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Non-territorial Autonomy **of Whom, by Whom and for Whom?**

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Summary

Non-territorial autonomy's (NTA) central purpose is to bring together the people of a minority community, regardless of their population numbers or where they live within a country. It aims to preserve the distinct ethnocultural identities of individuals and the objective characteristics of their community. The NTA model inevitably raises crucial questions and dilemmas, both theoretical and practical, about community boundaries. Who belongs to a given minority (Bauböck, 2001)? Who can represent whom? How should the answers to these questions be weighed up in diverse institutional and social contexts? Existing practices vary in the extent to which they rely on different factors to answer these questions. These factors include potential objective elements as well as subjective elements such as individuals' self-identification and personal choices. Existing practices also vary in the criteria they use to decide recognition of a community, eligibility for membership, rules for access to NTA institutions and whether any of these should be determined by the competent public authorities or the groups themselves.

The act of defining group membership needs to be carefully addressed by stakeholders and requires a delicately balanced approach. A generous and overly inclusive mechanism that relies entirely on individual self-identification and other subjective criteria, with no objective elements, undoubtedly carries risks. In these circumstances, group membership could be inflated by fraud and by people who presumably or obviously do not belong to the community. This latter phenomenon has already been widely observed and is commonly referred to as *ethnobusiness* or *ethnocorruption*. It has led to a number of scandals, particularly in some countries of central and eastern Europe. In contrast, a more exclusionary approach to NTA access, one that relies heavily on potential objective criteria, may prevent the participation of people with weaker ties to the community. This approach risks undermining the group's ability to effectively represent itself and influence key decisions affecting the lives of its members (Suksi, 2015, p. 109).

Recommendations

NTA regimes that place a strong emphasis on individual self-identification and voluntary public participation comply with Article 3 of the Framework Convention for the Protection of National Minorities of the Council of Europe. The article stipulates that “every person belonging to a national minority shall have the right freely to choose to be treated or not to be treated as such and no disadvantage shall result from this choice or from the exercise of the rights which are connected to that choice”. However, these inclusive NTA regimes should not fail to comply with paragraph 35 of the Explanatory Report of the Framework Convention. It states that the article “does not imply a right for an individual to choose arbitrarily to belong to any national minority. The individual’s subjective choice is inseparably linked to objective criteria relevant to the person’s identity” (Council of Europe, 1995, p. 5).

To solve the dilemma outlined above, the recommendations below apply a twofold and closely intertwined logic. They advocate the greater involvement of minority organisations in determining the conditions of their group membership and the need for objective features to have an important role too.

Further sources, including census data and independent expert opinions, could be also considered in addition to individuals’ self-identification when establishing NTA for certain domestic minorities, taking into account the peculiar features of the given contexts.

- / The conditions as well as the mechanism of group membership should be clearly formulated and transparent, with detailed provisions set out in the relevant legislation. Minority organisations should be actively involved.
- / When an application is made for group membership, in addition to self-identification, objective criteria could be also considered. Has the applicant been on a previous list? Have they had long-term relations with the community? Do they have a family relationship with a group member? Is preserving minority characteristics their goal? In general, the applicant should be required to explain their interests in minority affairs and their ties with the community in question.
- / Minority organisations should prepare and administer the minority (electoral) registers of group members. If possible, they should have the right to select, favour or reject individual applications. Provisions should be made for an appeals procedure.
- / If minority registers continue to be administered by public authorities (non-minority actors), greater involvement in those procedures should be secured for minority organisations. They should have the right to express their opinion on applications or even to veto them. In this case, too, provisions should be made for an appeals procedure.

Introduction

NTAs gained popularity since the early 1990s and onwards. During this period, various countries have aimed to preserve the identities of domestic minority communities by referring to the notion of NTA in legislation and policies made about them. This has particularly occurred in eastern, central and south eastern Europe. To fulfil its purpose, an NTA requires an institutional framework established at national and/or sub-national level (Heintze, 1998, p. 22). The framework should seek to unite, organise and represent potential group members and may be established in public or private law. In practical terms, it entails one of two options. The first option is to give key minority rights to minority NGOs managed by volunteers, such as the right to run educational and cultural institutions. The second is for voluntarily registered group members to gain the right to establish, at varying levels, directly or indirectly elected minority self-governments or councils to administer certain issues in the community (Brunner & Küpper, 2002). There is significant variation in existing practices, both with regards to the criteria for group membership as well as the rules for access to NTA institutions. At present, some are administered by the competent public authorities and others by the minorities themselves. Furthermore, there are also differences in whether and how they approach the issues of individual choice and the abuse commonly known as ethnobusiness (Pap, 2017). Therefore, it is vitally important to define the conditions and procedures of group membership and access to minority rights, NTA institutions and resources. Such considerations also need to take into account the complexity of identities, the sensitive nature of ethnic data, the often dispersed territorial configuration of minority groups and, not least, the democratic legitimacy and social embeddedness of NTA bodies.

Group membership and NTA

As pointed out by Fredrik Barth, ethnicity and the demarcation of community boundaries are the result of social marking-labelling processes in which the individual and other actors also play an integral role in a dialectical way (1969). Ethnicity can vary enormously in different settings, especially in terms of its political presence, role in social interactions, cultural diversity, temporal-historical stability and durability (Wimmer, 2008). According to the institutionalist tradition, the construction and formation of ethnic boundaries are shaped by individuals and by groups. The process is accompanied by debates about externally applied classifications, the role of outside actors and matters of individual perception and internal self-identification. External factors not only influence the strength of boundaries but even their existence.



The process outcome depends on the given institutional context, including what type of boundary can be drawn meaningfully and acceptably, on the distribution of power between actors, on their interest in differentiation and on existing social networks (Wimmer, 2008).

Another issue is that the nature and main components of belonging to formal communities must be defined in some way. The Ljubljana Guidelines on the Integration of Diverse Societies, published by the OSCE High Commissioner on National Minorities in 2012 and a series of other studies have emphasised that in everyday practices individual identities can be multiple, multi-layered, contextual and dynamically changing at the same time. In NTA regimes, the precise group of individuals who, as members of the community, have the right to access NTA needs to be carefully clarified.

International law has not been able to offer a universal or even legally binding definition on how to define group membership of certain ethnocultural groups.

Neither is there guidance on how to define membership through the interpretation of any distinct objective and subjective criteria. Yet, it is evident that without members one could hardly speak of a community. Following the various attempts to elaborate a definition (F. Caporoti, Council of Europe), in close connection with prominent debates about nationalism theories and identity research, two possible paths towards a solution have emerged. They are divided on whether identity is to be understood as given, natural, permanent and predetermined or, conversely, as a mere selected and constructed social category. Within both approaches, the role of the group itself in determining ethnic affiliation is also an issue. The first approach focuses on potential objective distinguishing features when examining minority affiliation. The key element of the second is individuals' self-determination and free choice. The relevant instruments of international law and country-level legislations usually seek to find some balance between the two paths: the choice of the individual and the social reality of the group. They generally consider the subjective aspect of membership, but complement it with possible objective elements, such as evidence of individual identities. As a result, individuals' free choice and the various objective aspects of belonging to that community constitute the criteria for group membership.

A common problem facing current NTA regimes is the classic paradox of democratic representation: in order to meet minority protection standards, they must ensure that minority rights can only be exercised by members belonging to minorities, meaning that group members must be registered on a voluntary basis. However, this should be done in such a way that NTA bodies have sufficient social credibility and democratic legitimacy to be able to effectively represent the whole group in order to make decisions and express opinions on issues of concern to



the community. Even the existing European NTAs have different competencies, functions and institutional structures in many respects. They also face different challenges due to their broader legal-political contexts and the specificities of their communities, to which they may also respond differently.

Access to minority institutions has traditionally been reserved for people who are nationals of the countries concerned and who also belong to an officially recognised minority. Where special minority elections are held, individuals are also expected to express their affiliation by subscribing to minority electoral rolls. The latter procedure necessarily leads to a politicisation of ethnicity. As a result of this, identity becomes a mandatory, divisive and prescriptive category, rather than an ordinary practice. No room is left to experience the multiple, contextual, situational or dynamic nature of ethnicity. One must also consider the fact that the minorities in question are relatively small in numbers and usually at an advanced stage of cultural-linguistic assimilation. They mostly live territorially scattered throughout the countries and often possess multiple, porous, blurred and in some cases even contested identities. Therefore, it is impossible to draw clear-cut boundaries between communities. The need to declare individual identities by registering on minority electoral rolls often involves extra efforts and costs for group members. This can cause an additional burden in some communities, most prominently Roma, where members still face various forms of prejudice and discrimination. Given the above factors, therefore, it is often quite challenging for minority communities to know how to reach, mobilise and unite potential group members, especially the less committed and assimilated segments.

At national level, when determining group membership, individuals' self-identification proves to be the decisive criterion as a general rule, following the international documents

such as the Framework Convention and the Ljubljana Guidelines. However, in addition to the subjective element, it is quite rare for legislation on group membership to follow the example of Slovenia by including detailed objective components. It is extremely remarkable that in those instances where minority registers are administered by the groups themselves (Estonia, Slovenia), no electoral abuse has been reported so far. Reasons for this may include the relatively small number of the affected communities in the two countries, the small number of NTA bodies, or that they possibly have a lower profile in society. Additional causes could be the requirement for stricter, objective elements in the Slovenian system, or the rather symbolic, consultative role of minority councils in Estonia. But the high degree of socio-economic integration of the communities in question, their advanced assimilation and the fact that, due to their demographic composition, they mostly seek to expand the boundaries of their communities, so these cases leave little space for potential abuses to be identified.

In other places, including Croatia, Hungary and Serbia, where there are many more and generally larger minorities than in Estonia or Slovenia, minority electoral rolls are compiled and maintained by the competent state or municipal authorities. Unlike in the previous examples, abuses, various forms of ethnobusiness, accusations and questionable identities have been constantly observed and reported from these places, often leading to public scandals. These incidents highlight the diverse strategies and interests of minority communities in the countries concerned and how they tackle and draw community boundaries during their efforts to preserve their distinct identities.

Policy implications

- / In both existing and newly developed models of NTA, stakeholders must start the process of and be actively involved in defining or redefining the specific details and scope of changes reinforcing the role of potential, country- or minority-specific objective criteria in determining the conditions and mechanisms of group membership, especially with an emphasis on access to the NTA. Key minority organisations must be actively engaged in meaningful consultation in these processes.
- / Existing channels of consultation must be used or created to give minorities a crucial voice in officially defining who belongs to the communities and who does not. Minorities should also have a say on how the criteria for membership eligibility should be evaluated, while fully respecting individuals' right to their own and free self-identification. These methods should be prioritised when determining the official mechanism of becoming a group member with access to NTA institutions, rights and resources. Minorities themselves should have the right to administer their own lists of community members. There should also be an official appeals procedure and the involvement of independent monitoring and supervisory bodies.

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