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The Formulation of the 1993 Minority Act in Hungary¹

The year 2023 marks the 30th anniversary of the adoption of Act 77 of 1993 on the rights of national and ethnic minorities,² which came into force with the support of an impressive, 96,5% majority in the parliament. The significance of the law is indicated by the fact that the last time a minority law was adopted in the country was back in the period of the Austro-Hungarian Monarchy, in 1868. Its formulation already began in the last years of the Communist regime, in 1988, and lasted more than five years until the final parliamentary vote in the summer of 1993. In this way, the preparation also accompanied the decisive events of the regime change. Moreover, it was done in a dramatically changing international and regional environment, including the emergence of ethnic tensions and conflicts, the often-violent break-up of former multi-ethnic neighboring states, such as the Soviet Union, Czechoslovakia and Yugoslavia. At domestic level, the complex political, social and economic processes of regime change undoubtedly posed a serious and formidable task for the actors involved. These circumstances also go some way to explaining the lengthy preparation of the law. The 1993 Act was later replaced by a new minority law, the act 179 of 2011 on the rights of minorities,³ but most of its provisions have been left unchanged.

Over the past three decades since the adoption of the 1993 Minority Act, the number of works specifically dealing only or in more detail with the formulation of the law has increased considerably even in international literature (see, e. g., Dobos 2007, Eiler 2005, Koulish 2003, Kovats 1999, Pap 2015, Sansum – Dobos 2020, Schafft 1999, Szabó 2005, Vizi 2009, 2015, 2022, Walsh 2000, Waters – Guglielmo 1996). A much more extensive and diversified range of Hungarian and international publications examines the law from historical or legal perspectives, not least focusing on the experiences,

1 The study was funded by the National Research, Development and Innovation Office under the projects no. K143523, Minority parliamentary representation in international comparison: descriptive or substantive representation?, and no. K134962, The legal operationalization of nationality and ethnicity.

2 See Act 77 of 1993 on the Rights of National and Ethnic Minorities (as of 25 November 2005). <http://www.kisebbsegombudsman.hu/data/files/128317683.pdf> (downloaded 25. 08. 2023)

3 Act 179 of 2011 on the Rights of Minorities. http://adapt.it/adapt-indices-a-z/wp-content/uploads/2014/08/Act_CLXXIX_Rights_Nationalities_2011.pdf (down. 25. 08. 2023)

shortcomings and anomalies of its implementation, including above all the elections of the minority self-government (MSGs), and the long-standing lack of real cultural autonomy and parliamentary representation of minorities. However, the considerable domestic and international interest in the 1993 Minority Act and its formulation may at first sight seem surprising for a relatively ethnoculturally homogeneous country like Hungary. The growing scholarly interest in the institution of MSGs, the Hungarian variant of national-cultural (NCA) or non-territorial autonomy, the proliferation of publications over the past decades is not only due to the fact that the law was adopted as a result of a series of compromises among the various actors, which led to a number of general, declaratory provisions and others referring to other legislation without any specific consequences, offered a wide range of possible interpretations.

However, at the same time they are integral part of the discussions and findings on the more general nature, aims, motivations and means of the minority policy in Hungary, which have been recurring since the late 1980s, partly in the public and partly in the academic sphere. The majority of the related works focus on the question of how Hungary's policy towards its domestic minorities, even before the regime change, from 1920 onwards and after 1989, is related to and unified with the policies towards the more numerous Hungarian minorities abroad. In other words, how the foundations of the political community can be defined and the different civic and ethnic approaches to the concept of nationhood and citizenship can be harmonized in the Hungarian case.

In this respect, the argument seems to be widely accepted that domestic policy on minorities has always been rather subordinate to foreign considerations, and that the sole reason for the adoption of the Minority Act (see, e. g., Deets 2002: 40, Kymlicka 2007: 392, Tesser 2003: 506), or for some, and at least partial reasons (see., e. g., Butler 2007: 1131, Edwards 1998: 349, Krizsán 2000: 249, Vermeersch 2003: 13) were political considerations related to the situation of Hungarians beyond the borders, the policies of neighboring countries in this direction, and thereby the Hungarian kin-state desire to set an example and exert pressure outwards. On the other hand, especially since the 2000s, the debate has also focused on the question of the extent to which the cultural autonomy and minority rights envisioned by the law are in line with the interests of the country's most populous minority, the Roma, and with the goals of achieving their desired socio-economic integration and combating discrimination.

In the light of the above, and taking into account the fact that there is already a considerable amount of domestic and international literature available on the formulation of the 1993 Minority Act, the present study can best attempt to highlight and elaborate some further important aspects, which have received disproportionately less attention in the above scholarly discussions so far. Therefore, the analysis is further supplemented with aspects such as how the issue of the law managed to get on the political agenda shortly before the regime change, the rivalry between the so-called ‚national liberal’ and ‚autonomist’ approaches (Bíró 1995: 36-39) often cited in the context of the formulation of the law. It takes the analysis further by looking at the considerations of key administrative and territorial stakeholders with regard to the new institution of MSGs, and the financial-financing perspectives of the minority area in the midst of the difficulties of economic transition. The focus is therefore much more on the question of how kin-state policy influenced the opportunities of domestic minorities in Hungary in effectively participating in those law-making processes that crucially affect them. Furthermore, the study addresses the question of whether and how the Hungarian minority policy fits into the wider Post-Communist context. To what extent it is in line with the recent literature findings on the role of Communist legacy, the nation- and state-building efforts, diversity management, and not least, the regional expansion of NCA in the countries of East-Central and Eastern Europe after the regime change.

Overall, the paper aims to underline that the formulation of the 1993 Minority Act in Hungary was an extremely complex, lengthy, multi-stakeholder process, characterized by a variety of interests and objectives, in which the external considerations, to set example or put pressure abroad were undoubtedly present, albeit not uniformly, and not to the same extent, in all the key actors. However, these less-studied circumstances, which took place even before the draft law was submitted to the parliament in 1992, also heavily influenced the adoption of the law, its specific provisions and its implementation largely than the much-studied parliamentary debate.

Historical legacy: the revival of non-territorial minority autonomy and minority laws in Central Europe

The Soviet nationalist policy that prevailed over decades in the region was explicitly opposed to NCA, therefore, after the fall of the Communist regimes, the commitment to NCA may also have

expressed a kind of confronting the past, too. However, a limited arrangement essentially focusing on issues of culture and education, controlled and heavily dependent on the state, is no longer entirely far from the very nature of post-communist minority policies. One of the key elements of Soviet policy was the promotion and development of specific cultural activities of minorities within their own institutions, as long as these separate organizations were not supposed to merge in the future (Osipov 2015: 64). The presentation of the apolitical values of the communities, which could by no means be called nationalistic, the publication of books and newspapers, the organization of cultural events and festivals, the performance of folk songs and dances, were all significant factors in the direction of folklorization. Not only in the Soviet Union, but also in other countries of the socialist bloc, including Hungary, which also began to officially proclaim the generosity of their minority policies and the equality of minorities. The politically insensitive and hardly destabilizing legacy of minority policies, centered around cultural and educational issues and folklore, has undoubtedly contributed to the revival of cultural autonomy in the region – adding, of course, that such issues, mainly minority education, have been able to generate serious conflicts in many countries even in the recent past, too.

The question arises as to how it could have been possible that many countries in the region (Croatia, Estonia, Hungary, Kosovo, Latvia, Montenegro, Northern Macedonia, Russia, Serbia, Slovenia and Ukraine) have started to refer – at least in principle and on paper – to non-territorial or cultural autonomy in their minority policies and legislations. Despite the historical antecedents of such autonomy, including most notably the cultural autonomy of Estonia between the two world wars, because of the legacy of earlier homogenization policies, exclusion and narrow-mindedness towards minority needs are still widespread in the region's nationalizing states. Further, the adoption and implementation of international minority protection standards has been significantly distorted in the countries in question. The view has thus become widely accepted that minorities tend to be disloyal to their home states, seek secession, cooperate with their kin-states and thus pose a security threat. The primary task of the political elites can thus be nothing other than to intensify nation- and state-building efforts and measures, and overall to build a strong state that weakens minorities with potentially stronger positions

(Kymlicka 2007). As a result, the institutions that are supposed to preserve minority identities and characteristics are in fact, due to their specific historical legacy, invariably controlling them (Agarin 2015: 24). The nation-state model and thinking continues to consider public institutions as the almost exclusive property of the titular nations, which exclude or disadvantage minorities to a significant extent (Agarin – Cordell 2016), mainly by entrenching the privileged, primary positions of majority languages and cultures in law and institutions (Csörgő – Regelmann 2017).

As a result, even the minority laws adopted in the region before the 1993 Act in Hungary were less results of grassroots pressure and advocacy of the most affected minority communities. These laws were only partly motivated by normative approaches to managing diversity, but much rather were dominated by instrumentalist considerations and other aspects such as international recognition or support for independence claims, external pressure from international organizations, compliance with international standards, and the desire to set an example abroad.

Georg Brunner pointed out that the idea of a separate minority law was first mooted in the Baltic region (Brunner 1996), to be precise, this was the region where the first such legislation was adopted. Namely in Lithuania, which adopted a law on national minorities at the end of November 1989, even before the declaration of independence.⁴ There was already support within the independence movement for guaranteeing minority rights, but the adoption of the law was also accompanied by a desire to win over and integrate minorities in a way, in the context of international political realities, in addition to the country's multi-ethnic traditions and the smaller presence of minorities compared to the two northern Baltic states (Andrlík 2009: 48). Indeed, the Polish and Russian minorities had serious fears about the gradual officializing of the Lithuanian language, and they had more extensive territorial demands, so the law was also intended to allay their fears by placing language rights at the center (Hogan-Brun – Ramonienė 2003: 33). However, the law, which consisted of only ten articles, was “*initially rather anaemic*” (Kolsto 1995: 141).

4 Law on Ethnic Minorities, No XI-3412 (23 November 1989, Vilnius, as amended of January 29, 1991, No. I- 1007), <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.21840?jfwid=j4ag25ww> (downloaded 25. 08. 2023)

Three weeks later, in mid-December, Estonia adopted the “Law on National Rights of Citizens of the Republic of Estonia”,⁵ which, by its title, declared not only the rights of the minorities, but also, like Lithuania, aimed to mitigate ethnic divisions and prevent confrontations around minority and independence issues (Smith 2020: 242). The smaller communities that had also suffered from Russification, the Inkeri Finns and Swedes, tended to get closer to the Estonians, and the idea of restoring the interwar cultural autonomy came to the fore, too. The legislation adopted in October 1993, however, followed its predecessor of 1925 only superficially, in formal terms, by retaining the electoral element: the minority councils of these two communities have no public status, nor the corresponding powers and financial guarantees (Smith 2014).

In March 1991, the “Law on the Free Development of Latvia’s National and Ethnic Groups and their Right to Cultural Autonomy” was adopted,⁶ which was the first law in international comparison that referred to cultural autonomy in its title. In addition to addressing internal diversity, the law also aimed to project a democratic, multi-cultural image to the outside world in recognition of the country’s independence (Yupsanis 2016: 116). Later, however, international observers also argued that the law, as short as the Lithuanian one, with only 16 articles, was little more than a general declaration without any real implementing consequences (Osipov 2013: 12).

In Croatia, the adoption of the 1991 Constitutional Law on Human Rights and Freedoms and the Rights of Ethnic and National Communities or Minorities⁷ was also linked and adopted shortly before the international recognition of the country’s independence. In essence, its provisions for the most populous Serb community provided that a minority of more than 8% of the population was entitled to proportional representation in parliament, local administrative autonomy and an autonomous district in the areas of Glina and Knin. However, its provisions were hardly implemented due to the war in the country, and in 1995, most of them were suspended (Petričušić 2004).

5 On the National Rights of the Citizens of the Estonian SSR (Tallinn, 15 December 1989), <https://www.riigiteataja.ee/akt/28144> (downl. 25. 08. 2023)

6 Law On Free Development of Latvia’s National and Ethnic Groups and Their Right to Cultural Autonomy (Riga, 19 March 1991), <https://likumi.lv/ta/en/en/id/65772> (downl. 25. 08. 2023)

7 Ustavni zakon o ljudskim pravima i slobodama i o pravima etničkih i nacionalnih zajednica ili manjina u Republici Hrvatskoj, https://narodne-novine.nn.hr/clanci/sluzbeni/1991_12_65_1664.html (25. 08. 2023)

Compared to the former, the Law on National Minorities in Ukraine was adopted in June 1992,⁸ after gaining independence, and the same law in Belarus in November 1992.⁹ While the latter did not even explicitly refer to autonomy, in the case of Ukraine, the narrow-mindedness could be also observed in such a way that the articles referring to the originally envisaged national administrative units (territorial autonomy) were eventually removed from the 19-article law (Fedinec – Halász – Tóth 2016: 169). Article 6 referred to national-cultural autonomy in a rather declarative way.

Regarding the concept of non-territorial or cultural autonomy and its possible synonyms, Federica Prina, in a recent synthesis of the issue, stressed the “*multi-faceted and evolving*” nature of the concept, referring to its ambiguity in the relevant literature (Prina 2020: 426). The vagueness of interpretations may have played a role – among other factors, such as the widespread rejection of territorial autonomy and the inherent limitations of the powers that can be conferred on minorities (Coakley 1994: 311) – in referring to this type of autonomy attractive to many governments in the region from the early 1990s onwards. Many add to these circumstances that in conjunction with the drafting of minority laws, the commitment to these autonomies and their actual elaboration, were much rather driven by pragmatic or instrumental considerations, than the normative aspects of equality and justice, and the recognition and channeling of minority needs organized with the change of regime. These considerations included international pressure, compliance with such pressures, intentions aiming at Euro-Atlantic integration and thus the creation of a favorable country image, or certain reciprocity demands, i.e. that the countries concerned – including Hungary – would have expected from neighboring countries at least a similar solution for their minorities abroad as that which they had created for their internal minorities (see, for example, Osipov 2013, Smith 2010, 2013). Since these aspects proved to be quite decisive, the representatives of the minorities themselves had mostly only limited involvement in both setting the legislative agenda and the drafting of the concrete provisions, so it is questionable to what extent they were subsequently implemented and to what extent they reflected minority interests.

8 Law on National Minorities (Kyiv, 25 June 1992). https://minelres.lv/NationalLegislation/Ukraine/Ukraine_Minorities_English.htm (downl. 25. 08. 2023)

9 Law No. 1926-XII of 1992 on National Minorities, <https://www.refworld.org/pdfid/409208774.pdf> (25. 08. 2023)

The Round Table of National and Ethnic Minorities of Hungary, established in early 1991, was undoubtedly successful in uniting minorities with different interests in a number of respects to formulate their basic common objectives. It made effective use of various means of advocacy, lobbying and pressure. It developed contacts with the media, domestic experts, political and international actors and made a significant contribution to informing the wider public about minority issues. Although its legitimacy was initially questioned, as a non-registered umbrella organization, it managed to gain acceptance as a negotiating partner for the government and to play an integral role in the drafting of the law. It managed to prevent the most controversial drafts of the Ministry of Justice in 1990 and the Ministry of Interior in early 1992 from being adopted, or to modify their highly controversial points (Doncsev 2019). The law adopted in the summer of 1993, however, fell significantly short of the Round Table's own draft in several areas, which was prepared in the first half of 1991,¹⁰ and the pre-passage bill was said to “*fail in several points to meet the basic expectations of minorities and the common social interest.*” The Round Table did not find acceptable the method of election of the national minority self-governments, the postponement of the elections of MSGs, their subordination to the municipal councils, the planned functioning of the minority fund, and the lack of financial guarantees for the establishment and operation of basic cultural and educational institutions for minorities.¹¹ According to the secretary of the Round Table, although the law complied with European standards at the level of declarations, it lacked the necessary guarantees to implement its provisions.¹²

The Minority Law on the agenda in Hungary

Due to the nature of the Communist regime, the official assessment of the situation in the country's minority policy and the future directions were determined by party resolutions adopted at regular intervals (1956, 1958, 1968, 1978, and 1988). The most prominent of these was the resolution of 1958, which “*almost fulfilled the function*

10 Draft Law on the Rights of National and Ethnic Minorities (Minority Round Table, May 1991), available in Hungarian at https://kisebbsegkutato.tk.hu/uploads/files/olvasoszoba/nektv/A_kisebbsegi_kerekasztal_torvenytervezetenek_el_vei.pdf (downloaded 25. 08. 2023)

11 Kisebbségi Kerekasztal – nyilatkozat (Hungarian News Agency, hereinafter MTI, 4. 05. 1993). See also A kisebbségi kerekasztal a kisebbségi törvényről (MTI, 23. 09. 1993)

12 Kisebbségi törvény – Tanjug (MTI, 10. 07. 1993)

of a basic minority law” (Kővágó 1982: 86). Although, from the late 1960s onwards, largely for foreign policy reasons, the minority policy, which now emphasized pro-activeness and the role of minorities as a bridge connecting countries and peoples, was re-evaluated and revived in comparison to earlier periods. Two decades later, however, the belated, top-down nature of the measures, which were pursuing quantitative and formal, demonstrative results, and were mainly limited to culture, folklore and to villages, became evident. The self-organization of the minority population and the representation of local and minority interests had little chance to assert themselves, while less attention was paid to implementation at lower levels, as well as to the more active promotion and stimulation of minority needs. At the level of legislation, there was still a contradiction between the relevant provisions of the constitution, which referred to minority rights in the list of individual rights and duties, while at the same time they also included community rights. In terms of process, the somewhat revitalized policy did thus not produce the desired results. On the one hand, the deteriorating Hungarian-Romanian relations and the spectacular worsening of the situation of the Hungarian minority in Romania indicated the failure of foreign policy leverage and inter-state reciprocity. On the other hand, domestic problems became more and more obvious. Especially the decline in the number of the minority population in the 1980 census, the possibility of minority education without any mother tongue education, and the operation of minority associations, the so-called minority alliances without municipal organizations and being controlled from above, which were accompanied by increasing interest and sometimes criticism from certain kin-states, especially Czechoslovakia, Yugoslavia and West Germany. The status of Gypsies and Jews, who were not recognized as official nationalities, and that of other smaller communities was also increasingly raised.

Regarding the other possible external circumstances and reasons why there was increasingly a crucial need for a minority law, the accession to the Optional Protocol to the International Covenant on Civil and Political Rights, the rise of the minority issue to the fore and the increased interest in the situation of Hungarian minorities should definitely be highlighted. While the aspiration that any international action in this latter direction can only be supported by an “*expanding and developing domestic national minority practice*” was undoubtedly, still present (Szokai – Tabajdi 1988).

The possibility of a minority law had certainly been raised in expert circles on one occasion or another in the late 1960s (Kósa 1969), and 1970s (Bodáné Pálok 1993: 26). Therefore, the state and party apparatus concerned with minority issues was already aware of it as a possible solution, which was also expressed as external pressure in the writings and outline programs of the non-party opposition in the 1980s. For example, the Social Contract illegally published in the summer of 1987, explicitly called for the drafting of a minority law.

The change of political leadership in 1987 and the preparation of the subsequent party resolution and the congresses of the minority alliances in 1988 offered another opportunity for evaluation. However, the key question of the elaboration of the law is still less explored: when, under what circumstances, by what actors, and for what reasons the political leadership of the time initiated or decided to start the formulation of the law, at the latest in early 1988. Based on the current state of the sources, it is highly probable that it was not the official representatives of the minorities at that time, the leaders of minority alliances, who initiated the drafting and adoption of a minority law.

According to one of the interpretations that emerge in connection with the exact start of the preparation, Mihály Samu, a law professor, in 1987 again brought up his 1979 note on the need for the law (Samu 1989). The document was more favorably received and by the beginning of 1988 at the latest, it was sent to the Scientific, Educational and Cultural Department of the Party's Central Committee, which was responsible for minority issues. Enclosing the document, the head of the Department sent a letter of request on 4 March to several people to start working on the political principles of the law and to form a committee for this purpose.¹³ It is unclear whether and how this was related to another initiative in mid-February, when the Presidium of the Budapest Committee of the Patriotic Popular Front took the position that it was timely to draft a minority law.¹⁴ Emil Peják, the Committee's secretary general and a member of the Parliament, put this forward as a legislative motion in

13 Letter of invitation from Katalin Radics, Head of the Scientific, Educational and Cultural Department of the Central Committee of the Hungarian Socialist Workers' Party, to participate in the committee to be set up to elaborate the concept of the Minority Law (Budapest, 4 March 1988). Hungarian National Archives (hereinafter MNL OL) M-KS 288. f. 36/1988/105. ó. e. Tu/239.

14 A népfront budapesti elnökségének véleménye: időszerű volna nemzetiségi törvényt alkotni, *Magyar Nemzet*, 19 February 1988.

the plenary session on 17 March, which was unanimously supported by the House.¹⁵ However, the initiatives, which were either interlinked or running in parallel, were successful in that the relevant party department started drafting the political principles and according to some sources, the Ministry of Justice started working on the text of the law as early as spring. The need for legislation was expressed in the resolution of the May 1988 Party Conference, its preparation was supported by the June session of the Central Committee, and finally, in November it published a resolution on “*the further development of minority policy and the guidelines of the Minority Law*” (Balogh – Sipos 2002: 735-740).

The debate between nation-state liberalism and autonomism

As the issue of the law successfully managed to get on the agenda, the literature emphasizes the struggle between two rival conceptual approaches, the so-called ‘nation-state liberalism’ and the ‘autonomist’ position, in the context of the formulation (Bíró 1995: 36-39). The former would have been content with the creation of a general democratic framework for the preservation of the identity, language, culture and traditions of minorities, with the necessary individual and community rights, including the right of association, and rejected the creation of separate institutions for this purpose. The latter, on the other hand, argued in favor of detailed regulation and a separate institution of cultural autonomy for minorities. The different approaches were relatively well-defined in terms of their association with the various actors involved in the preparation – while there were also a number of shifts in the positions of the actors over the years. In addition to the conceptual debate, it was also accompanied by a power rivalry among the government actors. The former were mainly associated with the Ministry of Justice, which was responsible for the preparation of legislation and the creation of legal coherence. While the latter were associated with the specialized government bodies responsible for minority affairs, the Secretariat for National and Ethnic Minorities in 1989-1990, the Office for National and Ethnic Minorities after 1990, and last but not least with the minority organizations themselves.

Although the original plans for the adoption of the law were 1989 autumn, the Ministry of Justice was burdened with the tasks of

15 Parliamentary Diary 1985-1990. 24th Session of Parliament, Thursday 17 March 1988. 1953-1958.

preparing a significant amount of legislation, would have preferred to postpone the drafting of the law already in 1988,¹⁶ but also after the adoption of the new party resolution, which could have had conceptual reasons, too. In a study, a staff member of the Ministry's Secretariat for the Formulation of the Constitution argued in favor of a thorough elaboration of a comprehensive nationality program or strategy: *“for this reason, apart from the international publicity value, we do not see the time for the imminent drafting of a minority law”* (Timoránszky 1989: 246). He argued that in the process of constitutional reform, minority rights and guarantees should be explicitly included in the Constitution and that this *“would probably make the planned separate law on nationalities superfluous”* (Timoránszky 1989: 251).

The first version of the Ministry's own concept, mostly related to András Baka, was prepared by early spring 1989 at the latest, the revised version and the first draft of by February 1990.¹⁷ Although it did not reject them, it did not consider the creation of separate institutions to be the main guarantees of minority rights, but stated as its objective to leave room for efforts to preserve minority identities, while establishing fundamental rights and guarantees (Baka 1990: 62-63). The logic of the Ministry later also excluded the definition of a minority, i.e. any ethnic group that considers itself a minority should be treated as such. Their classification was considered conceivable at most in a parliamentary resolution. In addition to Hungarian citizens belonging to minorities, the personal scope of the law would have been extended to refugees and foreigners with a settlement permit.¹⁸ At first, the Ministry was not even able to interpret the planned system of MSGs, saying that it was neither an institution of state power nor a civic association.¹⁹ Later on, too, the system

16 Letter from Kálmán Kulcsár, Minister of Justice, to Katalin Radics, Head of the Scientific, Educational and Cultural Department of the Central Committee of the Hungarian Socialist Workers' Party (Budapest, 14 July 1988). 40.633/1988. IM IV/4. MNL OL M-KS 288. f. 36/1988/105. ő. e.

17 András BAKA: The Concept of the Minority Act. Prepared on behalf of the Ministry of Justice. Manuscript, 1989, available in Hungarian at https://kisebbssegkutato.tk.hu/uploads/files/olvasoszoba/nektv/A_nemzetisegi_torveny_koncepcioja_1989.pdf (downl. 25. 08. 2023)

18 Draft Law on the Rights of National and Ethnic Minorities (Ministry of Justice, 22 December 1990), available in Hungarian at https://kisebbssegkutato.tk.hu/uploads/files/olvasoszoba/nektv/Torvenyjavaslat_a_nemzeti_es_etnikai_kisebbsge_k_jogairol_1990.pdf (downloaded 25. 08. 2023)

19 Letter from Kálmán Kulcsár, Minister of Justice to Csaba Tabajdi, Deputy Minister (Budapest, 4 April 1990). MNL OL XXVII-A-1-II 2. d. BB. 94/1990.

was essentially conceived on the basis of associations, which allowed all kinds of social self-organization. In other words, an MSG is any social organization that declares itself as such, and therefore the Ministry did not consider it necessary to regulate the formation of self-governments by law,²⁰ which could have had the consequence that a minority could have formed several parallel self-governments at national level, too. The rights of MSGs would have been little more extensive than those of associations.

Thus, while the Ministry's approach with the regime change gave room to minority self-organization, dismantling the former omnipotent and paternalistic state in this area, the most far-reaching autonomist stance was the draft law of the Minority Round Table in May 1991. The document, on the contrary, while somewhat over-regulatory and distrustful, continued to give the state a dominant role in terms of obligations and funding, in the development of extensive minority rights, a multi-level and elected system of MSGs independent of municipal councils, and in the establishment of extended institutional networks of cultural autonomy. With regard to minority rights and autonomy, this draft – even if some of its solutions had been difficult or impossible to implement – would undoubtedly have been better suited to setting an international example. The fact that the form of elected MSGs established under public law was finally adopted seemed to have meant the predominance of the autonomist position, but the later drafts, like the 1993 Minority Act itself, were dual in nature, softening the former position and bearing the hallmarks of both approaches. However, as Gáspár Bíró warned, *“it is not possible to apply the two logics in the same piece of legislation without the risk of dysfunction”* (Bíró 1995: 39). The probable reasons why this might have happened, and why the organizational form and powers of MSGs diverged, are discussed below.

Association or elected minority self-government?

Following the 1989 Law on Associations, the number of minority associations grew dynamically at local, county and national levels. With the demise of the unified alliance for Serbs, Croats and Slovenes, the former minority alliances were reorganized, and new, alternative and often critical organizations were formed alongside them,

20 Letter from Péter Vágvölgyi, Head of the Department of Public Law of the Ministry of Justice to Károly Manherz, State Secretary (Budapest, 18 September 1991). MNL OL XXVII-A-1-II. 2. d.

and the number of organizations of the previously non-recognized communities began to grow. The minority organizations were also heavily dependent on the incipient state support, which both generated state influence and provided an incentive for the formation of organizations. For example, according to the then head of the Office for National and Ethnic Minorities, the number of registered Roma organizations doubled in just three months because of this influence (Wolfart 1994: 95). However, associations soon had to face the question, especially those operating at a national level, when they claimed to represent the whole community, of what community support they had and which of them could legitimately represent and act on behalf of the group concerned.

During the preparation of the law, the government seemed to be rather dissatisfied with the functioning of minority organizations, their community embeddedness and presence in the rural settlements, on the one hand, and with the democratization processes taking place among them, on the other. The governmental criticisms suggested that in many cases, it was more a question of organizations that were unknown to the communities, were not embedded in the life of minorities and the settlements they lived in, but instead they were often run by a few ethnopolitical entrepreneurs, mainly in the capital, without membership or local grassroots organizations (Wolfart 1994: 37). In the case of several minorities, and especially the largest Roma population, in an increasingly fragmented and rivalry-ridden organizational landscape, there was also a noticeable governmental effort to create a unified, legitimate representation of interests and negotiating partners alongside organizational diversity (Wolfart 1994: 41-42). However, it should be borne in mind that these criticisms of the legitimacy of organizations, which may or may not have been well founded, could have been used to challenge minority aspirations, and to select, divide and antagonize minority organizations.

On the other hand, the sources also suggest that the government wanted to achieve increased democratization, a kind of elite replacement in the minority civil sphere, or at least in part of it. In spite of the changes in leaderships, there was a general impression in governmental circles that in many cases, there had been a transfer of positions and power from the previous system in minority organizations, and that the leaders of the more or less reformed structures were now seeking to compensate with a kind of radicalization, constant criticism and demands. From this point of view, therefore,

there was no regime change in the life of the organizations, and in the sense of a change of elites, and what was really needed was a “*changing of the guard*”, a “*speeding up of the democratization process*”.²¹ They feared that “*weak organizations with uncertain and uncontrollable legitimacy*” would be given strong powers of self-government, creating an anarchic situation through the parallel operation of several national bodies and allowing “*successor organizations to take over*”.²² These circumstances largely marginalized the ‘national-liberal’ alternative based on associations and advocated by the Ministry of Justice, at least in its organizational aspect. The system of MSGs elected from below was also intended to accelerate democratization and, more precisely, to gain sufficient community control and legitimacy.

However, the commitment to the organizational form of elected self-government immediately raises the question of why the tasks and powers have followed the self-government model only to a limited extent. In this respect, the position of local and regional actors and in this context of the Ministry of Interior, one of the most influential ministries, on MSGs was crucial. During the local elections in autumn 1990, nearly 3100 municipal councils were established in Hungary. It became a general characteristic of these municipalities that the tasks they had to perform constantly expanded, while the resources needed to perform them effectively did not keep pace, resulting in an increased dependence on the central budget. It should therefore come as little surprise, given that there are estimated to be some 2500 settlements with a minority population in varying numbers, that there were serious fears among them about the proposed system of MSGs. These concerns relate to both the excessive financial burden on local councils and the responsibilities and powers of MSGs, and more specifically the ‘dual power’ at local level. There were fears that the newly established MSGs, with their wide-ranging powers, would be able to ‘paralyze’ the functioning of municipalities and the state administration.²³ As a result, a considerable number of actors, many

21 János Wolfart: Memorandum to Ferenc József Nagy, Minister without Portfolio on the submission of the draft law on national and ethnic minorities to the Government (Budapest, 7 January 1992). MNL OL XXVII-A-1-II 3. d. N/1145/92.

22 János Wolfart: Resolution on the draft law on the rights of national and ethnic minorities, 24 January 1992 (Budapest, 27 January 1992). MNL OL XXVII-A-1-I 3. d.

23 See, for example, János Wolfart: Preliminary consultation and discussion of the draft law on the rights of national and ethnic minorities in the counties of Bács-Kiskun, Békés, Csongrád, Fejér, Győr-Moson-Sopron, Hajdú-Bihar, Pest, Somogy, Vas and Zala (Budapest, 12 July 1991). MNL OL XXVII-A-1-I. 2. d.

ministries, including the Ministry of Interior, county assemblies and a large number of government commissioners, argued in favor of a weaker legal basis for MSGs, namely that of associations. Partly in this context, the fact that the Ministry of Interior had already in 1990 proposed the integration of MSGs into the municipal self-government system, which was also included in the Ministry's controversial plans of early 1992.²⁴

Cost implications of the Minority Act

Last, but not least, it is necessary to address the issue of funding as a further key factor. In the course of the preparation of the Minority Act, the cost implications of the law proved to be an extremely contentious and divisive issue in the midst of the complex processes of economic transition, social tensions and scarce resources. Minority demands for the greatest possible central and local support and the fullest possible state involvement almost inevitably clashed with the financial position of fiscal austerity and the interests of municipal councils concerned with the management of the settlements. It was clear that the influential Ministry of Finance was interested in keeping costs as low as possible and building in brakes. The draft law of the Minority Round Table was based on normative state subsidies, contributions from county and municipal self-governments, one-off property grants to MSGs, revenue transferred to them, support from foreign organizations, foundations and individuals, and the establishment of a minority fund operating on a tender basis. These elements would be supplemented by discounts and exemptions (e.g. exemption from paying taxes and duties, and duty-free import of cultural and educational products from the kin-states). Overall, the Round Table believed that within five years of the entry into force of the law, with the active support of the state, and largely with automatic funding mechanisms, it would be possible to build up an adequate system of minority institutions and autonomy in Hungary.²⁵

However, the draft law of the Round Table caused “*panic*” in the Ministry of Finance, which criticized both the excessive level of public commitment and, in particular, the uncertainty over the

24 Draft law on the rights of national and ethnic minorities (Ministry of the Interior, January 1992). Draft law on the rights of national and ethnic minorities (6 February 1992).

25 Vilmos Váradi: Financial Guarantees of the Draft Laws on the Rights of National and Ethnic Minorities (Budapest, 11 August 1992). B as a financing program. Archive of the Hungarian Parliament 90-94. EJKVB 37. d.

number of possible legal subjects. In the planning process for the 1992 budget, too, the Ministry argued that only those funds could be used which were already available and had already been allocated for minority purposes in previous years, but it also considered it advisable to postpone the adoption of the Minority Act itself until after the budget debate.²⁶ The Ministry made it clear in the context of the state administration consultation that it “*cannot support a solution, in which the state only pays, but cannot control or monitor the use of the funds.*” It feared that there was no guarantee against the costs being run up and that the only obstacle to funding was public discretion, which could lead to wasteful management of planned MSGs whose mission barely extended beyond their survival. The Ministry also stated that it was pointless to provide for state property in the draft if “*there is no free state property*”.²⁷

Conclusions

The preparation of the 1993 Hungarian Law on the Rights of National and Ethnic Minorities, which was adopted more than thirty years ago by an impressive majority of the parliament, is now well covered in the relevant domestic and international literature. The existing knowledge on its formulation could undoubtedly be further enhanced by researching and systematically exploring the writings of the minority press, the documents of the minority organizations involved, and by conducting further interviews and reminiscences with those stakeholders who were involved in the process. The interest shown by experts in the law is mainly due to the controversial nature of country’s minority policy. The reference to the situation of Hungarian minorities living in the neighboring countries, and thus the idea that the motivation for the law was not only the recognition of minorities and the preservation of their identity in Hungary, was mentioned in numerous cases during the preparation of the law, most obviously in the parliamentary debates, essentially irrespective of party affiliation. In this way, Hungary seems to fit in with the trend in other countries of the region after the late 1980s. Whereby even when the states concerned adopted minority laws and cultural autonomy for minorities living on their territories, they did so in a narrow,

26 Sándor Kurunczi: Reminder of the meeting of the Codification Committee of 31 July 1991 (Budapest, 2 August 1991). MNL OL XXVII-A-1-III 1. d.

27 Letter from Peter Király, State Secretary of the Ministry of Finance to Károly Manherz, State Secretary (Budapest, September 1991). MNL OL XXVII-A-1-II 2. d. 11.010/91.

mostly symbolic and declarative manner, dominated less by normative considerations such as the preservation of diversity, equality or justice, and more by more pragmatic, instrumentalist motivations and expectations. However, unlike many other countries in the region, there was little sign of overt opposition to the Minority Act, or at least little public representation of any kind of exclusivist, nationalist rejection of minority rights, during the period in question. Moreover, among the models in operation, the system of MSGs in Hungary is still among the more successful ones with more extensive rights and opportunities in international comparison, especially when compared to the minority councils in Estonia and Croatia.

The present study has sought to illustrate the complexity of the elaboration process of the 1993 Minority Act by highlighting several crucial aspects that have received less scholarly attention so far. In the formulation, the often-cited cross-border aspect was undoubtedly present, especially in political communication and in the symbolic dimension of policy, but it was far from being the most dominant by other actors, at other moments and at other levels. The position in the debate is thus not one of the exclusivity or dominance of the cross-border aspect or, possibly, its neglect. On the one hand, it was evident that the demand for a minority law was not only put on the political agenda because of the Hungarian minorities abroad, but also for domestic reasons, in which, among other things, the intention to recognize the Roma as a minority played a major role.

On the other hand, the preparation of the Minority Act, which took more than five years, was a complex political process involving many actors and their interests, with a number of sensitive political and legal compromises, which to a considerable extent concerned the concrete material aspects of the policy. In other words, they had to take into account essentially domestic circumstances and opportunities: rights and obligations were established, institutions were set up, resources were allocated, which ultimately affected not only the minorities themselves but also the interests and opportunities of thousands of municipalities. Understandably, many of those who were actually influential in these processes were less motivated to set an example abroad. Moreover, at certain stages, the preparation of legislation also provided instances of the limited participation of minorities, as well as of the narrow-mindedness that is also familiar from other countries in the region. The latter was most evident in the regulation or lack thereof of the tasks and powers of MSGs,

financial guarantees, and the institutional system of cultural autonomy or parliamentary representation. Although in many of their speeches, the members of the parliament subsequently sought to use the legislation as an example to be followed abroad, many provisions had already been drafted even before the bill was submitted to parliament in 1992, in negotiations among influential actors, such as the Ministry of Interior, the Ministry of Finance, the Ministry of Justice and the Minority Round Table. It is undoubtedly questionable whether it would have been possible to draft legislation that would have fully met the diverse needs of minorities, but subsequent amendments to the 1993 Minority Act in the next two decades clearly indicated a move towards greater cultural autonomy.

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