

Balázs Dobos: Between Importing and Exporting Minority Rights: The Minority Self-Governments in Hungary

Since the fall of communism Hungary has made sustained efforts in the East Central European region to establish and develop a model of non-territorial autonomy for its relatively small minorities (Smith-Hiden 2012: 113). Even so, despite the country's relatively homogeneous ethnic composition, a recurring topic of debate has been government policy towards the domestic minority groups, as well as the relationship and the degree of consistency between domestic minority policy and the kin-state activities targeting ethnic Hungarians abroad. On this issue a rather contradictory picture emerges from the literature. On the one hand, the constitutional amendments of 1989-1990 and the introduction – in 1993 – of the system of elected minority self-governments (MSGs) clearly placed Hungary among the leading European countries in the field of minority protection and led Hungary's politicians and other domestic actors to emphasise, in a rhetorical and symbolic fashion, the exemplary and inspirational nature of Hungarian model. On the other hand, a growing number of scholars have contended that Hungary's domestic minority policy has been motivated principally by a desire to improve the situation of the Hungarian minorities abroad by setting an example and putting pressure on the neighbouring countries.

Despite several subsequent amendments to the 1993 legislation, including the 2005 law, which implemented crucial institutional changes,¹ it would seem Hungary's minority policy does not only reflect a commitment to the Hungarian minorities abroad. In a country where the minorities are relatively small, are dispersed around the country, feel themselves closely attached to the state and to mainstream Hungarian society, and – with the exception of the Roma, the country's largest minority group – are well integrated in socio-economic terms, it comes as no surprise that official policies seek to create good standards of minority protection, thereby empowering minorities and satisfying their needs and interests. However, recent research has found that behind the rhetoric the desire to set standards was of limited significance. Other concerns proved to be much more influential during both the formulation and further development of the autonomy model. Even the domestic minority objectives could not be fully achieved, and in certain instances the participation of members of minorities was constrained in the decision-making processes affecting their lives.

The discussions around the nature and objectives of minority policy have been revived in recent years. The debate has become more intense since the 2010 parliamentary elections. With its unprecedented two-thirds parliamentary majority, the new right-wing government, as part of its efforts to consolidate the state, redefined the basis of the political community and solidified and codified traditional values and norms by passing a new constitution (Fundamental Law).² In accordance with the new constitutional provisions, in 2011 a new law on the rights of minorities³ replaced the 1993 legislation. Both the design and some specific parts of the new law on minorities were criticised by international and domestic actors. Concerns have been voiced over the shift from a predominantly civic definition of the nation to an ethno-cultural conception, whereby the new constitution designates Hungarian as the official language and grants the possibility of dual citizenship and voting rights to ethnic

¹ See Act 77 of 1993 on the Rights of National and Ethnic Minorities (as of 25th November 2005). <http://www.kisebbsegiombudsman.hu/data/files/128317683.pdf> (accessed 15th May 2014).

² In English: The Fundamental Law of Hungary (25th April 2011) http://www.kormany.hu/download/2/ab/30000/Alap_angol.pdf (accessed 15th May 2014).

³ Act 179 of 2011 on the Rights of Minorities. http://www.kormany.hu/download/a/10/80000/A%20nemzetis%C3%A9gek%20joga_EN.pdf (accessed 15th May 2014).

Hungarians abroad. The Venice Commission commenced investigations in 2011-2012, while the Commissioner for Fundamental Rights requested the Hungarian Constitutional Court to examine some points of the new law that he deemed unconstitutional. The Court found that the law did not raise constitutional concerns.⁴ Being at an advanced stage of linguistic assimilation, the domestic minorities are invariably recognized as an organic part of the political community and some forms of preferential parliamentary representation are provided to them. Even so, the increasing role of ethnicity in politics and the shift to an ethnic approach inevitably affect their political opportunities. For this reason, some minority experts and politicians regard the recent changes as a backward step in minority protection. Meanwhile the government and other domestic actors still insist on the standard-setting nature of Hungary's minority policy framework.

To address the issues above, the following two sections aim to present the main socio-economic features of the minorities in Hungary and review the nature of, and reasons for, the new minority law. The third and fourth parts of the case study then take the analysis further by seeking to examine in broad terms the relevant political efforts and debates as well as the main elements and changes of the institutional arrangements since the adoption of the 1993 law, with particular emphasis on an evaluation of the emerging deficiencies. The focus is on the membership, electoral rules, and competences and finances of the autonomy structures at various levels. Although the rules and institutions of this framework are currently undergoing transition, lessons can be drawn from the preparations for and implementation of all minority laws. The findings may influence our view of much-debated theoretical dilemmas and specific practical problems. A specific question is how legitimate and representative structures can be built, taking into account the sensitive data of ethnic affiliation, the high level of assimilation, and the internal democracy of minority communities.

THE ETHNOCULTURAL DESCRIPTION OF HUNGARY

Most of the officially acknowledged 13 minority groups (Bulgarian, Roma, Greek, Croat, Polish, German, Armenian, Romanian, Ruthene, Serb, Slovak, Slovene, and Ukrainian) settled in the central area of the former Kingdom of Hungary, the present territory of Hungary, even before the formation of modern nation-states and the standardization of modern languages. Yet, once these nation-states were formed, for a great part of the 20th century these co-ethnics were not really able to attract the attention of their kin-states, especially in view of their relatively small size and their close affiliation with Hungary. On account of this close association with both the state and the Hungarian majority, as reflected in census data, scholars often view their identities as dual, being composed of both ethnic minority and Hungarian elements. This aspect distinguishes them from the more numerous and nationally conscious minority Hungarian communities in the neighbouring states. The pronounced differences in history often contributed to the neglect of domestic minority issues and even to complacency in official policies. Unlike the Hungarian minorities abroad, the evolution of the domestic minorities was less affected by the border changes of the 20th century, and even the more numerous and officially recognized groups (Germans, Slovaks, Romanians, and Croats, Serbs, and Slovenes – usually under the common label of “Southern Slavs” after 1945) could not form larger blocs. Living in dispersed settlements and mostly rural communities, the minorities lacked intellectuals and were much more exposed to assimilation and the homogenizing efforts of the emerging modern Hungarian state.

⁴ In Hungarian: Decision 41/2012. (6th December).
<http://public.mkab.hu/dev/dontesek.nsf/0/2EA8A1E5D6372FAFC1257ADA00524C26?OpenDocument>
(accessed 15th May 2014).

Furthermore, the spoken pre-modern dialects, an underdeveloped vocabulary, limited opportunities for language use, a folkloristic culture, and a locally or regionally based ethnic consciousness or identity, meant that minority status was accompanied by lower social prestige. Forms of vertical mobility, such as migration to larger cities, attendance at college or university, marriage or employment outside the community, led to assimilation. As a result, for the older generations the dialect became “the language of remembering” (Erb-Knipf 2000). For those who could complete some form of minority education and training, learning the previously unknown modern standardized language proved to be another challenge.

Historical traumas, official state ideologies and policies, and the 20th century transformation of Hungarian society and economy were further factors contributing to the fall in numbers. Claims concerning the collective guilt of Germans were used to justify the relocation of approximately half of Hungary’s ethnic German community to Germany after the Second World War. Meanwhile, the Hungarian-Slovak population exchange led many nationally-conscious Slovaks to leave the country, and a similar process ensued when Southern Slavs became subject to discrimination at the turn of 1950s after the expulsion of Yugoslavia from Cominform. Lacking recognized status, Roma were also subject to several forms of discrimination. As a result, minority members were likely to assume that declaring their ethnic identity might become a source of conflicts and disadvantages. In the economy, the system of central economic planning focussed on the rapid development of heavy industry; jobs thus shifted from traditional agriculture to industries. This development required the labour force to move from villages to the urban industrial centres. Those who managed to stay in their villages faced forcible collectivization, whereby their former private properties and the division of family labour were replaced by collective work (Dobos 2011: 65). Until the end of the 1960s the ruling Communist ideology held that the construction of socialism would eradicate national-ethnic cleavages automatically within a few decades. The Communist party-state, moreover, enabled only certain direct cultural and educational demands to be met; the foundation of independent organizations with grassroots presence was prohibited (Tóth 2005: 185).

In line with the ‘ethnic revival’ of the 1960s, certain national and ethnic claims gained ground in many post-Stalinist East Central European countries. The main reasons for them had to do with the emerging tensions between Communist countries, the generational replacement of the political elites, and, in Hungary, the internal pressure on party leaders to take steps towards improving the situation of the Hungarian communities in the neighbouring countries, which tended to be targets of homogenizing measures (Bárdi 2011). The growing significance of the Hungarian communities abroad had implications for the domestic minorities. Meanwhile, the failure of the previous assimilatory policy also became evident, as the minorities still existed. The new policy line thus laid emphasis on the positive role that could be played by the minorities with their dual affiliation to both Hungary and the kin-states. Their constructive role in bilateral relations (expressed in the Engelsian term of the minorities’ ‘bridge-role’) was highlighted, and as another element the new policy stressed the need for mutual efforts to preserve and develop minority features (officially referred to as ‘Leninist nationality policy’). Failing to provide political possibilities to express minority needs, the paternalist and belated shift, which lasted until the end of the 1980s, was not able to improve significantly the situation in Hungary. This was demonstrated clearly by the census data, which showed a steady decrease in the minority population (Vékás 2005). Meanwhile expectations of the mutual support of minorities were not realised either, as both Czechoslovakia and Romania, the two crucial countries, rejected such a policy (Vago 1989: 129-130). The reforms did not cover other smaller and more dispersed ethnic groups, and so the Bulgarians, Greeks and Poles were only allowed to found and maintain associations in a

controlled way. The regime did introduce serious measures aimed at improving the education, employment, and living conditions of the largest group, the Roma. In Hungary, the Roma community consists of at least three major ethnocultural and linguistic subgroups,⁵ but the regime recognized their distinct features only in the late 1970s. It was only after the political changes in the late 1980s that Roma received equal recognition in terms of their minority rights.

Major shifts can be observed both in the identity structures and compositions of the minorities. In the aftermath of the First World War, in 1920, 11% of around 8 million inhabitants belonged to minorities. Recently, based on the census data from 2001 and 2011, the percentage of persons belonging to the 13 minorities grew from 5% to 6.5% of the population (approx. 650 thousand people) (*see Table*).⁶ This indicates, at first glance, some increase in the level of minority consciousness, but others remain sceptical about the data. First, the data differ from the estimates of the minority organizations. Such organisations, however, may have an interest in exaggerating the size and political weight of the various minorities. They may be ignoring the assimilation that occurred in the 20th century. However, the fact alone that the estimated number is at least twice as high as the official figures reveals the relatively high level of uncertainty surrounding minority identities. Second, some point out that it is difficult to make comparisons due to differing census methodology. More importantly, the vast majority of those expressing a minority identity also declared themselves to be Hungarian. If just one response could have been given to each question, which affiliation would they have preferred? Thirdly, some express doubt as to whether the question on the language used in the family and among friends is conducive to assessing ethnic belongings. With the exception of the Roma and Germans, it is questionable whether there is any real dissimilation in most of the cases. In addition, for greater comparability, experts may turn to the number of registered MSG voters as an additional primary source. Even though only adult Hungarian citizens had the right to register for MSG elections, the number of minority voters was not below the census data in all the cases. The difference may derive, to some extent, from weak minority loyalties, but it may also indicate electoral abuses.

⁵ According to the latest census results from 2011, approximately 315,000 people – around 3% of the total population – declared themselves as Roma, but their estimated number is at least twice as high. The overwhelming majority is Hungarian-speaking, while smaller groups speak either a variant of Romani or Beash, an ancient Romanian dialect.

⁶ In the last two censuses, dual and multiple affiliations could be recorded. In 2001 three responses could be given to the four questions on ethnicity, while in 2011 two (anonymous and voluntary) responses could be given to the three questions. Even so, the Statistical Office does not publish separately the primary and secondary affiliations.

Table: Data on the national and ethnic minorities from the censuses of 2001 and 2011, and the number of registered minority voters at the 2006 and 2010 MSG elections⁷

Minority	Nationality (ethnicity)		Native language		Language used among friends and/or in the family		Affinity with cultural values, traditions	Persons		Registered MSG voters	
	2001	2011	2001	2011	2001	2011		2001	2011	2006	2010
Bulgarian	1,358	3,556	1,299	2,899	1,118	2,756	1,693	2,316	6,272	2,110	2,088
Roma	189,984	308,957	48,438	54,339	53,323	61,143	129,259	205,720	315,583	106,333	133,492
Greek	2,509	3,916	1,921	1,872	1,974	2,346	6,140	6,619	4,642	2,451	2,267
Croat	15,597	23,561	14,326	13,716	14,788	16,053	19,715	25,730	26,774	11,090	11,571
Polish	2,962	5,730	2,580	3,049	2,659	3,815	3,983	5,144	7,001	3,061	3,052
German	62,105	131,951	33,774	38,248	53,040	95,661	88,416	120,344	185,696	45,983	46,629
Armenian	620	3,293	294	444	300	496	836	1,165	3,571	2,361	2,357
Romanian	7,995	26,345	8,482	13,886	8,215	17,983	9,162	14,781	35,641	4,404	5,277
Ruthene	1,098	3,323	1,113	999	1,068	1,131	1,292	2,079	3,882	2,729	4,228
Serb	3,816	7,210	3,388	3,078	4,186	5,713	5,279	7,350	10,038	2,143	2,432
Slovak	17,693	29,647	11,817	9,888	18,057	16,266	26,631	39,266	35,208	15,049	12,282
Slovene	3,025	2,385	3,180	1,723	3,119	1,745	3,442	4,832	2,820	991	1,025
Ukrainian	5,070	5,633	4,885	3,384	4,519	3,245	4,779	7,393	7,396	1,084	1,338

⁷ Csordás (2014: 16-18). For the minority elections, see www.valasztas.hu.

The trend that emerges when comparing the two latest census data is a shift to prioritizing ethnic and cultural belongings over minority language use. For instance, the most extreme case is associated with the highly assimilated Slovak minority: only 30% of people expressing a Slovak identity in their responses to at least one of the four questions in 2001, declared Slovak to be their native language. The overall assessment of these predominantly Hungarian-speaking minority groups, whose identities usually involve cultural ties and less often linguistic affiliations, is an exciting issue, especially in the Central and Eastern European context where the tradition of defining communities in ethno-cultural terms has been prevalent ever since the rise of nationalism and modern nation-states. While there has been an enduring discussion in Hungarian political thought even since the 19th century on the boundaries and potential characteristics of the Hungarian nation, the presence of mostly Hungarian-speaking subgroups in certain communities (Roma, Armenians) and the vague nature of ethnic identity have often given rise to debates over the complexity of belongings and the so-called “ethno-business”. The contestation of group boundaries also played a significant role at the minority elections, since the different subgroups often accused each other of participating in ethno-business. Within certain communities a recent phenomenon has reignited the debate: the arrival in Hungary of a significant number of persons who belong to the specific minority but were born abroad and are non-Hungarian citizens (or possess dual citizenship) (Tóth-Vékás 2009). This explains why the minorities have long sought to extend the application of minority law to foreign citizens established in Hungary. Such persons usually have favourable socioeconomic positions, good educational qualifications, better native language skills, close ties to the kin-states, and stronger ethnic identities. Even so, their attempts to contribute to minority public life and to the work of MSGs have caused tensions in certain cases.

As already noted, minorities live dispersed throughout the country. Hungary has almost 3,200 municipalities, and there are minority inhabitants in 2,500 of them. In the overwhelming majority of them, minority persons constitute only local minorities. This distribution precludes any possibility of territorial autonomy. Furthermore, municipalities that administer local affairs are the most important partners of MSGs. In contrast to earlier periods, the urban minority communities, especially the smaller ones, have become stronger. Yet, some traditional minorities, including the Roma, Croats, Germans, Romanians, Slovaks, and Slovenes, are still overrepresented in rural villages. Turning to age composition, we find that, with the exception of the Roma, who have a higher mortality rate, the younger generations are underrepresented within most of the minorities. In terms of the highest level of education and training, the indicators are also more favourable in the case of those minorities that are more affected by recent migration, while Roma show the poorest results. As one consequence of the distorted age structure, less than 22% of persons belonging to minorities were employed in 2001. Indeed, among the Roma, the total ratio of young people, the unemployed, and the elderly population reached almost 90% (Mayer 2004: Appendix 8). Within most minorities, the employed segments worked either in the tertiary and service sector or in professional occupations, while Roma, Croat, Romanian and Slovene workers tended to be employed in manufacturing and agriculture. With the exception of the Roma, mixed marriages with members of the majority population are widespread in Hungary, and this fact illustrates parents’ ‘ethnic optimism’ that their children’s affiliation is more likely to be Hungarian.

While several research projects have revealed strong anti-Roma sentiments among the population and the high level of rejection of Roma, very little is known about the different aspects of the minorities’ political behaviour. The number of minority organizations and ethnic parties may be viewed as indicative of their mobilization. However, despite the high

number of registered ethnic parties since 1989,⁸ their electoral failures reflect accurately the fact that in Hungary the ethnic components of personal identities generally have little impact on individuals' political interests and voting preferences. In the light of such other factors as the electoral system, weak identities and the number and geographical spread of minority persons, it was obvious that their representation in the major decision-making bodies could be accomplished only in a preferential manner. (This will be discussed further in a later section.) Generally, with the exception of Roma, who face various challenges in everyday life as well as social and discriminatory problems (Bernát 2009), the minorities have been well-integrated into Hungarian society in socioeconomic terms.

THE PROCESS LEADING TO THE ADOPTION OF THE 1993 MINORITY LAW

The laws of 1993 and 2005 were both adopted as a result of long-term processes. Like the 2011 law in force, they had a special place in the legal hierarchy, as their adoption and subsequent amendment required the support of two-thirds of MPs present. Preparations for the first law were begun already in 1988, during the decline of the Communist regime. The party apparatus initially involved in the process was gradually replaced by governmental bodies even before the first democratic elections in 1990. Having been granted the right to freely associate, the minorities found they had an opportunity to (re)organize themselves in democratic ways: the Roma, in particular, established the highest number of associations, and even those communities that had been denied recognition in the previous era created their own organizations. In order to overcome the legitimacy deficit caused by the growing number of organizations, the most relevant ones formed a Minority Roundtable in 1991. This umbrella organization soon became an accepted partner for the government. After the adoption of the law, as MSGs were elected and certain disagreements became apparent among the minorities, the individual national MSGs replaced the Roundtable, and subsequent efforts to create a common platform were less successful.

The various actors contributing to the formulation had a number of goals, internal and external political values and motivations – a set of multiple objectives. As to the main motivations, according to the popular view shared by many scholars, the issue of the domestic minorities has always been subordinated to Hungary's kin-state policy. It is argued that the main – if not only – reason for creating autonomy in Hungary is the issue of Hungarians abroad (Deets 2002: 39-40. Kymlicka 2007: 392. Tesser 2003: 506). Other authors consider this to be only one goal among many others, thereby leaving scope for the analysis of other relevant issues (Butler 2007: 1131. Edwards 1998: 349. Krizsán 2000: 249. Vermeersch 2003: 13). Still others either completely ignore the issue or argue that the accusation against Hungary is unfounded.

Such cross-border pressures and inducements were a constant feature of Central and Eastern European history in the 20th century. Indeed, one can argue that the issue of the Hungarian minorities abroad has been a recurrent topic in Hungarian politics ever since the 1960s. Further, since several prominent Hungarian politicians dealing with minority issues were born abroad, the persistence of the issue, as well as the allusions in elite rhetoric, are not surprising. Such factors even appeared in the discussion of the 2011 minority law. Further,

⁸ The number of ethnopolitical parties that were registered by county courts between 1989 and 2014 is more than 30, although the legal framework does not recognize them as separate entities within political parties. This is why, interestingly, the participation of these minority parties at the MSG elections is prohibited by law. With one exception, the Nationality Forum which was formed by Croat, German and Slovak minority leaders in 1998, all of these parties were created by Roma. Only eight parties were able to run at least one candidate in at least one of the past parliamentary elections, but none of them succeeded in winning a mandate.

representatives of the Hungarian minorities abroad contributed to preparations for the 1993 minority law. Inevitably, they urged the enactment of a law that would serve as a point of reference and a blueprint (Dobos 2011: 133). Viewed from another perspective, the reason behind the Hungarian model was not only to serve as a reference by quickly adopting and further developing the Western standards (Galbreath-McEvoy 2012: 278) but also to prevent international organizations and neighbours from criticising Hungary in the field of minority protection.⁹ An additional aim was to justify the actions of the Hungarian governments as they gave support to minority claims abroad. Similarly, the intention – made plain by the Hungarian Parliament after the first democratic elections in 1990¹⁰ – to join the Euro-Atlantic community, to further develop existing international standards, and to attempt to conclude bilateral and regional agreements on minority protection – needed to be supported by a progressive domestic system. In addition, certain international actors, among them several leaders of the reunified Germany, used the Hungarian model as a reference point in their efforts to improve international norms. They gave their support to Hungary's minority legislation, emphasizing its importance (Dobos 2011: 131).

Given the less inclusive nature of nation-building efforts in the post-communist states and their rejection of minority claims, it seems very doubtful whether Hungary's hopes of improving the situation of the Hungarian communities abroad by creating and maintaining a progressive domestic system of minority protection were realistic. However, in my view, foreign considerations were not the primary motivation. The choice is not between assuming the primacy of kin-state politics and completely ignoring the issue. Other factors must also be considered. One factor contributing to the adoption of the minority legislation seems to have been to compensate the previously discriminated Roma by making their legal status equal to that of the other recognized minorities. The great number of minority civil organizations, their rivalry and the legitimacy deficit, also contributed to the decision to create a system of elected MSGs.¹¹

The elaboration of the legislation and its further amendment were lengthy and complex processes involving various different actors with diverse interests. This resulted in sensitive political and legal compromises, which moved beyond merely symbolic elements. While the claim to be setting standards was certainly present in the rhetoric, most of the provisions were actually formulated before the parliamentary deliberative stage in negotiations held by relevant ministries, governmental agencies and the minority organizations. In addition, the law was basically to function in Hungary in accordance with domestic needs and resources and with the participation of domestic actors. Through the creation of new institutions, rights, duties, procedures, and funding possibilities, the legislation left much room for debates and compromises. At the same time, the capacities and competences of local municipalities, as well as the country's overall economic and financial situation could not be ignored. At the time, Hungary was in transition to a capitalist market economy. Consequently, the major concerns were a lack of willingness to delegate appropriate powers to the minority bodies and inadequate financial resources. I therefore consider the aim of setting standards as just one of

⁹ As a result, EU conditionality played an important role in other areas such as in improving the antidiscrimination legislation in Hungary and had a correcting effect on the 2001 Status Law which granted rights to Hungarians living in the neighbouring countries (Sasse 2005, Vizi 2009).

¹⁰ Parliamentary resolution 46 of 1990 (24th of May) on the situation of Hungarian national minorities in the neighbouring countries.

¹¹ Moreover, there is evidence indicating that governmental actors expected the elections to bring the replacement of minority elites, and in this respect the elections could have been a tool for minority representatives to gain legitimacy.

several goals, many of which were suppressed at intervals or for a longer period of time in certain cases.

Regarding the 1993 legislation, the literature often emphasizes the differences that arose between the so-called ‘national liberal’ and ‘autonomist’ approaches to minority rights. The former would have been satisfied by granting individual rights, and it aimed to regulate only what was necessary. Its main advocate, the Ministry of Justice, argued that in a democracy the right of association provided the essential basis to articulate social interests and values. In its view, the MSGs should not become more than voluntary associations with weak competences. By contrast, the latter concept, supported in particular by the Minority Roundtable, sought to extend the scope of regulation as far as possible, embracing collective rights, cultural autonomy, and financial guarantees and establishing elected bodies based on constitutional law. Although the autonomist discourse dominated the rhetoric and the elected form ultimately prevailed, the overall outcome bore the marks of both approaches.

THE INSTITUTIONAL SYSTEM OF THE LEGISLATION OF 1993 AND 2005

Membership and elections

The relevant constitutional provisions declared that national and ethnic minorities had the right to establish MSGs, but defining the personal scope of the law and thus creating legitimate bodies was one of the most difficult tasks in view of the uncertain nature of ethnic identities, the huge differences between census data and estimates, and the claims by various ethnic groups. The minorities initially refused any kind of registration of persons with minority backgrounds, in view of historical experiences. This, however, made it almost impossible to assess the approximate number of persons to whom the law was to apply, while the principle of a person’s freedom to choose his or her identity had already been agreed upon during the preparatory phase. In the end, the compromise involved a legal definition of the term ‘national and ethnic minority’¹² and an enumeration of 13 recognized minorities and their native languages, with the possibility of subsequently expanding this list. Further, the MSGs were integrated into the municipality system, which resolved the problem of defining personal scope.

Until the 2005 amendment, the law distinguished three types of MSGs at local level, including the districts of the capital city. The most prevalent type was the directly elected one: due to the minorities’ rejection of registration, between 1994 and 2004 every Hungarian citizen had the right to vote for, and be elected to, MSGs. The voting took place in the same polling stations used in local municipality elections and on the same day.¹³ The two other, indirectly established forms were less frequent. Among these latter cases, if a majority of representatives of a local municipality were elected as minority candidates, then they could simultaneously transform the municipality into an MSG, which, in turn, also had to carry out the full range of local tasks. This prioritized form of MSG was intended especially for those settlements that had mostly minority inhabitants; it was often portrayed as territorial autonomy, but in practice the municipalities could turn it against local minority interests – as

¹² Article 1 (2). ‘*For the purposes of the present Act a national or ethnic minority (...) is an ethnic group which has been living on the territory of the Republic of Hungary for at least one century, which represents a numerical minority among the citizens of the state, the members of which are Hungarian citizens, and are distinguished from the rest of the citizens by their own language, culture and traditions, and at the same time demonstrate a sense of belonging together, which is aimed at the preservation of all these, and at the expression and the protection of the interests of their historical communities.*’

¹³ Non-citizens established in Hungary had the right to vote in the municipality elections, therefore de facto they could also vote for minority self-governments.

happened in various instances. The mostly local members of MSGs had the right to vote as electors indirectly for the minority bodies in Budapest and at the national level. At each level a majoritarian electoral system was introduced: candidates with the highest number of votes won seats (block vote). Consequently, however, certain sub-groups within divided communities were underrepresented or excluded, especially at the national level.

The number of MSGs increased from cycle to cycle (*see Figure*), which could be due to growing consciousness as reflected by census data but also to a less favourable phenomenon. At the elections, however, difficulties were encountered in implementing minorities' right to establish MSGs. Another issue was that minority rights applied to Hungarian citizens as a whole. As one result, the number of votes cast was significantly beyond even the estimated number of minorities, and these 'sympathy-votes' coming from the ethnic majority usually advantaged those candidates whose last names started with the first letters of the alphabet, a phenomenon which introduced serious distortions in minority public life (Szabó 2005: 225). It was even more serious and posed a threat for the entire model that some of the persons elected were presumably or obviously non-members of the specific community. Since mostly local minority representatives elected indirectly the MSGs in the capital and at the national level, those could also be affected by abuses (as well as the preferential mandates for minority candidates in local governments). The ethno-business factor gained importance in intra-community conflicts¹⁴ and debates between local governments and MSGs.

In order to reduce the incidence of abuses, pursuant to the 2005 law, the right to vote was limited to members of the recognized minorities. Minority voters now had to declare their affiliation by previously registering in minority electoral rolls administered by the head of the local electoral office, who, however, had no competence to assess affiliation with the minority. This simplified the system by reducing the number of local types of MSG; the election of the only remaining form could be held if the number of registered voters of a given minority in a settlement reached 30 by the established deadline. Notwithstanding these amendments, both the results of 2006 and 2010 elections and some local scandals raised further doubts about whether the changes had achieved their goal.¹⁵ The law imposed further requirements on minority candidates: only certain minority associations had the right to run candidates, who were furthermore obliged to make statements on their knowledge of language, culture and traditions, and were not previously members of an MSG of any other minority. The new law also cancelled the mechanism of gaining preferential mandates in local governments, a form of access to local decision-making that was especially important to Roma. Taking into account the needs of larger minorities, the 2005 law created the county-territorial level of MSGs, which had previously existed only in Budapest. In their electoral system as well as that of the national ones, there was a shift from the majoritarian to the list proportional type, in order to ensure the representation of diverse interest groups and to ensure that national MSGs would serve as the "parliaments" of minorities by fostering discussions and mutual understanding.¹⁶ Besides the deficit in community legitimacy, the

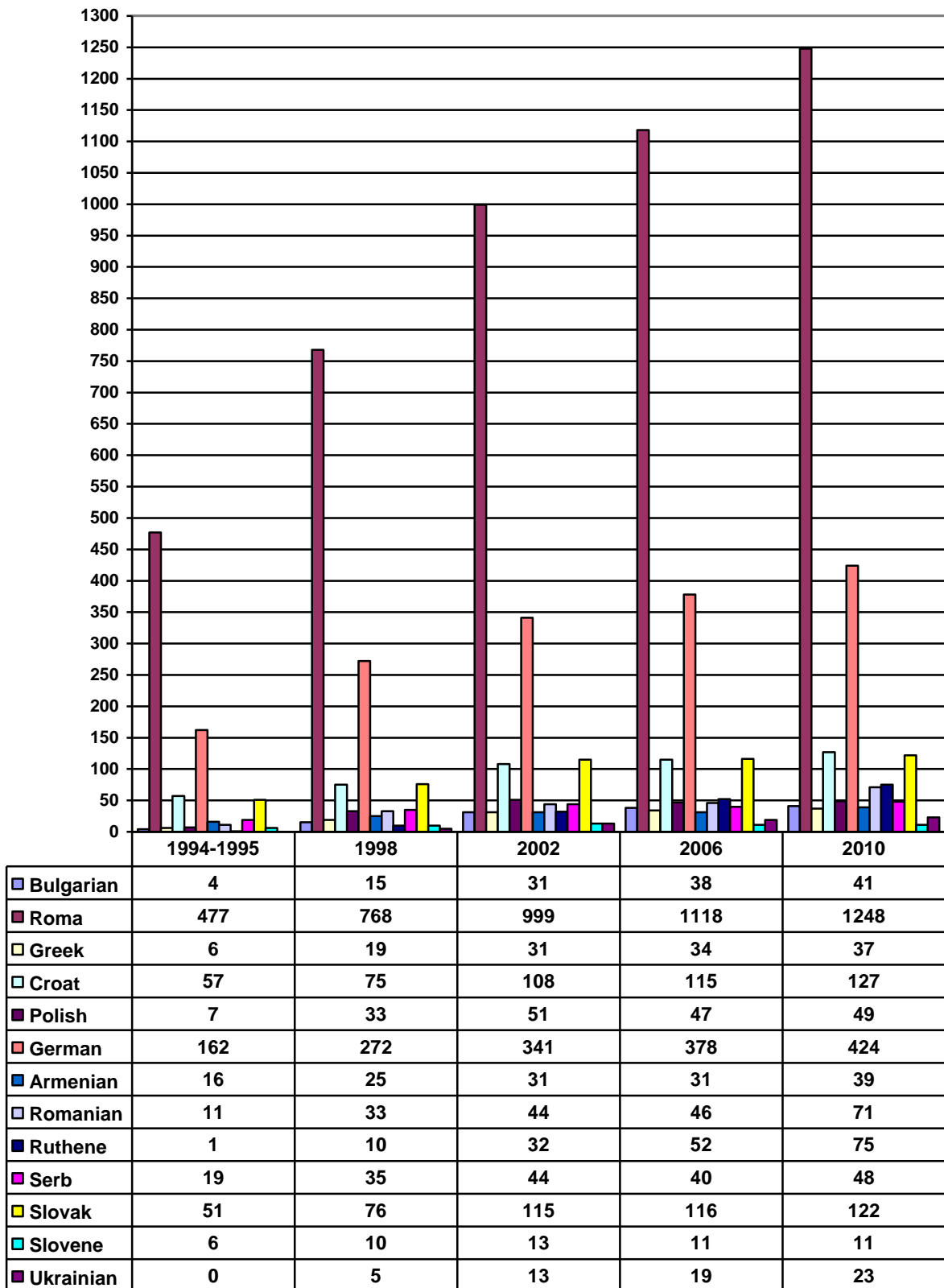
¹⁴ For instance, for the same reasons, Romanian institutions, local MSGs, associations, and parents objected to the plan of the National Self-Government of Romanians in Hungary to take over the most relevant minority educational centre in early 2008.

¹⁵ Comparing the results of 2001 census and the 2010 list of settlements where elections were held with at least 30 registered minority voters, we observe that in 34% of cases there were not 30 persons belonging to the same community.

¹⁶ Earlier those Roma and Romanian organizations that were excluded from the national MSGs demanded the elimination of autonomy. When measuring the proportionality of the electoral outcome, the difference between the percentage of votes and the percentage of seats won by minority organizations, the Loosemore-Hanby index revealed a high level of disproportionality. However, this disproportionality decreased after 2006.

minority elections could not fully meet the other requirements of elections (Katz 1997): the choice was rather limited, since the number of candidates was significantly greater than the number of representatives only in the case of the divided minorities. Further, as electoral success did not require a certain number of valid votes, voter participation was not encouraged (Dobos 2013).

Figure: The results of local MSG elections, 1994-2010



The major competences and funding of MSGs

Financial considerations and the fears of municipalities concerning the possibility of autonomy creating ‘dual administrations’, resulted in a separation of form and function. The basic structure of the MSGs followed that of the non-territorial autonomies, to which their responsibilities and tasks did not correspond. MSGs questioned the lack of adequate powers and rights, the dependence on municipalities, and the uncertain regulations (Csefkó-Pálné 1999). In this respect the 2005 law made progress in further regulating various issues concerning functions, tasks, competences, and the financial and infrastructural background. Generally, they had weak powers, most of which would not have required an elected form of autonomy. At the local level the most powerful right was a veto, which, after 2005, covered any municipal decrees affecting the minorities in the fields of local media, the promotion of traditions and culture, and the collective use of language. The appointment of the heads of minority institutions and local decisions concerning the education of persons belonging to minorities also required the MSGs’ approval. The national level of MSGs similarly had the power of veto in decisions on the preservation and conservation of minority settlements, minority architectural monuments, and governmental decrees on the implementation of the Act on Public Education.

In further developing cultural autonomy, great emphasis was laid on the provision of minority institutions that enabled both local and national MSGs to found, administer and take over certain educational and cultural institutions at various levels. While in the 1990s these remained mostly on paper, in the 2000s, due to the amendments, remarkable progress could be observed in the extension of different minority institutions (schools, theatres, research and cultural centres, media).

Even before the outbreak of the global financial crisis, which had a particularly detrimental effect on Hungary, one of the most vulnerable countries in the region, complex and controversial issues surrounding the socio-economic integration of the Roma were brought to the fore. The situation of the Roma raised the question, among others, of whether and to what extent the major goals of minority law and the legal and institutional framework had met their basic needs and expectations, as Roma MSGs mostly have to deal with social problems, even though they are not supposed to do so (Kállai 2005a: 308. Kovats 1999: 150-151. Molnár-Schafft 2003. Waters-Guglielmo 1996).

MSGs at all levels were entitled to normative state support, the precise amounts being determined by the annual acts on the central budget. Domestic and foreign organizations, foundations, and private individuals could also contribute to the financial support of the minorities in Hungary. Their financial management was supervised by the State Audit Office, while the administrative and legal supervision was the task of the metropolitan and county government offices. Earlier, each MSG was entitled to the same amount of normative support, irrespective of the local size of the community or the needs arising, although in many cases there were greater needs in less developed rural regions (Eiler-Kovács 2002). In general, opportunities for minority-related activities largely depended on cooperation between municipalities and minority self-governments, and on local capacities. In 2008, as part of the ongoing struggle against ethno-business, the amount was split into two portions: each MSG continued to receive the same annual amount, while the allocation of the remaining 25% was based on the performance of their key functions.¹⁷ The decisions on the submitted applications were regularly made by a special state committee, in which delegates of the national MSGs also took part in an advisory capacity. The committee could keep under

¹⁷ Governmental decree 375/2007. (23rd December).

review the activities of MSGs, and it concluded that a significant part of them were not performing any public or local tasks.

The findings of previous research on MSG members revealed that there were considerable differences in their social status and educational level: while the proportion of unskilled and often unemployed representatives was high among the Roma, other minorities had mostly well-educated, employed or self-employed intellectuals (Csefkó-Pálné 1999: 76-77). Research on specific communities added that the social prestige of minority activists, whose work was unpaid, was lower than that of people involved in other forms of public and local activities, and this could explain, for instance, the overrepresentation of women and pensioners from the educational and cultural sectors in the German MSGs. This posed the question of succession, and the future involvement of younger generations (Váradi 2002: 184). By contrast, in Roma MSGs, women have tended to be considerably underrepresented, as shown in the latest surveys. On the other hand, drawing on education and employment indicators, gradual progress could be observed (Bindorffer 2011. Kállai 2005b).

THE CHANGES IN THE NEW REGULATORY FRAMEWORK

Constitutional provisions

The political-legal measures of the right-wing government that came into power in 2010 have brought serious changes in various fields in a very short time. The most important change was the adoption of the new Fundamental Law on 18th April 2011. This act replaced the former 1949 constitution, which, in line with the transition, had been significantly amended several times since 1989. The Venice Commission criticized the rapidity of the process of elaborating and adoption the new Fundamental Law. It also drew attention to the significant lack of transparency and public debate.¹⁸ Obviously, the situation of the minorities could not remain unaffected either. Indeed, the new constitutional provisions, coupled with the new law on minorities, have greatly changed the institutional arrangements.

Besides returning to the term ‘nationalities’, which was in use before 1990, the Fundamental Law also significantly alters the concept of nation. Like most other constitutions in the region, both the previous and the new Hungarian constitutions illustrate how difficult it is to define the political community and reconcile the different concepts of the nation. The new Hungarian constitution seems to prefer the ethnocultural conception. However, until its adoption, the civic-neutral concept dominated the legal sphere, which defined the common entity in terms of citizenship. The civic-neutral term ‘people’ was combined with the national-ethnic approach (Deets 2005), while the more ethnocultural understanding of the nation covering those who identify themselves in ethnic terms, speak the language as native language, became much more influential in public discourse after the Treaty of Trianon, and it regained its influence during the transition. The amended 1949 constitution declared that the supreme power was vested in the people, that the national and ethnic minorities were constituent parts of the state, and that the state’s paramount duty was to protect them.¹⁹ Still, interestingly enough, it referred only indirectly to the presence of the overwhelming

¹⁸ *Opinion on the new Constitution of Hungary*. Adopted by the Venice Commission at its 87th Plenary Session (Venice, 17-18 June 2011).

<http://www.venice.coe.int/docs/2011/CDL-AD%282011%29016-e.pdf> In contrast to its predecessors, the preparation of the 2011 minority law took less than one and half years, providing thus less opportunity to consult and express opinions. After the debates of the September draft law, it was submitted to the Parliament on 19th November and adopted a month later, with the Fundamental Law entering into force on 1st January 2012.

¹⁹ Article 2 (2). 68 (1)-(2). Article 68 (1): “*The national and ethnic minorities living in the Republic of Hungary participate in the sovereign power of the people: they represent a constituent part of the State.*”

Hungarian majority, especially in the ‘responsibility clause’ for the fate of Hungarians living abroad.²⁰

By contrast, the new Preamble, the National Avowal, which still recognizes “the nationalities living with us” as state constituents, is written in the name of “we the members of the Hungarian nation”. It follows, therefore, and this is the opinion of the Venice Commission,²¹ that ethnic Hungarians share the power with the nationalities who are not considered to have been part of the people behind the Fundamental Law’s adoption. In fact, however, several national MSGs expressed their opinions during the elaboration of the Fundamental Law. The more pronounced responsibility for the Hungarian minorities as well as the much disputed provision that, contrary to the previous constitution, declares Hungarian as the official language deserving protection,²² also indicate an intention to strengthen the ethnic elements. The Fundamental Law, however, includes certain provisions from the previous constitution, including the right of minorities to use their native languages and names, to promote their cultures, to be educated in their mother tongue, and to create local and national self-governments. Even so, it does not declare their general protection and collective participation in public life. Moreover, it terminated the independent position of the Minority Rights Ombudsman. Instead it aims to fill a significant gap in the institutional framework when it states that minorities shall contribute to parliament’s work.²³ With respect to preventing electoral abuses, it declares that those Hungarian citizens who belong to any nationality shall have the right to freely express and preserve their identities.

Membership and elections

The new minority law extends its personal scope to non-Hungarian citizens belonging to minorities, including EU citizens, refugees, and immigrants residing in Hungary. This was indeed an old minority demand. As a result of the changes, in 2014, these groups also have the right to vote for, and be elected to, MSGs. However, this state of affairs will only last for one term, as the law will later cover only Hungarian citizens. In the case of the Roma, it replaces the term ‘Gypsy’ with ‘Roma’, which undoubtedly sounds more acceptable in terms of political correctness but does not suit the self-definition of each subgroup. As to the languages used by the minorities, the law additionally recognizes Hungarian in the case of the Armenian and Roma communities, but when defining the term minority it still states that minorities are distinguished by their languages, among other factors,. Most members of these two communities are apparently Hungarian-speaking, but Armenian speakers fear the change may lead to the violation of their linguistic rights.

During the formulation process, the Minority Ombudsman criticized the draft on the grounds that it is still based on the principle of free choice of identity and lacks any further safeguards to prevent electoral abuses. Indeed, the affiliation of candidates to minority rolls is not reviewed on the basis of certain criteria, but minority registers have become permanently updated and minority organizations have access to them. Continuing the struggle against ethno-business, some additional changes have been introduced to prevent abuses, of which the most relevant is that from 2014, at the local level, an election may be called only when the number of minority individuals of a given community reaches 25, according not to the former

²⁰ Article 6 (3): “*The Republic of Hungary bears a sense of responsibility for the fate of Hungarians living outside its borders and shall promote and foster their relations with Hungary.*”

²¹ *Opinion on the new Constitution of Hungary*. Adopted by the Venice Commission at its 87th Plenary Session (Venice, 17-18 June 2011). <http://www.venice.coe.int/docs/2011/CDL-AD%282011%29016-e.pdf> See also Pap 2011.

²² Article (H), article XXIX (1).

²³ Article 2 (2).

rolls but to the aggregated results of the latest census (of 2011). Critical voices raised by minority organizations and the Ombudsman argue that, besides the different nature of the procedures, the census cannot offer an overall view of the minority situation and records children and others who do not have voting rights. On the one hand, there were definitely hundreds of settlements in which minority elections were held by the adequate number of registered voters even though the number of minority inhabitants had been under 30 (or even there was nobody) at the census of 2001. On the other hand, the opposite is true for other cases in which there were at least 30 minority persons, but they have not organized themselves and created an MSG. The census results will, furthermore, play an important role in relation to language rights and the financial support granted to local MSGs. Both these factors are conditional upon the census figures, according to the new provisions.

The law reintroduces the system of transformed MSGs. This option was generally opposed by the minorities. A municipality may be transformed where more than half of local voters are simultaneously registered as minority voters from the same community and more than half of the elected representatives have won their seats as minority candidates. This type might serve just as an incentive for certain groups, because the results of the latest local elections indicate an absence of localities fulfilling both criteria, even though Roma organizations in particular ran candidates and in some municipalities registered minority voters constituted local majorities. Similarly, the new system reintroduces the possibility of securing preferential minority mandates in municipalities, a measure that had previously been repealed due to abuses. The electoral system has been amended to the extent that while previously only the local level had been elected directly by registered minority voters, from the next elections territorial and national MSGs will be established in the same way. One may vote for the territorial level where at least 10 local elections have been called in a certain county or Budapest. In contrast, there is no such precondition at the national level. Under the new rules, voters who live in localities where there were fewer than 25 minority persons according to census, and thus local elections could not be held, may also participate in the election of the territorial and national MSGs. The law still does not lay down any threshold of voter turnout; for instance, at the local level, victory may be achieved even by the margin of a single vote. The election of both territorial and national levels remains proportional.

Changes in the competences and funding of MSGs

Act 131 of 2010 on Preparing New Legislation and on Public Discussions on Drafts has limited the scope of minority veto power. Indeed, there has been a shift from the previous right of consent (approval) to the right of consultation. Reflecting the new circumstances, the Minister for Public Administration and Justice and the national MSGs signed a strategic partnership agreement in 2011. Minority bodies can still run their own educational and cultural institutions, but all the other schools have been taken over by the state and are now managed and maintained by a national body.

The system of allocating central financial support to MSGs has been also modified. First, there has been a change in the ratios: one third of the total amount is granted for core functions based on the latest 2011 census data; the remaining amount is granted on the basis of the activity history of each applicant.²⁴ Further, minority organizations are eligible to apply annually to a fund supporting their cultural and linguistic activities.

Contribution to the work of the Parliament

²⁴ Governmental decree 428/2012. (29th December).

The realisation of the right to parliamentary representation, which was a specific provision in the 1993 law, was the main political and legal demand of the minorities in Hungary after 1990. Despite many drafts and various domestic and international critiques, the aim was never realized. According to the new law on elections, in the mixed electoral system, those voters who are registered in minority electoral rolls have the right to vote for their candidates in the single-mandate constituencies and for the minority lists drawn up by the national self-governments. In such cases the 5% threshold is not applied, but they are entitled to one seat if they receive at least 25% of an electoral quota, thereby reducing the number of MPs to be elected on party lists.²⁵ It follows that this preferential system mostly favours the larger communities: the Roma, Germans, Croats and Slovaks. But given that the most successful ethnic parties had not received more than 10-12,000 of votes at the previous elections and as the latest parliamentary elections in April 2014 clearly showed, even these minorities had to work hard to attract their potential voters. All minority lists, even those of smaller groups that fail to win preferential mandates, are still entitled to a parliamentary spokesperson, who, however, does not have voting rights. Minority MPs and spokespersons can found permanent parliamentary committees, pursuant to the new law on the Parliament.²⁶

GENERAL ASSESSMENT, FUTURE PROSPECTS

In the context of the state- and nation-building efforts of the post-Communist states and their prioritisation of the institutional positions of the majority's language and culture, the present case study supports the findings that have been published on the non-territorial autonomies of the region, and which underscore the controversy surrounding the continued dominance of the nation-state model, the extension of state control to the field of minority issues and interethnic relations, and all those positive expectations that led to the spread of various autonomy regimes. The findings suggest that these institutional examples tended to be created in a top-down fashion, whereby symbolic and apolitical issues, such as education and culture, were imposed on minority groups, thereby preventing and neutralizing any potential territorial claims (see, for instance, Osipov 2013).

With regard to the Hungarian model, a growing number of scholars, by focusing on implementation and the rhetoric of politicians, have accepted the argument that the granting of substantial minority rights and non-territorial autonomy was motivated principally by a desire to improve the situation of the Hungarian minorities abroad. In the past two decades, such expectations were barely realised, as the neighbouring countries – with the exception of the former Yugoslav states – have tended to reject the creation of autonomy regimes. Although these arguments may partially explain the top-down nature of policy-making, they ignore other factors, including such key issues as the adoption of legislation, the legitimacy deficit of minority organizations, the political integration of Roma and stronger ethnic identification among certain minority groups. Consequently, they are less capable of explaining how and why the instrumental policies failed to create more space for the minorities in the Hungarian-dominated nation-state. Further, they offer few insights on the failure to accommodate additional minority demands, allocate more resources, and solve the major institutional deficiencies, including parliamentary representation, a subject of international criticism.

The return to the term 'nationalities' in the new legislation was officially justified as an effort to go beyond the dichotomy of majority versus minorities and highlight the contribution of the

²⁵ Act 203 of 2011 on the elections of members of Parliament of Hungary.

²⁶ Act 36 of 2012 on the Parliament of Hungary.

minority communities with their distinct ethnocultural features to the culture of both the Hungarian state and nation. Still, one may ask whether the ethnocultural definition of the nation facilitates the strengthening of the Hungarian components of minority identities, or whether the ethnicization of public discourse, a further extension of cultural autonomy, and transnational migration processes, will eventually lead to a preference for the ethnic elements, to more conscious communities, and to an increasing need for the better implementation of minority rights. Further, since many assess the socio-demographic processes as a gradual and irreversible assimilation process, a view supported by the relevant census data on the decline of minority language use, the question arises as to whether the creation of the Hungarian model was too late to slow down and possibly reverse these tendencies. It has also been shown that MSGs were not created to address the complex problems of the socio-economic integration of the Roma, but to help minorities preserve and develop their identities. While public opinion is critical of the somewhat exaggerated phenomenon of ethno-business,²⁷ the support given by the parliamentary parties to the system of MSGs is also favourable to the maintenance of the Hungarian model.

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²⁷ See for instance 'Egyetértésre talált az új nemzetiségi önkormányzati szabályozás' (19th December 2012, Századvég Foundation) http://szazadveg.hu/ld/r8h3l0m2y5p4s8g6t6a1_egyeterterre-talalt-az-uj-nemzetisegi-onkormanyzati-s-zabalyozas.pdf (accessed 21st May 2014).

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