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Non-territorial Autonomy as a Form of Minority Self-government in Central Europe

Balázs Vizi[1]

I. Introduction

In Central and Eastern Europe (CEE) inter-ethnic relations have always been a delicate political issue. The dramatic historical events of the 20th century including border changes, mass deportations, genocide, and the exchange of populations characterized the evolution of present-day multi-ethnic societies in the region. In almost all CEE countries, sizeable and often politically active minorities live and since the collapse of communism, the new democracies had to face the challenges of diversity management. In most states where different national, ethnic or linguistic groups live, the question of access to power and government is a cardinal issue. In democracies, minority groups are likely to have fewer chances to accede to power than majorities, as political mobilisation along identity cleavages will leave them in a structural minority position. Majorities and minorities may often disagree on policies relating to their different identities. In order to have a say in public affairs, especially in those affecting minorities' identity, there is a need to implement minority rights protection schemes.

The various legal tools and measures developed in CEE states to tackle minority claims range from individual (minority) rights to different models of minority autonomy. While there are many good and long-established examples of territorial autonomy in other parts of Europe, minority claims for territorial autonomous arrangements have not been successful in CEE. In this region, minority issues have often been securitized by governments, and claims for territorial minority autonomy were often just seen as a cover for secessionist goals. Instead, different models of non-territorial autonomy (NTA) emerged in the 1990s in the region: not

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only in Hungary, Serbia and Slovenia, but also in Croatia, Kosovo, North Macedonia, Ukraine, Russia, Latvia and Montenegro, the terms "personal" or "cultural autonomy" appeared in reference to various legislative and policy arrangements.[2] However, the institutions which are designated as applications of personal or cultural autonomy in these contexts significantly differ from each other. What is common to these autonomy arrangements is that the competencies assigned to the self-governing entities are not connected to a clear territory.

This article examines the NTA model as it appears in the legislation of Hungary, Serbia, and Slovenia. Following a brief outline of the theoretical background of NTA, the goal here is to offer an overview of the institutional structure and the legal framework of NTA in the three states. The Hungarian, Slovenian, and Serbian legislative frameworks on minority autonomy have some important common characteristics: all have been developed in the context of democratization, the autonomous bodies are directly elected, have the competence to administer some of their own affairs/institutions (mainly in the field of culture, education, and language use), and are recognised as a representative body of the minority community.

II. Autonomy Models and State-minority Relations in Central and Eastern Europe

Autonomous structures have been recognized in many international, though legally non-binding, documents in Europe. The Lund Recommendations (issued by the Organization for Security and Cooperation in Europa (OSCE) High Commissioner on National Minorities), for example, see autonomy as a useful means to preserve minority identity against majority pressures in democracies.[3] The Council of Europe (CoE) Parliamentary Assembly acknowledged that giving autonomous governing structures to minorities may well contribute to not only domestic, but also international stability and conflict prevention, which is still one of the political aims of providing effective minority protection.[4] As the Rapporteur of the Resolution, Andreas Gross concluded: "Autonomy allows a group which is a minority within a

[2] For a good overview of the elected personal autonomies in the region, see Balázs Dobos, A személyi elvű kisebbségi autonómiák Kelet-Közép-Európában (2020).
[3] The Lund Recommendations on the Effective Participation of National Minorities in Public Life, OSCE High Commissioner on National Minorities, 1999. Part III.
[4] CoE PA Res. 1334 (2003) on the positive experiences of autonomous regions as a source of inspiration for conflict resolution in Europe.

state to exercise its rights, while providing certain guarantees of the state's unity, sovereignty and territorial integrity."[5]

Brunner and Küpper offer a clear definition of autonomy: "collective rights may encompass a wide range of issues important for minority life. If collective rights amount to some form of essential self-determination (political, cultural or other) they become an autonomy."[6] In line with this definition, the most important criterion for any form of minority autonomy is that it is vested with specific jurisdiction over a substantial number of minority issues and shall be able to exercise this jurisdiction at its own responsibility. The various legal arrangements guaranteeing autonomy in national legislations can be categorised on the basis of their finality, whether they provide autonomy for a group of people on a personal basis or for a territory and the people living on that territory. As a matter of fact, all forms of autonomy (territorial or personal) are dependent on domestic political developments, but in each case, the community itself gains special institutions for the effective protection of the rights of the community and the individuals belonging to that minority group.

Territorial autonomy may be relevant for minorities that live in a territorial-demographic concentration, in enclaves or regions where their members constitute a local majority. In principle, territorial autonomy entails the transfer of governmental powers relevant to the preservation of their identity, to minorities on a territorial basis. It is seen as an effective instrument adhering to the principle of subsidiarity, thus improving "the opportunities of minorities to exercise authority over matters affecting them."[7] The major question is to what extent does the state transfer powers to the territorial autonomy institutions. There may indeed be a continuous bargaining between the minority and the majority on the grant of autonomous competencies. In addition to that, many see a major challenge in territorial autonomy as creating a "mini-state", "that provides an ongoing temptation for some voices within the minority to withdraw from main state participation entirely".[8]

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[5] CoE Parliamentary Assembly, Report on behalf of the Political Affairs Committee, Doc. 9824, 3 June 2003. p. 2.

[6] G. Brunner and H. Küpper, "European Options of Autonomy: a Typology of Autonomy Models of Minority Self-Governance", in K. Gál (ed.), Minority Governance in Europe (Open Society Institute 2002), p. 19.

[7] The Lund Recommendations, cited at note 2, para. 19.

[8] S. Stroschein, "Reconfiguring State-Minority Negotiations for a Better Outcome", in T. Malloy, A. Osipov, and B. Vizi (eds.), Managing Diversity through Non-territorial Autonomy (Oxford University Press 2015), p. 26.

Disputes over territorial power-sharing arrangements may easily lead to a political stalemate between minorities and the majority. So, there may be a need for a different approach to governance structures. The principle of subsidiarity has typically been taken to imply that local-level governance takes place at the level of a geographic locality. But there are policy areas such as culture or language use, and education for minorities, where the placement of government at its closest proximity to those governed may require a non-territorial structure. Personal or non-territorial autonomous arrangements may indeed offer an effective scheme for breaking down the notion of governance into specific functional competences. By including non-territorial structures in our understanding of and approach towards governance, it is possible to reframe the potential disputes over power-sharing in order to generate better outcomes for both minorities and the majority. Minorities' control over public authority is important in policy areas that are essential for the trans generational preservation of minority identity: i.e. language, culture, and traditions. From this perspective, non-territorial autonomy is often seen as a flexible instrument for accommodating minority claims, thus offering ample room for compromise between minorities and majority political elites.

The question is what are the political conditions for compromise between the majority and minorities. As the three case studies included in this article confirm, discussion and decision about any form of minority autonomy is likely to be dependent on various factors. The question usually emerges in the context of democratic transition, and very much depends on attitudes of the majority political elites and on the ethnic mobilisation of minorities. International actors, norms and institutions may also influence majority political elites' willingness to concede to minority claims. European integration in this regard was an important driving force for recognising a broader range of minority rights in many CEE states.[9]

Since territorial autonomy requires a more substantial restructuring of the state than non-territorial arrangements, states are more reluctant to accept autonomy claims on a territorial basis. This was particularly the case in Central and Eastern Europe where minority claims for territorial autonomy were often seen by majority political elites as a cover for a secessionist agenda.[10]

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[9] B. Vizi, N. Tóth, and E. Dobos (eds.), Beyond International Conditionality. Local Variations of Minority Representation in Central and South-Eastern Europe (Nomos 2017).

[10] L. Salat and I. G. Székely, "Conclusion", in L. Salat et al. (eds.), Autonomy Arrangements around the World - A Collection of Well and Lesser Known Cases (2014), pp. 446-456.

III. Non-territorial Autonomy as Special Form of Minority Self-government

In recent years, there has been an increasing interest in the conceptualization of non-territorial autonomy and there seems to emerge a consensus on the generic application of this term to very different institutions, legal practices, and social realities.[11] Other expressions, like cultural or personal autonomy, are also often used alternatively, which explains that the only common characteristic of the various legal instruments is the lack of territorial competencies that characterise the better-known model of territorial autonomies.[12] As Nimni pointed out, NTA "refers to different practices of minority community autonomy that does not entail exclusive control over territory."[13] This implies that minority autonomy can be introduced in many different ways and in different legal forms in which respect we can agree with Ghai that "autonomy is a device to allow ethnic or other groups claiming a distinct identity to exercise direct control over affairs of special concern to them, while allowing the larger entity those powers which cover common interests. (…) There is no uniform use of terms for the different kinds of arrangements for autonomy…"[14] Indeed, self-rule, the authority to exercise control over and to take decisions on issues related to the preservation of minority identity, is essential for any form of minority autonomy.

Brunner and Küpper made a distinction between personal and territorial autonomy stating, "personal autonomy does not relate to territory, but to all members of the minority. Thus, the crucial factor is (…) membership of the minority. (…) Thus, personal autonomy can be defined as a form of self-government granted to a group, with organs or organizational structures that exercise the various rights and powers of the autonomy."[15] Other authors use the term "personal autonomy" in a more restricted sense, focusing on personal choices in using language or cultural rights. In his typology, Tkacik refers to cultural autonomy as a form of NTA based on the

[11] K. Cordell and D. Smith (eds.), Cultural Autonomy in Contemporary Europe (Routledge 2008); E. Nimni, A. Osipov, and D. Smith (eds.), The challenge of non-territorial autonomy. Theory and practice (Peter Lang 2013); T. Malloy, A. Osipov, and B. Vizi (eds.), Managing Diversity through Non-territorial Autonomy (n 7); L. Salat et al. (eds.), Autonomy Arrangements around the World - A Collection of Well and Lesser Known Cases (n 9).

[12] See T. Malloy and F. Palermo (eds.), Minority Accommodation through Territorial and Non-Territorial Autonomy (Oxford University Press 2015).

[13] E. Nimni, "Non-territorial Autonomy: the Time is Now", in M. Andeva (ed.), Non-Territorial Autonomy in Theory and Practice: A 2020 Report (University American College Skopje 2020), p. 9.

[14] Y. Ghai (ed.), Autonomy and Ethnicity. Negotiating Competing Claims in Multi-Ethnic States (Cambridge University Press 2000), p. 8.

[15] Brunner and Küpper, "European Options of Autonomy: a Typology of Autonomy Models of Minority Self-Governance", (n 5), p. 26.

membership in a minority group that requires some sort of legal structure to make decisions in a limited set of areas where the autonomous bodies are vested with some competence.[16]

The terminological opacity of these terms is also reflected in the fact that in many cases the terms "personal" and "cultural" autonomy are used interchangeably. According to Lapidoth, the difference between personal (cultural) autonomy and minority rights is primarily institutional: without self-governing, self-regulating institutions cultural autonomy does not exist. She argues that cultural autonomy might be extended beyond policy areas strictly related to identity issues, such as national questions of foreign affairs or even in socio-economic areas, as long as it does not regulate any territorial issues.[17] Indeed, non-territorial arrangements are often seen as a viable compromise between the state and the minority community – especially in those cases where the minority lives dispersed over the territory of the state – facilitating the dialogue and evading some of the problems of territorial autonomy claims. Since non-territorial autonomy arrangements exclude territorial claims, they are often seen as a flexible conflict-resolution tool.[18] Moreover, NTA structures can be an instrument for enabling effective participation of minorities in public life.

From this perspective, NTA may be seen as a practical tool for the effective implementation of minorities' widely acknowledged right to participate in cultural life and public affairs. As a matter of fact, the right to autonomy is not recognized in international law as a minority right, and even the concept of collective rights is often debated.[19] International documents usually refer to the "rights of persons belonging to minorities" and there are serious disagreements both among states and in academia to what extent group rights, including claims for autonomous structures, are compatible with international standards. It should be noted that the individualistic terminology used in most international documents does not *per se* exclude the recognition of collective rights. Already Article 27 of the International Covenant on Civil and Political Rights notes that "persons belonging to" minorities may enjoy their rights "in community with the other members of their group", acknowledging the group character of

[16] M. Tkacik, "Characteristics of Forms of Autonomy", International Journal on Minority and Group Rights, vol. 15(2-3) (2008), pp. 374-375.
[17] R. Lapidoth, Autonomy. Flexible Solutions to Ethnic Conflicts (United States Institute of Peace Press 1996), Chapter 3.
[18] Stroschein, "Reconfiguring State-Minority Negotiations for a Better Outcome", (n 7), pp. 26-30.
[19] See e.g. N. Wenzel, "Minority Rights as Group-Protective Rights: A Challenge for the International Law of Human Rights", in D. König et al. (eds.), International Law Today: New Challenges and the Need for Reform? (Springer 2008), pp. 247-258.

minority rights. The Framework Convention for the Protection of National Minorities (FCNM),[20] in its Articles 10, 11 and 14, includes certain provisions that reflect this collective dimension, particularly in regard to language rights “in areas inhabited by persons belonging to national minorities traditionally or in substantial numbers”. While the legally non-binding OSCE Copenhagen Document states that “[t]he participating States note the efforts undertaken to protect and create conditions for the promotion of the ethnic, cultural, linguistic and religious identity of certain national minorities by establishing, as one of the possible means to achieve these aims, appropriate local or autonomous administrations corresponding to the specific historical and territorial circumstances of such minorities and in accordance with the policies of the State concerned.”[21]

Most international documents on minority rights, referring to NTA arrangements, underline the importance of participation, as the FCNM formulates it under Article 15: “The Parties shall create the conditions necessary for the effective participation of persons belonging to national minorities in cultural, social and economic life and in public affairs, in particular those affecting them.” The Advisory Committee of the FCNM highlighted in its commentary that while this provision does not provide a right to autonomy, still “cultural autonomy arrangements, whose aim is *inter alia* to delegate competences to persons belonging to national minorities in the sphere of culture and education, can result in increased participation of minorities in cultural life.”[22] The OSCE High Commissioner on National Minorities in the Lund Recommendations also highlighted that “personal or cultural autonomy” may represent a division of authority in cultural issues, allowing members of minorities to exercise control over issues relevant for their group identity.[23] It may be concluded that NTA is commonly perceived as a particular form of autonomy. However, since the term “personal” or “cultural” autonomy is really flexible, there are many states that apply the term without offering any decision-making or self-governing competence to the “autonomous” institutions. Referring to the post-Soviet practices and legislation, Osipov argued that these institutions have been more symbolic than instrumental for minorities.[24]

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[20] Adopted on 1 February 1995, Council of Europe, European Treaty Series, no. 157.

[21] Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, adopted on 29 June 1990.

[22] Advisory Committee on the Framework Convention for the Protection of National Minorities, Commentary on the Effective Participation of Persons Belonging to Minorities in Cultural, Social and Economic Life and in Public Affairs, 5 May 2008, ACFC/31DOC(2008)001

[23] The Lund Recommendations cited above at note 2, para. 5 and paras. 17-18.

[24] A. Osipov, "Non-Territorial Autonomy during and after Communism: In the Wrong or Right Place?”, Journal on Ethnopolitics and Minority Issues in Europe, vol. 12(1) (2013), pp. 7-26.

For an operational NTA arrangement, we may conclude that the key institutional feature is some form of self-government, an elected institution that has competencies related to minority rights in special policy areas that do not have a direct territorial dimension, like culture or education.

It is well-known that the theoretical foundations of personal autonomy as a minority policy tool first appeared in the works of the social-democrats Karl Renner and Otto Bauer based on their experiences in Austria-Hungary at the turn of 19th and 20th centuries. They realized that within the multi-ethnic monarchy, identity issues and national questions had become crucial elements in political mobilization, threatening also the unity of the socialist movement.[25] However, the idea of detaching identity policy from territorial competencies did not meet political success, neither within Austria-Hungary nor after the collapse of the empire. The minority protection regime introduced by the peace treaties in 1919-1920 under the aegis of the League of Nations focused on individual rights and many believed it implicitly suggested assimilation as a favourable outcome. Furthermore, the inter-war period and the Second World War were characterised by territorial revisionist endeavours in CEE and political considerations of NTA were definitely marginal. Probably the only relevant legislative experiment to implement this approach was the short-lived Estonian law on cultural autonomy adopted in 1925. Later, the idea of NTA was also discarded by the communist regimes installed after WWII. As it was mentioned above, new minority policy approaches emerged within the context of democratization in CEE after 1990 and a few states adopted politically viable solutions for minority rights protection, including NTA arrangements. Both Hungary and Slovenia were among the first states in the region to introduce a detailed legislation on minority rights and NTA structures after the collapse of communism. In Serbia, the fall of the Milošević-regime opened the way for democratic changes and for new minority rights legislation. The three cases presented below prove that NTA is a flexible structure, even if certain minimum criteria of self-government have to be met. Nevertheless, it is not necessarily the legal norms, but rather the political and legal practice that determine how NTAs can function as proper structures for political participation, decision-making, and representation.

IV. Minority Self-governments in Hungary

[25] See Dobos, cited above at note 1, pp. 40-43.

Hungary has often been seen as an exception among post-socialist countries, offering a new model to diversity management, by including a clear formulation of collective minority rights and minority self-government in its 1989 Constitution and by adopting a specific law on minority rights in 1993.[26] During the communist decades after World War II, minorities enjoyed rather limited cultural rights, while the government let them have their national umbrella organizations (politically controlled by the government) and enjoy limited rights to preserve their language and cultural traditions.[27] Democratic transition in 1989-1990 brought identity issues to the surface in Hungary, not because minorities in Hungary were politically relevant, but much more because there was an increasing public interest and concern for Hungarian minorities living in neighbouring states. For historical reasons, Hungary was in a specific situation: compared to other states in the region, since the collapse of Austria-Hungary at the end of World War I, it had been an ethnically rather homogeneous country. Except for the Roma (who, according to the 2011 census represent around 3,6 per cent of the total population),[28] only small, dispersed, linguistically assimilated minority communities live in Hungary.[29] On the other hand – as a result of border changes following the dismemberment of historical Hungary (Austria-Hungary) after WWI under the Paris Peace Treaties – large and politically active Hungarian minority communities live in neighbouring countries.[30]

Between 1989 and 1990, during the democratic transition, there was a wide consensus both within the reformist elites of the ruling Socialist Workers' Party and the emerging opposition movements on the need to transform minority rights protection legislation as well. The inclusion of a broad set of minority rights in the Constitution in 1989 and, after the first democratic elections, the adoption of the Minority Rights Law in 1993 reflected this broad political consensus. The new law was drafted after consultations with the representatives of minority organisations and the idea was to legally recognise all minority groups that wished so

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[26] 1993. évi LXVII. tv. a nemzeti és etnikai kisebbségek jogairól. Act LXVII of 1993 on the Rights of National and Ethnic Minorities.

[27] B. Dobos, "Magyarországi nemzetiségek a kommunista rendszer kiépülésétől a rendszerváltásig", in: Béni L. Balogh et al. (eds.), Az együttélés történelme: nemzetiségi kérdés Magyarországon (2020), pp. 289-308.

[28] According to the 2011 census, 315 583 people declared to belong to the Roma minority. However, it shall be underlined that most estimates put the number of Roma much higher, around 600-700,000 people.

[29] The other 12 minority communities according to the 2011 census represented around three % of the total population. In numbers: Armenians 3 571, Bulgarians 6 272, Croats 26 774, German 185 686, Greeks 4 642, Polish 7 001, Romanians 35 641, Rusyns 3 882, Serbs 10 038, Slovaks 35 208, Slovenians 2 820, Ukrainians 7 396 people. See http://www.ksh.hu/nepszamlalas/nemzetisegi_adatok_sb (accessed 20 December 2020).

[30] See more on that: N. Bárdi, C. Fedinec, and L. Szarka (eds.) Minority Hungarian Communities in the Twentieth Century (East European Monographs 2011).

(e.g. the Jewish organisations participated in the consultations but later preferred to be recognised as a religious community rather than as a national minority). The primary goal of the legislator was to establish appropriate institutional structures (i.e. a form of cultural autonomy) for guaranteeing the survival of minority identities, cultures, languages, and assuring the political representation and participation of minority communities in public life by creating a system of minority self-governments. The inclusion of an autonomous arrangement as a cardinal institution in the Minority Rights Law was not only motivated by domestic political concerns. There was a strong belief among the Hungarian political elite that adopting an autonomy model for the legal protection of minorities may demonstrate Hungary's firm commitment to advocate minority rights protection at international level. It was also seen as a good tool for providing a positive example for neighbouring states where large Hungarian minority communities live.[31]

Following a landslide victory of right-wing FIDESZ at the 2010 elections, a new constitution and a new law on minority rights were adopted in 2011.[32] The Fundamental Law (as the constitution was renamed) largely built on the previous constitutional provisions, by recognizing minorities ("nationalities" in the new terminology) as constituent parts of the State, together with their individual and collective rights, including also their right to self-government.[33] Against this background, the adoption of the Law on the Rights of Nationalities in 2011 was of particular importance.[34] The Law on Nationalities was adopted as a cardinal act (i.e. requiring a two-thirds majority in the parliament), which reflects and confirms the traditional importance of minority issues in the Hungarian constitutional structure. Although the Law on Nationalities did not change the fundamental principles of minority rights protection of the 1993 Minority Law, it is a more complex and more detailed piece of legislation.

The first and very important feature of the Hungarian minority protection system is the way the Act on Nationalities defines minorities, which is almost identical to the definition in the 1993 Minority Law. Article 1 offers the following definition: "Pursuant to this Act, all ethnic groups resident in Hungary for at least one century are nationalities which are in numerical minority

[31] Dobos, "Magyarországi nemzetiségek a kommunista rendszer kiépülésétől a rendszerváltásig", (n 26).
[32] The Fundamental Law of Hungary, adopted by the National Assembly on 18 April 2011. https://njt.hu/translated/doc/TheFundamentalLawofHungary_20190101_FIN.pdf (accessed 20 December 2020).
[33] Ibid, Article 29.
[34] 2011. évi CLXXIX. tv. a nemzetiségek jogairól. Act CLXXIX of 2011 on the Rights of Nationalities. (The text quoted here is the official translation of the Act, submitted to the Council of Europe Venice Commission, CDL-REF(2012)014.)

amongst the population of the State, are distinguished from the rest of the population by their own language, culture and traditions and manifest a sense of cohesion that is aimed at the preservation of these and at the expression and protection of the interests of their historically established communities."[35] As the 1993 Minority Law already codified the list of recognized minorities, Appendix 1 of the new 2011 Law on Nationalities names the same 13 minority communities which *ex lege* are entitled to collective rights, while for the enjoyment of individual rights the law requires a subjective self-identification with one of these nationalities. The nationality communities recognised by the Law are the following: Bulgarian, Gypsy, Greek, Croatian, Polish, German, Armenian, Romanian, Ruthenian, Serbian, Slovakian, Slovenian, and Ukrainian.[36] In addition, the Law also gives the following definition of a person belonging to a nationality: it is a person "who resides in Hungary, regards himself as part of a nationality and declares his affiliation with that nationality in the cases and manner determined in this Act."[37] For example, at the time of elections of the nationality self-governments, the voters need to submit a written declaration stating their nationality affiliation to the electoral authority. The distinction between "nationality" and the individual who belongs to a "nationality" clarifies the distinction between collective and individual rights: the nationality communities are entitled to collective rights (such as the right to cultural autonomy) and the individuals to individual rights (e.g. the right to use one's name in her/his mother tongue).

The Law on Nationalities strongly emphasises the concept of cultural autonomy, recognises collective rights and sees autonomy as a manifestation of collective rights.[38] In this sense, the 2011 Law distinguished cultural autonomy from nationality self-governments; it embodies a great variety of collective rights – including the establishment of a nationality self-government.

[35] In fact the subjects of the law are determined by a definition that builds a great deal on Capotorti's definition (UN Doc E/CN.4/Sub.2/384/Rev.1. 1979. 5-12.) and it uses the main elements of the definition applied in Article 1 of the Council of Europe 1201(1993) PA Resolution (Council of Europe Parliamentary Assembly Recommendation 1201 (1993) on an additional protocol on the rights of national minorities to the European Convention on Human Rights), although the requirement of one hundred years residence of a nationality was seen as problematic by the Venice Commission. CoE European Commission for Democracy through Law (Venice Commission) Opinion on the Act on the Rights of Nationalities of Hungary. 19 June 2012. CDL-AD (2012)011.

[36] But this enumeration is not exclusive: the Act allows – in the same way as in the previous law – for any other minority group to apply for recognition as a minority if it fulfils the conditions under Article (2) and is supported by at least 1000 citizens who profess to belong to it (Article 148(3)). The most important change introduced by the new law in this regard is an apparent opening towards immigrants: all people who reside in Hungary are entitled to enjoy minority rights if they wish so, although they do not have passive voting rights at the elections of nationality self-governments.

[37] Article 1 of the Act CLXXIX of 2011 on the Rights of Nationalities.

[38] Article 2 (3) provides the following definition of national cultural autonomy: "a collective nationality right that is embodied in the independence of the totality of the institutions and nationality self-organisations under this Act through the operation thereof by nationality communities by way of self-governance".

The self-government, as an elected body, is the institutional materialization of cultural autonomy, a representative forum, and an administrative tool to realise cultural autonomy.

Nationality self-governments are elected directly at local, regional (in the counties and in Budapest) and national level. This fully conforms to the territorial administrative levels in Hungary (local governments, counties, and the national level). Most of the competences are attributed to the local and national levels.[39] The law provides detailed provisions on the internal structure of nationality self-governments, on their function and on their competences. The "public duties" – to use the legal term – of nationality self-governments are of great importance.

According to Article 115 of the Law, the "mandatory public duties" of local nationality self-governments cover among others: i) duties related to the maintenance of institutions fulfilling national duties (e.g. schools or cultural institutions); ii) duties related to the maintenance of institutions taken over from local governments or other organisations; iii) duties related to the interest representation of the community represented; iv) exercising decision-making and cooperation rights in connection with institutions operated by state, local governments or other agencies in the nationality self-government's jurisdiction; v) liaise with the local nationality civil society organisations and initiatives of the community represented and local church organisations; vi) initiation of the measures necessary for the preservation of cultural assets associated with the nationality community in the jurisdiction of the nationality self-government; vii) participation in the preparation of development plans; and viii) assessment of demand for education and training in nationality languages. The local nationality self-governments are also entitled to fulfil voluntary responsibilities – if it does not affect the duties of state authorities – in particular in the field of nationality education, culture, social inclusion, public employment, social, youth, and cultural administration.[40]

The Law on Nationalities, under Articles 27 and 33-49 gives, with regard to different policy issues, the right of consultation or the right of agreement to nationality self-governments. Such

[39] As the regional governments, the regional nationality self-governments do not play an important role.
[40] Article 116 also states that "within the boundaries of the available resources" local nationality self-governments may take as voluntary public duties i) the establishment of nationality institutions; ii) establishment of decorations, establishment of the conditions and rules of awarding; iii) invitation of nationality tenders, establishment of scholarships.

rights are granted in relation to public education, and cultural self-government affecting the nationality concerned.[41]

The nationality self-governments with nation-wide competence are expected a) to fulfil the duties of interest representation and interest protection of the nationality in those localities where there is no nationality self-government; b) to engage in the interest representation at country level; c) to represent and protect the interests of the nationality represented by it on a national level; and d) to maintain a national network of nationality institutions in the interest of the development of nationality cultural autonomy.[42] The government is obliged to consult nationality self-governments with nation-wide competence with respect to issues concerning the educational self-administration of people belonging to that nationality. Moreover, the nationality self-government with nation-wide competence may request information relevant to the nationality from public authorities and agencies. It shall furthermore exercise the right of consent on issues directly affecting the nationality in connection with development plans and it shall be consulted on bilateral and multilateral international agreements related to the protection of nationalities.

A new element of the 2011 Law is that it brings back the possibility of creating a territorial minority self-government – which option was abolished by the 2005 modification of the previous law. A local nationality self-government may declare itself a transformed nationality self-government if on the day of the election more than half of the citizens recorded in the register of franchised citizens in the locality are recorded in the given nationality's electoral register, and where more than half of the elected members ran as the given nationality's candidates at the local government elections.[43] This option – in theory at least – offers those nationality communities, who constitute a majority in a village or locality, the possibility to create a special form of limited territorial autonomy. In this way, the local government and the local minority self-government can be merged in the locality concerned.[44]

[41] However, this is not an absolute veto right, according to the law each party has 30 days for issuing its opinion which may be postponed by another 30 days. The expiry of this time limit mandates the court to take a decision in substitution.
[42] Article 117(2) of the Law on Nationalities.
[43] Article 71 of the Law on Nationalities.
[44] Nevertheless the Law poses very strict requirements for that: to meet both criteria (majority of local voters shall be registered as nationality voters and half of the members of the local council shall be elected on nationality lists) seems almost impossible for most local minority communities. The previous experiences of territorial minority self-governments were not really positive either: the central state budget allocations did not take into consideration the different character and the increased responsibilities of a nationality self-government in a locality as compared

The Hungarian system of minority self-governments is probably the most complex one in CEE and it went through various modifications since 1993. One of the key dilemmas during the past decades was the electoral legitimacy of self-governments: should voting rights be based on a free choice of identity or should there be some formal requirements with regard to individuals' affiliation to a specific minority community? The 1993 Minority Law originally did not prescribe any formal condition for voting rights, anyone could vote in the minority self-government elections, resulting in a large number of "sympathy votes" from people who did not belong to the minority but nonetheless voted in the elections. Even for standing in the elections the registration was based on the individual's self-declaration and no one was entitled to examine the criteria required by the law, like knowledge of minority language, cultural affiliation, etc. This practice opened the door for "ethnic entrepreneurs", which entailed that after the elections minority self-governments were also established in localities where no member of that minority community had been registered during the census. This led to protests from members of the concerned minority who complained that people elected for these self-governments did not belong to the minority they claimed to represent. There have been different attempts to combat this phenomenon, and this was one of the main motivations behind the 2005 modification of the law. The 2011 Law on Nationalities introduced stricter requirements linking electoral rights to previous census results. Yet, this gave rise to concerns since the declaration of national identity had been optional in the 2011 census and at the time of data collection no one had been informed that later, under the new law, these data would be used for the election of nationality self-governments. Based on the experiences of the 2014 and 2019 elections, the law was modified. The law now requires either the nationality self-governments with nation-wide competence to declare their intent to hold elections in a locality or the presence (based on the latest census) of at least 25 persons belonging to the nationality – in case there has already existed a nationality self-government in the locality concerned. As the latest elections in 2019 have shown, the regulation introduced by the Law on Nationalities seems to have been successful in combating the phenomenon of "ethno-business" although it also had some backlash for smaller minority communities.[45] Only the next elections will show how the new modifications will affect the local representation of nationalities.

to an ordinary local government. It is thus doubtful whether any local government will be willing to transform into a nationality self-government.

[45] See also B. Dobos: A nemzetiségi önkormányzatok rendszere Magyarországon (https://kisebbsegkutato.tk.hu/uploads/files/Dobos_UNKP_Magyarorszag_orszagtanulmany.pdf (accessed 15 July 2021).

The experiences of the past 25 years of minority self-governments have revealed the enormous challenges with the revitalization of largely assimilated minority communities. The adopted autonomist structure may be useful for some minorities, it could help traditional minorities in forming their representative bodies and it could create a legal structure for their cultural and educational institutions. Among traditional minority communities, Slovaks, Slovenians, Serbs, Croats, Romanians, and Germans are well-organized to operate a complex system of cultural and educational institutions – even if not through nationality self-governments, at least with their active involvement. But the system of self-governments cannot answer the most challenging issues affecting the Roma (social marginalisation, discrimination) and cannot be effective in creating or maintaining real communities of the members of dispersed minorities (like Polish, Armenian, or Greek). The major challenges of the Hungarian NTA system today still lie in the mobilization of small minority communities and in addressing problems of discrimination and social inequalities that mainly affect the Roma, but that cannot be handled by minority self-governments focusing on the protection of identity, language, and culture.[46]

V. The Yugoslav Socialist Model and Heritage of Diversity Management

Before turning to the analysis of present-day Slovenian and Serbian legislation, there is a need to briefly reflect on the Yugoslav legal tradition that in certain aspects helps to understand the current minority policy measures in the successor states.

The socialist federal Yugoslavia (between 1945 and 1990) was an autocratic state governed by the Communist Party, nevertheless it had a rather sophisticated policy for managing ethnic diversity. The six republics and two autonomous provinces (Kosovo and Vojvodina within Serbia) formed the federal state that was constructed to maintain multi-ethnic coexistence and to prevent ethnic domination by the majority in this ethnically diverse state. The term "minority" was not used in the federal constitution of 1974, nor in any of the corresponding constitutions of the six Yugoslav republics and two provinces. A terminological distinction was made between "nations" and "nationalities". "Nations" were the Slavic nations, founding the Yugoslav (South Slav) state (Serbs, Croats, Slovenes, Montenegrins, Macedonians, and

[46] See e.g. Fifth Opinion of the Advisory Committee on the Framework Convention for the Protection of National Minorities, adopted on 26 May 2020. pp. 23-27. (https://rm.coe.int/5th-op-hungary-en/16809eb484 (accessed 15 July 2021).

Muslims or Bosnians). The other ethnic groups, Slavic and non-Slavic alike, were called "nationalities." It was understood that "nationalities" were actually the minorities.[47] The constitutional framework secured the national equality of "nations" and "nationalities" and many legal provisions protected minority rights, especially in education and culture. Public institutions (like schools, cultural institutions, media, etc.) served the preservation of ethnic diversity, protecting the language, culture, and identity of nations and nationalities equally. Ethnic diversity and the peaceful co-existence of different ethno-national groups were also maintained by the policy of proportional national representation in state institutions (by ethnic quotas), among others, by the official use of various languages. The delicate constitutional balance between the different national communities was maintained and enforced by the dictatorial monopoly of the communist party. As this political monopoly was increasingly challenged by rising nationalist, democratic movements, the constitutional structure of the state was one of the focal points of the serious internal conflicts that led to the break-up of Yugoslavia.

It should be emphasised that the Yugoslav socialist model did not include non-territorial autonomy, it built on territorial competences, education and language rights and individual career options as main national policy tools. Nevertheless, the relatively tolerant minority policy and legislation of Yugoslavia offered a legal heritage that in some elements survived and contributed to an accommodationist political atmosphere in successor states as the examples of Slovenia and Serbia show.

VI. Self-governing National Communities in Slovenia

As mentioned above, in communist Yugoslavia, there has been a long tradition of constitutional guarantees granting some form of autonomy or political participation for minorities. Already from the 1960s onward there were important legal and political initiatives to create basic conditions for broader minority rights, including – at least in the case of Slovenia – some form of autonomous arrangement. Despite the long and difficult dissolution of multi-ethnic communist Yugoslavia, characterised by a series of violent ethnic conflicts during the Yugoslav wars between 1991-1995, Slovenia gained independence in a relatively peaceful way in 1991.

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[47] According to a frequently used and stressed criterion, "nationalities" were those ethnic groups that had a state (kin-state) outside of Yugoslavia – such as Albanians, Hungarians, Slovaks, Romanians, or Italians – while "nations" had Yugoslavia as their only form of statehood. T. Várady, "Minorities, Majorities, Law and Ethnicity: Reflections of the Yugoslav Case", Human Rights Quarterly , vol. 19(1) (1997) pp. 9-10.

The new Slovenian Constitution adopted in 1991[48] recognised three autochthonous national minorities (the Roma, Hungarian, and Italian) and granted a privileged position to Hungarian and Italian minority communities. These two minorities enjoy a special form of autonomy besides a set of linguistic and political rights (including a reserved seat in the Parliament under the Constitution).[49] Both minorities are small, and largely assimilated. In the 2002 census, 6243 people declared Hungarian affiliation and 2258 persons belonged to the Italian minority. While there are other, more numerous ethnic, national communities in Slovenia, like the Bosniacs (21,541), Croats (35,642), or the Serbs (38,964),[50] independent Slovenia followed the Yugoslav legal tradition established by the 1974 Constitution recognising Hungarian and Italian minorities only. The reason behind this selectivity lies in the fact that when after 1974 the origins of the current minority rights protection system emerged, migratory minorities (i.e. those moving within Yugoslavia) had no special rights at all, and there was a clear political choice in focusing on two small, politically irrelevant communities which have a kin-state with which Yugoslavia (and Slovenia) intended (and intends) to build stronger relations.[51] Since the time of Slovenian independence, there have been serious debates about whether "post-Yugoslav" minorities (such as Bosniaks, Croats, Serbs) are immigrant communities or whether they need a "traditional" minority status.[52] The selective approach was partly rectified in 2007 when a new law established the Roma Council, composed by elected members of the Roma community and members delegated by Roma civil associations.[53] But the competencies of the Roma Council are much weaker than those assigned to the Hungarian and Italian self-governing bodies.

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[48] Official Gazette of the Republic of Slovenia Nos. 33/91-I, 42/97, 66/2000, 24/03, 69/04, 68/06, and 47/13. In English available at: https://www.us-rs.si/media/constitution.pdf (accessed 20 November 2020).

[49] The Slovenian Constitution states that "in those municipalities where Italian or Hungarian national communities reside, Italian or Hungarian shall also be official languages" (Article 11). The Constitution also guarantees the special rights of these two minority communities, including their right to education and schooling in their own languages, as well as the right to establish and develop such education and schooling, maintaining cross-border relations with their kin-states and their right to establish their own self-governing communities (Article 64.).

[50] Statistical Office of the Republic of Slovenia: 15. Population by ethnic affiliation, age groups and sex, Slovenia, Census 2002. https://www.stat.si/popis2002/en/rezultati/rezultati_red.asp?ter=SLO&st=15 (accessed 30 November 2020).

[51] M. Komac, "A kisebbségi kérdés Szlovénia kétoldalú kapcsolataiban", in M. Komac and B. Vizi (eds.), Bilaterális kisebbségvédelem. A magyar-szlovén kisebbségvédelmi egyezmény háttere és gyakorlata (2019).

[52] Cf.: J. Sardelić, "Constructing 'New' Minorities: An Evaluation of Approaches to Minority Protection in Post-Socialist Slovenia from the Perspective of Liberal Multiculturalism", Documents and Treatises: Journal of Ethnic Studies, vol. 67 (2012), pp. 100–123.

[53] M. Komac and P. Roter, "The Autonomy Arrangement in Slovenia", in Malloy, Osipov, and Vizi (eds.), Managing Diversity through Non-Territorial Autonomy (n 7), p. 94.

The basis of the minority autonomy arrangement in Slovenia is the concept of "ethnically mixed areas" and the system of group rights. It is important to note that these two minorities can exercise most of their rights only in the geographical area where they live. Municipalities are the local territorial self-government units that are entitled to adopt their own statute. The ethnically mixed areas are designated in the municipality statutes where the Hungarian/Italian minority communities live.[54] The Constitution (Article 64(2)) provides national minorities with the right to establish "self-governing national communities" (to use the Slovenian legal terminology) in the areas that the municipality statutes define as ethnically mixed territories and settlements. As a matter of fact, constitutional law makes a distinction between those members of the Italian and Hungarian minorities who live in these areas and those who live in other parts of Slovenia, outside these areas. Minority members living outside these areas enjoy only few specific rights, like the right to learn the language of their national community (if at least five students require it)[55] and the right to be listed on a special minority electoral register for elections of a minority MP to the Slovenian Parliament.[56]

In 1994, the Slovenian Parliament adopted the Law on Self-Governing National Communities,[57] which provides the legal framework of minority autonomy. The Law created a hybrid autonomy arrangement, partly building on territorial and partly building on personal elements. Most of the special minority rights are implemented only in the mixed areas defined by the municipality statutes.

Self-governing national communities enjoy legal personality and as legal entities their goal is to promote the needs and interests of national minorities and to guarantee organized minority participation in public affairs.

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[54] Law on Local Self-Government, Official Gazette of the Republic of Slovenia, no. 72/93, 57/94, 14/95, 26/97, 70/97, 10/98, 74/98, 70/00. In English available at http://www.parliament.am/library/Tim/slovenia.pdf (accessed 29 March 2021). Hungarian settlements exist in the municipalities of Hodoš (Hodos), Šalovci (Sal), Dobrovnik (Dobronak), Lendava (Lendva) and Moravske Toplice, and Italian in the municipalities of Koper (Capodistria), Izola (Isola), Piran (Pirano) and Ankaran (Ancarano). See the relevant statutes, Statute of the Municipality Hodoš 2011, Statute of the Municipality Šalovci 2011, Statute of the Municipality Dobrovnik 2007, Statute of the Municipality Lendava 2010, Statute of the Municipality Moravske Toplice 2014, Statute of the Municipality Koper 2000, Statute of the Municipality Izola 1999, Statute of the Municipality Piran 1999.
[55] Zakon o posebnih pravicah italijanske in madžarske narodne skupnosti na področju vzgoje in izobraževnja, Uradni list, 35/2001, Article 9.
[56] Zakon o evidenci volilne pravice, Uradni list RS, 98/2013, Article 27.
[57]Zakon o samoupravnih narodnih skupostih, Uradni list RS 65/1994. In English available at http://www.minelres.lv/NationalLegislation/Slovenia/Slovenia_EthnicCommun_English.htm (accessed 20 November 2020).

According to the 1994 Law, self-governing national communities perform the following tasks:

- in accordance with the Constitution and law, they decide autonomously on all matters within their competence;
- decisions related to the special rights of minorities are made together with bodies of self-governing local communities (i.e. municipality councils);
- they discuss and study matters concerning the status of ethnic communities, they submit proposals and initiatives to competent bodies;
- they stimulate and organize activities, contributing to the preservation of ethnic identity of members of the Italian and Hungarian ethnic community.[58]

The Law also defines the tools and methods through which the self-governing national communities are expected to carry out their above-mentioned tasks: "self-governing national communities implement the tasks from the above article by:

- initiating and organizing cultural, research, informative, publishing and economic activities essential for the development of national communities;
- establishing organizations and public institutions;
- following and promoting the development of education and schooling of members of national communities and, pursuant to law, participating in the planning and organizing of educational work and the preparing of educational programs;
- promoting contacts with their nation of origin, members of national communities in other states and with international organizations;
- pursuant to law, performing tasks from the competence of the state;[59]
- performing other tasks arising from the statute."[60]

Besides the self-governing national communities organized in every municipality, where according to the municipality statue, an autochthonous Hungarian or Italian population lives, both national minority communities are entitled to set up an "umbrella" self-governing national

[58] The law also regulates their relations with state authorities together with their financing. Zakon o samoupravnih narodnih skupostih, Uradni list RS 65/1994, Article 3.
[59] Additional competencies may be assigned to the self-governing national communities in separate laws.
[60] A. Petricusic, Slovenian legislative system for minority protection, (http://www.gencat.cat/llengua/noves/noves/hm04tardor/docs/petricusic.pdf (accessed 20 November 2020).

community, having a legal personality. This "umbrella" organ is indirectly elected by the municipal national self-governing communities and the highest body of the self-governing national community is the Council of Self-Governing National Community.[61]

The municipal self-governing national communities are elected by the members of the national minority community in direct elections. Elections for the council of municipal self-governing national community take place simultaneously with elections for the bodies of the municipality. At least one seat is reserved by law for national minority representatives in the municipal council.[62] The provisions of the Law on local elections are applied for the election of members of self-governing national communities.[63] Self-governing national communities cooperate with bodies of self-governing local communities and state bodies and are entitled to submit proposals, initiatives and opinions on matters regarding the status of ethnic communities to state bodies and to the National Council, a representative body for social, economic, professional and local interests established by the Constitution.[64] They furthermore take care of the preservation of characteristics of minority groups in ethnically mixed territories. Municipal self-governing national communities receive financial support and office space from the municipalities (i.e. the territorial self-governing local communities), while the functioning of the "umbrella" (state level) self-governing national communities is financed by the central state budget.

It is important to highlight that the self-governing national communities at state level are entitled to initiate legislative proposals before the Parliament and the government and these bodies are also obliged to consult with the self-governing national communities before deciding on matters that concern persons belonging to national minority communities.[65] In a similar way,

[61] Each council of a municipal national self-governing community elects among themselves a certain number of councillors as members of the council of the "umbrella" self-governing national community.
[62] Law on Local Self-Government, Official Gazette of the Republic of Slovenia, no. 72/93, 57/94, 14/95, 26/97, 70/97, 10/98, 74/98, 70/00. Article 39.
[63] Official Gazette of the Republic of Slovenia, no. 72/93, 7/94, 33/94, 70/95. Available in English: https://www.legislationline.org/download/id/7769/file/Slovenia_law_local_elections_1993_am1995_en.pdf (accessed 20 November 2020).
[64] The National Council brings together the interests of various social groups within a single institution. The idea is to provide representation to different interest groups (employers, employees, social and economic groups). According to the Constitution, the National Council may: propose to the National Assembly the passing of laws; convey to the National Assembly its opinion on all matters within the competence of the National Assembly; require the National Assembly to decide again on a given law prior to its promulgation; require inquiries on matters of public importance as provided by Article 93 of the Constitution. See also http://www.ds-rs.si/?q=en (accessed 28 March 2021).
[65] Law on Self-governing Ethnic Communities, Article 15.

when municipal councils or a municipal organ decide on matters directly affecting the national minority communities, minority members of the council are obliged to consult with and to seek prior agreement from the municipal self-governing national communities.[66] Moreover, the representatives of the self-governing national communities are entitled to participate in international bilateral (i.e. between Slovenia and the minority's kin-state) initiatives on minority protection.[67]

The Slovenian minority autonomy model shows an interesting mixture of territorial and non-territorial elements. Minorities have a say in managing their affairs, especially those related to the preservation of their identity, and in different forms they can participate in decision-making as well. However, their demographic position, the fact that even in the ethnically mixed territories they are in a minority position, makes the effectiveness of their participation in decision-making questionable. While the legal provisions offer appropriate structures to articulate their interests and while in some cases they have administrative competencies to control cultural institutions or minority language media, there are no overall guarantees to ensure that minority protection measures are implemented properly, meeting the real needs of the community. The changing population of Slovenian-Italian mixed areas and the peripheral, economically disadvantageous position of the Slovenian-Hungarian mixed area create conditions that cannot be counterbalanced by the minority community. The lawmakers apparently attributed a special significance to the territories where minorities traditionally live, but disregarded the social realities of internal migration (for study or work, etc.), so that many members of the minority community cannot enjoy the minority rights. Even within the ethnically mixed territories the promotion of official bilingualism may create an unbalanced situation, as the Slovenian language may offer better opportunities and lead to the linguistic assimilation of minorities.

VII. National Councils in Serbia

Serbia is a multi-ethnic state, where about 15 per cent of the total population belongs to different national or ethnic minorities that have historically lived in the territory of Serbia.[68] Hungarians (253,000) form the largest minority group and they almost exclusively live in the northern

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[66] Law on Self-governing Ethnic Communities, Article 13.
[67] Ibid.
[68] Statistical Office of the Republic of Serbia, 2011 Census (https://www.stat.gov.rs/en-us/oblasti/popis/popis-2011/ (accessed 20 November 2020).

autonomous province of Vojvodina.[69] Other significant and numerous minorities are the Roma (147,000), who live scattered all over the territory of Serbia,[70] and the Bosniaks (145,000), living mainly in the Sandžak.[71] Besides these three sizeable communities, Serbia, especially its northern province, Vojvodina, is also populated by other minorities like Albanians, Croats, Slovaks, Romanians, Bulgarians, Macedonians, etc.

An important characteristic of Serbia's constitutional administrative structure in the Yugoslav era was the creation of two autonomous provinces, the Albanian majority Kosovo and the Serbian majority Vojvodina, both with significant minority populations. During the Milošević-era in the 1990s, Kosovo and Vojvodina had a very limited and formal autonomy. The nationalist regime of Slobodan Milošević almost eliminated the Yugoslavian model of diversity management, when it fought for the creation of an enlarged, strong nation-state under Serb domination. Yet, since Milošević's Serbia – after the break-up of Yugoslavia, within the Federal Republic of Yugoslavia, established with Montenegro – self-declared to be the legal and political successor of socialist Yugoslavia, the laws of the previous state remained in force in the new Serbia.[72] As Korhecz noted, "although Serb ethnic nationalist rhetoric dominated Serbian politics of the 1990s, the legal and institutional framework for the protection of national minorities was not abolished (…) The Serbian state was simply not ready and not motivated to sharply and openly break with Yugoslavian standards of minority protection; rather it rarely chose to implement minority rights and legal standards in many areas."[73]

Following the fall of the Milošević-regime, Vojvodina's autonomy was restored in 2002[74] and the new Constitution, adopted in 2006, rebalanced and refurbished the territorial organization of the State by strengthening the autonomous provinces (in practice meaning Vojvodina) *vis-à-vis* the central government, expressly recognizing certain participatory rights of national minorities, including the possibility to establish national councils.[75] In this regard, minorities

[69] Ibid. Their total number in 2011 was 253.000, 3,5 per cent of the total population and 13 per cent of the population of Vojvodina.
[70] Ibid.
[71] Ibid.
[72] It shall be noted that this was a domestic position, at international level "small Yugoslavia" was not recognized as the legal successor state of former socialist Yugoslavia.
[73] T. Korhecz, "National minority councils in Serbia", in Malloy, Osipov, and Vizi (eds.), Managing Diversity through Non-Territorial Autonomy (n 7), p. 74.
[74] Vojvodina actually regained its autonomy already in 2002 when the so-called Omnibus-law (Act of 21 February 2002 establishing particular competencies of the Autonomous Province) was adopted.
[75] Constitution of the Republic of Serbia, adopted by the National Assembly on 30 September 2006, (http://www.parlament.gov.rs/upload/documents/Constitution_%20of_Serbia_pdf.pdf (accessed 20 December

living in Vojvodina autonomous province came to enjoy additional specific rights at provincial level as well. The minority protection system developed in the post-Milošević era was not only influenced by the former Yugoslav legal tradition, but largely reflected the strong commitment of the new, democratic Serbian government to open a new chapter in Serbia's turmoiled history. Guaranteeing high standards of human and minority rights was not only domestically important, but it helped reinvigorate Serbia's international relations, both with European organisations and with neighbouring states. In the formation of the new legislation, the Hungarian political parties (representing the largest minority in Serbia without Kosovo) were also very active. Already during the 1990s, Hungarian political representatives formulated various claims for a differentiated minority autonomy arrangement including territorial and non-territorial elements. After 2000, in a dramatically changed political context, the Hungarian political parties were strongly determined to push forward their autonomy proposals and indeed their experts also participated in the legislative preparatory works for the revision of the minority rights law.[76] The new minority legislation indeed builds on individual rights and on cultural autonomy.[77] The Act on the Protection of Rights and Freedoms of National Minorities,[78] adopted in 2002, did not only provide the basic conditions of national minority councils, but it also created a broad framework of minority rights, in the field of education, information, language use, and culture. The law also offered a definition of "minority", opening the door relatively widely for different national minority communities to form their national councils.[79]

2020). Though the Charter on Human and Minority Rights and Civil Liberties and the Act on the Protection of Rights and Freedoms of National Minorities – both adopted in 2002 – were the first important pieces of domestic legislation to pave the way for realizing the right of participation of individuals belonging to national minorities, this possibility gained constitutional recognition only in 2006. (See Article 44 of the Charter on Human and Minority Rights and Civil Liberties and Part IV of the Act on the Protection of Rights and Freedoms of National Minorities.)

[76] Korhecz, "National minority councils in Serbia", (n 72), pp. 75-77.

[77] K. Beretka, "Evolution of the Autonomy Ambitions of Vojvodina Hungarians – Constitution and Activity of the Hungarian Minority Council in Serbia", Hungarian Review, vol. 10(3) (2019).

[78] The law was intially one of the Federal Republic of Yugoslavia, but was applied only in Serbia.

[79] Article 2:

> "A national minority for the purpose of this Law shall be any group of citizens of the Federal Republic of Yugoslavia numerically sufficiently representative and, although representing a minority in the territory of the Federal Republic of Yugoslavia, belonging to a group of residents having a long term and firm bond with the territory of the Federal Republic of Yugoslavia and possessing characteristics such as language, culture, national or ethnic affiliation, origin or confession, differentiating them from the majority of the population and whose members are distinguished by care to collectively nurture their common identity, including their culture, tradition, language or religion.
>
> All groups of citizens termed or determined as nations, national or ethnic communities, national or ethnic groups, nationalities and nationalities, and which meet the conditions specified under para. 1 of this Article shall be deemed national minorities for the purpose of this Law."

The first national minority councils were indirectly elected by electors. However, the (s)election of electors raised concerns over proportionate representation of the electorate. In the case of the Hungarian National Council (the first established among national minority councils), members of national and provincial parliaments and Hungarian municipal councillors became *ex officio* electors. In addition, minority NGOs could delegate electors, and ordinary citizens could become electors if they were able to collect 100 supporting signatures from Hungarian voters. As a result, the electors participating in the election of the national minority council had very different degrees of popular support. The procedure was very similar in the case of other minorities as well. After the first national minority council's election, different representatives of the Hungarian community formulated harsh criticism on the indirect election rules arguing that it favoured the largest party (the Alliance of Vojvodina Hungarians). Since the competencies and financial background of the first indirectly elected national minority councils were not regulated in detail, the members of the councils stayed in office until 2010 when a new and direct election was organised.[80] One of the crucial elements of the new regulation was the requirement that at least 50 per cent (as from 2014, 40 per cent) of the minority electorate should register on the electoral roll in order to hold the election of a national minority council; if not, national council members would be elected by electors.[81] While the new direct election rules respect the personal principle in that anyone who belongs to a certain minority has the right to register on the voters' list (wherever she/he lives in the country), the need to reach out to almost half of the electorate for registration gives a chance to dominant minority parties to mobilize minority voters, not only for registration but also for supporting them at the elections. In fact, the experiences of the past elections show that dominant minority political movements are likely to capture the national minority councils. Moreover, there have also been fears that even majority political parties may enter the competition by mobilizing their electorate to register on minority electoral lists.[82]

Act on the Protection of Rights and Freedoms of National Minorities, Official Gazette of FRY No. 11 of 27 February 2002, in English https://www.refworld.org/pdfid/4b5d97562.pdf (accessed 2 December 2020). (The text quoted here is the translation provided by OSCE.)

[80] See First Opinion of the Advisory Committee on the Framework Convention for the Protection of National Minorities, adopted on 02 March 2004, paras. 107-109. (https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168008bd0e (accessed 17 July 2021) and B. Dobos, A kisebbségi nemzeti tanácsok rendszere Szerbiában (2020) (https://kisebbsegkutato.tk.hu/uploads/files/Dobos_UNKP_Szerbia_orszagtanulmany.pdf (accessed 15 July 2021).

[81] Zakon o nacionalnim savetima nacionalnih manjina, Službeni glasnik Republike Srbije Broj 72/2009, 20/2014 and 55/2014, Article 29.

[82] See Dobos, cited above at note 79, p. 11.

Until 2019, 19 minorities were able to form their national councils.[83] The 2006 Constitution states that:

> "persons belonging to national minorities shall take part in decision-making or decide independently on certain issues related to their culture, education, information and official use of languages and script through their collective rights in accordance with the law. Persons belonging to national minorities may elect their national councils in order to exercise the right to self-governance in the field of culture, education, information and official use of their language and script, in accordance with the law."[84]

Three years later, in 2009, the Serbian parliament enacted the current Act on National Councils of National Minorities.[85] This law codified the legal status and competencies of the national councils more precisely.[86] Based on the legal provisions adopted in 2009, each national minority council has general and special competences. General competences include organizational powers such as the right to adopt and amend the statute of the national council (that governs their internal organs and operations) or to adopt the financial plan and other budgetary documents of a similar nature. National councils are also allowed to manage their own properties and to establish institutions, associations, funds, and business organisations working in different fields. Moreover, they have some symbolic powers, such as the possibility to choose their own symbols, make proposals on the official holidays and emblems of national minorities, or award recognitions.

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[83] T. Korhecz, "Evolving legal framework and history of national minority councils in Serbia", International Journal of Public Law and Policy, vol. 6(2) (2019), p. 120.

[84] Article 75, Constitution of the Republic of Serbia, adopted on 30 September 2006, http://www.parlament.gov.rs/upload/documents/Constitution_%20of_Serbia_pdf.pdf (accessed 20 November 2020).

[85] Zakon o nacionalnim savetima nacionalnih manjina, Službeni glasnik Republike Srbije Broj 72/2009, 20/2014 and 55/2014, available in English at http://fer.org.rs/wp-content/uploads/2018/03/Law-on-National-Councils-in-Serbia.pdf (accessed 20 December 2020). Although national councils of national minorities existed between 2002 and 2009, it was not until the adoption of the Act on National Councils of National Minorities that they were elected directly as a rule.

[86] The institution of minority national council was gradually introduced from 2002, when the Law on the Protection of Rights and Freedoms of National Minorities opened the way for the first election of these national councils. However, this was only a provisional legal regulation, which did not specify the competencies and the future electoral procedures of the national councils. Zakon o zaštiti prava i sloboda nacionalnih manjina, Službeni List SRJ Broj 11/2002. See also Korhecz, "Evolving legal framework and history of national minority councils in Serbia", (n 82), p. 118.

The 2009 law attributed mostly consultative competencies to the national councils in the field of culture, education, official language use, and the media (the four policy areas identified by the Constitution). The fundamental principle of the law is not to delegate real decision-making powers to the national councils, but to involve them in the decision-making process of the central, provincial, and local authorities.[87] The effectiveness of the participation of national councils in decision-making depends on the field of competence. In some areas national councils may submit proposals for decision, or their consent is required for decision; in other areas, mainly with regard to issues related to the national minority identity, they have autonomous decision-making power;[88] and in almost all administrative decisions affecting the language use, cultural, educational or information rights of minorities they must be consulted. In the field of education, national councils give their opinion on the proposed candidates for the membership of the school board and the headmaster; on the syllabi for pre-, primary and secondary school; on textbooks written in the minority language; and on defining the number of pupils to be enrolled in secondary and vocational training schools.[89] In the field of culture, national minority councils give their opinion on the appointment of the cultural institutions' managers; and on the opening or closing of libraries keeping collections of books in the national minority language.[90] The national minority councils have a similar consultative right in the field of media, while having stronger competencies with regard to issues related to the use of the minority language. In addition, the national councils adopt their own statute that regulates the organs, working procedures, symbols and internal functioning of the council.

It is also important to note that the Law on National Councils permits the founding rights of state, provincial, and local public educational and cultural institutions to be transferred to the minority national council in cases where a national council so requests. This provision allows the minority national councils to take over the administration of schools using the minority language as a medium of instruction and minority cultural institutions. In such cases the law also guarantees that budgetary subsidies of these institutions transferred to national councils

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[87] For a more detailed analysis of the national councils' competencies see Korhecz, "National minority councils in Serbia", (n 72), pp. 80-82.

[88] For example, national councils determine the traditional names of local self-government units, settlements, and other geographical terms in the language of a national minority if this language is in official use in the territory of the local self-government unit or settlement. Zakon o nacionalnim savetima nacionalnih manjina, Službeni glasnik Republike Srbije Broj 72/2009, 20/2014 and 55/2014, Article 22.

[89]Zakon o nacionalnim savetima nacionalnih manjina, Službeni glasnik Republike Srbije Broj 72/2009, 20/2014 and 55/2014, Articles 13-15.

[90] Ibid, Article 18.

remain consistent.[91] Korhecz notes that “these provisions open the door to the gradual establishment of a system of public institutions under the umbrella and management of national councils”.[92]

Nevertheless, the political representative functions of the national councils cannot be ignored either. At national level, in all issues related to its competence, the national council is entitled to represent the minority community. At international level, the law guarantees that the representative of a national council shall participate in negotiations or be consulted with regard to negotiations on the conclusion of bilateral agreements with the minority’s kin-state for issues directly related to the rights of national minorities.[93] Finally, the provisions on finances stipulate that activities of national councils are financed by the central state budget, the budget of the autonomous province of Vojvodina, the budget of local self-governments, donations, and other incomes.[94]

As the national minority councils started to operate under the new legal regime, the implementation of the 2009 law raised fierce criticism in different segments of the Serbian public and from political elites. As a result, many petitions were submitted to the Serbian Constitutional Court in 2010 and 2011, asking the Court to review the constitutionality of the provisions on the electoral procedure of the minority national councils and on the transfer of competences to the national councils. The Constitutional Court’s decision in 2014 cut back important competencies and declared:

> “The national councils of national minorities have the character of a special (non-state) body or organisation constituting an institutional form through which the collective rights of national minorities (the right to self-government) are exercised in the constitutionally established areas of social life that are important for the preservation of the identity of national minorities (culture, education, information, and official use of languages and scripts), in the way that certain public powers to participate in decision-making or to decide independently on

[91] Ibid, Articles 11-12 and 16.
[92] Korhecz, “National minority councils in Serbia”, (n 72), p. 81.
[93] Zakon o nacionalnim savetima nacionalnih manjina, Službeni glasnik Republike Srbije Broj 72/2009, 20/2014 and 55/2014, Article 27.
[94] Ibid, Article 114. See also Korhecz, “National minority councils in Serbia", (n 72), pp. 81-82.

certain issues in these areas are delegated to national councils, whilst taking into account, of course, the nature of the power that is being delegated."[95]

Since national councils are non-state bodies, the Constitutional Court stated that they could not have competences in a legal sense. The Constitutional Court found that the provisions related to the obligatory transfer of powers of public institutions and to certain national minority council competences were unconstitutional. The Court's decision entails that even if minority national councils request to transfer the administration of minority language schools, or minority cultural institutions, the state or the local government is not obliged to do so. The Court's decision abolished the provisions that allowed national councils to establish institutions in other areas than the four areas mentioned above (education, culture, media, and language use). It also abolished the provisions that allowed local governments to transfer further tasks to the national councils, and significantly limited some consultative rights of the national councils. As Korhecz noted, "the Constitutional Court upheld the general positions of the Serbian political public towards the NTA. This position could be summarized as readiness to formally accept high standards of minority rights but much less openness to implement obligations and to share powers with representatives of national minorities and to accept ethnic diversity."[96] The representatives of the national minority councils also made similar conclusions, arguing that following the Court's decision, the implementation of real autonomous competences remains difficult and the lack of an effective sanctioning system means that the authorities have violated the 2009 Act's provisions many times.[97]

VIII. Concluding Remarks

The evolution of the institutional structure and competencies of NTA models in these three countries shows that both history and international context matter. On the one hand, the historical Yugoslav experience of autonomy paved the way for the adoption of minority autonomy arrangements in Slovenia and Serbia, since the idea of "minority autonomy" was alien neither to the political elites nor to the broader public. In the case of Hungary, the

[95] "Assessment of Constitutionality: Published Decision of the Constitutional Court Determining the Unconstitutionality of Provisions of the Law on National Councils of National Minorities", Official Gazette of RS, no. 20, section V.
[96] Korhecz, "National minority councils in Serbia", (n 72), p. 87.
[97] The representative of the Bosniak National Council, as cited by N. Tóth, "A tool for an effective participation in the decision-making process? The case of the national councils of national minorities in Serbia", in B. Vizi, N. Tóth, and E. Dobos (eds.), Beyond International Conditionality. Local Variations of Minority Representation in Central and South-Eastern Europe (Nomos 2017), p. 230.

motivation to set up a "good example" for neighbouring states where large Hungarian minorities live apparently strengthened the legitimacy of minority rights protection measures. On the other hand, the international aspects were also important: the intention to maintain stable and friendly relations with kin-states was strong in all the three countries together with the willingness to demonstrate to the broader international community that democratic transition guaranteed the recognition of minority rights and the involvement of minorities in decision-making. This dual goal is best reflected in the legal provisions – common to all the three legal frameworks – that ensure that minority representatives can participate in international bilateral negotiations with their kin-state.[98]

In the literature, as it was seen above, NTA is often depicted as a viable compromise on power-sharing between minorities and a majority. The idea of a "compromise" suggests that the parties involved make mutual concessions and that minority and majority political elites can both influence the institutional outcome. The three examples discussed in this article show that this is not necessarily the case: small, politically non-mobilized minorities are not likely to have any decisive impact on the establishment of NTA structures. In Hungary, the representatives of minorities were actively involved in designing the minority rights legislation, but it is clear that the installation of an NTA model was more of a political decision from majority political parties than a genuine demand of the minorities. In a similar way in Slovenia, the evolution of minority self-governments was more of a top-down process, even though minority representatives were also involved in the legislative preparation. Only in Serbia were the Hungarian minority parties in a political position to significantly influence the legislative process, and articulate their autonomy claims vis-á-vis the government. That was not only possible because Hungary, as a kin-state, stood behind the Hungarian minority, but it was much more the result of the political role Hungarian minority parties could play in the national and provincial parliaments as the representatives of a relatively large and politically active minority community. Furthermore, all three cases underline the importance of how and why certain minority communities are recognised by the state and others not. Slovenia clearly applies an arbitrary hierarchy in the legal recognition of minorities, limiting the full-fledged self-government to the Hungarian and Italian minorities. Even the neutral legal definitions of "minority" (in Hungary or in Serbia)

[98] The recognition of minorities and their right to autonomy can also be influenced by foreign policy considerations, as is illustrated by the privileged position of Hungarians and Italians in Slovenia. A similar example is that, while Rusyns are recognised as a minority in Hungary, in Ukraine they are just considered to be Ukrainians speaking a regional dialect. In Serbia, the recognition of Bunjevci as a minority was criticized by many in Croatia who just see this as an artificial division of the Croatian minority.

leave space for majority political elites to influence or even manipulate recognition of certain minority groups. In a similar way, the formal requirements for exercising voting rights in NTA elections (e.g. linking registration to census data) may be used by the majority political forces as a tool for influencing or changing the rules of the game.

As outlined above, since self-rule or self-government is an essential feature of non-territorial autonomy, it is important to see the effective operationalization of self-rule exercised by empowered minorities through self-regulating institutions.[99] The terminology or the legal status of autonomous bodies does not determine their effectiveness: in Slovenia and Hungary the terms "self-governing national community" and "nationality self-government" do not designate more effective decision-making competencies than what the "national minority councils" in Serbia have. In a similar way, the fact that minority autonomy is mentioned in the constitution signals the symbolic position of the institution, but does not reflect the effective implementation of autonomy.

The competencies assigned to autonomous bodies in all three cases can be categorized in three groups: consultative rights, participation in decision-making, and establishment/administration of institutions. In Serbia, the Constitutional Court's decision significantly limited the areas where the national councils can exercise their consultative rights and also their right to establish/administer institutions. In this way, national councils are only partly able to act as a self-governing body, their competencies basically being limited to consultation with central, provincial, and local authorities and to certain institutions operating in the field of culture, education, and media. In Slovenia, the self-governing national communities, besides their consultative rights, also have decision making power in the field of culture, media, and education, both at municipal level and in regard to the ethnically mixed areas.[100] In Hungary, besides the broad policy areas where minorities shall be consulted, according to the law, nationality self-governments may overtake different competencies and institutions from local self-governments depending on their financial capacities. This means that even though there is an objective legal basis for creating an effective self-rule by managing a wide range of minority institutions, it largely depends on the available funds, leaving nationality self-governments

[99] See above in section 3. See also L. Salat, "Conclusions", in Malloy, Osipov, and Vizi (eds.), Managing Diversity through Non-territorial Autonomy (n 7), pp. 265-268.
[100] The territory of a municipality may cover localities that do not belong to the ethnically mixed areas defined by the municipality statute.

vulnerable to local and national budgetary decisions. One of the major concerns about how effective the minority self-government can be in all three cases is financial dependence on local and national governments. It seems to be a common challenge for non-territorial autonomy arrangements that the autonomous bodies do not have direct revenues; the financing of their activities and institutions is dependent on the political decisions of the government and so it is beyond their control.

In addition to that, the fragmentation of self-governing bodies, as the cases of Slovenia and Hungary show, may render it more difficult for minorities to become strong and effective actors in representing the minority community. Since most of the competencies relevant for minority communities are at local level, it may be difficult for the local minority representative body[101] to negotiate successfully with the local self-government, which is clearly in a dominant political, administrative, and financial position.

In summary, the case studies of Hungary, Serbia, and Slovenia show that successful autonomy arrangements do not depend solely on the legislative framework and on the competencies assigned to the autonomous bodies. The effective implementation is largely in the hands of local and national authorities and those determine (through transferring institutions, powers, and financial resources) to what extent a minority can exercise self-government in the areas defined by law.

[101] Municipal self-governing national community in Slovenia and local nationality self-government in Hungary.