developed and supported measures to promote the integration of migrants into society as well as to promote tolerance and good ethnic relations in society, especially in working life.

The Permanent Secretary of the Ministry of Labour is the Chairman of the Advisory Board. The Permanent Secretary of the Ministry of the Interior and the Chairman of the Association for Foreigners in Finland are its Vice-Chairmen. The Advisory Board may assemble in two different compositions. The authority and organization-dominated composition consists of representatives of the ministries, the social partners, the Association of Finnish Local Authorities, the Finnish Evangelic Lutheran Church and Finland Society. Members of the migrant-dominated composition represent immigrants and Finnish ethnic minorities.

The Advisory Board assembles as a whole at least twice a year. The board also hears, in an annual event, representatives of other migrant groups and ethnic minorities than the ones represented in the Board. The Advisory Board may set up sections or working groups for the preparation of its work.

Finland. In 1956, the Finnish Government set up an Advisory Board on Gypsy in conjunction with the Ministry of Social Affairs and Health. In 1989, the Board was given a permanent status and its name was changed to the Advisory Board on Romani Affairs.

The Board serves as a link between the Romani population of Finland and the public authorities. Its members are appointed every three years by the Finnish Government. Half of the 18 members represent the Roma, and the other half the central government.

The Advisory Board's function is to:

- monitor and report to the authorities on the development of the Romani population's living conditions and opportunities for social participation;
- take initiatives to improve the economic, educational, social and cultural living conditions of the Romani population and to improve the employment of Roma;
- combat all forms of racial discrimination;
- further Romani language and culture;
- participate in international co-operation to improve conditions for the Roma.

In 1996, also Provincial Advisory Boards on Romany Affairs were established. The aim was to strengthen the position of the Roma through increased opportunities of participation. The Boards co-operate with both provincial and local authorities, disseminating information, promoting tolerance and dispelling prejudice. They may also mediate in disputes between the authorities and the Roma. Notwithstanding this they are not interest groups. It is not their task, for instance, to defend the rights of the Roma against the majority population.

Finland. A Sami Advisory Board was established in 1960 by a Council of State decision to promote the interests of the indigenous Sami minority in Finland. The Sami Advisory Board is a mixed standing commission with Sami and non-Sami members with the task to prepare and submit to the Council of State measures relating to Sami matters according to the recommendations adopted by the Nordic Council. It also monitors the development of the legal, economic, social and cultural situation of the Finnish Sami. Its members (11) are appointed by the Council of State

every four years. The Provincial Governor of the Province of Lapland chairs the Advisory Board. The other members represent various Ministries and the Provincial Government of Lapland. Five of the members are appointed by the Finnish Sami Parliament (*see below*).

Latvia. In Latvia, the President's Consultative Council on Ethnic Issues meets regularly. The decisions of the Consultative Council are recommendations by nature.

Lithuania. In Lithuania, there is a Parliamentary Human Rights and Nationalities Commission.

Poland. In Poland, there is a Parliamentary Commission for National and Ethnic Minorities. The Commission includes representatives of national minorities. It contributed to the preparation of the new Constitution with articles on minority issues and has been responsible for the preparation of the draft law on national and ethnic minorities.

Slovenia. In Slovenia, there is a Parliamentary Commission for Minorities.

The advisory and consultative bodies of national minorities may also be elected, directly or indirectly, and thus be representative of the minority in question. Examples of such bodies are the *Nordic Sami Parliaments*.

Sweden. The Swedish Sami Parliament was established in 1993 by an Act of Parliament. The task of this representative assembly is to promote a living Sami culture and to protect and promote the cultural interests of the Swedish Sami population. In particular it should:

- decide on the distribution of state subsidies to the Sami culture;
- appoint the Board of the Sami School;
- direct the efforts towards the promotion of the Sami language;
- contribute to societal planning and ensure that the interests of the Sami are taken into account; among them, the interests of the reindeer breeding in relation to the exploitation of land and water;
- provide information on Sami conditions.

The competence of the Swedish Sami Parliament is, aside from the aforementioned few exceptions, restricted to the taking of initiatives in Sami cultural matters. It is not a body to which a proposed measure is referred for consideration. The state or municipal authorities have no obligations to consult the Sami Parliament, even in matters that especially concern Sami culture.

Legally speaking the Swedish Sami Parliament is a state authority under the government. This means that it forms a part of the ordinary state administration and that its members and employees are civil servants.

The Sami Parliament is financed through the state budget. The subsidies are designed to cover working expenses, Sami language projects and the Parliament's political activities. Since 1996, the Sami Parliament has been responsible for the payment of compensation to Sami reindeer owners for predator damages. It has also been entrusted with the responsibility for the distribution of state subsidies to Sami culture and Sami organizations.

The Swedish Sami Parliament has 31 members. The members are elected by and among the Sami. For the purposes of the elections, the country constitutes a single electoral district. The elections are held every four years. To be entitled to vote in these elections, a person must be registered in the Sami electoral register. A person is entered in the electoral register on application provided that he or she is a Sami. Under the Act on the Sami Parliament, a 'Sami' is a person who considers himself a Sami and:

- shows that it is likely that he or she has or has had Sami as a home language;
- shows that it is likely that at least one of his/her parents or grandparents has or has had Sami as a home language;
- that at least one of his/her parents is or has been registered in the Sami electoral register.

In the elections of the Sami Parliament, the candidates are nominated by Swedish national Sami organizations, Sami 'parties' or Sami associations (electoral lists).

Finland. The status of the Finnish Sami as an indigenous people, as well as their right to maintain and develop their language and culture, have been recognized in the Finnish Constitution (section 17, sub-section 3).

Since 1996, the Finnish Sami enjoy cultural autonomy. The legal basis for their cultural autonomy derives from section 121, sub-section 4 of the Finnish Constitution. This constitutional provision is accompanied by an *Act on the Sami Parliament*. The Sami Parliament, which is an elected and representative Sami assembly, governs the Sami cultural autonomy.

The Sami cultural autonomy cannot be compared to an 'ordinary' cultural autonomy of a minority group. The Sami Parliament has not—at least not so far—any real independent decision-making powers, as might be expected from the use of the term 'autonomy'. Nor does the Act on the Sami Parliament include a list of 'Sami issues' which would fall under its jurisdiction. Thirdly, the competence of the Sami Parliament is not restricted solely to the cultural field but includes, for instance, consultation in community planning and the management and use of lands as well as nature conservation and wilderness areas within the Sami Homeland. In practice, Sami cultural autonomy is implemented through a right of the Sami Parliament to participate in public decision-making and administration. Thus, the Sami Parliament is more of a policy organ than a body for Sami cultural administration.

The Sami Parliament works under the auspices of the Ministry of Justice and is financed from the state budget. Despite this it is a Sami organ and does not form part of the ordinary state administration. For instance, the Sami Parliament appoints its own staff. The national legislation concerning civil servants is only partly applicable on these persons.

The Sami Parliament represents the Finnish Sami population nationally and internationally. Its other principal tasks and duties are to promote the Sami language and culture and to take care of matters relating to the status of the Sami as an indigenous people. In issues pertaining to its tasks it has the right to take initiatives, make proposals and issue statements to the authorities. The central, regional and local authorities also have an obligation to negotiate with the Sami Parliament in all far-reaching and important measures which may, directly and in a specific way, affect the status of the Sami as an indigenous people, and which concern the following matters in the Sami Homeland:

- community planning;
- the management, use, leasing and assignment of state lands, conservation areas and wilderness areas;
- applications for mining concessions for mineral deposits and for founding of mining districts;
- legislative or administrative changes in the occupations belonging to the Sami form of culture;
- the development of teaching of, and in, the Sami language in schools, as well as social and health services; and
- any other matters affecting the Sami language and culture or the status of the Sami as an indigenous people.

To fulfil its obligation to negotiate with the Sami Parliament, the authority in question must provide the Sami Parliament with the opportunity to be heard and discuss matters.

Though the Sami Parliament so far has been entrusted with limited independent decision-making powers, they are likely to be extended in the future. The Sami Parliament has already assumed full responsibility for the production of Sami language textbooks and other teaching materials.

The 30 members of the Sami Parliament are elected by and among the Sami. For the purposes of these elections, the country constitutes a single electoral district. For the purposes of the Act on the Sami Parliament, 'Sami' means a person who considers himself a Sami, provided that:

- he himself or at least one of his parents or grandparents has learnt Sami as his first language; or
- he is a descendant of a person who has been entered in a land, taxation or population register as a 'mountain', 'forest' or 'fishing' Lapp; or
- at least one of his parents has, or could have been, registered as a voter for an election to the Sami Parliament or its predecessor, the Delegation for Sami Affairs.

A person who is entitled to vote is also eligible to run as a candidate in the elections of the Sami Parliament. Three persons entitled to vote may together nominate one candidate at the elections. In Finland, there are no Sami 'parties'. Neither do the national political parties participate in these elections.

Norway. The Norwegian Sami Parliament was founded in 1989 by an Act of Parliament. The purpose of 1989 Act is to implement the aims set forth in section 110(a) of the Norwegian Constitution.

The Norwegian Sami Parliament is the representative political institution of the Norwegian Sami population. Despite its legal basis and regardless of the fact that it is financed from the state budget, the Norwegian Sami Parliament is not an ordinary state authority. For instance, the government cannot direct its decision-making in particular cases, and it is free to pursue its own policy in Sami issues, even though this may not always be in line with the government's policy.

The Sami Parliament has the right to engage in all matters which according to its own judgment, are of particular concern to the Sami population. Within its field of competence it has the right to take initiatives, make petitions and issue statements to public authorities and private parties. All public authorities must provide the Sami Parliament with an opportunity to be consulted before they take any action in matters falling within the field of competence of the Sami Parliament, though it is not a body to which a proposed measure is referred for mandatory consideration. In addition to these tasks, it has been given some restricted decision-making powers regarding its own affairs.

The Norwegian Sami Parliament is not only the political institution of the Sami in relation to public decision-making and the state, regional and local administrations. It is also an organ with important administrative functions. The Norwegian Sami administration consists of four Sami Councils, all working under the auspices of the Sami Parliament: one for Sami cultural affairs, one for the Sami languages, one for Sami livelihoods and one for Sami memorial monuments. In the capacity of an administrative Sami organ, the Sami Parliament decides annually on the use of some 56 million Norwegian crowns in state subsidies to Sami culture, language and livelihoods.

The Norwegian Sami Parliament consists of a total of 31 members. Those who are entitled to vote in municipal elections and who have been registered in the Sami electoral roll of their own municipality are entitled to vote in the elections of the Sami Parliament. In order to be entered into the Sami electoral roll, a person must be a Sami.

Legally, a Sami is a person who according to his or her own declaration considers himself/herself a Sami and:

- has Sami as his/her home language; or
- at least one of his/her parents, grandparents or their parents has or has had Sami as his/her home language; or
- is a child of person who is entered or has been entered in the Sami electoral roll.

At the 1997 elections of the Norwegian Sami Parliament, 12 members were elected from the list of candidates of the Labour Party (*'Arbeiderpartiet'*), two from the list of the Centre Party (*'Senterpartiet'*), 19 from the list of a Norwegian Sami national organization (*NSR*) and six from various Sami lists.

Finland. The Swedish Assembly of Finland is an indirectly elected political body for the Swedish-speakers in Finland. The Assembly has two main functions: it offers a forum for political discussion on issues concerning Swedish-speakers, including all political groupings of relevance. It also functions as a pressure group in essential matters with regard to the legitimate interests of the Swedish-speaking population. The Assembly also engages in research (demographic issues) and disseminates information to the public, in particular to the Finnish-speakers, about the Swedish-speakers and their situation.

In its work, the Assembly takes initiatives, submits proposals and issues statements to the authorities and to the government in matters falling under its competence. Proposed measures are often submitted to the Assembly for consideration on a voluntary basis, but authorities are under no obligation to consult the Assembly before taking measures that may affect the Swedish language and culture in Finland.

Even though the Act on State Subsidies to the Swedish Assembly primarily concerns state subsidies to the Assembly, it also contains some provisions on its organization and tasks. Despite this, the Swedish Assembly is not a state authority. For instance, its employees are not civil servants and the general administrative law provisions are not applicable on it.

The Swedish Assembly of Finland consists of 75 members. Between the sessions a Board with 16 members, appointed by the Assembly manages the daily administration. Seventy members of the Assembly are elected every fourth year from six election districts indirectly on the basis of the outcome of the municipal elections. Eligible for election are Finnish citizens who have attained 18 years of age before the municipal elections. Parties

and other groupings which intend to participate at the elections of the Assembly, have to present a list of their candidates in each election district. These lists may include three times as many candidates as shall be elected from the election district. The lists of candidates are so-called long lists, which means that the candidates are presented in that order the parties or the other groupings wish them to be elected. Those votes cast in the municipal elections on Swedish-speaking candidates are taken into account in the elections of the Swedish Assembly. Swedish candidates are those who have been registered as Swedish-speakers or who use a Swedish title or profession in the official compilation of lists of candidates at the municipal elections. In addition, the Legislative Assembly of the autonomous Åland Islands appoints five members to the Assembly, a number which is proportional to the number of the Åland Islanders compared to all Swedish-speakers in Finland.

6. LUND RECOMMENDATIONS NOS. 14 TO 18

Lund Recommendations Nos. 14 to 18 read:

14) Effective participation of minorities in public life may call for non-territorial or territorial arrangements of self-governance or a combination thereof. States should devote adequate resources to such arrangements.

15) It is essential to the success of such arrangements that governmental authorities and minorities recognize the need for central and uniform decisions in some areas of governance together with the advantages of diversity in others.

- *Functions that are generally exercised by the central authorities include defense, foreign affairs, immigration and customs, macroeconomic policy, and monetary affairs.*
- *Other functions, such as those identified below, may be managed by minorities or territorial administrations or shared with the central authorities.*
- *Functions may be allocated asymmetrically to respond to different minority situations within the same State.*

16) Institutions of self-governance, whether non-territorial or territorial, must be based on democratic principles to ensure that they genuinely reflect the views of the affected population.

17) *Non-territorial forms of governance are useful for the maintenance and development of the identity and culture of national minorities.*

18) *The issues most susceptible to regulation by these arrangements include education, culture, use of minority language, religion, and other matters crucial to the identity and way of life of national minorities.*

- *Individuals and groups have the right to choose to use their names in the minority language and obtain official recognition of their names.*
- *Taking into account the responsibility of the governmental authorities to set educational standards, minority institutions can determine curricula for teaching of their minority languages, cultures, or both.*
- *Minorities can determine and enjoy their own symbols and other forms of cultural expression.*

A. General explanation

The term 'self-governance' implies a measure of control by a community over matters affecting it. The choice of the term 'governance' does not necessarily imply any exclusive jurisdiction. In addition, it may include administrative authority, management, and specified legislative and judicial jurisdiction. The state may achieve this through delegation or devolution, or, in case of a federation, an initial division of constituent powers. Among OSCE Participating States, such arrangements are variously referred to as delegations of autonomy, self-government and self-governance. In no case is this to include any ethnic criteria for territorial arrangements.

Recommendations Nos. 14 to 16 address the issue of sharing of regulatory authority in fields other than defence, foreign affairs, immigration and customs between the central authorities of a state and affected territorial units or minority groups. When institutions of self-governance are needed or desirable, the equal enjoyment by everyone of their rights requires the application of the principle of democracy within these institutions.

Political power may be devolved non-territorially or territorially. Recommendations Nos. 17 and 18 concern specifically non-territorial forms of governance. Non-territorial autonomy, which is often referred to as 'personal autonomy' or 'cultural autonomy', is most likely when a group is geographically dispersed. Such divisions of authority, including control over a specific subject-matter, may take place at the level of the state or

within territorial arrangements. The issues most susceptible to cultural autonomy include education, culture, the use of minority language, religion and other matters crucial to the identity and way of life of national minorities.

There are few existing territorial autonomies in Eastern Europe. The only major example of territorial autonomy is the autonomous Gagauzi territory in Moldova, and with certain reservations, the Crimean autonomy. Again, non-territorial autonomy is rare in Western Europe, but commonly found in Eastern Europe. Here there are two principal forms of non-territorial minority self-government: as a part of local autonomy, and in the form of a special minority cultural autonomy (personal autonomy). The former means that minorities participate in the administration of local public affairs as parts of the local political community under the general rules on local government.

B. Instruction of, or in, minority languages

The existence of an education system in the language of the minority community is crucial to the protection and promotion of the identity of national minorities. In most European countries, there are no separate minority education systems, but in states with linguistic minorities minority education is organized as an integral part of the public education system. In a number of Western European states, as well as in Hungary, Romania and Slovakia, the law entitles minority groups to establish and maintain their own cultural and educational institutions.

Finland. In Finland, the language of instruction in schools is either Finnish or Swedish, depending on the pupil's mother tongue. In 1997, there were 270 Swedish lower level comprehensive schools, 54 Swedish upper level comprehensive schools, 36 Swedish gymnasia and some 30 Swedish vocational schools. Private Swedish-language schools have been established in unilingual Finnish areas, for instance, in the cities of Tampere and Oulu (0.5 % and 0.2% of Swedish-speaking inhabitants respectively). Depending on the choice of the pupils and their guardians, the Sami language can also be the language of instruction within the Sami Homeland.

Hungary. According to the law, the language of education in Hungary is both Hungarian and the language of the Hungarian minorities. National and ethnic minorities are entitled to education in their mother tongue. The

organization and maintenance of minority education is mandatory if the parents of eight children belonging to a minority require this. The national bodies of minority self-government have the right to establish and maintain educational institutions.

Norway. In Norway, the Education Act of 1999 gives pupils belonging to the Sami minority the right to receive all education in their mother tongue, provided that at least ten pupils in the community are Sami-speaking.

Some states, such as Finland and Slovenia, have a bilingual education system.

Finland. In Finland, Swedish is a compulsory subject in all Finnish comprehensive schools, although Swedish is the mother tongue of only 5.7 per cent of the total population. In the same way, Finnish is a compulsory subject in the Swedish-language comprehensive schools.

Slovenia. In the minority language educational institutions in the area of Prekmurje in Slovenia the Slovenian language is a compulsory subject. Again, in the educational institutions in which education is given in the Slovenian language the minority language is a compulsory subject.

C. Cultural autonomy

Legislation on minority cultural autonomy is found, for instance, in Hungary and the Baltic States.

Hungary. In Hungary, the rights of national and ethnic minorities are defined by Article 68 of the Constitution. This provision also guarantees national and ethnic minorities the right to participate in public affairs and to form local and national bodies of self-government. The latter right is further specified in Act LXV of 1990 on Local Government Authorities, Act LXXVII of 1993 on the Rights of National and Ethnic Minorities and Act LXII of 1994 on Local Government Elections.

According to Act LXXVII of 1993, Hungarian national and ethnic minorities have the right to establish local and national self-governments. Local and national self-governments are representative political bodies of the Hungarian national and ethnic minorities. Minority self-governments are established either through direct elections, or indirectly.

Direct elections of local minority self-governments are held at the same time as the elections of the municipal councils, provided that at least five persons belonging to the same minority in a settlement have requested the arrangement of such elections. Five persons belonging to a national or ethnic minority have the right to nominate one candidate for the elections of a minority self-government. In settlements with less than 1,300 inhabitants a local minority self-government consists of three members. In settlements with more than 1,300 inhabitants, including the district of Budapest, a local minority self-government has five members. To be valid at least 50 (valid) votes must be cast in elections of a local minority self-government in settlements with a population less than 10,000 persons. In settlements with more than 10,000 inhabitants at least 100 valid votes are required for the elections to be valid.

In case more than half of the members of a municipal council represent national or ethnic minorities the council may declare itself to be a minority local self-government. If at least 30 per cent of its members represent one particular national or ethnic minority, the council is considered an *indirectly* formed local minority self-government.

If a national or ethnic minority in a particular settlement does not have a self-government it may appoint a *spokesperson* to represent its interest.

Legally, minority self-governments are not public authorities and they do not have the decision-making powers of such authorities. Instead, minority self-governments have consultative functions in matters concerning:

- local public education, local media;
- the protection of the local heritage;
- culture;
- the use of the minority language.

In matters which affect the minority, a self-government of a national or ethnic minority has the right to approach the competent public authority and to ask for additional information. It also has the right to make proposals, to take initiatives and to object to a certain practice or decision.

In addition, local minority self-governments have certain limited internal decision-making powers concerning:

- the use of their property;
- their budget;

- the protection of local historical monuments, historical buildings and memorial sites.

A local minority self-government may also decide on:

- its internal organization;
- name;
- insignia;
- medals and decorations, including the requirements and rules for the awarding of such medals and decorations.

Within their available resources they have the right to establish and maintain:

- scholarships;
- institutions of primary and adult education;
- local newspapers and electronic media;
- enterprises and other business organizations.

National self-governments of national or ethnic minorities, so-called national councils, are established through elections. A national minority council is elected by so-called minority electors. Minority electors are:

- those representatives of the local councils which have been elected as representatives for a national or ethnic minority; and
- the members of local minority self-governments.

A national council of a Hungarian national or ethnic minority consists of 13 to 53 members. The national council protects and promotes the interests and rights of the minority represented at the national and regional level. A national council has the right to decide independently on:

- the location of its office, its organization and operational mode;
- its budget;
- the full list of opening assets;
- its name and insignia;
- nation-wide festivals of the minority represented;

- its medals or decorations and the requirements and rules for awarding them;
- the principles and means governing the utilization of the public radio and television channels at its disposal;
- the principles governing the use of the radio and television air time at its disposal;
- the publication of its press releases;
- the establishment and maintenance of a museum or exhibition hall and public collections with a countrywide collection network;
- the maintenance of a minority library;
- the establishment and maintenance of an institute for the arts and/or science and a publishing house;
- the maintenance of secondary and higher educational institutions with a countrywide coverage;
- the establishment and operation of legal advisory services;
- the performance of other duties which legally fall within its authority.

Furthermore, a national self-government of a minority has the right to express its opinion on legislative proposals which affect it. It also has the right to request information from public administrative authorities in matters affecting the minority and to participate in the supervision of minority educational institutions at all levels. A national self-government must be consulted on draft legislation on the preservation of historical settlements and the architectural heritage of the minority and on minority education material in general.

The local authorities—or the state in respect of national self-governments—have a duty to provide the minority self-governments with office space. Both local and national minority self-governments receive state subsidies to cover their expenses. Being legal entities, minority self-governments may have other revenues than state subsidies. For instance, grants from kin-states are allowed, as are possible incomes from their business activities.

In Hungary, minority self-government elections were held for the first time on 11 December 1994. At this date, a total of 792 minority self-governments were elected. Minority self-government elections were held for the second time on 18 October 1998. As a result, all of the 13 Hungarian national and ethnic minorities were able to form their own national minority self-governments. Later also the Bulgarian, Gypsy, German, Armenian,

Ruthenian and Ukrainian minorities have established their national self-governments.

Under Act LXXVII of 1993, the right to belong to a national or ethnic minority is an inalienable right of all individuals. This means that also persons who are not recognized by a certain minority group and/or who cannot speak the language of the minority in question have the right to initiate minority self-government elections. In practice, such persons have been elected as members of minority self-governments as well.

7. LUND RECOMMENDATIONS NOS. 19 TO 21

Lund Recommendations Nos. 19 to 21 read:

19) All democracies have arrangements for governance at different territorial levels. Experience in Europe and elsewhere shows the value of shifting certain legislative and executive functions from the central to the regional level, beyond the mere decentralization of the central government administration from the capital to regional or local offices. Drawing on the principle of subsidiarity, States should favourably consider such territorial devolution of powers, including specific functions of self-government, particularly where it would improve the opportunities of minorities to exercise authority over matters affecting them.

20) Appropriate local, regional, or autonomous administrations that correspond to the specific historical and territorial circumstances of national minorities may undertake a number of functions in order to respond more effectively to the concerns of these minorities.

- *Functions over which such administrations have successfully assumed primary or significant authority include education, culture, use of minority language, environment, local planning, natural resources, economic development, local policing functions, and housing, health, and other social services.*
- *Functions shared by central and regional authorities include taxation, administration of justice, tourism, and transport.*

21) Local, regional, and autonomous authorities must respect and ensure the human rights of all persons, including the rights of any minorities within their jurisdiction.

A. Federalism

Lund Recommendations Nos. 19 to 21 are concerned with *territorial* arrangements for the devolving of power. Such arrangements are, for instance, federalism, asymmetrical federalism and territorial autonomy.

Federalism is probably the best-known arrangement for the devolving of power. In federalist arrangements power is devolved equally to all regions and each region has an identical relationship to the central government. Traditionally, federalism has not been used to solve problems of ethnic or linguistic diversity. There are nevertheless examples of instances where federalism has proven effective in solving such problems as well, such as Belgium, Malaysia, Nigeria and Switzerland.

The federal model may not always meet the cultural and other needs of a minority community. In this case there are two alternatives to federalism, namely asymmetrical federalism and territorial autonomy.

Asymmetrical federalism means that one or more federal entities are vested with special powers, powers that are not granted to other provinces, to allow for preservation of the culture and language of its inhabitants. Examples of asymmetrical federalist arrangements are Quebec in Canada and Kashmir within the Indian federation.

Belgium. Belgium is a federal state consisting of communities and regions. In Belgium, there are three *communities*: the French Community, the Flemish Community and the German Community. These correspond to the population groups of the country. There are also three *regions* in Belgium: the Walloon region, the Flemish region and the Brussels region. To some extent the regions correspond to the American States and the German Länder.

Furthermore, the country is divided into four *linguistic regions*: the French-speaking region, the Dutch-speaking region, the bilingual region of Brussels Capital and the German-speaking region. Each municipality of the kingdom is part of one of these linguistic regions. The regions (the Walloon and the Flemish regions) are further divided into ten *provinces* and some 589 *municipalities*.

The Belgian Parliament, Federal Chambers, consists of a Chamber of Representatives and the Senate. The elected members of each Chamber are divided into a French linguistic group and a Dutch linguistic group. The 150 members of the Chamber of Representatives are elected from 20 multi-member constituencies from party lists with proportional representation in

accordance with the d'Hondt divisor. Of the 71 Senators, 40 are directly elected from three multi-member constituencies (Flanders, Wallonia and Brussels) and two electoral colleges (French and Dutch). The voting system is party-list with proportional representation in accordance with the d'Hondt method. Preferential voting with respect to the same list is possible. Twenty-one Senators are designated by the Community Councils, and ten of them co-opted. In addition, certain members of the royal family are Senators by right (at present two).

The electoral district of Brussels, Halle-Vilvorde, is bilingual. It covers both the bilingual region of Brussels and the Dutch-language region of Halle-Vilvorde, a region inhabited by a French-speaking minority. As an exception to the strict principle of territoriality, these French-speakers may vote for deputies and senators belonging to the French language group.

For many laws the Constitution requires a special majority. This majority requires, in addition to an overall majority of two-thirds in each Chamber, an absolute majority of the votes of each language group. The Constitution provides that the Cabinet must be made up of the same number of French-speaking and Dutch-speaking ministers.

In Belgium, the federal state retains power in matters that are formally attributed to it by the Constitution and the laws carried in pursuance of the Constitution itself. In other matters the regions and the communities have authority. The originality of Belgian federalism is that it has two competing federated structures, the communities and the regions. The regions are strictly territorial, while the competences of the French and Flemish communities are not entirely territorial. The laws of the two communities apply in some cases and to a certain extent also to Brussels, where the French-speaking and Flemish communities have concurrent competencies. The German-language region is both a part of the Wallonia (economically) and an autonomous community (culturally).

In Belgium, interests which are exclusively of a communal or provincial nature are ruled on by the communal and regional councils. The communities are represented by Community Councils: the French Community Council, the Flemish Community Council and the German Community Council. Each community council is composed of representatives elected directly as members of the concerned community council or as members of a regional council. The regions are represented by regional councils. Each regional council is composed of members elected directly as

members of the regional council concerned or as members of a community council. There are also Regional and Community Governments.

The regions have legislative and administrative powers in matters concerning the environment, transports, economy, etc. The communities have authority in personal and cultural issues, educational matters, issues related to inter-community co-operation and in some social matters.

B. Territorial autonomy

Territorial autonomy is more common than federalism. In territorial autonomy arrangements special powers have been devolved to one or more regions of a state. Autonomy is usually asymmetric. An important distinction between federalism and autonomy is that in federalism the regions participate actively in national institutions and national policy-making, in addition to controlling devolved subjects within the region. In autonomy, the emphasis is rather on the region's power to control its own affairs, than on the possibility to participate in national institutions.

Compared to arrangements for the strengthening of minority participation in public affairs, the general advantages of territorial autonomy solutions are that they ensure minorities executive, legislative and fiscal powers, not merely a right of political representation. Territorial autonomy also offers minorities better prospects of preserving their culture by enabling minorities to make important decisions. Furthermore, territorial autonomy may prevent demands for secession.

In Europe, there are many examples of self-governing territories, such as the Azores, the Basque country, the Canary Islands, Catalonia, the Channels Islands and the Isle of Man (under the British Crown), Corsica, Crimea, the Faeroe Islands, the Friuli-Venezia Giulia, Gagauzia, Galicia, Greenland, Madeira, Northern Ireland, Scotland, Trentino-Alto Adige (South Tyrol), the Valle d'Aosta and the Åland Islands.

Finland. A particularly successful example of territorial autonomy is the Åland Islands. The Åland Islands form an autonomous, demilitarized, neutralized and unilingual Swedish-speaking Province of Finland. The Islands are situated in the Baltic Sea between Finland and Sweden. The total population of Åland amounts to some 25,000 people. Of these, some 23,700 speak Swedish and some 1,200 Finnish.

In 1917, Ålandic secessionist claims—supported by the Swedish Government—led to a territorial dispute between Finland and Sweden over

the Åland Islands. On British initiative the dispute was brought before the League of Nations. In 1921, the Council of the League of Nations recognized that the sovereignty over the Åland Islands belongs to Finland. At the same time it decided that certain guarantees should be provided by Finland for the protection of the islanders. In June 1921, the bilateral negotiations between Finland and Sweden resulted in an agreement between the two countries, the so-called Åland Agreement, in which Finland undertook to preserve the Swedish language, culture and character of Åland. The text of the Åland Agreement was later included in the so-called Guarantee Act of 1922, which supplemented the 1920 Autonomy Act. On 20 October 1921, a convention on the non-fortification and neutralization of the Åland Islands was signed between Germany, Denmark, Estonia, Finland, France, Great Britain, Italy, Latvia, Poland and Sweden.

The current Autonomy Act of the Åland Islands was adopted in 1991, and came into force 1 January 1993. Today, the autonomy of the Åland Islands is very far-reaching and includes independent legislative and administrative powers in a great number of sectors. The Autonomy Act of Åland, like the 1975 Act on the Acquisition of Real Property on Åland, may only be amended following the procedure laid down for Finnish constitutional amendments and with the consent of the Ålandic Legislative Assembly. The autonomy of Åland is also guaranteed under section 120 of the Finnish Constitution.

The population of Åland is represented by the Ålandic Legislative Assembly (*'Lagtinget'*), the members of which are elected by direct and secret ballot. *'Landskapsstyrelsen'* is the Government of Åland. The Autonomy Act specifies the areas in which the Ålandic Legislative Assembly has the right to pass Ålandic laws. The most important areas are:

- education, health and medical services;
- social welfare;
- the promotion of industry;
- trade;
- internal communications;
- local district administration;
- public order and security;
- hunting, fishing and farming;
- the protection of the environment;
- postal services, television and radio broadcasting;

- the use of the flag of the Province.

In other fields of legislation the laws of Finland apply in Åland. The Finnish government authorities deal with the judicial system, collection of taxes, customs and land surveying. The County Administrative Board in Åland, which is in charge of issues belonging to the general administration of the state, has more limited duties than those in the rest of Finland. The Government of Finland is represented in Åland by a County Governor, who is appointed by the President upon agreement with the Speaker of the Legislative Assembly of Åland.

The decision to enact an Ålandic Act shall be presented to the President of the Republic. After having obtained a statement from the Supreme Court, the President of the Republic can declare the Ålandic Act to be void in full or in part if she considers the Legislative Assembly to have exceeded its legislative competence or the Act to pertain to the foreign or domestic security of the state.

Consent by Åland is a precondition for an international treaty having (domestic) validity in Åland. If the treaty is in contradiction with the Autonomy Act itself, its incorporation requires a majority of two-thirds both in the national Parliament and in the Legislative Assembly of Åland.

Under the Autonomy Act, the government has an obligation to inform and, in some cases, to consult the Ålandic authorities in the process of negotiating international treaties. The decision to conclude or not to conclude a treaty is in the hands of the Finnish Government, in many cases requiring consent by Parliament.

In Åland, the state has the right to collect income and property taxes but the Province receives every year a sum of money from the state to cover the costs of the autonomy. This sum—the so-called amount of equalization—is determined in an equalization procedure laid down in the Autonomy Act. This procedure cannot be altered without the consent of the Ålandic Legislative Assembly.

As mentioned above, the official language of Åland is Swedish, which means that the language used by the state and Ålandic officials and in the municipal administration is Swedish. However, in a matter concerning himself or herself, a Finnish citizen has the right to use Finnish in a court of law and with other state officials in the Åland Islands. Swedish is also the language of instruction in schools which are financed by public means, or

which receive public support, unless otherwise prescribed by an Ålandic Act.

In addition to their autonomy, the Åland Islanders have a permanent seat in the Finnish Parliament.

The self-government of the Åland Islands differs in one respect from most other territorial autonomy arrangements. A significant part of the autonomy of the Åland Islands is the institution of *the right of domicile*, which is a regional Ålandic citizenship. The enjoyment or absence of the right of domicile is decisive for several other individual rights on the islands. Only a person in possession of the right of domicile may participate in the elections of the Legislative Assembly of Åland, although all Finnish citizens, as well as citizens of Sweden, Denmark, Iceland and Norway, have the right to vote and to be elected at municipal elections in Åland. According to the 1975 Act on the Acquisition of Real Property in Åland, natural persons without the right of domicile and legal persons may not, without a special permission from the Government of Åland, acquire ownership or, through land lease or other contract, possession of real property in Åland. The Autonomy Act also establishes a distinction as for the right to exercise a trade or profession in Åland. Only persons with the right of domicile have full rights in this respect. Finally, a person with the right of domicile is legally exempt from conscription for military service, and in practice from any substitute alternative service as well.

Under the Autonomy Act, two groups of persons acquire the right of domicile by virtue of law:

- persons who at the time of the entry into force of the 1991 Autonomy Act had the right of domicile according to the 1951 Autonomy Act; and
- all children under 18 years of age, who are Finnish citizens resident in Åland, provided that either the mother or the father has the right of domicile.

Section 7 of the Act entrusts the Government of Åland with the power to grant the right of domicile to other persons on the basis of an application. Its discretion in refusing an application is regulated in paragraph 2. Unless there are persuasive reasons for not granting the right of domicile, it shall be granted on application to a citizen of Finland:

- who has taken up residence in Åland;

- who has without interruption been habitually resident in Åland for at least five years; and
- who is satisfactorily proficient in the Swedish language.

The Government of Åland may grant the right of domicile for a special reason also to a person who does not fulfill all the requirements in paragraph 2, subject to the provisions of an Ålandic Act.

The Home Rule of Greenland. Greenland (Inuit: '*Kalaallit Nunaat*') belongs geographically to North America but is politically a part of Denmark. The population of Greenland amounts to 56,087 persons (as of 1 January 1999). Of these, 49,281 were born in Greenland and 6,806 outside Greenland, mainly in Denmark. The population born in Greenland is approximately the size of the indigenous population of the island, *Inuit*.

Until 1953, Greenland was a Danish colony. In practice this meant that Greenland was administered from Denmark with little participation from the population of the colony. Through the 1953 Danish Constitution Greenland became a Danish Province.

In the 1970s, a movement for a Greenlandic autonomy gradually emerged. In 1972, the Provincial Council of Greenland petitioned to the Danish Government that the granting of more influence and responsibility for the development of Greenland to the Council should be studied. One year later, the government appointed a Commission on Home Rule in Greenland. The Commission was a mixed one, consisting of politicians from both Denmark and Greenland. On the recommendations and proposals of this Commission the Danish Parliament adopted the *Greenland Home Rule Act* in November 1978. The Act was endorsed by the population of Greenland in a referendum held on 17 January 1979. The Act entered into force 1 May 1979.

According to the preamble of the Home Rule Act, Greenland has a special national, cultural and geographical position within the Danish society. Despite this provision the Home Rule Act did not alter the constitutional status of Greenland. From a strict constitutional point of view Greenland does not have any special status within the Danish realm. The principle of national unity of the realm expressed in the Constitution of Denmark still applies. Sovereignty continued to rest with the central authorities of the realm and Greenland remained a part of the Danish realm. The Constitution also sets certain limits to the scope of the Home Rule.

Matters concerning foreign policy, security policy and monetary policy cannot be transferred to the Home Rule. Greenland must also respect Denmark's international obligations.

Lagtinget is the Legislative Assembly and *Landstinget* the administrative organ of Greenland. The Home Rule Act does not enumerate the matters that belong to the Home Rule or to the central government. It only provides that competence may be transferred to the Home Rule according to the schedule annexed to the Home Rule Act. On the other hand, only fields appertaining exclusively to Greenland may be transferred to the Home Rule. The delegation of powers must be precisely defined by statute. Affairs of the state, such as external relations, defense policy and monetary policy, cannot be transferred to the Home Rule. With respect to non-transferable and non-transferred fields, the Home Rule Authority has, however, an advisory function with respect to the Danish central authorities. Proposed legislation exclusively addressing Greenland must be submitted to the Home Rule Authority for comments prior to the introduction of the Government's Bill in the Danish Parliament. If the proposed legislation is of 'particular importance to Greenland', the Home Rule Authority must be consulted before such legislation is implemented in Greenland.

In practice, extensive legislative and executive powers have been transferred to the Home Rule. Since 1979 the Home Rule Authority has, as a matter of fact, exhausted the list in the schedule annexed to the Act and thus assumed authority in most aspects of life in Greenland, including, for instance:

- the organization of the Home Rule system;
- taxation;
- regulation of trade;
- fishing and hunting;
- education;
- supply of commodities;
- transport and communications;
- social security, labour affairs, housing;
- environmental protection;
- conservation of nature;
- health services.

The list is not exhaustive. Transfer of legislative and administrative powers in other fields than those listed in the schedule is subject to prior agreement between the Home Rule Authority and the central authorities of the realm.

The Home Rule Act includes a principle that legislative and economic powers should not be separated. When a field is transferred to the Home Rule, the Home Rule Authority also assumes responsibility for the expenses. On the other hand, the Home Rule Authority has the right to levy taxes and revenue in fields transferred to the Home Rule. Since this principle is not yet possible to follow in a number of capital intensive fields, a system is created in the Home Rule to facilitate transfer of powers in fields requiring Danish subsidies. The subsidies are granted as a lump sum annually.

The power to conduct foreign policy is a constitutional prerogative of the Danish Government and cannot be transferred to the Greenland Home Rule. The Home Rule Act nevertheless grants the Home Rule Authority a number of functions of an advisory, representative and executive character. For instance, the government must consult the Home Rule Authority before entering into treaties that particularly affect Greenland's interests. The Home Rule Authority may also send representatives to Danish diplomatic missions to safeguard economic interests of Greenland. Furthermore, the Danish Government or the central authorities may authorize the Home Rule Authority to conduct, with the assistance of the Foreign Service, international negotiations on purely Greenlandic affairs.

Under the Home Rule Act, the 'resident population of Greenland' has fundamental rights to the natural resources of Greenland. As regards mineral resources, the Home Rule Act contains a special provision, vesting joint decision-making power in the national authorities and the Home Rule Authorities, making it possible for either party to veto a development policy or specific resolutions. The main rule is that the incomes are divided equally between the Danish realm and the Home Rule.

The legislative assembly of Greenland has 27 members which are elected for four years. The right to vote is given to all Danish citizens who have attained the age of 18 years and who have lived permanently in Greenland at least six months prior to the elections. A person who is entitled to vote is also eligible to run as a candidate. Thus, the Home Rule Act does not distinguish between persons born in Greenland and persons born outside Greenland in regard to the right to participate in the regional elections in Greenland.

The Autonomy of South Tyrol. The Region of Trentino-Alto Adige (South Tyrol) and the Provinces of Bolzano and Trentino are situated in the northernmost part of Italy. The population of South Tyrol amounts to some 920,000 people. Its population is made up of Italians (some 62 per cent), Germans (some 33 per cent) and Ladins (some 3 per cent).

As a result of the 1919 peace treaty after World War I, South Tyrol was transferred from Austria to Italy. After World War II, a special treaty, the so-called Paris Agreement, was signed in 1946 between the countries defining the status of the German-speaking inhabitants of the Province of Trentino. This agreement gave the German-speakers of the province, *inter alia*, the right to establish and maintain German-language schools at the primary and secondary levels, equal status for the German and Italian languages in public offices and official documents as well as the right of the population to re-take their German names that had been Italianized during the inter-war period.

In 1948, Italy approved an autonomous status for Trentino-Alto Adige. The fact that the 1946 or the 1948 agreements were never implemented gave rise to a long-standing conflict between Austria and Italy. In 1960 and 1961, the conflict was subject to two UN General Assembly Resolutions.

In 1972, the Region of Trentino-Alto Adige (South Tyrol) and the Provinces of Bolzano and Trentino were established. The so-called 'package' deal was a political commitment and included a series of measures in favour of the population of Trentino-Alto Adige. Such measures were to be fulfilled partly through the Autonomy Statute and partly through supplementary rules, Acts and regulations. Through these the Region of South Tyrol was granted an autonomous status. This solution was aimed at ensuring that the German-speaking minority, which mainly lives in the Province of Bolzano, enjoys territorial autonomy. At the same time it gives special powers of self-government to the inhabitants of the Province of Trentino.

The region as well as the two provinces have representative governments which are elected by the inhabitants of the territories. The provincial counselors are also members of the regional legislative council. The regional and provincial executive bodies and the presidents are distinct and separate, but the representation of the German and Italian groups on a proportional basis according to the size of the groups in the provincial executive board and of the presidency of the provincial legislative council is guaranteed under special provisions. The main offices of both bodies are rotated. Similar

arrangements are also found in the local self-government organs in the Province of Bolzano in order to take account of the Ladinan-speaking minority.

Both the Region of Trentino-Alto Adige and the Provinces of Bolzano and Trentino have legislative and administrative powers. The legislative powers are divided into a primary authority, a concurrent authority and a supplementary authority.

Primary authority may be exercised within the limits of the Constitution and in harmony with the principles of the juridical system of the state and in respect of international obligations and national interests as well as the fundamental principles of the economic and social reforms of the republic.

The borders of the concurrent authority are narrower and limited by 'the fundamental principles of the laws of the state'.

The supplementary authority granted to the region and the provinces allows them to enact legislative norms to integrate the provisions of the laws of the state, which means that state laws are valid without restrictions both in the province and the region and that they cannot be amended although additional laws may be passed.

The most important competencies of the region are the so-called competences of regulation. In the primary sector the region is responsible for, *inter alia*, the regulation of the regional bodies, their boarders, offices and staff, expropriation for public use, establishment and management of land registers, fire services, the regulation of bodies in charge of health services and hospitals, and the regulation of chambers of commerce. The region is secondarily responsible for, among other functions, the regulation of public welfare, the regulation of land, credit institutions and banks.

The provinces are responsible for, *inter alia*, the following primary, concurrent and secondary areas:

- toponymy;
- protection and conservation of the historical, artistic and ethnic heritage, local customs and cultural institutions;
- nursery schools;
- professional and vocational education;
- primary and secondary education;
- town planning;
- protection of the landscape;

- handicraft;
- lake ports, fairs and markets;
- mining;
- hunting and fishing;
- tourism;
- commerce;
- public performances;
- promotion of industrial production;
- utilization of water supplies;
- hygiene and public health; and
- sport and recreational services.

In order to come into force, the regional and provincial laws must be endorsed by the State Government Commission. If they are not endorsed by the Commission within 30 days, that is, if they are considered to be outside the regional/provincial competences or in conflict with national interest or the interest of one of the two provinces, they are sent back to the Regional Parliament or to the Landtag (the Provincial Parliament) respectively. Laws which are referred back can either be amended or confirmed in the same form. In the latter case, the central government has a right of appeal to the Constitutional Court (constitutional adversity) or to the Chambers of Parliament (conflicting interests).

In South Tyrol, the highest representatives of the central government are two Government Commissioners, one for Bolzano and one for Trentino. One of the tasks of the Commissioners is to supervise the maintenance of public order. In the region and the provinces the state levies most of the taxes and the costs of the autonomy are therefore covered by state allocations.

The minority protection in South Tyrol is based on proportional representation of the various linguistic groups. Not only must the composition of the regional government and provincial government correspond to the numerical strength of the language groups, but this rule applies to the use of public funds for welfare, social and cultural purposes as well. In addition, the number of teachers, police officers, judges, etc., must be in proportion to the number of persons of the various linguistic groups.

C. Local autonomous administration

Territorial autonomy is not only a question of regional territorial autonomy. In many states with national minorities positive results have been obtained by legislation on local self-government as well, in particular in situations where the minorities live geographically concentrated.

Local self-government denotes the right and ability of local authorities, within the limits of the law, to regulate and manage a substantial share of public affairs under the responsibility and in the interests of the local population. Furthermore, the right to local self-government shall be exercised by councils or assemblies composed of members freely elected by secret ballot on the basis of direct, equal and universal suffrage. They may also possess executive organs responsible to them. Powers given to local authorities shall normally be full and exclusive.

The European Charter of Local Self-Government has so far been ratified by the following states: Albania, Austria, Bulgaria, Croatia, Cyprus, the Czech Republic, Denmark, Estonia, Finland, Germany, Greece, Hungary, Iceland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Moldova, the Netherlands, Norway, Poland, Portugal, Romania, Russia, Slovakia, Slovenia, Spain, Sweden, Macedonia, Turkey, the Ukraine, and the United Kingdom.¹⁰

8. LUND RECOMMENDATIONS NOS. 22 AND 23

Lund Recommendations Nos. 22 and 23 read:

22) Self-governance arrangements should be established by law and generally not be subject to change in the same manner as ordinary legislation. Arrangements for promoting participation of minorities in decision-making may be determined by law or other appropriate means.

- *Arrangements adopted as constitutional provisions are normally subject to a higher threshold of legislative or popular consent for their adoption and amendment.*

¹⁰ ETS No. 122. Opened for signature 15 October 1985, entered into force 1 September 1988. Status of ratifications as of 2 May 2001.

- *Changes to self-governance arrangements established by legislation often require approval by a qualified majority of the legislature, autonomous bodies or bodies representing national minorities, or both.*
- *Periodic review of arrangements for self-governance and minority participation in decision-making can provide useful opportunities to determine whether such arrangements should be amended in the light of experience and changed circumstances.*

23) The possibility of provisional or step-by-step arrangements that allow for the testing and development of new forms of participation may be considered. These arrangements can be established through legislation or informal means with a defined time period, subject to extension, alteration, or termination depending upon the success achieved.

A. Constitutional and legal safeguards

Recommendation No. 22 of the Lund Recommendations addresses the issue of 'entrenchment', that is, solidifying the various arrangements in law. Very detailed legal arrangements may be useful in some cases, while frameworks may be sufficient in other cases. In all cases, arrangements should result from open processes. However, once concluded, stability is required in order to assure some security for those affected, especially persons belonging to national minorities. Recommendation No. 23 differs from Recommendation No. 22 insofar as it encourages the testing of new and innovative regimes, rather than specifying terms for alteration of existing arrangements.

B. National practice

Finland. Under section 120 of the Finnish Constitution, the Åland Islands have self-government in accordance with what is specifically stipulated in the Act on the Autonomy of the Åland Islands. According to section 69 of the Autonomy Act, the Act may be amended, explained, repealed or exceptions to it may be made only by consistent decisions of the Finnish Parliament and the Legislative Assembly of Åland. In the Parliament of Finland, the decision shall be made as provided for the amendment, explanation and repeal of the Constitution and in the Legislative Assembly by at least two-thirds' majority of the votes cast.

The Finnish Constitution provides that a proposal on the enactment, amendment or repeal of the Constitution or on the enactment of a limited derogation of the Constitution shall in the second reading be left in abeyance, by a majority of the votes cast, until the first parliamentary session following parliamentary elections. The proposal shall then, once the Committee preparing the matter has issued its report, be adopted without material alterations in one reading in a plenary session by a decision supported by at least two-thirds of the votes cast. However, the proposal may be declared urgent by a decision that has been supported by at least five-sixths of the votes cast. In this event, the proposal is not left in abeyance and it can be adopted by a decision supported by at least two-thirds of the votes cast.

The cultural and linguistic self-government of the Finnish Sami within their native region is guaranteed under section 121 of the Constitution. A possible decision to repeal this provision would be subject to the general rules provided for the amendment, explanation and repeal of the Constitution.

9. LUND RECOMMENDATION NO. 24

Lund Recommendation No. 24 reads:

Effective participation of national minorities in public life requires established channels of consultation for the prevention of conflicts and dispute resolution, as well as the possibility of ad hoc or alternative mechanisms when necessary. Such methods include:

- *judicial resolution of conflicts, such as judicial review of legislation or administrative actions, which requires that the State possess an independent, accessible, and impartial judiciary whose decisions are respected; and*
- *additional dispute resolution mechanisms, such as negotiation, fact finding, mediation, arbitration, an ombudsman for national minorities, and special commissions, which can serve as focal points and mechanisms for the resolution of grievances about governance issues.*

A. Judicial review

Recommendation No. 24 is concerned with the issue of effective remedies for national minorities to safeguard their legal rights. Judicial review of

legislation and administrative actions can be performed by constitutional courts and, in effect, by relevant international human rights bodies.

There are Constitutional Courts and Supreme Courts with similar functions in a number of OSCE Participating States, such as in Armenia, Austria, Belgium, Bosnia and Herzegovina, Bulgaria, Canada, Croatia, the Czech Republic, Estonia, France, Georgia, Germany, Hungary, Italy, Latvia, Lithuania, Malta, Poland, Russia, Slovakia, Slovenia and the United States of America.

Belgium. In 1989, the jurisdiction of the Belgian Constitutional Court, the Cour d'Arbitrage, was extended to include all questions relating to compliance with the principle of equality between the legislatures of the French-speaking and Flemish-speaking communities of Belgium. The Court has six Dutch-speaking and six French-speaking judges. It is presided by two presidents, one Dutch-speaking and one French-speaking, on an alternate basis.

B. National institutions and mechanisms

Non-judicial mechanisms and institutions, such as national human rights commissions, ombudspersons, inter-ethnic or 'race' relations boards, etc., may also play an important role as for resolution of grievances.

Ombudspersons, national human rights commissions and human rights centers are found in many states. Usually these are characterized by the fact that they have general competencies rather than functions focused on minority issues or racism. There are, however, also some national institutions that have special competencies in regard to minorities and/or ethnic discrimination.

Cyprus. In Cyprus, a Presidential Advisor on Minorities has the role of facilitating complaints submitted by members of minority groups and of coordinating general policies in this respect.

Hungary. For the protection of national and ethnic minorities the Hungarian Parliament has established a Commissioner for National and Ethnic Minority Rights. The Parliamentary Commissioner moderates in issues under his jurisdiction as stipulated in Act LXXVII of 1993 on the Rights of National and Ethnic Minorities (Minority Rights Act).

The Parliamentary Commissioner is functionally and financially independent of the public administration. He has a wide range of powers concerning the supervision of the administrative authorities, including the practices of the government. He has also the right to participate, without a right to vote, in the work of the Parliament and to initiate the adoption of new legislation.

One of the Commissioner's most important tasks is to consider petitions from individuals and groups. Anyone who feels that his or her rights as a member of an ethnic or national minority have been violated as a result of a decision, proceedings, or negligence of an authority may turn to the Parliamentary Commissioner. The same applies in case of an imminent threat of such a violation. The authorities included are:

- ministries and national organizations;
- armed forces;
- law enforcement;
- national security services;
- judicial authorities (prosecutor's office), with the exception of the courts of law;
- county and settlement self-governments, minority self-governments;
- public service organizations;
- other administrative governmental agencies;
- public media.

The Parliamentary Commissioner may be called upon by a citizen whose rights guaranteed under the Minority Rights Act have been violated. Such rights are, *inter alia*, the right of a person to use his own language, the freedom of association, the right to participate in minority language education, the right to self-identification and the right to equality and freedom from discrimination. Also a community, local or national minority self-government the minority rights of which have been violated has the right to call upon the Commissioner. A citizen's national or ethnic minority rights may be violated as a result of, for instance, racial discrimination, undue delay, providing of inappropriate or misleading information, derogatory personal treatment, refusal to provide information and unlawful decisions.

The submission of a petition to the Parliamentary Commissioner requires that the petitioner has exhausted all available public administrative

remedies. The Commissioner does not consider communications concerning decisions older than 12 months. Furthermore, he has no jurisdiction to represent the petitioner before the authorities or to provide him with legal advice or to assist him in cases brought before a court of law.

Between 1995 and the beginning of 2000, the Hungarian Parliamentary Commissioner dealt with some 1,600 files. Of these, 1,360 were written complaints, 70 official investigations and 170 analysis and information requests. Some 69 per cent of all cases concerned the Roma population.

Norway. Based on the proposal of the Ministry of Local Government and Regional Development, the Center for Combating Ethnic Discrimination (SMED) was established in February 1999. The Center's task is to document and monitor developments related to discrimination and to provide legal advice, and in specific cases legal aid, to persons who are exposed to discrimination on the grounds of religion, race, colour or national or ethnic origin. The legal advisory service will be available for a trial period of five years. The Center cannot itself bring cases before the courts, but it provides legal assistance to individuals free of charge by giving advice and guidance, by channelling requests for assistance to the appropriate official body and by assisting in the preparation of legal representation and negotiation. In cases which may establish legal precedent it can cover expenses to engage a lawyer.

It is also the task of SMED to document and monitor the situation in relation to the nature and extent of any reported discriminatory acts. Other activities the Center engages in include:

- registering of inquiries and how these are followed up;
- compiling documentation on discrimination;
- preparation of annual reports on the nature and extent of discrimination;
- co-operation with relevant parties to prevent discrimination;
- putting forward proposals for action or measures which can prevent discrimination in Norwegian society.

The Center is governed by a steering committee appointed by the King. The Center has seven members with background in and experience from organizations working with discrimination and human rights issues, legal practice, business and industry, the police or prosecuting authorities. Half of the members should preferably be persons with a minority background.

Romania. The first Romanian Ombudsman was nominated by Parliament in 1997. One of the Ombudsman's Deputies has the responsibility for the protection of the rights of persons belonging to national minorities.

Sweden. The Office of Swedish Ombudsman against Ethnic Discrimination (DO) was established by the Parliament in 1986 through the Act against Racial Discrimination. The Ombudsman himself is appointed by the government. According to the law, the DO shall work to combat ethnic discrimination in working life and other spheres of social life. His competence is thus not restricted to public administration only. In his work he shall also counteract racism and xenophobia. The tasks of the DO are the following:

- to help, by giving advice and in other similar ways, those who are experiencing ethnic discrimination to exercise their rights;
- to instigate, through discussions with the authorities, companies and organizations, measures to be taken against racial discrimination;
- to present to the government proposals regarding constitutional amendments and other measures aimed at combating racial discrimination;
- to provide information to the public to make the public opinion more tolerant in his field of competence.

The DO has limited legal means. Although his mandate covers Swedish national ethnic minorities, such as the Sami and the Roma, most of his work concerns persons belonging to immigrant groups.

C. The European Court of Human Rights

The European Court of Human Rights ensures the observance of the engagements by the Contracting Parties to the European Convention for the Protection of Human Rights and Fundamental Freedoms and its four supplementary Protocols, that is, Protocols Nos. 1, 4, 6 and 7. A great number of OSCE Participating States are bound by the European Convention and its Protocols.

The European Convention does not include an express provision on the rights of persons belonging to national minorities, but its Article 14 extends the principle of non-discrimination to cover grounds of national origin. While Article 14 of the European Convention only prohibits

discrimination in the enjoyment of one of the other rights protected by the Convention, the new Protocol No. 12 provides for a general prohibition of discrimination. Protocol No. 12 will enter into force following ten ratifications.¹¹

The Court may receive applications (complaints) from any person, non-governmental organization or group of individuals claiming to be the *victim* of a violation by one of the Contracting Parties to the European Convention or its Protocols. A person can only complain to the Court about matters that are the responsibility of a public authority of the Contracting States. The Court cannot deal with complaints against private individuals or private organizations. Before appealing to the Court all national remedies must be exhausted, such as the normal appeal procedures of the courts of law. The application must be done within six months after the decision of the highest competent national court or administrative authority. Legal aid is not granted when lodging an application to the Court. At a later stage in the proceeding an applicant may be eligible for free legal aid.

The European Court is not a court of appeal. It cannot annul or modify decisions by national courts or administrative authorities. Nor can it intervene directly with the authority complained about. The Contracting Parties nevertheless have an obligation to abide by the decision of the Court. The Court may also decide to afford just satisfaction to the injured party.

¹¹ ETS No. 177. Opened for signature 4 November 2000. As of 2 May 2001, 27 states had signed the Protocol but no state had ratified it.

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ANNEX: THE LUND RECOMMENDATIONS ON THE EFFECTIVE PARTICIPATION OF NATIONAL MINORITIES IN PUBLIC LIFE

I GENERAL PRINCIPLES

1) Effective participation of national minorities in public life is an essential component of a peaceful and democratic society. Experience in Europe and elsewhere has shown that, in order to promote such participation, governments often need to establish specific arrangements for national minorities. These Recommendations aim to facilitate the inclusion of minorities within the State and enable minorities to maintain their own identity and characteristics, thereby promoting the good governance and integrity of the State.

2) These Recommendations build upon fundamental principles and rules of international law, such as respect for human dignity, equal rights, and non-discrimination, as they affect the rights of national minorities to participate in public life and to enjoy other political rights. States have a duty to respect internationally recognized human rights and the rule of law, which allow for the full development of civil society in conditions of tolerance, peace, and prosperity.

3) When specific institutions are established to ensure the effective participation of minorities in public life, which can include the exercise of authority or responsibility by such institutions, they must respect the human rights of all those affected.

4) Individuals identify themselves in numerous ways in addition to their identity as members of a national minority. The decision as to whether an individual is a member of a minority, the majority, or neither rests with that individual and shall not be imposed upon her or him. Moreover, no person shall suffer any disadvantage as a result of such a choice or refusal to choose.

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

II PARTICIPATION IN DECISION-MAKING

A. Arrangements at the Level of the Central Government

6) States should ensure that opportunities exist for minorities to have an effective voice at the level of the central government, including through special arrangements as necessary. These may include, depending upon the circumstances:

- special representation of national minorities, for example, through a reserved number of seats in one or both chambers of parliament or in parliamentary committees; and other forms of guaranteed participation in the legislative process;
- formal or informal understandings for allocating to members of national minorities cabinet positions, seats on the supreme or constitutional court or lower courts, and positions on nominated advisory bodies or other high-level organs;
- mechanisms to ensure that minority interests are considered within relevant ministries, through, e.g., personnel addressing minority concerns or issuance of standing directives; and
- special measures for minority participation in the civil service as well as the provision of public services in the language of the national minority.

B. Elections

7) Experience in Europe and elsewhere demonstrates the importance of the electoral process for facilitating the participation of minorities in the political sphere. States shall guarantee the right of persons belonging to national minorities to take part in the conduct of public affairs, including through the rights to vote and stand for office without discrimination.

8) The regulation of the formation and activity of political parties shall comply with the international law principle of freedom of association. This principle includes the freedom to establish political parties based on communal identities as well as those not identified exclusively with the interests of a specific community.

9) The electoral system should facilitate minority representation and influence.

- Where minorities are concentrated territorially, single-member districts may provide sufficient minority representation.
- Proportional representation systems, where a political party's share in the national vote is reflected in its share of the legislative seats, may assist in the representation of minorities.
- Some forms of preference voting, where voters rank candidates in order of choice, may facilitate minority representation and promote inter-communal cooperation.

- Lower numerical thresholds for representation in the legislature may enhance the inclusion of national minorities in governance.

10) The geographic boundaries of electoral districts should facilitate the equitable representation of national minorities.

C. Arrangements at the Regional and Local Levels

11) States should adopt measures to promote participation of national minorities at the regional and local levels such as those mentioned above regarding the level of the central government (paragraphs 6-10). 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.

D. Advisory and Consultative Bodies

12) States should establish advisory or consultative bodies within appropriate institutional frameworks to serve as channels for dialogue between governmental authorities and national minorities. Such bodies might also include special purpose committees for addressing such issues as housing, land, education, language, and culture. The composition of such bodies should reflect their purpose and contribute to more effective communication and advancement of minority interests.

13) These bodies should be able to raise issues with decisionmakers, prepare recommendations, formulate legislative and other proposals, monitor developments and provide views on proposed governmental decisions that may directly or indirectly affect minorities. Governmental authorities should consult these bodies regularly regarding minority-related legislation and administrative measures in order to contribute to the satisfaction of minority concerns and to the building of confidence. The effective functioning of these bodies will require that they have adequate resources.

III SELF-GOVERNANCE

14) Effective participation of minorities in public life may call for non-territorial or territorial arrangements of self-governance or a combination thereof. States should devote adequate resources to such arrangements.

15) It is essential to the success of such arrangements that governmental authorities and minorities recognize the need for central and uniform decisions in some areas of governance together with the advantages of diversity in others.

- Functions that are generally exercised by the central authorities include defense, foreign affairs, immigration and customs, macroeconomic policy, and monetary affairs.
- Other functions, such as those identified below, may be managed by minorities or territorial administrations or shared with the central authorities.
- Functions may be allocated asymmetrically to respond to different minority situations within the same State.

16) Institutions of self-governance, whether non-territorial or territorial, must be based on democratic principles to ensure that they genuinely reflect the views of the affected population.

A. Non-Territorial Arrangements

17) Non-territorial forms of governance are useful for the maintenance and development of the identity and culture of national minorities.

18) The issues most susceptible to regulation by these arrangements include education, culture, use of minority language, religion, and other matters crucial to the identity and way of life of national minorities.

- Individuals and groups have the right to choose to use their names in the minority language and obtain official recognition of their names.
- Taking into account the responsibility of the governmental authorities to set educational standards, minority institutions can determine curricula for teaching of their minority languages, cultures, or both.
- Minorities can determine and enjoy their own symbols and other forms of cultural expression.

B. Territorial Arrangements

19) All democracies have arrangements for governance at different territorial levels. Experience in Europe and elsewhere shows the value of shifting certain legislative and executive functions from the central to the regional level, beyond the mere decentralization of the central government administration from the capital to regional or local offices. Drawing on the principle of subsidiarity, States should favourably consider such territorial devolution of powers, including specific functions of self-government, particularly where it would improve the opportunities of minorities to exercise authority over matters affecting them.

20) Appropriate local, regional, or autonomous administrations that correspond to the specific historical and territorial circumstances of national minorities may undertake a number of functions in order to respond more effectively to the concerns of these minorities.

- Functions over which such administrations have successfully assumed primary or significant authority include education, culture, use of minority language, environment, local planning, natural resources, economic development, local policing functions, and housing, health, and other social services.
- Functions shared by central and regional authorities include taxation, administration of justice, tourism, and transport.

21) Local, regional, and autonomous authorities must respect and ensure the human rights of all persons, including the rights of any minorities within their jurisdiction.

IV GUARANTEES

A. Constitutional and Legal Safeguards

22) Self-governance arrangements should be established by law and generally not be subject to chance in the same manner as ordinary legislation. Arrangements for promoting participation of minorities in decision-making may be determined by law or other appropriate means.

- Arrangements adopted as constitutional provisions are normally subject to a higher threshold of legislative or popular consent for their adoption and amendment.
- Changes to self-governance arrangements established by legislation often require approval by a qualified majority of the legislature, autonomous bodies or bodies representing national minorities, or both.
- Periodic review of arrangements for self-governance and minority participation in decision-making can provide useful opportunities to determine whether such arrangements should be amended in the light of experience and changed circumstances.

23) The possibility of provisional or step-by-step arrangements that allow for the testing and development of new form of participation may be considered. These arrangements can be established through legislation or informal means with a defined time period, subject to extension, alteration, or termination depending upon the success achieved.

B. Remedies

24) Effective participation of national minorities in public life requires established channels of consultation for the prevention of conflicts and dispute resolution, as well as the possibility of ad hoc or alternative mechanisms when necessary. Such methods include:

- judicial resolution of conflicts, such as judicial review of legislation or administrative actions, which requires that the State possess an independent, accessible, and impartial judiciary whose decisions are respected; and
- additional dispute resolution mechanisms, such as negotiation, fact finding, mediation, arbitration, an ombudsman for national minorities, and special commissions, which can serve as focal points and mechanisms for the resolution of grievances about governance issues.