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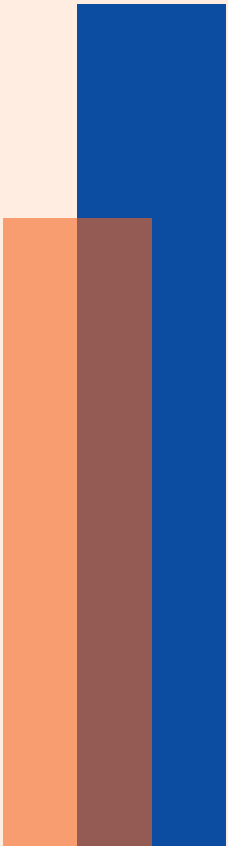
Balázs Vizi, Balázs Dobos and Natalija Shikova



ENTAN
EUROPEAN NON-TERRITORIAL AUTONOMY NETWORK

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Centre for Social Sciences, Budapest
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ENTAN – The European Non-Territorial Autonomy Network

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The emerging significance of non-territorial autonomy: A foreword

This volume comprises a selection of peer-reviewed chapters originally presented at the Second ENTAN conference held in Budapest on 24–25 September 2021. The 'Non-Territorial Autonomy as an Instrument for Effective Participation of Minorities' conference was held at the Institute for Minority Studies, Centre for Social Sciences in Budapest. The main purpose of the conference was to examine how the various non-territorial autonomy (NTA) models have been implemented and contribute to the effective representation and participation of minorities in public life. It focused on various activities, policies and institutional structures in diverse contexts that can be considered as forms of NTA. The contributions offered a critical eye not only on the decision of states to opt for and even constitutionally entrench NTA arrangements but also on the extent to which such arrangements meet minority demands and mitigate territorial and separatist aspirations, ethnic conflict, discrimination and socioeconomic exclusion.

The chapters included in this publication were written against the backdrop of a number of issues confronting Europe and, indeed, the world. Global lockdowns due to the Covid-19 pandemic have caused uncertainties, fear and divisions of various kinds. They have been coupled with rising media disinformation, security risks and concerns over economic stagnation, along with existing and new international, regional and local conflicts. In such contexts, minorities are often turned into an object of projected ills and amongst the first to be blamed for state disloyalty or social subversion. Under the pretence of national sovereignty and territorial integrity, minority rights in many countries are more often than not looked down upon by the state or supressed altogether. Even in democratic societies, whenever the dominant narrative is about enforcing public health or national security policies, very few voices would question whether minorities face unequal treatment and difficulties in participating in decision-making efforts for the common good.

As the main organiser of the Budapest conference, ENTAN – the European Non-Territorial Autonomy Network, which now gathers more than one hundred scholars from thirty-six European countries – endeavours to address the need to reinvigorate the discussion about the rights of minorities and their effective participation in public life by offering research ideas and findings, both multidisciplinary and interdisciplinary, related to one particular concept – that of non-territorial autonomy. As a European Cooperation in Science and Technology (COST) Action aimed at examining the concept of NTA, ENTAN particularly focuses on NTA arrangements for reducing interethnic tensions within a state and on the accommodation of the needs of different communities while preventing calls to separate statehood. The project tackles recent developments in the theories and practices of cultural diversity, minority rights (including linguistic and educational rights), state functions and sovereignty, conflict resolution through policy arrangements, policymaking and inclusiveness. The main objective is to investigate the existing NTA mechanisms and policies so as to develop new modalities for the accommodation of differences in the context of growing challenges stemming from globalisation, regionalisation and European supranational integration. The Network fosters group work and provides for training and empowerment of young researchers, academic

conferences and publications, and the dissemination of results to policymakers, civil society organisations and communities.

Indeed, interest in NTA responses to ethnocultural demands seems to be intensifying amongst scholars and policymakers alike. Rekindled ethnic tensions and secessionist claims, along with massive migrations triggered by wars, economic deprivation or climate change, compel us to revise the existing models and search for new solutions. Although NTA is not a novel concept, its application in diverse historical and contemporary contexts invites closer consideration precisely because of its promise to provide answers to recent challenges. The past ten to twenty years have witnessed an expanding body of scholarship which appraises NTA not only as a facet of autonomy but also as a field of study in its own right (for a recent overview, see Prina, 2020). In this respect, at least two aspects deserve further attention.

First, NTA seems to pose 'a frontal challenge to the idea that national self-determination and national governance can only take place in the form of territorial representation or as a sovereign territorial state' (Nimni, 2013, p. 1). That is not to say that territorial autonomy and non-territorial autonomy are mutually exclusive; on the contrary, both can function as supplementary or complementary mechanisms for minority empowerment (Malloy & Palermo, 2015). Indeed, as the keynote speaker at the Second ENTAN conference in Budapest, Francesco Palermo, explained:

> Cultural pluralism requires a plurality of instruments for its accommodation. Against this background, both territorial and non-territorial autonomy arrangements are key elements of the overall legal and institutional toolkit of plural (and pluralistic) societies … more interplay between territorial and non-territorial forms is needed rather than either-or. Just like for minority protection overall, the challenge is coexistence rather than separation (Palermo, 2021, p. 8).

Still, by deterritorialising the idea of self-determination, NTA concomitantly challenges the very notion of the nation-state rooted in the territoriality principle as fundamental to the established international order. There are several thousand nations in the world (Minahan, 2016), each with a distinct cultural identity that its members hold dear. And yet, only 193 states are represented at the UN. As Gellner (1983, p. 2) once warned: 'not all nationalisms can be satisfied' by the creation of nation-states. Stateless nations outnumber nation-states many times over. Moreover, most of the existing nation-states are culturally diverse, not ethnically homogeneous (Brown, 1993), and their minority communities – by the virtue of their numbers – face some sort of assimilation even when a representative democratic system is put in place. Although fundamental to the established norm of equitable representation, the principle of one person, one vote does not guarantee the protection of a minority's culture and way of life without the endorsement of the dominant nation (Nimni, 2015). Hence, NTA aspires to rectify this deficit of majoritarian democracy by concurrently avoiding the perpetual calls for territorial secession. Ultimately, NTA arrangements would presuppose a transformative paradigm of the state as plurinational (Nimni, 2020). Representative democracy can be enriched and secessionism averted if the state set-up is inclusive of minorities and provides for their effective participation, irrespective of their territorial and numerical status.

The second aspect of NTA's allure may stem from the fact that the term is rather generic and serves to signify the evolving forms of minority empowerment for effective representation and participation in democratic societies. Admittedly, scholars note that the term 'NTA' is often used for its normative rather than descriptive value (Osipov, 2010) and that its 'theoretical

justifications … have had a limited practical impact' (Coakley, 2016, p. 18). Some case studies suggest that the benefits of NTA so far have been rather 'modest' (Prina, 2020, p. 427; see also Malloy et al., 2015). Yet, what seems constant in the emerging significance of NTA is the understanding that it can be a tool for diversity management beyond the existing deadlocks of the territoriality principle and an enhancement to representative democracy (Pavlović & Nimni, 2020). From that perspective, a potential list of NTA models would include not only the forms of 'national cultural autonomy' originally developed by the Austrian Marxists Karl Renner (1899/2005) and Otto Bauer (1907/2000) around the turn of the twentieth century, and thereafter evolving into various legal or less formal variants in some Baltic and Balkan states, Ukraine and the Russian Federation, but also the examples of consociationalism (Lijphart, 1977; McGarry & O'Leary, 2004), the Bolivian plurinational model and the most recent gender-sensitive Rajova experiment in northeast Syria (Nimni, 2020). Although one can recall autocratic NTA examples, such as the Ottoman *millet* system (Barkey & Gavrilis, 2016; Erk, 2015; Nimni, 2013), scholars argue that NTA can function both as a unique contemporary democratic mechanism of public recognition and participation, in particular for indigenous people (e.g. the Sami in the Nordic countries, and the Maori in New Zealand), scattered nations (e.g. Roma) and religious communities in various settings, and as a conflict resolution mechanism in deeply divided societies (e.g. Israel-Palestine; see Behar, 2019; Ghanem, 2019; Nimni, 2019).

What seems to underpin these various examples is that, regardless of the whole gamut of non-territorial arrangements, which may be enshrined in constitutional and other legal frameworks as traditional, institutionalised, top-down state structures or developed as functional, bottom-up networking initiatives of minorities (Malloy, 2019), they all bring some degree of empowerment to the communities and offer them options for effective participation which should not be easily discarded. Equally so, those mechanisms resonate in many ways with 'The Lund Recommendations on the Effective Participation of National Minorities in Public Life' advocated by the OSCE High Commission for National Minorities (1999) (see also Malloy, 2009). Hence, NTA's potential for new policy responses to contemporary challenges is there to research and employ.

The volume entitled 'Non-Territorial Autonomy as an Instrument for Effective Participation of Minorities' is just one exertion in that direction. The book includes twenty chapters divided into six sections, each dedicated to a separate aspect of the main topic.

The first section, entitled 'Theorising Non-Territorial Autonomy and Self-Determination', includes three papers: Jacob Dahl Rendtorff offers necessary clarification on the concept of autonomy in jurisprudence; Natalija Shikova compares the various normative provisions that introduce and safeguard NTA arrangements in several countries; and Piet Goemans argues that Karl Renner's version of national cultural autonomy allows not only for minority self-determination but also for codetermination, i.e. the entitlement of minorities to participate in policymaking on state affairs and to codetermine the ultimate constitutional set-up as a way of achieving federal stability.

The second section, 'Origins and Operation of Non-Territorial Autonomy Regimes', offers a thorough discussion of varied NTA cases: Costas Stratilatis writes about Cyprus after its independence from colonial rule in 1960; by considering the case of *Südschleswigscher Wählerverband* (SSW), a party of the Danish minority in the state of Schleswig-Holstein in Germany, Martin Klatt illustrates how a well-functioning NTA can, paradoxically, alter the idea of minority political mobilisation; Balázs Dobos assesses the effectiveness of NTA regimes

in Croatia, Slovenia, Hungary and Serbia by comparing registration and voter turnout at minority elections with census and other electoral data (e.g. votes for ethnic parties at parliamentary elections); and Ágnes Molnárné Balázs focuses on the main features and limitations of the Hungarian model for political participation of minorities.

The third section offers three further NTA examples from the Balkans: Aleksandar Pavlović assesses the Yugoslav and post-Yugoslav context of minority autonomy arrangements in Vojvodina and Kosovo by considering the status of Hungarians and Albanians, respectively, within Serbia; Damir Banović explains how the complicated federal system of Bosnia and Herzegovina, with its consociational arrangements, has evolved from territorial to non-territorial autonomy and reflects on the possibilities for democratic consolidation of the country; whereas Bojan Božović and Branko Bošković discuss the legal definitions and practical issues of minority autonomy in Montenegro.

The Serbian model of NTA is a special one, so the fourth section of this volume is dedicated to assessing both its legal elements and practical dividends. Tamás Korhecz, Katinka Beretka, Ljubica Đorđević-Vidojković and Karolina Lendák-Kabók each penned one of the four individual papers.

Similarly, the fifth section is related to the possibilities of non-territorial autonomy in the case of Israel-Palestine, as discussed in three separate papers by As'ad Ghanem, Erella Shadmi and Meital Pinto.

Finally, the sixth section, entitled 'Identifications and Group Boundaries within Non-Territorial Autonomies', includes three additional examples: András L. Pap discusses NTA for Roma in Hungary; Konstantinos Tsitselikis elaborates on the modalities of NTA arrangements with reference to Muslims in Greece; and Antonia M. Mora-Luna probes the issues with secondary school curricula, in particular the teaching of a national literary canon in Catalonia as a tool for the construction of Catalan identity vis-à-vis the central state Castilian Spanish identity.

* * *

As a word of acknowledgement, we thank the members of the organising committee of the Second ENTAN conference in Budapest, as well as all colleagues who took part in the conference. Special thanks go to the contributors to this volume, especially its editors Balázs Vizi, Balázs Dobos and Natalija Shikova who made it possible to organise the collection, peer review and editing of this publication, which we hope will foster further interest in the study and application of non-territorial autonomy.

September 2021

Ivan Dodovski,
Chair of ENTAN

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I.
Theorizing Non-Territorial Autonomy and Self-Determination

Jacob Dahl Rendtorff

Autonomy as a basic principle in ethics and law: Clarification of the concept of autonomy in jurisprudence as the basis for understanding non-territorial autonomy

Introduction

In a modern, pluralistic, liberal society, personal autonomy – the right to choose one's own way of life for oneself – is considered to be of supreme value (Charlesworth, 1993, p. 1). The principle of autonomy is the principle of liberty (Rendtorff & Kemp, 2000; Rendtorff, 2008; Kemp & Rendtorff, 2009). Autonomy consists of 'auto' and 'nomos'. Combined, these translate as 'self-government' in the Greek language; indeed, in Ancient Greece, a city state was said to be autonomous when it was self-governing (Dworkin, 1988, p. 20). People are considered to be autonomous when they are able to control their own lives and decisions, just as an independent government acts to control its own policies (Beauchamp & Childress, 1979, p. 68). In the western tradition, autonomy has been linked to the freedom of the individual and their ability to develop freely according to their personal choices, desires and wishes for their future life. The idea of a pluralist society is that people, as autonomous moral agents, are free to choose for themselves, even if their choices are mistaken (Charlesworth, 1993). Autonomy is a second-order capacity of individuals to reflect on their first-order preferences and desires (Dworkin, 1988). It is important to stress that a theory of autonomy must include positive liberty and an individual's active choices.

Against this background, five important meanings of autonomy can be put forward: (1) the capacity for the creation of ideas and goals for life; (2) the capacity for moral insight, 'self-legislation' and privacy; (3) the capacity for rational decisions and actions without coercion; (4) the capacity for political involvement and personal responsibility; and (5) the capacity for informed consent to actions imposed from outside.

Legal philosophy of autonomy

Aristotle saw a close connection between autonomy and voluntary action (Crisp, 2000). A voluntary action must be freely chosen by the agent. A lack of external restraint and intervention is thus integral to Aristotle's concept of autonomy. For Immanuel Kant, to have moral freedom and autonomy is an end in itself and gives the person as a human being with humanity unconditional worth (Beauchamp & Childress, 1979, p. 72). From this perspective, a person is their own moral agent or legislator. Autonomy refers to the capacity of the human being to be a self-legislative rational being, to take part in universal moral law (Hansson, 1992). This is

not to be determined by external heteronomous conditions for action. This autonomy is built on the good will of the human person as a moral being. A moral agent is a source of moral value, and this is intrinsically valuable as an end in itself. Human beings are different from animals and the natural world because of their capacity for moral autonomy. As such, we take part in two worlds: the world of natural causality, as bodily incarnated beings, and the world of moral reason, as beings that participate in the world of reason (Rendtorff & Kemp, 2000; Rendtorff, 2008; Kemp & Rendtorff, 2009).

An insight into Kant's categorical imperative is an insight into moral law as opposed to hypothetical imperatives and specific rules of jurisprudence. The first version of the categorical imperative in Kant's philosophy can be understood as the principle of universality. As such, moral actions are a result of the second rule which is the imperative of respecting all human beings as an end in themselves in universality of moral choices. Actions are the result of the inner autonomy of the self-legislating subject and not the consequence of external heteronomous principles. The Kantian vision of human autonomy implies that autonomy means that an individual respects the moral law of universality of moral principles and this includes an idealised version of autonomy built on the ideal of the free human subject, where the subject makes decisions according to the universality of moral law. A third aspect of a moral autonomous action is the respect for a community of human beings as ends in themselves where the imperative of morality and jurisprudence is that the law should be valid for all rational human beings and, further, should not contradict the civilising process of humanity in relation to society and natural teleology (Rendtorff & Kemp, 2000; Rendtorff, 2008; Kemp & Rendtorff, 2009). From the point of view of a political community this means that an autonomous political community is a society that respects the freedom and autonomy of all its citizens. This is the case for both geographically defined political communities as well as communities characterized as based on non-territorial autonomy. What is important for a successful political community is indeed the respect for the right of citizens to be free moral and political actors. Therefore, a central dimension of non-territorial autonomy is respect for the Kantian principles of morality, politics and jurisprudence according to the rule of law.

For the liberal utilitarian philosopher John Stuart Mill, autonomy consists of the possibility of carrying out your own actions and making your own decisions. It is also freedom from coercion. Along with John Locke and Thomas Paine, Mill is one of the initiators of the ideal of the rights of humanity and of the idea of personal autonomy as central to liberal democracy. An ideal definition of democratic politics includes the freedom of the individual to choose their life in society. In relation to the state, an individual's personal liberty should be as great as possible, and paternalistic action should be avoided. In a liberal society, there can be no substantive agreement and consensus about fundamental lifestyles and religious values (Charlesworth, 1993). The only real substantive value is the recognition of individual, in other words, personal autonomy. Following Mill, non-territorial autonomy would also have to lay emphasis on the liberal rights of individuals participating in the political community (Rendtorff & Kemp, 2000; Rendtorff, 2008; Kemp & Rendtorff, 2009). What is important in non-territorial autonomy as well as territorial autonomy is therefore the respect for individual autonomy and the rights of individuals to make their own decisions. Non-territorial autonomy should be based on liberal democracy and the rights of the individuals to take part of liberal democracy and be respected for his or her personal autonomy. Liberalism would go for protection of individual rights of citizens in every kind of state formation, regardless of territorial or non-territorial autonomy.

The close connection between autonomy, moral independence and personal self-development is also stressed in European personalist and existentialist philosophies that emphasise the individual's personal freedom, engagement and moral responsibility. From the existentialist perspective, autonomy also includes a process of reflection and the active presence of the individual as a politically engaged citizen in the political processes of society (Sartre, 1943). In existential freedom and engagement, the individual is fundamentally responsible for his or her actions in society (Rendtorff & Kemp, 2000; Rendtorff; Rendtorff, 2008; Kemp & Rendtorff, 2009). Existential freedom also means participation and action for a better political community. Existential freedom is a condition of personal identity and self-development. Jean-Paul Sartre's philosophy of human freedom, in which the human being is constantly choosing their own existence and life in basic autonomy, is an example of the process of self-creation and personal choice being fundamental to the concept of autonomy. But even though the individual is free to choose their own existence, this condition is often hidden in an inauthentic life of self-deception. According to Sartre, a philosophy of existential authenticity can overcome the bad faith and self-deception that are so common in the life of the modern individual. Thus, following Sartre, non-territorial autonomy would require respect for the existential freedom of the individual as essential for decision-making in the political community. Non-territorial autonomy may also be developed on the basis of existential engagement of citizens in order to promote their self-realization in the political community as essential for respect for their humanity as free individuals in society.

Moral autonomy and political autonomy

Moral autonomy is related to sincere choice and personal decision-making, rather than to the invention of genuinely personal values. It is a question of free moral choice according to a set of values that the individual considers right and just (Dworkin, 1988, p. 34). The question is whether autonomy includes a total substantial and procedural independence, or if it is possible to be autonomous and, at the same time, rely on communitarian values, the legal system, and moral or religious authorities. This leads to the question of whether it is possible to act autonomously in situations with a high degree of external determination. Further, in what ways can autonomous decisions rely on the opinions of others? In this context, moral autonomy is clearly related to free and autonomous choice, but this does not imply total independence from external factors. Here, when we speak of non-territorial autonomy, it is important to stress that non-territorial autonomy should respect the moral autonomy of citizens in society. Non-territorial autonomy should allow individuals to be free and relate freely to communitarian, collective and religious values.

As the political origins of the term 'auto-nomos' suggest, there is also a close connection between individual autonomy and the political organisation of society (Dworkin, 1988, p. 34). This may be the reason why autonomy is so important for political independence. In modern society, the principles of justice presuppose that human individuals are free and equal. Society develops through a process of construction in which autonomous agents are supposed to agree rationally on some common principles of justice (Rendtorff & Kemp, 2000; Rendtorff, 2008; Kemp & Rendtorff, 2009). In this context, autonomy often includes other basic characteristics, for example rationality, individuality, independence, and moral responsibility of the human person. It is important to stress that a society built on responsible, autonomous

decision-making may also have communitarian engagements and common values (Habermas, 1992). The choice of such values should be motivated by individual decision-making rather than collective coercion, but autonomy does not a priori exclude common decision-making. Therefore, in order to promote non-territorial autonomy the respect for the autonomy and free decision-making of individuals is essential.

The European concept of political democracy focuses on the idea of autonomy and on the 'good life for and with the other in just institutions' (Ricoeur, 1990). This concept consists of the recognition of political society as a deliberative democracy founded on respect for the political sphere and the confrontation between citizens as the basis of common values (Rawls, 1992). Applied to non-territorial autonomy, there should be both external and internal recognition of this vision of the respect for the good life as the basis for recognition of the respect for the individual in the just institutions of the political community.

It is central to the idea of liberal democracy that the individual has the possibility of self-realisation and of self-development. A legitimate government has to be built on the self-determination of autonomous individuals. The protection of individual autonomy is therefore a basic principle in most European constitutions. This central importance of autonomy for the development of the human person (personal agency), political democracy and our conceptions of moral decision-making can help explain the significance attributed to autonomy as a fundamental right and as justification for protecting privacy, confidentiality, refusal of treatment and informed consent. Applied to the development of structures, institutions and procedures for political systems of non-territorial autonomy, it is a key dimension of such a society with political autonomy that it respects the fundamental rules and institutions of democratic agency based on political, social and economic freedoms of the individuals in this society.

Informed consent and autonomy

Following the Nuremberg Code and the Declaration of Helsinki which have been essential in the development of medical ethics and regulation of the field of protection of human beings in medical research, the notion of 'informed consent' as an expression of autonomy in medical ethics and medical practice has been introduced as a basic requirement in most European countries. This concept of autonomy can also be applied to the discussion of non-territorial autonomy, since it can be argued that the idea of informed consent and participation of citizens in decision-making is essential for the developments of good and just societies.

Following the definition of informed consent in medicine, every medical intervention must be legitimated by informed consent. The patient must have the right to make their own decisions about treatment and refusal of treatment. The concept of informed consent was introduced to secure self-determination by the patient undergoing medical treatment (Rendtorff & Kemp, 2000; Rendtorff, 2008; Kemp & Rendtorff, 2009). The patient has the right to make decisions about their own body in the context of medical treatment. Some basic requirements of the doctrine of informed consent are necessary for the concept to function in practical medicine (Dworkin, 1988). The patient must have a meaningful choice and freedom in relation to the process of medical treatment. Therefore, the patient must engage in the process of the treatment intentionally and with understanding and knowledge. They must be free and capable to make such decisions, and free from violence and coercion. An autonomous action implies: (1) freedom, (2) authenticity, (3) deliberation and (4) moral reflection

(Beauchamp and Childress, 1979). Such decisions are compatible with existing moral traditions in hospitals as long as they are substantially free and independent. Informed consent should be considered as an event, as a process of communication and action between physician and patient that eventually leads to the decision and the undertaking of treatment. In this context, the essential elements of informed consent are: (1) disclosure, (2) understanding, (3) voluntariness, (4) competence and (5) consent (Dworkin, 1988). This account of informed consent as a basic feature of medical decision-making has, until now, largely been determined by the patient's personal autonomy.

This concept of autonomy can be transferred to the discussion of the development of procedures for regulation of the concept of autonomy. The idea is that the key elements of informed consent should guide the development and creation of structures and institutions of non-territorial autonomy.: (1) freedom, (2) authenticity, (3) deliberation and (4) moral reflection as well as (1) disclosure, (2) understanding, (3) voluntariness, (4) competence and (5) consent are essential principles of decision-making for developing good structures of non-territorial autonomy. This is the case for the political communication and process of setting up regions of non-territorial autonomy, but it should also be guiding for the political deliberation processes within regions of non-territorial autonomy, once they have been established.

The concept of autonomy as a basic method of regulation in law and jurisprudence is, however, not without genuine difficulties (Rendtorff & Kemp, 2000; Rendtorff, 2008; Kemp & Rendtorff, 2009). Generally, autonomy is an ideal notion, referring to an individual's full self-control. But there might be defects in the individual's ability to control their actions or desires or both. The individual might have first-order desires that they do not like at a second-order level. Also, the individual's capacity for reasoning might be limited. They might also make decisions on the basis of wrong or false information. Further, the individual's desires or wishes might be confused. Personal identity is not always stable, and the individual sometimes does not know what they really wish for (Dworkin, 1988). These challenges are also at stake when we talk about autonomy at the political level. Democracies are not always rational and autonomy is sometimes very fragile and vulnerable in the face of political power and changes in political authorities in communities.

Criticism of the philosophy of autonomy

A communitarian criticism of the concept of autonomy is that freedom and diversity cannot be absolute values (Rendtorff & Kemp, 2000; Rendtorff, 2008; Kemp & Rendtorff, 2009). Communitarian values refer to a community life that is built on public morality rather than individual autonomy. In this context, the communitarian critique is based on the idea that the concept of autonomy presupposes an institutional and cultural background that refers to common values. Autonomy should also not rule out social obligations to help others. An account of autonomy cannot be totally libertarian but must recognise that the subject is situated within a large number of social practices, commitments, compassions and relations to other people (Benhabib, 1994). Focussing solely on autonomy causes us to forget the fragile and vulnerable components of the human condition, which require care and respect. However, this account breaks away from the idea of autonomy as the only foundation of a liberal society; rather, a broader concept of the protection of the human person is needed. Thus, the communitarian critique of the ideal of autonomy points to the core dilemma of the concept

of non-territorial autonomy, since this concept really combines autonomy and community in the case where non-territorial autonomy searches to protect an ethnic group, a specific culture, a minority within an established state and political community. Here, the focus on this minority community aims at giving this group political autonomy. The challenge is however to be sure that individual members of this group still receive political protection of basic political rights and autonomy. Here, the tension between respect for autonomy and community is essential to the concept of non-territorial autonomy.

Along similar lines to the communitarian critique of autonomy are the feminist challenges to this concept of autonomy. The feminist critique focusses on the 'unencumbered self' that is said to be predominant in the ideal of the autonomous self in ethics and politics (Benhabib, 1994). This critique argues that the ideal of autonomy comes from an abstract male universalism and does not take into account the reality of human life and especially the situation of women. From a feminist perspective, it is absurd to argue for autonomy as an ideal because the individual is always situated in a multiplicity of contexts and life situations in which dependency on others is of central importance. Further, the narrative structure of personal identity, and of the experiences of the individual, shows that decision-making is always the result of the individual's interactions with the social context. The feminist position also emphasises the embodied and embedded character of human experiences, which means that the concept of the self-limits the abstract notion of personal autonomy. Instead, the subject is constituted in concrete relations of gender and community. The subject is always dependent on a body, culture and life world, where the individual stands in relation to 'concrete others' in, for example, the family. The concept of autonomy as a basic concept of law and legal regulation is therefore very challenging, and the adequate protection of the human person must take into account the other dimensions of the protection of individuals: the principles of dignity, integrity and vulnerability.

Thus, the feminist concept of autonomy can be mobilised as a strong argument for non-territorial autonomy, based on belonging to a community of particular ethnic, cultural, religious or social groups since every human being is placed in a specific culture and life-world. But the feminist criticism of abstract autonomy also reveals a paradox and tension within the concepts of territorial and non-territorial autonomy since it demonstrates that participation to community may sometimes also be a limitation of individual freedom for example when certain groups and cultures limit the rights of women. Nevertheless, the feminist concepts also suggest that emancipation of the individual may happen from within when the participants of a minority culture changes the repressive forces of this culture without leaving this particular ethnic group. Thus, within a community and particular group of cultural religious or social autonomy, there is an important work of respect for women rights and autonomy that needs to be done in order to ensure political autonomy of all participants in this community of non-territorial autonomy.

Beyond autonomy with non-territorial autonomy

The post-structuralist philosophers Deleuze and Guattari (1980) are even more critical of the concepts of autonomy and territorialisation than the feminists, and they base their analysis on the concepts of space and territorialisation from Hegelian and Marxist philosophy. Deleuze and Guattari propose a pragmatic political philosophy that combines schizoanalysis with the search for novelty in order to overcome the conformity and censorship of society.

The idea of minority, and how to become a minority, in the machinery of mass society is an essential concept in *Mille Plateaux*, a key work of post-structuralist political philosophy, which distinguishes between minority and majority. The majority is a system that imprisons the creative forces in mass society, and it constitutes a disposition of domination and normalisation. In contrast, the minority consists of a totality of molecular singularities that preserve and develop the creative forces. The majority is a dominating group that uses power to enact their authority on the minority, an 'agencement' of power that dominates people and their singularities. However, the minority increases creativity and normalises the people in society. The majority is defined by essentialist concepts such as man, male, adult, habitant of the city, European and Caucasian, and these become the constituting norms of the machinery of mass society. Applied to the discussion of non-territorial autonomy, it can be argued that efforts to avoid respect for non-territorial autonomy are based on such an essentialist political philosophy of domination.

In contrast, minority, and to become a minority ('devenir minoritaire'), implies a concern for minority groups, which might include, for example, black people, women or immigrants. In fact, the war machine, that is the minority's fight against domination, as proposed in *Mille Plateaux* and *Anti-Oedipe*, represents the minority's struggle for recognition. Deleuze and Guattari emphasise that every creation happens through such a war machine that can be both physically and spiritually expressed. The war machine should not be conceived as a will to gain power. Rather, it is the opening of an opportunity for creation and innovation. Thus, the minority community searching for non-territorial autonomy can be seen as such a creative force. This war machine exists radically outside the state system. The minorities act like nomads in relation to the war machine, and they express heterogeneity regarding the war machine and state bureaucracy. The minorities act in permanent 'lines of escape', which represents new ways of thinking in order to gain autonomy in relation to these machines and state totalities. The war machine challenges the mechanism of regulation and normalisation. It functions like a guerrilla or a revolutionary force that challenges the dominant power. This nomadic and guerrilla-like activity may be carried out in the form of art, philosophy, science and other activities that constitute new nomadic potential at the limits of the established structures of power in a society. The nomads, in all senses of the word, are the basis of creation of the new in society and politics. Thus, Deleuze and Guattari consider the struggle for non-territorial autonomy as a creative force at the limits of totalitarian domination by the authoritative forces in society.

Following this philosophical clarification of the principles of autonomy, what conclusion can we draw in order to define the concept of non-territorial autonomy as an instrument for protecting minorities? Deleuze and Guattari emphasise the importance of respect for minorities in non-territorial terms. Here, it is important to contribute to the movement of 'devenir minoritaire'. But, this movement is also characterized by a problematic concept of violence that is at the limits of the democratic concept of political philosophy. Therefore, we need to accomplish this idea with the ethical principles of social liberal political philosophy.

Here, the idea of respect for the autonomy and freedom of minorities can be concretised in the concept of 'Rechtsfreien Raum' as the basis of self-determination. The principles of dignity, integrity and vulnerability are also fundamental to this definition of legal principles as the basis of a political community of respect for human freedom, dignity and deliberative democracy. The extension of human rights to imply non-territorial autonomy as a special sphere of protection of human beings can be defined as based on the principles of moral and political democracy following Kant's and Mill's political philosophies of respect for individual

autonomy and the rule of law in both geographical and non-territorial political community. This suggests that a definition of non-territorial autonomy should be developed as an expression of 'political morality' and 'integrity', and this indicates that the juridical system is largely open to the outside world of politics and culture in the sense that a community of non-territorial autonomy also respects the rules of political democracy.

Legal principles and rights can be seen in the light of a general theory of legal judgment. Kant has distinguished between determinant and reflective judgment. Determinant judgment applies pre-given rules to a pre-given legal case, while reflective judgment searches for rules related to a new legal case. The creative function of reflective judgment is to apply the rule of law and protect the human person. This happens through developing legal principles that, as juridical fictions, help to construct acceptable solutions to protect both non-territorial autonomy and what is specifically human. The creation of legal principles and the definition of rights result from the creative function of judgment. Legal formalisation of a specific state of affairs ('the nature of things') is founded on creative judgments and dynamic interpretations of the solution for social conflicts in the ideals of social peace and justice.

The analysis of the concept of liberal autonomy based on the basic ethical principles of respect for autonomy, dignity, integrity and vulnerability of citizens in political community in relation to the specific field of non-territorial autonomy shows how the laws and legal regulation of non-territorial autonomy must be defined as a principle oriented towards legal thinking, where open principles and general legal standards determine legal development. Such principles have been defined by Ronald Dworkin in *Taking Rights Seriously* (Dworkin, 1977). Dworkin does not agree with Hart's positivist legal theory, which defines a legal system as an autonomous system of rules and is the only basis of interpretation in particular cases. In 'hard cases', the legal application is not simply a deduction of a sentence to a concrete according to positive legal rules. Judging cannot be considered only in the perspective of legal positivism as a deduction of pre-given rules. Legal principles are not only formulated as legal rules; rather, they are open legal standards that are the basis of a legal order without being directly formulated in legal rules. Legal thinking is based on both general legal principles and considerations of policy, and these are the general horizon for actual legal practice. Legal principles are at once present in the application of law and the basis for the legislator's formulation of policy as general legal standards to be followed in the application of law. Applied to non-territorial autonomy, this means that the legal principles and legal regulation of a community of non-territorial autonomy need to be based on law as political morality of democratic governance in order to be sure that the political autonomy of citizens and community is respected in the particular development of political construction of a community of non-territorial autonomy.

From autonomy to non-territorial autonomy

In this analysis, we have taken autonomy to be a basic principle in ethics and law. On this basis, we clarified the concept of autonomy in jurisprudence and the foundation for understanding non-territorial autonomy. The aim was to analyse the concept of non-territorial autonomy as an instrument for protecting minorities in line with this philosophical clarification of the meanings of autonomy. Though the concept of autonomy has been clearly explained, it could be argued that we are still lacking an explanation of whether there is a real distinction between the philosophical concept of autonomy and the notion of what is considered non-territorial

in relation to the philosophical concept of autonomy. The question here is whether there is an important difference between personal autonomy and territorial autonomy, and, subsequently, whether there is a difference between non-territorial autonomy and the proposed concept of autonomy. We must thus apply the proposed concept of autonomy to the notion of non-territorial autonomy to really make autonomy work. Considering this, we argue that we should understand non-territorial autonomy as the proposed concept of autonomy based on self-government in a pluralistic liberal society. The implication is therefore that autonomy is the ability to choose one's own way of life for oneself, which is essential for those who need non-territorial autonomy.

There can be autonomy without a territory if the vision of self-government of legal and political philosophy is respected. As argued, this means that people are considered to be autonomous when they are able to control their own lives and decisions, just as an independent government acts to control its own policies. Accordingly, non-territorial autonomy implies the capacity and responsibility of the individual to make personal choices and be free in existential engagement in development of a free society. The five important meanings of autonomy must therefore be applied to non-territorial autonomy: (1) the capacity for the creation of ideas and goals for life; (2) the capacity for moral insight, 'self-legislation' and privacy; (3) the capacity for rational decisions and actions without coercion; (4) the capacity for political involvement and personal responsibility; and (5) the capacity for informed consent to actions imposed from outside. Consequently, by applying this clarification of the meanings of autonomy to non-territorial autonomy as an instrument for protecting minorities, we can argue that this political and personal concept of autonomy is essential for the better protection of minorities.

Realisation of non-territorial autonomy based on legal judgment

The realisation of non-territorial autonomy as a legal principle is particularly relevant to the actual development of the law of autonomy, which is characterised by openness and has no precedence in pre-given rules. Hard cases and legislation on the protection of non-territorial autonomy issues are resolved considering general legal principles and legal standards. Legal standards are ethical and political principles that reflect the social and political self-understanding that emerges from the tension between the common good of society and respect for non-territorial autonomy. Here, it is difficult to distinguish between political and ethical standards: both are legal sources that may be based on general philosophical and religious aspects while taking into account cultural and historical aspects.

Thus, in the law of non-territorial autonomy, principles and rights are closely connected, and legal judgment must place these in relation to each other. Sometimes, there is a conflict between principles and rights because principles can limit rights. In other situations, principles might protect the basic human rights of minorities.

As can be deduced from the development of non-territorial autonomy in Europe, the relation between principles and concrete situations must be understood as a dynamic hermeneutical circle, in which both contribute to the development of the basic norms of law. The creative play of judgment between the general and the particular implies a creative tension between principle and situation, where there is no opposition between casuistry and principles. Principles are developed in concrete situations and structure the normative development of law. On the one hand, legal principles frame particular cases, and on the other hand, the

particular case of non-territorial autonomy. This gives general legal principles substantial content. Analysing different fields of law sharpens our understanding of the general framework and content of basic principles in law. Respect for non-territorial autonomy implies an equilibrium between situations and principles in a circle encompassing actual cases and general legal standards.

Conclusion

To summarise, a theory of non-territorial autonomy must include positive liberty and the active choices of the individual according to the principles of liberal democracy following Kant and Mill. As such, we present the five dimensions of autonomy that are essential for non-territorial autonomy: (1) the capacity for the creation of ideas and goals for life; (2) the capacity for moral insight, 'self-legislation' and privacy; (3) the capacity for rational decisions and actions without coercion; (4) the capacity for political involvement and personal responsibility; and (5) the capacity for informed consent to actions imposed from outside. These dimensions should be realised in non-territorial autonomy in legal judgments, hard cases of law and legal decision-making in order to ensure the positive development of a community of non-territorial autonomy as a free and just society.

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Natalija Shikova

The normative base for non-territorial autonomy: A comparative legal overview

Introduction

The accommodation of minorities through mechanisms of territorial and non-territorial autonomy (NTA) is gaining prominence in today's world, and that is visible both in political theory and in comparative politics (Malloy, 2015; Malloy & Palermo, 2015; Nimni et al., 2013). The concept of minority rights has become generalised internationally, and even more regionally, but the doctrine has been driven more by political considerations rather than legal consistency (Wilson, 1996). Nonetheless, within international law, it is accepted that minorities have rights upon which they can establish and influence their political order, control the issues that matter the most to them and thus protect their cultural, ethnic and historical identity. Certainly, before the law, the principles of equality and non-discrimination – which have acquired the status of customary law – are binding to all states, and in that sense they are fundamental. Apart from applying the principle of non-discrimination, the rights of minorities are best realised through special measures for (members of) minorities that enable their proper protection (Henrard, 2000).

National cultural autonomy (NCA) is understood as a form of autonomy where a non-majority population can establish a representative body without territorial limitation, and conduct relevant cultural or other activities on a national or local level. There isn't a unique model of NTA, either. It resembles territorial autonomy (TA), but the criterion of membership is personal rather than territorial and it focuses on cultural issues (Coakley, 2015). NTA works best if the involved minorities are dispersed, that is they are not territorially concentrated. Many legal systems encompass NTA, but there is no universally accepted theoretical or legal definition of the concept. Additionally, some authors question the functionality of NTA – seeing it as a state strategy for minority patronage (Yupsanis, 2019) – and are concerned about its less-than-impressive record of implementation despite formal guarantees of autonomy (Coakley, 2015). NTA agreements are most common in post-communist states in Central and Eastern Europe and involve a variety of arrangements aimed at non-territorial cultural autonomy. In that respect, the relevant regulations can be found in national constitutions as well as in specific regulations that grant cultural autonomy (Smith, 2013).

This research focuses on the normative base of NTA in Hungary, Slovenia, Croatia and Serbia, and provides examples of different NTA arrangements. It represents an outline of what, legally, is labelled as NTA and what the constitutional and legal safeguards are in that regard, examining the relevant legal provisions on a constitutional level and as specified in additional laws that endorse NTA. The main idea is to present a comparative overview to illustrate how NTA is positioned on a normative level. Tentatively, the analysis can both help to identify common denominators that can assist in the positioning of NTA within legal theory and serve as a practical tool in tailoring adequate strategies for minority protection.

NTA as a policy instrument

NTA is a statecraft tool or policy instrument applied in countries that are ethnoculturally diverse (Salat, 2015). NTA is a generic term, not a specific model, therefore it refers to diverse theories and practices as well as a variety of related interpretations (Osipov, 2015). Those related concepts that envisage similar elements (personal, cultural, extraterritorial, etc.), most commonly refer either to the main principle (personal) or to the content of the autonomy (cultural) (Osipov, 2018). Amongst them, the narrower subcategory of NCA has been theoretically structured and elaborated by Karl Renner (1870-1950) and Otto Bauer (1881-1938) in their attempts to convert a decaying Austro-Hungarian empire of squabbling national communities into a democratic federation of national communities. The proposed solution was based on the model of national-cultural NTA, established on the 'personality principle', meaning that ethnic and national communities can be organised as autonomous units in multinational states regardless of their residential location (Nimni, 2000). The understanding is additionally shaped by the interwar Baltic theorists, who conceived NCA around elected institutions to administer minority cultural-educational affairs and represent often small and territorially dispersed communities (Malloy, 2015). The singularity of this model can be understood when contrasted to most other theories of national autonomy, since in most of the conventional theories, national autonomy requires a territorial base for the autonomous national community. However, according to Bauer and Renner's theory, there is no need for a territorial base for the autonomous communities to be organised as sovereign collectives, no matter where they reside in a multinational state. The autonomous communities can be organised democratically, based on individual consent for belonging. It is this democratic element that distinguishes NCA from the Ottoman Empire's millet system that, in essence, is based on a similar understanding of the possibility that peoples of different ethnic identities can coexist in the same territory (Nimni, 2000).

NTA has become popular in minority policies and related government communications such that diverse arrangements and practices have been labelled as such in Central and Eastern Europe (Nimni et al., 2013). However, the literature on NTA has yet to find common features amongst all applied NTA models, though analysis of seminal works indicates that NTA can be used for the representation of non-dominant groups (Shikova, 2020). NTA can enhance a minority group's ability to self-govern on matters that are relevant to the group members. Contextual understanding of NTA arrangements involves the description of institutions, their functionality and the legal framework that protects them, that is, according to scholars, personal cultural autonomy does not exist without self-regulating institutions.

NTA arrangements work best in cases where the minorities or beneficiaries are dispersed amongst the majority population and TA cannot apply. In that sense, implementation of NTA models can represent a practical solution and can be extended if TA is not applicable (Lapidoth, 1997), for example because of various political factors and power balances rather than demographic or territorial reasons. However, in most cases, the concentrated groups will favour TA over NTA because TA gives them a territorial base from which to manage their affairs. However, from the majority population's perspective, TA is often perceived in ethnoculturally diverse states as a step towards secession that challenges state territorial integrity. As such, it is a less popular approach. In that respect, NTA has an advantage over TA in that it establishes rights upon the personality principle rather than the territorial principle (Lapidoth, 1997). NTA applicability relies on a subjective definition of nationhood – whose only criterion is

a feeling, belonging or an attachment to one's particular national community (Renner, 1899) – though, as it is applied, NTA in many cases involves a synergy of objective (residence in a territory, or territorial unity) and subjective elements. Renner's initial approach envisaged that self-rule is preferred in the sphere of cultural and educational affairs, where social institutions manage central affairs such as security and foreign policy (Nimni, 2005). In that sense, cultural autonomy is understood as a form of autonomy where the non-majority population can establish a representative body without territorial limitation and conduct cultural or other activities relevant to minority groups on a national or local level (Vizi, 2015). Traditionally, NTA encompasses a mixture of different arrangements such as consociationalism, NCA and other forms of representation that de-territorialise self-determination (Nimni, 2015).

Regarding the decision-making process, commentators distinguish between a voice, a quasi-voice and a non-voice to indicate the ability of NTA institutions to represent the various ethnocultural groups (Malloy, 2015). In many cases, NTA institutions cannot make decisions independently but perform a consultative function; at most, they secure co-decision powers. This distinguishes NTA from TA, which implies singular decision-making power rather than devolved competencies (Weller, 2009). Consequently, TA (unlike NTA) assumes the right to act on its own volition, independence and limited self-rule (Lapidoth, 1997). In that sense, NTA arrangements are considered weaker than TA arrangements. However, respective advantages and disadvantages notwithstanding, TA and NTA arrangements are not mutually exclusive and can be applied simultaneously (Lapidoth, 1997).

Personal, cultural and functional autonomy can be seen as NTA modules. Personal autonomy is based on personal choices amongst the arrangements that exist in the legal order, whereas the institutional form of personal autonomy can be seen as an opportunity for the creation of associations or legal representatives to protect or improve the interests of a minority (Suksi, 2011). Functional autonomy is a pragmatic approach to the promotion of rights of a minority population, an organizational option that is related to the provision of adequate public services to a minority population. That is when private subjects are conferred with public functions and public powers, i.e. when the state transfers particular functions to a private form of minority organization (Suksi, 2008a). Cultural autonomy can be understood as self-rule by a culturally defined group aiming to sustain its own culture (Eide, 1998) where the state allows internal management of the group to which autonomy is granted. Cultural autonomy and management are allocated to a group that is culturally rather than territorially defined and the scope of self-management is limited to cultural aspects, hence authority can be exercised over the individuals that belong to that cultural group. Thus, cultural autonomy supposes some institutions created under the freedom of association (Suksi, 2008a). Associations formed under this horizontal right can secure horizontal relationships between persons belonging to minorities, which enable them to act on behalf of a group in the community (Suksi, 2008b).

It is clear from the above that a scholarly variety of practices and arrangements are labelled as NTA, making it the broadest denominator. The theoretical views encompass cultural, national-cultural, segmental, personal and functional autonomy, with similar or overlapping meanings that stress different features of the applied models and implemented practices (Coakley, 2015). Hence, the understanding of NTA comprises a broader, vibrant and rapidly emerging approach that is not so much a particular model but a generic term that refers to different practices of minority community autonomy that does not entail exclusive control

over a territory (Nimni & Pavlovic, 2020). Since NTA is not a single concept, the perceptions of NTA agreements are reflected as different normative projects.

Legal basis for NTA

Methodology

Non-territorial forms of governance are useful for the maintenance and development of the identity and culture of national minorities. The issues most susceptible to regulation by these arrangements include education, culture, use of minority language, religion and other matters crucial to the identity and way of life of national minorities. This paper considers the normative base of the applied NTA agreements in several examples where NTA is legally acknowledged and protected, analysing: 1) the position of NTA within national constitutions and the shape it takes (being set as cultural, non-territorial or personal autonomy); 2) the position of NTA within other legal acts that complement the constitutional provisions; 3) the content of NTA agreements. For analytical reasons, other parameters are also considered, namely recognition of the minorities within the constitutions and number of the minorities vs total population. The main idea is to gain insights into how national legislations are tackling issues related to NTA agreements, identify the instruments and norms that envisage and grant NTA and examine the contents of NTA agreements. The sample for analysis comprises Hungary, Serbia, Slovenia and Croatia, all European states with legal provisions for establishing NTA agreements within their respective national legal frameworks.

Comparative overview

Based on the above overview, we can observe the variety of NTA forms determined by the political system and the number of minorities and their position within the respective societies. Hungary is a good place to start, since it provides a solid basis for NTA. Here, provisions for cultural autonomy are contained in the Act on the Rights of Nationalities of Hungary (2011) that recognises NTA as a form of *cultural autonomy*. NCA is established as a collective right embodied in the independence of the institutions and the self-governance of national communities. A national *cultural institution* is an institution whose duty is to preserve and make accessible the material, spiritual and cultural values and assets associated with the identity of a nationality and to preserve, practise, popularise and pass on to future generations traditions and the communal use of language. National cultural institutions include: a) institutions of cultural heritage (serving to preserve, maintain, develop and introduce spiritual and cultural heritage and cultural traditions); b) public collections fulfilling national responsibilities (libraries, archives, museums or archives of images or sound recordings); c) national communal events (operated on the basis of a cultural heritage agreement to provide cultural services as regular or *ad hoc* cultural heritage activities).

According to the Hungarian Constitution (2011), Hungary is an ethnonational state in which the nationalities living with the dominant group of the population (Hungarians) form part of the political community and are recognised as constituent parts of the state. In Hungary, fundamental rights are exercised by individuals and communities (Vizi, 2015). On the individual level, every Hungarian citizen of any nationality has the right to freely express and

preserve their identity. On the collective level, nationalities have the right to use their native languages, to be educated in them, to use individual and collective names in their languages and to promote their own cultures. Hungary has a relatively homogeneous population where the minorities (nationalities) form 6.5% of the total population (according to the official data from the Census 2011, Nationality data). Minority populations are dispersed, which makes TA an infeasible option (Dobos, 2016). However, 13 ethnic nationalities present in historical communities – established in Hungary for the past 100 years – are afforded minority status and enjoy rights based on the use of national languages in article 22 of the Act on the Rights of Nationalities of Hungary.

Nationalities have the right to establish local and nationalities self-governments, where the election rules and procedures are regulated by separate, cardinal acts (Hungarian Const., 2011, art. 29). Such rights are granted in the Act on the Rights of Nationalities that has the status of a cardinal act and aims to put into effect the principles set within the Fundamental Law (Hungarian Constitution, 2011). Based on articles 2 and 3 of the act, the nationalities can enjoy NCA, realised as self-governance. Minority self-governments (MSGs) are established in the settlements where nationalities live, and being part of a minority is an individual determination. MSGs are partners to local and central authorities and have rights to consultation and agreement for matters concerning education, use of language, and culture. Moreover, MSGs enjoy functional and financial autonomy in the establishment, running and managing of educational and cultural institutions (Advisory Committee, 2010). Local MSGs are connected at a regional and national level. At the national level, MSGs can veto not only proposals concerning cultural, educational or language issues but also the appointment of leaders to minority institutions. Furthermore, they can give their opinion on draft laws concerning the minority communities, monitor minority education and participate in the development of minority primary education curricula (Dobos, 2016).

There are many more minorities in Serbia. According to the official data (Demographic Yearbook 2018), minority populations together represent around 20% of the total population. The Serbian Constitution (2006) declares the general protection of national minorities that are not listed in the constitution (Beretka & Székely, 2016). According to article 75, persons belonging to national minorities can elect national councils to exercise the right to self-governance in the fields of culture, education, information and official use of their language and script, in accordance with the law. The constitution forbids artificial changes to the population structure in the areas where the members of the national minorities live traditionally and in large numbers (Serbian Const., 2006, art. 78) (n.b. such as taking measures for systematic inhabitancy of non – minority population; minority displacement, or changing of the administrative boundaries, etc.). The national councils have three types of competencies: decision-making powers, consent and proposing powers, and the power to express opinions on all matters pertaining to the culture, education, information and language use of national minorities (Korhecz, 2013) – including consent or opinion concerning the identity of the national minority. Hence, national council powers are limited to making proposals or offering opinions (their consent is needed for the election of educational institution managers) (Law on National Councils of National Minorities, 2009; 2014, art. 116). Regarding implementation of the relevant provisions, there are general concerns about the legitimacy of the councils, underfunding and lack of cooperation with various public authorities, etc. (Korhecz, 2015).

The Slovenian Constitution (1991) awards special status to the Hungarian and Italian *national communities* and to the Roma community (that has different status, compared to the

Italian and Hungarian communities, regulated by law). Beyond the constitution, several special laws regulate communities' status, including use of an anthem, use of a flag, use of names, the law on local elections, etc. (Petricusic, 2004). Slovenia is considered to be an ethnically homogeneous state – with minorities representing just 1% of the population (Petricusic, 2004) – and rights are granted to autochthonous communities (Slovenian Const., 1991, art. 5) but not to groups that became minorities with the dissolution of the Socialist Federal Republic of Yugoslavia (Komac & Roter, 2015). In the area that minorities inhabit, they can establish self-governing national communities (as persons governed by public law) and enjoy cultural autonomy. The highest body of the self-governing national community is Council, elected by the members of the national community. Elections for the Council representatives are run in parallel with the elections for the local self-government unit representatives. The communities are directly represented in the local self-government units and in the National Assembly (one deputy is from the Hungarian national community and one deputy is from the Italian national community) (Slovenian Const., 1991, arts. 64, 80; Act Amending the Local Self-Government Act, 2018, art. 39). Unlike the Italians and Hungarians, the Roma are dispersed around Slovenia. Around 20 municipalities with the largest Roma populations, which are regarded as settled, need to elect one Roma councillor (Act Amending the Local Self-Government Act, 2018). Although a distinction is made between Roma who traditionally lived in Slovenia and those who arrived with the dissolution of the Socialist Federal Republic of Yugoslavia, how that distinction affects the rules for protection remains unclear. The Roma Community Act establishes a special body, the Roma Community Council of the Republic of Slovenia, to represent the interests of the Slovenian Roma in relation to state bodies. The Roma Community Council comprises 14 representatives of the Roma Union of Slovenia and 7 representatives from amongst the Roma councillors elected to municipal councils (Roma Community Act, 2007). According to this legislation, persons belonging to the Roma community have access to special rights, although there is acknowledgement that implementation of this legislation has been unsatisfactory and that the authorities have yet to amend it (Advisory Committee, 2017). Additionally, the Roma Community Council is regarded as divisive and has not been perceived as a representative for the whole Slovenian Roma community (FRANET, 2012). Law on Self-governing Ethnic Communities (1994) represents a basic framework for NTA, however there is a law that provides for members of the national communities to exercise their rights outside the communities they live in. The Slovenian system combines the personality principle (Slovenian Const., art. 61: everyone has the right to freely express affiliation with a community) with the territorial principle (people have rights within the settlements they inhabit). Although the system protects only three communities, its functionality in practice is problematic, mainly for financial reasons (Komac & Roter, 2015).

In Croatia, minorities represent 7.47% of the population. Within the Croatian Constitution (2010), members of all national minorities are guaranteed freedom to express their nationality, to use their language and script, and to enjoy cultural autonomy (Croatian Const., 2010, art. 15). There is an organic law with respect to the national minorities adopted by the qualified majority (the Constitutional Law on Human Rights and Freedoms, and the Rights of Ethnic and National Communities or Minorities in the Republic of Croatia, 2002) and many bylaws (Charter on the Rights of Serbs and Other Nationalities in the Republic of Croatia; special laws for the use of language and script, etc.). Minorities can form MSGs on the principle of personal autonomy. Minority groups with fewer than 100 members can elect a representative instead of an MSG (Constitutional Law on the Rights of National Minorities,

2002, art. 24). Existing MSGs have some elements of territoriality: they can influence local self-government, nominate candidates and participate in local affairs. Local self-government authorities must seek the opinions of MSGs and representatives, so there is an obligation to collaborate. In certain conditions, MSGs can establish a steering committee to make decisions about the insignias and symbols of national minorities, as well as their holidays, in cooperation with the National Minority Council (Constitutional Law on the Rights of National Minorities, 2002, art. 33), a national-level institution whose role is to facilitate the participation of minorities in public life (Constitutional Law on the Rights of National Minorities, 2002, art. 35). The National Minority Council has in many aspects no more than a consultative role: it can seek information, make proposals and express views and opinions.

Discussion

Across the various policies, most contemporary NTA arrangements were developed in the new democracies in Eastern Europe at the beginning of the 20th century (Korhecz, 2013), though many of the original proposals for autonomy arrangements were subsequently rejected (Dobos, 2016). Although there are many similarities in the examples analysed in this study, there are almost as many differences – such as respective attempts at gaining membership of the EU – despite the similar political situations and transformative changes that occurred in the post-communist period. On a nomothetical level, in general, NTA is not explicitly part of the constitutional terminology. Only the Constitution of the Republic of Croatia formally acknowledges the existence of cultural autonomy for national minorities. Otherwise, NTA is part of other legislation relating to national minorities (such as the Hungarian Act on the Rights of Nationalities (2011); the Law on National Councils of National Minorities in Serbia (2209; 2014); the Constitutional Law on Human Rights and Freedoms and the Rights of Ethnic and National Communities or Minorities in the Republic of Croatia (2002), etc.). Moreover, the content of NTA agreements is reflected in special laws that concern minority issues and related sub-laws. Various terminology is used in national legislations with respect to minorities (such as nationalities, communities, or minorities) to describe those segments of the population with different ethnic, cultural or religious characteristics than the majority of the population (see Table 1).

Regarding the application of NTA, and in contrast to the original idea of exercising rights based on the personality principle, many of the NTA modalities have a territorial base that is (explicitly or implicitly) legally established. The definitions of minority in the analysed cases contain both subjective and objective elements, whereas, concerning individual self-identification, subjective elements are more important and prevail. For example, in Slovenia, in addition to the subjective affiliation, recognised minorities can enjoy NTA in their communities (e.g. in the officially designated Slovene–Italian and Slovene–Hungarian ethnically mixed areas, or in the 20 municipalities in which Roma live). This means that objective elements apply when defining community membership, but that those who live outside the designated areas do not have access to the autonomous bodies and related rights. Often, NTA institutions are connected with self-government units, as in Croatia, Hungary, etc., which represent a territorial base for the exercise of rights based on the personality principle. However, in Serbia, as NTA institutions, the national councils exemplify the purest application of the personality principle.

The dissolution of the former Yugoslavia raised the fears of further undermining peace and prosperity especially among the countries in transition to democracy. As a follow up to the Charter of Paris for a New Europe (1990), the Organization for Security and Cooperation in Europe (OSCE) in its Helsinki Decisions (1992) established the position of High Commissioner on National Minorities (HCNM) in order to act in a way to prevent ethnic and minority conflicts at the earliest possible stage. Within its activity HCNM identified certain recurrent issues in a number of OECD states, such as the issues of minority education, the use of minority languages, and other aspects that are relevant for the maintenance and development of the minority identities. In addition to these themes, attention was drawn to proposing the forms of effective participation of national minorities in the governance of States. Following those considerations, the group of internationally recognized independent experts conceived recommendations and alternatives – in line with the relevant international standards, commonly known as The Lund Recommendations on the Effective Participation of National Minorities in Public Life (Lund Recommendations), with a view to achieving an appropriate and coherent application of relevant minority rights in the OSCE area (OSCE, 1999). Regarding the complexity of regulations related to NTA, it is important to mention that the Lund Recommendations do not specify an exact form for legal acts, although in some cases they suggest that detailed legal arrangements would be more useful while in others they indicate that a legal framework may be sufficient (OSCE, 1999). The professional comments of the specialised bodies do however seem to agree that legislation dealing with minority issues, and within NTA agreements, is procedurally overburdened, such for example in Hungary and in Croatia. According to those views, the complexity of the procedures restricts autonomy and does not provide enough space to accommodate the realisation of minority rights. In turn, that prevents the creation of legal grounds that provide necessary flexibility (Venice Commission, 2001; Venice Commission, 2012). Unlike the detailed regulation observed in some of our examples, the legal protection of recognised minorities is sometimes dispersed amongst many laws with no single, solid and comprehensive regulation addressing minority issues (as in Slovenia) (Komac & Roter, 2015). In some cases, although regulation is comprehensive and based on European standards (as in Serbia), NTA is seen as a substitute for reducing the previously existing rights (Beretka & Székely, 2016).

The content of NTA agreements is determined not only by the relevant political system but also by the legal status of the minorities within the system. In Slovenia, for example, only three minorities are legally recognised and can enjoy NTA whereas others are outside of the system; or in Hungary, protection is generally extended only to historically established communities.

Most of the cases analysed in this study are considered as homogeneous or at least relatively homogeneous states (Slovenia, Hungary, Croatia). The analysed NTA agreements generally focus on bigger or autochthonous communities, leaving the smallest or the 'newest' minorities without sufficient protection, with some exceptions in Hungary where relatively new communities have managed to secure their position as the 'old' ones. Regarding protection and the promotion of identity, most of the NTA agreements in the studied examples share one characteristic: NTA is reserved for matters of cultural or educational relevance where the minorities – through different forms or modalities (such as MSGs, national councils and the like) – can assume a consultative role or ensure representation. Thus, the minorities can enjoy functional and financial autonomy in the establishment, running, and management of educational and cultural institutions. In short, minorities have the right to be consulted, they can

propose decisions and offer their views and opinions, but they do not have decision-making powers that will allow them significant self-governance (see Table 1). Their most powerful right with respect to decision-making is the right to veto, which has limited scope (such as in Hungary, where national councils can veto proposals concerning cultural, educational, or language issues) or is rarely used (as in Slovenia).

Conclusion

NTA – often referred to as 'personal' or 'cultural autonomy' – is mostly used when groups are geographically dispersed. In the analysed cases, the documentation provides legal grants for NTA arrangements, though the desired balance between stability and flexibility is not always achieved. However, based on the analysed examples and despite their differences, we can see similarities: the general positioning of NTA in the countries' respective political frameworks and, more specifically, that NTA is clearly positioned within legal frameworks for matters concerning the protection and promotion of recognised minority identities but not for matters that involve their political participation in decision-making processes.

Minority participation in public decision-making, especially regarding issues concerning the minority community and its specific identity, represents a democracy marker. Minority participation requires various legal and political arrangements, state policies and practices, since uniform solutions do not exist, and their existence is not desirable. Effective national minority participation in public life assumes involvement in decision-making, including not only arrangements at the central, regional and local levels, elections, and advisory and consultative bodies, but also self-governance, covering territorial and non-territorial arrangements. In that respect, guarantees, including constitutional and legal safeguards, are crucial for allowing the system to function. According to the Lund Recommendations, participation assumes the opportunity to make a substantive contribution to decision-making processes concerning the political, economic, social and cultural life of the country (OSCE, 1999).

NTA can be understood as a 'frame' in which ethnopolitics is shaped by experts and practitioners. It is not a single normative model or coherent principle, and that raises doubts about its usefulness beyond mere political rhetoric or suitability as an analytical model with definite conventional meaning (Osipov, 2015). In short, it makes it difficult to establish common legal NTA denominators. Based on that overview, we can observe the variety of methods labelled as NTA. Those arrangements and their content can depend on the political system in which they are enacted, on the number of the minorities and their position within the society or on other economic preconditions that are not part of this analysis. However, it is clear that NTA agreements do in general secure some protection and promotion of minority identities reflected through education, culture and the use of languages and symbols but do not provide (or at least restrict) decision-making powers beyond those areas. Nevertheless, if other mechanisms for minority participation are granted and legally protected (such as participation in political parties and associations, reserved seats or other national-level measures), then NTA can complement those endeavours.

Table 1: Legal comparative overview, NTA agreements

Country	Minorities within the constitution	No. of minorities vs total population	NTA agreements within the constitution	NTA agreements within the other legal acts	Forms of NTA	Content
Hungary	Nationalities (13) (historical minorities that have lived in Hungary in for the past 100 years)	6.5% of the population	–	Act on the Rights of Nationalities (2011)	*Nationality cultural autonomy* *Minority self – governments (the expression 'Nationality self-governments' is used in legislation)* (established in the settlements where nationalities live; connected at the regional and national levels)	partners to local and central authorities rights to consultation and agreement for the issues of education use of language culture functional and financial autonomy in the establishment, running and management of educational and cultural institutions can veto proposals concerning cultural, educational or language issues and the appointment of leaders to minority institutions can offer opinions on draft laws concerning the minority communities can monitor minority education can participate in the development of minority primary education curricula
Serbia	Minorities	20% of the population	–	Law on National Councils of National Minorities (2009, 2014)	*National councils*	Competencies of the national minority councils with regard to culture, education, information, official use of language and script, electoral procedures for the national councils and their funding, as well as other issues concerning the national councils. can propose decisions can provide opinion on issues related to the identity of the national minority their consent is needed for the election of managers to educational institutions

Slovenia	National communities (Hungarian and Italian; Roma community have special status regulated by the law)	1% of the population	–	Law on Self-Governing National Communities (1994) Act Amending the Local Self-Government Act (2018) There are several special laws regulating communities' status, such as the Roma Community Act (2007); the law for use of the anthem; the law for use of the flag; the law for local elections, etc.	*Self-governing national communities (the highest body is Council)* (in designated areas)	give their consent to matters relating to the protection of the special rights of national communities, on which they decide together with the bodies of self-governing local communities adopt positions and make proposals and initiatives to the competent authorities, promote and organize activities that contribute to the preservation of the national identity, by establishing organizations and public institutes, participate in the planning and organization of educational work and in the preparation of educational programs Roma Community Council is established in a special way and has special competencies The communities are directly represented in the local self-government units in which they reside (with at least one representative in the Municipal Council) and in the National Assembly (one deputy is from the Hungarian national community (and one deputy is from the Italian national community)
Croatia	National minorities	7.47 % of the population	*Cultural autonomy*	Constitutional Law on the Rights of National Minorities in the Republic of Croatia (2002); many bylaws	*Minority self-governments* Minority groups with fewer than 100 members can elect a *representative* instead of minority self-government *National minority council* – a national-level institution	can participate in local affairs can influence local self-government and nominate candidates can establish a steering committee to make decisions about insignias and symbols of national minorities, as well as their holidays, in collaboration with the National Minority Council can facilitate the participation of minorities in the public life of the country consultative role can seek information, make proposals and offer views and opinions local self-government authorities must seek the opinions of the minority self-government and representatives obligation to collaborate

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Piet Goemans

Karl Renner's guarantee for a national right to co-determination

Introduction

In the writings on his famous reform plan to solve the national question, Karl Renner often mentions national minorities' right to co-determination. Renner understands this as a right to participate in statewide or supranational[1] policy-making (pp. 24–25).[2] As such it differs from the right to self-determination[3], which is the right to make policy on one's own and which Renner grants to minorities on cultural and educational matters. Arguably, self-determination on these matters is not enough. It still allows for the possibility of majority tyranny on other issues. Hence, Renner includes minority co-determination on other issues and he seems to be sincere about this. However, at first sight, it is not obvious where in his reform plan this co-determination occurs. There are some possible sites of minority co-determination among Renner's proposed institutions. The Federal Senate[4] and the Federal Council come to mind (see below for a brief description). But he explicitly keeps these places for minority co-determination minimal, arguing for an integrated and unified federal government. This raises the following question: where, in Renner's reform plan, do substantial forms of minority co-determination occur?

The argument in this paper will be that the most important place for minority co-determination in Renner's plan is hidden from sight because co-determination occurs mainly sporadically. It occurs during moments of constitutional reform that take place after Renner's initial constitutional reform is implemented – I will call these 'subsequent constitutional reforms'. Rather than setting forth a finished constitutional reform that would put a final stop to the national conflict, Renner proposed a constitutional framework that would structure

1 I follow Renner in using the words 'nation' or 'national' to refer to ethno-cultural units and not to the citizens of a state.

2 Stand-alone page numbers in brackets that are not preceded by a date are references to Renner (1918), his main theoretical work on the national question. For clarity's sake, however, I include the date for references to this work in case of references that do not stand alone.

3 How does Renner conceive of national self- and co-determination? Both concepts are part of the notion of national autonomy (p. 24), although he calls self-determination 'national autonomy in the strict sense' (p. 128). National autonomy, for Renner (p. 24), implies incorporation into a higher whole. His concept of national autonomy stands opposed to the nationalist concept, which implies national sovereignty and which thus retains a kind of anarchist freedom between the nations (Renner, 1916, p. 72, 1918, p. 24). For Renner, nations can only be autonomous, i.e. not subject to a dire international state of nature, if they are part of a supranational organisation. The nations co-determine when they give shape, together with the other nations, to the policies of this supranational organisation. Tthey self-determine in the sphere in which they are left alone by this supranational organisation (pp. 150–151). Renner (p. 234) implies that the concept of self-determination includes making one's own laws, governing oneself and adjudicating oneself – so having all powers of the state, be it merely on certain matters.

4 By 'federal' I mean the central, statewide level of government, or anything that pertains to this level. By 'federated' I mean the lower subunits of the federation, or anything that pertains to this level.

subsequent constitutional reforms. National minorities would, in Renner's plan, be the most important initiators and co-determinators of those subsequent reforms. Next to arguing that this is the correct reading of Renner, I will argue that the reason why Renner kept strong forms of minority co-determination out of the federal government is to guarantee federal stability.

Before we start, let us take a brief look at Renner's proposed institutions. Nations would mainly self-determine through the National Council, a body that non-territorially represents all members of a nation. The non-national federal legislative branch consists of two chambers: the Federal Parliament (pp. 273–279), which is the most important chamber, and the Federal Senate or First Chamber (pp. 279–280). The non-national federal executive would primarily consist of a Council of Ministers with a Chancellor at its head (pp. 280–284). With the aim of representing the nations in the federal executive, Renner adds a Federal Council (p. 284). Next to the Chancellor and representatives of the regions, this council would also consist of the heads of the National Councils, the Federal Secretaries of the Nations (p. 285). With the same aim, Renner adds the Heads of the Federal Administration (pp. 283–284) to the federal executive, which would be national but subordinated to the non-national ministers. The most important territorial federated subunits are the *Kreise*, i.e. canton-like places of decentralised local self-government.

First, I explain Renner's argument to keep minority co-determination in the federal institutions minimal for reasons of federal stability. In the second section, I argue that Renner was serious about national minority co-determination during subsequent constitutional reforms. In the last section I point out that in Renner's plan the National Councils, instead of disintegrated national or ethnic parties, would co-determine those reforms and I argue that this has advantages regarding federal stability.

An integrated Federal Parliament

One of the main reason's why Renner advocated a centrist theory of democracy is federal instability. Federal instability is a very difficult problem that might even be beyond solving. Contemporary scholars of federalism have argued that an integrated party system – in which there are no major regional, ethnic or, as Renner would call them, national parties – is one of the most important factors in ensuring federal stability (see the authors listed in Filippov et al., 2004, pp. 177–182). Federations are an uneasy balance between break-up and unification, i.e. the end of the *federal* order. Party-system integration, or lack thereof, is a powerful factor, which can easily tip that balance in either direction. Given that it is so difficult to keep a party system integrated in a multinational polity (see Horowitz, 1985), the risk of multinational federations is that of break-up. The problem of federal instability is deepened by two opposing pitfalls that solutions run a risk of falling into. The first pitfall is when minorities develop an attitude of resignation as a result of majority tyranny, the unchecked dominance of the majority. The solution to majority tyranny includes mechanisms that foster minority co-determination in the main legislative chamber, like minority delegates or a minority veto. The second pitfall is the hampering or bogging down of the governmental process. A core part of the problem of federal instability is that the mechanisms to avoid the first pitfall of majority tyranny increase the risk of running into the second pitfall. (Mechanisms to avoid the second pitfall also increase the risk of running into the first pitfall – but that is less of interest to us here.) Minority vetoes are overused and delegates hamper the formation of governing coalitions. Many political systems can stand a bit of bogging down. Given the predicament

of multinational federations, however, the question is one much more of trying to avoid any kind of further overload. Ethnic or regional minority parties are sure to overuse their minority veto and push delegates into destabilising positions. In short, multinational federations risk break-up and certain mechanisms intended to alleviate majority tyranny increase this risk. Yet, majority tyranny also has to be avoided.

Renner anticipates this problem. His strategy is to keep minority interests out of the most important legislative body, in order not to bog down the governmental process, but propping up the other ways in which minority co-determination can happen to avoid majority tyranny. As I will argue, Renner believes that a unified Federal Parliament, without minority vetoes and without minority delegates, is necessary for federal stability because it is necessary to facilitate the emergence of an integrated party system, which is instrumental in securing federal stability. Renner believes that such a unified Federal Parliament is incompatible with strong forms of minority co-determination in that parliament.

Renner would concur with the analysis that puts the blame for federal instability largely on national parties. He has no good words for national parties, calling the dominance of local and regional parties 'this evil of all evil, this distressing symptom of the dissolution of the empire' (p. 238). He speaks of the 'repulsiveness, contemptibility and misery of national parties' (Renner, 1914, p. 21). Furthermore, he says that '[a] multinational state cannot be the state of national parties when it does not want to accelerate its own dissolution' (Renner, 1914, p. 22, 1918, p. 33). Much of Renner's (1901, 1906, pp. 129–137, 1918, pp. 278–279) account of democracy is an analysis of the requirements for dissolving the national parties in their socio-economic components and creating integrated parties on the basis of socio-economic issues. In short, Renner blames national parties for federal instability and hopes that an integrated party system will lead to federal stability.

To understand how Renner conceives of the emergence of an integrated party system, we need to understand his surprisingly up-to-date conception of the formation of parties in general. All professions have different interests (Renner, 1901, pp. 2–3). These interests provide the basis upon which small parties and factions are formed (Renner, 1906, p. 109). The main political fault lines, however, are a few major cleavages that split the professions into two camps: one cleavage is, for example, formed by how much operational capital a company has (Renner, 1901, p. 3, 1906, p. 115), another is, to give another example, formed by the urban–rural divide (Renner, 1906, p. 115). This results in two fluid blocks standing on either side of the cleavages – fluid because one side of a cleavage overlaps only partially with the corresponding side of another cleavage (Renner, 1906, p. 114). Renner thus believes that in a well-functioning democracy a two-party system will emerge on the basis of these two blocks, consisting of a left-wing, progressive, proletarian 'yes'-party and a right-wing, conservative, bourgeois 'no'-party (Renner, 1901, p. 27, 1906, p. 109). Next to these major parties, smaller parties or factions will emerge based more directly on the socio-economic interests of the professions.

Renner believes that in a well-functioning party system the competition of the two main parties for the allegiance of the smaller parties or factions would be the motor of party-system integration. All nations are split along socio-economic lines (Renner, 1906, p. 132, 1914, p. 23, 1918, pp. 70, 275, 277–278). The competition between the two major parties implies an attempt to capture the socio-economic subgroups of all nations that have affinity with the major party's own socio-economic ideology. The major parties compete with each other over the allegiance of socio-economic subgroups by implementing policy or putting together a programme that favours, for example, the interests of farmers or small companies – regardless

of which nation the farmers or small company owners belong to. In this way national parties would be dismantled and similar classes of all nations would be integrated into the two major political parties (Renner, 1901, p. 29). 'Soon alliances will form between the progressives of all nations, the clerical people, the friends of industry, the agrarians of all nations' (Renner, 1906, p. 136). The question will be whether the bourgeoisie or the proletariat will attract the middle classes, the farmers and the manual labourers (Renner, 1901, p. 27).

What role, according to Renner, should a Federal Parliament play in the integration of the party system? It is clear that Renner attributes a very important unifying or integrating role to the Federal Parliament. The Federal Parliament is the most important organ of unity (Renner, 1901, p. 5, 1918, pp. 273–274), 'the actually unifying organ' (p. 271). A well-functioning parliament would make the *common* interests, on which the federal level decides, 'visible, tangible, palpable' (p. 278). Citizens should, through the elections for the Federal Parliament, acquire and express the insight that they are directly related to the federal power, not indirectly through the nations (p. 279).

To get a deeper understanding of Renner's view on the integrating function of the Federal Parliament, we need to understand an idea that repeatedly shows up in his account of democracy: the free combining and dissolving of coalitions of socio-economic interests, in other words, the changing of alliances (Renner, 1906, pp. 113–114, 116, 125–126, 1918, pp. 276, 278). As we will see, it is this free combining and dissolving of coalitions of interests that, according to Renner, makes a unifying parliament incompatible with strong forms of minority co-determination. According to Renner, the possible alliances that make up the major parties constantly change (Renner, 1906, pp. 115–116). These changes depend on the changing number of people having this or that profession (pp. 278–279) and on which cleavage happens to be the predominant one (Renner, 1906, p. 115). There is thus an ever-changing fault line between the two major parties, which should result in these parties waging a tug-of-war with each other over potential new voters. Renner says that this combining and dissolving of coalitions of interests should be free. For him this process, if it is free, is the motor that integrates or unifies the federal polity. A well-functioning parliament unifies the polity by filling the discussion in the parliament and the public opinion with this tug-of-war (p. 276). The fear for these changing alliances would make the parties thoughtful, matter-of-fact, sober, with a sense of responsibility (Renner, 1906, p. 125), in other words, focused on sound socio-economic policy-making and not resorting to disintegrating nationalist slogans. Members of parliament would sacrifice part of the special national, and potentially disintegrating, interests they represent to keep the majority afloat, or to build a new majority.[5]

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5 There is a difficulty of interpreting Renner here. His argument for his reform plan and that for universal and equal suffrage partly overlap. Universal and equal suffrage implies the absence of a curiae system in which estates get a fixed number of seats in parliament. Universal and equal suffrage was introduced and the curiae system thus abolished in 1907. The primary aim of Renner's work of 1901 and part of his aim in passages in his 1906 book is to argue against the curiae system. In his 1918 book Renner's aim is to argue for a unified parliament, but nevertheless much of what he writes is similar to the passages from before 1907. I think – but one could make another interpretation of Renner here – that it is similar for a reason: the abstract criticism of hindering the free combining and dissolving of interests, which occurs in passages from before and after 1907, can be applied to a curiae system as well as a parliament with strong forms of minority co-determination, like delegates. Renner (p. 276) explicitly applies this abstract criticism to a national delegate system. Hence, I have interpreted Renner here as thinking that his analysis demands universal and equal suffrage as well as a parliament without strong forms of minority co-determination.

Now we can understand Renner's view that a unified parliament is incompatible with strong forms of minority co-determination. A unified parliament allows for the free changing of alliances on the basis of socio-economic issues. He says that '[e]very system that hinders this free process of combining and dissolving of coalitions of interests is absolutely harmful' (p. 276). Renner explicitly says that a unified parliament cannot be made up of delegates from the National Council. Delegates have a strict mandate, which prevents them from giving due precedence to the common interests over their own special interests. According to Renner, this would hamper the free formation of majority coalitions and would thus not be 'an instrument for unifying but for dissolving the statewide community' (p. 276). For the same reason he also says that politicians cannot combine a seat in the Federal Parliament with a seat in one of the National Councils (p. 276). Renner (1916, p. 69) also explicitly dismisses minority vetoes, be it in a somewhat different context. Furthermore, on a more abstract level, strong forms of minority co-determination, defined as forms that can effectively weigh on statewide decision-making, hinder the aforementioned free changing of alliances. Any representative who primarily thinks about his or her special minority interests could artificially strengthen a majority coalition or artificially make it easier for the opposing coalition to conquer government – 'artificially' here stands in contrast with the free combining and dissolving of socio-economic interest coalitions.

Added to the free combining and dissolving of interests, Renner offers another argument for keeping a unified parliament free from strong forms of minority co-determination. He believes that regular socio-economic policy-making has integrative effects. The more the bourgeoisie has to compete over socio-economic policies with a unified proletariat, the more it will have to unify or integrate itself (p. 275). Let the proletariat implement some socio-economic policies and see how quickly the bourgeoisie will return to parliament to prevent taxes from being raised (Renner, 1906, p. 119, 1918, pp. 62, 197) and how quickly the national bourgeoisie will drop its strategies of boycotting and obstructing parliament. Hence, the more a parliament churns out socio-economic policies, the more unifying and integrating its effects. This too is incompatible with strong forms of minority co-determination in that parliament. The more minorities can block (socio-economic) policies, the less integrating the effect of the parliament.

Thus, Renner believes that a unified parliament plays an important role in producing an integrated party system. But it is not alone in achieving this goal. There are other institutions in Renner's reform plan that come to the aid of the Federal Parliament, like the *Kreise*, the National Councils and proportional representation. The national self-determination that would occur in the *Kreise* and the National Councils would, most importantly, satisfy much of the special interests of minority nations, thereby freeing up the federal institutions to deal with the common interests (p. 273). National self-determination would take away much of the 'momentum' of the national question when it comes to elections for and discussions in the Federal Parliament (p. 276). This 'momentum' is placed in the separate elections to the National Council (p. 278). Furthermore, decentralisation to the *Kreise,* especially the homogeneous ones, would relieve the federal level from the conflict-inducing national issues, thus opening up the federal level for socio-economic issues (pp. 198, 213). Moreover, the electoral system, proportional representation, would strengthen the socio-economic divides in all nations, allowing socio-economic subgroups within nations to act independently from their national elites and forge integrative alliances with one of the major parties (p. 278). Proportional representation, as opposed to majoritarianism, would also go some way towards preventing majority tyranny and thus keep the minorities from developing an attitude of resignation (p.

279). All these integrative elements taken together make it plausible that an integrated party system would emerge and this is what Renner aimed for.

Let us take a brief look at minority co-determination in the other federal institutions. The legislative is of course the main candidate. As mentioned, Renner does allow for a chamber that represents the federated subunits: the First Chamber or Federal Senate. But the few paragraphs he spends on this chamber, indicate that he did not see it as a site for strong minority co-determination. In the one paragraph in the 1918 book devoted to this chamber, he starts by repeating that the main chamber, the Federal Parliament, should be one of centrist direct union (pp. 279–280). Then he says that 'If one wants next to this [parliament] a First Chamber, then one creates by means of indirect union a Senate' (pp. 279–280). He thus implies that it is not even necessary to have a chamber that represents the federated subunits. By 'indirect union', Renner means delegations from the National Councils and regions and he immediately goes on to refer to the disadvantage of delegations, immobility. He suggests that this disadvantage has to be offset by a more mobile element, namely, a third of the members of the Federal Senate should be appointed by the Head of State (p. 280). Regrettably, Renner says nothing about the legislative powers of this chamber. But we may assume that he does not think that this should be a very important place for minority co-determination. There are some forms of minority co-determination in the federal executive, but these are not strong either. The Heads of the Federal Administration will be appointed by the nations, but, as their name indicates, they are merely administrative positions (pp. 283–284). That leaves the Federal Council, a body in which all nations will be represented by their Federal Secretary of the Nation (p. 284). This council only has advisory powers, though. It is, however, the prime candidate for initiating the subsequent constitutional reforms, which I will explain in the next section.

To sum up, for Renner, strong forms of minority co-determination in the federal institutions, especially in the Federal Parliament, are incompatible with federal stability. They would not give enough incentives for integrating the party system and, also according to Renner, this is important for federal stability.

Minority co-determination during subsequent constitutional reforms

To understand Renner correctly, it is important to see that he proposed a constitutional framework rather than a finished constitution. There are many ways in which his proposal leaves room for manoeuvre. First of all, he aims to facilitate all kinds of possibly different and evolving compromises between the nations, for example on the language regime on the local level and the central administration. Furthermore, he leaves open the exact role of the Federal Council (p. 285) and the powers of the Federal Senate (pp. 279–280). The main ways in which the scope of his proposal could be broadened are in the division of powers and the self-government of the *Kreise*.

Renner is vague about the federal division of powers. He often repeats the simple formula: military and economic matters for the state, educational and cultural matters for the nations. But he does not get much more specific than that. The list of sovereign powers he gives leaves many powers undivided and is somewhat abstract. The state would get 'military', 'justice', 'policing' and 'territory'; the nations would get 'public officials'; both nations

and state would share 'representation', 'culture'[6], 'finance', 'natural resources' and 'personal' (pp. 137–145). Elsewhere, Renner (pp. 257–258) is a bit more explicit and, for example, reserves the ministry of education for the nations. We should not put too much weight on this, though, as he only intends it as an illustration (p. 258).[7]

Why is Renner so vague about such an important part of a federal constitution as the division of powers? Of course a federal division of powers cannot be the result of armchair theorising. In the case of Renner's reform plan, however, there is another reason for vagueness. About his list of sovereign powers he says '[o]ne can enlarge or reduce the system of sovereign powers given by us in the previous paragraphs' (pp. 148–149). In other words, Renner would not cling to his list. That Renner sees his division of powers as an unfinished framework is also shown in the following quote. 'Wilhelm v. Humboldt has, in his famous study, tried to stake out "The Limits of State Action". It is the task of a Humboldt of the future Austrian constitution to stake out the limits of a "supranational" state and those of "national" autonomy and to, in this way and then, determine the human rights of nations' (pp. 127–128). Apparently, Renner did not conceive of his reform plan as the final plan that would put a full stop to the national conflict. He expected subsequent constitutional reforms on the national question.

Another important way in which Renner's plan could be expanded is in the role of the *Kreise*. It is hard to overestimate the importance of the *Kreise* in Renner's plan. He repeatedly heralds the English system of local autonomy, the autonomy of the County Councils, and sees this as an example for the *Kreise* (Renner, 1906, pp. 80, 243, 1918, pp. 159, 200, 239–240). These *Kreise* would be places of true local self-government able to legislate within the framework of federal laws, following the example of the English by-laws (pp. 182). Here as well, much room for manoeuvre is left. Legislative frameworks can be quite detailed themselves or they can set only loose perimeters. That the legislative power of the *Kreise* is potentially large is indicated by Renner's comparison of the *Kreise* with the relatively powerful Swiss cantons and his statement that the *Kreise* are 'large enough to be state-like entities on their own' (pp. 199–200). Furthermore, the combination of *Kreise* and National Councils introduces an interesting constellation, whereby the councils could join together the *Kreise*, especially the homogeneous ones, to form a power base for the nations. Hence the *Kreise* could become important places of *national* self-government too.

If we put together these different ways in which Renner's plan leaves room for manouvre, then we end up with a range of possible constitutions that Renner's reform plan allows for, from a multinational federal structure aimed at accommodating the nations to a quasi-centralised state. Suppose the autonomy of the *Kreise* becomes serious and the federal state is limited to economic and military policy-making, then the picture is one that comes close to a multinational federation. Alternatively, suppose the autonomy of the *Kreise* is rather minimal and the powers of the federal state are expanded, then the picture comes close to that of a centralised state.

There are many indications that Renner thinks the nations should, together, play a prominent role in making the decision whether to go in the direction of a centralised state or that of a multinational federation. Here we have the main place for minority co-determination in Renner's plan. Renner thinks that the nations should initiate and co-determine subsequent constitutional reforms. He often speaks of the nations as the primary federal partners, the most important building blocks of the federation (pp. 23, 45–46, 71, 233–234, 253–255).

6 A subcategory of 'culture' here is 'welfare policing', which Renner reserves for the state.

7 See also Renner (pp. 280, 283) for further passages on the division of powers.

He also calls the nations the 'federal people' (p. 260). Thus, the nations give shape to or even own the federal level. If this logic is pushed further, then we enter into a confederal logic, in which citizens are first of all citizens of the nations and only indirectly citizens of the federal state. Not even this confederal logic is strange to Renner (pp. 83–84, 127, 253). For example, in describing the 'collective-federalist' type of reform plan, to which his plan belongs, he (p. 41) says that this collective-federalist type advocates the nation's right of being a separate community and makes the individual first a member of this national community and then of the supranational state. In other words, there are hints not only of a multinational federation but even of a multinational confederation here. Renner presents the federal level as little more than an instrument for doing that what the nations decide to do together, i.e. the nations (co-) own the state.

It might seem difficult to square Renner's rather unified and integrated federal institutions with the nation's ownership of the federation. That is, unless we understand that Renner prefers a lean but well-functioning federal level over a broad but malfunctioning one. His bargain with the (minority) nations consists of demanding a well-functioning, unified and integrated federal level, but in return leaving the question of what to do on the federal level up to the nations. There is textual evidence for this view. Somewhat rashly he says that '[i]n some measure – one can make an even smaller circumscription than the Fundamental Articles made – Austria will remain a state' (p. 153). The Fundamental Articles, which were a Czech proposal for more autonomy during the Hohenwart administration of 1871, left for the federal level only matters of commerce, communications, currency, public debts, state treaties, jurisdictional conflicts and constitutional revisions (Kann, 1983, p. 185). In other words the Fundamental Articles already proposed a very lean federal level and Renner says that one may even make it leaner. The most illuminating quote is the following: 'However wide or narrow the Austrian nations want to draw the circle of tasks that they realise in common, they will in any case declare certain tasks to be common goals of the state' (p. 156). So for Renner the nations ought to decide on the division of powers and they may opt for a lean federal level. In return he demanded a well-functioning, and thus integrated, federal level.

The room for manoeuvre, the important role of the nations in shaping the federal state and the possibility of going into the direction of a multinational federation indicate that Renner truly wanted a federal state in which the nations co-determine the federal order. In what sense is this minority co-determination? Minorities would co-determine the subsequent constitutional reforms. The (minority) nations are the most important actors that decide what to do separately and what to do jointly. That which is done separately then falls under what Renner calls self-determination (either of the *Kreise* or the nations) – hence the main form of co-determination is hidden from sight. That which is done jointly is done in a unified and integrated way, primarily through a Federal Parliament in which there is no room for strong forms of minority co-determination. This offers the nations a serious sense of co-ownership over the federal state; a sense of co-ownership that is, as I will argue next, interesting regarding the problem of federal instability.

Co-determination by legally recognised nations

Minority co-determination during subsequent reforms is interesting with regard to federal stability because it can be put into a legal framework. Why this is interesting becomes clear

when one compares this kind of minority co-determination with the erratic, unpredictable kind of co-determination through national parties.

Largely for the sake of federal stability, Renner places the nations' shared power to initiate and co-determine subsequent constitutional reforms in the hands of specific bodies, the National Councils. Notice an interesting side-effect of non-territorial national registers here. For National Councils to be co-determinators of constitutional reforms they need to be able to plausibly speak for their nation, something that becomes possible with a national register. In addition, the National Councils need the sovereign power to represent their nations. Renner's argument that the National Councils ought to have that power, is revealing: 'Just for the sake of the state, national representative bodies are indispensable. Without them there is a lack of authorised parties to the treaty [*Kompaziszenten*]. Obligations that are taken on by a political party dissolve with the party. How often did a national compromise fail because the national party that concluded the compromise was replaced by another party? A national party cannot oblige the nation, a national representative body can, even when all representatives change' (pp. 138–139). Thus Renner believes that for national compromises (what I have been calling subsequent constitutional reforms) to succeed, the National Councils, and not a national party, need to be the actors that co-determine the compromise, they need to be the parties to the treaty.

Deploying the National Councils, and not national parties, as the co-determinators of subsequent constitutional reforms has advantages for federal stability. First of all, which kind of minority accommodation a National Council defends will already be a stability-inducing internal compromise between the kind of accommodation that is demanded by the members of the nation living in a region in which they are a minority and those living in a region in which they are the majority (p. 142). Furthermore, as Renner argues in the previously quoted passage (pp. 138–139), the National Councils can be held accountable. They are not political parties that hold power temporarily, only to be replaced by perhaps a more radically nationalist faction or party. The National Councils are public bodies that need to portray some consistency in the position they defend. Moreover, the national conflict can be legalised in a certain way. The National Councils can not only be asked to sign a subsequent constitutional reform, they can also be penalised when they do not live up to that contract. Renner (p. 128–129) describes a sort of legal give-and-take relation between state and nations. He implies that if the state respects the nation's right to co-determination, the nations' abstinence from and obstruction of the Federal Parliament may be ignored. The strong Constitutional Court would then be the arbiter on whether the nations' right to co-determination was respected or not. If the state does not respect the nation's right to co-determination, then the court may deem the nation's abstinence and obstruction to be justified and to annul certain policies. Renner provides us here with the elements to put the core of the federal state-nations relation into a legal framework: disputes about the extent of minority co-determination between two opposing parties, the state and the nations, that are bound by an imperfect contract.

Notice how, if integrated party systems are indeed as crucial for federal stability as was argued above, Renner offers us here one of the few ways to give minority co-determination its due place. Federations with integrated party systems – a requirement of federal stability – are likely to centralise too much. The legitimate function of an ethnic or national party in that case is to restore the balance. The difficulty is that, with a strong ethnic party, comes the risk of federal instability. Renner proposes an institution, the National Council, that can take over that function of ethnic parties without incurring an extra risk to federal instability. It does not

incur an extra risk, or much less of a risk, because a National Council, as opposed to an ethnic party, can plausibly speak for the nation as a whole, is not periodically taken over by a more radical wing, can sign a contract, can be held accountable to live up to that contract and can be penalised when it does not live up to that contract. At the same time, Renner's plan is not static or one in which the centralising forces, like integrated parties, hold all the power. If the need arises, if the federation centralises too much, the nations are given the tools to put a subsequent constitutional reform on the agenda. There is a permanent body, the Federal Council, in which the nations are represented, that can constantly monitor whether another constitutional reform might be called for. This kind of minority co-determination – that is pushed out of the sphere of the party system, but can still give the nations a sense of truly co-owning the state, that sees the nations as the initiators and co-determinators of subsequent constitutional reforms – strikes an interesting balance.

Conclusion

It is difficult to formulate a conclusion on the many interesting ways in which Renner's reform plan might work. Here is my inevitably one-sided attempt. Renner sees a conflict between strong minority co-determination in the Federal Parliament and federal stability. A unified Federal Parliament without strong forms of minority co-determination is needed to give a strong incentive to keep the party system integrated. With a unified parliament and an integrated party system, however, the pitfall of majority tyranny is not far off. Renner's strategy is to keep the Federal Parliament unified and integrative but to prop up the other ways in which minorities can co-determine the polity, the most important way being co-determination during subsequent constitutional reforms. He leaves much room for manoeuvre so that subsequent constitutional reforms present a significant way in which minorities can co-own the federation. The advantage of this form of minority co-determination is that it can be embedded in a legal framework, which is promising in light of federal stability. Renner does not force the straitjacket of self-determination on cultural matters upon the nations. There are ways in which he enables serious forms of co-determination for the nations. He does, however, give precedence to federal stability.

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II.
Origins and Operation of Non-Territorial Autonomy Regimes

Costas Stratilatis

Non-territorial autonomy and territoriality: the case of Cyprus

Introduction

Karl Renner (2005) and Otto Bauer (2000, pp. 281–289) advocated the prospect of a multinational state which would recognise nations as legitimate agents of internal self-determination on a non-territorial basis. The members of different nations would organise themselves into legal entities formed in accordance with the personality principle, i.e. the right, not the duty, of every person to choose their nationality. National councils would be instituted at all levels – district, region and state – and be equipped with comprehensive powers in the areas of education and culture, including the powers to establish schools and other institutions, tax their members and provide them with legal and material assistance irrespective of their residence. The state would retain many of the powers traditionally ascribed to sovereignty. The parliament would be bicameral, with the first chamber representing nationalities and territories, and the second elected by universal suffrage. Relieved of the burden of mediating national struggles, the state would become the forum of material interests and of party politics. Class struggle in the central state forums would hopefully advance towards a socialist society in which everyone, not only the privileged classes, would be entitled to an equal share in the cultural life of their nation. Nations would thus become fully-fledged communities of culture.

The constitutional vision of the Austro-Marxists[1] was not implemented in the Habsburg Empire. Although some features appeared sporadically (Kuzmany, 2016), they were too late to prevent the dissolution of the Empire. In the interwar period, forms of national cultural autonomy (NCA) were adopted in the Baltic states, most importantly in Estonia (Smith, 2016), Finland and Czechoslovakia (Coakley, 1994, pp. 305–308). The Austro-Marxist model has today become a source of inspiration for the theory of non-territorial autonomy (NTA). Renner and Bauer are typically referenced in the beginning of analyses of existing NTA such as those in Hungary (Krizsán, 2000, p. 250; Vizi 2015, p. 38) and Russia (Bowring, 2002).

In an article expressing scepticism about the analytical value of the concept of NTA, Osipov (2018, pp. 633–634) observes that the short-lived bicommunal statehood of Cyprus (August 1960 – December 1963) is '[p]erhaps the only case of a corporate-type institutional design directly analogous to the Austro-Marxist' model. Indeed, even a cursory reading of the Constitution of the Republic of Cyprus of 1960, which is still in force today (with its unamendable provisions concerning the representation of the Turkish Cypriot community in state organs being considered inoperative), would reveal interesting similarities. As we discuss below, the Cypriot version of the principle of personality was not as liberal, and the legislature had only one chamber, but in other respects, including the two Communal Chambers, with

1 For which see also Arzoz, 2020 (on Renner), Máiz and Pereira, 2020 (on Bauer) and Nimni, 2007.

their legislative power in matters of religion, education and culture, the polity of Cyprus could be taken as approximating the Austro-Marxist model.[2]

Cyprus is an idiosyncratic case of NTA *qua* NCA, however, because the constitutional order that incorporated NCA was heavily influenced by *territoriality*. This term connotes modes of human agency, with the corresponding social practices and power relations, whose defining trait is 'the attempt by an individual or group (*x*) to influence, affect or control objects, people and relationships (*y*) by delimiting and asserting control over a geographic area' (Sack, 1983, p. 56). Territoriality becomes geopolitical when it is directed to, or stems from, the realm of international relations.[3]

The concept of territoriality brings to the fore an important condition of modernity: the denaturalisation of the spatial aspect of political coexistence. In modernity, territories are not (only) passive containers of social activities. They are 'fundamental elements of human socio-spatial organization' (Delaney, 2009, p. 196); bounded social spaces charged with meanings (Delaney, 2005, pp. 14–16). Those can be interpreted and contested, hence reconstructed, or they may remain dormant over long periods of historical time to become latent in the way we perceive political realities. In either case, territories take part in power-knowledge generation while performing several primary functions: classification by area so that the complexity of social relationships is reduced and the efficiency of asserting control is enhanced; simplified communication using a singular marker or sign, i.e. the boundary, to delineate an area; enforcing control; reifying power; displacing attention from the relationship between the controller and the controlled; helping make relationships impersonal; clearing and maintaining space for new things to exist; containing or moulding the spatial properties of events; creating the idea of a socially empty space; and helping to engender more territoriality and more relationships to mould (Sack 1983, pp. 58–59).

In this essay we expound on the origins and operation of NCA in Cyprus with a view to inquiring into the relationship between NCA and (geopolitical) territoriality – an unexplored field in NTA studies. The intensity of the territorial factor differentiates Cyprus from other cases in which the adoption of NTA has been influenced by strategic considerations, e.g. the establishment of minority self-governments in Hungary seems to have been motivated in part by concern for the rights of ethnic Hungarians living in neighbouring countries (Krizsán, 2000, p. 250; see also Vizi, 2015, p. 32). David Smith (2015) analysed NTA as a political strategy in Hungary, Estonia, Romania (which adopted a state-securitisation approach to the issue of NTA) and Russia (where NTA was 'part of top-down initiatives designed to consolidate the post-Soviet political community and address imbalances and substate nationalising

2 Dundas (2004) has also examined the case of Cyprus through the lens of NTA, but for the most part he focused on the prospect of NTA arrangements being adopted in a future federal Cyprus, where the freedoms of movement and of establishment under EU law would necessitate safeguards for the cultural autonomy of anyone choosing to reside in the federal entity of the other community. For the most part, the case of Cyprus has been examined from the viewpoint of consociational theory (Coughlan, 2000, pp. 223–224; Lijphart, 1977, pp. 158–161; Loizides, 2018; McGarry, 2017; Yakinthou, 2009). The authors who mention Cyprus as an NCA case often also connect it with consociationalism (Coakley, 1994, p. 310; McGarry & Moore, 2005, pp. 69, 75).

3 We are well aware of the spurious origins of the term 'geopolitics', and we share the view that, more than anything else, geopolitics is a discourse 'tend[ing] to be constructed from positions and locations of political, economic and cultural power and privilege' (Routledge, 1998, p. 245). We nonetheless decided to use this term because the protagonists of our historical narrative were well versed in, and deeply affected by, the geopolitical discourses about the Cold War and/or decolonisation.

trends arising from the inherited system of ethnoterritorial federalism'). While in Russia the adoption of NTA could be read as a precaution against the emergence of territorial aspirations, however vague or unrealistic, such aspirations were all too real in Cyprus, and the strategic reasons for setting up institutions of NCA were essential, almost existential. For one thing, it was not only the case that a 'motherland' (here, two motherlands, i.e. Greece and Turkey) wished to protect the interests of her 'children' abroad but also that one of the motherlands, Turkey, perceived her national security interests as requiring her keeping control over the political developments on the island, whereas the other motherland, Greece, was interested in limiting such control. Actually, as is discussed below, the state of Cyprus would not have been brought into existence in the absence of strong constitutional guarantees for the NCA of the two main communities on the island, i.e. the Greek Cypriot community, comprising around 78% of the population at the time, and the Turkish Cypriot community, comprising around 16% of the population at the time. NCA had deep roots in the social and political history of the island. However, the positive effects of this legacy were annulled first by the rise of two rival nationalisms, accompanied by territorial claims that were incompatible with the prospect of a united Cyprus, then by geopolitical territoriality, which became the main driving force of the process whereby the state of Cyprus was created.

After independence (16 August 1960), territoriality continued to influence the political developments on the island, as significant fractions within the two communities had not abandoned their original territorial aspirations. Besides, the three guarantor powers (UK, Greece and Turkey) could at any time intervene in the constitutional affairs of the newly formed Republic, and some of them did not refrain from doing so, in a way that was detrimental to the capacity of the internal actors to reach an agreement on the constitutional issues arising soon after independence. It was only natural, one would surmise, that, overburdened by geopolitical territoriality, the bicommunal constitutional order, and along with it, the institutions of NCA, would collapse, as they did no more than three years after independence.

Through this essay we wish to propound the view that things are not so simple. In our view, the fate of NCA is not strictly dependent upon the complete absence of any territorial aspirations. Of course, the restriction of certain kinds of territoriality is a favourable, in some cases even a necessary, condition for NCA. However, the institutions of NCA can in principle coexist with territoriality. They can even be designed to accommodate territorial concerns, although that must be done in a way that does not eliminate the whole point of having instituted NCA in the first place. In any case, it is the degree and the kinds of territoriality that matter, not territoriality *per se*.

Before its collapse, the bicommunal constitutional order did function in Cyprus. It did so notwithstanding the constitutional controversies which attracted the guarantor powers' interventions, which compounded rather than helped to resolve the problems. It is precisely at this juncture, at which the constitutional controversies could have been resolved had the interested third-party intervention been more constructive, that the Cyprus case becomes interesting for the topic of this article. Interestingly, the interaction of NTA with territoriality was instantiated in a specific institution with separate municipalities. That institution was closely intertwined with the territorial anxieties of the two communities and Turkey's geopolitical interests. Separate municipalities became the Achilles heel of the Republic. This controversy provides us with a prism through which we might get a closer look both at the microphysics and at the mega-politics of the interaction between NTA and territoriality.

The remainder of this essay is organised as follows. In Section 2 we expound on the origins of NCA in Cyprus, then we focus on the constitutive role of geopolitical territoriality in the process whereby the state of Cyprus was created. In Section 3 we describe the constitution of the Republic of Cyprus. In Section 4 we present the controversies that precipitated the collapse of the bicommunal constitutional edifice in late 1963, including the controversy over separate municipalities. In that section we also propose a possible solution to the municipalities issue based on the notion of NCA; a solution which could have been achieved if the interventions of the guarantor powers had been more constructive. The last part of Section 4 is then dedicated to those interventions and the corrosive role of the Treaty of Guarantee, the legal instrument for the intrusion of geopolitical territoriality into the constitutional order of Cyprus. In Section 5, with cues from our case study, we expound some more general thoughts on the relationship between NTA and (geopolitical) territoriality.

The origins of national cultural autonomy in Cyprus

In most contemporary cases of NCA, the relevant institutions, important as they can be for the accommodation of cultural diversity, are not indispensable, foundational, core components of the constitutional order. That is often the case with territorial federations. No one would deny that federalism is a core feature of the constitutions of, for instance, the USA and Switzerland. Interestingly, NCA was a core, indispensable feature of the constitutional order of the Republic of Cyprus, just as in the Austro-Marxist model, for which nations are constituent parts of the multinational state (Arzoz, 2020, pp. 309, 311, 315).

The main institutional instruments of NCA in Cyprus, the two Communal Chambers, were the first building blocks used in constructing the constitution of Cyprus. The architects of that constitution were neither Cypriots nor British, as should have been expected in a decolonisation process. They were the Foreign Affairs Ministers of Turkey and of Greece, Fatin Rüştü Zorlu and Evangelos Averoff, respectively. When, in mid-December 1958, the two politicians started negotiating the prospect of a state of Cyprus, not even the sovereignty and the international standing of that state were certain. What was certain was that each community would have its own Communal Chamber, elected by universal suffrage through separate electoral rolls, equipped with considerable powers in the areas of education, religion and culture (Xydis, 1973, pp. 345–347). Such certainty should not be attributed only to the fact that NCA had deep roots in the political history of the island. Perhaps more important were the geopolitical considerations. Besides, the historical origins of NCA had already been linked with the development of two rival nationalisms.

The historical depth of NCA and of two rival nationalisms

The Republic of Venice held Cyprus before the Ottoman Empire conquered the island in 1571. It was then that the Muslim community on the island began to form. It seems that at some point during the eighteenth century the Muslim population became the majority, but soon thereafter that trend was reversed. The Christian population increased such that the British census of 1881 estimated 136,629 Greeks, 46,389 Turks, 691 British and 2,400 'other' (Pollis, 1973, p. 582). In 1878, the Ottoman Empire transferred the administration of the island to the UK and retained only nominal sovereignty. The UK annexed the island *de facto*

in 1914 then *de jure* 1923 through the Treaty of Lausanne, whereby the new state of Turkey relinquished any claims over the island and its inhabitants. Cyprus officially became a crown colony in 1925.

In their anticipation of *enosis*, i.e. the union of the island with Greece, Greek Cypriots held fast to the precedents of the Ionian islands and of Crete, which had been ceded to Greece in 1864 and in 1913, respectively (Holland & Markides, 2006). As would be expected, the propagation of *enosis* was a source of fear for Turkish Cypriots and of consternation for the British administration. The *enosis* aspiration was being nourished by the Greek Orthodox Church and its popularly elected Archbishop, who was considered as the 'ethnarch', i.e. the leader of his people. The *millet* system, which is today studied as an early manifestation of NTA (Barkey & Gavrilis, 2016; Coakley, 2016b; Nimni, 2015, pp. 72–73), accorded to the Orthodox Church a key role in managing the affairs of the Christian community, including education.

> Ethnic, linguistic, literary, and religious conventions were shaped around a Hellenistic consciousness to preserve a customary order from hostile pressures within and without. The ancient church of Cyprus was both the symbol and functional core of this process, but it spanned out through schoolteachers, the professions, the merchant classes, and came to embrace a more affluent peasant cadre as agrarian change slowly brought about social differentiation in the countryside (Holland, 1998, p. 6).

During the first half of the twentieth century, the two communities remained distinct in many respects: religion, language, laws and customs regarding personal status, rarity (though not a total absence) of intermarriages and, last but not least, emotional ties with the two motherlands. National identities crystallised in the context of the modernisation process. That took shape through the emergence of a Greek Cypriot urban elite promoting the cause of *enosis*, 'the rise to prominence of young intellectuals in Nicosia who took their cue from New Turkey and opposed the traditional religious and collaborationist elite' (Kızılyürek, 2010, p. 177), the differentiated spread of growth in income and property ownership (Holland & Markides, 2006, p. 168), and, on a deeper level, through the development of diverging attitudes towards the issue of moral and material progress (Bryant, 2006). All those trends were linked, in one way or another, with the retention of separate educational systems. Separation remained in place until independence despite – even as a reaction to – the British administration's efforts during the 1930s to curb the impact of Greek nationalism by introducing a sense of Cypriotness coupled with a 'British atmosphere' (Heraclidou, 2012).

The fact that British elites venerated Greek classical antiquity goes a long way to explaining the decision of the British secretary of state for the colonies to overrule the views of the high commissioner on the island regarding the importance of establishing English as the medium of education. Such veneration may well also explain why the two communities were allowed to retain control of education through their school committees and boards of education; all the more so since the financial means for the educational systems were to be provided by the communities, and only secondarily by the British administration (Heraclidou, 2012, pp. 48–49). The teachers at Greek schools had been trained in Greek Universities, with many coming from Greece, and the analytical programme and reading books were first decided by committees in Athens before being approved by the Greek Cypriot community's Education Board. Maps of Greece and portraits of the Greek king could be found in the classrooms, with

only a few maps of Cyprus and almost no symbols of British sovereignty. During the 1950s, students were massively recruited to PEON (the Greek acronym for the 'Pancyprian National Youth Organisation'), a youth organisation committed to pursuing *enosis*. When the armed insurgency broke out, student riots became an integral part of the EOKA (the Greek acronym for 'National Organisation of Cypriot Fighters') struggle for *enosis*.

The colonial administration included a legislative council with limited power. The representatives of the two communities were elected through separate electoral rolls. The Greek Cypriots could be outvoted by the combined vote of the Turkish Cypriot representatives and of the British officials – another cause of resentment and constant appeals for the revision of the island's constitutional status. The legislative council was abolished in 1931 after riots culminating in the burning down of Government House in Nicosia. A period of repression followed, including the deportation of bishops and other *enosis* zealots, press censorship, a ban on the strong Communist Party of Cyprus (named AKEL, the Greek acronym for the 'Progressive Party of the Working People') and the freezing of municipal elections until their restoration in 1943 (Holland & Markides, 2006, pp. 213–214). The abolition of the legislative council left the island without a forum wherein rival nationalisms could be contained. The opposition to British rule was forced to go underground, 'especially on the left, where stalwarts of the Cyprus Communist Party focused on organizing strikes among poorer urban workers', while on the right of the political spectrum the vacuum that was created could be filled only by the church (Holland & Markides, 2006, pp. 213–214). In the late 1940s, the Greek Cypriots rejected a British proposal for limited self-government. After participating in the ranks of the Allies during World War II and seeing the Dodecanese islands being ceded to Greece, Greek Cypriots could be satisfied with nothing less than *enosis*. In January 1950, the church organised an *enosis* plebiscite of Greek Cypriots. The result (96% in favour) 'marked a new and more active stage in the *Enosis* movement' (Holland, 1998, p. 18). In the same period, Turkish Cypriot leaders proposed *taksim*, the partition of the island, 'after their close contact with counterparts in Pakistan led them to model their own future on the division of the subcontinent' (Bryant & Hatay, 2020, p. 30).

Political geography

Before the Greek Cypriots launched their armed struggle for *enosis* (April 1955), incidents of low-level intercommunal violence were not unknown, especially in times of tension between Greece and Turkey (Asmussen, 2010). Nevertheless, in normal times, the two communities coexisted rather peacefully. They cooperated in the context of agricultural production and commercial transactions, and they interacted socially in coffee shops and at social events such as marriages (Attalides, 1981, p. 417). In the mid-1950s, many villages and all the towns were mixed, although the members of the two communities lived in different quarters, while villages with a preponderance of one of the two communities were dispersed across the island (Melamide, 1956; Patrick, 1976, pp. 10–11). 'By 1960, 150 of the island's 636 villages were predominantly Turkish; but 98 of these were wholly Turkish, and in a further 23 Turks constituted at least 95% of the population' (Coakley, 2016b, p. 169). Yet the compactness of the areas wherein the Turkish villages were located was low (Coakley, 2016a, p. 10).

Thus, the partition of the island was not a feasible option. According to a study conducted by the British Colonial Cabinet in 1957,[4] the physical separation of the two communities would require either using military force for the compulsory removal of 150,000 people or the gradual removal of populations on a voluntary basis over a ten-year period, with the result in both cases being a dramatic drop in (already poor) living standards on the island. That did not prevent the British from using the spectre of partition as a playing card in their game of divide-and-rule politics. In any case, the intercommunal conflicts of 1958 accelerated the decline in cohabitation: Turkish Cypriots abandoned 36 mixed villages, and six hundred Greek Cypriot families abandoned their homes in the mixed neighbourhoods of Nicosia (Kliot & Mansfield, 1997, p. 499).

Geopolitical territoriality

In 1954, the imminent withdrawal of the British forces from Egypt and plans to transfer the joint headquarters of their Middle East land and air forces to Cyprus increased exponentially the strategic value of the island for the UK (Holland & Markides, 2006, p. 223; James, 2002, p. 5; Stevens, 1966, p. 136). The withdrawal from Suez affirmed previous British experience regarding the indispensability of sovereignty for securing their military bases (Holland, 1998, p. 21). The policy of keeping Cyprus as a base rather than a base in Cyprus would not be questioned until 1957, when the Suez debacle and pressure from the USA would make the UK reconsider its defence priorities.

The key position of Turkey on the frontline of the Cold War, south of the USSR and on the route to Iraq, was another, equally strong, reason for the sharp refusal of the British government to discuss the status of its Mediterranean colony with Greece (Stevens, 1966, pp. 137–138). Turkey assumed a leading role in the Baghdad Pact, the precursor of CENTO, a military alliance uniting the country with the United Kingdom, Iraq, Iran and Pakistan. For the USA, the Baghdad Pact was a means of containing Soviet influence, while for the UK it was 'a means for maintaining friendly governments in the oil countries of the Middle East' (Stevens, 1966, p. 138). Eden later wrote: 'I regarded our alliance with Turkey as the first consideration of our policy in that part of the world' (quoted in Stevens, 1966, p. 138). Besides, again in Eden's words: 'No Cyprus, no certain facilities to protect our supply of oil. No oil, unemployment and hunger in Britain. It is as simple as that' (quoted in James, 2002, p. 11).

The Greek governments of the early 1950s preferred to keep the Cyprus question out of the limelight, for the sake of good relations with the UK (a traditional ally) and with Turkey (crucial for the survival of the Greek minority in Istanbul). Nevertheless, the agitation for *enosis* in Greece was growing stronger. By 1954, 'it had become a nationwide obsession' (Crawshaw, 1978, p. 71). In the summer of 1954, the Greek government filed an appeal with the UN requesting the application of the right of self-determination for the Cyprus population. The issue was extensively discussed in the First Committee of the General Assembly. Greece's argument that their application concerned only the right of Cypriots to self-determination was met with sympathy by the representatives of various countries (Ecuador, Syria, El Salvador, Poland, Indonesia, Czechoslovakia, the Philippines and Yemen), including the Soviet Union. The UK representative retorted that Greece, which 'had actually been a party to the treaty of peace, signed at Lausanne in 1923, which had recognised British sovereignty over

4 Reprinted in Madden (2000, pp. 449–450).

Cyprus', was 'now trying to use discussion at the United Nations to mobilise international pressure in order to acquire sovereignty over the territory for itself' (UN 1954a, § 28). Turkey's representative invoked the precedent of the Aland Islands to argue that what mattered was the geographical proximity of Cyprus to the Anatolian peninsula, not the wishes of its inhabitants. 'If the population factor was to be considered, it should be studied in relation to the existence of 24 million Turks on the mainland, in which case the Greek-speaking group would represent only a tiny minority' (UN 1954b, § 67). With the support of the USA, the General Assembly adopted an effectively negative resolution (Resolution 814 of 17 December 1954, proposing that 'for the time being, it does not appear appropriate to adopt a resolution on the question of Cyprus'). In 1957, the Greek government would secure a more favourable resolution (Resolution 1013 of 26 February 1957) expressing the 'earnest desire' of the General Assembly 'that a peaceful, democratic and just solution will be found in accord with the purposes and principles of the Charter of the United Nations.' In the meantime, the situation on the ground had changed dramatically, to say the least.

On 1 April 1955, the Greek Cypriots' struggle for *enosis* took the form of an armed insurgency organised by EOKA. The EOKA political leader was Archbishop Makarios, and the military leader was Georgios Grivas, a retired Greek army colonel. The Greek government provided EOKA with financial aid and controlled the smuggling of arms to the island. EOKA's activities included guerrilla warfare in the mountains, acts of sabotage and bombing, raids on police stations and assassinations. That assassination campaign targeted British soldiers and officers, Cypriot members of the security forces (which had a large number of Turkish Cypriots, who were massively recruited by the British, thus making intercommunal strife rather inevitable), perceived 'traitors' such as Greek Cypriot police officers and informers, and left-wingers, given that AKEL had condemned EOKA's campaign from the outset (French, 2015, pp. 158–170). Demonstrations, strikes, school riots and various forms of passive resistance, including boycotts of British products, were the order of the day.

During the first half of 1958, serious intercommunal conflicts broke out, and murders of members of one community by members of the other also became the order of the day (French, 2015, pp. 237–269; Kızılyürek, 2015). Turkish Cypriots in Cyprus and Turks in Turkey demonstrators used the slogan 'Partition (*taksim*) or death'. That was not merely a reaction to EOKA's 'terrorism'. *Taksim* swiftly became just as vigorous and authentic as the *enosis* cause. In the late 1950s, under the leadership of Rauf Denktaş, the Federation of Turkish Cypriot Associations:

> worked to spread and enforce a 'motherland' Turkish nationalism in the community through methods such as Turkifying toponyms, coordinating village education, and organising parades and festivals on national days. [The Federation] also worked to build a Turkish economy on the island by enforcing a 'Turk-to-Turk' consumer campaign that punished persons buying from Greek Cypriots (Bryant & Hatay, 2020, p. 27).

With the support of Turkish military officers, Turkish Cypriots formed their own clandestine Turkish Resistance Organisation, which used methods similar to those of EOKA, including the persecution of 'traitors' (French, 2015, pp. 7, 260). From then on, Turkish Cypriots promoted their cause in a highly active manner, with massive demonstrations against the British administration (which was accused of having an anti-partitionist posture) and by raising their own 'heroes' (i.e. casualties). In June 1958, the Turkish Cypriots established *de facto* separate

municipalities. To this end, they seized municipal property, evicted Greek Cypriots, started raising taxes and elected their own councillors. Turkish Cypriot leaders did everything they could, including the planting of a bomb outside the Turkish Information Office in Nicosia (as Denktaş himself admitted many years after the event), to prove that the two communities could no longer live together (French, 2015, pp. 260–263; Holland, 1998, pp. 241–242, 251, 275). However, it was first the pro-*enosis* attitudes of the Greek Cypriot mayors that had forced Turkish municipal councillors to resign from their positions *en masse* in June 1957 (Bılge, 1961, pp. 187–188) before they embarked upon their separatist course of action.

Partition was the unwavering demand of Turkish Cypriots and the Turkish government alike. National security concerns related to the island's proximity to Turkey's southern shores weighed for both as heavily as the safety and national identity of Turkish Cypriots did (Bılge, 1961, pp. 193–211). When in 1956 the British government offered to Greek Cypriots limited self-government, the offer was accompanied by the statement of the Colonial Secretary Lennox-Boyd in the House of Commons that partition would be considered as an option in the future. 'Although it was not the British government that invented the Turkish strategic interest in partitioning Cyprus, it certainly vested this interest with a cloak of "international respectability"' (Hatzivassiliou, 2002, p. 64). The British pledge provided support to the view that the two communities were entitled to exercise separately their rights to self-determination. This view became the holy grail of the Turkish legal position on the Cyprus problem for long after. At the time, the UK did not refrain from using the spectre of partition as leverage for exerting pressure on the Greek side to back down from *enosis* (Reddaway, 1986 pp. 49–50).

That spectre of partition loomed large in the minds of Greek politicians after the UK Prime Minister Harold Macmillan announced his partnership plan in June 1958. The MacMillan plan would establish a condominium of the UK, Greece and Turkey on the island, and it would bring about complete separation of the institutional life of the two communities. The Macmillan plan's two Houses of Representatives, one for each community, were the precursors of the two Communal Chambers in the Constitution of 1960. In its final version, the Macmillan plan legitimised the separate municipalities that Turkish Cypriots had already created. Macmillan himself described his plan as offering Turkey the 'metaphysical partition' that they really needed (Holland, 1998, p. 285). As Birgi, a Turkish expert on Cyprus, explained to the British secretary for foreign affairs, Turkey 'needed to be able to demonstrate to public opinion at home "something equivalent to or even better" than territorial partition […] "such as an equal share with the Greeks in the administration of the whole island"' (Weston Markides 2001, p. 19).

In view of the ominous course of events, Makarios announced in September 1958 that he was willing to accept, instead of *enosis*, an independent Cyprus under UN guarantee. With the exception of the UN's involvement, guaranteed independence was also the solution favoured by the USA. During the early days of December 1958, Greek hopes of a UN General Assembly resolution calling for the application of the principle of self-determination died. The Assembly expressed only 'confidence that continued efforts will be made by the parties to reach a peaceful, democratic and just solution in accordance with the Charter of the United Nations' (Resolution 1287 of 5 December 1958). Nevertheless, it was in the corridors of the UN that the Greco-Turkish *rapprochement* began.

Turkey acceded to the course of Cyprus independence because of anxieties caused by the recent revolution in Iraq, the formation of the United Arab Republic and the consequent danger of being isolated in the region (Holland & Markides, 2006, p. 237; Hatzivassiliou,

2002, p. 74). To these anxieties one should add pressures from the USA (James, 2002, p. 15) with the aim of repairing Greco-Turkish relations for the sake of strengthening NATO's weak right flank. The Greco-Turkish *rapprochement* offered the British government an opportunity to disentangle itself from the costly business of fighting EOKA, on the understanding that 'whatever Greece and Turkey hatched up between them, the United Kingdom as the sovereign power in Cyprus had to agree to cede her title' – that agreement definitely had to include at least 'two Gibraltars' so as to appease the right wing of the Conservative Party (Holland, 1998, pp. 197, 299; James, 2002, p. 11).

A truly sovereign state? The Zurich and London agreements

The negotiations between Averoff and Zorlu culminated in a summit meeting in Zurich during the first days of February 1959. At that Zurich conference, Prime Ministers Konstantinos Karamanlis and Adnan Menderes approved the documents upon which the formation of the future Republic of Cyprus would be based. The Greek government consulted regularly with Makarios (Xydis, 1973, pp. 369–372, 404).

The document that designed the constitutional structure of the new Republic was called the 'Basic Structure'. The Zurich agreement also included a draft Treaty of Alliance between Greece, Turkey and the future Republic of Cyprus providing for the stationing of military contingents from the two motherlands (950 Greek and 650 Turkish soldiers and officials) on the island, under tripartite headquarters. That was a concession by the Greek government in exchange for the Turkish government's concession regarding their original demand for four military bases to be kept under the sovereignty of the two states on the island. Moreover, the Zurich agreement included a Treaty of Guarantee, to which the UK was also a party, destined to become the legal excuse for Turkey's military interventions on the island, first in the summer of 1964 and again in the summer of 1974. Under the Treaty of Guarantee, the Republic of Cyprus undertook 'to ensure the maintenance of its independence, territorial integrity and security, as well as *respect for its Constitution*' (our emphasis). The Republic also undertook 'not to participate, in whole or in part, in any political or economic union with any State whatsoever, and with this intent, to prohibit *all activity* tending to promote directly or indirectly either union or partition of island' (our emphasis). Pursuant to Article II of the Treaty of Guarantee, the three external powers guaranteed not only the independence, the territorial integrity, and the security of the Republic of Cyprus but also 'the provisions of the basic articles of its Constitution'. Article IV of the Treaty stipulated that, 'in the event of any breach of its provisions', the three external powers would 'consult together, with a view to making representations, or taking the necessary steps to ensure observation' of the provisions of the Treaty. Besides, '[i]nsofar as common or concerted action' might 'prove impossible', each of the three powers reserved 'the right to take action *with the sole aim of re-establishing the state of affairs established by the present Treaty*' (our emphasis). Both the Treaty of Alliance and the Treaty of Guarantee were to have constitutional status.

The geopolitical nature of the agreements is further corroborated by an unpublished gentlemen's agreement approved by the two prime ministers in Zurich promising to support NATO membership of the new state and to make representations, to the Greek Cypriot president and to the Turkish Cypriot vice president, respectively, regarding the outlawing of AKEL. Although neither objective was fulfilled, the agreement shows that the new state was not conceived as a truly sovereign one. For Turkish Ministry of Foreign Affairs, the island was

to be 'Turkish-Greek, not Greek or Cypriot' (quoted in Holland, 1998, p. 299). The British government contemplated for a while a 'status of independence subject to certain limitations' so that it would be 'undesirable' for Cyprus to become a UN member (James, 1998, p. 25). It took the opinion of none other than Hans Kelsen[5] to affirm that, despite the onerous provisions of the Treaty of Guarantee, Cyprus was fit to become a UN member.

The process whereby the state of Cyprus was created lent support to further doubts about its independence. Although Makarios publicly acclaimed the Zurich agreement, when he went to London to participate in the Lancaster House conference, he expressed reservations over some of the Zurich agreement provisions, including the guarantor powers' rights to intervene unilaterally. Nevertheless, as the three governments had already decided, the London conference 'was not to be about the substance of agreement, since that agreement had already been forged, but purely and simply about the shadow of Cypriot concurrence in a display of diplomatic *force majeure*' (Holland, 1998, p. 310). Makarios stated that he accepted the Zurich settlement as the basis for a solution to the Cyprus problem, but when he voiced his reservations on four points (two of which would turn out to be fatal for the Republic), he was confronted with a straight 'take it or leave it' dilemma. After a difficult night, he succumbed to pressures, not least from the Greek side, and signed the agreements as originally drafted. Menderes signed the agreements in hospital while undergoing treatment for the injuries suffered when the plane taking him to London crashed. 'Thus it was that the independent Republic of Cyprus was, by some prophetic stroke of irony, ultimately conceived in a hospital' (Holland, 1998, p. 317).

The only issue discussed at Lancaster House was the fate of the British military bases on the island. Selwyn Lloyd emphasised that 'the strategic needs of the British government should be met in a manner that was impossible to challenge and was absolutely clear for all to see' (Xydis, 1973, p. 428). That meant sovereignty. No one questioned it. According to the Treaty of Establishment, which was signed on Independence Day (16 August 1960) together with the other founding treaties, the UK secured two quite large Sovereign Base Areas and the right to control various other places on the island where it had intelligence facilities.

The constitution of the Republic of Cyprus (1960)

The geopolitical interests of the three guarantor powers and of the military alliances in which they participated brought to the Cyprus question 'a complexity of issues going beyond any immediate question of the well-being of the Cypriot people' (Plaza, 1965, para. 20). The new state had to have a constitution, however. The constitutional essentials were prescribed in great detail in the basic structure document approved in Zurich by the Turkish and Greek governments. A commission with representatives of Greece, Turkey, Greek Cypriots and Turkish Cypriots then finalised the text of the constitution. Although its work proved to be arduous, in no way could this commission be compared to a democratically elected constituent assembly, since it had to 'scrupulously observe the points contained in the documents of the Zurich conference', as one of the provisions of the London agreement dictated.

5 Kelsen's opinion is reprinted in Soulioti (2006b, pp. 253–260).

We describe below the main provisions of the constitution of Cyprus, with the terms 'Greek' and 'Turk' or 'Turkish' (instead of Greek Cypriot and Turkish Cypriot) left as they tellingly appeared in the original text.

Reluctant sovereignty

The first article of the constitution declares that the state of Cyprus is a Republic with a presidential regime, with the president being Greek and the vice president being Turk, elected by universal suffrage by the Greek and the Turkish communities, respectively. The Republic of Cyprus has two official languages, Greek and Turkish, and its own flag. All the points inserted into the Zurich basic structure agreement were declared unamendable. The amendment of the remaining articles requires two separate three fifths majority decisions of the Greek and the Turkish representatives in the parliament. Thus, bicommunalism was the founding principle of the Republic of Cyprus.

Rather characteristically, given the original uncertainty regarding the independence of the Republic, the first article of the constitution contains a qualification of the state of Cyprus as sovereign which was not included in the unamendable provisions. The attribution of sovereignty to Cyprus was agreed upon after the Zurich and London agreements as a Turkish concession to Greece in return for the omission of any reference to democracy out of a fear that it would imply majority rule (Xydis, 1973, pp. 493–494, 506).

The Cypriot version of the personality principle, and the problem of the partnership state

Bicommunalism is enshrined in the Cyprus constitution's art. 2, which spells out the Cypriot version of the personality principle. In fact, the art. 2 provisions are counter to the letter and spirit of that principle, since they assign primacy to objective criteria of ethnic belonging, reserving personal autonomy only for the opt-out, not for the opt-in, choice. Membership of the two communities was firstly determined by origin, mother tongue, cultural tradition *or* religion. Even more antiliberal was the provision whereby the 'religious groups' of Armenians, Maronites and Latins, which formed small minorities numbering no more than ten thousand Cypriots overall (Plaza, 1965, p. 7), were obliged to make a collective decision on the participation of their members in one or other community. On the other hand, Greek and Turkish citizens were granted the right to opt to belong to the other community upon a formal declaration, *which had to be accepted by the respective Communal Chamber*. The members of religious groups could choose not to abide by the collective decision of their group and instead participate in the other community. In November 1960, the religious groups held plebiscites and chose to be affiliated to the Greek Cypriot community (Emilianides, 2019, p. 123).

The disparity between the constitutional status of the two major communities and of the religious groups owed to the Turkish demand for a 'partnership state' in which Turkish Cypriots would be constituent partners on an equal footing, not a minority. The Turkish Cypriots consistently disavowed the status of a minority – in fact, they found it offensive (e.g. Bılge, 1961, pp. 77–78, 133–134, 256; Denktash, 1997, p. 127). Therefore, their status had to differ from that of the small religious groups of Maronites, Armenians and Latins. Those were to be the only minorities on the island.

The partnership state concept fits well with the Austro-Marxist model. However, as our case study indicates, this conception gives rise to the important questions of who are to be

the *constituent* partners of the multinational state. Is it possible to include in the class of the constituent partners every national minority, however small it may be? On the other hand, if we exclude small minorities, does that not entail a repetition of the problem afflicting the nation-state, i.e. repressing minorities, which the Austro-Marxist project purports to resolve? This is a serious challenge for the Austro-Marxist model if one considers that its raison d'être was precisely the resolution of this problem. For the moment, let us simply notice that the Austro-Marxists took for granted the existence of *a* state, and that this seems to be a prerequisite for the realisation of their model. We return to this issue in Section 5.

The power-sharing regime

The president and the vice president were to be elected for five years. In the event of absence, impediment or vacancy, they would not be replaced by each other, but by the president and the vice president of the House of Representatives, respectively. Executive power was vested both in the president and in the vice president, who would both be aided by a Council of Ministers composed of seven Greek and three Turkish ministers. The ministers were to be designated by the president and by the vice president separately. Decisions of the Council of Ministers would be taken by absolute majority, then promulgated by both the president and the vice president in the Official Gazette, unless one or both exercised their right of final veto over decisions concerning foreign affairs, security and defence.

Legislative authority was vested in a House of Representatives elected through separate electoral rolls. Its composition was determined not in accordance with the population, but in accordance with the general ratio of 70% for the Greek community and 30% for the Turkish Community. The House was to exercise authority in all matters except those expressly assigned to the Communal Chambers. Conflicts of authority would be resolved by the Supreme Constitutional Court, which comprised one Greek, one Turk and one neutral judge, appointed jointly by the president and the vice president. Laws were adopted by simple majority of the members present, then promulgated within 15 days if neither the president nor the vice president returned them for reconsideration. Laws which the president or the vice president considered discriminatory could either be returned to the House or submitted to the Supreme Constitutional Court. The president and the vice president had the right of final veto on any law concerning foreign affairs, security and defence. Electoral law modifications and the adoption of any law relating to municipalities or imposing taxes required separate majorities of each community's representatives in the House.

The general ratio of 70:30 also had to be applied in the civil service and the security forces. The ratio for the army was 60:40. Judicial system administration and the jurisdiction to hear appeals were assigned to a High Court composed of two Greeks, one Turk and one neutral judge. Cases involving members of the same community were to be tried by judges belonging to that community, while cases in which the parties belonged to different communities, the composition of the court should be mixed, as determined by the High Court.

The Communal Chambers and other features of NCA

The main instruments of NCA in Cyprus were the two Communal Chambers. Those were elected by the members of each community through universal suffrage. The 'religious groups' had the right to be represented in the Communal Chamber of the community to which they

had opted to belong, i.e. the Greek Communal Chamber. The Communal Chambers were equipped with legislative power in: all religious, educational, cultural and teaching matters; matters relating to the personal status of the members of the respective communities; matters where the interests and institutions involved were of a purely communal nature, such as charitable and sporting foundations, bodies and associations created for the purpose of promoting the well-being of their respective community; matters relating to the exercising of control authority of producer and consumer cooperatives and credit establishments; matters relating to the supervision of municipalities consisting solely of members of the respective community. The Communal Chambers were also accorded the power to: determine the composition and instances of courts dealing with civil disputes relating to personal status and religious matters; *impose personal income taxes and fees on the members of the respective community* in order to provide for their needs and for the needs of bodies and institutions under their control if such financial needs were not satisfied by the Chambers' state budget funding provided for in detailed provisions. Furthermore, Communal Chambers were empowered to set the principles of public policies within their communal laws, to promote the aims of separate municipalities (see below) by issuing subsidiary legislation and to supervise those producer and consumer cooperatives and credit establishments (i.e. banks) created for the purpose of promoting the respective community's well-being. The Communal Chambers' constitutional powers did not extend to taking coercive measures to secure compliance with communal laws or with communal court orders or with any law or decision whatsoever. Legal coercion was reserved exclusively for the central state authorities. The president of the Republic, with regard to the Greek Communal Chamber, and the vice president, with regard to the Turkish Communal Chamber, had the right to return laws or decisions to the Chambers for reconsideration, but if the Chambers insisted, the promulgation of such laws in the Official Gazette by the president alone, as regards the Greek Communal Chamber, or by the vice president alone, as regards the Turkish Communal Chamber, would be mandatory.

A series of other constitutional provisions enriched NCA: safeguards concerning the autonomy of the Greek Orthodox Church; the recognition of the institution of Waqf (i.e. inalienable charitable endowments under the Islamic law); the subjection of issues relevant to the personal status of the members of the Greek community and of the religious groups to the laws and to the special tribunals of the Greek Orthodox Church, or to the laws and the tribunals of the church of the religious group, as the case may be; the right of the two communities to celebrate the Greek or Turkish national holidays; the right of citizens to fly the Turkish or the Greek flag without restrictions, and the right of communal authorities to fly the respective flag next to that of the Republic on the relevant public holidays; the allocation of a minimum broadcasting time of programmes for the Turkish Cypriot community and other detailed rules regarding tv and radio programmes; the right of the Greek and the Turkish governments to subsidise communal institutions of culture, education, athletics and charity; the right of the two communities to ask the government of the respective motherland to provide schoolteachers, professors or priests; and the right of the communities to celebrate Greek and Turkish national holidays collectively.

Separate municipalities: when NCA is territorialised

According to art. 173 of the constitution, separate municipalities were to be established in the five largest towns 'by the Turkish inhabitants thereof' – a clear adoption of the personality

principle. Two other basic provisions (i.e. corresponding to the unamendable points agreed upon in Zurich) stipulated that coordinating bodies should be set up in each such town, composed of two members from each community, and that 'within four years' the president and the vice president would review the situation to decide whether separation of the municipalities would continue. Art. 173 § 2, a non-basic provision, safeguarded the personality principle by requiring that the councils of separate municipalities be elected by the respective Greek and Turkish electorates in the relevant towns. On the other hand, the non-basic art. 177 enshrined the territoriality principle by requiring that:

> each municipality in any such town shall exercise its jurisdiction and perform all its functions respectively within a region the limits of which shall be fixed for each municipality by agreement of the President and the Vice-President of the Republic.

What that jurisdiction should contain was not specified.

The nature of separate municipalities as instruments of NCA can also be deduced from the constitutional provisions which enabled the Communal Chambers 'to promote the aims pursued by municipalities composed solely of members of its respective Community' by means of regulations or bylaws (art. 87 § 1(g)). The following provisions are also of note. Art. 174, a non-basic one, provided that:

> within the limits of separate municipalities, no municipal tax, rate, fee or any other revenue shall be imposed or levied upon or collected from any person by any such municipality unless such person belongs to the same Community as the municipality concerned.

Exceptions to that were provided for entertainment fees and fees for the use of municipal markets, slaughterhouses and other municipal places which were to be payable to the municipality exercising jurisdiction in the relevant region. Art. 175 stipulated that 'no licence or permit shall be issued to any person by a municipality in any such town not belonging to the Community of such municipality', provided that:

> licences or permits relating to premises, places or buildings in operations in the region within which one of such municipalities in any such town exercises its jurisdiction shall be issued by the council of such municipality and any service, control or supervision in connection with such licences or permits shall be performed by the council of such municipality and any such fee payable in respect thereof shall be collected by such council.

Those provisions point to the personality principle, but in practice separate municipalities had become an instrument for territoriality well before the establishment of the Republic. As we have seen, Turkish Cypriots created their own municipalities during the intercommunal conflicts of June 1958. In the same period, Macmillan incorporated into his plan the establishment of separate municipalities in an attempt to convince the Turkish government to back down from its partition demand. In the autumn of 1958, Governor Foot, when acting to implement the Macmillan plan, assigned to a commission the task of preparing a report on municipal affairs, including the drawing of municipal boundaries (Weston Markides, 2001, pp. 27–28). Privately, Surridge described the partition of municipalities as 'an administrative nonsense but a political necessity' (quoted in Weston Markides, 2001, p. 35). Political

necessity meant the cooperation of Turkey and of Turkish Cypriots in the implementation of the Macmillan plan and for the needs of British operations against EOKA. The Surridge Commission completed its work, but its report was not published – it was leaked and published in a British newspaper.

At the beginning of the Averoff–Zorlu talks, the latter insisted on the establishment of separate municipalities, while the former vigorously resisted it. That was a 'red line' for the Greek side because they regarded municipal separation as a first step towards partition (Xydis, 1973, p. 412). Nevertheless, in a meeting between Makarios, Averoff and Karamanlis before Zurich, the Cypriot ethnarch said that for him the issue was of secondary importance, on the grounds that Greek Cypriot taxpayers should not be made responsible for the miserable conditions in Turkish Cypriot quarters (Xydis, 1973, p. 404). Following the London agreement, Ankara impressed on the British government the demand that the Turkish municipalities created in June 1958 be legalised. A law issued by the British governor legalised only their competence to collect revenues. Makarios, on the other hand, recanted on his pre-Zurich position. Realising that a substantial number of Greek properties would be included in the areas of Turkish municipalities, he now argued that separate municipalities did not necessarily entail separate municipal zones but only functional separation, if any at all (Weston Markides, 2001, p. 47). The problem remained unsolved when Cyprus became an independent state on 16 August 1960.

Greek fears over separate municipalities were not unfounded. The separation of municipalities was interwoven with Turkey's strategic interest in controlling political developments on the island. Municipal separation also made possible the territorialisation of Turkish Cypriots' security concerns. The small size of the Turkish Cypriot community meant that their safety, if they came under attack, could not be safeguarded in the long run solely by means of municipal enclaves. The sustainability of such enclaves presupposed that Turkey would intervene if needed. The Turkish military contingent under the Treaty of Alliance could protect Turkish Cypriots in the meantime, and it could prepare the ground for the intervention, but something more was needed if the threat of intervention were to be credible. That was precisely what the Treaty of Guarantee offered: the possibility for Turkey to invoke its terms – no matter how wrong their interpretation would be in the eyes of any disinterested parties – to make the threat of intervention credible.

The operation and collapse of the bicommunal constitutional order

The sense that the constitution was imposed by outside powers was widespread amongst Greek Cypriots. In an opinion survey conducted in the summer of 1965, shortly after the crisis of 1963–1964 (Kyriakides, 1968, pp. 123–126), 55.8% the five hundred participants attributed the crisis to the Zurich agreements, and another 30% to NATO (those views had almost identical meaning). Even the 'other factors', a total of 9.2%, reported 'blam[ing] the Greek Cypriot leadership for accepting the 1959 Zurich and London agreements', the 'imperialistic' policies of the USA, the UK and Turkey, and the 'incompetency' of Greece's leaders. Impressively, however, only 5% of the respondents blamed the Turkish Cypriots, the recent bloody conflicts notwithstanding. None of those blaming the Turkish Cypriots had received higher education.

The constitutional problems of the new Republic stemmed from the fact that '[t]he Greek Cypriots really wanted a unitary state with themselves in charge, while the Turkish Cypriots wanted a geographically based two-state, or confederal, solution, which was not feasible' (Dodd, 2010, p. 43; see also Soulioti, 2006a, p. 133). The discrepancy between the fundamental objectives of the two sides was transformed into detrimental kinds of territoriality. As was revealed by documents discovered later,[6] the paramilitary groups within both communities had not stopped their preparations for the continuation of the struggle to realise their original territorial aspirations. The consequent feelings of fear and mistrust were fuelled by frequent public statements by the two communities' leaders, especially Makarios, which served to refresh the original nationalist causes.[7] A series of incidents (bombing of mosques, killing of lawyers and journalists, etc.), for which each side accused the other (Drousiotis, 2008), and the fresh memories of the conflicts of 'dark' 1958 (Kızılyürek, 2015) also contributed to a climate of mutual suspicion and insecurity. Such divisions were exacerbated by the two agonistic national identities viewing the state of Cyprus, and a possible Cypriotisation, as a threat. The agonism of the two nations, fuelled incessantly by their (reasonable) geopolitical fears and (unreasonable) commitment to realising their original territorial aspirations, was in fact nothing less than fierce antagonism, which was soon channelled into the core functions of the constitutional order.

Constitutional deadlocks

Disagreement over the implementation of the 60:40 ratio in the army's organisational structure led to an inability to form a joint army after the Turkish Cypriot vice president exercised his final veto over the relevant decision of the Greek Cypriot majority in the Council of Ministers. That veto was actually a relief for Greek Cypriot ministers, since they regarded the formation of an army of two thousand men as an unnecessary luxury. The Greek Cypriot inaction regarding the formation of the army became one of the arguments that Turkish Cypriots put forward as indicative of Greek Cypriots' unwillingness to implement the constitution. Slow progress in the implementation of another basic article, the 30% ratio for Turks in public service, was another cause for friction. Turkish Cypriots represented a small fraction of the population, so it was not always easy to find suitable candidates for every rank and position or to overlook more qualified candidates, especially as Greek Cypriots resented this constitutional provision and considered it unjust (Kyriakides, 1968, pp. 78–83). As a matter of fact, when independence was achieved, the presence of Turkish Cypriots at all levels of public administration exceeded their ratio in the population. In January 1963 the Turkish Foreign Affairs Minister admitted that the Turkish Cypriot representation in public administration had reached 25.5% (Soulioti, 2006a, p. 166).

Nevertheless, in December 1961, the Turkish Cypriot members in the House of Representatives cited the failure to fully implement the 70:30 ratio and the non-implementation of the provision concerning separate municipalities when voting against the bill on permanent taxation. In doing so, they invoked the constitutional provision requiring separate majorities when voting on tax bills. The Turkish Cypriot leaders did not argue that the bill discriminated against the interests of their community. They assumed that their power under the separate majorities

6 Reprinted in Soulioti (2006b, pp. 627–645).

7 A quite representative sample of such statements is quoted verbatim by Soulioti (2006a, pp. 224–241).

clause could be linked with all pending issues. For Greek Cypriots this was an abusive interpretation aimed at putting them 'under constant surveillance by the Turkish group' (Kyriakides, 1968, p. 90). After the tax bill was defeated, to avoid the system collapsing, the two communities had their Communal Chambers vote on tax laws. In this way, Communal Chambers were used to resolve a problem that had little to do with NCA (Yakinthou, 2009, p. 66).

On the other hand, a problem that afflicted the Communal Chambers – the need for increased annual state budget subsidies for education – led the two communities' leaders to embark upon serious negotiations regarding the taxation issue.[8] The two sides agreed upon a formula for the appropriate use of the separate majorities clause. They also agreed that the state would be obliged from then on to cover all the financial needs of the Chambers, on the condition that the latter would disavow their power to impose personal taxes. However, mistrust forestalled the agreement. The Greek Cypriot leaders believed that a constitutional amendment was the only way to make the solution binding. The Turkish Cypriots wanted to avoid such an amendment, out of a fear that it might open the door to other amendments which would abolish their rights under the power-sharing regime.

On this issue, the Turkish government's stance was constructive. In August 1962, the Turkish Prime Minister İsmet İnönü Inonu reassured Averoff that the Turkish government would be willing to consider the amendment of the relevant constitutional clause, but only on the condition that art. 173, providing for separate municipalities, would be implemented (Weston Markides, 2001, p. 88). İnönü went as far as to propose that coordinating committees over and above the separate municipalities should be established and that, if it was proved that such committees worked satisfactorily, they should gradually be given more and more powers so that in time they could evolve into unified municipal councils. However, by then, Greek Cypriot reluctance to endorse separate municipalities had transformed into stubborn refusal, out of a fear that any kind of municipal separation would prepare the ground for a future partition of the island. Besides, the mixed committees that Makarios and Küçük had appointed to deal with the municipal issue could not agree upon the boundaries for separate municipalities.

Evidently, the drawing of boundaries was next to impossible since there were many districts in which no community could claim inhabitancy (the constitutional criterion) or at least ownership close to 100%. In the autumn of 1962, Küçük presented a proposal (reproduced verbatim in Clerides, 1963, p. 509), the complexity of which was indicative of the graveness of the problem: the frontage of all properties abutting on a street should be measured, and if the total length of properties belonging to members of one community were longer, that street should be included in that community's jurisdiction. In situations where a street could only be accessed via streets falling under the other municipality's jurisdiction, it would also fall under that jurisdiction, irrespective of the frontage criterion. This was to be so unless access were possible through a ring, trunk or encircling road, irrespective of whether that road was under the jurisdiction of one or other community.

In any case, the property frontage criterion did not satisfy the basic constitutional requirement, which was based on the principle of personality. Another serious problem was that the five towns in question 'were not at that time large enough to justify the economic running of more than one municipality' (Clerides, 2006, pp. 536–537).

In December 1962, the two sides opened negotiations to settle the municipal issue before the temporary municipal legislation lapsed at the end of the year. On 24 December 1962,

8 The records of the meetings are reproduced in Soulioti (2006b, pp. 411–457).

the Turkish Cypriot leaders accepted a plan which provided for a one-year trial of unified municipal councils, under strict safeguards that secured strong representation of Turkish Cypriots coupled with generous financial terms. A joint communiqué announced that '[c]ommon ground was found for eventual agreement on the subject', and that another meeting had been arranged to 'work out the details' (reproduced verbatim in Clerides, 2006, p. 531). Nevertheless, in that follow-up meeting the Turkish Cypriots withdrew their support for the plan and alleged that they had misunderstood the Greek Cypriot proposal. 'Both the British and the Americans believed […] that the reversal of the Turkish Cypriot position had come after long meetings between the Turkish Cypriots and the new Turkish ambassador, Mazhar Ozkol' (Weston Markides, 2001, p. 94; see also Stevens, 1966, pp. 176–177). Despite the aid of intense diplomatic activity by foreign powers, two more attempts to solve the municipalities problem failed (Weston Markides, 2001, pp. 99–127). Following the last of those failures, in May 1963, the dismayed British High Commissioner to Cyprus, Sir Arthur Clark, concluded that the 'key to a solution does not really lie here but in Ankara whence local Turks clearly get instructions' (quoted in Soulioti, 2006a, pp. 194–195).

The Greek Cypriot leaders underestimated Turkey's determination to retain, at any cost, the *de facto* municipalities established in 1958. Such determination was owed, at least in part, to concern for the fate of Turkish Cypriots if they were attacked. That is frequently mentioned in Weston Markides' study (2001, pp. 79, 81, 165, 167), but it is not adequately emphasised in our view. Turkish intransigence could also be attributed 'to the fear that concessions on this issue would create a precedent', thereby opening the way to wholesale constitutional amendments, in spite of the 'assurances from both the British and the American ambassadors that the Greek Cypriot proposals were reasonable' (Weston Markides, 2001, pp. 126–127). Makarios made things worse by declaring that the constitutional provision regarding separate municipalities was not workable. On 2 January 1963, the Greek Cypriot majority in the Council of Ministers decided to set up 'development boards', appointed by the government, to run municipal affairs, in accordance with an old colonial law which had clearly lapsed. The Turkish Communal Chamber moved beyond its area of competences to vote for a law legitimising the Turkish municipalities. The controversy over an NCA institution became a dispute about state power with territorial ramifications.

Both the Council of Ministers' decision and the Turkish Chamber's law were struck down by the Supreme Constitutional Court, but the Court's judgements contributed little to a possible solution, apart from ruling that separate municipalities should be established in some form.[9] The form in which that could be achieved was not specified. The only tangible effect of the focus of the conflict switching to the Constitutional Court was the collapse of the Court itself, after the resignation of its president, Professor Ernst Forsthoff, in the summer of 1963.

A possible solution to the municipalities issue

A possible solution to the municipalities issue should have taken seriously the principle of personality, as enshrined in the constitutional provisions regarding the establishment of separate municipalities ('by the Turkish inhabitants thereof') and the election of the municipal councils ('by the Greek electors of the town' and 'by the Turkish electors of the town').

9 See *The Turkish Communal Chamber, And/Through Its Social and Municipal Affairs Office v. The Council of Ministers* (1963).

Besides, as we have seen, the personality principle was further entrenched in provisions related to the payment of taxes and fees and to obtaining licences and permits. The constitution did however provide for the delimitation of the regions of the municipalities and stipulated that each municipality 'shall exercise its jurisdiction and perform all its functions' within that region. Thus, separate municipalities should have been established, with territorial jurisdiction duly accorded to them, but the constitution did not specify the functions of such territorial jurisdictions. We submit that those functions could have been restricted to aims related to NCA. Such an approach finds support in the constitutional provisions on the Communal Chambers, especially the provision which accorded Chambers the power 'to promote the aims pursued by municipalities composed solely of members of their respective Community and to supervise in their functions such municipalities to which the laws shall apply' (art. 89, § 1(c) of the Constitution of Cyprus). Besides, a series of competences (town planning, the granting of licences and permits, and the collection of various kinds of municipal fees) were regulated directly by the constitution. The delivery of other 'territorial' municipal services, so to speak, such as cleaning, lighting and road maintenance, and the collection of the relevant fees, could have been assigned to the coordinating bodies, which could thus assume territorial jurisdiction. In this way, the territorial autonomy of municipalities would be linked with their functional autonomy in national cultural affairs, and municipalities would be relieved of the burden of providing those services which they could not afford. No one would then have been in a position to claim that municipal boundaries were encouraging the territorial separation of the population, or that they implied the power to set up instruments for purposes other than those related to national cultural affairs and a minority's legitimate interest in preserving its national identity. The issue of whether the Turkish municipalities would be financially viable was an internal affair for the Turkish Cypriot community to consider. Should they have decided that they could not support their municipalities, the road to unified municipalities would certainly have remained open. In that way, an elite-driven affair which was symbolically and geopolitically loaded would at some point become an issue of practical concern.

The solution that we propose would not have created a precedent detrimental to the interests of either side. The Greek Cypriots would not be entitled to claim that they were forced to concur with the creation of a new situation on the ground that was preparing the way for the island's territorial partition. The Turkish Cypriots would not be entitled to raise complaints about non-implementation of the constitution. Such a solution does not neglect the fact that some territorial delimitation was essential to address the Turkish Cypriot community's security concerns. In any case, if it were only about these concerns, and not about the wider geopolitical interests of their motherland, any kind of territorial delimitation, either that proposed above or the one that they were pursuing, would be equally good. Of course, we are well aware that it would not be easy to convince the Turkish Cypriot leaders that separate municipalities were created only in order to preserve and to promote their NCA. All the same, they would have gotten what they wanted, i.e. some sort of territorial jurisdiction that they could link with the safety of their community.

What happened in fact was full territorialisation not only of the institution of separate municipalities but also of the bicommunal constitutional order overall. One could say that that was to be expected, given that the constitutional design was premised upon certain presuppositions of geopolitics, which is often in reality a destabilising factor merely appearing to offer stability. Given the existence of the international guarantees and fluctuations in international affairs, the smooth operation of a complex constitutional structure, as of that in Cyprus,

would presuppose benign, efficient and wise interventions, or silences, the part of the external powers; all the more so because their right to intervene was constitutionally enshrined. That right constituted an apt reality and a relentless virtuality which was hurting the pride of Greek Cypriots. However, the majority of Greek Cypriots, including their leadership, were not prepared to disavow the *enosis* cause, despite such a change being a key to showing their antagonistic compatriots that they really were committed to independent statehood.

All these conditions had little to do with NCA *per se*, although both sides were taking such autonomy for granted. The link between NCA and the municipal issue should have been emphasised by all parties to the Cyprus problem to debunk the territorial interests or fears invested in the issue. Things took the opposite course, however. The constitutional controversy over separate municipalities, which in other cases might have been a relatively peaceful affair of arranging the details of NCA in local self-administration, triggered a process of polarisation that transformed the municipal issue into a problem of state sovereignty, in the eyes of Greek Cypriots, and into a problem of utmost constitutional importance, in the eyes of the Turkish Cypriots (Weston Markides, 2001, p. 127). The only way out could have been provided by concerted and decisively constructive action on the part of the three guarantor powers. Even a joint declaration that the geopolitical fears of the two sides over the municipalities issue were not justified could have contributed to resolving it. The problem was that those fears were indeed justified. The expectation for such a joint declaration would prove to be chimerical under the then prevailing conditions, and it remains so today.

The corrosive role of the Treaty of Guarantee

> The constitutional disequilibrium in Cyprus reflected the power configuration of Greece and Turkey within NATO and not the bi-communal structure of Cyprus. This constitutional disequilibrium had negative effects in Cyprus. It invited friction between the Greek and Turkish Cypriot communities as indicated in the constitutional tension areas discussed […] At the same time, it channelled the internal difficulties in Cyprus to Greece and Turkey. Thus, it became increasingly evident that as tension mounted in Cyprus, the Greco-Turkish rift became worse (Kyriakides, 1968, p. 135).

The interaction channels were more open in the reverse direction, with territoriality stemming from the two motherlands being directed towards Cyprus. Consider the following episode. At some point Clerides, one of Makarios' closest associates and the president of the House of Representatives, and Denktaş, the all-powerful president of the Turkish Communal Chamber, reached an agreement which would allow the Turkish Cypriots to keep separate municipalities in place, but under joint committees, until an agreed date, when the president and the vice president would decide on the abolition of the subordinate municipal bodies. All relevant matters would be decided by the neutral Canadian president of the High Court and by the neutral German president of the Supreme Constitutional Court (Weston Markides, 2001, p. 115). However, as had happened with the December 1962 agreement, this new agreement collapsed due to the spiralling of events originating beyond the island's shores. The Turkish government sent a deputy chief of staff of the Turkish armed forces and other high-ranking officials to Cyprus to inspect the Turkish regiment and conduct exercises without giving the Cyprus government any official notification. Makarios reacted by warning that, in the event of offensive interference, he would approach the UN, where he could find considerable support from decolonised and non-aligned countries (Weston Markides, 2001, p. 117). Then, during

a speech marking the anniversary of EOKA's struggle, the Greek Cypriot leader embarked upon his own course of territoriality, thus casting doubt on his commitment to respecting the Zurich and London agreements, by declaring that they were 'a rampart for the conquest of the future' (Weston Markides, 2001, p. 118). The Turkish government vehemently replied that 'any violation of Turkey's external rights or vital interests […] [would] find the Turkish nation strong, united and prepared. A government which would abandon more than 100,000 Turks to arbitrary foreign rule will never exist in Turkey' (quoted in Weston Markides, 2001, p. 119). British diplomacy once again intervened with the aim of preventing the constitutional friction from escalating into open conflict. However, the attempt by the British High Commissioner, Sir Arthur Clark, to broker a solution to the municipalities issue failed (Weston Markides, 2001, pp. 123–126). In one of his reports to the Commonwealth Relations Office, dated 29 May 1963 (quoted in Soulioti, 2006a, pp. 197–199), Clark expressed the view that, under such conditions, Cyprus could not develop into a truly independent state but was in danger of becoming 'a schizophrenic appendage of Greece and Turkey'.

The Greek government urged Makarios not to take radical steps such as a proposal for constitutional amendments that would purport to abolish the rights of Turkish Cypriots (Clerides, 1989, pp. 151–154). However, Makarios was determined to take such a step. Political developments in Greece facilitated his decision. In June 1963, the Karamanlis government fell. The caretaker government which took over could do little to limit Makarios' bold tactics, which were bolstered by the prospect of a new government being formed in Greece by Georgios Papandreou, who continued to accuse the Karamanlis government regarding the Zurich and London agreements.

The British policy in late September 1963 was:

> to dissuade the archbishop from taking unilateral action, to persuade the Turkish government that some change in the constitution may be necessary, to encourage the formulation of proposals for the *reasonable* modification of constitutional arrangements, and to promote informal talks with a view to reaching a satisfactory solution well before the elections of 1965 (Weston Markides, 2001, p. 143, our emphasis).

Sir Arthur Clark personally reviewed and commented on the draft of the Makarios amendment proposals (Soulioti, 2006a, pp. 289–293), but that did not mean that the British government endorsed them. However, Makarios 'genuinely believed that on the issue of proposing constitutional amendments' he 'had the encouragement and the support of the British government' (Clerides, 1989, p. 168).

Thus, on 30 November 1963, Makarios handed to Vice President Küçük his 'Suggested measures for facilitating the smooth functioning of the State and for the removal of certain causes of intercommunal friction'[10]. Copies of the proposal were immediately transmitted to the British High Commissioner and to the ambassadors of Greece and Turkey, and it was the latter that first rejected the proposal even as a basis for discussion. The Makarios proposals included: the abolition of the final veto powers of the president and of the vice president on Council of Ministers decisions and on laws voted by the House of Representatives concerning foreign affairs, security and defence (the power to return such decisions and laws would remain in place); the abolition of the requirement of separate majorities for votes on laws

10 Reprinted in Soulioti (2006b, pp. 669–682).

concerning taxation, elections and municipalities (on the grounds that the constitution already provided for other measures, including referral to the Supreme Constitutional Court, that would preclude discrimination against the one of the two communities by such legislation); the establishment of unified municipalities; the unification of the administration of justice; and adjustments to the representation ratios of Greek Cypriots and Turkish Cypriots in the civil service and security forces. The proposals also announced the determination of the Greek Cypriot community to abolish its own Communal Chamber, with the issue of keeping in place the Turkish Communal Chamber left to the discretion of Turkish Cypriots. The stated justification reveals that, rather than being an instrument of NCA, the Communal Chambers were for the Greek Cypriots only a means of providing protection to a minority, in accordance with 'the [liberal] concept that the Republic ought not to interfere with religious, educational, cultural and other cognate matters'.

In the days that followed, tensions mounted between the two communities. 'With this tense atmosphere, made worse by the accumulation of arms and the political conflicts in Greece and in Turkey, only a spark was needed to set the island aflame' (Stevens, 1966, p. 182). On 21 December 1963, when a Greek Cypriot police patrol stopped a Turkish Cypriot car to inspect it for guns, a hostile Turkish Cypriot crowd gathered, the police opened fire, the shooting spread and two Turkish Cypriots were killed. Soon thereafter '[t]he initiative fell from the hands of the politicians and was taken up by the communal paramilitary forces' (Patrick, 1976, p. 45). The Greek Cypriots took control of the airport, the seaports and all the police stations, while Turkish Cypriots took up arms in earnest and fortified the Turkish quarters of Nicosia (Stevens, 1966, p. 183). The Greek Cypriots launched a fierce attack, with the irregulars running wild, 'killing scores of Turks, including women and children, smashing and looting Turkish houses, and taking hundreds of hostages' (Stevens, 1966, p. 184).

Turkish military ships assembled at the port of Alexandretta, and the Turkish contingent on the island took control of a strategic position between Kyrenia, located on the north coast, and Nicosia. Turkish jets flew low over Nicosia on Christmas Day. 'The horrifying prospect of a Turkish invasion […] had to be averted and given Britain's past and present position in relation to Cyprus, she was the state which was being looked to' (James, 2002, p. 59). Indeed, the British offer for the formation of a truce force was accepted. On 30 December 1963, the British Secretary of State for Commonwealth Relations, Duncan Sandys, Makarios and Küçük signed the Green Line Agreement, after which Nicosia was divided into a Greek Cypriot and a Turkish Cypriot district. On 1 January 1964, Makarios sent a telegram to the heads of all states to report indications of an imminent Turkish invasion and declare that his government had decided to abrogate the Treaties of Guarantee and of Alliance, only to renege on that latter declaration a few hours later, after a strong reaction from Duncan Sandys. Küçük told reporters that: 'The Cyprus Constitution is dead. There is no possibility of the Turkish Community living together with the Greek Community. Each community must be the master of its own house' (quoted in Soulioti, 2006a, p. 369). Barricaded in the Turkish parts of towns and in small enclaves elsewhere, Turkish Cypriots established their own administration under the direction of Küçük and the Turkish Communal Chamber, which had now become a vehicle for territorial autonomy. For the Greek Cypriot leadership, this was a rebellion, whereas for Turkey and Turkish Cypriots, this was a legitimate reaction to the Greek Cypriot attempt to impose *enosis* by violent means (Patrick, 1976, p. 45). The fighting continued for the next months. On 4 March 1964, the UN Security Council adopted Resolution 186 to create the United Nation's peacekeeping force in Cyprus (UNFICYP) and implicitly recognise

the Makarios government as the only legitimate government on the island. The resolution provided for the designation of a mediator to promote:

> a peaceful solution and an agreed settlement of the problem confronting Cyprus, in accordance with the Charter of the United Nations, having in mind the well-being of the people of Cyprus as a whole and the preservation of international peace and security.

Such a solution is still pending.

National cultural autonomy and (geopolitical) territoriality

The continuing relevance of the state

In *The Ethos of Pluralization*, Williams Connolly (1995, pp. 135–137) refers to the inability of practice to fulfil the expectation of alignment with the image of 'the sovereign, territorial, national, democratic security state'. According to Connolly, the recurring experience of 'disalignment' becomes the source of a certain kind of nostalgia giving rise either to a 'politics of homesickness' or to a more energetic stance that conceals nostalgia by introducing 'stopgap concepts that treat the politics of place as if it were pretty much intact' (Connolly, 1995, pp. 135–137). Expanding upon Connolly's insights, Malloy (2015, p. 3) notes that:

> one might see autonomy as an abnormality in state construction and international relations. To be more precise, TA would represent the 'disalignment' of the boundaries of the sovereign state, and NTA may be seen as accommodating the 'impurity' of society. As such, both may be seen as a threat to social cohesion and the unity of the state. Nevertheless, states have acknowledged and accepted, albeit under pressure, these faults […] the presumption of alignment and unity is a myth because autonomy is applied prolifically around the globe.

These remarks do not discredit the form of the state as such. After all, as Malloy notes, some states have corrected the fault of suppressing disalignment and/or impurity. The problem rests with the states which claim *pure and undiluted* sovereignty; the states which are imagined, and imagine themselves, as having exclusive and comprehensive jurisdiction over the inhabitants of a certain territory. As regards the viability of NTA, the major problem lies in the nation-state ideal, i.e. the type of state which, by a stretch of imagination, aspires to be the homeland of an ethnically homogenous population, and only of that population. Still, many states make good on promises of territorial federalism which in some way corresponds to NCA concept. Not all states are the same and not all kinds of territoriality that are linked with states need to suppress pluralism and, by extrapolation, multiculturalism, NCA or some other political form predicated on pluralism. The multinational or plurinational state is a reality in many places around the world and inspires permutations in political imaginings on a global scale.

The implementation of the Austro-Marxist model presupposes a stable and relatively strong state. That is so not just for functional reasons of economic efficiency and coordination (Keating, 2005). At a more fundamental level, the multinational state must be able to function as the exclusive source of constitutional authority and as the provider of the

legal-organisational means through which NCA institutions can form. With that solid base established, those institutions then need to acquire the necessary legal and political authority on their own to be able to perform their all-important functions. Furthermore, the state must create the public sphere(s) for competing material interests and for nations or segments thereof to cooperate, both economically and politically. One does not need to subscribe to the cause of proletarian socialism, as the Austro-Marxists did, to realise the importance of living and working conditions, social welfare and the just distribution of economic resources in an individual's capability to participate actively in their nation's cultural advances and humanity's cultural wealth if NCA is to become a meaningful aspect of everyday political life, and not just an appendage to state bureaucracy or another means for creating political clienteles.

NCA presupposes a state capable of supporting an adequate measure of material welfare enabling individuals to really enjoy their nation's cultural assets. Such a state must be brought into existence in a way that does not prejudice the right of every national group, however small, to be considered as a constituent part. That does not automatically mean that all national groups, however small, should have equal formal power in the constitution-making process. Instead, the actors in this process should treat nations as equal when designing institutions, including NCA.

A self-enforced constitution

Our case study also indicates that the multinational state presupposes a constitution that is self-enforced; a constitution supported, and in this sense owned, by the citizens, or at least by the local elites. Constitutional self-enforcement, or local ownership, in this sense is indispensable not only for the authority of the institutions of NCA but also for their smooth functioning in practice.

Naturally, ownership of the constitution requires the avoidance of a widespread sense that the constitution has been imposed. The problematic character of constitutional imposition for the performance of constitutions is a quite common view amongst constitutional scholars (Elkins et al., 2008; Feldman, 2005; Stratilatis, 2018), but other perspectives are presented (Law, 2019). In Cyprus, the sense that the constitution was imposed was widespread, as we have seen, and that influenced the Greek Cypriots' mindset and attitudes. It is not by chance that the Makarios amendment proposal opens with a narrative about the circumstances that forced him, as he claimed, to sign the Zurich and London agreements, despite his reservations and misgivings. The Turkish Cypriots' response was that: Makarios could have disavowed the agreements or expressed his reservations after the London conference while the final text of the constitution was still being drafted; in any case, what matters in law is his signing the agreements; and his reference to the circumstances that allegedly forced him to sign the Zurich and London agreements 'cannot serve any purpose except to make it clear that the Constitution was accepted and signed with ulterior motives and with the intention (formed prior to signing) of not implementing it at all' (Küçük, 1963, p. 690). Be that as it may, it seems that NCA arrangements, and consociationalism for that matter, cannot easily take root in the political culture of a divided society unless the major actors are not in a position to disavow the constitutional agreements on the grounds that they had no or little role in drafting their contents. Whether or not Makarios signed the Cyprus agreements with ulterior motives cannot be known. What is important is that *he was in a position* to claim that, despite his signature, he had not been given the opportunity to even express his reservations, much

less to negotiate the revision of some points. To put it in a nutshell, the viability of NCA presupposes a stable state whose constitution cannot be denounced by any of the first interested parties as having been imposed.

Territoriality and the multinational state

Austro-Marxist theory is particularly appealing in comparison with liberal multiculturalism because it gives full credit to the idea that nations should be democratically empowered and organised, while it preserves a liberal core – the personality principle – in the constitution of such democratic power. As Nimni (2007, p. 348) puts it, Austro-Marxist theory 'does away altogether with the idea of national minorities and the need for specific minority protection'. Such protection becomes a corollary to the democratic infrastructure of national bodies. If ever realised, that vision, and the ideological transmutations that it entails, would be a major democratic, not merely liberal, achievement. It would still be an achievement of the territorial state, or of some other comparable entity.

The stability of the multinational state that supports institutions of NCA requires the presence of certain kinds of territoriality and the avoidance of others. For instance, other nations in the same state, and the agents of the state, should respect the emotional attachment of peoples to their 'homelands'; their desire to harness 'the latent powers of space' through myths, history, symbols and ceremonial activities, and the territoriality that stems from that desire (Penrose, 2002, pp. 281–282). The agents of the state should not appeal to vague securitisation concerns to absolve themselves of their constitutional obligation to pay respect to all national identities. On the other hand, the nations that live within a state should not raise pretensions to forms of control akin to exclusive jurisdiction over certain places, or forms of control akin to ownership, which would deprive the agents of the state and/or the members of other nations of access to places or resources which might be important for their prosperity. Neither should nations aspire to forms of control akin to statehood. In such a case, a spiral of actions and reactions could dismantle the multinational state which is the source of the constitutional authority underpinning the existence of nations as public bodies. While there is nothing wrong with substate nations aspiring to be recognised as entities under international law, and to participate in international fora, their foreign policies should not contradict their state's foreign policy nor the equal right of other nations residing in the same state to also enjoy an international status. Moreover, international actors should respect the constitutional autonomy of their counterparts. While it is legitimate for a foreign politician to express concern for the interests of co-nationals living abroad, this concern should not be – and should not be interpreted as being – a subtle raising of territorial claims. This is a significant, often complicated, and relatively unexplored issue related to diplomatic territoriality.

Another kind of territoriality of particular interest for NCA, and one which has played an important role in Cyprus, occurs when political leaders express publicly their support for the territorial aspirations of the nation which they represent, to the detriment of the stability of the state which those same leaders might also represent. While *prima facie* this is a form of territoriality that should be avoided, since it subverts the state and stirs up nationalist passions, some expression of sympathy with those who nurture lost territorial causes might be the only realistic way to undercut the political influence of hardliners and gradually co-opt nationalists in the case for a multinational state. This issue points to a more general question: does agonistic coexistence of national groups in plurinational states include the right to express freely

one's own territorial aspirations when such expression undermines the existence of the plurinational state (and the democratic legitimacy of the nationalist political leaders themselves)? If we may speak of 'agonistic patriotism' commanding from the outset 'the bounding, solidarity and loyalty of differing ethnic and national communities to a common set of transcultural agreements that constitute and make possible the arena of common politics' (Nimni, 2007, p. 359), then what is the real difference between agonism and constitutional patriotism? The problem with the latter is that it postulates *a priori* the existence of a people, when that may be contested, and when the use of the language of 'we the people' may become the vehicle of repressive policies (Oklopcic 2012). In this scenario, the language of peoplehood can be a subtle way to reintroduce nationalist policies with another name.

Renner's proviso: introducing nationalism by the back door?

Let us now consider Renner's (2005, p. 30) constitutional *proviso* that in monolingual regions territorial administration should coincide with national cultural administration. Renner believed that this *proviso* could be implemented in four fifths of the territory of the Austrian part of the Hapsburg Empire – 'national autonomy, distinguishable from territorial autonomy, would be applied only in the remaining mixed nationality districts' (Arzoz, 2020, p. 316).

Renner's *proviso* implies that the members of national groups would be willing to pursue territorial autonomy if they were able to do so. That rather commonsensical idea is implicit in many formulations regarding NTA today. For instance, as Nootens (2005, p. 47) puts it, a model based on the personality principle 'may be an interesting solution for those groups which are not (or only partly) territorially concentrated but which claim some degree of institutional separateness and self-administration', and it might be a 'particularly useful' option 'in cases where nations are closely intermingled on a territory or for scattered minorities'. This approach gives credence to the capacity of the Austro-Marxist model to offer a transterritorial organisation of national life most useful for those individuals, or small communities, who lead their lives in a place other than that in which most members of their nation are concentrated. The same condition implicitly asserts that national groups which have achieved a high level of homogeneity, inclusiveness and compactness, all of which are proxies for territorial segregation, are good candidates for territorial autonomy (Coakley, 2016a, pp. 6–7) and that they would thus opt for it instead of NTA.

Certainly, such a preference can find support in solid normative grounds. Living in a certain place and asserting some control over such living are conditions with intrinsic moral and political value both for individuals, since their life plans are often made on the assumption that they will continue living in a specific place, and for communities, insofar as living in a place provides the background for significant relationships with others. The types of activities which presuppose those relationships, not to mention identities and histories, may be inextricably bound up with occupancy rights over a specific geographical area (Moore, 2015, pp. 38, 40). The dislocation of peoples from the places where they collectively and individually exercise their autonomy is often a traumatic experience, especially, but not exclusively, when it takes place without their consent (Moore, 2015, p. 41). If that is so, then it seems that NCA, being a form of mastery over one's own affairs, cannot be fully deterritorialised, even if it can be transterritorialised (see also Coakley, 2016b, pp. 180–181; Kemp, 2005, p. 180). Some extent of control over a certain territory seems to be a requisite not only for the fruition of the traditional, ideological and/or symbolical investments of nations in native

lands, 'homelands' or 'heartlands' but also (and mainly) for the realisation of their individual and collective autonomy.

Such considerations offer a not antiliberal justification of Renner's *proviso*. The problem is that monolingualism, even if perfectly realised (and we have reasons to presume that this cannot be so), is hardly a conclusive reason justifying why certain nations should be able to reap the added moral and political value of territorial autonomy, while others cannot. Nor would 'historical titles' do for this purpose in most cases, but that is a topic that cannot be discussed here. What we may stress here is a possible negative effect of Renner's *proviso*: the corroboration of the view that, all things considered, territorial autonomy is preferable to NCA. From this point of view, the adoption of NCA could in the best-case scenario be considered as a corollary to the state's 'territorial' institutions, while in the worst-case scenario NCA would be taken as a necessary evil. If widely used, Renner's *proviso* would hinder the diffusion of the ideology that supports NCA in the population. The unification of state-territorial with national-cultural self-administration may keep alive the notion that territorial autonomy is the best means for achieving autonomy in general, including NCA. Thus, Renner's *proviso* implicitly corroborates the view that the dual institutional model of self-administration that his model promotes is *somehow* deficient in comparison with the unified self-administration model of the traditional territorial nation-state. Of course, one might justify the *proviso* on pragmatic grounds, e.g. by noticing that it secures administrative simplicity.

We might consider this problem in connection with our case study, especially in terms of the Makarios proposal that the Greek Communal Chamber be abolished (presumably for cost-saving purposes) and that Turkish Cypriots should consider whether to abolish their own Communal Chamber. This proposal insinuates a conception of institutions such as Communal Chambers as mere, and replaceable, instruments of liberal minority rights, not as irreplaceable instruments for the achievement of fully-fledged NCA. It is worth quoting the Turkish Cypriot reply to this particular proposal:

> The Cyprus State is not a Greek State but it is a State brought about by the settlement reached between the Greek and Turkish communities […] If this factor is forgotten then all endeavors for solving our problems lack sincerity and wisdom. The attempt to abolish the Greek Communal Chamber and to transfer to Government the services which the Chamber renders is tantamount to making the Cyprus Government a Greek Government and reducing the Turks to the position of a minority in defiance of the Constitution and of the settlement which brought about the Cyprus Republic (Küçük, 1963, pp. 713–714).

The Turkish Cypriot reply demonstrates the more general idea that elected and democratically empowered bodies promoting NCA are indispensable in a truly multinational state; that NCA is a core feature of such a state, and one which should be promoted as a value *per se*, as a primary constitutional good. Particularly when a multinational state is composed of two nations, the abolition of the institutions of NCA of the one nation would amplify the notion that such institutions are in general a bizarre, and for many anachronistic, instrument of supposedly old causes. Manipulating this notion appropriately, the ethnic majority could achieve the 're-majoritisation' of national cultural life by relegating it to a lower status compared to other political concerns. However, the whole point of NCA is to stress the potency of nations as legitimate agents of ideological, cultural and political autonomy in the face of

denationalisation trends. Such trends might be appealing to the members of the national majority and can be especially detrimental to the concerns of the minority.

We could consider a possible way out of this problem by considering the municipalities issue. Our narrative indicates that an institution based on the personality principle can, in theory, assume territorial functions, with all the practical difficulties that might entail, and with all the advantages that might create for meeting local needs in an efficient way. The fact that in the case of the separate municipalities the relationship between NTA and territoriality became a source of friction owed to the peculiarities of the case of Cyprus, i.e. to geopolitical territoriality. In the absence of such adverse conditions, however, there is no reason to assume that an institution whose primary purpose is the promotion of NCA should not have *some kind* of territorial jurisdiction in relation to tasks which are generally assigned to state organs. More generally, there is no reason to insist upon a strict division between the territorial state and its instruments, on the one hand, and the non-territorial institutions of NCA, on the other hand – a division which is difficult to sustain in practice anyway (Kemp, 2005, p. 180). When the concerns that are salient in a particular case (as in the Turkish Cypriots' security concerns in our case study) indicate that some degree of territorialisation would be essential to the preservation of the national identity of the peoples concerned, national bodies could assume some of the functions of state organs (e.g. police). Local self-administration would be the most appropriate context for such a soft form of territorialising NCA, but the same option could also be considered regarding the upper levels of national self-administration.

Renner takes that idea further than is required when he suggests the unification of state-territorial and national-cultural self-administration in regions where one nation has achieved high levels of linguistic homogeneity. In this way he keeps alive the notion that territorial autonomy is the best means for achieving autonomy in general. It is true, however, that Renner's proposal has the advantage of administrative simplicity, but much still depends upon the Communal Chambers' range of powers and the number of nations. If there are only two nations, the complete territorialisation of self-administration would be best avoided. In general, we could imagine an institutional mechanism that would calibrate the balance between the competences of the state and the national organs to the needs at hand, by means of transferring competences as things change, potentially under constitutional court supervision. Thus, if for some reason the members of a particular nation raise fears concerning their treatment by the police authorities, a court or other comparable organ might consider approving the transfer of certain competences (e.g. supervision of the conduct of policemen in a certain regions and, in this context, issuing reports and investigating cases of alleged police brutality or abuse) to the organs of NCA. Even better, the state organs might share such competences with the NCA bodies. That would be, after all, the logical corollary of shared sovereignty. Let us come now to another issue which was central to our case study.

Deep internationalisation, if any is needed

The existence of a stable and relatively strong state, being a prerequisite for the realisation of the Austro-Marxist model, requires not inimical international conditions. If not conditions conducive to international socialism, as the Austro-Marxists hoped, then at least conditions that do not foment secessions, partitions and territorial reconfigurations for the sake of nationalism, thereby resurrecting 'the obsession with national conquests', which is 'the law of all national struggle under the centralist-atomist constitution' (Bauer, 2000, p. 274). It was

arguably this factor that determined the fate of bicommunalism in Cyprus more than any other.

In the previous section we focused on the corrosive role of the Treaty of Guarantee. Being one of a kind (the closest analogue is the Platt Amendment, which legalised the interventions of the USA in Cuba), the very existence of the Treaty of Guarantee curtailed the autonomy of the local actors and undermined the state's authority by providing a constant reminder that the guarantor powers were in a position to intervene. In fact, the problem was much deeper. By becoming accustomed to taking their lead from the 'motherlands' or the British, Cypriot leaders were diminishing their own capacity to lead and make good on their constitutional responsibility to run their own political affairs. The Treaty of Guarantee undermined the symbolic authority of the constitution and caused a territorialisation of all political affairs. It also gave the local actors an alibi for their unconstructive stances and three scapegoats, plus the usual suspect of the USA, for their failure to reach an agreement.

Considered more broadly, in the context of other cases wherein NTA arrangements are linked with state securitisation concerns, the case of Cyprus is not so unusual after all. Geopolitics always play a critical role in aggravating, alleviating or neutralising security concerns. We could even propose that this is an unseen condition of all NTA arrangements, even if only in the form of a negative condition (i.e. a condition whose absence favours NTA) in most cases. NTA cannot completely escape the messy business of territorialisation of interethnic or other disputes, despite territorial factor remaining dormant in many cases, either because of the positive effects of the NTA arrangements themselves or for other reasons. However, if the circumstances are such as to activate the territorial factor, the normative point would not be to wish it away. We should rather pursue a constructive use of the means of constitutional law and negotiations between the constitutional partners directly addressing their territorial concerns. In the event of failure, the means of international law should come into play. A constructive use of such means should prioritise the ends, i.e. constitutional coexistence, prosperity and international peace. Constructiveness includes efficiency, which has to do with the optimal balance between these two ends. In the case of Cyprus, such a constructive use of the means of international law was by and large absent. If it had been present, had the Treaty of Guarantee been used as a forum for coordinated action of the guarantor powers in a constructive way or, even better, had a complementary mechanism of mediation and arbitration (not unlike that that the UN set up in March 1964, when it was already too late) existed, things might have taken a different course (Yakinthou, 2009, pp. 69–71).

When geopolitical territoriality makes its appearance, the internationalisation of conflict-resolution efforts is unavoidable. What one might ask for then is *deep* internationalisation, in the form of multilateral diplomatic forums whose workings are directed by the principles of international peace and fairness, urging the first interested parties to agree upon, and then to assert ownership of, a consociational constitution. Such internationalisation would effectively preclude the uncontrolled openness of the constitutional order of the state in question to all kinds of external actors, factors and conditions that might arise in the future. This consideration is quite independent of whether external influences stem from 'motherlands' or other states. To be able to serve as a locus of authority and, hence, as the space for political and economic development, a state cannot allow continuous, everyday involvement in its constitutional affairs. Only structured interventions cloaked with the authority of the international community, preferably the UN or other regional organisations that secure an adequate level of multilateralism, can be allowed.

Thus, to sum up our observations so far, any state that hosts institutions of NCA must first have a constitution that cannot be easily denounced as having been imposed. Second, it must not allow the 'motherlands' to replace it as the source of the NCA institutions' authority. Third, when conflict between the warring nations is internationalised, the state must be ready to allow soft interventions stemming from multilateral negotiating forums, supported by the authority of the relevant international organisation, preferably the UN. Of course, impartial yet efficient external interventions might well be elusive, especially in deeply divided societies.

NCA in deeply divided societies: a matter of segmental isolation?

The most problematic context for the realisation of NCA are 'really' deeply divided societies, i.e. societies which are not only prone to conflict because of non-divisible ethnic or religious identity issues (Lerner, 2011, pp. 31–32) but have also recently experienced armed conflict so that the state in question cannot command overarching loyalties. In such cases, the state is not able to serve as the source of constitutional authority needed to underpin all the institutions that would materialise, included those of NCA. The question that arises in this connection is how a constitution that incorporates NCA can be designed to reduce the danger of relapsing into armed conflict and thus corroding even further the state in its capacity as the source of the NCA institutions' authority.

One way of tackling this problem is to consider segmental autonomy, which is one of the four components of consociational democracy.[11] Lijphart (1977, pp. 41–44) defined this term as 'rule by the minority over itself in the area of the minority's exclusive concern'. Such rule may take the form of federalism, either territorial or non-territorial, and it is in this context where Lijphart cites Bauer and Renner and their personality principle. Lijphart pointed in later articles to education and culture as the areas in which groups should have authority to run their internal affairs (Lijphart, 2004, p. 97), and he referred to three forms of cultural autonomy in power-sharing regimes: 'federal arrangements in which state and linguistic boundaries largely coincide, thus providing a high degree of linguistic autonomy, as in Switzerland, Belgium and Czecho-Slovakia'; 'the right of religious and linguistic minorities to establish and administer their own autonomous schools, fully supported by public funds, as in Belgium and the Netherlands'; and 'separate 'personal laws' – concerning marriage, divorce, custody and adoption of children, and inheritance – for religious minorities, as in Lebanon and Cyprus' (Lijphart, 1996, p. 260). According Lijphart's (1977, p. 88) original idea, the aim of segmental autonomy is to diminish the potential for conflict by 'limiting mutual contacts and consequently [by] limiting the chances of ever-present potential antagonisms to erupt into actual hostility'. This suggests that 'there is a strong, positive relationship between stability and the separation of groups at all but the most elite leadership levels' (Brooks Kelly, 2019, p. 88).

Examining the case of Cyprus through the lens of consociational theory, Yakinthou (2009, pp. 61–64) emphasised the absence of segmental isolation as one of the factors that contributed to the collapse of bicommunalism. Yakinthou focused on the municipalities issue, which, if resolved, could have produced some sort of separation of the two communities. Still, this would not have been done by means of removal of populations. It would have been

[11] In fact, segmental autonomy has been viewed as the most fundamental trait of consociational democracy on the grounds that its meaning, when fully articulated, becomes an explanandum for the other three components: grand coalitions, proportional representation and mutual vetoes (Brooks Kelly, 2019, p. 88).

the consequence of an institutional choice, i.e. the attribution of territorial jurisdiction to an institution that would still be primarily defined as an instrument of NCA. Indeed, segmental autonomy should not be taken only or primarily as an issue of political geography, at least not if by the latter term we mean places and territories being neutral, inert containers of human activities. The concept of territoriality points to the opposite direction: the perception of territories as the medium whereby social and political relationships are formed. Following that idea, segmental autonomy should not be perceived as a matter of removing people from one place to another, but rather as a matter of instituting arrangements conducive to the reduction of the danger of conflict that is inherent in certain (not all) interactions between warring factions of the population. Territorial separation of populations may not produce segmental autonomy. It may bring about poverty and a meaningless life, because of the absence of the 'other', which often defines our identity in subtle ways that we are not able to feel unless the other has been excluded from our lives. Needless to say, any attempt to achieve geographical separation by force will harm even more important values, such as human dignity.

The removal of populations is a policy which does not simply undermine but neutralises the whole case for constitutional autonomy, be it in the form of NTA (in which case to remove populations would be tantamount to cutting the head off to treat a headache) or in the form of territorial autonomy (in which case the whole ideological apparatus of nationalism is reintroduced to the situation). Segmental isolation should be perceived only as the unintended consequence of institutional choices that are *not* designed with the aim of enforcing a removal of populations, not even on a 'voluntary' basis, for there is little that can genuinely be voluntary under such conditions, so such choices are devoid of significant sacrifices. This observation reflects our opinion that living in a specific territory has intrinsic moral and political value insofar as it is a necessary condition for important relationships that form the matter of our individual and collective autonomy (Moore, 2015).

In general, the NCA model cannot achieve its full purpose and value when members of different nations live apart from each other. Segmental isolation in the form of geographical separation contradicts an important element of the constitutional vision of the Austro-Marxists: their hope to see peaceful coexistence taking the form of economic and political cooperation towards a socialist society. Besides, the Austro-Marxist model is not *only* or *primarily* a conflict-resolution mechanism, although prevention of conflicts is part of its rationale. This model aspires to seeing international coexistence becoming a medium of social evolution, as distinct from an imposed sense of social cohesion. Segmental autonomy *qua* cultural self-government remains the core component of NCA. If in specific cases cultural self-government presupposes arrangements that would strengthen the physical safety of the members of one nation, some kind of separation would be inevitable. The point is not to construe such separation as a value *per se*.

Conclusions

NCA is a primary constitutional good, given that the relevant populations would be interested in setting up the institutions conducive to it. Such institutions may also play a vital, if often unnoticed, role in preventing conflicts. NCA is compatible with the presence of territorial aspirations on the condition that those aspirations are contained within the confines of the constitution of the multinational state. As a form of mastery over one's own affairs, NCA

cannot be fully deterritorialised, even if it can be transterritorialised. That is so because one's own affairs depend to a certain extent upon living in a specific place, where important social and political relations are articulated. NCA institutions may even be furnished with some degree of territorial jurisdiction in relation to matters such as physical safety which would naturally fall under the competence of state organs. Concerns for the physical safety of the members of the minority nation may necessitate the transferral of competences which would naturally belong to the central state to the institutions of NCA. It is however worth insisting upon keeping the institutions of NCA distinct from state-territorial self-administration bodies if we wish to avoid the notion that NCA is a deficient instrument for promoting autonomy or that it is a necessary evil.

The role of the constitutional state as source of the authority of the institutions of NCA is very important. For this reason, the constitution of a multinational state should be drafted in a way that would not allow some of the main actors to claim later that it was imposed by outside powers. Moreover, local actors should be forced to assume responsibility for resolving the constitutional issues that will most probably arise after the creation of the multinational state. External involvement in the constitutional affairs of a deeply divided society may sometimes be inevitable. In such cases, the external powers must be prepared to be constructively engaged in what we termed 'deep internationalisation': multilateral forums directed by international law, enabling local actors to reach a settlement, or to give account before their constituencies for their failure to do so. External interventions need not undermine the constitutional autonomy of local actors or the prospect for a (new) constitutional settlement that will be owned by these actors.

The key concept of this essay was territoriality. This concept implies that one should not blame territorial configurations for their inability to reorient their own or their political constituency's constitutional imagination towards a compromise with the 'other'. There is however a kernel of truth in the view that territories point to hard facts which cannot be brushed away – they may only be interpreted in a way that favours changes in the political attitudes that might contribute to one outcome or the other. In our case study, such a hard fact was seemingly the openness of the Cypriot constitutional order to the influence of all the actors interested in controlling the developments in the Middle East and eastern Mediterranean. Such openness made difficult even the demarcation of the territorial scope of political action regarding Cyprus. The external powers treated the territory in question not only as the ground of a possible constitutional compromise for the sake of its inhabitants but also as an unsinkable aircraft carrier. One could thus speculate that the territory of Cyprus includes not only the island but also the surrounding sea (with its newly found energy resources) and the Middle East region to an extent coinciding with the range of the strategic weapons, and intelligence facilities, which remain on the island to this day. Ironically, then, Cypriots should ask that foreign powers treat them as … only an island. In other respects, whatever form the coexistence of ethnicities on this island takes is a matter of constitutional, not territorial, imagination.

The fluidity of the territory of Cyprus, and the fluidity of territoriality stemming both from within and beyond the island, seem to determine the political fate of its people(s). However, that is true only to the extent that those conditions enable certain political attitudes on the part of the first interested parties to the Cyprus problems, i.e. the Cypriots, including a mentality of exceptionalism from (supposedly existing) global standards of democracy (Trimikliniotis, 2018; see also Moudouros, 2021). This mentality reproduces the feeling that the various states of exception on the island (the Green Line and the dead zones, the British

sovereign bases, the presence of the Turkish army in the north, the non-recognised state entity there, etc.) could be brushed away by the stroke of a pen which is in the hand of foreign powers. The same mentality allows other problems, which could also be linked with the discourse of states of exception (e.g. immigrants), to pass unnoticed. There is however nothing exceptional about the condition of inhabiting an island which has been tormented by immense pressures from within and without. The fate of Cypriots is no different from that of many other peoples all over the postcolonial world. Realising this *is* a kind of territoriality, although not one which facilitates control over geographical spaces but which debunks the use of territorial language as a means for displacing attention from the relationship between controllers and the controlled. Power relations can be mediated by making and remaking constitutions. The institutions of NCA can be part of constitution (re)making. As such, they are neither a medicine nor an antidote, but they are a possible outcome of a political process animated by the intention to treat the world as a space that can be remade without underestimating the importance of nations.

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Martin Klatt

Minority political parties – an effective means of participation or a trade union negotiator? The example of the South Schleswig Voters Association (Südschleswigscher Wählerverband, SSW)

Political participation – a key element of non-territorial autonomy

Non-territorial autonomy (NTA) is a tool for managing ethnocultural diversity. In principle, democracy – the rule of the people – is inherently connected to territoriality: a people should legislate for the territory they inhabit and which is clearly bordered or demarcated from other peoples' territories. Non-interference in domestic affairs is a core element of the Westphalian system of sovereign states. Nationalism and the subsequent principle of the ethnically defined nation state with a linguistically and culturally homogeneous population have socially constructed clear geographically demarcated states with contingent histories, narratives of identity and cultural distinction, as well as linguistic dominance and homogenisation. This has caused conflict among diverse groups inhabiting the same territory. NTA is a concept that accommodates these groups without raising fears of secession and provoking or mobilizing secessionist movements and which enables diversity that does not threaten a state's territorial integrity. Since WWI, there has been a general pattern to assign the status of national minority to groups that do not automatically identify with the core historic, linguistic and cultural concepts of their state of residence. While the status of national minority is usually ascribed based on empirically measurable otherness (language, religion, ethnic origin, cultural practices), clear distinctions may be difficult to ascertain in practice due to social integration and multiple identifications, as well as social practices of intermarriage or changes in identification.

Despite these shortcomings, the concept of national minority is perceived as the most acceptable tool for enabling diversity in the nationally defined states of Europe. It has been acknowledged in European international law, especially in the Council of Europe's Framework Convention for the Protection of National Minorities (FCPNM) of 1998. Protection of national minorities was also one of the Copenhagen Criteria of 1993, a precondition for accession to the European Union. The FCPNM and the Copenhagen Criteria not only imply non-discrimination of minorities but also set out standards for their active inclusion in economic, social, public, cultural and political life. This paper focuses on the latter: political life. How can NTA arrangements secure minorities' full political participation as citizens of their state of residency, the ethnic, national, linguistic and cultural self-identification of which they may not share? The study centres on the Danish–German case of Schleswig, widely perceived as a best practice example of minority accommodation and inclusion (Klatt, 2015, 2017, 2019; Kühl, 2005a, 2005b, 2019), to illustrate dilemmas and challenges of minority political participation.

Minority parties as an instrument of political inclusion

Many minorities have formed ethnic minority parties as a means to advance their political interests at local, regional and national levels. While some minority parties have territorial ambitions, others restrict themselves to political participation, especially promoting non-discrimination and the equal financial involvement of minorities in public goods and services. All national minorities have to consider and discuss how to best participate in the political systems of their state of residence. There is no prescription on how to ensure minorities' political participation. Minority members may join mainstream, value-oriented parties or form ethnicised minority parties to promote minority interests. They may even form value-oriented, ethnicised parties as there are multiple minority parties within a political system. If two-party membership is allowed within a political system, minority members might choose a dual system of political participation in minority parties at local level, while joining value-oriented parties at national level if the minority is too small to obtain national representation. Conversely, they may join a minority party at national level to promote minority interests and join a value-oriented party (or local municipal voters' associations'lists) at a local level. In practice, however, two forms of political mobilization prevail, not the least because most electoral systems do not allow membership on more than one party: active membership in main-stream political parties or the establishment of ethnicised minority parties. Allochthonous minorities (ethnic minorities who have arrived fairly recently) tend to participate in mainstream political parties in most West (of the former Iron Curtain) European countries. Even large communities, such as the migrants and descendants of Turkish origin in Germany or similar North African communities in France, have not formed their own parties. Instead, minority participation in centre-left or liberal parties ensures (usually limited) parliamentary representation and policy influence (Koev, 2019). In former Warsaw Pact countries, many minority groups formed ethnic parties after the collapse of Communism (Koev, 2019), in line with the general movement of politics into more autocratic frameworks based on nationalistic legitimation (Berend & Bugaric, 2015).

Ethnicised parties monopolise an ethnic minority's political plurality in party systems and/or minority–majority settings where the minority's size does not allow a plurality of ethnic parties to gain representation in parliament. To broaden their appeal, ethnic parties often include a regionalist aspect in their name and programmes. This is the case, for example, in Scotland (Scottish National Party – SNP), Wales (*Plaid Cymru*), South Tyrol (*Südtiroler Volkspartei*) and in the Danish–German context with the *Slesvigsk Parti* representing the German minority in Denmark and the *Südschleswigscher Wählerverband* (SSW) representing the Danish (and Frisian) minority in German Schleswig-Holstein. Ethnic parties tend to have strong mobilisation potential with higher levels of party loyalty and lower defection rates (Allen, 2017; Alonso, 2005). During intensive and ethnically exclusive political campaigns, ethnic parties are an instrument for strengthening ethnic identity (Higashijima & Nakai, 2016). However, their appeal outside their core voter group – the ethnic minority – may be limited because of the party's focus on that group.

There is no general trend in electoral success for these parties. While ethnic parties have become pivotal partners in national coalition governments in Bulgaria, Romania and Slovakia, Russian minority parties in Estonia, after some early success in the 1990s, have merged with more viable, ideologically based parties (Koev, 2019). A state-of-the-art overview (Koev, 2019, p. 231) demonstrates that ethnic minority parties can be highly influential actors in

domestic policies, boost political participation within the group they represent, prevent minority conflict, help manage interethnic relations and help stabilise and sustain democracy.

Nevertheless, ethnicised party systems may be considered problematic as there is widespread fear that they could increase the salience of ethnic differences and, thus, fuel ethnic tensions (Flesken, 2018, p. 967). In a minority kin-state setting, an ethnic party might be perceived as an instrument of kin-state interference in domestic policies. In Europe, the ethnicisation of party systems, e.g. in Ulster/Northern Ireland, Bosnia-Hercegovina and South Tyrol, has complicated or monopolised the forming of governments. When multi-party systems evolved in many sub-Saharan African countries in the 1990s, several of them included legal provisions against, or even banned, ethnic or other identity-based particularistic parties due to widespread fears that they increase the risk of inter-communal conflict (Basedau & Moroff, 2011). The hypothesis that ethnicised party systems emphasise or promote ethnic tensions is based on the theory that political parties represent societal cleavages (Lipset & Rokkan, 1967). These cleavages have been predominantly class based, signifying social divisions, and are represented as such in most West European political party systems. Ethnic parties introduce a different dimension here. Their political success suggests the existence of an ethnic cleavage strong enough to overcome social divisions, uniting an ethnic in-group despite inner social rifts. However, this is not necessarily the case. Studies from Romania have revealed that out-group aversion may decrease despite an ethnicised competitive party system and that minority identification with the state of residence may increase due to active political participation (Flesken, 2018).

NTA in Schleswig

This article focuses on the political participation of the Danish minority in South Schleswig. As mentioned above, the Schleswig case is usually considered to be settled and reconciled with a commonly accepted framework of NTA ensuring minorities' societal participation. However, this has not always been the case. The former Duchy of Schleswig, administratively united with the Duchy of Holstein and part of the Danish Conglomerate State until 1864, became a border conflict zone in the 19th century, when both Danish and German national movements claimed it for their respective national projects. Two wars (1848–50, 1864) were followed by national assimilation policies combined with national, cultural and linguistic suppression. After WWI, the region was divided between Denmark and Germany following two plebiscites. This resulted in what has been referred to as the 'greatest border of the world' [*verdens bedste grænse*] (Gram-Skjoldager, 2020), which accommodated a national conflict by applying the right of national self-determination and offering dissenters NTA within institutionalised national minorities, with subjective self-identification as the decisive criteria of membership.

The political consensus in Schleswig since 1920 is that national minorities should be entitled to manage their own cultural affairs, to educate in the minority language in separate minority schools operated by the minorities but publicly funded and to participate in politics. This consensus has been formalised within education law, guaranteeing parents the right to choose a minority school for their children. In practice, however, the NTA model is largely based on declarations of intent by the majority. Negative discrimination is prohibited by constitutional law but there are no direct provisions for positive discrimination. Instead,

the reciprocity principle should (and did) enable kin-state support and create an atmosphere of mutual trust and recognition. This consensus was disrupted during the political crisis of Nazi rule and WWII and its aftermath but was restored with the mutual Bonn–Copenhagen governmental declarations of 1955 (Kühl, 2005a). These parallel, identical governmental statements are also declarations of intent. Implementation depends on a spirit of goodwill and acceptance of the minority.

Today, both minorities operate a respected minority school system, are politically active at local and regional levels and offer a broad range of cultural associations to ensure the possibility of living as a Dane in South Schleswig or as a German in North Schleswig. Conflicts have become increasingly rare and usually evolve around financial issues (Klatt, 2014) although, apparently, they can easily be used to mobilise ethnic solidarity and antagonism, leading some scholars to promote a more active, positive approach to peace in Schleswig's NTA (Hughes et al., 2020).

The South Schleswig Voters' Association

The *Südschleswigscher Wählerverband* (SSW) was founded in 1948 as a compromise between the British occupation authorities in Schleswig-Holstein and the Danish minority, after a three-year struggle over how to organise the political representation of the Danish-oriented population in South Schleswig. The British opposed the idea of ethnic parties while the minority favoured a single minority organisation also functioning as political party; a model exceptionally applied for the elections to the Schleswig-Holstein *Landtag* in 1947. The SSW was represented with six seats in the first elected Schleswig-Holstein *Landtag* (1947–1950), one seat in the first West German *Bundestag* (1949–1953) and at county and municipal levels. Between 1946 and 1954, it was in alliance with a Danish-oriented Social Democratic Party branch in the city of Flensburg (*Sozialdemokratische Partei Flensburg*, SPF) before most of its members returned to the Social Democratic Party of Germany (SPD). Since 1955, the SSW has been exempted from the 5% threshold1 applied to federal and state elections. Apart from a gap between 1954 and 1958, it has been continuously represented in the Schleswig-Holstein *Landtag*, with three seats in the 2017-2022 term, and it was a partner in the ruling coalition with the Social Democrats and the Green Party from 2012 to 2017 (Henningsen et al., 1998; Klatt & Kühl, 2015). In autumn 2020, the party decided to participate in the German federal elections (September 2021), which it had not done since 1961. The SSW has maintained a regionalist South Schleswig approach in party programmes and electoral campaigns, claiming that minority members have a greater interest in their home region's development in order to sustain the minority and lessen the threat of outmigration. In the 2017 election campaign, the party changed its South Schleswig regionalist perspective to a Schleswig-Holstein perspective. At European level, it has joined the European Free Alliance group of regionalist and separatist parties (fig 1.).

Figure 1 illustrates the electoral success of the Danish minority's party in the state elections in Schleswig-Holstein in terms of total votes. How can this change in electoral success be explained when the size of the Danish minority is considered to have stabilised at approximately 50,000 since the late 1950s, after a decline following the post WWII boom (Kühl, 2005c)? Three phases stand out at first glance:

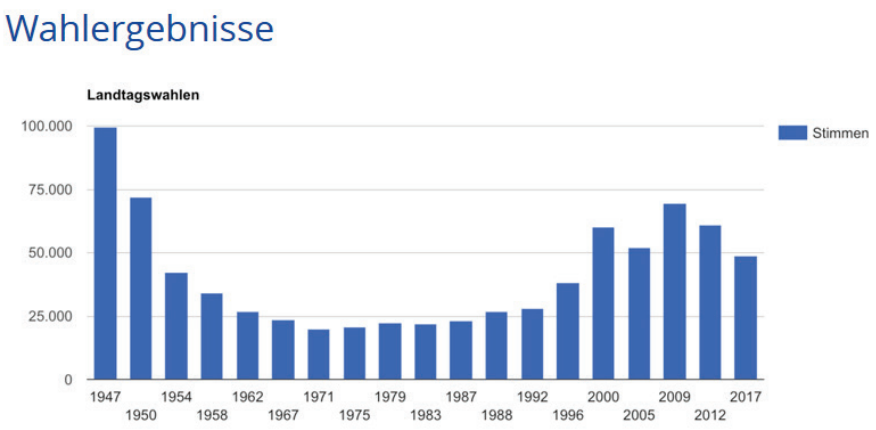

Fig. 1: SSW election results (*Wahlergebnisse),* votes (*Stimmen*), Schleswig-Holstein *Landtag (State)* ections, 1947–2017 (SSW, 2 August 2021)

1. The reunification border-change cleavage explains the success during the immediate post-war period, with the 1947 result of approximately 100,000 votes representing circa 33% of the votes in South Schleswig. If we subtract the votes of refugees from Germany's eastern provinces, the Danish vote represents a narrow majority of the native population of South Schleswig. At local level, in the city of Flensburg, 80–90 % of the votes of the native population were cast for the Danish minority party, indicating a wish to remove the border (for a more explicit analysis see Henningsen et al., 1998). The SSW was founded as the political representative of a movement that wanted border revision and the reunification of South Schleswig with Denmark. In its original party programme, rather than explicitly referring to the Danish minority, it delivered a regional, comprehensive *Heimat*-approach to integrate all natives of South Schleswig, regardless of their national orientation (Danish, Frisian, German). The SSW represented an attempt to politicise a new interpretation of the national conflict in Schleswig as a cleavage between natives and immigrants from outside, i.e. from other parts of Germany, such as Prussians, Nazis and, after WWII, East German refugees (Klatt, 2000, 2001). The party's programmatic approach was inclusive and monopolising. It included the term *Wählervereinigung* (Voters' Association) in its name to illustrate that it was not simply a political party but rather a movement. As it was not allowed to demand unification with Denmark (secession from Germany) in its programme, the foundational party programme of 1948 was dominated by a regional, *Heimat* component with little reference to a Danish minority and no reference to Denmark at all. This also applied to the electoral campaigns of 1950 and 1954 (Henningsen et al., 1998). The party aimed to unite the locals against 'foreigners' – in this case particularly the numerous refugees from Germany's lost Eastern territories (*Ostgebiete)*, many of whom now resided in Schleswig-Holstein (Klatt, 2001). However, with the post-war stabilisation of Germany and the successful construction of a Schleswig-Holstein *Heimat*-civil-society movement, the approach to unite all South Schleswig locals against the Eastern refugees never succeeded. The party was very quickly, and reasonably, branded as the party of the Danes. When the prospects of immediate unification with Denmark or

a plebiscite faded, votes for the SSW continued to decline and by 1958 had reduced to a third of the 1947 total.

2. *Stabilisation at a low level as an ethnic party*. In the 1960s, 1970s and 1980s, votes for the SSW stabilised at around 20,000–25,000. This was the ethnic party period, when only the core minority members voted for the SSW for reasons of ethnic solidarity. This was reflected in a new party programme (1966), in which the SSW defined itself as the party of the Danish (and the Frisian) minority, which is how it still views itself today (Klatt & Kühl, 2015). Politically, the party programme argued for the implementation of Nordic policies in Schleswig-Holstein. The party continues to hold this perception of its political role within the German party system and defines its politics as being close to the social and economic development policies in Scandinavia (SSW, 4 August 2021). This new programmatic approach had only a slight impact during the 1960s and 1970s, when the party came close to losing its seat in the parliament in Kiel, only narrowly surpassing the vote threshold to take the last seat.

3. *New voter recruitment since the 1990s*. Nordic policies have continued to be the SSW's second most popular vote-winner, behind the primary appeal of minority voters' solidarity. This pledge to adopt Nordic policy models was successful during the 1990s and 2000s, when the SSW more than doubled its vote. However, the number of votes it has received since the Millennium has varied, with just above/below 50,000 in the 2005 and 2017 elections respectively and close to 70,000 in 2009. It should be noted that the SSW profited from changes to the electoral system which took effect in 2000, when Schleswig-Holstein introduced the German two-vote system whereby voters have a personal vote for a precinct candidate and a second vote for a party list. Previously, the electorate could only vote for the SSW in the electoral precincts where it had nominated candidates, which was the case in South Schleswig but not in Holstein. Since 2000, voters have been able to cast their second vote for the SSW in the whole of Schleswig-Holstein, including in electoral precincts where the party has not nominated a direct candidate. The sudden success of the party outside the Danish minority's traditional settlement area came as a surprise to many, not least some members of the SSW. In fact, in the 2000s, it obtained approximately half of its votes in Holstein, outside the Danish minority's traditional settlement area.

While apparently attracting voters from outside the core minority (which has remained stable over time in terms of membership), these sympathy votes are fluid. Interestingly, Nordic mainstream policies have changed considerably during this period. Denmark had a paradigm change in 2001, when (neo)liberal Anders Fogh Rasmussen formed a government supported by the right-populist Danish People's Party and implemented a neoliberal political agenda accompanied by very restrictive immigration and nativist integration policies. The latter have become mainstream in Denmark, including for the present social democrat government. This has been a dilemma for the SSW, which continues to propagate open migration and multiculturalist integration policies. The conflict between the SSW and Danish politics was particularly apparent during the so-called migration crisis of 2015, when most of the Danish minority and the SSW supported German Chancellor Angela Merkel's 'refugees welcome' open-door policy rather than the much more restrictive Danish policies (Klatt, 2020a).

According to Lipset and Rokkan's cleavage theory (Lipset & Rokkan, 1967), a party must represent a societal conflict/cleavage in order to be politically successful. Here, we can identify the issue of border revision as the main cleavage for the elections of 1947,1949, 1950 and 1951. This was visible by the social democrats in Flensburg splitting into pro-Danish and pro-German factions (Christinansen, 1993), the nomination of a single German candidate

in the Flensburg voting district at the first election to the German *Bundestag* in 1949, and the formation of a single German list (*Wählergemeinschaft Deutsches Flensburg)* at the municipal elections in 1951. With the foundation of the Federal Republic of Germany and its integration into NATO and the EC, border revision was no longer on the agenda. This is reflected in the decline in the number of votes for the SSW. Today, the only cleavage remaining is a narrative of continuous majority–minority conflict to justify the party's claim for solidarity from minority members.

It is even more interesting to scrutinise the party's success from the late 1980s onwards. Being a small party, the SSW has not been subject to in-depth voting analyses, e.g. via exit polls. Therefore, the following analysis is based on various observations and considerations but is unable to reach a firm conclusion. There is no indication that a renewed Danish–German ethnic cleavage, as occurred during the immediate period after WWII, has emerged in the region. On the contrary, political narratives have maintained the improvement in Danish–German relations and emphasised the contributions of minorities to reconciliation and cooperation in the borderlands (Klatt, 2006). This should, all other conditions aside, also make it more difficult for the party to play on the ethnic solidarity narrative: if the minority is politically, socially and culturally accommodated into both Schleswig-Holstein and German societies, its voters may take other considerations into account when casting their ballot. Analyses of federal German elections, where the SSW did not participate, have demonstrated that approximately 80% of Danish minority votes went to the Social Democrats and the new Green Party during the 1980s and 1990s (Henningsen et al., 1998). The SSW has argued that a stronger focus on regional issues, beyond narrow minority-interest representation, is the key to success (Henningsen et al., 1998). The presence of an authentic, charismatic, popular and relatable politician in Karl Otto Meyer (1928–2016, sole SSW member of the *Landtag* 1971–1996 (Nissen, 2018)) may partly explain the success. Denmark and the myth of the Nordic welfare state as a successful symbiosis of capitalism, socialism and ecology may also have contributed to the SSW being able to extend its electorate beyond the core minority.

The party's electoral success improved significantly, when a new electoral process broadened the geographical spread of its electorate. The Danish minority had been geographically tied to South Schleswig, the part of the former duchy that had remained with Germany in 1920. As reflected in place names and linguistic history, this area had originally been Danish but had been subject to German cultural influence since medieval times. Since the 19th century national struggle, this area between the Eider and Kongeå rivers was considered to be divided along national lines. Holstein was considered German, although that was debatable (Frandsen, 2008). In the state elections of 2000, 2005 and 2009, many people in German Holstein voted for the SSW. Why was this? The regional dimension cannot be at play here, as the SSW's programme was firmly identified with Schleswig and the party repeatedly claimed that Schleswig was lagging behind because of Holstein's domination of Schleswig-Holstein politics (Henningsen et al., 1998; Klatt & Kühl, 2015). However, the party programme underwent a shift from 1981 by including many 'Green' policies, such as anti-nuclear energy (Klatt & Kühl, 2015). Although in principle, the SSW, as an ethnic party, should represent a broad spectrum of political ideas, its perceived image and political initiatives are social-liberal and promote multiculturalism, like the Danish party *Radikale Venstre*. This political stance was actively communicated as inherently Danish and was supported by the politically much more diverse membership as it provided political success. The SSW even joined a left-wing coalition government in 2012 – although this step was made easier for the more conservative

members of the party by what they perceived as a deceit on the part of the ruling coalition government of the conservative Christian Democracts and the neoliberal Free Democrats in making unilateral funding cuts to Danish minority schools (Hughes et al., 2020; Klatt, 2014; Kühl, 2012).

Challenging the territorial integrity of the Danish minority, a scientific survey estimated its population in all of Schleswig-Holstein and Hamburg to total approximately 100,000, twice the figure of the usual estimate of 50,000 (Schaefer-Rolffs & Schnapp, 2015; for the background of the usual estimate of 50,000 see Kühl, 2005c). The survey method included asking people outside South Schleswig whether they identified with the Danish minority, which had not been done before. The result was politically provoking although not surprising considering normal patterns of mobility between bordering regions. It could also explain the SSW's electoral success in Holstein. However, as the party's votes there have been declining recently, this explanation may not stand up to closer scrutiny as it is assumed that ethnic party voters show lower defection rates (see above). It seems more plausible that the opportunity to vote for a new, different party, which represents a value-based lifestyle caused the peak in non-minority votes during the 2000s. A paradigm shift in Danish national politics from 2001, with stricter migration control and anti-multiculturalism measures may have caused the dip in non-minority votes, as the SSW's image of Danish politics no longer reflected Danish political reality.

Returning to Lipset and Rokkan (1967), the SSW is in an unusual situation. It has been losing votes continuously in every election since 2009. Even the 2011 conflict concerning the financing of minority schools, which greatly mobilised the minority (Hughes et al., 2020) around issues of perceived unjust treatment and discrimination and which led to assessments that the Schleswig minority model was in crisis (Kühl, 2012), has not halted the downward trend.

Election campaigns have taken a two-pronged approach. Inside the minority the solidarity aspect is emphasised: 'Only the SSW really cares for the minority' and 'Only the SSW fights for the financial equality of minority institutions' are the arguments used to convince minority members to vote for ethnic parties. If they, or parents of children attending minority schools, campaign for or even stand for election for mainstream parties, they are criticised for not showing solidarity. This is not that unusual: Robert Habeck, the present federal chairman of the Green Party, had his four children educated in the Danish minority school system; as does Simone Lange, the present SPD mayor of Flensburg; Kai Richerts, Flensburg's FDP member of the *Landtag*; Markus Döhring, the former chairman of the conservative CDU's group on Flensburg city council; and many others (including the author of this paper who is a member of the SPD). So, while minority members are asked to give up their political freedom of organisation and either join the SSW or refrain from political activity, at the same time, the party needs to broaden its political base outside the minority in order to survive, since the ethnic cleavage no longer poses a significant issue. Here, regionalism and the attraction of Danish and/or Nordic politics were successfully communicated in the election campaigns of the 1980s, 1990s and 2000s. Since then, Danish domestic politics have had an increasingly critical reception from the German left. The end of multiculturalism, the focus on nativist cultural policies, increasing pressure on Muslim migrants and their descendants, the reintroduction of border controls (in 2011 and since 2016), the construction of a fence on the border (to keep out wild boars) and the refusal of the original German welcoming culture (*Willkommenskultur)* during the so-called migration crisis of 2015 have all made it more difficult for the SSW to score votes with 'Danish' politics (Klatt, 2020a, 2020b).

Conclusion: the dilemma of ethnic parties in constructing positive NTA

Throughout its history, the SSW has navigated between attempting to be a regional *Heimat* party, an ethnic minority party and a modern, value-based lifestyle party. Membership, and especially active membership, has been minority based. The SSW has had a close relationship with the Danish minority's cultural organisation *Sydslesvigsk Forening* (SSF) with district officers often holding posts in both organisations. Until the 1960s, there was an informal agreement that the chair of the SSF was also vice chair of the SSW and vice versa (Henningsen et al., 1998), with district business meetings usually held on the same evening. There is an explicit expectation among the core minority that its members should join the SSW and it is not commonly accepted for minority members or parents of children in a minority school to be members or hold political office for mainstream political parties, even though this phenomenon has increased in recent years. So, even though the SSW has a value-based party programme and makes value-based political decisions, such as joining the Social Democrat–Green Party coalition in 2012, it is an ethnic minority party in terms of its membership base. It has also been largely successful in maintaining ethnic solidarity (Allen, 2017), which is central to the minority's perception of its party's role in the NTA arrangement of Schleswig. The minority party is perceived as the only way to ensure political influence and inclusion. The minority community, majority- and kin-state policiticians identify it as the minority's political spokesperson. Specifically, it is considered essential for ensuring public funding of the minority's activities. The SSW functions like a trade-union negotiator for the minority, a constant reminder not to forget Danish institutions in public budgets at municipal, county and state levels. Although the Schleswig NTA is considered a success by its stakeholders, crises can easily arise around inequity in public funding. A crisis concerning school financing, which evolved during the austerity policies of 2011–2012, demonstrated the fragility of the NTA in Schleswig, which is only legally regulated in a small way (Hughes et al., 2020; Klatt, 2014; Kühl, 2012).

An analysis of the SSW over time demonstrates both the opportunities and the limitations of ethnic minority parties. In the 1960s, when minority issues had been largely settled and border revision was no longer on the agenda, the SSW could no longer mobilise its core ethnic voters. A regionalist agenda, which it had always pursued in parallel, could not overcome this deficit. The regionalist approach of South Schleswig was, in fact, only adopted by the Danish minority, with the majority regional population maintaining a strong identification with their federal state of Schleswig-Holstein. The SSW managed to broaden its electorate and attract voters from outside the core minority from the late 1970s onwards. Both external and internal circumstances contributed to this success. New challenges surfaced in the 1970s and 1980s: the post-war economic boom had come to a halt, environmental problems were being taken more seriously and divided Germany was challenged by the effective breakdown of the detente between the superpowers following the Soviet invasion of Afghanistan. The Scandinavian North with its ideas of a welfare state oriented, collectivist capitalism appeared to offer a way out of the deadlock between capitalism and 'real existing' socialism for many voters on the centre-left political spectrum (Einhorn & Logue, 1989; Hilson, 2008; Waever, 1994). Internally, the outspoken political talent Karl Otto Meyer had replaced the moderate Berthold Bahnsen and took clear political standpoints on the left. The party successfully managed to communicate its Nordic character during a period in which the Nordic model offered solutions to political stalemates in both West-German and reunited German

societies. This changed with the paradigm shift in Danish politics from November 2001, when the centre-right party *Venstre* formed a government with the support of the right-populist Danish People's Party *(Dansk Folkeparti)*. The new government deviated from Danish political tradition, which had been established in the 1930s, to broker political compromise across the centre and implement a neoliberal agenda, alongside restrictions on immigration and immigrants' rights and a focus on more nativist cultural policies. This change presented the SSW with a new image of Danish politics which was not in alignment with how the party had profiled itself during the 1980s and 1990s. The SSW criticised the new Danish policies, which culminated during the 2015 refugee crisis and the, albeit soft, militarisation of the border. The media discourse about Denmark shifted in Germany: while largely positive before, it now partially reframed Denmark as an isolationist, anti-migrant, anti-animal welfare, nationalistic society. It is likely that this contributed decisively to the apparent difficulties of the SSW in continuing to attract voters from outside the core minority.

What implications does this have for minorities' political participation within NTA? The SSW is an important example of how minorities can increase their political influence by expanding their appeal beyond the core ethnic group. This has necessitated taking positions on general political issues, beyond representing comprehensive minority interests. This, of course, also risks offending and losing the solidarity of the core electorate. In fact, the SSW has managed to maintain the core solidarity of its more right-wing membership and electorate but has also experienced many minority members or users of minority institutions voting, campaigning and standing for elections for mainstream political parties. This perceived decrease in minority solidarity has been lamented and criticised but, so far, without effect. Indeed, in recent years, the practice of SSW political advertising within minority schools ceased when parents pointed out that campaigning for political parties in schools is not allowed in Germany.

The continuing dilemma here is that a national minority is not a closed, bordered, socially continuous block but it has multiple identifications which may change over time. In South Schleswig, 'Danishness' is not an issue of language or ancestry but a subjective identification bound to various social aspects. This aligns with the history of this border zone, where national identification was not an issue before the 19th century. Today, cultural autonomy in Schleswig is bounded to the territory of the former duchy (which no longer has any administrative significance) and to the people identifying with the minority (who are neither counted nor registered). There are different perceptions of what the Danish minority in South Schleswig actually is (or should be). Kühl has illustrated this very well, dividing the minority into national and post-national factions (Kühl, 2018). This has aroused, or rather catalysed, a debate within the minority on what minority identification is meant to be – again demonstrating that 'national minority' may not be the best term to define or classify a border region's (and historic border zone's) diverse population – and, in consequence, on how to successfully apply NTA in a nationally defined territory and state.

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(Endnotes)

1 The Federal Republic of Germany and its *Länder* have applied a 5% threshold to gain representation in the Federal and State Parliaments to avoid the representation of too many small parties in Parliament. This was perceived to ease the formation of strong coalition governments and resulted in a stable three-party system of CDU, SPD and FDP from the 1950s to the 1970s, when the Green Party evolved as Germany's fourth party. The threshold discriminated the minority party SSW, as its electoral base was limited to South Schleswig. This is why it has been exempted from the threshold since 1953 (Federal level) and 1955 (State level). Its share of the votes at state elections has fluctuated between 2 and 4.5 %.

Balázs Dobos

Ethnopolitical identification and mobilisation within the elected non-territorial cultural autonomies of Central and South-Eastern Europe[1]

Introduction: The general patterns of non-territorial autonomy regimes in Central and Eastern Europe

After the tragic developments that the 20th century brought to the rich ethnocultural diversity of the post-Communist Central and Eastern European countries, the international literature has typically viewed the minority policies of those countries as being influenced only by compliance with western standards of minority protection (Osipov, 2015b, p. 59). Undoubtedly, implementation of these standards has been seriously distorted in this part of Europe, and the institutions that aim to preserve minority identities and their distinct features have also been seeking to exert control over them (Agarin, 2015, p. 24). The continuing legacy of the nation-state model and public thinking claim that public institutions are almost the exclusive property of the dominant nations to the extent that they exclude minorities (Agarin & Cordell, 2016; Cordell et al., 2015) primarily by entrenching the institutional positions of majority languages and cultures against them (Csergő & Regelmann, 2017).

Whilst the idea of non-territorial and national cultural autonomy (NCA) has long been present in the region, the 'model' can be now considered a typical central European phenomenon. NCA has many historical precedents, from the Ottoman millet system and the seminal ideas of the Austrian social democrats Karl Renner and Otto Bauer in the multi-ethnic Austro-Hungarian Monarchy, to the Baltic advocates' theories on non-territorial minority self-governments (MSGs) in the interwar period and the often cited example of the 1925 Estonian law, which, in practice, enabled the country's German and Jewish minorities to elect cultural councils to administer their own cultural and educational issues. According to Kymlicka (2000), this notion of autonomy might be an interesting alternative to existing western models of minority rights because it does not imply territorial autonomy compared to traditional, multinational federations tailored to historical ethnoregional groups but includes separate institutions with self-governance and language rights compared to multiculturalism in relation to immigrants (p. 202).

Moreover, from the early 1990s, a significant number of countries in the region, including Estonia, Croatia, Hungary, Kosovo, Latvia, Montenegro, North Macedonia, Russia, Serbia, Slovenia and Ukraine began to refer, at least in principle and on paper, to cultural

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autonomy in their policies and legislation concerning internal minorities. Other states, such as the Czech Republic, Lithuania or Slovakia, claim that they also implement some forms of cultural autonomy by providing financial support to minority organisations. This might explain why, since the mid-2000s, an increasing number of studies have examined these systems, analysing them from historical, normative-theoretical, practical-operational and comparative perspectives (see Coakley, 2017; Malloy et al., 2015; Malloy & Palermo, 2015; Nimni, 2005; Nimni et al., 2013; Smith & Cordell, 2008; Smith & Hiden, 2012).

These circumstances, together with the debate amongst actors about how to interpret cultural autonomy, serve to highlight uncertainty around a universal definition of the concept. Wiberg (2005) aptly states that autonomy is an extremely diffuse concept, which has been closely associated with many other synonyms in discourse as well as several other controversial terms (p. 177). Whilst it can take many legal forms, Ghai's (2000) definition of autonomy serves as a useful point of departure. It refers to the enabling of ethnic groups with distinct identities to exercise direct control over matters important to them, leaving larger entities to manage common affairs (p. 8). Thus, inevitably, various views of the concept have come to light and, consequently, diverse arrangements have been labelled as autonomy in practice. Complicating matters is the fact that the term has become popular for the policies and communications of some governments, and experts have also begun to use it as a kind of measure when evaluating cases (Peleg, 2007, p. 44).

Non-territorial autonomy (NTA) and its synonyms is no different: it is widely accepted that, first, NTA is a general concept that describes different practices and includes various theories with the aim to represent specific ethnocultural segments of society and, second, that it does not seek exclusive control over territory (Nimni, 2013). However, the narrower, non-territorial cultural or NCA has been systematically elaborated by Renner and Bauer (Smith & Hiden, 2012, p. xiii). Yet, the question remains whether NTA refers to a kind of special ethnicity-based organisation and/or a general principle for establishing group representation (Suksi, 2015, p. 84). Furthermore, what is its relation to territory? To what extent can it be considered non-territorial? In short, should there be some kind of threshold that demarcates it from territorial autonomy? The national-ethnic component is also questionable, so the extent to which NTA is related to ethnicity – as well as which groups it may be the most appropriate institutional framework for – remains unclear, given the complexity and diversity of contemporary identities and the strength of ethnicity as a social structuring-organising force. Evidently, having its crucial focus on individual participation, NTA is especially suitable for territorially dispersed and relatively small minorities to preserve their characteristics and create group representation (Kymlicka, 2000, p. 202; Peleg, 2007, p. 102; Wirsing, 2004, p. 83), which can be satisfied even with limited autonomy in some cases, although minorities in other cases cannot expect more given their situation (Nootens, 2015, p. 47). Finally, the degree of power-sharing can also be an issue, that is whether there is any standpoint from which one can consider an institutional solution as autonomy (Nootens, 2015, p. 33; Osipov, 2015a, p. 179).

A key element of the model is that, as it seeks to cover potentially all minority members regardless of their place of residence, local or national size, at least one institutional form, ideally with legal personality, needs to be established at local, regional or national level (Heintze, 1998, p. 22). In the countries above, where autonomy goes beyond mere declaration and has concrete institutional consequences, this involves – in the first group of cases and most prominently in Russia – that certain minority associations have been entrusted with public tasks

affecting the lives of communities, such as maintaining educational and cultural institutions (Osipov, 2010). Compared to this functionalist model based on voluntary minority organisations, another group of countries, namely Estonia, Hungary, and several former Yugoslav republics, Croatia, Serbia and Slovenia represent another variant, which is more reminiscent of the Austrian theorists' original ideas. In these cases, minority voters (registered on a voluntary basis) have the right to establish their own minority councils or self-governments at different levels through direct or indirect elections. Still more examples lie between these two main approaches, meaning that minority bodies have both elected and non-elected members, most notably in Montenegro. Since they only partly fit the category of elected regimes, these cases are excluded from the present analysis.[2]

However, even the fully elected models in the five countries above (Croatia, Estonia, Hungary, Serbia, Slovenia) have different historical legacies, operate in diverse political, legal-institutional and social contexts, with varying competencies and resources for minority communities with diverse characteristics within and across countries. Whilst the self-governing ethnic communities have the right of consent in Slovenia, MSGs in Hungary and the national councils in Serbia can make decisions and maintain various cultural and educational institutions. MSGs in Croatia and the minority cultural councils in Estonia are much weaker, being only consultative and advisory bodies, although respective policies insist on labelling them as autonomies. Given this wide array of cases, Osipov argues that using the concept of cultural autonomy as a descriptive-conceptual and analytical tool is highly questionable (2013a, p. 133). Moreover, the few findings published on the contemporary forms of NTA in the region suggest that these institutional examples were more likely created top-down behind the rise of these regimes, and normative assumptions about social justice and tackling diversity were less present. Instead, the creation of contemporary forms of NTA was motivated by other, more instrumentalist considerations, such as international pressure, compliance with external standards or internally driven expectations of reciprocity. In addition, contemporary forms of NTA also tended to impose rather symbolic and apolitical – that is educational and cultural – issues on minority groups, thereby preventing and neutralising any further territorial claims, whilst some of them can in practice be considered rather as traditional national minorities with a territorial basis and settlements (Kymlicka, 2007), which may also raise territorial demands.

Yet, surprisingly little research has been devoted to assessing the extent to which these regimes meet minority demands, how group members become active within these systems, whether these minority councils and self-governments effectively empower their members and whether they have overall integrative effects for those belonging to the recognised groups. The findings also emphasise the need to support bottom-up activities and to strengthen democratic accountability and effective representation – such changes can be described as a shift to governance, too (see Osipov, 2010, 2013b; Smith, 2010, 2013). From the above, commentators argue that there needs to be a closer look at practices, and that more research is needed to explore how minority members and representatives perceive and use their own autonomy organisations in everyday reality, as well as how they view themselves, their identities and their role within the organisations, particularly in the context of the unfinished nation- and state-building and Europeanisation processes of the region. In sum, the crucial question that

[2] Similarly, the Roma Council in Slovenia – where the Roma community does not enjoy the same rights as the recognised Hungarian and Italian minorities – comprises partly elected and partly appointed representatives (Komac & Roter, 2015, p. 96).

needs to be addressed is whether these regimes – officially labelled as NTA – serve as effective institutional frameworks for minority communities to organise and mobilise themselves to represent their interests and preserve their distinct features, or as tools for state authorities to keep domestic minority issues under control. This gives prominence to the idea that, within the latter group of countries with elected regimes (Croatia, Estonia, Hungary, Serbia, Slovenia), minority elections could serve as a potential tool for identifying and critically assessing intra-group and elite dynamics, an idea that remains understudied in the region (for the few exceptions, see Petričušić 2007; Zuber & Mus, 2013).

To address the issues above, this paper seeks to measure the extent to which four out of these autonomies (Croatia, Hungary, Serbia and Slovenia) are able to represent and mobilise the often territorially dispersed and highly assimilated group members by comparing registration and voter turnout at minority elections with census data. In light of the institutional incentives for ethnic representation, this paper also investigates whether there are differences in ethnic voting across these countries, minority communities and elections, and how adaptive these regimes are to intra-group changes. Based on electoral and census statistics, interviews and country experiences, the paper aims to contribute to a better understanding of the general patterns of cultural autonomies and their elections in the countries in question, and to assess whether they can be considered as successful forms of diversity management with the potential to preserve minority identities.

Non-territoriality and territorial coverage in the elected autonomies

As stated above, one of the most important theoretical questions about the non-territorial model – as well as its practical implications – relates to the territory, namely how precisely it is able to follow the personal principle, to what extent it can be considered territorial and therefore what distinguishes it from territorial autonomy. In principle, it is not founded on a territorial basis, although in practice it is usually introduced only in a specific area, either in the whole territory of a state or in a specific administrative or territorial unit (Keating, 2012, p. 26; Porter, 2003). The latter can be observed in Slovenia, where the overwhelming majority of the two relatively small and non-Slavic minority communities – the Hungarians and Italians – are concentrated along the Hungarian border and in the port cities of the Adriatic Sea. Consequently, amongst the countries in question, the territorial principle is mostly applied, whilst it can be seen that, in both cases, the proportion of those living outside the officially defined mixed areas was at least 15%, according to both the 1991 (Komac, 1999, pp. 18–19, 26) and the 2002 censuses. On the latter occasion, the share of those living outside the affected municipalities was about 16% in the case of Hungarians (Statistical Office of the Republic of Slovenia, 2002b) and almost 20% in the case of Italians (Statistical Office of the Republic of Slovenia, 2002a).

In Slovenia, elections are held by law, regardless of the local proportion or number of communities in the two ethnically mixed regions, but are not open to non-residents. In other majority systems, where municipalities or councils are also elected at the local-district level: a) a threshold is set so that either a certain number of registered voters (Hungary 2006, 2010), or b) a minimum number of the population in the census is required for the elections to be held (Hungary 2014, 2019) or c) combining these two approaches, the number is calculated from the comparison of the census and the electoral roll (Croatia). However, especially in the case of

wide territorial dispersion, the introduction of these census or registration thresholds – which distort the purely personal principle – means that only those belonging to a minority or a subset of registered voters are able to elect MSGs at the local or county level. On one hand, it is understandable that in municipalities with only a few minority residents, it is not possible to form minority bodies but to have a prescribed local number instead which presupposes a small, active local community. On the other hand, the exclusion of smaller communities and the introduction of territorial thresholds may act against the registration of minority members.

All this may have contributed to the fact that, in Hungary, despite the growing number of scatterings of a few people in the latest censuses, the majority of voters registered in a settlement where they saw it as 'meaningful' (Table 1), probably because an MSG had previously operated in the municipality or it was newly organised.[3] However, this ratio remained the same or decreased with the introduction of the census threshold in 2014, with the exception of Slovenes. The amendment therefore not only excluded municipalities that did not yet declare a sufficient number of minority members in the 2011 census, but also smaller municipalities that had existed for a long time. However, in several cases, the amendment brought settlements into the system where, although the census recorded a sufficient number of people, the locals had not yet organised themselves enough to form an MSG. As a result, in slightly less than 10% of the scheduled elections, an average number of around 15 people were registered in these cases. In 50 other cases, however, although there were 25 registered voters, in the absence of the census threshold, elections could not be called.

Table 1.

Number and proportion of registered and eligible minority voters in the latest minority elections in Hungary (2010–2019)

Minority	*2010*			*2014*			*2019*		
	Total	*Election*	*%*	*Total*	*Election*	*%*	*Total*	*Election*	*%*
Armenian	2,357	2,245	95	2,399	2,003	83	3,270	2,608	80
Bulgarian	2,088	1,997	96	1,355	1,267	94	1,364	1,235	91
Croat	11,571	11,351	98	10,637	10,326	97	11,593	11,176	96
German	46,629	45,934	99	40,906	40,131	98	54,899	52,955	96
Greek	2,267	2,159	95	1,744	1,658	95	2,791	2,443	88
Polish	3,052	2,924	96	2,246	1,994	89	3,556	2,834	80
Roma	133,492	121,194	91	157,902	148,037	94	211,134	183,382	87
Romanian	5,277	5,083	96	5,088	3,739	73	7,268	6,841	94
Ruthene	4,228	3,811	90	3,107	2,573	83	4,294	3,367	78
Serb	2,432	2,342	96	1,689	1,595	94	2,444	2,247	92
Slovak	12,282	11,938	97	12,211	11,904	97	12,402	11,828	95
Slovene	1,025	876	85	692	655	95	859	816	95
Ukrainian	1,338	1,184	88	1,012	663	66	1,920	1,491	78

The number of registered voters increased up to 2019, but the proportion of those registered in a settlement where no local election could be held due to the census has risen from

[3] Exploring the causal relationships undoubtedly requires more thorough research in the future, as in many cases the activities of minority municipalities may have contributed to the increase in the census population in the given settlements and the factors and processes behind the introduction of minority voter registers.

9% to 12%. The highest proportions were amongst Poles, Armenians, Ruthenians and Ukrainians, communities that were officially recognised only after the regime change. In addition, in 8% of elections, fewer than 25 people were registered (15 on average). Compared to 2014, in 2019 the number of elections decreased slightly, from 569 to 527, when elections were cancelled due to an insufficient number of candidates. All these data may reflect the impact of the amended legal environment, the adjustment of minorities to it or a growing self-awareness of the increase in the number of people registered in the affected municipalities, except for Bulgarians, Slovaks and Slovenes. At the same time, there was an increase in the proportion of those who, although included in the national electoral roll, did not have the opportunity to form a local government.

Furthermore, if the territorial configuration of the MSGs is projected onto the census results, it turns out that, in 2014, at local level, self-governments were able to represent on average 64% of those belonging to the given nationality according to the 2011 census. However, there are significant differences amongst them: whilst 92% of the Roma population lived in a settlement where an MSG was elected locally in 2014, this proportion was only 24% in the case of Ukrainians. In 2019, with the exception of the Ruthenians, the number of elected self-governments remained the same for five minorities and increased for seven. Especially for Croats, Poles, Romanians and Ukrainians, new or re-entering municipalities allowed the structure to cover minority members more effectively than in 2014, which cannot be observed in the case of the Roma, despite the increase in the number of their self-governments (Table 2).

Table 2.

Territorial coverage of local MSGs in Hungary (2014–2019)

Minority	*Minority members, census (2011)*	*Territorial coverage, elections (2014)*	*Percentage*	*Territorial coverage, elections (2019)*	*Percentage*
Armenian	3,571	2,041	57	2,040	57
Bulgarian	6,272	3,155	50	3,173	51
Croat	26,774	22,242	83	22,589	84
German	185,696	150,006	81	149,863	81
Greek	4,642	3,406	73	3,400	73
Polish	7,001	3,804	54	4,026	58
Roma	315,583	290,566	92	288,701	91
Romanian	35,641	17,267	48	17,880	50
Ruthene	3,882	2,393	62	2,361	61
Serb	10,038	6,304	63	6,344	63
Slovak	35,208	26,827	76	26,876	76
Slovene	2,820	1,799	64	1,799	64
Ukrainian	7,396	1,810	24	3,307	45

However, further analysis is needed to explore the causal effect between census results and the elections of MSGs, and thus the potential incentive effect of the autonomy regime to encourage people to declare their identities and create self-governments. In the case of the Ukrainians, one of the reasons they are still the least represented is their belated and lower level of organisation compared to other minorities. The relevant percentages may also indicate a high level of territorial dispersion for all communities, meaning that the remaining persons not covered by the municipalities lived in settlements where, due to legal restrictions, the

established thresholds of self-governments did not apply. In other cases, the legal conditions were met but an insufficient number of candidates were fielded (three or four in 2014, three or five in 2019), perhaps due to a lack of minority NGOs and integration into minority public life. However, there has been some improvement recently: in 2014, 21% of the scheduled elections could not be held due to a lack of candidates, but in 2019 this proportion improved somewhat for all minorities and dropped to 19% overall.

In the cases examined, beyond majoritarian electoral mechanisms, list-proportional systems are not necessarily able to fully represent community members. Not all registered voters in Hungary can participate in regional minority elections, where elections can be held if at least ten municipalities or districts in a given county or capital are elected. For example, the Slovenes territorially concentrated in the border region of Vas County traditionally elect local MSGs in only eight settlements, and so they have missed the opportunity to establish a county-level Slovene body. However, if a territorial election is called, the county-level self-government could also be elected from those settlements where no local elections are held anyway. Nevertheless, the personal principle is most precisely followed by the election of the national councils in Serbia and the national MSGs in Hungary. In Serbia, if direct council elections are held, eligible voters must be able to vote regardless of their place of residence or local number. To illustrate this, in the last 2018 elections in Subotica, in addition to the major local communities, there were Egyptian, Polish and Vlach (1 each), Czech (3), Albanian and Bulgarian (4 each), Romanian (5), Ashkali and Ukrainian (7 each), Slovak (11), Slovenian (47), Ruthenian (85), Greek (87) and Bosnian (138) voters, several of whom cast their votes. However, due to the logic of fielding lists and the decisions of nominating organisations in Serbia, some municipalities and communities may not be represented in the respective national council.

The integrative and mobilisation capacities of elected autonomies

Considering the key features of the minorities in question, and consequently the low overall salience of ethnic issues in public life, it can be argued that both the registration process and voting itself – usually conducted on different days than general elections and in separate polling stations – could mean higher costs for group members (Birnir, 2007, p. 223). Moreover, the need to declare their identities and register themselves may even have a demobilising effect on the groups in question. The extent to which the personal principle is adopted, and whether and how it is combined with territorial elements and thresholds, necessarily affect in turn individuals' choice to register and participate in their autonomous bodies. As a result, significant parts of these communities might have abstained from minority elections, in which case the number of registered minority voters would be consistently less than the number of those who declared themselves as belonging to the officially recognised minority communities in the latest censuses, and even less than the estimated number of the ethnic group within the population. In this regard, when comparing the latest and available census data with the number of voters registered in the last election (Table 3), and applying the method previously introduced in Serbia to reduce the census data by 20% for non-eligible voters – predominantly minors – in order to be screened, it can be seen that, with a few exceptions, a significant proportion of those belonging to minorities did not register to vote. In Hungary, on average, only 58% of those belonging to minorities were registered on the electoral roll; in Croatia, 63%, and in Serbia (excluding Albanians) 77%.

Table 3.
Comparative data for national and ethnic minorities in Croatia, Hungary and Serbia

Minority	*Croatia*		*Hungary*		*Serbia*	
	2011 census	*2019 elections*[i]	*2011 census*	*2019 elections*[ii]	*2011 census*	*2018 elections*[ii]
Albanian	17,513	13,916	–	–	5,809	36,456
Armenian	–	–	3,571	3,270	–	–
Ashkali	–	–	–	–	n. d.	2,708
Austrian	297	31	–	–	–	–
Bosniak	31,479	12,817	–	–	145,278	106,326
Bulgarian	350	93	6,272	1,364	18,543	18,201
Bunjevci	–	–	–	–	16,706	7,849
Croat	–	–	26,774	11,593	57,900	n. a.
Czech	9,641	6,717	–	–	n. d.	1,483
Egyptian	–	–	–	–	n. d.	3,893
German	2,965	1,094	185,696	54,899	4,064	2,592
Gorani	–	–	–	–	7,767	–
Greek	–	–	4,642	2,791	n. d.	2,458
Hungarian	14,048	10,902	–	–	253,889	129,471
Italian	17,807	16,984	–	–	–	–
Jewish	509	184	–	–	–	–
Macedonian	4,138	3,090	–	–	22,755	n. d.
Montenegrin	4,517	3,168	–	–	38,527	n. d.
Polish	672	123	7,001	3,556	–	345
Roma	16,975	11,877	315,583	211,134	147,604	66,570
Romanian	435	0	35,641	7,268	29,332	20,391
Russian	1,279	597	–	–	3,247	–
Ruthene	1,936	1,299	3,882	4,294	14,246	7,934
Serb	186,633	170,406	10,038	2,444	–	–
Slovak	4,753	2,856	35,208	12,402	52,750	29,509
Slovene	10,517	6,452	2,820	859	4,033	2,128
Turkish	367	69	–	–	–	–
Ukrainian	1,878	1,084	7,396	1,920	4,903	2,677
Vlach	29	0	–	–	35,330	26,584

Notes: i Registered, eligible minority voters; ii Total number of registered voters at the last minority elections.
Sources: Croatian Bureau of Statistics (https://www.dzs.hr/), State Electoral Commission (www.izbori.hr); Hungarian National Election Office (www.valasztas.hu); Serbian Electoral Commission (http://www.rik.parlament.gov.rs/); see also Hungarian Central Statistical Office (2011) and Statistical Office of the Republic of Serbia (2011).

However, it is important to note two methodological limitations of the comparison above: the two data sets are getting further apart in time, and they do not cover the same group of people, which in turn may have changed significantly over time. However, in many cases the census cannot provide an accurate picture – or even an approximation – of the number of persons belonging to a minority, as many refrain from assuming their identity either by claiming to belong to the majority nationality or simply not responding to the relevant

questions. Moreover, censuses include those who do not have the right to vote in minority elections, including minors and citizens of other countries.

In cases where there were more registered voters than the census result, the reasons why are well known. For instance, in Serbia, the majority of Albanians boycotted the 2011 census, but a significant number of them had already registered for the national council elections. In the case of the Ruthenians in Hungary, hiding and abstinence from the Ruthenian census categories (Kozma, 2007, pp. 269–270), already examined by some scholars, may explain why the number of their registered voters exceeded the total population shown in the census, although it should be acknowledged that this could also be the result of electoral abuses or changes in the community, such as increasing self-awareness or an increase in immigration.

However, the number of registered voters shows a declining trend over time in most of the countries and for many minorities: in Croatia, it reached its peak in 2011 with around 361,000 persons altogether, but had decreased to around 163,000 by 2019. In contrast, the size of only three constituencies (Albanian, Bosniak and Roma) apparently grew consistently over the same period. The Serbian community alone lost more than 100,000 voters in one and a half decades. Meanwhile, in Serbia, there were around 436,000 registered voters for the 2010 elections of national councils, and their number showed moderate growth to around 465,000 in 2018. Yet, at the same time, some traditional minorities decreased in Vojvodina, including Bunjevci, Hungarians, Ruthenians and Slovaks as well as the Vlach community in eastern Serbia.

As to the integrative effect of elected NTA systems, the question is not only about the extent to which these arrangements are able to represent potential group members and provide sufficient incentive for them to register for the elections, but also whether they encourage voter participation. Most conventional theories of modern representative democracy hold that broad participation in public life is desirable because the more people who cast their votes the greater the legitimacy, accountability and representativity of the elected body, increasing the visibility of the interests of the diverse political community and gaining a voice in decision-making. Although voters' decision whether to participate in minority elections is influenced by several factors, including their socio-economic status, external electoral institutions and procedures seriously constrain them, too. In addition to the highly sensitive issue of registration, the perceived utility of voting should also be considered, that is whether it makes sense for often largely assimilated culturally and linguistically – or socially excluded – group members to declare their identities by attending a non-competitive election for an often weakly functioning body. It is often held in the literature that list-proportional electoral systems are more likely to result in higher turnout since they encourage greater competition, parties are more interested in contesting elections and, not least, voters are more motivated to vote (Birch, 2003, p. 79).

In the present cases, however, it seems that instead of the adopted electoral formula, much depends on the day of the election and the physical location of polling stations. Generally speaking, holding minority elections on the same day as local elections but at separate polling booths would produce higher voter turnout, as was the case in both Hungary and Slovenia. However, testing the above hypothesis in the two most prominent proportional regimes only revealed a weak correlation between the number of lists and voter turnout, namely in Serbia (0.18) and for the latest elections of national MSGs in Hungary (0.45).

In addition, in 2019, the minority elections in Hungary did not take place in separate polling stations, which contributed to the fact that, compared to 2014, the turnout increased for all communities except Ruthenians. In Serbia, where elections are held on different days,

turnout is mostly lower: for direct national council elections, the national average turnout was 54% in 2010, 41% in 2014 and 43% in 2018. Over the electoral cycles, Greek minority participation fell drastically from 77% to 13%, although a decline was also noticeable in larger communities such as Ukrainians (-20%), Hungarians (-18%), Albanians and Germans (-17%), Bunjevci (-16%), Slovaks (-13%), and Czechs and Egyptians (-12%). A variety of factors may explain such decline, including the number of regular or early parliamentary, Vojvodina provincial, municipal and presidential elections held in Serbia almost every year, and the presence of dual citizens who may participate in their kin-state and European Parliament elections. Other factors worth noting are voter fatigue, voting on separate days and the lack of electoral competition and stakes, evident in the decrease in the number of nominating organisations.

The issue of voter turnout is especially striking in Croatia where extremely low turnouts have been recorded, especially in the first elections, which, in addition to the fact that minority elections are held on separate days, may have been due not only to the weak competencies of the councils (Petričušić, 2007, Table 4), institutional ignorance of the local municipalities, the lack of results and classic electoral campaigns, but also a reluctance amongst communities to declare their identities. In those settlements in which minorities constitute local majorities, the need to create a separate minority council could be challenged. The non-competitive nature of the elections may also have played a role, that is if the same number of candidates ran as the number of elected representatives, the seats were essentially decided by the nominating minority organisations and voters were less motivated to vote. The number and location of polling stations could also be argued to influence voter motivation: with fewer voters, some municipalities set up fewer polling stations, and in many cases they were in different locations than in other elections. For the people of the capital, Zagreb, this meant in practice that they were obliged to travel to the centre of the city on a Sunday to cast their vote. People living in towns on the outskirts of the city faced an even greater challenge, given that there was no public transport on Sundays. The situation was compounded when the election day was set for June or July, when heat alerts are most common.

Table 4.

Voter turnout at the first elections of national minority councils in Croatia, 2003–2019 (%)

Level	*2003*	*2004*	*2007*	*2011*	*2015*	*2019*
County	10.21	6.35	9.88	10.44	13.49	12.60
City	10.84	8.99	8.04	9.45	12.26	10.87
Village	22.13	16.20	17.02	15.93	22.96	23.30

Source: Croatian State Electoral Commission (http://www.izbori.hr).

The idea is that elections should in theory create more accountable, effective, transparent and potentially more visible organisations with the potential to unite and mobilise communities. In practice, however, even in Hungary (which saw probably the highest turnout), data show voter decline from one election to another. At least minority voters in Hungary were more active than in Serbia, where the average voter turnout was well below 50% at the latest minority elections (Table 5). However, in all cases, it is crucial that community leaders, ethnic activists and minority organisations and parties seek to mobilise and integrate less-committed members.

Table 5.

Voter turnout at the last minority elections (%)

	Croatia (2019)	Hungary (2019)	Serbia (2018)	Slovenia (2018)
Albanian	13	–	39	–
Armenian	–	62	–	–
Ashkali	–	–	45	–
Austrian	10	–	–	–
Bosniak	23	–	52	–
Bulgarian	2	59	56	–
Bunjevci	–	–	25	–
Croat	–	74	–	–
Czech	17	–	58	–
Egyptian	–	–	56	–
Finnish	–	–	–	
German	13	72	47	–
Greek	–	73	12	–
Hungarian	33	–	36	65
Italian	8	–	–	62
Jewish	18	–	–	–
Polish	39	74	45	–
Macedonian	11	–	–	–
Montenegrin	6	–	–	–
Roma	27	56	49	–
Romanian	–	70	48	–
Russian	23	–	–	–
Ruthene	16	69	51	–
Serb	9	74	–	–
Slovak	15	73	33	–
Slovene	5	76	28	–
Turkish	7	–	–	–
Ukrainian	17	64	40	–
Vlach	–	–	53	–

Sources: Croatian State Electoral Commission (http://www.izbori.hr); Hungarian National Election Office (www.valasztas.hu);Serbian Electoral Commission (http://www.rik.parlament.gov.rs/); Slovenian municipal websites.

In terms of voter turnout, the project also compared minority election data with other electoral results: the votes cast in Hungary at the parliamentary elections for the lists of national self-governments (the so-called minority spokespersons) and Roma parties; in Croatia and Slovenia the votes for minority MPs; and in Serbia the votes for ethnic parties, including the most recent parliamentary elections in Croatia and Serbia in 2020. The conclusion was that the minorities in question tend to register for and participate more in minority elections than they support minority actors in parliamentary elections. One reason for this is that voters registered as minorities in both Hungary and Croatia must cast one of their votes on mainstream or minority candidates/lists but, interestingly, support for minority parties in Serbia is lower than for national councils.

Conclusion

This paper aimed to explore some key and intertwined features and effects of minority elections on intra-community dynamics and voter behaviour – like special voter registration and voter turnout – taking into account the sensitive nature of ethnic data and the relatively high level of cultural-linguistic assimilation. Concerning the elected non-territorial cultural autonomies of central and south-eastern Europe, very little research has focused on these issues, hence this study sought to fill this gap at least in part by identifying and examining their operation in practice whilst acknowledging that more in-depth analysis of the key elements of such processes needs further research. Taken together, these factors have a crucial influence not only on the public participation of the minority groups concerned but also on their future prospects.

Overall, this paper demonstrates that, when compared to census data, the existing elected regimes in the respective regions are only partially able to represent the potential group members, many of whom live in communities scattered across the country (except in Slovenia where both minority communities are territorially concentrated). Significant portions of minorities abstain from elections: they do not register, vote or stand as candidates. This could also be because minorities have (or perceive they have) limited access to minority rights and institutions. For example, in municipalities that also hold elections at local level, and where additional thresholds are imposed – such as a required number of registered voters or group members according to latest census results – a significant number of people, because of their territorial dispersion, low level of organisation and political mobilisation, may be unable to elect their preferred representatives or autonomous bodies.

Moreover, certain minority elections show a decreasing trend in the number of registered voters. In Croatia and Serbia, the decreasing number of registered voters produced relatively low and even declining voter turnout, while the number of voters rose again in 2019 and resulted in increasing participation in Hungary. In those cases where minority elections are held together with municipal elections, higher voter turnout could be observed (Hungary, Slovenia), whilst lower participation can be attributed to weak competencies and the general non-competitive nature of minority elections (Croatia).

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Non-territorial autonomy as the gateway to (effective) participation of minorities at national level – nationality spokespersons in the Hungarian Parliament

Introduction

Although there had been claims for a special parliamentary representation of national minorities since the change of regime (Dobos, 2011, pp. 168–170; Majtényi, 2010, pp. 92–94; Pap, 2007, pp. 233–245),[1] it was only ensured for the 13 acknowledged nationalities[2] (formerly known as 11 national and 2 ethnic minorities) living in Hungary by the adoption of Act 203 of 2011. The electoral system of Hungary is mixed, which means that voters can vote for an individual candidate and a national list. The latter may be a party list or minority (nationality) list set by the national nationality self-governments. No plural vote is available to the members of minorities, which means that no voter can vote on both types of national lists. The recommendation of 1% of persons registered as minority voters – but no more than 1,500 proposals – is required to establish a nationality list. Electors wishing to vote for a nationality list have to register as minority voters. At least 3 candidates have to be on nationality lists and they also have to be registered as minority voters. National nationality self-governments may not establish a joint nationality list and one person may be nominated exclusively for one national list (either a party or nationality list). One preferential seat can be obtained on each minority list reaching a preferential threshold. The general threshold (5%) has to be reached to gain any other mandates. Should the number of votes cast for a nationality list be insufficient to acquire a preferential seat, the first-nominated person on the list will represent the minority as a nationality spokesperson (Electoral Act, 2011, §§ 7–10, 16, 18).[3]

1 Around the time of and after the change of regime (1989) multiple proposals were made. One law was adopted during the term of the socialist Németh government in 1990 (Act 17 of 1990 on the Parliamentary Representation of National and Linguistic Minorities Living in the Republic of Hungary) but the new, freely elected Parliament annulled it before it could be applied (Pap, 2007, pp. 233–245). This act would have ensured the parliamentary representation of 8 acknowledged national and ethnic minorities. The law was modified by Act 36 of 1990 to extend the deadline for parliament's decision on the co-option of minority representatives. Act 40 of 1990 (see 1 §, and 5 § (2)) put the law out of effect, so it has never been applied (Dobos, 2011, pp. 168–170).
Legislation on the representation of minorities was adopted in 2010. The constitution of Hungary was amended on 25 May 2010. This modification would have guaranteed the election of a maximum of 13 MPs representing minorities in addition to 200 'ordinary' MPs. The amendment declared thate separate law should have been adopted on the date of entry into force of this amendment, but this second law has never been adopted. This amendment would have changed the number of MPs from 386 to 200 plus a maximum of 13 minority representatives. (Constitutional Amendment, 2010, 1, §5(2)).

2 In this the paper, we use the terms nationality and minority interchangeably.

3 For additional information on the representation of national minorities in Hungary see Chronowski, 2015; Erdős, 2013; Kurunczi, 2015; Móré, 2015; Pap, 2013, 2014.

The National Assembly Act contains detailed rules concerning nationality spokespersons and the parliamentary committee representing nationalities (Committee of Nationalities Living in Hungary; National Assembly Act, 2012, §§ 22, 29–29/A). Minority spokespersons have fewer powers than MPs. They cannot vote at plenary sessions (merely in the committee representing nationalities) and they can only speak at plenary sessions if the House Committee decides that an agenda issue is connected to the interests of nationalities or if there is an extraordinary case. They can hold advisory roles in other committees' sessions subject to the approval of the committee concerned. They can ask questions to the same persons and instituions as MPs (to the Government and to its members, to the president of the State Audit Office, to the president of the National Bank of Hungary and to the chief public prosecutor) but only if they are related to the rights and interests of nationalities. They also have a free and – compared to each other – equal mandate, as well as parliamentary immunity (National Assembly Act, 2012, §§ 29–29/A).

Before the 2014 elections, several scholars argued that members of nationalities were not likely to gain even one preferential seat, so they would be represented only by nationality spokespersons with fewer powers than MPs (Balázs, 2014; Erdős, 2013, p. 5; Kurunczi, 2013; Szalayné, 2014, p. 13; see also Kurunczi, 2014). These concerns were not unfounded. In this paper, we examine the following research questions:

Q1: Can nationality spokespersons of minorities with no realistic chance of passing the preferential threshold be considered as
- consultative delegates of the national nationality self-governments as forms of non-territorial autonomy,
- as a representative
- or as something else?

Q2: What concerns are raised by the fact that only national nationality self-governments, elected several years before parliamentary elections take place, are entitled to establish a nationality list?

Before we answer these questions, we present the theoretical and methodological background.

Representation, access to candidacy and democracy

Kymlicka (1995) provides one of the most systematic theory and categorisation of minority rights (Heywood, 2012, p. 320). He defines three groups of minority rights: self-government rights, polyethnic rights and representation rights (Kymlicka, 1995, pp. 26–33). He also emphasises that it is important to differentiate between national minorities and ethnic groups, which – according to him – is neglected in the literature (Kymlicka, 1995, p. 20). He defines nation as 'an intergenerational community, more or less institutionally complete, occupying a given territory or homeland, sharing a distinct language and history' (Kymlicka, 1995, p. 18). From this viewpoint, national minorities, that is, territorially concentrated indigenous peoples sharing a common language and conducting a 'meaningful way of life across the full range of human activities' are entitled to self-government rights (Heywood, 2012, p. 320;

Kymlicka, 1995, pp. 18, 27–30, 76). Polyethnic rights are aimed at supporting immigrant ethnic groups and religious minorities to maintain and express their 'cultural particularity and pride' (Heywood, 2012, p. 320; Kymlicka, 1995, pp. 30–31). The most important type of minority rights are special representation rights, which are claimed not only by national minorities and ethnic groups but also by non-ethnic social groups (Kymlicka, 1995, pp. 31–33). Connected to the latter, it is worthwhile considering the theories concerning the relationship between substantive and descriptive representation of certain groups.

Parliamentary representation of national minorities means the erosion of the principle of popular representation. The assumption that persons belonging to a minority better represent the members of that minority than non-members is the basis for special representation. Another argument in favour of special representation is that minorities are not capable of being elected to parliament when there are no special rules concerning their representation. Pitkin (1967) differentiates formal, descriptive and symbolic views of representation according to its characteristics. The idea of substantive representation is based on an 'acting for' approach, which assumes that MPs act with regard to the interests of their voters. On this basis, Sebők (2015, p. 8) describes this theory as the predecessor of the mandate model of democracy.

Nowadays, there is widespread discourse in the scientific literature concerning whether descriptive representation – matching the proportion of MPs belonging to a certain social group to the proportion of that group's members in the society – is a precondition of substantive representation, which means the presence and representation of the interests of the particular social group during the decision-making process (Várnagy & Ilonszki, 2012, p. 9; see also Mansbridge, 1999). This question is often examined with regard to the representation of Latin Americans and African Americans in the US Congress (Minta, 2009) and in US member states' legislatures as well (Ueda, n.d.). There are also studies concerning the substantive representation of minorities in other countries (e.g. Bird, 2011; Hodžić & Mraović, 2015; Rocha et al., 2010). Creators of systems that have special representation of minorities at national or local level assume that the descriptive representation of minorities enhances the substantive representation of them.

Another important question related to the substantive representation of minorities' interests is how can they stand as candidates at elections? At this point, we must emphasise that cleavages can occur not only among national minorities, and among different national minorities in a country, but also within a minority community itself. That is why many scholars doubt whether there is a unified minority interest that can be represented by the presence of minorities in parliament (Bird et al., 2011, p. 5). Thematic Commentary No. 2. of the Advisory Committee on the Council of Europe Framework Convention for the Protection of National Minorities – not accidentally – requires that more than one minority organisation stands at elections (Advisory Committee, 2008, pp. 75–59). This raises many questions regarding parliamentary representation of minorities in Hungary, such as access to candidacy when the national nationality self-governments exercise a monopoly over establishing national minority lists at the parliamentary elections.

This system shall be evaluated by its extent of democratic character. During this, we use the Schumpeterian definition of democracy, that is, 'that institutional method for arriving at political decisions in which individuals acquire the power to decide by means of a competitive struggle for the people's vote' – through being successful in 'free competition for a free vote' (Schumpeter, 1974, pp. 269–271. cited by Brooker, 2005: 9).

Data and methods

When considering the legal background to the parliamentary representation of people living in Hungary who belong to one of the 13 acknowledged nationalities, we observe that there are concerns related to entry into the competition for candidacy and democratic elections (e.g. equal voting rights and secret-ballot voting) occur. In order to answer our research questions, first, we examine the circumstances of the candidacy of the elected spokespersons in 2014 and 2018. We review the data on the websites of the National Election Office (2010, 2014d, 2019) and the National Assembly (National Assembly, 2018c, 2018d). We examine the organisations nominating the spokespersons and their mandate share at the 2010, 2014 and 2019 elections of the national nationality self-governments. We also analyse the participation data of national minorities at the parliamentary elections in 2014 and 2018. We outline the nature and characteristics of the nationality spokespersons' institution and then analyse their activity based on the data on the National Assembly of Hungary website. We also examine data concerning the occurrence of the issue of nationalities and their inner conflicts on the parliamentary agenda, among parliamentary questions (interpellations, questions and urgent questions). We mainly focus on indications of conflicts and cleavages within the acknowledged minority communities.

To research the changes in the number of interpellations, questions and urgent questions, we use the search tool of the Hungarian National Assembly website (National Assembly, 2014a, 2014b, 2018a, 2018b), comparing the 2014–2018 and 2010–2014 parliamentary cycles. We selected these two terms as they are close in time and had similar composition of the legislation (e.g. the Governing party Fidesz had two thirds of the seats). One of the differences between the two cycles is that nationality spokespersons also participate in parliamentary activity since 2014. However, the comparison is a little complicated due to the fact that in 2012 a new act on the National Assembly was adopted and in 2014 a new standing order was passed (Standing Orders, 2014), so the operation of the Parliament changed a lot. At the same time, the number of MPs decreased from 386 to 199 (Electoral Act, 2011, § 3 (1)). As a consequence, it is worthwhile comparing these two cycles with regard to the issue of nationalities. This research will later be extended to all parliamentary cycles since the change of regime in 1990. A dictionary had been compiled of the word stems connected to minorities and we carried out a search on these words using the substitute character '*'.[4] We classified the nationality-related content of interpellations, questions and urgent questions based on their titles. In the absence of a title or if the title did not provide adequate information, we considered the content of the question. We included only those questions related to the rights, history, culture, representation and identity of the 13 acknowledged nationalities living in Hungary as minority-related ones. We did not examine questions, interpellations and urgent questions related to Roma people as a socially and economically disadvantaged group, nor those concerning the protection of Hungarians living in neighbouring countries nor those which, although connected to minority issues, primarily came under another policy area (e.g. education) .

In section 4, we present data and highlight some concerns and regarding the candidacy and legitimacy of the spokespersons.

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4 The dictionary contains the terms nationality and minority and the official and commonly used names of nationalities living in Hungary, as follows: *nemzetiség**, *kisebbség**, *romá**, *roma**, *cigán**, *ruszin**, *német**, *lengyel**, *ukrán**, *szlovák**, *szerb**, *szlovén**, *horvát**, *örmény**, *görög**, *bolgár**, *vend**, *rác**, *tót**, *sváb**, *oláh**.

Some data and concerns and regarding the candidacy and legitimacy of spokespersons

From our point of view, the main problem related to the monopoly of national nationality self-governments in establishing minority lists is that these bodies deciding on candidacy are elected several years before parliamentary elections take place. Examining census and voter registration data, we observe that most minorities do not have any chance of reaching the preferential quota. In their case, National Nationality Self-Governments are the bodies elected years before deciding on the delegate of the minority to the parliament. These issues raise concerns regarding legitimation, when the interests of voters and the self-government's position can deviate by the time the minority list is drawn up. In 2014, national nationality self-governments that had been elected 4 years earlier decided the candidates and, in most cases, on the person representing the minority (the spokesperson) as well. In 2018, there was a similar 4-year gap. The term of nationality self-governments has changed to 5 years, while the parliamentary term is 4 years. Therefore providing there are no early elections, the gap will be 3 years in 2022, 2 years in 2026, 1 year in 2030, then 5 years in 2034 and so on. On the positive side, it may be argued that this division can lead to a better separation of power.

Legitimation concerns remain valid, even if we take into consideration that Act 97 of 2021 amended the act on nationalities and clarified the process of establishing a nationality list. Section 2 of the legislation made it clear that the national nationality self-government has to decide, in the form of a resolution, on the establishment of the nationality list and on the order of candidates no earlier than 1 October of the year preceding the parliamentary election year. The legislation also stipulates that this decision shall be made public. It is important to mention that the nationality spokesperson or the nationality MP is entitled to participate at both open (public) and closed sessions of the national nationality self-government in a consultative status (Nationalities' Act Amendment, 2021, § 2).

At the same time, the national self-governments' monopoly over candidate selection is aimed at preventing the election to parliament of people who do not belong to a minority group but who claim to represent it in order to further their political careers. However, it must be stated that there are not many objective criteria that need to be met by those wishing to stand as a candidate at nationality self-government elections. Instead, the system relies on the self-declaration and statements of the potential candidate (e.g. a declaration that he/she knows the language and culture of the minority and intends to represent them). In addition to eligibility for the election of local governments and mayors an additional objective limitation that a person who has been a candidate of a minority group during one of the two preceding elections or at any interim election cannot stand as a candidate for another group (Nationalities' Act, 2011, § 54).

In light of the above, it is important to examine which organisations' candidates topped the nationality lists – and so were predestined to become the spokesperson or MP of their nationality – and their mandate share at the national nationality self-government elections. We use the data from the websites of the National Election Office (2010, 2014d, 2019) and the National Assembly (2018c, 2018d) in order to conduct this examination.

Of the 13 spokespersons elected to parliament in 2014, 7 were also elected in 2018. Emmerich (Imre) Ritter, the former German spokesperson, gained a preferential mandate in 2018 so he became an MP with full rights, while the other 6 successful candidates remained as spokespersons: Ljubomir Alexov (Serb), Félix Farkas (Roma), Vera Giricz (Rusyn), Erika

Kissné Köles (Slovene), Traján Kreszta (Romanian) and Szimeon Varga (Bulgarian). All of them were nominated for the national nationality self-government elections by the organisations winning the highest number and proportion of mandates at the national nationality self-government elections in 2010, 2014 and 2019. The Serb spokesperson was the candidate of Szegedian Serbs which ran on a joint list with other parties at both the 2014 and 2019 national nationality (minority) self-government elections. This organisation received 71.4% of mandates in 2010 and the joint list received all the seats in 2014 and 2019. The Slovene and Bulgarian spokespersons and the German MP (former spokesperson) were elected to their respective national nationality self-governments as members of organisations that gained 100% of mandates at the 2010, 2014 and 2019 elections. In these cases, the monopoly of the national nationality self-governments extends over several election cycles. There is a more complex picture regarding the Roma, Rusyn and Romanian spokespersons. The Roma spokesperson's organisation (Lungo Drom) obtained 69.8% of mandates in 2010, 61.7% in 2014 and only 42.6% in 2019. This drop in popularity may be due to corruption scandals related to their national self-government which we will return to later. The Rusyn spokesperson's organisation (the National Alliance of Rusyns Living in Hungary) gained 48% of mandates in 2010, 46.7% in 2014 and 60% in 2019, while the Romanian spokesperson's organisation obtained 44% of mandates in 2010, 46.7% in 2014 and 60% in 2019. It is important to mention that this latter organisation stood with a new name at the 2014 elections.

In 6 instances, there was a change of spokesperson in 2018. In 3 cases (Croat, Polish and Ukrainian), the new spokesperson was a candidate of the same organisation as their predecessor. Both Mišo (Mihály) Hepp, elected in 2014, and József Szolga, elected in 2018, were candidates of the Alliance of Croats Living in Hungary. The Polish spokespersons elected in 2014 (Csúcs Lászlóné) and 2018 (Ewa (Éva) Rónayné Słaba) were both candidates of the József Bem Cultural Association. This organisation has become decidedly weaker during the time covered by this study, receiving 76.2% of the mandates at the 2010 national self-government elections, 53.3% in 2014 and only 26.7% in 2019. It is common in the aforementioned organisations that they had the highest proportion of mandates during the examined period of time.

The Ukrainian spokespersons Jaroszlava Hartyányi (2014) and Brigitta Szuperák (2018) stood at national nationality self-government elections as candidates of the Ukrainian Cultural Association in Hungary, which received 61.9% of mandates in 2010, 100% in 2014 and 40% in 2018. This organisation had the most mandates in the national self-government in 2010 and 2014 and became the second largest in 2019. We observe that all of these spokespersons were nominated for the national nationality self-government elections by the organisation dominating the national nationality self-government.

The Slovak spokesperson elected in 2014 (Ján (János) Fuzik) stood at the nationality self-government elections as a candidate of the Slovak Union, which received 51.7% of mandates in 2010 and 69.6% in 2014. The spokesperson elected in 2018 (Antal Paulik) was not a member of a national nationality self-government.

We observe changes in nominating organisations in 3 cases. The Greek spokesperson Laokratisz Koranisz (elected as spokesperson in 2014) was a candidate of Syllogos, which obtained 52.4% of the vote at the 2010 national nationality self-government elections and 60% at the 2014 national nationality self-government elections. The Greek spokesperson elected in 2018 (Tamás Sianos) was a candidate of the HELLASZ GMKE, which received 40% of the mandates at the 2014 national nationality self-government elections (the second largest share) and 20% in 2019 (the third largest share of mandates). In this case, we observe a sharp

decrease in support for the organisation by the time the nationality self-government elections took place – one and a half years after the parliamentary elections.

The Armenian case is the most complicated. Tamás Turgyán, the spokesperson elected in 2014, was not a member of a minority self-government; nor was Silva Simani, who was the spokesperson elected in 2018. She was replaced by Szeván Simon Serkisian who got into the national nationality self-government as a candidate of the organisation which received 53.3% of mandates at the 2014 national nationality self-government elections but only 13.3% of the mandates (the third largest share) in 2019. An informational letter of the president of the Municipal Armenian Self-Government has been published in the journal *Erdélyi Örmény Gyökerek* (*Transylvanian Armenian Roots*)' regarding the candidacy (Esztergály, 2018). The letter begins with 'Armenians and Transylvanian Armenians!' which demonstrates a split in the organisation. The letter also tells us that the members of the National Armenian Self-Government could not agree on the candidates even after 4 sessions. Szeván Serkisian was the president of the National Armenian Self-Government at the time of the establishment of a nationality list in 2018. Tamás Turgyán wished to be re-elected as spokesperson but Silva Simani, Vahan Malhazjan, Antranik Lutfi Bezijan, Szeván Serkisian and Zsófia Zita Esztergály also wanted to take on the role. Vahan Malhazjan and Antranik Lutfi Bezijan did not even register for the nationality electoral roll for the parliamentary elections. The form of establishing a nationality list had not been regulated by this time, so they reached a 'decision' instead of a resolution of the national self-government which means that they did not vote on the candidates (Esztergály, 2018). We observe that our aforementioned concerns regarding legitimacy are confirmed in the last two cases only (Greek and Armenian). It is important to mention that there is an immigrant – autochthonous divide within the Greek nationality as well, hence there are two groups of Greeks in Hungary: the one group came to the Hungarian Kingdom a long time ago, and the other group fled to Hungary after the Greek civil war (1944-1945) (Sztavrosz, 2005).

Participation of minorities in the 2014 and 2018 parliamentary elections

As mentioned earlier, prior to the 2014 parliamentary elections in Hungary, several scholars noted that members of national minorities did not have any realistic chance of gaining even one preferential seat (Balázs, 2014; Erdős, 2013, p. 5; Kurunczi, 2013; Szalayné, 2014, p. 13; see also: Kurunczi, 2014). Erzsébet Szalayné Sándor, the deputy ombudsman for minority protection even stated before the 2014 general election that the new electoral law had changed the one person–one vote principle to the 'one minority voter–half vote' principle, which means that the regulation's effect is the exact opposite of its aim of ensuring a preferential mandate for minority voters (Szalayné, 2014, p. 13). The outcome of the 2014 election demonstrates that these concerns were not unfounded. The situation did not substantially change following the 2018 elections, when only one preferential nationality mandate was obtained by the list of the National Nationality Self-Government of Germans living in Hungary. Of the other minority groups, only the Roma nationality had a realistic chance of winning a preferential mandate in the National Assembly.

Examining the data on registration, we observe that many members of minorities who registered on the electoral roll of minorities for the election of national self-governments did not apply to extend their registration to the parliamentary elections (see Table 1 and Table

2). We can also see that these numbers are much lower than the 2011 Census data on people declaring themselves as being a member of one of the 13 acknowledged nationalities (see Table 3), even if we exclude those who were too young to vote and if we consider that one person may declare multiple identities at censuses.

Table 1.

Number of voters applying for the extension of registration to the minority electoral roll during the 2014 parliamentary elections and number of votes cast by them

National minority	*Registered for the parliamentary elections (voters) (25 March 2014)*	*Registered for the parliamentary elections (voters) (6 April 2014)*	*Votes cast on the national nationality list (2014)*
Bulgarian	106	104	74
Greek	138	140	102
Croat	1 634	1 623	1 212
Polish	134	133	99
German	15 455	15 209	11 415
Armenian	190	184	110
Roma	19 731	14 271	4 048
Romanian	652	647	362
Rusyn	612	611	463
Serb	344	349	362
Slovak	1 323	1 317	995
Slovene	199	199	134
Ukrainian	510	502	293

Source: National Election Office (2014a, 2014b, 2014c)

Table 2.

Number of voters registered on the minority electoral roll and applying for the extension of registration to the parliamentary elections of 2018

National minority	*Registered on the minority electoral roll (20 March 2018)*	*Registered for the parliamentary elections (20 March 2018)*	*Registered on the minority electoral roll (27 March 2018)*	*Registered for the parliamentary elections (27 March 2018)*	*Votes cast in the parliamentary elections (8 April 2018)*
Bulgarian	1 311	159	1 311	160	158
Greek	1 728	241	1 727	241	159
Croat	10 198	2 102	10 229	2 316	1 743
Polish	2 182	273	2 184	277	210
German	51 227	32 326	52 419	33 762	26 477
Armenian	2 278	276	2 272	270	159
Roma	151 532	19 602	15 1442	19 166	5 703
Romanian	4 801	846	4 812	805	428
Rusyn	2 990	966	2 984	915	895
Serb	1 614	422	1 616	428	296
Slovak	11 597	1 702	11 596	1 689	1 245
Slovene	701	246	718	256	199
Ukrainian	982	529	1 017	566	270

Source: National Election Office (2018a, 2018b, 2018d)

Analysing the data from the 2018 elections (Table 2), we observe that only the German minority passed the preferential quota (23,831 votes) to obtain a full mandate (National Election Office, 2018c).

Table 3.

Number of members of national minority communities in Hungary according to the 2011 Census

National minority	Number of members
Bulgarian	3 556
Greek	3 916
Croat	23 651
Polish	5 730
German	131 951
Armenian	3 293
Roma	308 957
Romanian	26 345
Rusyn	3 323
Serb	7 210
Slovak	29 647
Slovene	2 385
Ukrainian	5 633

Source: Central Statistical Office (2011)

To understand the bigger picture, we now need to examine minority-related parliamentary activity, with a focus on signs of cleavages between or within minority communities.

Nationality-related issues on the parliamentary agenda and cleavages within minority groups

It is worthwhile examining the activity of nationality spokespersons during the 2014–2018 parliamentary cycle, focusing on indications of cleavages within minority groups. We investigate the number and topic of nationality spokespersons' speeches and questions based on data available on the Hungarian National Assembly website (2018c) and conduct our analysis from a different perspective to Móré (Móré, 2016). Figure 1 shows the number of speeches given and questions asked by nationality spokespersons during the 2014–2018 electoral cycle.

Most of the nationality spokespersons' speeches connected to parliament's official agenda concerned the central budget and public finances, with 6 spokespersons (mostly the Bulgarian, German and Serb) giving speeches related to such issues. The second most frequently mentioned issue was culture, with more than half of the culture-related speeches being given by the German spokesperson and the president of the Committee of Nationalities Living in Hungary, Emmerich (Imre) Ritter, while 4 other spokespersons spoke on this issue. Several speeches are connected to various procedures (e.g. misdemeanour procedure, registry and criminal) and the use of minority languages, which is an important issue for minorities. Almost half of these speeches were made by the Serb spokesperson. These topics are followed by the annual reports of the Commissioner of Fundamental Rights and his deputies. It is

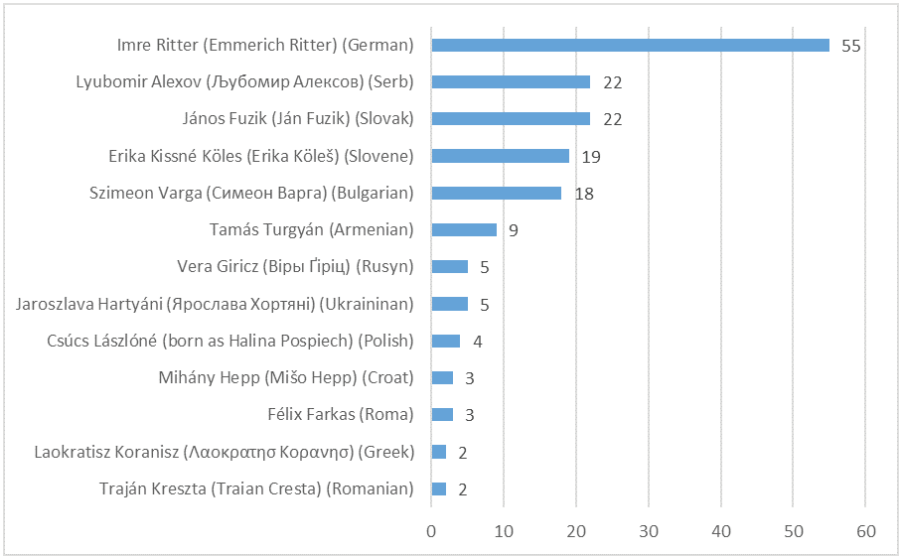

Figure 1. *Number of speeches given and questions asked by minority spokespersons at plenary sessions during the 2014–2018 electoral cycle*
Source: Author's own diagram based on data from the National Assembly (2018c)

important to mention that the Slovene spokesperson spoke most regarding education. There were also speeches concerning the Electoral Procedure Actand the National Assembly Act. Two speeches were related to both consular protection and the census. A report on the activity of the Committee of Nationalities Living in Hungary during the first year of the electoral cycle was also heard. The spokespersons also spoke to the bill related to subsidies from abroad for non-governmental organisations. If we examine the speeches related to the official agenda, we observe that they are mainly connected to the common interests of the 13 nationalities. However, there are some exceptions: the Polish and Bulgarian spokespersons' speeches concerned resolution proposals of symbol importance that they submitted alongside MPs.

Besides questions, pre- and post-agenda speeches provide an arena for the expression of interests of each minority and for raising the issue of their relationships with their kin-states. We provide the following examples. The German spokesperson held a pre-agenda speech related to Germans transported to the Soviet Union for forced labour. The Bulgarian spokesperson's pre-agenda speeches were connected to the past, present and future of of Bulgarians living in Hungary, to their folk traditions, accordingly to the centenary of the establishment of the Bulgarian Orthodox Church in Hungary. He also held an exposé (opening speech) connected to the resolution proposal on the establishment of the day of Bulgarian-Hungarian Friendship. The Slovak spokesperson spoke on the memorial day of Hungarians expelled from Slovakia and the Czechoslovak-Hungarian enforced population transfer, furthermore on the people transported to the Soviet Union for forced labour. He also spoke on the joint exercise of the Visegrád countries' armed forces. The Serb spokesperson's questions were related to the future of nationality theatres, to the opportunities for renovating the cultural heritage of Serbs living in Hungary by craftsmen from their kin-state and to the Serbian Orthodox Diocese of Buda. He also gave a post-agenda speech related to the 575 years of Hungarians and Serbs living side by side. The Slovene spokesperson spoke on the past, present and future of Slovenes

living in Hungary, on Ágoston Pável – a researcher of Slovenes living in Hungary – and on the 25th anniversary of the adoption of the Slovenian constitution, which she delivered entirely in the Slovene language. The Armenian spokesperson made speeches related to the memorial day of the Martyrs of Arad, on the Armenian genocide and on the 25th anniversary of Armenia's independence. The Rusyn spokesperson's speech was entitled 'Ferenc Rákóczi II and the Rusyns'. All the Polish spokesperson's speeches related exclusively to the Polish nationality and some of them concerned resolution proposals that she submitted alongside MPs from almost all parliamentary groups: on the 70th anniversary of Henryk Slawik's death and the 40th anniversary of József Antal Senior's death, on the declaration of 2016 as the year of Polish-Hungarian solidarity and on the revolution of 1956. The Ukrainian spokesperson spoke on Ukrainian-Hungarian relations.

Overall, we do not observe many indications of cleavages among minority communities or within a particular minority community from the activities of the nationality spokespersons. However, there is one exception when the Armenian spokesperson spoke in the plenary session regarding conflicts among the so-called Hungarian-Armenians who had immigrated from Transylvania 350 years earlier and 'eastern' Armenians who came later from Armenia. We find evidence of his concerns regarding this issue in the activity of the Committee of Nationalities Living in Hungary. During a 2017 session, for example, he alleged that Hungarian-Armenians who have one less mandate in the National Armenian Self-Government were completely excluded from the decision-making process in the national self-government, that 'eastern' Armenians would have all the resources and that the president of their national self-government had alleged that Hungarian-Armenians were not real Armenians, would have no knowledge of Armenian culture and could not represent anyone (National Assembly, 2017). Interestingly, the spokesperson read the letter from the majority the 'eastern' Armenians at the plenary session and read the Hungarian-Armenians' opinion at the Committee of Nationalities living in Hungary.

We observe another example of cleavages within a particular national minority community when we examine the content of minority-related interpellations during the 2010–2014 and 2014–2018 parliamentary cycles. For an adequate evaluation in this context, we consider the overall number of minority-related interpellations, questions and urgent questions during this period (see Table 4).

Table 4.

Minority-related parliamentary questions
during the 2010–2014 and the 2014–2018 electoral terms

		2010–2014	2014–2018
Interpellations	Submitted	1 752	1 356
	Performed	957	820
	Minority-related	2	3
Questions	Submitted	8 491	15 431
	Asked	869	1 081
	Minority-related	2	12
Urgent questions	Submitted	1 307	1 454
	Asked	1 136	1 059
	Minority-related	4	21

Source: Results of a keyword search of the National Assembly the website (2014a, 2018a)

As a result of this comparison, we conclude that there were only two interpellations during the 2010–2014 cycle which fulfil our criteria. These can be connected to the Jobbik party and were submitted in 2010 and 2013. Reviewing the National Assembly website we observe that 957 interpellations were performed during the 2010–2014 parliamentary cycle, while in the following term 1,356 interpellations were submitted and 820 of these were performed. One of the 2014–2018 minority-related interpellations, which mentioned minority and ecclesiastic nurseries, was presented by István Soltész, an MP belonging to the Christian Democratic Party. The other interpellation on EU funds connected to corruption mentioned the misuses within the National Roma Self-Government.

We must bear in mind that nationality spokespersons are not entitled to perform interpellations. The number of questions asked was also low in 2010–2014 but we note a moderate increase in 2014–2018. While only 2 of the 869 questions during the 2014–2018 parliamentary cycle were directly connected to minorities, 12 of the 1,081 questions asked during the following parliamentary term were directly related to minorities. Of the 12 minority-related questions asked in 2014–2018, 4 were asked by the Serb spokesperson, 1 by the German spokesperson, 1 by an MP belonging to the Politics Can Be Different party (LMP) and 5 by members of the Hungarian Socialist Party. We must mention that 3 of the latter questions were posed by László Teleki, former secretary of state responsible for Roma issues, who had been a member of the Zala County Roma Minority Self-Government between 2010 and 2014. These three question are the only ones which can be considered as manifestations of cleavages within a particular minority community (Roma). Anita Heringes asked the Hungarian Socialist Party's 4th question and referred to her German ancestors during her speech. Based on the aforementioned analysis, we conclude that there has been no significant increase in minority-related questions since the establishment of the institution of nationality spokespersons.

Of the 1,136 urgent questions asked during the 2010–2014 cycle, 4 were expressively related to minorities, while during the following term, 21 of the 1,059 urgent questions asked were related to minorities. Of the 21 minority-related urgent questions asked between 2014 and 2018, 9 were posed by István Ikotity (7) and Ákos Hadházy (2) of the LMP, 7 by László Teleki, former secretary of state, and 5 by representatives of the Jobbik party. The urgent questions asked by László Teleki are a sign of cleavages within the Roma community, as he criticised the National Roma Self-Government, especially regarding corruption-related issues. If we merely look at the numbers, we may assume that the increase in minority-related urgent questions is caused by the presence of nationality spokespersons but we must be wary of making such statements. If we also analyse the content of these speeches, we can see that 18 of these urgent questions were related to issues like corruption, financial mis and breaches of law in the National Roma Self-Government. Other urgent questions concerned the remuneration of Flórián Farkas, ministerial commissioner responsible for subsidies provided for Roma; the financial misuse of a fund connected to subsidies for alleged Roma minority education; the quality of education of Roma people; and the issue of local governments and nationality self-governments being unable to access the financial resources that are ensured by the state. These urgent question topics demonstrate to us that there are conflicts within the Roma community.

Some preliminary data regarding the current (2018–) electoral cycle[5]

By examining the data on the speeches of spokespersons and the minority MP Imre (Emmerich) Ritter, we observe that 7 spokespersons from the 2014–18 electoral cycle were re-elected (indicated by number of speeches underlined in Figure 2). It appears that their activity is similar to that during the preceding cycle. One exception is the Roma spokesperson, Félix Farkas, who is much more active.

If we examine the content of the spokespersons' speeches, we observe experts of some policy areas among them (e.g. the Slovene spokesperson continues to speak mostly on education and the Serb spokesperson speaks on theatre, culture and procedural laws).

Regarding the activity of the German minority MP Emmerich Ritter, we observe that his level of activity is similar to the preceding cycle, when he was a spokesperson. At the same time, there have been some advances since he became an MP: the standing orders were amended and minority MPs' competences were broadened (e.g. they have one extra interpellation per year compared to non-caucus-member MPs) (Standing Orders Amendment, 2011). Interestingly, although he can submit a bill to parliament as an MP, he has done this only once so far, minority-related bills and amendments were introduced by the Committee of Nationalities Living in Hungary – as in the preceding cycle when he could not have done so.

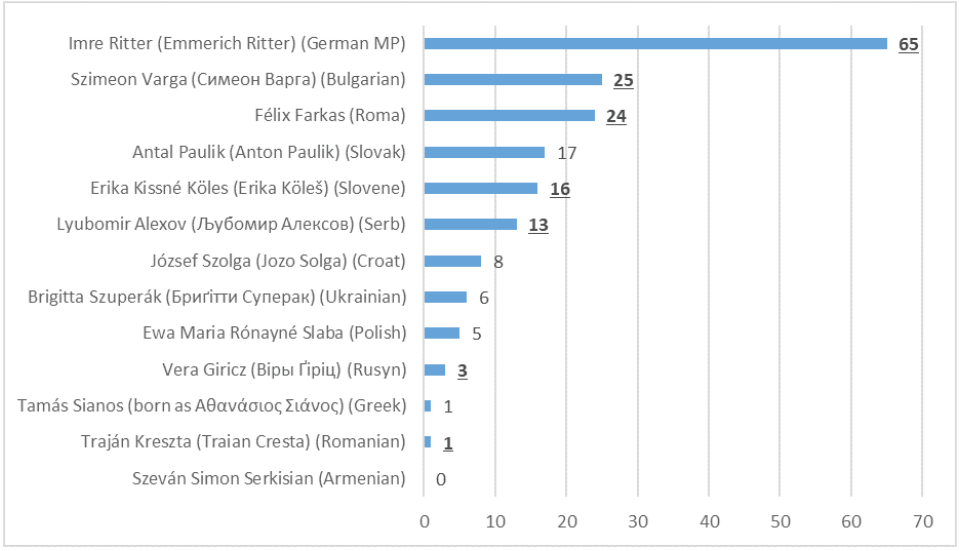

Figure 2. *Number of speeches and questions by minority spokespersons at plenary sessions from the beginning of the 2018– electoral cycle to 8 June 2021*
Source: Author's own diagram based on data from the National Assembly (2018d)

5 This section considers data from the beginning of the 2018– electoral cycle to 8 June 2021.

Conclusion

We observe that claims for preferential parliamentary representation to members of nationalities living in Hungary have a long history, but were only realised in 2014. When the electoral act of 2011 was adopted, several scholars stated that members of nationalities would not have a realistic chance of acquiring even one preferential mandate. Therefore, nationality spokespersons would represent them in parliament (except for the party-nominated MP they elected in a single member constituency), undermining the equality of their vote. We also observe some cleavages within minority communities. Regarding our first research question we can conclude that nationality spokespersons elected on nationality lists of nationalities having no real chance to gain a preferential seat as delegates of the national nationality self-government, hence their spokesperson mandate is guaranteed, and n

ational nationality self-governments exercise a monopoly over establishing a minority list. On the one hand, this is beneficial in that this monopoly can help prevent some abuses of the system, even though the benefit is limited due to a lack of thorough objective criteria for standing as a candidate in the nationality self-government elections. On the other hand, this monopoly raises concerns about democratic competition and the effective participation of minorities under international law even if a recent amendment clarified the circumstances of the establishment of a nationality list. If we also take a look at the data of the national nationality self-government elections, we can see that this dilemma occurs in practice regarding the Greek and Armenian nationality list. We saw a harsh cleavage within the Armenian community. It is also important to mention that there is an immigrant – autochthonous divide within the Greek nationality as well, hence there are two groups of Greeks in Hungary: the one group came to the Hungarian Kingdom a long time ago, and the other group fled to Hungary after the Greek civil war (1944-1945) (Sztavrosz, 2005). However, if we focus on the activity of the spokespersons, we note that they can effectively represent the interests of minorities.

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III.
Perspectives of Non-Territorial Autonomy in the Balkans

Aleksandar Pavlović

Autonomy or independence: minority arrangements for Vojvodina Hungarians and Kosovo Albanians in Serbia during and after the Yugoslav Period

'Whether 'tis nobler in the mind to suffer/
The slings and arrows of outrageous fortune,/
Or to take arms against a sea of troubles?'
William Shakespeare, *Hamlet*

Introduction: comparing the status of Vojvodina Hungarians and Kosovo Albanians in Serbia

Hungarians and Albanians had fairly comparable 'beginnings' in both Yugoslavias during the 20th century, both numbering over 400,000 people and comprising close to 4% of the overall population, as well as being concentrated in particular geographical areas (Vojvodina and Kosovo respectfully). First, Hungarians outnumbered Albanians (472,409 to 441,740 in 1918; 467,658 to 439,657 in 1921) in the new Kingdom of Serbs, Croats and Slovenes (later renamed Yugoslavia); second, the new post-1945 socialist Yugoslavia operated a federal principle in which Serbia contained two largely autonomous provinces, primarily accommodating Hungarians in Vojvodina and Albanians in Kosovo (Banac, 1988, p. 58; Grupković, 1988; Ramet, 2006). Yet, arguably, the outcomes of the two ethnic minorities could not be more different. Due to a demographic explosion, Kosovo Albanians soon became an absolute majority in the province, demanding more and more political rights that were opposed by the Serbs, which ultimately led to harsh conflict and ethnic war there. Despite continuous efforts to stabilise these relations, this conflict constantly plays out as the domination of one nation over the other, so that 'what predominates now in the minds of most Serbs and Albanians, as well as most outside observers, is the image of a deeply rooted and unbridgeable rift between Serbs and Albanians, more "ancient" and clear-cut than the division in Bosnia' (Duijzings, 2000, p. 8).

In contrast, the number of Hungarians in Vojvodina declined due to several factors, such as a low birth rate, migration and the colonisation of Vojvodina by Serbs and Montenegrins during the 20th century. Since Vojvodina's autonomy was abolished by Slobodan Milošević in 1990, it has focused on and achieved more in terms of non-territorial autonomy, mainly by embracing personal, cultural and language rights and local autonomy and, most recently, establishing the Hungarian minority council (Beretka, 2019; Korhecz, 2015). In stark contrast with Serbian-Albanian relations, high-ranking Serbian and Hungarian officials claim that 'current relations between Serbia and Hungary are the best they have ever been in history' (Serbian President Aleksandar Vučić on 11 September 2017, as cited in Beretka, 2019) and that 'Serbia has regained its esteem and returned to European politics… Today, the EU needs Serbia more than Serbia needs the EU' (Hungarian PM Viktor Orbán on 15 May 2020, as cited in MTI-Hungary Today, 2020).

The aim of this article[1] is to offer a comparative analysis of minority politics and autonomy arrangements in Yugoslavia and Serbia up to the present day, in relation to Hungarians in Vojvodina and Albanians in Kosovo. The goal of the research is to examine in greater detail how – and, ultimately, why – autonomy-targeted arrangements and struggles led to violence and independence in Kosovo, while such efforts were peacefully incorporated within society, and even served as a solid foundation for good neighbourly relations, in Vojvodina.

The comparative perspective on Kosovo and Vojvodina and the issue of the opposite directions of intra- and extra- Serbian-Albanian and Serbian-Hungarian relations during the Yugoslav crisis has not been adequately addressed to date. Jenne (2007) has stressed the role of external international factors in spurring internal conflicts and has juxtaposed the secessionist versus integrationist approaches of Kosovo and Vojvodina alongside a number of other comparable cases to claim that:

> when the minority's external patron credibly signals interventionist intent, minority leaders are likely to radicalise their demands against the centre, even when the government has committed itself to moderation. It follows that the successful mediation of triadic conflicts is possible only after relations have been normalised between the minority's host government and lobby actor at the international level (p. 2).

Some scholars, approaching the issue of conflicts in Kosovo and the Balkans in general, have stressed the role of national and political myths and centuries-old Serbian-Albanian hostility in spurring the Kosovo conflict (Merthus, 1999). Others have viewed the recent Balkan wars as primarily religious clashes (Sells, 1996) or, *mutatis mutandis*, have blamed Serbian nationalist ideology for igniting tensions in the Balkans since the 19th century (Anzulović, 1999; Malcolm, 1998). This article fully acknowledges the role played by external factors, as well as historical, cultural and symbolical forces in influencing the Kosovo issue. However, after providing a comparative overview of minority politics involving Hungarians and Albanians in the two Yugoslavias and post-1990 Serbia, it stresses that, rather than centuries-old hatred and national myths, it was the oppressive measures and legal arrangements implemented by the Milošević regime in Serbia in the 1990s, together with international and military support for Kosovo independence, that ultimately led to violent ethnic conflict and war.

In approaching these issues, this article provides several arguments that mainly focus on: demographic tendencies and migration trends that led to a reduction in the Hungarian population and an increase in the Albanian population in the past century; the distinctive symbolical status of Kosovo as a mythical, sacred space for Serbs and Vojvodina as a shared, joint territory, which prevented political compromises and solutions for the Kosovo issue in Serbia; Milošević's oppressive regime being the harshest in Kosovo, which was completely stripped of its autonomy and ruled through a series of constant special decrees and states of emergency; Vojvodina Hungarian intellectuals' post-1990s struggle for autonomy that eventually led to the adoption of several laws protecting minorities and the establishment of national councils in post-Milošević Serbia; and the role of external factors and the international community

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that ultimately supported Kosovo Albanian armed forces and their claims for full independence from Serbia.

After providing a brief survey of the unfavourable status of Hungarians and Albanians in interwar Yugoslavia, I argue that both minorities were accommodated within provinces that enjoyed significant rights and powers, which some authors view as quasi federal member states, especially after the adoption of the 1969 constitutional amendments and the 1974 constitution. Yet, from the outset, Vojvodina was a multinational province with a large Hungarian minority, but also sizable Croatian, Romanian and other communities and an increasing Serbian majority; hence, independence has not been the ultimate goal of Hungarian minority politics. Conversely, the ethnic structure in Kosovo became more homogeneous as the Albanian population increased and calls for independence here were more realistic than in the north. Furthermore, I draw on Jenne's analysis of the role of external international factors in spurring internal conflicts, indicating that the clear interventionist intentions of the Kosovo Albanians' external patrons was pivotal in the secessionist and integrationist approaches employed in Kosovo and Vojvodina, respectively. Moreover, to the Serbs, Kosovo as a territory represented 'the heart of Serbia' and 'the cradle of Serbian nationhood and statehood' (both are commonly used phrases in popular discourse) and remained immersed in mythopoetical and symbolic realms, thereby preventing any *real-life*, viable and moderate political solutions. In contrast, Vojvodina was still perceived as an inherently multinational, *shared* space that therefore deserved a somewhat specific status and special arrangements, which resulted in fairly positive minorities' legislation and rights in post-Milošević Serbia. In addition, I argue that the Kosovo Albanians continued to be portrayed and culturally perceived as somewhat inferior to other Yugoslav nations and nationalities and were often seen in Serbian public discourse as a threat or as intruders, which also spurred feelings of dissatisfaction and claims for political partition. In comparison, Hungarians arguably enjoyed a more favourable perception in the public discourse in both Yugoslavias and, later on, in Serbia, even though WWII and conflict in the 1990s saw hostilities and violence in Vojvodina. As a result, there is a lasting positive trend in Serbian-Hungarian relations and minority rights, which, according to recent scholars, 'could potentially offer a template for addressing ethnic tensions in other Central and East European countries' (Smith & Semenyshyn, 2016). Thereby, this analysis departs from the perspective that has marked post-1990s' scholarship, which perceives Serbian and regional ethnic relations as a continuation of centuries-old hatred and historically deeply rooted hostilities, and instead looks for an explanation of conflict within the power dynamics and political situation of the early 1990s.

Overview of the Yugoslav policy towards Albanians and Hungarians between the Balkan Wars of the 1910s and 1990s

As a result of the collapse of the vast Ottoman and Austro-Hungarian empires in the early 20th century, a large number of Albanians and Hungarians found themselves living under Serbian sovereignty within the two Yugoslavias for most of the past century. Serbian expansion during the 1912–1913 Balkan Wars saw Serbia doubling its territory southwards, including into present-day Kosovo and North Macedonia. In the official Serbian discourse, this was a just war to not only liberate oppressed Serbian brothers but also bring freedom to other nations suffering from the Turkish yoke, as Serbian King Petar claimed in his 1912 Proclamation

of War (King Petar I, 1912). In reality, however, while Serbia continued to expand at the expense of the collapsing Ottoman Empire after 1912, Serbs constituted a minority of the population of these majority Albanian populated areas.

The Great War, which started in 1914, disrupted the establishment of full Serbian rule over these newly acquired regions, but the collapse of the Austro-Hungarian Empire after the war brought new territorial gains for the Serbs. On 24 and 25 November 1918, the National Assemblies of Srem and the Great National Assembly of the Serbs, Bunjevci and other Slavs for Banat, Bačka and Baranja decided to join these territories with Serbia. Subsequently, Vojvodina, part of the Kingdom of Serbia, was included in the new Kingdom of Serbs. The assemblies did not adequately reflect the ethnic structure of Vojvodina: 'Of 757 deputies present, 578 were Serbs, 84 Bunjevci, 62 Slovaks, 21 Ruthenes, 6 Germans, 3 Šokci, 2 Croats and one Hungarian', even though approximately one-third of the population were Hungarian and another third were German (Njegovan, 2001).

Hungarians and Albanians in the First Yugoslavia: (e)migration, colonisation and demographic trends

The territories and ethnicities of Vojvodina and Kosovo did not enjoy real autonomy in the first Yugoslavia. After WWI, the newly formed Kingdom of Serbs, Croats and Slovenes was divided into districts and counties. According to the administrative division of 1922, the present-day territory of Vojvodina was divided into the Bačka, Belgrade and Srem districts (Bjeljac & Lukić, 2008). Similarly, the modern-day territory of Kosovo was officially named South Serbia and comprised 12 districts. In 1929, a new territorial distribution was introduced. A dispute between Serbian and Croatian MPs resulted in a shooting in parliament in 1928, which caused a major political crisis. To avoid nationalistic outbursts, a new constitution and new territorial distribution were imposed in 1929, as well as a new name: the Kingdom of Yugoslavia. Yugoslavia now underwent a new territorial division into nine banovinas, named after the main rivers in the area in order to avoid upsetting nationalistic sensitivities (please see Figure 1). Notably, Hungarians were incorporated into the large Danube banovina, where they comprised 18.2% of the population, while Albanians were divided between the Vardar and Zeta banovinas, where they constituted approximately one-third of the total, majority Serbian, population.[2]

While Hungarians were historically indifferent towards the idea of Vojvodina, with some seeing it as a threat to Hungarian territorial integrity, their new political reality made them increasingly inclined towards the concept of Vojvodina's political autonomy. Thus, the interwar period saw the emergence of the movement for Vojvodina autonomy among the increasingly dissatisfied Vojvodina Hungarians, who believed it to be the only way to protect their unrecognised collective (chiefly national, economic and cultural) rights. Their discontent peaked in the late 1930s when, at a meeting in Senta on 9 December 1937, the United Opposition demanded reorganisation of the state and the establishment of Vojvodina as a separate territorial unit. By 1940, one of the Hungarian leaders Nagy Iván was claiming that 'the experiences of the last twenty years induce us to conclude that all our rights are nothing but a dead letter without the autonomy of Vojvodina, whose emergence remains a mere unfulfilled promise' (Losoncz, 2021, p. 5).

[2] The methodology of drawing the borders of the banovinas indicated an intention to secure Serbian numerical superiority, or at least strengthen Serbian influence, wherever possible.

Fig. 1. *The division of Yugoslavia into banovinas in 1929* (source: Wikipedia commons)

The Yugoslav policy towards Kosovo in the interwar period was marked by efforts to integrate it with Serbia, deosmanisation (cultural, ideological, political and economic transformation from the Ottoman ways and outlooks), agrarian reform and colonisation. While Albanians were essentially not forcefully displaced or expelled from Kosovo en masse immediately after the war, the interwar policy was disadvantageous for them – the redistribution of land meant that some border areas were taken from their previous Albanian owners and distributed to Serbian and Montenegrin colonists. Moreover, Yugoslav laws limited land ownership to half a hectare (1.2 acres) per family member, which, in the rural and often mountainous and impoverished areas inhabited by Albanians, was insufficient for economic sustainability and progress (Jovanović, 2019). In addition, Albanians did not enjoy particular rights to political organisation, representation or education in Albanian. Nevertheless, the overall results of the colonisation of Kosovo were relatively modest – in the interwar period some 19,500 families were settled in over 1,000 colonies in Kosovo but many returned home afterwards for reasons such as poor arable land, insecurity and the burden of state credits (Jovanović, 2013).

During the interwar period, the Yugoslav authorities in Kosovo also implemented resettlement and emigration measures. During the 1930s, Yugoslavia and Turkey made plans, and even signed treaties, to resettle hundreds of thousands of Yugoslav Muslims in Turkey;

while these plans, sensu stricto, applied only to Turks and Albanians were not included in the negotiations, the Yugoslav authority intended to adopt a wide interpretation of the term 'people of the Turkish culture' to include many of its citizens of Albanian nationality (Jovanović, 2019, p. 46). While the Yugoslav and Turkish authorities encouraged migration, it is hard to identify the exact number of émigrés and the figures are disputed – reliable scholarly sources state that approximately 19,000 persons migrated from Kosovo to Turkey between 1927 and 1939. Even though there is no reliable data for the period 1912–1927 nor about migration to Albania, it is likely that there were tens rather than hundreds of thousands of émigrés to Turkey and Albania (Jovanović, 2019, p. 46). Consequently, changes to the overall demographic structure in Kosovo in the interwar period were not drastic, with the Serbian population rising from 25% to 34% of the overall total while the Albanian population declined from 65% to approximately 60% (please see Table 2).

The results of population resettlement and colonisation were longer lasting in Vojvodina. By 1931, its population had increased by over 90,000, of which over 56,000 were through colonisation (Bjeljac & Lukić, 2008, p. 73). Such agrarian reform aimed to pacify the rural population, remove foreign landowners and reward war veterans, mostly Serbs from Montenegro, Herzegovina and Lika, settling them in areas where there was an excess of non-cultivated, state-owned, municipal or deserted land (Pavlowitch, 2002). According to estimates, up to 20,000 families, or as many as 100,000 colonists and their dependents, were settled in Vojvodina during the period of colonisation after WWI. This constituted approximately 6% of the total population of Vojvodina according to the 1931 census (Bjeljac & Lukić, 2008, p. 74).

Vojvodina and Kosovo in Socialist Yugoslavia: autonomy, colonisation and demographic trends

During WWII, most of Kosovo was part of so-called Greater Albania, a puppet state established by the occupying German and Italian forces. At that time, the repressive measures of both the occupying and the local Albanian forces caused an exodus of tens of thousands of Serbian and Montenegrin colonists. Vojvodina has also been occupied and ceded to the Nazi puppet states of Horthy's Hungary and the Independent State of Croatia (NDH). Serbs and Jews were killed during the war and the communists took retaliatory measures against local Germans and Hungarians in late 1944 and 1945. WWII resulted in dramatic changes to Vojvodina's demographic. Practically the entire German population of Vojvodina was banished to Germany, shrinking from 328,631 in 1931 to just 41,460 in 1948. While Hungarians were also occasionally exposed to measures such as expulsion, and even execution at the end of the war (Losoncz, 2015), their numbers grew from 413,000 in 1931 to 433,701 in 1948 (please see Table 1).

Both Vojvodina and Kosovo were immediately granted autonomy in the new, socialist Yugoslavia. The communists declared goals of dealing with nationalism and bringing equality to all and envisaged a new Yugoslavia based on the principles of federalism and equality. Originally conceived during a meeting in late 1943, the Yugoslav Federation, according to the 1946 constitution, had six republics, of which Serbia was one, including the autonomous province of Vojvodina (*pokrajina*) and the autonomous region (*oblast*) of Kosovo and Metohija, which had a lower degree of autonomy (please see Figure 2). Albanians and Hungarians were not listed as nations (*narodi*) but as national minorities (*nacionalne manjine*) (Várady, 1997, pp. 10–12). The Kosovo region was thus a constitutive part of Serbia, comprising 15

counties with the capital in Prizren. Equal rights for Albanians, Serbs and Montenegrins, as well as equal use of the Albanian and Serbian languages in schools and public administration, were prescribed by law.

However, the unfavourable conditions experienced by Kosovo Albanians continued after WWII. In 1945 the communist authorities forbade the return of most Serbian colonists to Kosovo and restored the land that had been given to them to its previous private owners, thereby attempting to correct the injustices suffered by Albanian peasants during the first wave of colonisation. However, in the years after the war, there were few Albanians in the Yugoslav administration and the majority of people with leadership roles in Kosovo were Serbian; emigration – encouraged by Turkey – continued and even intensified; and repressive measures were introduced, particularly in areas where Albanians were viewed as irredentists (i.e. cooperating with the occupies in WWII) or 'Stalinists' after the Tito–Stalin split in 1948 (Jovanović, 2019).

Fig. 2. *The borders of Vojvodina and Kosovo and 2002 population distribution* (source: Wikipedia commons)

While the colonisation of Kosovo ended, and was even reversed, socialist Yugoslavia advanced the colonisation of Vojvodina. Over 60,000 houses there – mostly belonging to expelled Germans – were confiscated for the use of colonists and, by the end of 1947, 36,430 families, comprising 216,306 people, had been settled in Vojvodina, mostly from the majority-Serb rural areas of Bosnia and Herzegovina and Croatia (Bubalo-Živković et al., 2014; Bjeljac & Lukić, 2008, p. 84). Thus, by 1948, Serbs amounted to 50% of the population, Hungarians remained at 26.4%, while Germans were reduced to 1.8% (please see Table 1). While it would be easy to view this as a deliberate intention on the part of the Yugoslav authorities to change the ethnic composition of Vojvodina, in reality the motives for colonisation were economic rather than nationalistic – rich and fertile Vojvodina land was given to the rural population from the poorest parts of Bosnia and Herzegovina and Croatia, which were mostly inhabited by Serbs and Montenegrins.

After 1948, organised colonisation and migration to Vojvodina were no longer significant and the ethnic composition remained relatively stable until the 1990s, when hundreds of thousands of Serbs fled or were expelled from Croatia at the beginning of the war in 1991 and 1992 and after the collapse of the Serb-ruled regions in Croatia in 1995. The largest number of recorded refugees in Serbia was 617,728 in 1996. While some later returned home, emigrated abroad or remained in Belgrade and Central Serbia, approximately one-third settled in Vojvodina. Again, while it is easy to view this as state-organised colonisation of Vojvodina, scholars have emphasised that the existence of kinship or friendship ties between refugees and 1945–1948 and later colonists, who came from the same regions of Bosnia and Croatia, was the main driving force behind permanent settlement in Vojvodina (Lukić, 2015).

Meanwhile, the position of Kosovo, and especially Kosovo Albanians (in comparison to other Albanians in Yugoslavia), improved rapidly in the Socialist Federal Republic of Yugoslavia (SFRY). The 1966 Brioni Plenum of the Communist Party of Yugoslavia opted for Edvard Kardelj's federal-based approach instead of Aleksandar Leka Ranković's vision of a stronger Yugoslav state. In the following years drastic changes occurred. 'Metohija' – meaning monastery's land and thereby marking Kosovo's attachment to Serbian Orthodoxy – was removed from the province's name and Kosovo had an increasing number of Albanian leaders, initially educated in Belgrade and elsewhere. Moreover, in 1969, the University of Prishtina was founded, paving the way for a new, locally educated Kosovo elite. From 1968, and especially since 1974, 'Kosovo became a Socialist Autonomous Province (SAP) and obtained its own constitution, parliament, government, central bank, constitutional court, as well as representation in the federal institutions independent of the Republic of Serbia, and thus was a republic in everything but name' (Cakaj & Krasniqi, 2016, p. 155).

Vojvodina enjoyed the same autonomy, guaranteed by constitutional changes in the 1960s and especially in 1974. The Serbian political and intellectual elite was not altogether enthusiastic about these changes and Serbian scholars tend to be rather critical of its overall effects: 'Many authors believe that the 1974 constitution gave to the republics and provinces prerogatives of the state, which endangered the federal state. Some even want to trace the destruction of the country and the savage civil war to the crises which resulted from the constitutional changes' (Pavlović, 2009). The extent to which the provinces were autonomous even led to political paradoxes whereby they could independently issue a law but Serbia needed approval from the provinces to change its constitution and laws that applied only to Serbia proper. The provinces had an equal voice in the federal institutions, often voting differently from those of the Republic of Serbia (Pavlović, 2009).

Conversely, Hungarian scholars tend to view these political arrangements, and the overall climate in Yugoslavia, in a positive – although still far from ideal – light, especially in comparison to the later authoritarian and nationalistic policies of Milošević's regime in the 1990s. Thus, Losoncz identifies the period leading to the 1974 constitution as the second wave of the Hungarian struggle for autonomy. While recognising strong emancipatory moments compared to the repressive practices of the First Yugoslavia or Milošević's regime, he also points out that some Hungarian representatives in the 1960s were politically reprimanded and even investigated for charges of 'separatism' (Lošonc, 2021, p. 8). Similarly, Várady says that 'the past several decades in Yugoslavia, particularly the 1960s and 1970s, may not have been a fully enjoyable present, but they have become a respectable and even enviable past' (Várady, 1997, p. 17). Arday places the situation of Hungarians in Vojvodina in a wider context and concludes:

> All in all, for a while, Hungarians in Yugoslavia enjoyed a more favourable situation than their compatriots in other countries in the Carpathian basin, even including Hungary. For example, after 1952–1953 there was no mandated collectivisation, and private farms were allowed. Virtually everybody was allowed to go abroad, and millions worked temporarily in Western Europe in the 'golden' sixties and seventies. They had a mass media which satisfied the needs of the population. What the Hungarians in Vojvodina missed most was an independent organisation to articulate their political will, safeguard their interests and organise their educational activities (Arday, 1996, p. 478).

Thereby, even though some Hungarians in Vojvodina might not have been eager to wholeheartedly join the Yugoslav Communist Party, it appears that Hungarians in the second Yugoslavia were able to voice their demands and claims within the existing political framework and that communist policy concerning Vojvodina often corresponded to Hungarians' main demands and interests.

Table 1.

Ethnic composition of the Vojvodina population (1880–2011)
(appropriated from: Császár & Mérei, 2012, p. 121)

Year	*Total population*	*Hungarian*		*German*		*Serb*		*Croat*		*Slovak*	
	Number	*Number*	*%*	*Number*	*%*	*Number*	*%*	*Number*	*%*	*Number*	*%*
1880	1,172,729	265,287	22.6	285,920	24.4	416,116	35.5	72,486	6.2	43,318	3.7
1890	1,331,143	324,430	24.4	321,563	24.2	457,873	34.4	80,404	6.0	49,834	3.7
1900	1,432,748	378,634	26.4	336,430	23.5	483,176	33.7	80,901	5.6	53,832	3.8
1910	1,512,983	425,672	28.1	324,017	21.4	510,754	33.8	91,016	6.0	56,690	3.7
1921	1,528,238	363,450	23.8	335,902	22.0	533,466	34.9	129,788	8.5	59,540	3.9
1931	1,624,158	376,176	23.2	328,631	20.2	613,910	37.8	132,517	8.2	..	..
1941	1,636,367	465,920	28.5	318,259	19.4	577,067	35.3	105,810	6.5	..	..
1948	1,640,757	428,554	26.1	28,869	1.8	827,633	50.4	132,980	8.1	69,622	4.2
1953	1,701,384	435,210	25.6	..	..	867,210	51.0	127,040	7.5	71,191	4.2
1961	1,854,965	442,560	23.9	..	..	1,017,713	54.9	145,341	7.8	73,830	4.0
1971	1,952,533	423,866	21.7	7,243	0.4	1,089,132	55.8	138,561	7.1	72,795	3.7
1981	2,034,772	385,356	18.9	3,808	0.2	1,107,375	54.4	119,157	5.9	69,549	3.4
1991	2,013,889	339,491	16.9	3,873	0.2	1,143,723	56.8	98,025	4.9	63,545	3.2
2002	2,031,992	290,207	14.3	3,154	0.1	1,321,807	65.0	56,546	2.8	56,637	2.8
2011	1,931,809	251,136	13.0	3,272	0.1	1,289,635	66.7	47,033	2.4	50,321	2.6

Table 2.

Ethnic composition of the Kosovo population (1921–2011)
(appropriated from Brunborg, 2021)

Year	*Total population*	*Albanian*		*Serb*		*Montenegrin*		*Turk*	
	Number	*Number*	*%*	*Number*	*%*	*Number*	*%*	*Number*	*%*
1921	439,010	288,907	65.8	114,095	26.0			27,915	6.4
1931	552,064	331,549	60.0	180,170	32.6			n/a	
1948	727,820	498,244	68.5	171,911	23.6	28,050	3.9	1,315	0.2
1953	808,141	524,559	64.9	189,869	23.5	31,343	3.9	34,583	4.3
1961	963,988	646,605	67.1	227,016	23.5	37,588	3.9	25,764	2.7
1971	1,243,693	916,168	73.7	228,264	18.4	31,555	2.5	12,244	1.0
1981	1,584,441	1,226,736	77.4	209,498	13.2	27,028	1.7	12,513	0.8
1991	1,956,196	1,596,072	81.6	194,190	9.9	20,365	1.1	10,445	0.5
2011	1,739,825	1,616,869	92.9	25,532*	1.5			18,738	1.1

* Many Kosovo Serbs boycotted the 2011 census. In the absence of completely reliable data, scholars estimate the number of Serbs in Kosovo today to be between 130,000 and 140,000 (Ceriman and Pavlović, 2020, p. 341).

Hungarians in Vojvodina from 1990 to today: from political mobilisation to national minority councils

The political activities of Hungarians in Vojvodina from the 1990s onwards constitute the third wave of their struggle for autonomy, marked by a huge setback caused by Milošević's rise to power and their long, institutional struggle with centralised power structures in Serbia to reclaim their previous rights. In response to Milošević's abolishment of Vojvodina autonomy, in 1990 Hungarians in Vojvodina formed a national party – the Democratic Community of Vojvodina Hungarians (*Vajdasági Magyarok Demokratikus Közössége* (VMDK)) – and adopted the *Memorandum on the Self-Governance of Hungarians Living in the Republic of Serbia*. The Hungarians focused on minority rights and demanded: (a) personal autonomy with rights in the areas of education, culture, media and the use of language; (b) territorial autonomy for majority Hungarian municipalities; and (c) special local autonomy for municipalities with a Hungarian majority. However, the Milošević regime showed no intention of granting collective rights to Hungarians, despite their arguably more cooperative approach to his rule and to Serbia. Beretka observes: 'Unfortunately, the international community acted only as a passive observer in this process, and ultimately Serbia did not appreciate the fact that a well-working model might serve as an example of good practice in the former member states of Yugoslavia with their own significant ethnic-Serbian minorities' (Beretka, 2019). In 1994, the by then compact Hungarian political body split when a number of Hungarian intellectuals left VMDK to form the Alliance of Vojvodina Hungarians (*Vajdasági Magyar Szövetség* (VMSZ)). While VMSZ also advocated national minority autonomy, in contrast to VMDK, it also demanded the restoration of autonomy for Vojvodina, similar to its status in the former Yugoslavia and on the basis of the 1974 constitution, but later shifted that policy to focus primarily on the constitution of national minority councils, or in other words, on personal autonomy.

In any case, representatives and sympathisers of the party took part in the work of the committees responsible for drafting laws and by-laws concerning national minority rights both at the national and provincial levels. Some of the most fundamental elements of these acts (including provisions about the national minority councils) are the direct result of the VMSZ's political stances taken around the turn of the century (Beretka, 2019).

Simultaneously, the international community appeared to demonstrate increased interest in the position of the Hungarians in Serbia, with the US and the UK supporting dialogue between Vojvodina Hungarian political leaders and Serbian opposition leaders, both before and after the NATO bombing. As a result, Vojvodina Hungarians contributed to the overthrow of Milošević's regime and participated in the large political coalition in 2000, with the VMSZ president, József Kasza, becoming deputy prime minister in the newly formed government of Zoran Đindić.

In 2002, this government adopted two important laws: the first on Certain Competences of the Autonomous Province and the second on the Protection of Rights and Freedoms of National Minorities (the National Minority Act). As Beretka argues, good relationships between leading Hungarian and Serbian intellectuals at the time, including the legal professor Tibor Várady, greatly contributed to the ultimate recognition of Hungarian collective rights and the real transfer of legal and property rights to the Hungarian national council. Following this, Hungarians elected their national council through an electoral assembly in 2002, in order to resume their legal rights to self-government and use of their native language, education, culture and information. Unfortunately, they had to wait until the final ratification of

the National Minority Councils Act in 2009 before they could reassert these rights (Korhecz, 2015, p. 152). These post-Milošević laws also restored some powers that Vojvodina had enjoyed in the former Yugoslavia. However, overall, scholars still tend to describe Serbia as an asymmetrically decentralised and unitary state and view the status of Vojvodina as 'legally not totally clarified' (Beretka & Székely, 2016, p. 6).

Table 3.
Performance of Hungarian parties at Serbian parliamentary and Vojvodina elections (source: Pokrajinska izborna komisija)

Election	*Party*	*Votes (Percentage)*	*Seats*
1990 parliamentary	VMDK	132,726 (2.64%)	8 (of 250)
1992 parliamentary	VMDK	140,825 (2.98%)	9 (of 250)
1993 parliamentary	VMDK	112,456 (2.61%)	5 (of 250)
1997 parliamentary	VMSZ	50,960 (1.235%)	4 (of 250)
2007 parliamentary	VMSZ	52,510 (1.30%)	3 (of 250)
2008 parliamentary	Hungarian coalition (*Magyar koalíció – Pásztor István*)	74,874 (1.81%)	4 (of 250)
2012 parliamentary	VMSZ	68,323 (1.75%)	5 (of 250)
2014 parliamentary	VMSZ	75,294 (2.10%)	6 (of 250)
2016 parliamentary	VMSZ	56,620 (1.50%)	4 (of 250)
2020 parliamentary	VMSZ	71,893 (2.23%)	9 (of 250)
1992 Vojvodina	VMDK		8 (of 120)
1996 Vojvodina	VMSZ VMDK		13 (of 120) 1 (of 120)
2000 Vojvodina	VMSZ VMDP		14 (of 120) 1 (of 120)
2004 Vojvodina	VMSZ VMDK		10 (of 120) 1 (of 120)
2008 Vojvodina	VMSZ VMDK		13 (of 120) 1 (of 120)
2012 Vojvodina	VMSZ	62,272 (6.15%)	7 (of 120)
2016 Vojvodina	VMSZ Hungarian Autonomy Movement	47,034 (4.88%) 16,452 (1.71%)	6 (of 120) 2 (of 120)
2020 Vojvodina	VMSZ	75,218 (9.29%)	11 (of 120)

Since 2010, Hungarian national minority council members have been elected through a direct vote on a turnout of approximately 40% of registered voters and with VMSZ winning the overwhelming majority of seats (28 of 35 in 2010, 31 of 35 in 2014 and 30 of 35 in 2018) (Beretka, 2019; please see Table 3). The council has wide powers in the fields of education and culture, including approval of textbooks in the Hungarian language, membership of governing boards and cultural institutions and providing opinions on key issues regarding schools in which Hungarian is taught. For instance:

> in the case of public educational (nursery, elementary, secondary, grammar and vocational-training schools) and cultural (theatres, libraries, museums, etc.) institutions which are dominantly linked to a national minority (e.g. the language of instruction is exclusively or dominantly a minority

> language), the national council […] is entitled to propose one-third of the managing (school) board members and to give consent for the nomination of the director of the public institution (Korhecz, 2015, p. 155).

In terms of ownership, the founding rights of these public institutions, as well as several in Hungarian-language media outlets, have been partially transferred to the Hungarian national council. The council also has a voice in the structure of public media services concerning Hungarian, has an annual sum allocated from the state budget to implement its activities and is permitted to receive additional support from Hungary. Its activities also include the protection of cultural heritage, support for education in the Hungarian language through various means, providing fellowships for Hungarian students and offering free legal aid and translation services. Moreover, all public authorities are obliged to ask the opinion of the Hungarian national council on any decisions concerning the education and dissemination of public information in the Hungarian language or about changing street names in municipalities with substantial Hungarian populations (Korhecz, 2015).

While scholars tend to see this as 'a good (or even the best) example' and a 'success' (Beretka, 2019), some challenges still remain. There was a long pause (2002–2010) between the legislation enabling the establishment of the Hungarian national council and its full implementation; local and provincial authorities initially hesitated in transferring founding and decision-making rights that required court actions (Korhecz, 2015, pp. 155–6). Relatively modest financing has made the council too reliant on Hungary's support and, by extension, its influence – in 2018, Serbia allocated 770,000 euros to the council, while Hungary donated 1,000,000 euros – and its unimpeded functioning is dependent on good relations and cooperation (or loyalty) between Hungarian representatives and the leading Serbian politicians and parties (Beretka, 2019).

Kosovo: from passive resistance and the formation of parallel institutions to war and independence

Responding to the abolishment of autonomy, which Kosovo Albanians considered to be unconstitutional, on 2 July 1990, the Kosovo parliament declared Kosovo a republic, equal to the other Yugoslav republics. Serbia responded by abolishing the Kosovo parliament, removing the editors of all the main Albanian media outlets in Kosovo and ending the financing of Kosovo institutions. Kosovo Albanians reacted by building parallel institutions. In September of 1990, MPs met in secret to adopt the Kosovo constitution and hold an informal referendum on independence, leading to the proclamation of Kosovo independence from Yugoslavia. In reality, during Milošević's rule (until 1999) Kosovo functioned as a parallel system of official Serbian institutions of the autonomous province of Kosovo and Metohija and Albanian institutions of the 'Republic of Kosovo', which Serbian authorities considered illegal and tried to prevent by force. On the ground, Kosovo was a police state, hundreds of thousands of Albanians lost their jobs in the public sector, most Albanian-language schools were closed and teachers lost their salaries and Albanians were often arrested and tortured. While Miloševič's rule was fundamentally oppressive for all citizens, Kosovo Albanians suffered its terror the most. Ibrahim Rugova, the leader of the Kosovo Albanians, advocated non-violent resistance and rejected invitations from Croatian and Bosniak leaders to open another front against

Serbia during the 1991–1995 wars. Instead, he called for the formation of parallel educational, health and tax systems and the boycott of Serbian elections, institutions and population censuses, which most Albanians agreed with at the time (Pavlica, 2019).

The armed conflict

Following the 1995 Dayton Peace Agreement, Kosovo Albanian opinion shifted to supporting armed conflict. In 1996, a new force called the Kosovo Liberation Army (*Ushtria* Çlirimtare *e Kosovës* (UÇK)) criticised peaceful resistance and initiated terrorist attacks against Serbian police and civilians, as well as 'loyal' Albanians, that is, those who continued to work in Serbia-controlled institutions. Their actions intensified in 1997 and were met with a brutal response from the Serbian special police who, in several cases, destroyed entire houses, killing insurgents and their families. By mid-1998, a mass resistance movement had developed and a fully fledged war had broken out, with many of Rugova's former supporters switching their support to the UÇK. The Serbian police and army launched a widespread offensive against UÇK and their actions included the use of 'excessive and random force', resulting in the destruction of villages, population displacement and civilian deaths (Cakaj & Krasniqi, 2016). These actions were officially given as the reason for the NATO bombing of Serbia from 23 March to 10 June 1999. Immediately after the bombing had begun, Milošević launched an ethnic cleansing campaign which saw the expulsion of 862,979 registered refugees, as well as summary executions and war crimes in Kosovo (Serbian, Albanian and international forces provide competing numbers of casualties, crimes and destruction during of this conflict; Gashi (2019) provides a useful comparison). The results were devastating: 'Whatever form of interethnic cooperation was left following the period of segregation in the 1990s was destroyed during the 1998–1999 war in Kosovo' (Cakaj & Krasniqi, 2016, p. 159).

The war ended with the Kumanovo Agreement and UN Security Council Resolution 1244, which approved the withdrawal of all Serbian military and state sovereignty and the establishment of an international, UN-mandated protectorate over Kosovo. Alongside Serbian forces, some 100,000 Serbs fled Kosovo in the days that followed. Serbs continued to be attacked, killed, kidnapped or expelled and, subsequently, the number of Serbs and other non-Albanians displaced from Kosovo rose to some 200,000 people (Commissariat for Refugees and Migration, Republic of Serbia, 2020). In March 2004, there was another wave of violence against the Serbs. This time, international forces staged a military intervention following the destruction of hundreds of Serbian houses and 35 Serbian Orthodox churches and monasteries, the killing of 8 civilians and the expulsion of some 4000 Serbs, mostly from rural enclaves, thereby leaving large parts of Kosovo without a single Serb (Human Rights Watch, 2004). In February 2006, negotiations on the final status of Kosovo began, with Western countries opting for 'conditional' independence, i.e. recognition of Kosovo upon fulfilling certain standards in legislation, rule of law and minority protection. The Serbian side advocated for wide autonomy but Kosovo Albanians rejected any proposal that would see Kosovo as part of Serbia. On 17 February 2008, the Kosovo assembly proclaimed independence, with all 109 MPs present voting in favour and the 11 Serbian representatives boycotting the vote. Since then, the Serbian government has annulled the vote, referring to it as an illegal act, and has continued to work against Kosovo independence, preventing Kosovo's admission to international bodies and institutions. Meanwhile, most Western countries, 23 EU member countries and approximately half of all countries worldwide have recognised Kosovo's

independence. Kosovo has become a member of a number of international bodies but not UNESCO, Interpol or the UN.

Why (no) violence?

In summary, both the Kosovo Albanians and the Vojvodina Hungarians in Serbia have, to some extent, achieved their main aspirations. Since 1990, the Albanians consistently opposed Serbian rule, initially through peaceful means as boycotting Serbian institutions and later through violent armed conflict, eventually proclaiming full independence. However, their independence remains somewhat disputed and is not fully recognised internationally and Kosovo remains economically undeveloped and politically isolated. Meanwhile, Hungarians have consistently participated in elections and in practically all post-Milošević Serbian governments. Despite ethnic attacks, including hate graffiti, acts of vandalism and violent youth clashes which continued until the mid-2000s (Petsinis, 2008, p. 271; Rácz, 2018, p. 138), they ultimately secured favourable laws that ensure their educational and cultural, although not territorial, autonomy. Nevertheless, some scholars still argue that 'different ethnic groups live (at best) peacefully "next to each other", but far from "with each other", as life in Vojvodina is often described' (Rácz, 2012, p. 596).

Yet, the question remains why were the approaches of the two nationalities towards the majority Serbs and central government so different? In the remainder of this article, I offer several tentative explanations.

In responding to Milošević's abolishment of autonomy, Kosovo Albanians had an overwhelming majority in the province and therefore could claim that their parallel institutions actually represented the popular will. In comparison, in 1990, Hungarians constituted less than 20% of the Vojvodina population and could therefore hardly hope to make any valid claims for the secession of Vojvodina or a referendum on its status. Furthermore, demands for the official recognition of Kosovo as a constitutive part of the former Yugoslavia – and thereby for its separation from Serbia – were already gaining prominence in former Yugoslav times, with periodic outbreaks of popular revolt among Kosovo Albanians since the late 1960s, most notably in 1981. The Hungarians, in contrast, did not demonstrate any such ambitions during the Yugoslav times, nor had that concept been dominant or promoted by their own political structures or the political leadership of Hungary during the 1990s.

In addition, one could easily argue that the Hungarians have been comparatively better off economically and, thereby, socially. In economic terms, despite the apparent financial crisis throughout the 1980s, Vojvodina consistently had a higher GDP than both Serbia proper and the Federation and more than four times that of Kosovo. In contrast, Kosovo remained by far the poorest region, with GDP over seven times lower than Slovenian GDP, and it experienced almost a 14% drop in GDP between 1980 and 1989 (see Table 4). Kosovo was also by far the most densely populated region in Yugoslavia, with poorer infrastructure and educational and job prospects than the rest of the country. While there were hardly any prominent cases of ethnic conflict and repression over Hungarians in the 1980s, the oppression of Albanian protesters was already common in that decade, with Milošević increasing the pressure and effectively turning Kosovo into a de facto police state.

Table 4.

GDP per capita in Yugoslavia (1980–1989) (Source: Mills, 1989)

	1980	*1989*	*Change*
Yugoslavia overall	17,764	16,820	-5.3%
Slovenia	35,320	33,103	-6.0%
Croatia	22,505	21,238	-5.6%
Bosnia	11,722	11,424	-2.5%
Montenegro	14,034	12,398	-11.7%
Serbia	17,453	17,429	0.0%
Vojvodina	20,029	20,063	+0.0%
Kosovo	5,013	4,317	-13.9%
Macedonia	11,946	10,891	-8.8%

Several more elements could be added to this picture. When asked about the reasons for the outbreak of the Bosnian war, a character from Bosnian writer Nenad Veličković's 1999 novel *Lodgers* (*Konačari*) responds that the war is waged because 'Croats have Croatia, Serbs have Serbia, but Muslims don't have Muslimania' ('*Hrvati imaju Hrvatsku, Srbi Srbiju, a Muslimani nemaju Muslimaniju*', Veličković, 1999, p. 8). In this context, neighbouring, rapidly developing and EU-aspiring Hungary presented Hungarians from Vojvodina with viable alternatives of either moving there permanently, finding a job or using it as a stepping stone for going further abroad. Kosovo Albanians, in contrast, were far more isolated, with Albanian communist leader Enver Hoxha effectively sealing off Albania in 1948 until the fall of communism in 1992, with no proper connecting roads and infrastructure and suffering from late transition, internal conflicts and state collapse that peaked in 1997. In other words, while Vojvodina Hungarians could obtain a Hungarian passport and cross the border as a way – at least potentially – to improve their unfavourable circumstances, Kosovo Albanians would gain nothing by crossing over to an impoverished and internationally isolated Albania, which was even poorer than Kosovo itself. Moreover, for Kosovo Albanians, travelling abroad during the 1990s usually involved the unpleasant, perhaps potentially risky and somewhat humiliating procedure of obtaining a passport and visa from Belgrade, whose government they did not recognise.

In this context, a further point may be made about Kosovo Albanians from a more symbolic perspective. Responding to a question about why large-scale riots broke out in Kosovo in 1981, despite years of relative stability and economic growth, Cakaj and Krasniqi (2016) make an evocative reference to Peter Sloterdijk's emphasis on the psychopolitical role of *thymos* – 'the irreducible impulsive core of the self's pride' – and remind us that Kosovo Albanians 'have been constantly portrayed as inferior' and had unequal national status in Yugoslavia (p. 157). Indeed, since the late 19th century, Serbian public discourse viewed Albanians as a threat or as intruders (Pavlović, 2019). There was an increasingly hostile perception of Albanians in the late Yugoslav period and their frequent treatment as pariahs in the 1990s only amplified their dissatisfaction.

In addition, Vojvodina never acquired the same high symbolic status that Kosovo enjoys in the Serbian political discourse. Kosovo is the locus of the 1389 Battle of Kosovo, where Serbian Prince Lazar led the fight against the advancing Ottomans and which is commonly understood as *the* event that marked the downfall of the medieval Serbian Empire and the end of centuries-long enslavement. Thus, it is unsurprising that, in 1989, Milošević chose Gazimestan – the

exact site of this medieval battle – for his greatest political rally which gathered as many as one million Serbs in Kosovo. While he did not overtly advocate armed conflict as the way to improve the position of Serbs and Serbia, notions of glory, battle and fighting permeated his speech (Milošević, 2006). Arguably, Kosovo's typical description in common use as 'the heart of Serbia' and 'the cradle of Serbian nationhood and statehood' throughout the 1990s remained immersed in mythopoetical and symbolic realms, thereby preventing any *real-life*, viable and moderate political solutions. In contrast, Vojvodina – while also being undisputedly a Serbian territory in the public discourse – continued to be perceived as an inherently multinational, *shared* space that has and, therefore, deserves some form of specific status and arrangement.

Finally, Milošević constituted his rule and popularity by returning Kosovo to Serbian central rule and reversing the balance of ethnic relations in Kosovo to favour Serbians. Alongside his support for the efforts of Bosnian and Croatian Serbs to secede from their respective countries through war, this clearly signalled that he would not make any major concessions over Kosovo without a fight. The military defeat of Serbs in Croatia 1995, international sanctions against Serbia from 1992 onwards (with devastating effects on Serbian economy and society), the international perception of Serbs as perpetrators and war criminals and Serbia's weak position in international relations all contributed to Milošević and his regime appearing as the shadow of a confident, nationally awakened, strong Gazimestan Serbia. Even after years of advocating passive resistance and suffering apartheid in Kosovo, Ibrahim Rugova, the founder and president of the Democratic League of Kosovo from 1989 and the undisputed leader of the Kosovo Albanians throughout this period, remained faithful to his ideals of achieving Kosovo independence through civil disobedience, boycott and protests. However, when the US establishment discovered new protégés among UÇK members and openly supported the insurgents, even bypassing Rugova (Brown, 1998), it was clear that the armed and uniformed secessionists were being officially recognised as the new Kosovo Albanian leaders.

To summarise, although they are certainly relevant, explanations derived chiefly from the economic sphere are insufficient to account for ethnic struggles and tensions – experienced by both Hungarians and Albanians – resulting in ethnic violence and war in Kosovo. Equally so, the popular *Balkanistic* explanation in Todorova's sense[3] that explains the Kosovo conflict as the result of centuries-old Balkan hatred fails to account for the specific power dynamics between Serbs and Albanians in the late Yugoslav and early post-Yugoslav periods. Arguably, the complete contrast between the (too) broad post-1974 minority rights and the complete abolition of such rights in post-1989 Kosovo caused the Albanians to become disinterested in any solution, even nominally, within Serbia. However, in accordance with Jenne's aforementioned theory, despite the war and Yugoslav dissolution between 1991 and 1995 and Milošević's continual refusal to negotiate with the Kosovo Albanians, it was only after external, international factors had spurred internal conflict and the Milošević regime's brutal response that ethnic struggles resulted in armed conflict. Finally, one could perhaps be reminded of a Foucaultian notion of power and resistance as being intertwined and relational and thereby argue that the specific, increasingly oppressive forms of power relations that existed in Kosovo ignited particularly violent forms of resistance there, whereas these relations in Vojvodina were less antagonistic.

3 The term "the Balkans" is often stereotypically used negatively and pejoratively as "a synonym for a reversion to the tribal, the backward, the primitive, the barbarian" (Todorova 1997: 3). Todorova defined *balkanism* it as a discourse that originated in the West in the past centuries that generates stereotypes of and politics towards the Balkans that is significantly and organically intertwined with this discourse.

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(Endnotes)

1 Many Kosovo Serbs boycotted the 2011 census. In the absence of completely reliable data, scholars estimate the number of Serbs in Kosovo today to be between 130,000 and 140,000 (Ćeriman and Pavlović, 2020, p. 341).

Damir Banović

Federalism, consocialism and non-territorial autonomy

Introduction to the Bosnian-Herzegovinian constitutional and political system

Different authors observe the nature of the Bosnian-Herzegovinian political and constitutional system from different viewpoints, resulting in various conclusions. From a comparative perspective, it is difficult to compare the system with any other. However, at a higher level of abstraction, it is possible to consider it in terms of a specific type of federation. Some researchers observe Bosnia and Herzegovina's federalism as a 'form of internationally agreed federal system that is an integral part of a peace plan which is unique for Bosnia and Herzegovina and that, therefore, Bosnia and Herzegovina represents a new model of federalism' (Kiel, 2013, p. 78). 'It is a distinctive system that combines two forms of federalism – federation and confederation' – and has been functioning for 25 years (Stanković, 2019, p. 2). Indeed, if one were attempting to fit it into a classical theoretical framework, Bosnia and Herzegovina might be characterised as a federation with distinct confederal elements (Stanković, 2019, p. 4). Similarly, Marković believes that the case of Bosnia and Herzegovina represents the establishment of two forms of state that rarely appear simultaneously: a political regime of consociational democracy and a federal form of government (Marković, 2019, p. 1).

In fact, the following conclusions may be drawn. First, Bosnia and Herzegovina is a country with a federal system (Marković, 2019, p. 1) as demonstrated by the following elements: (1) a pluralistic constitutional system composed of both state level and federal unit systems; (2) a hierarchical relationship between the constitutional systems of the federal state and the federal units, where the former is superior to the latter, resulting in just one, albeit very complicated, constitutional system; (3) the division of competences between the federal state and units is usually provided for by the federal constitution; (4) federal units are quasi-states because they have their own constitutional systems, state-government organisation and individual decision-making powers; (5) federal units have the right to self-organise; (6) federal units are represented in the federal authorities; and (7) federal units do not have the right to secede (except in a few federal states) (Marković, 2019, p. 2). Second, the need for a political regime of consociational democracy results from Bosnian-Herzegovinian society being divided (Marković, 2019, p. 1). Third, the constitutional system is based on the combination of these two forms, where consociational mechanisms have a certain advantage over federal state principles (Marković, 2019, p. 1).

Bosnia and Herzegovina is one of the few fully consociational federations as it contains nearly all the features of federal structure and consociational democracy (Marković, 2019, p. 13). Here, federalism has been supplemented by the consociational principle through: (1) the composition of institutions, whether quota-based or proportional in terms of representation of social groups and (2) the manner of their decision-making, whether through the

implementation of blocking mechanisms or by consensus (Marković, 2019, p. 13). Considering the non-existence of group cohesion within a fully consociational system and the presence of the Office of the High Representative[1] (OHR) which still has (at least formal) prerogatives to intervene in political decision-making, it could be argue that Bosnia and Herzegovina has an imposed consociationalism system (Merdžanović, 2015, pp. 351–357).

Some authors contend that Bosnia and Herzegovina is an example of an asymmetric and highly decentralised federation in which the Republika Srpska, in terms of its structure, is a unitary subnational entity, while the Federation of Bosnia and Herzegovina (FBiH) is a federation within a federation.[2] Or, as Sahadžić observes, Bosnia and Herzegovina is a weak case of constitutional asymmetry (Sahadžić, 2019, p. 68).

In Bosnia and Herzegovina, as in other federal states, federalism as a concept is not fully developed and static, but is dynamic and changing. However, this is not reflected in formal amendments to the Constitution of Bosnia and Herzegovina, but through the factual changes of the Constitution, which are based on the principle of 'additional responsibilities' (Article III/5a). According to this principle, Bosnia and Herzegovina assumes responsibility for such matters: (1) as are agreed by the entities; (2) are provided for in Annexes 5–8 to the General Framework Agreement (1995) (3) or are necessary to preserve sovereignty, territorial integrity, political independence and the international characteristics of the country, in accordance with the division of responsibilities between its institutions (Išerić, 2019, pp. 25–26). Points (2) and (3) do not require the agreement of both entities (Išerić, 2019, p. 26).

On the basis of an agreement between both entities, responsibility for defence, indirect taxation, as well as some internal affairs, has been centralised (Balić, 2019, p. 15). In this way, the process of changing the nature of federalism has been directed towards the transfer of competences to the central government, which has been followed by the establishment of appropriate institutions (e.g. the State Border Police, the Directorate for Coordination of Police Bodies of Bosnia and Herzegovina and the Indirect Taxation Authority) that strengthen the central authorities and of new judicial state-level bodies, such as the Court of Bosnia and Herzegovina, the Prosecutor's Office of Bosnia and Herzegovina and the High Judicial and Prosecutorial Council (Balić, 2019, p. 15). This has significantly reduced the confederal elements provided for in the original 1995 Constitution, which underwent a process of factual changes, including to the nature of federalism in Bosnia and Herzegovina.

Constitutional law analysis: constitutional system

The Dayton Peace Agreement (DPA) is a de facto series of accords consisting of one framework agreement and twelve special agreements, referred to as Annexes of the General Framework Agreement for Peace in Bosnia and Herzegovina (1995). The special agreements, signed by various parties, relate to civilian (Annexes 2–11) and military components (Annexes 1-A and 1-B). Annex 4 contains the Constitution of Bosnia and Herzegovina, which, unlike other annexes, was not made in the form of an official agreement. Although the last sentence of

1 The Office of the High Representative (OHR) is an ad hoc international institution responsible for overseeing implementation for civilian aspects of the Peace Agreement ending the war in Bosnia and Herzegovina.

2 The Republika Srpska and the Federation of Bosnia and Herzegovina, referred in the Constitution as "the entities", are federal units in Bosnia and Herzegovina.

Article XI states that the Agreement shall be signed in the three official languages of Bosnia and Herzegovina (i.e. Bosnian, Serbian and Croatian) and English, the Constitutional Charter of Bosnia and Herzegovina was signed only in English. No official versions were made in the languages of Bosnia and Herzegovina, nor have the relevant authorities translated this document, which includes the Constitution. Only unofficial translations have been used, even by the Constitutional Court of Bosnia and Herzegovina, which uses the unofficial version as the basis for the interpretation and development of constitutional principles and norms. The DPA, including the Constitution, has never been published in the official gazettes of the state and/or entities.

Even though Bosnia and Herzegovina maintained its legal existence according to international law (Const. of Bosnia and Herzegovina, Article I/1), the Constitution introduced a completely new structure, including new state authorities, vertical and horizontal divisions of responsibility, sui generis international administration and a system of collective and individual rights (Ademović et al., 2012, p. XXI). Although the Constitution has formally been amended only once, the constitutional system has undergone significant changes, especially concerning divisions of responsibility and state institutional organisation on the basis of the implementation of constitutional provisions on additional responsibilities.

The Constitution of the Republika Srpska was adopted on 28 February 1992 and published in its Official Gazette. Since then, there have been more than 120 amendments to the Constitution, implemented through 17 constitutional change procedures. Article 1 of the Constitution states that the Republika Srpska is territorially unified, indivisible and an inalienable constitutional and legal entity that shall independently perform its constitutional, legislative, executive and judicial functions. The Constitution created a centralised federal unit.

The Washington Agreement established the Federation of Bosnia and Herzegovina in March 1994. On 30 March that year, the Constitutional Assembly of the FBiH adopted its Constitution, establishing the second of the two entities in Bosnia and Herzegovina. Unlike the Republika Srpska, the FBiH is further federalised, comprising ten cantons with broad constitutional powers and responsibilities in areas such as education, culture, social protection and healthcare. The cantonal system was selected to prevent dominance by one ethnic group over another. Since 1994, this Constitution has been amended more than a hundred times.

The Brčko District of Bosnia and Herzegovina was established in 2000 following an arbitration process undertaken by the High Representative. It is a self-governing administrative unit under the sovereignty of Bosnia and Herzegovina. The Constitution of Bosnia and Herzegovina, as well as all relevant decisions and laws regarding the institutions of the country, are directly applicable throughout the territory of the Brčko District. It also has its own Statute regulating its functions and powers, cooperation with the entities, human rights and freedoms, its organization, division of powers, competencies and institutions. The District's status was secured with the adoption of the First Amendment to the Constitution of Bosnia and Herzegovina in 2009.

Constitutional development and the role of the Constitutional Court

The nature of most constitutional norms is characterised by a high level of abstraction and every constitutional system contains a significant number of principles. Additionally, considering that the Constitution of Bosnia and Herzegovina was new and had insufficiently

developed content, the judicial activity and legal interpretation of the Constitutional Court of Bosnia and Herzegovina was (and still is) very important in the establishment of elements of the constitutional and legal structure. Moreover, it was decided to situate the Constitutional Court within the contemporary Bosnian and Herzegovinian federalism with the aim of having an arbiter in conflicts between federal authorities and federal units (Išerić, 2019, p. 2). According to the Constitution of Bosnia and Herzegovina, the role of the Constitutional Court includes, but is not limited to: (1) the resolution of possible disputes between Bosnia and Herzegovina and its entities and (2) alignment of entity constitutions with that of the state as a result of the principle of the supremacy of the latter over the former (Constitution of Bosnia and Herzegovina, Article VI).

The Constitutional Court of Bosnia and Herzegovina, like the Constitution itself, has refused to define state structure, even though, in its decisions, it has pointed at comparative experiences of federal states (Išerić, 2019, p. 5). In its case law, it uses phrases such as 'complexity of constitutional structure of Bosnia and Herzegovina indicates "sui generis" system', 'complex constitutional structure' and 'complex state structure' (Išerić, 2019, p. 5). The fact that federalism or federation are not mentioned in the Constitution of Bosnia and Herzegovina or in the case law of the Constitutional Court does not mean that it is not a federal country (Išerić, 2019, p. 6). The hesitation of the Constitutional Court to clearly define the nature of internal state structure may be explained by its reluctance to become involved in political debates (Išerić, 2019, p. 6). It is worth mentioning here that the political sphere of Bosnia and Herzegovina is still characterised by a lack of consensus among political elites on the nature of state structure.

The judicial activity of the Constitutional Court is particularly noticeable in the following areas: (1) defining constitutional principles; (2) defining the ways in which they are implemented within the legal system of Bosnia and Herzegovina (e.g. non-discrimination principle, rule of law, constitutionality of the peoples, etc); (3) defining the content of the exclusive competences of the state; (4) indicating the exclusive competences of entities; (5) developing additional state responsibilities; and (6) recognising the existence of the joint framework and competitive responsibilities of the state and entities (Išerić, 2019). The Constitutional Court of Bosnia and Herzegovina has determined in its case law that the additional responsibilities concept has 'three mutually independent hypotheses', according to which Bosnia and Herzegovina will assume responsibilities: (a) for such matters as are agreed by the entities; (b) are provided for in Annexes 5–8 to the General Framework Agreement (1995); or (c) are necessary to preserve sovereignty, territorial integrity, political independence and the international characteristics of the country (Išerić, 2019, pp. 25–26). Naturally, cases referred to under items (b) and (c) do not require the agreement of entities to assume such responsibilities. Formal transfer of responsibilities is achieved by agreement between entities, which provides a constitutional basis for the adoption of laws in areas that are transferred to the competence of Bosnia and Herzegovina (Išerić, 2019, p. 27). Bosnian and Herzegovinian federalism has developed from a dual to a cooperative system. The Constitutional Court of Bosnia and Herzegovina made a significant contribution to this process through its decisions and development of constitutional case law (Išerić, 2019, p. 39). Cooperative federalism does not only represent the constitutional reshuffling of competences or a set of institutions and procedures but is also based on the 'combination of coordination, cooperation, mutual responsibilities, consensus and desirability of mutual standards across the federation' (Išerić, 2019, p. 39).

In its case law, the Constitutional Court has recognised several constitutional and legal principles: constitutionality of the peoples, rule of law, democracy, social state, single market and human-rights protection (especially non-discrimination) (Išerić, 2019, pp. 6–7). Of significant importance for the development of the political system are the principles of multi-ethnicity, collective equality of constituent peoples and non-discrimination. According to the Constitution of Bosnia and Herzegovina, a new notion of 'constituent peoples' (Bosniaks, Serbs and Croats) and 'the others' was introduced. While the former are clearly defined in the Constitution, the latter are not. The concept of 'the others' may be systematically interpreted to include both national minorities and people who are neither a member of the constituent groups nor the national minorities, e.g. persons with ethnically mixed backgrounds and those who refuse to identify themselves according to their ethnicity. Constituent peoples hold the position of power within the state and, in this sense, a distinction is made between them and 'the others'. Only constituent peoples are fully entitled to special collective rights, such as representation in institutions and powers of veto in decision-making processes. Until 2000, the principle of constituency was interpreted and implemented in such a way that members of ethnic groups were constituent only in certain parts of the territory of Bosnia and Herzegovina, that is, Serbs were the only constituent people in the Republika Srpska while Bosniaks and Croats were the only constituent people in the FBiH. Furthermore, the constitutional principle of constituency includes: defining some parts of Bosnia and Herzegovina exclusively through the prism of a particular ethnic group; giving primacy to the language and script of a particular group; organising the legislative, executive and judicial authorities according to the criteria of one ethnicity; and financing at entity level for the maintenance of certain elements of cultural identity for one specific ethnic group (although this principle has not been applied at state level, where members of all ethnic groups are equally represented). The primary consequence of the implementation of the principle of constituency has been the identification of ethnicity with territory.

During the post-war period, in 2000, the Constitutional Court initiated the most important institutional reform of the political system through its ground-breaking decision on constituent peoples. The initiative came from the NGO Serbian Citizen Council (*Srpsko građansko vijeće*), which called attention to the discrimination of Serbs in the FBiH and of Bosniaks and Croats in the Republika Srpska, as they were not recognised as constituent peoples and, therefore, did not have collective rights under the constitution of the respective entity. This initiative also encompassed the position of 'the others' at entity level who were constitutionally excluded from the right to participate in the government. Former member of the Presidency Alija Izetbegović filed a request on this matter in accordance with the Court's competence to carry out an abstract review of the constitutionality of law (including entities' constitutions). The Court passed four individual judgments in January, February, July and August 2000. The third partial decision of 1 July 2000 is generally known as the Decision on the Constituent Status of Peoples (2000). These judgements declared that several articles of the entity constitutions were in breach of the state-level constitution. The decisions were passed by a simple majority, namely the votes of the three international and two Bosniak Constitutional Court judges, with the Croat and Serb judges voting against. Thus, the judgement was only possible because the Constitutional Court is one of the few institutions that does not make decisions by consensus, nor does it have veto mechanisms in place. The consequence of this decision was the redefinition of the principle of the constituency of peoples. According to the decision, there are three constituent ethnic groups in the entire territory of Bosnia and

Herzegovina. As a precondition necessary for linguistic clarification of standardised content regarding the notion of constituent people, the Constitutional Court addressed the issue of whether the preamble to the Constitution, as such, should have a normative character. The Court accepted the opinion that some parts of the introduction should be normative, which is of legal relevance. In order to analyse the content of the notion of the 'status of the constituent', the majority of Constitutional Court members decided to attempt to determine the meaning of this concept through systematic interpretation.

Based on such methods of interpretation, the Constitutional Court derived three general normative principles from the Constitution: (1) 'the principle of multi-ethnicity', meaning that the overall state structure of Bosnia and Herzegovina corresponds to a model of multi-ethnic statehood, where territorial delimitation does not have to lead to institutional segregation and national homogenisation within state institutions; (2) 'the principle of collective equality of constituent peoples', meaning that effective political participation in decision-making processes should be reached not only through individual equality in respect to electoral rights but also through collective ethnic representation of the three constituent peoples; and (3) the 'prohibition of discrimination', which includes the prohibition of de facto and both past and present de jure discrimination. Entities have an obligation to comply with the principle prohibiting discrimination against any member of the three constituent peoples, in particular those who are, de facto, in the position of being an ethnic minority in the respective entity. The principle of collective equality prohibits any special privileges for any of the three ethnic constituent peoples by granting them any distinct or additional rights. The Constitutional Court addressed the issue of tension between individual and collective rights and concluded that total exclusion of persons from the representative system would be a violation of their individual political rights. Therefore, the category of 'the others' was introduced to the representative system in order to prevent the total exclusion of individual rights. Nevertheless, even though the Court intended this decision to assert individual political rights', having in mind the nature of the Bosnian-Herzegovinian political system, the rights of 'the others' at entity level have been implemented as the collective rights of extremely heterogeneous groups (representative of 17 national minorities and ethnically unidentified citizens).

As stated earlier, the implementation of this decision led to the inclusion of Serbs as constituent peoples in the FBiH and the inclusion of Bosniaks and Croats as constituent peoples in the Republika Srpska, as well as the recognition that 'the others' have a right to representation in parliaments and administrative bodies. Considering the political situation in Bosnia and Herzegovina immediately following the adoption of the decision, it was impossible to expect the Parliament of the FBiH and the National Assembly of the Republika Srpska to revise their respective constitutions. Even though there was general agreement on how the decision should be implemented, it eventually became necessary for the OHR to intervene in order to enforce amendments to the entities' constitutions.

The Constitutional Court decision resulted in the reorganisation of all entity institutions and the introduction of mandatory quotas of representation in all parts of government for all three constituent ethnic groups and 'the others' in both entities. More specifically, the following has been introduced: (1) a parity system in the most significant entity institutions, as well as in houses of peoples; (2) a veto mechanism for constituent peoples (the vital national interest procedure); and (3) proportional representation of the constitutional peoples and 'the others' (in relation to the 1991 census and until such time as Annex VII of the DPA on the Return of Refugees and Displaced Persons had been fulfilled).

From a more detailed perspective, concerning the entity level, the Constitution of the Republika Srpska states that all citizens, including Serbs, Bosniaks and Croats, as constituent peoples, along with 'the others' shall participate in exercising functions and powers in the Republika Srpska (Const. of the Republika Srpska, Article 1). The constitutional structure of the Republika Srpska is based, among other things, on the guarantee of ethnic equality and the protection of the vital interests of the constituent people (Article 5). The official languages of the Republic are those of the Serb, Bosniak and Croat people, while the official scripts are Cyrillic and Latin (Article 7, paragraph 1). The veto mechanism for the constituent peoples is implemented through the vital national interest process, which is guaranteed in the legislative procedure itself through laws and other regulations passed by the National Assembly that are promulgated only after they have been adopted by the Council of Peoples (Article 69, paragraph 2). The Constitution defines the term 'vital national interest' as well as the procedure for its establishment as a veto mechanism (Article 70).

In terms of parity representation/guaranteed quotas, the Constitution provides for the eventuality that no more than two functions may be performed concurrently by a representative of one constituent people or by a representative of 'the others'. It also sets the minimum number of representatives of constituent peoples in the National Assembly at four, while the composition of the Republika Srpska Council of Peoples is parity-based and follows the following formula: eight representatives each of Serbs, Bosniaks and Croats and four representatives of 'the others' (Article 71). The president has two vice-presidents from different constituent peoples (Article 80). Until such time as Annex VII of the DPA is fully implemented, the government comprises eight Serb, five Bosniak and three Croat ministers (Article 92). One minister representing 'the others' may be appointed by the prime minister from the quota of the largest national constituency (Article 92). Eventually, the constituent peoples and 'the others' should be proportionally represented in the public institutions of the Republika Srpska (Article 92).

Similarly, the Constitution of the FBiH determines that Bosniaks, Croats and Serbs are constituent people, together with 'the others' (Amendment XXVII to the Constitution of the FBiH). The official languages of the Federation are Bosnian, Croatian and Serbian, while its official scripts are Latin and Cyrillic (Amendment XXIX). From a total of 98 MPs in the House of Representatives of the Parliament of the FBiH, a minimum of four MPs represent one constituent people (Amendment XXXII). The House of Peoples is composed on a parity basis, so that each constituent people has the same number of delegates (17) with seven delegates from 'the others' (Amendment XXXIII). Similar to the other entity, the Constitution defines the terms and procedures for the protection of the vital national interest as a veto mechanism (Amendments XXXVII-XXXIX). Concerning the division of executive functions, the president has two vice-presidents from different constituent peoples (Amendment XLI), while in the government of the FBIH, the composition is regulated as follows: eight Bosniak, five Croat and three Serb ministers and one minister representing 'the others' may be appointed by the prime minister from the quota of the largest national constituency (Amendment XLIV). In terms of the distribution of the most important functions, the prime minister and his/her deputies may not come from among the same constituent peoples, while not more than two of the following positions may be filled by representatives of any one constituent people or of 'the others': prime minister, speaker of the House of Representatives, speaker of the House of Peoples, president of the Supreme Court, president of the Constitutional Court and federation prosecutor (Amendment XLIX). Finally, the constituent peoples and

'the others' should be proportionally represented in the public institutions of the Federation (Amendment LII). Although there was an obligation for the constitutions of the ten Federation cantons to be aligned with the amended Constitution and to implement the decisions of the Constitutional Court of Bosnia and Herzegovina on the constitutionality of the peoples, not all cantons have complied.

Contextualising the democratic political system

Specific to the Bosnian-Herzegovinian political system and complicating the process of democratic consolidation are: (1) the post-conflict, post-socialist and transitional social context; (2) the division of society along ethnic lines; (3) the legacy of non-democratic political culture; (4) the application of the multicultural concept of predomination of collectives, or elements of consensual democracy without resolving the issue of the public, legal position of an individual; and (5) the absence of minimal common identity and consensus on the nature of the political system (Banović, 2015, p. 278).

The concept of consensual democracy does not contextualise the nature of political culture as its material basis and foundation of its practical sustainability (Banović, 2015, p. 278). In other words, what values, forms of cooperation and trust should citizens have in this form of democracy (Banović, 2015, p. 278)? Besides the aforementioned general issues, the specific contextualisation of the material basis for the consensual concept of democracy should include: (1) minimal identity content that transcends the identity of social groups; (2) cooperation and development of trust among social groups at both collective and individual levels regarding issues of common interest; (3) consensus and legitimacy of the political representation of social groups as values in the relationship among political elites; (4) activation and cooperation of civil society within and between social groups; (5) democratic education that fosters values within social groups, as well as the values between the groups; and (6) minimal consensus on the nature of the political system (Banović, 2015, p. 278).

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The meaning of autonomy in the Montenegrin sociopolitical context: A comparative perspective

Introduction

Understanding complex societies and the way in which they achieve the peaceful coexistence and integration of national and other minorities requires insights into more than just the legal frameworks. Developing such understanding not only requires looking at the practice but also examining the level and specific aspects of minorities' autonomy. The importance of autonomy is that it enables minorities to act as they wish and the space to do so. As a multiethnic and multilingual society enjoying a long period of peaceful coexistence, Montenegro is an excellent case for this type of research. The society supports minority identities, and they are accepted by the two largest national groups – Montenegrins and Serbs.

This paper examines the legal framework for and actual practice of minority autonomy in Montenegro. It looks at the rights and freedoms which are available, protected and practised, and the nature of the autonomy in various spheres: political, cultural and social. Due to the countries' common history and close relationships, it is important to have a broader overview of the practice of autonomy in Croatia and Serbia. Croatia is relevant as an EU member state, and Serbia has traditionally had the closest political and other relations with Montenegro since before it gained independence in 2006.

The introduction is followed by insights into the minorities' history and current status in Montenegro. Section 3 is devoted to research into the practice of autonomy in terms of minority rights and freedoms. Sections 4 and 5 present an overview of the legal status and practice of autonomy for minorities in Croatia and Serbia. Section 6 provides a synthesis of the findings and a comparison of the three countries. The paper then closes with a conclusions section.

Meaning of autonomy

In the context of this paper, autonomy is a concept which cannot easily be defined. It may refer to various organisational methods within a country, but it also includes varying rights and obligations (Nimni, 2005). It may refer to a form of self-rule or be a legally recognised social organisation of ethnic groups (Coakley, 2016). It can be territorial or non-territorial and, due to a range of different practices, the term 'arrangement' has also been used (Malloy, 2009). However, the most important point regarding autonomy is that it is more a matter of degree than actual organisation. It may refer to fiscal structures at various substate levels (e.g. Schneider, 2003) or to the amount of actual power that can be transferred to those authorities (Coakley, 2016). Various examples exist of countries introducing models of autonomy going beyond the political and economic spheres to include the cultural aspect. Although implementation of such approaches

has been questioned in many cases (Osipov, 2010), they have become cornerstones for future improvements in some countries. In addition, the traditional state could not provide any form of non-territorial autonomy (NTA), as it requires either recognition of the non-territorial groups or the granting of some autonomy to them (Coakley, 1994).

Nimni (2005) discusses national cultural autonomy as a possible solution for a situation of too many cultural minorities in too few nation states. Its implementation has been similarly differentiated historically, with various forms having been applied. Liberal democracies can be wary of the implications of collective rights, because those clash with the liberal tradition of free choice and political equality (Nimni, 2005). The major issue here is the potential conflict between individual choice and collective identity – it is important that an individual be free to choose how they want to live and not be discriminated against. However, collective identity needs to be recognised, because it is a way to protect the rights of the group. For example, as Gal (2002) notes, one of the most relevant aspects of autonomy is the use of minority languages. Such language considerations also represent a shift to a more progressive agenda of political action which is not under pressure from nationalist rifts (Schwartzmantel, 2005).

Osipov contrasts the concepts of thick and thin autonomy. The 'thin' autonomy perceives minorities as collective actors possessing will, consciousness and the ability to act which can internally be understood as one group (Osipov, 2018). Such autonomy is often practised indirectly through how a group perceives itself. This type of autonomy can also serve as conflict protection, since it means providing some of the rights to minorities without going to the extent of recognising their territorial belonging. 'Thick' autonomy, on the other hand, refers to more robust and institutional settings. It can be practised by forming a legal body to represent a minority, and other rights may be attributed to the members, while also ensuring that some divisions of rights and competences are made strictly along linguistic or other lines.

In essence, autonomy is used as a method of ensuring that specific minorities are represented and their identities protected through providing them with rights which are not related to a territory but to them as a group. It may refer to political, economic, cultural or other rights, depending on the country. In the context of this paper, autonomy is an important aspect of their democracies, because it ensures the protection of minorities representing a significant proportion of the population, with their rights guaranteed and safeguarded. It must be added here that autonomy is understood as more than just human rights protection. Autonomy encompasses human rights protection but also goes beyond it. Autonomy in this paper refers to specific rights and freedoms granted to minorities which are not universal for all social groups and which ensure the protection and preservation of minority identities, cultures, languages, etc.

Minorities in Montenegro: an overview of the legal framework and current practice

Population censuses, including the gathering of ethnicity data, were conducted eight times in Montenegro during 1946 to 2011 (in 1948, 1953, 1961, 1971, 1981, 1991, 2003 and 2011). The census methodology varied over the years as it was gradually improved to establish a systematic approach and more precise data processing in later censuses.

However, it has to be considered when using those census results that the data from 2003 and earlier provide incomplete comparability between the definitions of permanent

population, i.e. 'total population'. In addition to the population in the country, the 1981 and 1991 data included in the permanent population statistics Montenegrin nationals temporarily working abroad and family members living with them. Following international recommendations, the 2003 Census also included in the permanent population Montenegrin nationals whose work or residence abroad did not exceed one year and foreign nationals working in Montenegro or residing there in the capacity of family members for longer than one year.

Montenegro's 2003 Census recorded 620,145 citizens. The statistical breakdown of the national population at that time was: Montenegrins – 267,669 or 43.16%; Muslims – 24,625 or 3.97%; Serbs – 198,414 or 31.99%; Albanians – 31,163 or 5.03%; Croats – 6,811 or 1.10%; Bosniaks – 48,184 or 7.77%; Roma – 2,601 or 0.42%. According to the 2011 Census, the ethnicity breakdown was as follows: Montenegrins – 44.98%; Serbs – 28.73%; Albanians – 4.91%; Bosniaks – 8.65%; Muslims – 3.34% (Monstat, 2011).

It should also be noted that the latest censuses paid particular attention to the engagement of minority members by conducting the census in areas where minorities form a majority or significant segment of the population. Data on the national population composition in the censuses conducted in 2003 and 2011 were gathered based on the inhabitants' self-declarations.

As the census results show, Montenegro is a multiethnic state in which no ethnic group forms a majority. The society is characterised by a general climate of tolerance. Montenegro is constitutionally defined as a civic, democratic and environmentally friendly country, with social justice based on the rule of law. The bearers of sovereignty are citizens with Montenegrin citizenship.

The Montenegrin constitution provides the legal basis for the promotion, strengthening and improvement of the protection of fundamental human rights and freedoms. It also confirms the country's obligation to respect international standards in that context. Article 9 established that international treaties and generally accepted rules of international law are an integral part of the domestic legal order, have primacy over domestic legislation and apply directly when the domestic legislation provides different regulations. The major ethnic groups include Montenegrins and Serbs; others are Bosniaks, Albanians and Croats. The number of 'Montenegrins' and 'Serbs' fluctuates widely between censuses due to changes in people's perception, experience or choice to express their identity and ethnic affiliation.

Minorities in Montenegro: autonomy in practice

Montenegro recognised minority rights in its most recent constitution, thus continuing its previous practice of protecting its national minorities. The 2007 constitution provides autonomy in the identity protection of minorities, including rights and freedoms related to national, ethnic, cultural and religious aspects, the use of national minority symbols, language use and education in the their own language, participation in local city councils, authentic representation in the Montenegrin parliament and the founding of national councils.

The major legislative framework stems from the Law on minority rights and freedoms (2017), which is framed in accordance with the major international legislation in the field (Ministry of Human and Minority Rights [MHMR], 2019). The Law on minority rights and freedoms (2017) defines minority people or other national minority community as those groups of Montenegrin citizens which are numerically fewer than the majority population,

with distinctive ethnic, religious or language characteristics which distinguish them from the rest of the population, and whose aim is to enunciate and protect the national, ethnic, cultural, language and religious identity. That definition is aimed at protecting minority identities, with the Law further defining how autonomy can be practised. The specific rights available to minorities are designed to protect their identities, languages and cultures. In other words, their autonomy is mostly practised in the area of culture as it is understood in the wider sense (e.g. Nimni, 2005).

Understood in that context, autonomy means that Montenegro aims as a country to protect the culture of minorities as their basic characteristic. Economic and political rights refer more to actual rights than to autonomy per se. In a certain sense, it can be difficult to delineate autonomy from human rights protection, because protection of some of the rights contributes to autonomy, as discussed below. Minority councils are an example of that. Their main aim is protecting minority identities, but they also ensure other methods of representation. Although their actual contribution to minority autonomy is indirect, their activities do contribute to it.

The Law on minority rights and freedoms (2017) enables minorities to form councils. Councils are organisations which represent the minority, with the aim of protecting and further improving its status. Councils should support minorities and their activities but not act as their sole representatives. Councils have their advisory bodies (councils) whose members are minority representatives holding a relevant political post (MP, government minister, member of local parliaments and mayors, and leaders of political parties represented in parliament). Councils receive state budget funds aimed at supporting their activities related to the promotion of minorities' cultural, language and religious identities.

Each minority may only have one council, with their competences including representing the minority, developing and submitting new initiatives concerning the minority and its status, participating in the creation of educational programmes and initiatives related to the education of minorities, and performing other relevant activities (Law on minorities' rights and freedoms, 2017). Minority councils represent one of the most significant aspects of autonomy. Serbs have a specific status in Montenegro and have their own council. Due to the size of the population who declare themselves as Serbs, they receive the highest level of funding for their activities. Albanian, Muslim, Croatian, Bosniak, Serb and Roma councils were active in 2018 (MHMR, 2018).

Councils did not have an implicit executive role, but they were promoters of their constituents' identity, as they should. However, they contributed to establishing TV stations in their mother tongue, provided scholarships for education, assisted in relevant employment matters, organised cultural events, published articles and conducted other related activities (MHMR, 2018). All those represent significant contributions to improving the status of minorities, protecting their identities and influencing the way minorities are perceived. Such roles do not determine territorial autonomy in any sense, but they do create autonomy for the minorities to act for themselves. The results of the research from 2018 show that the councils' work was not perceived as highly as might be expected, with support in the 20–21% range from the total population and a bit higher in the national minority populations (Serb's National Council 21.5%, Council of the Islamic Community in Montenegro 44.9%, Bosniak's National Council 32.5% and the Albanian National Council 23.1%) (MHMR, 2018).

The most significant aspect of the practice of minorities' autonomy can be observed in their language use and education. As it is the practice in the most relevant Council of Europe

sources, minority languages are recognised as official and equal by the Montenegrin constitution, and they can be used together with Montenegrin as the official language. In practice, the use of a minority language is mostly related to its use in the national and municipal institutions. Its use is also provided for in those municipalities where the minority is represented. Nevertheless, this practice has not been fully developed yet, as no clear guidelines have been developed. Despite it being a long time since the Law was adopted, this policy area requires a more detailed framework for implementation to define how the official language can be used and on what occasions (MHMR, 2019). Courts are especially relevant here as arenas for the protection of rights. The right to use the minority language is practised in education for the Albanian minority at all levels of education. The Montenegrin, Bosnian, Croatian and Serbian languages are very similar, or even almost the same, and all easily understood by members of those national groups, so there is no need to create educational materials in those languages separately.

Autonomy also includes the right to be educated in the minority language in those areas where minorities are significantly represented, so they can attend school in their own language. In the Montenegrin case, that refers to the Albanian minority. It is also possible to devote up to 20% of the open curriculum (which forms a part of the total curriculum) to teaching materials developed by the local community and teachers. The aim of such measures is to increase awareness of the minority community's characteristics and culture (MHMR, 2018).

Such measures in education are an important part of autonomy because they allow minorities to preserve their languages as part of their identities. It is also an opportunity for their members to be educated using their own language, which is a particularly relevant aspect for the Albanian minority in Montenegro. Furthermore, the use of the national language and national symbols is allowed in those municipalities where minorities represent at least 5% of the total population (Law on selection, use and public presentation of national symbols, 2020). The practical implementation of those measures is indicative of minority affirmative action in Montenegro and another step towards their autonomy (MHMR, 2018).

Montenegrin law provides for affirmative action in electoral processes and the authentic representation of minorities in parliament. The most recent changes to electoral law introduced a new threshold aimed at allowing easier access of minority representatives to parliament. The general threshold is 3%, but it is set at 0.7% for political parties registered as representing minorities. However, each minority may have a maximum of three seats, out of the total of 81 parliamentary seats. Due to its smaller size, the Croatian minority has been assigned a threshold of 0.35%, and it may have up to one seat in parliament. Affirmative action in this sense is available to minorities which constitute up to 15% of the population (Law on the election of councillors and parliamentary representatives, 2020).

Minorities have preferential treatment in political representation at the national and local levels. In the national parliament, political parties defined as minority parties were represented by four MPs: two Bosniaks, one Albanian and one Croat. At about 5% of MPs, that representation is significantly lower than would be expected based on a total population which includes 17.83% minority members, as recorded in the 2011 Census. Serbs are not included in these calculations, as they represent 28.73% of the population and are not eligible for affirmative action. Other political parties also had members belonging to a minority population. At the local level, in municipalities where Bosniaks or Albanians represent significant proportions of the population, minority parties have more local MPs. In other words, the political aspect of autonomy is used up to a certain level, but other minorities, e.g. the Roma, are not

represented. Although that issue has been recognised (MHMR, 2019), it has still not been addressed.

Minorities may be represented in local (municipal) administrations in proportion to their population in the municipality. Legislation has been adopted to address the need for employment of minority members at the national level. However, implementation is still lacking for this aspect, so Montenegro's latest strategic goals are aimed at addressing that issue (MHMR, 2019). National-level employment is one of the indicators which shows whether minorities are equally treated in recruitment, at least in the public sector, and it highlights the economic aspect of autonomy. The Employment Bureau of Montenegro is especially active in helping Roma minority members to gain employment, irrespective of the sector, and although it is not a policy of autonomy per se, it does represent a relevant step towards their individual economic security (MHMR, 2017). It may be concluded that Montenegrin institutions are committed to enabling members of minorities in employment matters, but implementation measures and clear practical tools are still lacking. Although such employment actions are aimed at enhancing autonomy, they are not a significant part of it.

All the above suggests that minorities in Montenegro have significant autonomy. The previously mentioned aspects are what some authors label NTA in practice: official recognition of heterogeneity, state support of pluralism, multilingualism, specific collective rights based on ethnic or other belonging, education based on specific cultural and national history, and delegation of functions from the state to other actors (councils in this case) (Osipov, 2018). The practice analysis shows that the cultural aspect of autonomy is the most present and practised. Although the national councils play the major role here, the research shows the need for their further advancement and enhanced transparency so that their actual impact is recognised beyond their ethnic groups. Such developments would increase the probability of the councils achieving higher acceptance and approval ratings in the minority community and the wider society. Other aspects of autonomy are present, and minorities utilise them up to a certain point (e.g. education), but others (employment) require a more focused approach from the state and municipalities.

Minorities and autonomy in Serbia

Sections 5 and 6 provide a brief overview of the status and autonomy of minorities in Serbia and Croatia. The aim is to present an analysis which shows how minorities are treated, which rights and freedoms are available to them and how the practice of autonomy is implemented. This approach enables a comparison to be made with the Montenegrin practice, thus providing insights into the major similarities and differences between the three countries' practices.

Minority policies in Serbia have an important role to play in good interethnic relations, democratic development and the prosperity of Serbia, as is the case in other countries in the region. A minority is defined as a group which is significant in terms of numbers but a minority on the territory of the Republic of Serbia, has a firm and lasting connection with the country, and has specific characteristics, including language, culture, national or ethnic belonging, origin or religion, which makes it different from the rest of the society (Law on protection of rights and freedoms of national minorities, 2018). The Law ensures the official use of the language of the minority in municipalities where minorities are present, a right to

be educated in the minority language when there are enough students to form a group and the use of national symbols.

When defining and implementing measures pertaining to minority policy, it should be remembered that, in addition to the old (autochthonous) minorities, there are also the so-called 'new minorities' formed by people belonging to the constituent peoples of the former Yugoslavia whose status changed significantly with its dissolution.

According to the 2011 Census, there are more than twenty national communities in the Republic of Serbia. The Serbs are dominant in number, with 83.32% of the total population. After the Serbs, the most numerous national communities, i.e. those with more than 1% of the population, are: Hungarians (3.53%), Roma (2.05%) and Bosniaks (2.02%). Those four largest groups are followed by 16 national communities with more than two thousand members: Croats, Slovaks, Montenegrins, Vlachs, Romanians, Yugoslavs, Macedonians, Muslims, Bulgarians, Bunjevacs, Rusyns, Gorani, Ukrainians, Germans, Slovenians and Russians. In addition to the more numerous ethnic communities, there is a category of 'others' made up of ethnic groups with less than two thousand members each: Czechs, Ashkali, Egyptians and Jewish people.

National minority rights in Serbia can be divided into several groups: general definition of the legal status, guaranteed rights on political participation and decision-making, rights related to education, culture, the official use of minority languages and promoting the local autonomy of national minorities (Marković & Pavlović, 2018). Coordination of the issues related to national minorities is performed at the national, regional and local levels, with the Council of the Government of the Republic of Serbia for National Minorities as the major advisory institution. Representatives of all minority national councils also participate.

All minorities can form councils, with the Law on national councils of national minorities (2018) providing for their functioning in more detail. Looking at the most relevant competences, councils of national minorities can: form and recommend policies regarding the use of their national symbols, found enterprises, foundations and other institutions aimed at promoting minority identities and other aspects, recommend the founding of other institutions at the local level relevant for a minority, initiate adoption and evaluate implementation of the legislative framework, and participate in the preparation and drafting of legislation relevant for a minority.

The Republic of Serbia's territorial division provides significant autonomy for minorities in the territory of Vojvodina. That territory is guaranteed by the Law on defining the competence of the autonomous region of Vojvodina (2020). That Law ensures education in the minority language, which is of special relevance for the Hungarian minority. Other rights may be exercised in accordance with the national legislation on the preservation of minority identities.

Examining the practice revealed a low level of actual contribution from the Council of the Government of the Republic of Serbia for National Minorities (Marković & Pavlović, 2018). The overall conclusion concerning the legal and practical status of national minorities in Serbia is that the lack of a systemic approach and a long-term strategy has undermined the implementation of planned measures. Instead of being a driving force in improving the status of minorities in Serbia, national councils have often stayed out of the spotlight, mainly due to their lack of resources. However, opinions vary regarding territorial and non-territorial autonomy, with some minorities looking for additional territorial autonomy, as in Sandžak, or to have more cultural autonomy in everyday activities. Regional belonging also resulted in

different aspirations in, for example, Vojvodina from those in the country's central regions. Autonomy in the sphere of culture was also an issue in terms of the official use of language, especially for minorities without their own unique language: Roma, Vlachs and Bunjevacs (Marković & Pavlović, 2018). In general, the lack of a systemic approach resulted in a lower level of minority participation in the rights defined here related to autonomy.

Autonomy in Serbia is both territorial and non-territorial, due to the special status of the region of Vojvodina and the other rights guaranteed to minorities. Of the highest importance is the cultural sphere, which refers to protection of minorities and preservation of their cultural identities, but political participation is supported and encouraged. Councils of national minorities have a wide array of competences, but their lack of a strategic overview and a clear aim in how to approach the issue of minority status has impeded their integration. However, problems related to functionality of the national minority councils have had a negative impact on their role fulfillment. Those problems relate to flaws in the election procedures for their members, lack of financial support from the very beginning and being restricted to only having one council per minority, because some were under minority political party influence, which could result in the use of councils for political purposes (Yupsanis, 2019).

Minorities and autonomy in Croatia

Croatia is inhabited mostly by Croats (90.42%), with minority groups including Serbs (4.36%), Bosniaks, Hungarians, Italians, Albanians, Slovenes, Germans, Czechs, Romani people and others (5.22%). The Constitution of the Republic of Croatia explicitly identifies 22 minorities. Those are Serbs, Czechs, Slovaks, Italians, Hungarians, Jews, Germans, Austrians, Ukrainians, Ruthenians, Macedonians, Bosniaks, Slovenes, Montenegrins, Russians, Bulgarians, Poles, Romani, Romanians, Turks, Vlachs and Albanians.

One of the objectives of the Croatian Government for its current term from 2016 to 2020 is to continue enhancing the existing level of protection for national minority rights. Accordingly, at its session on 24 November 2016, the Croatian Government passed the Decision on the Preparation of Operational Programmes for national minorities with a view to defining mechanisms to secure national minority rights and supporting the activities of their bodies in line with the Constitutional Act on the rights of national minorities and other special legislation. Operational programmes for national minorities consist of the general Operational Programme for the protection and enhancement of the existing level of rights of all national minorities. It applies to all national minorities listed in the Preamble of the Constitution of the Republic of Croatia and specific operational programmes.

Given the specifics of each national minority and the need to enhance their existing level of protection, specific operational programmes have been prepared for the Serbian, Italian, Czech, Slovak, Hungarian, Albanian and Roma national minorities. Pursuant to the Conclusion of the Croatian Government dated 24 August 2017, the Operational Programmes for national minorities were prepared for the period from 2017 to 2020, with implementation time frames and implementing bodies defined for each activity.

At its session on 29 November 2012, the Government of the Republic of Croatia adopted the 2013–2020 National strategy for Roma inclusion (NSRI) (Croatian Office for Human Rights of National Minorities, 2012). The NSRI relies on the provisions of international instruments on human and national minority rights to which the Republic of Croatia is

a party. It is aligned with the identified needs and challenges related to the social inclusion of the Roma community at all levels: local, regional, national and European. Furthermore, the 2011 EU Framework for national Roma integration strategies (European Commission, 2011) was considered when the NSRI was being prepared. Amongst other aspects, the Operational Programme provides for the revision and implementation of the NSRI, and efforts to enhance the work of the Commission on Monitoring the Implementation of the National Strategy, with special emphasis on the issues of education, social integration, employment and housing. The Operational Programme provides an additional contribution to the implementation of the NSRI.

The Republic of Croatia is committed to safeguarding and securing national minority rights. Over the last 20 years, the regulatory framework has been improved in terms of protecting national minority rights. The minority is a group of Croatian citizens who have traditionally lived on the territory of the Republic of Croatia. Its members have ethnic, language, cultural or religious characteristics different from those of other citizens. The Law on the rights of national minorities defines a detailed framework for the protection of minority rights and freedoms. Members of minorities can officially use their own language and be educated in it, with curriculum development addressing the specifics of that minority's language and cultural characteristics. The language of the minority can be officially used in municipalities where they are represented with at least a third of the total of inhabitants.

Minorities, which represent 5–15% of Croatia's total population, have guaranteed parliamentary representation. The number of minority representatives can vary depending on the electoral results of their respective political parties, but they are all guaranteed at least one MP. Minorities can also form their own councils, which are organised at the local level. Forming a council is dependent on the percentage of the minority in the municipality population. Such councils have advisory functions, mostly related to the cultural sphere, can present candidates for representative bodies and they have to be included in developing legislation related to minority rights and freedoms. The same Law has established the local council structure and also provided for the formation of a national Council for national minorities. Its role is defined as being the coordinating institution for minorities' status in Croatia. Its main responsibilities include: having an oversight of the implementation of relevant laws and making recommendations regarding minority status improvements, radio and TV programmes relevant for minorities, and the social and economic welfare of minorities. Overall, the national council role is advisory regarding implementation of the minorities-related legal framework, with the other state institutions retaining competence over the actual implementation (Vasiljevic, 2004).

The functionality of the national councils has also been criticised, mainly in terms of their lack of governing power, the limitations of their advisory role and, therefore, their being rather symbolic representative bodies (Yuspanis, 2019). The other major issue is that the lack of financial resources undermines their functionality. Furthermore, there is a lack of cooperation between councils and local self-government, and interest in council activities is low due to their lack of actual power. The role, capacity and functionality of national councils in Croatia could be significantly improved to achieve a higher level of cultural autonomy and to ensure that minorities can exercise their rights in this area.

The enforcement of the Constitutional Act on the rights of national minorities also entails implementation of measures related to obligations arising from international treaties to which the Republic of Croatia is a party, primarily the framework convention for the protection of national minorities. In the field of fostering tolerance of differences and combating

discrimination, the adoption of the National Human Rights Protection and Promotion Programme and the accompanying Action Plan is deemed vital. That plan is a strategic Croatian Government document stipulating measures for the improvement of the comprehensive system of protection against discrimination. For the purposes of improving the socioeconomic status of the Roma national minority and their complete integration into society, the national strategy for Roma Inclusion was adopted and aligned with the EU framework for national Roma inclusion strategies, with a new Action Plan for its implementation being developed. The Operational Programmes for national minorities which the Croatian Government highlighted as a priority in its programme also contributed to the advancement and improvement of the status of national minorities.

Comparative perspective of minorities in Montenegro, Serbia and Croatia

Autonomy can be exercised on different levels and by various means. The practice of the three countries discussed in this paper shows both similarities and differences. This conclusion can be separated into two groups of arguments. The first is related to what autonomy means and how it is understood, with the second addressing the implementation of autonomy in practice. Concerning the first aspect, autonomy in all three countries is broadly understood to mean cultural autonomy, as is argued in this paper. It refers to availability of rights related to language use education in the minority's mother tongue and the exercising of identity rights, with the aim of protecting the minority's collectivity.

Minorities in all three countries have the official right to use their own language in the areas where they are represented, under varying country-specific conditions. Some positive outcomes have resulted in Croatia in terms of protecting minority languages and cultures, but further work is needed on the practice side (Council of Europe, 2021). Some minorities in Serbia lack adequate access to information, thus resulting in inadequate use of the opportunities offered by the legal framework (Zaštitnik građana, 2019). Education can also be provided in the minority languages, and curriculums can be adapted to include relevant facts about minorities. Those are important aspects of the collective identity and represent a crucial part of the autonomy. In all three country cases, minorities can form national councils. The Montenegrin councils are the least criticised. The major criticisms of the Croatian and Serbian systems refer to organisational issues and the legal framework, but the Council of Europe (2021) has observed improvements in Croatia. As the organisational and legal frameworks were not designed as well as they could have been, the minority councils' work was hampered. However, the Montenegrin case also shows that the functionality of minority councils can be significantly improved, especially concerning the trust in them and their overall importance for minorities.

From Osipov's (2018) distinction between the thin and thick concepts, it can be concluded that Montenegrin autonomy is closer to thin overall, with certain segments of the thick concept also being implemented. In other words, minorities in Montenegro are recognised as constitutive groups and they have autonomy in deciding their future. Most importantly, they may decide how their identity is shaped and presented. They are 'masters of their own affairs' in some aspects of their lives, but such freedom is also a way of ensuring peaceful and meaningful coexistence. In terms of policy formation and implementation, none of the policy areas

discussed can be defined as predominant. That means that minority rights in Montenegro are perceived as a whole consisting of various parts. However, a rather different picture appears when those parts are observed individually.

On the other hand, the thick concept would imply a public corporation that would encompass and structure a whole ethnic or minority group (Osipov, 2018). It would mean having separate public institutions organised specifically for the ethnic group. Methods may differ, but, in principle, that approach points to a more robust organisation. That is not the case in Montenegro, where the whole administration, including executive and representative bodies, is founded on a unitary basis. However, as the practice in other European countries shows, that may not be an obstacle to peaceful coexistence and successful integration of minorities.

Concerning their competences, minority councils in Serbia have more power than those in Montenegro and Croatia, where their functions are mostly advisory. However, as discussed, the range of the Serbian councils' competences has not translated into recognition and results success. Furthermore, an inadequate use of the opportunities available to councils was observed in Serbia, due to the lack of engagement of professionals able to lead them adequately (Zaštitnik građana, 2019). All of that points to the fact that councils can play an important role in exercising autonomy only when the required environmental context is in place: clearly defined competences, support – especially financial – from state institutions, the willingness of the society and the minority they represent to accept the councils' roles and those roles being conducted distinct from the political parties' aims.

Political representation of minorities in Montenegro and Serbia is similar. The lower electoral thresholds for minority political parties should result in their national parliament representativeness in a more achievable way than it is for non-minorities or the majority population. Minorities in Croatia have guaranteed seats in parliament, with the actual depending on their achieved electoral results. The practice in Montenegro and Serbia shows that members of minorities do not necessarily vote their own parties, as electoral results show. That issue could be addressed in the future to optimise this aspect of minorities' representation.

The meaning of autonomy in Montenegro can be understood in the context of a developing system which is still relatively new, at least in comparison with Serbia, Croatia and other European Union member states which have some type of autonomy, be it territorial or non-territorial (see Nimni, 2007). As the most visible and used aspect in practice, cultural autonomy is an important tool for affirming minority identities. Minority councils could also be a significant part of autonomy, acting as a leading partner and link between the minorities and public institutions. However, their role would have to be improved, as already stated. In the long term, the essence of autonomy could be deepened to further improve the status of minorities.

The three countries' laws provide lower electoral thresholds for minority political parties, which have been represented in the national parliaments. Indeed, they have all been in government at various times and for varying periods. Such electoral legislation is a powerful step towards the protection and autonomy of minorities through direct representation in the legislative and executive branches. Minority representatives have used that opportunity to increase their share of power and autonomy, with varying results in practice. Montenegrin practice shows a significant level of autonomy in that sense, thus confirming the country's strong support for minority policies. Minorities in Montenegro clearly have a very strong base, both legally and in practice, for using their autonomy to protect their identities and further improve their political, economic and social status.

Conclusion

Understanding the meaning of autonomy depends on more than a legal framework. This research shows that a solid legal framework has to be closely followed by actual practice. That is highly relevant for minority protection, as their autonomy depends on the actual rights and practices which are guaranteed and protected. Cultural autonomy is the most used minority autonomy policy area in Montenegro. It is a method of protecting minority identity and culture. In other words, the Montenegrin Government has been paving the way for ensuring its minorities can have autonomy in their way of life and specific cultural traits. The national councils have played an important role in ensuring the implementation of measures aimed at protecting minority identities.

Autonomy is also practised in other policy areas, with political representation being another crucial aspect of it. Montenegrin minorities have a lower electoral threshold than the wider population, thus enabling them to be represented in the national and local parliaments. That is a fine way of ensuring that minority voices are heard. More importantly, minority political parties have been part of the government in various periods. Indeed, all the minority parties formed part of the national government from 2016 to 2020. Minority representatives in parliament and the executive have used that opportunity to enhance the status of their minorities.

Montenegrin minorities also have autonomy in education and in the use of their national symbols. Policies have also been enacted which allow minorities easier access to public administration and the labour market, but those require further enhancement to ensure their implementation in practice and a higher level of autonomy. A high level of similarity exists between Montenegro, Croatia and Serbia as a result of longstanding close cooperation in the modern period and their common history. Such similarities suggest that the Montenegrin legal framework and practice are in accordance with modern European standards and practices. In other words, the autonomy of minorities in Montenegro is protected in accordance with European practice, and that should remain the case with future policies.

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IV.
Assessing the Serbian Model of NTA: The Experiences of the National Councils

Tamás Korhecz

Evolving the legal framework of non-territorial autonomy in Serbia. Interaction between the legislator and the Constitutional Court: Steps forwards and steps backwards

Introduction

Even without the province of Kosovo (which, mostly populated by ethnic Albanians, unilaterally declared independence in 2008), the Republic of Serbia (hereinafter, Serbia) is still a multiethnic state. Around 15% of the total Serbian population belongs to various autochthonous national minorities. Hungarians make up the biggest national minority group in Serbia. They live almost exclusively in the Autonomous Province of Vojvodina and around number 253,000 (3.53% of the total population). The second largest national minority group is the Roma, who live dispersed throughout Serbia and number around 147,000 (2.05%), followed by the Bosniaks. This group is concentrated in the Sandžak/Raška region, and they number around 145,000 (2.02%) (Statistical Office of the Republic of Serbia, 2011). Furthermore, the country is populated by large numbers of Croats, Slovaks, Albanians, Montenegrins, Vlachs, Romanians, Macedonians, Bulgarians, Bunjevci, and Rusyns, primarily living in Vojvodina.

National minorities' collective right for self-governance/non-territorial autonomy (NTA) by way of elected national minority councils (NMCs) was introduced into the legal system of Serbia (then the Federal Republic of Yugoslavia) in 2002 with the Law on the Protection of the Rights and Freedoms of National Minorities (LPNM). The legalisation of NMCs in Serbia has been influenced by various factors, notably the political demands and activities of Hungarian political organisations in Serbia and international efforts for the recognition of 'post-Milošević' Serbia (Đurić, 2019).

The continuous evolution of the relevant legal framework over the last 18 years – which has been influenced, among other factors, by the interventions of the Constitutional Court of Serbia (CCS), the experience of democratic elections and the functioning of the NMCs – provides an opportunity for analysing NTA in Serbia and drawing some significant conclusions.

This paper is divided into four sections. First, the legislative framework of NTA will be presented, with particular emphasis on the amendments made to it, such as those relating to the functioning of NMCs. Second, the relevant decisions of the CCS on NTA will be presented and analysed. The third section highlights the most important unresolved issues around NTA in Serbia, while in the closing section, some conclusions will be formulated.

The evolving legal framework of NTA and the functioning of NMCs in Serbia

The legal framework of NTA

In the last 18 years, the legal framework of NTA in Serbia has been retailored and amended several times in the context of various state formations. It was introduced into the legal system during the years of the Federal Republic of Yugoslavia (established in 1992 and composed of two states: the Republic of Serbia and the Republic of Montenegro), constitutionalised during the state union of Serbia and Montenegro (established in 2003 as a loose federation of the Republic of Serbia and the Republic of Montenegro) and definitively shaped after the split of Montenegro and Serbia within the independent unitary state of the Republic of Serbia.

Two stages within this 18-year period can be distinguished. The first began with the legislative act of the Yugoslav LPNM in 2002, which established and recognised the collective right of national minorities to self-governance by the way of elected NMCs (Zakon o zaštiti prava i sloboda nacionalnih manjina, 2002). This first period lasted until the enactment of the Law on National Councils of the National Minorities (LNCNM) in 2009, a legislative act that comprehensively regulated the internal organisation, registration, competences, election and financing of NMCs. In the meantime, NTA and the NMCs were constitutionalised: in 2003, they became part of the Charter on Human and Minority Rights of Serbia and Montenegro, and after the secession of Montenegro, provisions on NTA were included in the new Constitution of Serbia in 2006. The second stage began with the enactment of the LNCNM in 2009 and includes, first, the major intervention of the CCS in January 2014, which declared many LNCNM provisions to be unconstitutional and, second, two legislative acts of the National Assembly, which amended dozens of LNCNM articles in 2014 and 2018.

In 2002, the LPNM included only two articles with provisions on NMCs. Article 19 regulated organisational issues (legal personality, registration, number of members), competences and NMCs' relation to public authorities. The article also stipulated: that people belonging to national minorities elect NMCs in order to enjoy the right to self-governance in areas including language use, education, information and culture; that NMCs represent the respective national minority in the areas of official language use, education, national minority language information, and culture; and that NMCs participate in the process of decision-making or decide on issues and establish institutions in these areas. Furthermore, Article 19 stipulated that the state can delegate some of its competences to NMCs and provide funding to cover the expenses. According to this article, NMCs are financed from the budget and donations.

Article 24 contained provisional rules on the (first) election of NMCs. It stipulated that elections should be organised on the principles of voluntary participation, proportionality and democracy, but not through direct elections. Instead, NMCs would be elected by electoral assemblies composed of deputies belonging to the respective national minorities and electors delegated by a group or organisation of the respective national minority. The provisions of the LPNM on NTA, described above, legalised and made possible the establishment of NMCs and subsequently served as the basis for the comprehensive legislative regulation and constitutionalisation of NTA.

After years of delay, the enactment of the LNCNM by the National Assembly in 2009 comprehensively regulated NTA in Serbia (Zakon o nacionalnim savetima nacionalnih

manjina, 2009). Unlike the LPNM in 2002, the LNCNM was not enacted with consent in the National Assembly but exclusively with the votes of the ruling coalition, led by the central-leftist Democratic Party. Comprised of 139 articles, the LNCNM gave NTA concrete content, making NMCs operational. The most important new content was the definitive and precise provisions on the competences of NMCs, such as new electoral rules on the direct election of NMCs. Although the LNCNM represented a real breakthrough in the legal regulation of NTA in Serbia, critics highlighted the slow drafting of provisions and their conflict with provisions in other laws in areas such as education, culture, media and official language use (Council of Europe, 2013).

Probably the most significant issue related to NMCs is that of competences, that is, the delegated public powers that enable NMCs to self-govern or at least to participate in decision-making processes in the areas of official language use, native language education, culture and information. The idea behind the 2009 law was to involve NMCs in the decision-making process of central, provincial or local authorities. Most often, this took place in the form of giving opinions through consultation with authorities deciding issues in merits (Korhecz, 2019). For example, Article 15, paragraph 1, point 3 of the LNCNM stipulates that NMCs give opinions on the process used to determine the number of places for pupils in secondary schools that teach in a minority language. In other cases, the involvement of NMCs in decision-making is more significant, such as when NMCs are empowered to propose their own draft decision or when they have consent (veto) power concerning a decision (Đurić, 2019; Korhecz, 2015). For example, Article 13, paragraph 1, point 1 of the LNCNM stipulates that NMCs propose the curriculum to the Ministry for Education in the case of subjects that are closely related to the minority national identity, like native language, history, fine arts and music. Furthermore, in a few cases, NMCs can make autonomous decisions. For example, Article 22, paragraph 1, point 1 of the LNCNM stipulates that NMCs are empowered to determine the official names of settlements in minority languages in areas where the language of the respective national minority is in official use. Most of these competences are related to the management of public educational and cultural institutions that are essential to the identity of the respective national minority (kindergartens, elementary and secondary schools, theatres, libraries, museums, etc.) as well as involvement in decision-making related to school curricula, textbooks, school enrolment plans and so on. It is also important to note that the provisions of NMC competences permitted the right to found public schools and cultural institutions (established by the state, province and local municipalities) to be partly or completely transferred to the NMC on the initiative of the respective national councils.

The second aspect of the LNCNM to provide important developments was related to the election rules. The LNCNM stipulated that NMCs must have 15 to 35 elected members, depending on the size of the represented national minority. The law regulated the procedure for electing NMC members in detail. There are two systems for NMC elections. The first and primary system is the direct election of NMCs by the members of the national minority registered on a separate voting register of minority voters. If the number of registered minority voters is less than 50% of the total number of persons belonging to a minority eligible to vote (in accordance with the latest census), provisions stipulate that elections will be held indirectly by electors nominated by 100 minority voters. According to the relevant provisions, members of NMCs are elected through a proportional electoral system with nominated lists of candidates. Lists of candidates can be proposed by organisations of national minorities (political parties and NGOs) and groups of citizens (belonging to the respective national minority)

on the condition that their nomination is supported by 1% of the voters registered with the voting register for the respective national minority. After voting, all lists receive seats in NMCs proportionate to the number of votes they won.

As of 2021, the comprehensive legal framework established in 2009, LNCNM, has been altered and retailored three times. First, the decision of the Constitutional Court in January 2014 declared unconstitutional and invalidated various provisions of the LNCNM in a total of ten articles (Odluka, 2010). (The analyses of the Constitutional Court decision will follow in the second section of this paper.) The second intervention occurred in 2014 with a law amending the LNCNM (Zakon o izmenama i dopunama, 2014), while the third occurred in 2018, with another law amending the LNCNM (Zakon o izmenama i dopunama, 2018). The 2014 amendments to the LNCNM focused primarily on the provisions on NMC elections (the amendments tackled more than 60 articles of the LNCNM). The basic elements of the electoral system remained the same (direct elections based on a separate voting register, lists of candidates, proportional distribution of seats in NMCs and the electoral system as an alternative way of election), but the provisions were refined and complemented at various points. The most important development was that the periodic NMC elections would later be organised not by the ministry responsible for minority rights but by the Republic's Electoral Commission, a public authority responsible for organising and monitoring all parliamentary and presidential elections in Serbia.

The last legislative intervention to the LNCNM occurred in June 2018. As in 2014, the 2018 legislative reform was significant mostly in a quantitative sense, as changes involved provisions in around 50 articles. Most changes were related to the competences of NMCs and status issues. At least declaratory, these changes were mainly answers to and reflections on the conclusions of the Constitutional Court in decision IUz-882/2010 from 16 January 2014. In most cases, the LNCNM provisions aligned with equivalent legal provisions in areas of education, culture and media. Furthermore, the reform defined some preconditions necessary for an NMC to declare a public cultural or educational institution as an institution of particular interest for a national minority. Other amendments sought to regulate the monitoring powers of state authorities towards NMCs in detail, and they provided strict rules and procedures for the financing of NMCs. Articles 113, 115 and 117 stipulated new, stricter obligations and restrictions for NMCs in financial planning and spending. Finally, amendments also complemented and specified provisions regulating the status and responsibility of members of and functionaries in NMCs. According to Article 127, NMCs and their presidents can be charged for misdemeanours in certain cases if they fail to fulfil some duties prescribed in various provisions of the LNCNM. For example, if they fail to properly publish the decisions of the NMC, or if they do not deliver their own documents on the request of administrative authorities. The 2018 amendments can be described as serving mainly to develop state mechanisms for monitoring and controlling the activities of NMCs, while mostly reducing – and only exceptionally specifying or broadening – their competences.

The functioning of NMCs

In accordance with the 2002 LPNM, the members of the Hungarian minority were the first to elect their NMC in September 2002. By 2008, 13 other national minorities had done the same (Korhecz, 2019). Electoral assemblies were organised by the Ministry of Human and Minority Rights. In 2009, the LNCNM made it possible for minority groups to elect

NMCs democratically and directly via a separate voting register of citizens belonging to each national minority. The second (and the first direct) elections for NMCs were organised on 6 June 2010. Altogether, members of 19 national minorities elected their NMCs – 16 by direct elections using secret ballots and three by an assembly of electors. In the case of the 16 minorities who directly elected their NMCs, more than 436,000 voters were registered on separate voting registers and more than 230,000 cast their vote for the competing lists of candidates with a turnout of 54.5% (for the results of the 2010 elections, see Table 1).

The third NMC elections took place on 24 October 2014. Seventeen NMCs were elected directly, while three were elected by assemblies of electors. Altogether, 456,444 voters of national minorities were registered in direct elections. While 171,799 registered voters cast their votes, the turnout had declined in comparison to 2010, falling under 38% (for the results of the 2014 elections, see Table 2). 17 NMCs were elected directly, and three by the assembly of electors.

The fourth and most recent NMC elections were held on 4 November 2018. Eighteen NMCs were elected directly, while four were elected by the assemblies of electors. The number of registered national minority voters directly electing NMCs climbed to over 467,000, while 208,570 people voted. The turnout was 44% (for the results of the 2018 elections, see Table 3). All three direct elections for NMCs can be qualified as legal, reaching minimal democratic standards and without significant irregularities that might put the whole electoral process into question. All relevant actors, including the participants, agreed that, overall, the Republic's Electoral Commission organised the last two elections lawfully and professionally. Even reports that were critical of independent monitoring NGOs confirmed the regularity of the electoral process (Center for Free Elections and Democracy, 2018).

The Constitutional Court of Serbia and NTA

Wojciech Sadurski concluded that eastern and central European Constitutional Courts have been neither intellectually equipped nor morally and politically prepared to interpret minority rights in an expansive, generous manner, and thus that these courts have not played a significant role in shaping the 'toleration regimes' (Sadurski, 2014). This statement seems generally valid for the Constitutional Courts of both the Federal Republic of Yugoslavia and Serbia. However, some decisions concerning NTA need further analysis and commentary. Legal provisions regulating the NTA system in Serbia and NMCs were quickly brought before the Constitutional Court of the Federal Republic of Yugoslavia after the enactment of the LPRNM in 2002. Initiatives questioning the constitutionality of NMCs and collective rights were rejected by the Constitutional Court (Odluka, 2002). These initiatives were brought before the court by various civil organisations and mainly challenged the constitutionality of provisional electoral rules for the election of NMC members by electors. Later, after the enactment of the 2006 Constitution of Serbia, many other constitutional disputes related to the NTA were resolved by the CCS. In some cases, initiators claimed that various legislative provisions violated the constitution on the grounds that the laws stipulated competences to NMCs that fell outside constitutional boundaries. In other cases, the representatives of various national minorities, including national councils, claimed that their constitutional and statutory rights for self-governance were violated by provisions of bylaws and other regulations (Korhecz, 2021).

The cornerstone decision of the CCS (IUz-882/2010 from 16 January 2014) on the constitutionality of the LNCNM

Of the many CCS decisions related to the legal framework of NTA in Serbia, the IUz-882/2010 from 16 January 2014 deserves particular attention. In this case, the CCS demonstrated unusual activism, despite the fact that it generally avoids strict scrutiny of laws enacted by the political branches of power, particularly acts relating to the ruling majority (Beširević, 2014; Papić & Djerić, 2019; Tripković, 2011). In 2010 and 2011, a total of eight initiatives were brought before the CCS. These initiatives primarily contested the competences of NMCs in various areas, but they also challenged the possibility of direct elections. The initiators contested various provisions contained in 37 of the 139 articles of the law. The large number of initiatives and contested provisions, the innovative nature of the LNCNM and the poor jurisprudence of the CCS related to minority rights, all spurred the CCS to strive to produce a well-elaborated decision with solid doctrinaire foundations. Furthermore, the fall of the Democrats led by Boris Tadić in May 2012 freed the CCS to a certain extent from its traditional deference and culture of restraint towards the ruling political majority.

In January 2013, with its decisive order, the CCS rejected as ill-founded most of the initiatives related to contested provisions addressing separate voting registers, the electoral process, and competences in the areas of culture and the official use of languages. However, it did decide that challenged provisions in 14 articles merited further adjudication (Rešenje, 2013). Finally, a year later, the CCS declared unconstitutional two articles of the law in their totality and several provisions in another eight articles. Almost all the invalidated provisions were related to the competences of NMCs in education and information (media) and their competences and relations with state and local bodies in protecting minority rights (Korhec, 2015).

The unique significance of this decision is that its reasoning contains many important general statements related to the protection of national minorities and minority rights, including collective rights. On the one hand, the CCS stressed the necessity of guaranteeing (additional) group-specific rights to national minorities based on the grounds that, without them, full and effective equality between members of the ethnic majority and national minorities is not possible; in other words, equal rights and non-discrimination are not enough for effective equality (Odluka, 2014). On the other hand, the CCS omitted several important international documents and offered no clear answers to some basic questions regarding the definition and legal nature of NMCs (Beretka, 2019). For example, what is the purpose of guaranteeing the collective rights for self-governance?

Although the CCS upheld the constitutionality of the general concept of the law, it found many of its contested provisions unconstitutional on various grounds. In the case of numerous contested provisions, the CCS invalidated provisions not because they directly violated some provisions of the constitution, but because these provisions did not align with so-called sectorial laws regulating the areas of electronic media, administrative procedure, public broadcasting, the educational system, and so on. According to the CCS, such inconsistencies could violate the constitutional principle of the unity of the legal order, Article 4, paragraph 1 of the constitution. By allowing a sectorial law provision to prevail, the CCS could exclude or drastically limit the ability to exercise collective rights guaranteed by Article 75 of the constitution (Kartag-Odri, 2018; Teofilović, 2019). In several other cases, the unconstitutionality of provisions was not based on any concrete provision of the constitution but rather on the

CCS's restrictive interpretation of the scope of minority rights (Beretka, 2019), or, as the CCS put it, *the Legislator went outside actions for the implementation of additional rights of persons belonging to national minorities*. A suitable example of such a restrictive interpretation is the annulment of the provision in Article 12, paragraph 1, point 5, which stipulated that NMCs are to participate in the appointment of some school directors via preliminary consent (veto) power. The CCS tried to support its argument *that participation in decision-making cannot amount to veto power* by referring to Article 15 of the Framework Convention for the Protection of National Minorities and the explanatory report attached to this convention. In its argumentation, the CCS neglected to analyse the statements of the advisory committee for monitoring the framework convention, which could suggest a completely different conclusion (Tóth, 2017). Various scholars have argued that the constitution and laws provide an even less solid basis for such a restrictive constitutional interpretation of minority rights. Katinka Beretka, for example, argues that constitutional provision (Article 75, paragraph 2) stipulates both autonomous decision-making and participation in decision-making; therefore, preliminary consent cannot violate the constitution. On the contrary, consultation is the lowest level of participation in decision-making, if it is a form of participation at all (Beretka, 2019; Varadi, 2013). Kartag-Odri, meanwhile, refers to the Law on Administrative Procedure, which explicitly stipulates preliminary consent as a means of participation in administrative decision-making (Kartag-Odri, 2018).

The National Assembly's responses to the CCS decision

The major intervention of the CCS in the provisions of the LNCNM, including its statement on and interpretation of constitutional and legislative provisions, in a way pressured the government and National Assembly to draft amendments to LNCNM in accordance with the 'guidance' of the CCS. On 3 March 2016, during the EU integration process, the Serbian government enacted a special Action Plan for the Implementation of National Minority Rights, explicitly referring to amending the LNCNM in accordance with the statements of the CCS. The National Assembly should have taken action on several provisions. First, many provisions in the LNCNM were invalidated because they were not compatible with sectorial laws. The National Assembly should thus have either amended the sectorial laws and reinstated the invalidated provisions, or replaced the invalidated provisions with new ones to correspond with provisions in the sectorial laws. Second, the provisions 'saved' by the interpretive decision of the CCS should have been amended in accordance with the CCS interpretation. Third, the provisions that were invalidated by the CCS because they *went outside actions for the implementation of additional rights of persons belonging to national minorities* should have been replaced in an acceptable manner.

After years of drafting, the amendments were finally enacted in June 2018. The results were not surprising. Legislators implemented the CCS decision in a way that generally curtailed the NMCs' powers. Namely, sectorial laws were not amended to enable the restoration of the NMCs' previous, stronger powers; rather, provisions from the sectorial laws were incorporated into the LNCNM. No amendments empowered NMCs to make decisions autonomously. It is also noteworthy that the LNCNM was bolstered with several provisions sanctioning NMCs and their presidents if they breach the provisions of the LNCNM, while no sanctions were stipulated for authorities and their officials for violating the powers of the NMCs. In sum, the National Assembly operationalised the CCS decision in a way that

further curtailed the powers of NMCs and expanded monitory powers of state authorities towards NMCs. In contrast, some issues and legal controversies remained without a legislative response even after the 2018 amendments, particularly those related to the legal character and status of NMCs.

Unresolved issues around NTA in Serbia

After 18 years of the practical functioning of NTA and evolutions in its legal framework in Serbia, we can identify several chronic problems that prevent NMCs not only from finding a stable place in the state structure and legal order but from decisively contributing to the preservation of ethnic identity and full and effective equality between the ethnic majority and national minorities.

A public or private institution?

The status and position of NMCs are still not properly defined in the relevant legislative acts. Are they democratically elected public institutions with public power/competences and, as such, part of the state organisation, like territorial self-governments (Jovanović, 2013)? Or are they private corporations, institutions like NGOs, consultative bodies? The current legislative framework is confused, controversial and fluid. For example, budgetary regulations and laws on public property treat NMCs as private associations, while electoral rules treat them as democratic and representative public bodies like the National Assembly or elected local councils (Beretka, 2019). Weak attempts to clarify the legal framework in this respect have failed to shed light on the situation.

Should party politics remain inside or outside NMCs?

The well-known Serbian academic Slobodan Jovanović defined political parties in Serbia at the beginning of the 20th century as companies for the exploitation of political power or machines for acquiring power (Jovanović, 1922). It therefore seems natural for political parties to use every opportunity to boost their popularity, power and influence. From the very beginning in 2002, one of the disputed issues of legal regulation was the involvement, and particularly the level of involvement, of party politics in NMCs. The election rules have always allowed ethnic political parties to participate openly in NMC elections; furthermore, through NGOs, elections are also open to other (non-ethnic minority) political parties. NMC elections, particularly in the case of the biggest minority groups, are often a stage for competition between ethnic political parties within a national community. Political parties (both ethnic and non-ethnic) competing for seats in NMCs try to demonstrate their influence and support within the minority community. Furthermore, the ruling majority in an NMC can utilise institutions, primarily the media, to support their claims for power in the broader political arena. As such, NMCs can become useful tools for political parties but less useful as tools for a national minority asserting its rights. In fact, the practical functioning of some NMCs reveals that the ruling majority often uses its power to suppress political opposition in the NMC, and in doing so, suppresses plurality. This is a particularly pertinent issue in the case of minority language media outlets, which are founded and directed by NMCs but receive

substantial funding from public sources (Korhecz, 2019). Despite its stated goals, the 2018 amendment made no real progress in this regard. In practice, the rule excluding high-ranked political party functionaries from some positions in NMCs (such as president, or president or member of the NMC executive body) is simply for show. Political parties have complete control of the most important NMCs in Serbia and utilise them to their benefit.

Equal NTA framework for unequal communities with different capacities

The Hungarians' political parties strongly influenced the enactment of the Serbian NTA system. It is therefore not surprising that the existing legal framework and the specific provisions on the competences of NMCs mostly reflect the needs of the populous Hungarian community. The Hungarians are politically well-organised and well-represented. They are almost entirely concentrated in the Vojvodina province and have received financial support from both the Serbian budget and Hungary for the development of their framework of media, educational and cultural public institutions. Their ethnic identity is overwhelmingly based on their unique native language. Such populous and politically organised national minority groups – such as those with a distinctive native language and proportionally strong institutional frameworks, like the Slovaks, the Romanians and Rusyns and, to some extent, Albanians, Bulgarians and Bosniaks – have also benefited from the NTA system. In contrast, many minorities electing NMCs had almost no institutional frameworks and, as such, they have almost no competences in practice. Such groups include the Vlachs, the Croats, the Macedonians, the Bunjevci or the Slovenians. Moreover, some even question whether certain minorities can be considered national minorities with the capacity to self-govern (Đurić, 2019).

Concluding remarks

NTA is a policy tool whose basic goal is to accommodate ethno-cultural diversity in multiethnic states without territorial distinction (Malloy, 2015). Enabling communities to autonomously decide on matters specific to their community may have advantages over a territorial autonomy arrangement, which could cause fears of possible secession (Nimni, 2007). As such, eastern-central European multiethnic states are more open to NTA than territorial autonomy (Kymlicka, 2007; Smith, 2014). Among the most challenging issues posed by NTA is how to ensure the representativeness of non-territorial minority bodies with autonomous powers (Đurić, 2018; Smith, 2014), such as the issue of certain powers creating differences between weak or strong NTA self-governments (Malloy, 2015). This is relevant for Serbia. The Serbian NTA system and its 18-year-long legal evolution are sufficiently instructive. The collective right for minority self-governance was recognised and legalised within specific historical and political contexts in the first decade of the 21st century. Eighteen years later, no serious political actor in Serbia questions the existence of NMCs and the electoral system, which is based on a separate voting register of minority voters. Members of almost all national minorities voluntarily registered themselves on the separate voting register in sufficient numbers; they also demonstrated the willingness and desire to participate in NMC elections. Fears around registering national identity and potential manipulations related to ethnic self-identification proved unfounded. However, even after ten years, there are considerable differences in the registration levels of various national minorities. NMCs are comprehensively regulated, and

every non-Serb ethnic group is eligible to form an NMC. However, the system works best for well-organised national minorities with a strong institutional background and national identity like the Hungarians, the Slovaks, the Romanians and Rusyns, and, to a certain extent, Albanians, Bulgarians, Bosniaks and the Roma. On the other hand, the legal framework is much less suited to the Vlachs, the Bunjevci, the Croats the Macedonians or the Slovenians, all of which lack traditional institutions funded by state budgets decades before the LNCNM was enacted.

Meanwhile, the legal framework of NTA in Serbia has been altered and amended in such a way that the constitutional right for self-governance has gradually evolved into the constitutional right to consultation, and NMCs are today less self-governments and more consultative bodies (Salát, 2015). The CCS played a decisive role in this process by drawing red lines around the NTA system in Serbia, curtailing the ambitions of some NMCs to become public authorities in a system of ethnic power-sharing. As László Józsa, the first president of the Hungarian NMC put it recently: "the CCS decision showed that Serb society is not able to tolerate the weight and importance that some NMCs acquired" (Tőke, 2020). Today, it seems that the ruling Serbian political elites have rejected the idea of ethnic power-sharing through self-governing NMCs, instead opting for NMCs with strong democratic legitimacy but without appropriate powers. Moreover, campaigns and democratic elections often serve as a playground for ruling political parties, such as minority ethnic political parties, to test their support within minority communities (Zuber & Mus, 2012), and sometimes to spread their influence through NMCs (Korhecz, 2019). Ruling political parties at the state level managed to take control of some NMCs through their financial and organisational skills and capacities. As such, they ultimately prevented NMCs from criticising state policies towards national minorities.

In 2013, the Advisory Committee for the Framework Convention for the Protection of National Minorities concluded that the 2009 LNCNM 'sets up a generous system in favour of national minority councils, covering a range of fields and granting the councils very wide-ranging competences. In practice, national minority councils play an overwhelmingly dominant role in the realisation of minority rights in Serbia' (Council of Europe, 2013). Following the 2014 amendments, these statements now seem to be huge exaggerations.

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Table 1.

2010 NMC Election Results for the Ten Most Representative National Minorities

	Elections (direct/ electoral)	*Registered voters*	*Voters participating/ percentage of all registered voters*	*Number of competing lists of candidates*	*The most successful list of candidates, with percentage of votes cast*
Hungarians	Direct	138,665	76,894 55.4%	5	Hungarian Unity, 77.2%
Bosniaks	Direct	96,656	54,516 56.4%	3	Bosniak Cultural Community, Muamer Zukorlic, 48%
Roma	Direct	56,076	30,802 54.9%	10	Romas for European Serbia, 44.9%
Croats	Electoral	n/a	n/a		
Slovaks	Direct	32,657	15,286 46.8%	5	Slovaks Together, Ana Makanova Tomanova, 59.7%
Vlachs	Direct	28,081	13,091 46.6%	9	Community of Vlachs in Serbia, Dr Predrag Balašević, 27.9%
Albanians	Direct	26,927	15,159 56.3%	2	Party for Democratic Action, Riza Halimi, 81%
Romanians	Direct	17,417	9,480 54.4%	6	Romanian Unity for European Serbia, Daniel Petrović, 48.1%
Bulgarians	Direct	13,382	8,835 66%	7	Bulgarian Community for European Serbia, Zaran Petrov, 30%
Rusyns	Direct	8,562	4,801 56%	6	'Together for Rusins', Slavko Rac, 36%

2014 NMC Election Results for the Ten Most Representative National Minorities

Hungarians	Direct	137,111	55,673 40.6%	4	Hungarian Unity, 83.9%
Bosniaks	Direct	99,259	35,638 35.9%	2	Bosniak Unity, Dr Sulejman Ugljanin, 54.1%
Roma	Direct	61,755	17,523 28.38%	10	Romas for Better Future, 24.5%
Croats	Electoral	n/a	n/a	2	List Slaven Bačić, 71.5%
Slovaks	Direct	31,196	9,682 31,%	5	Slovak Identity, Ana Makanova Tomanova, 34%
Vlachs	Direct	27,763	8,902 32.06%	4	Vlachs for Serbia, Serbia for Vlachs, Radiša Dragojević, 71.5%
Albanians	Direct	35,395	14,108 39.8%	5	Coalition for the Rights of Albanians, 41%
Romanians	Direct	17,858	7,432 41.6%	7	United List, Daniel Petrović, 40%
Bulgarians	Direct	14,908	9,870 66.21%	4	Vladimir Zaharijev, That's Us – From Hard, 48.4%
Rusyns	Direct	8,270	3,317 40.1%	7	'Together for Rusins', Slavko Rac, 24.3%

2018 NMC Election Results for the Ten Most Representative National Minorities

	Elections (Direct/ electoral)	*Registered voters*	*Voters participating/ percentage of all registered voters*	*Number of competing lists of candidates*	*The most successful list of candidates, with percentage of votes cast*
Hungarians	Direct	129,471	47,316 36.5%	2	Hungarian Unity, 82.7%
Bosniaks	Direct	106,326	55,711 52.3%	3	Self-Determination, Dr Sulejman Ugljanin, 39.7%
Roma	Direct	66,570	33,106 49.7%	5	All-European Roma Movement, 83.5%
Croats	Electoral	n/a	n/a	1	Croats Together, 100%
Slovaks	Direct	29,509	9,932 33.6%	4	Matica Slovačka in Serbia, Ljubuška Lakatoš, 45.1%
Vlachs	Direct	26,584	14,286 53.7%	2	Vlachs for Serbia, 93.2%
Albanians	Direct	36,456	14,274 39.1%	6	Party for Democratic Action, Shaip Kamberi, 33%
Romanians	Direct	20,391	9,879 48.4%	6	Rumanian List, Dr Ion Ormoran, 5,310, 53.7%
Bulgarians	Direct	18,201	10,320 56.7%	7	'That's Us' – Natural Movement, Vladimir Zahariev, 83.6%
Rusyns	Direct	7,934	4,052 51%	7	'Rusins Together', 43.3%

Katinka Beretka

Factors influencing the legal footing of National Minority Councils in Serbia – the first ten years[1]

Introduction

After the Serbian parliament passed the National Minority Councils Act in 2009, Serbia's national minorities could directly elect their national councils 'to exercise the right to self-governance in the fields of culture, education, information and the official use of their language and script' (Serbian Const. art. 75, para. 3). Irrespective of the Serbian Constitutional Court's Decision (No. 882/2010, 2014) to void several of the Act's provisions, and despite the unclear status of the national minority councils since the first democratic elections of 2010 (Beretka, 2020, p. 284), they do participate in the decision-making process and institution management across Serbia, with varying degrees of success (Vukašinović & Janić, 2014, pp. 57–58).

The 2009 National Minority Councils Act may represent the start of a new era in Serbian minority legislation and politics, since it marked the end of an approximately twenty-year period during which the national minority councils were established through the clashes and reconciliations of various national and international interests. However, the first legislation to name national minority councils as an institutional form of minority self-governance was the federal Law on Protection of Rights and Freedoms of National Minorities (2002), parts of Article 19 of which were taken almost verbatim from the Article 75, Paragraph 3, of the Serbian Constitution of 2006.

The circumstances around how different reasonings and arguments have been formulated and changed during the preparation of bills and political concepts in various historical contexts often remained hidden from the general public's view, especially as the decision to introduce national councils did not have a solid ideological background. In other words, it was not a logical result of the Serbian diversity management policy (Korhecz, 2015, p. 72). This paper examines the so-called political beginnings of NTA in Serbia, covering the first decade or so of its evolution from the initial formal appearance of NTA in the 1990 programme of the Democratic Community of Vojvodina Hungarians (VMDK, in Hungarian *Vajdasági Magyarok Demokratikus Közössége*) to the 2002 publication of the first legal provision on NTA in Serbia (the above mentioned Article 19). In examining that period, this paper searches for an answer to the basic question of who national minority councils should thank for finally achieving the legal basis for their functioning, even if that basis was fairly elementary and general.

1 I would like to express my thanks to László Józsa, Tamás Korhecz, Alpár Losonc and Tibor Várady for sharing their memories and personal archives with me.

The context of ethnic autonomy in Serbia

Autonomy has diverse legal-political meanings in Serbia that may be interconnected to each other and, as such, jointly researched, especially regarding the protection of national minority rights. Due to the lack of classic vertical self-organisation of nationalities under Yugoslavia's socialist republic (Hornyák, 2008, pp. 250–255), autonomy during that period appeared primarily in the form of territorial autonomy of the country's two provinces, Vojvodina and Kosovo. Owing to their pseudo-statehood status and the related competences of an almost federal member state, the provinces could and did guarantee a broad scale of special rights for national communities living in their territory, especially after the adoption of the 1974 Constitution of the Socialist Federal Republic of Yugoslavia. However, since Kosovo might be defined – only, of course, theoretically – as an ethnic territorial autonomy, due to the majority proportion of the Albanian population compared to the size of the Serbian population living in this autonomous province (Savezni zavod za statistiku, 1971, p. 11), Vojvodina was and remains a multinational territorial autonomy in which the extra competences that come with that status could be explained by the traditional coexistence of national minorities and the Serbian majority, both in Vojvodina and Serbia (Korhecz, 2017, p. 150).

After the 1990 Serbian Constitution revoked and diminished the legislative power and other autonomous competences of the two provinces, demand remained for autonomy, in the sense of territorial autonomy, but that was incompatible with the Serbian ambition of forming an independent nation state. The fact that Kosovo's autonomy had appeared even more robustly as a tool of (external) Kosovar Albanians' self-determination just sharpened an already conflicted situation. Such linking of Vojvodina territorial autonomy with the autonomy ambitions of one or more nationalities was not subject to serious discussions, especially because of the ethnic proportions within the population. As long as Kosovo's institutional system coincided with that of Kosovar Albanians, the autonomy of Vojvodina – due to its multilingual, multicultural and multinational nature – could not replace the institutional system of a single minority group, even that of the Vojvodina Hungarians, who represented the most numerous nationality in the province. That statement remains true today. On the other side, especially from the Hungarian community perspective, Vojvodina could provide a much better legal-political framework for the enforcement of their rights (Losoncz & Tóth, 2018c, p. 319). According to the 1991 Census results, the Hungarian nationality represented a significant percentage (16.8%) of the Vojvodina population, compared to the slight Serbian nation majority (56.8%) (Republički zavod za statistiku, 1995, p. 225). Perhaps those numbers generated false allegations (that may occur even nowadays) about the separatist character of autonomy movements, as represented by Vojvodina Hungarians, most notably after the publication of the VMDK's three-pillar autonomy concept. That proposal included a constitution for Hungarian local self-government in Serbia, despite territorial distancing not appearing even in private or informal discussions (Losoncz & Tóth, 2018a, p. 215).

Immediately after the dissolution of Yugoslavia (even during the process itself), any suggestion of further territorial distancing was a major sin. In comparison, the idea of reconstructing Vojvodina's autonomy was a minor sin. However, personal autonomy was an elusive project, with the real content being complicated for even Serbia's political elite to understand. It was not a new concept, however. The original theory of NTA dates back to the beginning of the XX century, when Karl Renner and Otto Bauer were 'opposed to the then-established nation-state concept based on cultural homogenisation of political space' and 'envisaged the

state as a shared territorial space inhabited by autonomously-organised ethno-national groups' (Smith, 2013, p. 29). According to their notion, national-cultural self-governments elected by members of the respective ethnic group, freely affiliated to a national register, would not be primarily organised on a territorial basis, but they should operate in the overall territory of the given state, especially in cultural spheres. The national minority councils now functioning in Serbia follow that logic.

Factors influencing the development of national minority councils

It was challenging to decide how to group all the factors (legal, political, social and human) that generated the first legal recognition of national minority councils in Article 19 of the Minority Protection Act:

> The persons belonging to national minorities may elect national councils with the purpose of exercising rights of self-government regarding the use of language and script, education, information and culture. … The council shall represent the national minority in respect of the official use of language, education, information in the language of the minority, culture, and participating in decision-making or deciding on issues in these fields, as well as establishing institutions in those fields.

Grouping the factors by chronological appearance, importance, location or the people involved proved to be an imperfect solution. For example, as some attempts to introduce ethnic autonomy in Serbia were made in parallel, some players appeared in multiple projects. Furthermore, the relevance of some parameters changed over time. At the start of the 1990s, fighting Milošević's rule was unimaginable without international support, but later, in the first half of the 2000s, the role of Serbian intellectuals in policymaking was more highly appreciated than previously, or even today. However, important changes occurred, even within one factor. For example, there were significant shifts in Vojvodina Hungarian politics regarding how they viewed various autonomy forms or moderation of the international community's activity.

As some sort of systematisation was needed, and there was always at least one Vojvodina Hungarian participant in the relevant public/semi-official discourses about NTA in Serbia, the Vojvodina Hungarians' autonomy programmes served as a starting point from which the roles of Hungary as a kinstate, the Serbian government and opposition, and the international community could be (partially) deduced.

NTA in Hungarian minority politics

The first official autonomy programme in Serbia was the minority-initiated political document *Self-governance! Initiative for establishing personal ethnic self-governance* adopted by the VMDK on 6 November 1990. In accordance with this programme, Hungarian voters living in Serbia would elect a Vojvodina Hungarian self-government council as a personal autonomy body under national law, with decision-making jurisdiction in the fields of education, culture and information. Any such decisions should have the character of a bounding proposal in parliamentary procedure.

That autonomy programme was subsequently completed with elements of territorial autonomy, despite not having the complete support of the community. Reservations over Hungarian territorial autonomy were a logical consequence of the varying geopolitical status of Hungarians living in the North Bačka district and those scattered across other parts of Vojvodina.

> We have accepted the NTA model as a universal approach that might be completed but not substituted with territorial autonomy, because the territory is not ethnically homogeneous. Others would uphold NTA as a kind of self-governance of decreased value to the diaspora (Losoncz & Tóth, 2018a, p. 215).

Almost two years later, at the party's annual assembly in Kanjiža on 25 April 1992, the VMDK adopted a new model based on three pillars: 1) the Autonomous Hungarian District composed of territorially neighbouring settlements of special status with majority Hungarian populations, 2) local Hungarian self-governments in the case of Hungarian communities forming a simple majority but living in isolated villages, and, last but not least, 3) personal autonomy (11§, 17§). NTA here refers to an:

> elected body (the parliament of the Hungarian ethnic group), with its leaders elected through general, fair, direct and secret elections, empowered to legislate in questions falling within the competence of autonomy, especially in the areas of education, culture, communication and the use of language, … the financing of it is secured by the state from the national budget and from other income (Kókai, 2010, p. 3).

On 18 June 1994, the Alliance of Vojvodina Hungarians (VMSZ) (in Hungarian Vajdasági Magyar Szövetség) was founded, mostly by former VMDK members. The VMSZ primarily stood for cultural autonomy and the restoration of Vojvodina's real autonomy (VMSZ, 1995). At that time, it was obvious that the idea of Hungarian territorial autonomy could not be realised in the short- to medium-term, so the issue was not favoured in the VMSZ rhetoric. Although the VMSZ version of the Autonomous Hungarian District as the basis of territorial self-organisation also had its place in the three-pillar autonomy concept, it was not a priority. Concerning NTA, the VMSZ adopted the Tibor Várady[2] idea of establishing five thematic bodies (the Political Council and the Councils of Education, Culture, Information and Science) with Hungarian members of the existing institutional system (schools, libraries, theatres, media houses, etc.), delegates of Hungarian organisations (e.g. NGOs) and Hungarian MPs (VMSZ, 1996). Although the conflict within the VMDK that finally led the party's disintegration was not primarily motivated by different understandings of autonomy, the VMSZ was permanently labeled an anti-autonomy party due to it neglecting the necessity of: 1) territorial autonomy, 2) political subjectivity of NTA, 3) independence in decision-making (VMDK Elnöksége, 1994).

The Democratic Party of Vojvodina Hungarians (VMDP) (in Hungarian Vajdasági Magyar Demokrata Párt) was founded on 22 February 1997 by the rest of the VMDK's former members, including its president, András Ágoston. The VMDP's (1997) autonomy

2 Tibor Várady is legal scientist, professor emeritus of the Central European University, minister of justice in the Panić government.

programme, the *Model of Personal Autonomy*, totally left behind plans regarding the introduction of territorial autonomy for the Hungarian community. It instead focused only on NTA (similar to the VMDK's initial concept in 1990).

Immediately before the NATO military operation against Serbia, the three main Hungarian minority parties, under the coordination of Hungary, adopted a common autonomy concept. The Agreement on a political and legal framework for the self-governance of Vojvodina and Vojvodina nationalities, amongst others, created a semi-legal, political basis for the establishment of the Provisional Hungarian National Council (PHNC) and laid down some basic principles of NTA that were incorporated into the currently in force National Minority Councils Act (e.g. provisions on direct elections, competences in the field of cultural autonomy, taking over founding rights of already existing state-owned institutions, tender announcements and participation in education curriculum development) (VMSZ, 1999). According to the Agreement, 'the Hungarian National Community in Vojvodina through direct, equal, general and secret elections establishes the Hungarian National Council, which is the highest body of personal self-governance of Vojvodina Hungarians', with its seat in Subotica (Point 3.3). It would have decision-making competence in connection with the rights of the Hungarian national community in the fields of culture, education-nursing, language use and other issues concerning national identity (e.g. the use of national symbols). The original strategy was to organise the first direct elections in parallel with the next Vojvodina provincial elections based on a special electoral register. Establishing the Council would result in the PHNC being disbanded at the same time (Point 3.8). The Hungarian National Council was finally elected indirectly through an electoral assembly in line with the provisions of the 2002 Minority Protection Act. The special voters register was not compiled until 2010.

The PHNC was constituted in Subotica on 20 August 1999. At that time collective minority rights were not regulated at all in Serbia, so the PHNC was established without appropriate legal footing. According to its goals, it operated as a forerunner of a Hungarian ethnic self-government, but, given its lack of legal status, in effect it was more a political forum or conference. Without applicable provisions on direct or even indirect elections, the Council was composed of 61 Vojvodina Hungarian politicians who were already MPs in the federal, national, provincial or local parliament in Serbia, or represented a Hungarian minority party in another form. Its primary task was to present the autonomy ambitions and interests of Vojvodina Hungarians before domestic, kinstate and international organisations and officials, and to compile the special electoral register (Decision on the Constitution of the Provisional Hungarian National Council, 1999, art. 7). However, it was sharply criticised by one part of the Hungarian community itself because of the VMSZ politicians' excessive dominance amongst the council's members and for excluding NGO, church and Hungarian emigrant representatives, who should symbolise the apolitical aspect of the national council ("Magyarok Világszövetsége Jugoszláviai Országos Tanácsának állásfoglalása a Nemzeti Tanácsról: Akkor van értelme, ha független lesz," 1991). The VMDP president asked the Hungarian Government to deny the PHNC legitimacy (public letter of András Ágoston, dated 24 August 1999), but the then minister for foreign affairs, János Martonyi, pointed out in his reply (public letter dated 7 September 1999) that the establishment of the council was the result of a multilevel harmonisation of professional and political interests aimed at gaining sympathy from both the international community and the Serbian opposition. Hungary looked at this quasi-institution as the first step in the autonomy-building process. Otherwise, Hungary was fairly active in that period. After the final negotiations with the VMSZ were held on 10 July

1999, the Hungarian Ministry of Foreign Affairs posted the document to the US Department of State and the Directorate of European Affairs within the National Security Council (Wágner, 2018, p. 394).

Hungary's approach to the Vojvodina Hungarian autonomy movement

The basic question here is the relevance of kinstate intervention in the process of successful autonomy-building. Specifically, whether it is necessary at all and whether it is sufficient without the togetherness and unified standpoint of the community itself regarding the ultimate issues of autonomy. The first three-pillar autonomy concept developed by the VMDK (1992) was drafted with the help of experts and state secretaries from Hungary, but the all-time Hungarian Government had expressed (implicit) support for almost every autonomy programme. In 1996, it proposed the adjustment of the VMSZ and the VMDK ideas (Wágner, 2018, pp. 383–384), and, as mentioned above, by 1999 it was firmly in support of the PHNC constitution.

> Hungary handled minority questions as an international issue: owing to the 'Antal doctrine', Hungary declared itself to be the defence authority in issues of Hungarians living outside the borders, while treating the Hungarian parties in neighbouring states as factors in international relations (Bárdi, 2000).

Although Hungary did not negotiate with the Serbian/Yugoslav Government on behalf (or instead) of the Hungarian minority parties about the Vojvodina Hungarian autonomy ambitions, it was well known to all the participants that Hungary supported the VMDK's three-pillar autonomy programme (Vékás, 2000). However, in wartime, it was logical not to rely publicly on Hungary's direct assistance on sensitive issues such as autonomy, because it could generate fear of revisionism. In the 1990s, Hungary and Serbia (Yugoslavia) did not discuss these questions in depth. By the start of the 2000s, the political climate had changed, so the two countries could at last go into details about the status of nationalities. They signed a bilateral agreement in the field of mutual minority protection in 2003.

For Hungary, European integration was the number one political priority, but, in certain cases, that was incompatible with encouraging autonomy ambitions in Serbia. 'They wanted to act upon the European Union and did not want to take a risk with supporting the claims of Hungarians living outside the borders' (Losoncz & Tóth, 2018a, p. 223). By then, the manoeuvring space for Hungarian diplomacy had become quite narrow, especially due to Hungary's military assistance, in the form of allowing unlimited use of its airspace, during the NATO bombing of Yugoslavia. Although Hungary had brought the Vojvodina Hungarians to the attention of the NATO countries, and the country's special status derived from its reasonably good neighbourly relations with Serbia, Vojvodina Hungarians were hard hit by Hungary's involvement in the NATO bombing campaign (Szilágyi, 2004, p. 17).

In 1993, the Hungarian Parliament adopted Act LXXVII on the rights of national and ethnic minorities. Although those responsible for drafting the Act relied on the characteristics of the domestic nationalities, rather than those of Hungarians living outside the country's borders, the provisions on ethnic self-governance were implicitly aimed at demonstrating positive legislative practice in the field of minority rights to other countries in the region. The Act should have remained within the international requirements, but it was also required to 'step

over the minimum of these norms, especially concerning the extent of material help and level of guaranteed collective rights' (Dobos, 2009, p. 293). As the Serbian Minority Protection Act was adopted almost a decade later, the Hungarian manoeuvring – at least in the Serbian-Hungarian context – proved unsuccessful. However, it was necessary to emphasise that the ethnic problems in Vojvodina were not inspired by kinstate political opportunism and that their solution depended primarily on domestic circumstances (T. Várady, personal communication, May 7, 1994).

Due to the possible negative consequences of Hungary's direct inclusion in Serbia's internal affairs, Hungary acted primarily in the field of paradiplomacy by: 1) providing professional help in drafting the autonomy concepts, 2) contributing to resolving the disputes between the Hungarian minority parties in Serbia, 3) setting up a support system to provide material help in the preservation of Hungarian heritage and cultural life outside the borders, 4) keeping the international community informed and, when necessary, providing mediation support.

The role of the international community, with special regard to the Vojvodina Hungarian autonomy programmes

> The issue of autonomy was characterised by a special ambivalence. For the Serbian political elite, it appeared too huge a security risk indicating an explicit countermove, and for the international community it was too trifling to justify intervention. At home it showed to be too much, abroad too slight (Tóth, 2018, p. 23).

However, that statement is only partially correct. First, due to Yugoslav war, the world was mainly focused on peacemaking. The topic of ethnic autonomy could appear only within that context, especially in the first half of the 1990s, and only to the extent that it could make a successful contribution to stabilising relations in the region. However, a few years later, it was obvious to everybody that autonomy was seen only through the prism of settling the Kosovo case, and nationalities living in Serbia had to find their place within the formula designed primarily for the Kosovo province. It was actually a bottom-up approach starting with situation recognition by minority leaders, mostly from Vojvodina. Second, minority collective rights at that time did not have established standards and there were no ready-made solutions. Third, autonomy is an internal issue; no international documents or other acts regulate the right of regions or regional minorities regarding internal self-determination (Hannikanien, 1998, p. 84). Of course, autonomy may be characterised by international or treaty-based entrenchment, as in the Åland Islands or South Tyrol cases (Suksi, 2011, pp. 94–95), but such entrenchment is not a requirement for a working autonomy (and that is more than true in the case of NTA).

At the first European conference on minorities and democracy, held in Subotica (Serbia) in 1992, Prof. Várady presented a list of rights for minorities that seemed to be the first such written statement of ethnic standards in the Balkans. Central to those stated rights were two essential elements: the right to be different, and the right to self-organisation.

> Minorities are both the reason and the excuse for the war. But at the same time, peace is conditioned on an agreement on the rights of persons being in minority position and the adequate mechanisms for the enforcement of those rights ("Mir na Balkanu i nacionalne manjine, Pravo na opstanak," 1992, p. 8).

It is understandable therefore that the (ethnic) minority question had always appeared in peace plans. On the other side, the international community's proposals were exclusively based on territorial solutions: division of territories, municipalities with special status, etc. Instead of finding a universal conception including every minority in Yugoslavia, the proposals concentrated on certain ethnic groups. However, that did not stop the Hungarian minority parties from relying on international ideas in their autonomy programmes.

The VMDK was the first political organisation representing nationalities in Yugoslavia to be invited to the Peace Conference held in the Hague from 7 September to 18 October 1991. Although the participants had no significant differences over how to settle the status of nationalities (VMDK Elnöksége, 1991), that was considered a marginal issue on the agenda (Rupel, 2013, p. 354). The Carrington-Cutileiro Plan presented in the Hague had a huge impact on the VMDK's concept of Hungarian territorial autonomy. The plan was designed to prevent the Bosnian war by proposing ethnic power-sharing at all administrative levels of governance and the devolution of central competences to local ethnic communities. It urged a kind of territorial autonomy for the Yugoslav *nations* in Bosnia (Serbs, Croats and Bosnians), but not for nationalities. However, the VMDK wanted to apply a similar formula for Hungarians in Vojvodina: 'We want nothing but the same that Serbs have in Croatia or in any other independent state' (VMDK, 1992).

At a press conference in Budapest on 2 December 1994, the VMDK leaders told of their meeting with Geert Ahrens, a member of the working group on minorities within the Yugoslav Peace Conference, who had reconfirmed that Hungarian and Albanian autonomy ambitions should be handled in a similar way (Wágner, 2018, p. 377). Common settlement plans would not however give positive results in the long term, because the situations, motivations and goals of the two ethic groups were totally different. Furthermore, the other minority groups, including Hungarians, did not aspire to having their own states. As was stated by Alush Gashi, a member of the human rights council in Kosovo, during the hearing before the US Helsinki Commission held in Washington on 7 May 1994, 'it would be absurd that after the long years of police state rule any kind of autonomy would satisfy the Albanian population' ("Várady Tibor az amerikai kongresszusban tanúskodott: Lappangó válsággócok," 1994).

In 1997, the VMSZ's draft agreement on a political framework for Vojvodina's self-governance was based on the plan for the Kosovar Albanian status settlement proposed by Christopher Hill, the US ambassador to Macedonia. According to the Hill Plan, nationalities living in Kosovo would elect their national council through democratic elections to administer the affairs of the respective ethnic group (the plan did not specify in which social fields national councils would have competences). Under that NTA, representatives of each ethnic group in Kosovo would get places on federal bodies, nationalities could apply their own procedural provisions in some court proceedings, Kosovo would regain its former competences, etc. (Krieger, 2001, pp. 155–156). Brian Donnelly, UK ambassador to Serbia, confirmed that some of the Hill Plan provisions could also be applicable in the case of Vojvodina Hungarians (Wágner, 2018, p. 391).

Although international organisations implicitly expressed a requirement to demonstrate results in connection with human and minority rights, Serbia was completely free to decide which steps it would take to stabilise ethnic relations within its borders. The only explicit demand was to ratify the Framework Convention for the Protection of National Minorities, of which Article 15 could serve as an appropriate legal basis for the establishment of ethnic self-governance. The Framework Convention finally entered into force in Serbia (which was

still part of the Federal Republic of Yugoslavia (FRY) at that time) on 1 September 2001. It had an important impact on the content of the federal Minority Protection Act adopted a year later. On the other side, international organisations are not independent structures; their activities are mainly determined and formed by the political objectives of their members (states, regions, etc.). In a private letter to Zsolt Németh regarding his appointment as state secretary in 1998, Prof. Várady noted that international players dealing with the Yugoslav situation were mentioning Vojvodina, including Hungarians, ever less frequently amongst the problems to be solved (personal communication). The Contact Group's[3] momentary interest in Kosovo might have provided a chance for Vojvodina, but neither the Contact Group nor the OECD planned to apply the proposals made for Kosovar Albanians automatically to any other minorities. However, it was evident that 'the Albanian issue could not be effectively resolved (within Yugoslavia) without putting on the table a more general regulation of minority rights in Serbia, or Yugoslavia' (T. Várady, personal communication, July 10, 1998). It was argued that it was still not too late to solve the problems of minorities living in Vojvodina. The second argument was that finding a positive, minority-friendly solution in Serbia might have a positive effect on other, more widespread, interethnic conflicts.

In fact, the 1990s' anti-minority atmosphere and unreasonable centralisation, aimed purely at securing the ethnic majority's absolute role at every level of governance, were primarily motivated by relations in Kosovo (and not in Vojvodina) ("Dr Várady Tibor nyilatkozata a Magyar Szónak a Helsinki-bizottság előtt tett beszámolójáról," 1994). The NATO military operation (24 March – 10 June 1999) against the FRY also drew international attention to the other minorities. As the animosity between Serbs and Albanians intensified in Kosovo, threats, intimidation and even violent acts multiplied in other parts of the country. An overdue international response came in the form of the Serbia Democratization Act (1999), as in which the US Congress expressed its expectations that:

> the President should call on the NATO allies of the United States, during any negotiation on the future status of Kosovo, also to pay substantial attention to establishing satisfactory guarantees for the rights of the ethnic Hungarian community of Vojvodina, and of other ethnic minorities in the province, including consulting with elected leaders about their proposal for self-administration (Sec. 502. (b) 4).

Although the bill was passed without any reaction in Serbian internal politics and the media, the PHNC was constituted somewhere in the background of that Act (Wágner, 2018, p. 394).

Opposition to Milošević versus minority-friendly politics: the Serbian scene

The question arises here as to whether the Serbian government and/or intellectuals had their own proposal regarding the nationalities issue. In October 1992, the federal Yugoslav government formed an expert group to provide a professional basis for the development of a minority

[3] The Contact Group is an informal grouping of the USA, the UK, France, Germany, Italy and Russia, created in response to the war and crisis in Bosnia, and the settlement of Kosovo's political status.

rights act. The group was mostly made up of members of an NGO, the Forum for Ethnic Relations (FER) (in Serbian Forum za etničke odnose). Although the FER had drafted a law, political changes in the central governance meant that it was not discussed in parliament. Savović Margit, federal minister in the Kontić government, explained that the proposed bill was rejected on the basis that its provisions on the right of nationalities to self-organisation might impose a constitution for ethnic self-governance in Serbia (Janjić, 2002, pp. 3–4). Nonetheless, the document (in a modified version) remained an important reference point in various forums, despite the national minority councils finally being formulated along different lines (see Thesis for a Constitutional Law of the Republic of Serbia on Freedoms and Rights of National Minority Communities and Persons Belonging to Them, ch. 4).

It had been clear from the very beginning that there was no willingness to continue with tradition and implement the former minority protection model applied during the Tito era. At the US Helsinki Commission hearing, Prof. Várady argued that autonomy was the only solution for minorities because, although the line between good and bad in the socialist republic period had been party/political affiliation, ethnicity had taken over that role in the 1990s ("Serbian human rights abuses increase in minority regions," 1994). As an example, he mentioned that minorities (Hungarians, Albanians and others in Serbia) should have the right to administer their schools. He also argued that those schools would be financed from resources collected from the public through taxation, as the Serbian majority and the minorities, both Hungarian and Albanian, paid taxes (*Hearing before the Commission on Security and Cooperation in Europe*, 1994, p. 7). Várady's concept was to put the minority issue on the table in such a way that would increase the international community's support for Serbia while also helping the Serb diaspora (Losoncz & Tóth, 2018b, p. 251). However, the Serbian government did not really recognise 'the parallelism between ours amongst theirs, and theirs among ours' ("Várady Tibor az amerikai kongresszusban tanúskodott: Lappangó válsággócok," 1994). Although Serbian intellectuals understood the importance of reciprocity, such argumentation had appeared only in informal talks.

In the 1990s, especially in the first half of the decade, Serbian leaders were focused on regaining lost territories, with NTA not really being one of their political objectives. NTA was primarily part of the internal and foreign communications of Vojvodina Hungarian politics. Of course, behind the scenes, NTA was subject to intellectual discourses and principal debates. For example, at an international conference on the situation of minorities in the FRY organised by the Serbian Academy of Sciences and Arts (11–13 January 1995), most of participants recognised the right of nationalities to cultural autonomy (Wágner, 2018, p. 387). However, NTA in Serbia was essentially a minority-led, more precisely, a Hungarian-led, initiative: the VMDK was the first organisation to publish an autonomy programme and represent Hungarian interests, in contrast with the Serbian nation-building ambitions (Bárdi, 2000). As part of the governing coalition after the fall of the Milošević regime, the VMSZ succeeded in putting NTA down on paper by cooperating with progressive political and intellectual forces within the Democratic Opposition of Serbia (DOS) alliance of political parties when the then VMSZ president, József Kasza, became deputy prime minister in the Đindić government (Beretka, 2019, p. 52).

Article 19 of the Minority Protection Act

The Project on Ethnic Relations (PER), a US-based international NGO, had managed to bring together maverick political leaders and the most influential representatives from ethnic and majority groups in Serbia to facilitate dialogue during preparations to remove the Milošević regime (and immediately after that). Due to its excellent cooperation with the White House, the U. S. Department of State, the Pentagon, the Council of Europe, the OECD and the EU, PER's support for the idea of Hungarian autonomy was of particular importance. For example, in a private email dated 3 July 1996, the then PER president, Allen Kassof, asked Prof. Várady to inform him about the Vojvodina Hungarian proposals in order to include them in PER's plans.

The PER organised three roundtables on Vojvodina interethnic relations. The main topics at the Vienna meeting on 23–25 September 1999 were the identified needs and the possibility of fulfilling them. The VMSZ presented its autonomy programme from 1997 and introduced the Provisional Hungarian National Council (PER, 2000b, pp. 10–11). Although the opposition (representing the potential next Serbian government) was ready for cooperation with the nationalities, to avoid another NATO mission against the country, they did not really have a solid programme of policies for addressing minority issues (PER, 2000b, p. 9).

The participants at the subsequent roundtable (leaders of Vojvodina Hungarians, Romanians and the maverick Serbian political parties) held in Athens on 13–15 February 2000 agreed that the democratic opposition in Serbia had to respect that: 1) the autonomy of Vojvodina corresponded to the interests of the democratisation and decentralisation of Serbia, and also represented the most suitable framework for the resolution of all issues pertaining to the national communities, 2) it was necessary to develop modern institutional guarantees for the rights of the national communities in Vojvodina, including the right of national communities to self-organisation for the purpose of preserving and developing their identities. In accordance with that, the national communities could form national councils to decide, unilaterally or with state bodies, on the issues of education, culture and the media. Furthermore, the roundtable's final declarations dealt with the financial aspects of the national councils' activities and the nationalities' linguistic rights, which, it was argued, should not be less than those in Vojvodina in the 1970s and 1980s (PER, 2000a).

The third and last roundtable was held in Palic (Serbia) on 18 February 2001. According to the Communiqué, 'all participants hope that steps towards practical implementation of the Athens recommendations will be considered as soon as possible. They recognised that there are many other urgent and very serious problems confronting the country, but they need not delay consideration and implementation of the Athens recommendations' (PER, 2001). A year later, the federal parliament of Yugoslavia adopted the Minority Protection Act to establish the first legal basis (Law on Protection of Rights and Freedoms of National Minorities, art. 19) for the constitution of national minority councils.

> …the Minority Protection Act was born under foreign pressure, on one side, and in virtue of the intentions of the Serbian political forces, on the other side, but some of its material elements (especially those that have grounded autonomy) were exclusively the result of situation recognition and utilisation of that situation by Hungarian politics (Korhecz, 2009, p. 53).

The Vojvodina Hungarian community was represented by six experts as members of the working group preparing the draft law, despite some other nationalities not having any representatives. The working group was free to develop the draft as it saw fit, especially because the minister responsible did not express any specific content expectations. Max van der Stoel, the OECD High Commissioner on National Minorities, was sometimes present, but on other occasions he only sent his notes. It can be concluded that the international community participated mainly as a passive observer to the process. The work progressed without serious disputes, except regarding how to define the term *national minority*. For Article 19, the working group accepted the Hungarian proposals. Tamás Korhecz, the then provincial secretary for nationalities in Vojvodina, made a crucial contribution to this success by supporting the Hungarian version of NTA not only as a politician but also as a legal scientist. As autonomy arrangements guaranteed for nationalities had already existed in the region (Hungary and Slovenia), the working group did not have to invent a completely new system, so any objections could be deflected. Although Article 19 did not contain clear-cut answers regarding the councils' competences, finances or constitution, it did regulate collective minority rights in Yugoslavia (Serbia) for the very first time. Its content was further detailed only seven years later by the National Minority Councils Act. But that is another story.

Conclusion

The adoption of the Minority Protection Act marked the end of an era, with the consequences of a broad decade between 1990 and 2002, characterised by political arguments and reconciliations, taking legal form in Article 19 of that Act.

Although the goal of this paper was to respond to the question of who was (is) primarily responsible for the initial formation of national minority councils in Serbia and who held the key position in the overall process, the paper cannot provide a definitive answer. In reality, every (f)actor examined in the paper has influenced the emergence of NTA in Serbia, just not in the same way. First, the 1990s were marked by peace-reaching and peacekeeping measures, with autonomy only occupying a secondary place both in internal and external politics of the country, even in the international community. Second, political parties, whether minority or Serbian (majority) organisations, have supported autonomy ideas in accordance with the goal of political survival. Third, Hungary, as kinstate, was overly cautious regarding direct and visible assistance to the Vojvodina Hungarian autonomy movements, especially in the 1990s. Fourth, although the Vojvodina Hungarians had positive relationships with other minority parties (Muslims in Sandžak, Croats in Bačka, Albanians), there was no explicit cooperation regarding autonomy-building: other minorities knew that any positive Hungarian result would also be of benefit to them, but they did not want to take the risk with their own autonomy programmes (Losoncz & Tóth, 2018a, p. 219).

Notwithstanding the numerous question marks concerning the history of NTA in Serbia, the examined period serves to throw new light on the issue of ethnic autonomy in the context of the Balkans war. The international community became acquainted with the minority dimension of Yugoslav problems, and Hungarian political parties formulated their requirements in detail. After the fall of the Milošević regime, Serbian intellectuals taking up positions in the new government were open-minded about providing official support for minority claims in

order to be appreciated by the West, but the first impulse to create a national minority council, then the further initiatives to make it real, came from the Vojvodina Hungarians.

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Ljubica Djordjević

An outline for systematic and evidence-based monitoring of the functioning of the National Minority Councils in Serbia

Introduction

Minority cultural autonomy in Serbia is facilitated through National Minority Councils (NMCs), the *sui generis* institutions with competences in the four areas of culture, education, the media and the official use of minority languages. As the central actors in representing minority interests, NMCs have been subjected to various analyses pertinent to specific issues such as their confusing legal status (Beretka, 2020), problematic election processes and the role of political parties in them (Bašić & Pajvančić, 2015), their competences and the question of whether those are sufficient for autonomy or simply constitute a consultative mechanism (Korhecz, 2015b), transparency of the work (Centre for Regionalism [CfR], 2014), youth participation (Centre for Free Elections and Democracy [CeSID], 2019) and gender equality (Provincial Ombudsman, n.d.). What is missing, however, is a holistic approach with regular and systematic monitoring of NMCs functioning (valuable attempts to evaluate NMC include, for example, CfR, 2012; Forum for Ethnic Relations, 2015; Provincial Ombudsman, 2014).

Against that background, this paper offers an outline for comprehensive monitoring of NMCs. Five broader areas have been identified as pertinent to NMC functioning and around which monitoring can be structured: composition and internal organisation, competences, financing, cooperation/networks, and transparency and accountability. Those five areas are further divided into more specific subcategories, for which quantitative and qualitative indicators have been developed.

Composition and internal organisation

NMC structure and number of members

Article 9 of the National Minority Councils Act (NMC Law) stipulates that the number of council members depends on the demographic size of the national minority represented: An NMC can have 15, 19, 23, 29 or 35 members. The respective size indicates a council's human capacities for performing its tasks and can thus affect its internal structure and institutional capacity.

NMC members are democratically elected from candidate lists filed for (direct or indirect) elections. Such elections are heavily politicised (Bašić & Pajvančić, 2015; CeSID, 2018; Provincial Ombudsman, 2018) and each NMC's functioning is strongly influenced by its

'political' structure and power relations. This is relevant both for their representativeness and democratic decision-making, for which reason the number of candidate lists represented in an NMC serves as a valuable indicator.

Three further parameters are also relevant for NMC representativeness: gender, age and regional distribution of seats. Gender balance is underpinned by the legal provision that every fourth candidate on a list be a person of less-represented sex (in practice, women; Articles 72.5 and 109.5). However, this minimum standard is not a full guarantee of gender balance because, in the case of vacancy, the seat is allocated to the next candidate on the list, regardless of their gender (Article 41.6). Age is also a relevant parameter, especially with regard to the common observation that NMCs are not sufficiently age balanced and that more effort is needed to attract younger people into them (CeSID, 2019). As NMCs are elected as centralised bodies, people belonging to the national minority might live dispersed across the country or the 'traditional area', so local/regional representation of NMC members is also relevant. To mitigate the risk of centralisation, a more regionally/locally diverse representation within an NMC is desirable.

NMCs are conceptualised as democratic institutions and membership is not preconditioned on professional requirements. Although that is good from the democratic character and representativeness perspectives, the specifics of NMC roles and tasks require members to be familiar with the core issues of minority protection and the very concept of NMCs. Members' professional backgrounds can thus be relevant for capacity and performance aspects. That does however raise questions about NMC members' professional affiliations and the possible impact on their engagement. That is especially true for members elected or appointed to state, provincial or local bodies which, amongst other issues, decide on questions relevant to the work of NMCs (Article 7a.2). The possibility of such remit overlaps can indeed be perceived as a conflict of interests or can lead to 'influential' members having an imbalanced impact on NMC functioning. However, it is also the case that members with such dual roles can contribute to empowering the NCM and increasing both its visibility and impact. A more controversial question relates to political party affiliations, especially in the capacity of party officials. The politicisation of NMCs has been strongly criticised, as has the extensive influence of political parties (both minority and mainstream) on their functioning (see, for instance, Bašić & Pajvančić, 2015). As membership of political parties does not preclude NMC membership (Article 7a.1), party members can participate in NMC elections. That generally open and democratic approach can give rise to tensions and difficulties in NMC functioning when political life becomes polarised and political parties follow their inclination to seek control over areas which should be outside the sphere of party political influence.

Checklist
• Number of NMC members
• Number of candidate lists represented in the NMC (compared with the number of lists competing in the elections), with shares of total seats held
• NMC gender ratio
• NMC age ratio (35+)
• NMC regional distribution
• NMC members' professional affiliations
• NMC members' political party affiliations (member/official)

Institutional framework

Article 7 of NMC Law outlines the NMC institutional framework covering the president, the executive board and four 'thematic' committees (education, culture, information and official use of the minority language). An NMC elects its president and executive board from amongst its members (Article 7, paras. 3 and 4) by absolute majority vote (Article 8.3). NMC Law addresses potential conflicts of interest and stipulates that those NMC officials cannot be political party officials nor hold elected or appointed positions within state, provincial or local bodies which decide upon NMC-pertinent issues (Article 7a, paras. 1 and 2). The four 'thematic' committees are conceptualised more as advisory bodies established to provide 'professional opinions, suggestions and analyses for the NMC' (Article 7.8). Such committees are mixed bodies, as people who are not NMC members can be elected to them (Article 7.8).

The NMC Law stipulations regarding institutional structures do not address whether the described setup is final or NMCs have the legal possibility to establish other internal bodies. The current wording of Article 7, in conjunction with the 2014 amendments removing the provision (previously Article 7.2) that NMCs could use their statutes to establish consultative and other bodies, indicates that the set institutional structure is final. However, the principle of organisational autonomy would suggest that NMCs can establish other bodies beyond the (obligatory) set structure, as indicated by the Article 6.5 (point 6) reference to 'other working bodies' of the NMC. In practice, NMCs use that option to establish bodies beyond the standardised setup.

The parameters explained above can be used for assessing an NMC's institutional structure.

	Checklist
NMC president	• Elected by the votes from one or more lists within the NMC • Male/female • 35+ or not • Professional affiliation • Political party affiliation • Local/regional background
Executive board	• Number of members • One or more NMC list represented • Gender ratio • Age structure (35+) • Professional affiliation • Political party affiliation • Local/regional distribution
Thematic committees	• Number of members • Internal/external members • NMC list representation • Membership of more than one committee • Gender ratio • Age structure (35+) • Professional affiliation • Political party affiliation (member/official) • Local/regional distribution
Working bodies	• Number of members • Representation • Membership structure (see above)

Seat and regional offices

Under NMC Law, each council is free to decide where it sits (Article 6.5, point 3). Due to asymmetric decentralisation in the Republic of Serbia and the competences held be the Autonomous Province of Vojvodina (AP Vojvodina) pertinent to national minority protection, where an NMC establishes its seat can have an important impact on its functioning. NMCs sitting on the territory of the AP Vojvodina enjoy the benefits of a more diversity-friendly environment and additional support from the provincial authorities. It is not surprising then that 17 NMCs (out of 23) currently have their seats in Vojvodina.

The NMC system rests on the principle of personal non-territorial representation, with the main feature being that NMCs are centralised bodies covering the whole territory of Serbia. Such an approach better suits national minorities concentrated in 'traditional areas', but it is rather inappropriate for national minorities living dispersed or in scattered or remote settlements (border areas, for instance). Strong arguments have been put forward for reforming the centralised system of NMCs to establish a decentralised, two-layer, system (Bašić, 2006), but no such measures have been implemented to date. Day-to-day practical realities have however pushed (some) NMCs into establishing regional offices within the existing system and thereby mitigating the effects of centralisation.

Checklist	
Seat of the NMC	• Vojvodina or central Serbia
Regional offices	• Number, structure and role

Administrative support and employees

The nature and scope of NMC activities require some form of secretarial support. In theory, NMC presidents, executive boards and thematic committees could deal with the secretarial needs, but larger NMCs, with sophisticated institutional setups and developed activities, need continuous and coordinated secretarial services. As a legal entity, an NMC can employ staff to perform such secretarial duties. NMC Law explicitly stipulates that NMC members can also be employed by the NMC (Article 7b.1). Regular labour regulations apply to such employment relationships (Article 7b.2).

Checklist
• Who provides secretarial support for the NMC (the existence of a secretariat)?
• Number of employees and their organisational structure (job classification) at the NMC

Institutional functioning

Proper functioning of an NMC requires continuous and coordinated engagement, as well as an active approach. Three aspects seem relevant here: (1) existence of appropriate frameworks, vision and strategies, (2) regular sessions and meetings, (3) and effective decision-making.

An NMC's statute forms the legal basis of all its functions (Article 6). NMCs can also adopt other general legal acts in line with their statutes (Article 6.2). They usually adopt rules of procedure through which they regulate their own modus operandi in more detail. Other general legal acts can be adopted to guide the performance of some specific activities (rules on scholarships, for instance). The further adoption of strategic documents and action plans can also help NMCs to better conduct their activities and underpin their approach. NMC Law

explicitly states two such strategies: Cultural Development Strategy (Article 18.1, point 2) and Media Development Strategy (Article 21.1, point 1).

Regular meetings are an important aspect of an efficient NMC. Several issues seem relevant here: a set frequency of regular sessions/meetings, the participation of non-members in those and the option of calling an extraordinary meeting (who can call it and when).

Decision-making is also an important aspect of NMC functioning. Majoritarian rule is the grounding principle for their decision-making processes: decisions are made by simple majority, with only exceptional cases requiring an absolute majority (Article 8). Majoritarian rule underpins NMC efficiency, but if not supported by institutional openness to dialogue and deliberation, it can lead to polarisation and internal conflicts. NMC politicisation often manifests itself in the strong division lines between the 'ruling group' and the 'opposition'. That is not only unnatural for a body of *cultural* autonomy but also unproductive, and it can significantly hamper an NMC's work (Bašić & Pajvančić, 2015). For that reason, an NMC should not turn into a 'voting machine', focused only on securing majority votes, but instead it should nourish constructive and open dialogue.

An important aspect of the decision-making process is the possibility for the executive board to make decisions on behalf of the NMC, on condition that such decisions are validated by the NMC at its next session (Article 7, paras. 6 and 7). That useful instrument underpins NMC efficiency and allows timely actions, but it should not lead to an extensive transfer of decision-making to the executive board. Questions have at times been raised regarding whether the four thematic committees can also make some decisions on behalf of the NMC, but the 2018 amendments to NMC Law made it clear that that is not possible (Article 7.8).

	Checklist
'Internal' legal framework and strategic planning	• Statute: amendment stability/frequency • Rules of Procedure • Other general legal acts • Strategies and action plans (Cultural Development Strategy, Media Development Strategy)
Sessions	• Regular NMC sessions stipulated • Option to summon extraordinary NMC session (actors and conditions) • Number of the NMC sessions per year (summoned and held) • Place of NMC sessions: only the NMC seat or also other locations • Participation of non-members in NMC sessions • NMC session attendance rates • Number of executive board meetings • Participation of non-members in executive board meeting • Regularity of NMC thematic committee and working body meetings
Decision-making	• Number of decisions adopted per NMC session and per year • Ratio of adopted decisions and rejected proposals • Ratio of the votes for NMC decisions • Executive board decision-making (issues, number of decisions and validation) • Decision-making process consultations and deliberations

Competences

NMCs are conceptualised as bodies of minority cultural autonomy, with competences in four areas: education, culture, information and the official use of the national minority's language and script. In essence, their competences are in autonomous decision-making and participating in the competent authorities' decision-making. However, something of a paradox arises regarding NMC powers. It has often been argued that the autonomous powers are so narrow that NMCs are in fact consultative bodies lacking the genuine autonomous decision-making essential for minority autonomy. The counterargument is that the concept of NMCs and their powers are tailored to big and institutionalised national minorities, whereas small, dispersed or new minorities can barely perform the tasks envisaged in NMC Law (Korhecz, 2015a). In effect, each national minority's specific context has a significant impact on the NMC's performance and its capacity to wield the powers vested in it. That leads to a two-track (or even multiple-track) system, depending on whether there are minority educational or cultural institutions, minority media, or the national minority's language is in official use at the municipal level.

Education

Education is the core area of NMC activity, not only because the list of powers granted by NMC Law is most extensive in this area (compared to the three other areas) but also because, in practice, NMCs put the most focus and interest into this area. Central competences in education are linked to the management of institutions, curricula and textbooks. Beyond those, NMCs have a range of additional 'channels' through which they can influence the competent authorities' educational policies. Most such powers are consultative in nature. NMCs can provide opinions and proposals, but decision-making power rests with the public/educational authorities (be they state, provincial or local). Although the authorities are not bound to accept NMC opinions or proposals, those are not without significance: first, the very concept calls for cooperation, and the authorities should seriously consider an NMC's stated position; second, opinions and proposals have an administrative (procedural) relevance, so making decisions without taking them into account can have repercussions for the validity of any subsequently adopted Acts.

The scope of NMC powers in the field of education depends on the development of an institutional structure for instruction in or of the minority language in question and, to some extent, on the official status of that language in the municipality. An NMC representing a national minority whose language is present in the educational system has more options for participating in decision-making than those not in that position. That should not however be used as an excuse for NMCs in that latter situation to be inactive; they should invest effort in gradually introducing instruction of/in their minority language into the educational system.

	Checklist
Background information: status of the minority language in the education system	• Minority language is present in the education system: a) as a special subject or b) as the language of instruction • Number and structure of educational institutions according to the above a) • Number and structure of educational institutions according to the above b) • Minority language is in official use at the municipal level (relevant for pupils' and students' institutions)
Minority educational institutions	• Number and structure of educational institutions (co-) founded by the NMC • Number and structure of educational institutions with the status of educational institutions of particular importance for the national minority (with the ratio of total and accepted proposals) • Number and structure of educational institutions for which the founder (state, province or municipality) has fully or partly delegated funding rights to the NMC
Participation in institution management	• Total number and acceptance ratio of opinions provided on candidates for management boards or school boards (by type of educational institution) • Total number and acceptance ratio of opinions provided on candidates for the director of institutions (by type of educational institution) • Number of proposals for members of management boards or school boards (by structure of institution) • Appointed representative at the National Council for Higher Education
Curricula and textbooks	• The NMC has: • proposed the basics of the curricula for the content expressing specific features of the national minority (especially history, music and art) • proposed curricula for the language of the national minority and the language (or vernacular) with elements of national culture • proposed measures and programmes for pupils' and students' institutions regarding affirmation of interethnic tolerance and multiculturalism • provided opinions on the curricula for Serbian language studied as a non-native language • provided opinions on the curricula in educational institutions of particular importance for the national minority • given ex ante approval for textbook manuscripts and/or teaching materials

	Checklist
Miscellaneous	• The NMC has: • participated in the appointment of the joint NMCs' representative on the National Education Council • appointed its representative who can participate (without a voting right) in National Education Council sessions • proposed teacher training abroad • proposed student competitions abroad • provided opinions on the network of educational institutions • provided opinions on the establishing of a class in the language of national minority for fewer than 15 students • provided opinions on the number of students to be enrolled in secondary school in the minority language or for prequalification or specialisation programmes • provided opinions on the distribution of places in pupils' and students' institutions • provided opinions on the distribution of budgetary funds (central, provincial and local) to educational institutions and associations • established a scholarship scheme • developed techniques for participation in monitoring and improving the quality of adult education in the minority language
NMC impact (core issues)	• Increased number of institutions offering instruction in/of the minority language • Increased number of students attending instruction in/of the minority language • Improved quality of curricula • Increased number and improved quality of textbooks

Culture

Powers in the field of culture partly resemble those in education. Although the culture-related powers are smaller in scope, they are in some instances 'more autonomous' than those in education. The cultural influence is not as limited by a national minority's 'institutional status', so it proves to be a desirable area for action, especially for small or newly established NMCs. That attractiveness of culture as an easy-going area should not however turn the NMC into simply a folkloristic cultural facilitator. To some extent, adopting that approach could contribute to improved visibility and promotion, but NMC activities should not be restricted to the cultural sphere, nor can an NMC demonstrate its active approach purely through cultural manifestations. Culture is an important segment of activity, but it is only one of the four pillars of minority cultural autonomy.

The core culture-related powers vested in NMCs pertain to the management of cultural institutions and the protection of cultural heritage.

	Checklist
Minority cultural institutions	• Number and structure of cultural institutions (co-)founded by the NMC • Number and structure of cultural institutions with the status of institutions of particular importance for the national minority (with the ratio of total and accepted proposals) • Number and structure of cultural institutions for which the founder (state, province or municipality) has fully or partly delegated funding rights to the NMC
Participation in institution management	• The NMC has: • proposed one member of the management board • provided opinions on candidates for management board membership • provided opinions on candidates for directorships of institutions
Protection of cultural heritage	• The NMC has: • determined cultural institutions and manifestations of special concern for the national minority • determined movable and immovable cultural goods of particular importance • initiated procedures for the legal protection of cultural goods • initiated measures for the protection or reconstruction of cultural goods • participated in the preparation of spatial and urban development plants • proposed suspension of the implementation of spatial and urban development plans • provided opinions on the dislocation of immovable cultural goods
Miscellaneous	• The NMC has: • provided opinions on the establishment or dissolution of libraries • proposed distribution of budgetary funds (central, provincial and local) to cultural institutions, manifestations and associations • participated in the joint nomination of two candidates for National Council for Culture membership
NMC impact (core issues)	• Increased number of cultural institutions presenting the national minority's cultural heritage • Increased number of 'minority' cultural goods that enjoy statutory protection • Increased number of reconstructed 'minority' cultural goods

Media

The NMC competences pertinent to the media are rather exclusive and, in effect, applicable only to those NMCs with the financial and organisational capacity to establish a media institution/company, exercise foundation rights over media based on transfer from the public authorities (such transfers are no longer possible but kept as status quo) and represent a minority whose language is used on public broadcasting service (RTS and RTV) programmes.

	Checklist
Minority media	• The NMC has founded media outlets • The NMC exercises transferred foundation rights over media outlet(s) • RTS and/or RTV provides programming in the minority language

Participation in public broadcasting services	• The NMC has: • made proposals or suggestions pertinent to programmes in minority languages • provided opinions on the Programme Council report on programmes in minority languages • provided opinions on candidates for minority programming editors in chief
Miscellaneous	• The NMC has: • proposed distribution of project (public) funds for minority programmes • participated in the nomination procedure for one member of the Regulatory Authority for Electronic Media
NMC impact	• The number/quality of media outlets and programmes in the minority language has increased/improved

Official use of the minority language

NMC competences in this area are preconditioned on the minority language enjoying the status of an official language at the municipal level. As such status is generally linked to the 15% demographic threshold, such competences are in reality reserved for national minorities who live in concentrated areas.

	Checklist
Context	• Number of municipalities in which the minority language is in official use
The minority language is in official use	• The NMC has: • determined traditional names and geographic indications • proposed posting geographic signs in the minority language • proposed changes to street names • provided opinions on the change of street names
The minority language is not in official use	• The NMC has proposed official status for the minority language
Miscellaneous	• The NMC has: • proposed control over the official use of the minority language • initiated publication of core state laws in the minority language • supported translation of core state laws into the minority language • implemented measures and activities for improvement of the official use of the minority language
NMC impact	• Increased number of municipalities in which the minority language is in official use • Place names and geographic signs in the minority language are properly placed • The minority (language) is visible in the municipality (street names and similar) • Core legal texts are available in the minority language

General (overarching) powers

NMC Law has opened channels for NMCs to participate in the development of laws and policies, to monitor implementation of regulations pertinent to the four areas and to propose remedies in specific cases, all of which underpins their position as the core minority actor.

	Checklist
Participation in the development of laws and policies	• The NMC has: • initiated adoption of a law or other regulation in the four areas • participated in drafting laws and regulations in the four areas • submitted proposals, initiatives or opinions to the state or provincial authorities • participated in drafting relevant international agreements (multilateral or with the kin-state) • proposed regulations and special measures underpinning full equality (affirmative action)
Monitoring minority laws and policies	• The NMC has: • developed mechanisms for monitoring the status of the national minority • engaged in shadow reporting (to international bodies) • participated in state reporting to international monitoring bodies • participated in the work of interstate bodies arising from bilateral agreements
Remedies	• The NMC has: • initiated administrative litigation against acts pertinent to its functioning • initiated administrative remedies against acts adopted without its opinion or proposal • submitted an initiative for the revocation of subsidiary regulations conflicting with NMC Law • recommended the constitutional review of a legal act • filed a complaint before the Ombudsman (state, provincial or local) or the Equality Commissioner

Financing

As a sophisticated institutional infrastructure and diversity of actions presuppose adequate financial means, NMC functioning depends considerably on financial capacity. NMCs have three main ways in which to finance themselves: public budgets, donations and income (Article 114). Allocations from public budgets (state, provincial or local) are the core source of financing for the vast majority of NMCs. Access to those funds depends on the extent of the minority institutional infrastructure (state budget), whether the activity falls within the competence of the AP Vojvodina (provincial budget), the minority's demographic strength and the minority language's official status at the municipal level (local budgets). Once again, the system favours bigger or stronger institutionalised minorities and Vojvodina-based NMCs. Kin-state support can also play an important role, but it can have the effect of putting NMCs in unequal positions. Project financing can serve as additional sources of funds. Finally, as NMCs can hold assets, financial portfolios can be developed. On the expenditure side, the central issue is the need to maintain an acceptable ratio between administrative and programme costs so that the NMC budget is not overburdened by administrative aspects to the detriment of programme activities. The legal cap in that regard is 50% (Article 113.4).

	Checklist
Incomes	• NMC's total annual budget • NMC has assets • State budget funding • Provincial budget funding • Local budget funding (with the number of municipalities) • Kin-state financial support • Project funding (number of approved projects and number of project applications; structure of founders) • Other sources
Expenditures	• Administrative costs (total amount and structure) • Programme costs (total amount and structure: programmes, projects and institutions)
NMC impact	• Undisturbed functioning of the NMC • Provided financial support for a range of minority activities

Cooperation/Networks

Cooperation lies at the very heart of the NMC concept. Outreach and impact largely depend on networks and interactions with various stakeholders. The most prominent of those is clearly the public authorities, as they make the final decisions in most instances pertinent to NMCs and their work. Networking within the minority community is also vital, both with minority institutions whose activities overlap with the NMC's direct competences and with the wider minority community, including the relevant stakeholders therein (political parties, civil or professional associations, cultural groups, etc.). Networking needs to go beyond ethnic lines however to build links with other national minorities, other NMCs and the national majority. Finally, the international aspect should not be neglected, as networking can go beyond national borders to develop cooperation with institutions and associations in the kin-state, minority associations in other states and with international organisations or associations.

	Checklist
Cooperation with public authorities	• State authorities (formats and impact) • Participation in the Council for National Minorities • Provincial authorities (formats and impact) • Local authorities (formats and impact) • Participation in the local Councils for Interethnic Relations
Cooperation within the minority community	• Educational and cultural institutions, media (formats and impact) • Other stakeholders (formats and impact)
Cooperation with other groups beyond ethnic lines	• Coordination of NMCs (impact) • Other minority organisations or associations beyond that coordination (stakeholders, formats and impact) • Majority community (stakeholders, formats and impact)
International cooperation	• Institutions and associations in the kin-state (stakeholders, formats and impact) • Minority associations in foreign states • International organisations and associations

Transparency and accountability

Transparency and accountability are important aspects of NMC functioning not only because they are democratically elected and minority representative bodies but also because they bear some public competences and are financed by public funds. Three channels exist for control over an NMC: democratic, legal (rule of law) and financial. Democratic control is vested first and foremost in the people of the national minority the NMC represents, but it goes beyond 'ethnic lines' and calls for general democratic accountability. On the second layer, NMCs and their activities are bound by and subject to the rule of law. Finally, NMC financial management is bound by financial regulations and subject to external audit.

	Checklist
Transparency and democratic control	• Sessions and meetings generally open to the public • Acts and documents available to the public (minority language and official language) • Annual activity report • Public hearings and consultations as regular practice • Website updated regularly; established and updated social media channels • Media briefings and coverage • Promotion of the NMC, its activities and benefits for the community • Decentralised approach and outreach to rural/remote areas • Transparency towards other communities (minority or majority)
Legality control	• The NMC statute or other general Act challenged before the Constitutional Court • The NMC general act challenged before the Administrative Court • An NMC individual act challenged • An NMC individual act revoked by the competent ministry
Financial control	• Financial plan and financial statement with the financial report • Quarterly report to the competent public spending unit • Annual financial external audit • Suspension of public budgetary funds

Conclusion

NMC functioning depends on various internal and external factors. The demographic size and geographic distribution of the minority it represents, the status of the minority language in education, the media and official communications, the degree of development of the minority institutional network, including the level of political organisation, and support from the kin-state are all crucial external determinants of NMC functioning. Of course, NMCs do not operate in an institutional vacuum, and their impact largely depends on the response of the public authorities, which ultimately hold the decision-making power in most situations. The general political and social climate also play important roles, so NMCs are not immune to politicisation, polarisation, authoritative decision-making or weak democratic control, all of which are present in Serbia. A weak economy and scarce resources have a negative impact on the financial capacity of NMCs, encourage 'ethno-business' and shift people's focus away from minority issues. The described context does not however mean that NMCs are passive

actors deprived of any impact. On the contrary, the impact of NMCs largely depends on some internal factors and the level of engagement: representativeness, pluralism, transparent deliberation and decision-making, active approach to competences, established networks, active fundraising and openness to both the minority community and wider society. Only with an active and thorough approach can an NMC bring change and benefits to the national minority it represents while also contributing to stable interethnic relations.

The purpose of monitoring is not to limit NMCs or their institutional autonomy, but rather to support them in identifying strengths and weaknesses with a view to developing their capacities. Monitoring should show the impact of internal and external factors on the functioning of the NMC and signal how those factors can be addressed. The central actor is thus the NMC itself, with its self-reflection and self-evaluation playing significant roles in monitoring. Civil society also has an important role to play and is an inevitable monitoring actor. Finally, public institutions with roles in protecting national minorities also need to engage in more systematic and evidence-based monitoring of NMC functions so that they can assess implementation and effectiveness of minority laws and policies, then make adequate changes if needed.

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Karolina Lendák Kabók

The National Council of the Hungarian National Minority's impact on education and social integration in Serbia[1]

Introduction

Vojvodina, the northern autonomous province in Serbia, is known for its multi-ethnicity, which has evolved, at times gradually and at other times suddenly, due to various historical events.[2] Vojvodina is not a territorial autonomy based on ethnicity but is a multi-ethnic region with a clear (and growing) Serbian majority (Székely & Horváth, 2014, p. 434). Its autonomy is largely geographic and socio-political. It is home to sizeable Hungarian (13 per cent, ~250,000), Slovak (2.6 per cent, ~50,000), Croatian (2.44 per cent, ~47,033) and Romanian (1.3 per cent, ~25,000) ethnic minority communities (Statistical Office of the Republic of Serbia, 2012).[3] Following Kymlicka's (2007) three general types of minority in Western democracies (indigenous, substate and immigrants), we define the national structure of the aforementioned ethnic minorities as substate 'national groups'. These national groups, or national minorities, are caught between two mutually antagonistic nationalisms – those of the internal national states in which they live and those of the external national homelands to which they belong through ethnonational affinity but not by legal citizenship (Brubaker, 1996, p. 5). Some minorities, including Hungarians, may have dual legal citizenship according to the simplified procedure of acquiring this status since 1 January 2011. In this sense, members of the Hungarian national minority may have both Serbian and Hungarian citizenship.[4]

In this 'triadic nexus' (Brubaker, 1996), members of the Hungarian ethnic minority are in a challenging position: most Hungarian nationals live in nation states inside the European Union (EU), while they are 'locked out' in Serbia, a non-EU state. The Serbian educational system enables young members of these ethnic minorities to complete their primary and secondary education in Hungarian. After secondary school, most students have to decide between continuing their studies in the predominantly Serbian-language higher education system in Serbia[5]

1 The author received partial financial support from the Provincial Secretariat for Education, Regulations, Administration and National Minorities – National Communities, Autonomous Province of Vojvodina, Serbia for the research, authorship and/or publication of this article

2 The territory of the Autonomous Province of Vojvodina was part of the Austro-Hungarian Empire before the Trianon Treaty in 1920.

3 Vojvodina is home to 25 different ethnicities in total; however, in this paper only the Hungarian ethnicity is discussed due to its considerable size and the availability of Hungarian-language content in schools.

4 The same right is ensured for those who speak Hungarian and have Hungarian ancestors born in Vojvodina before 1920, and during the Hungarian occupation of Bácska during the II. World War from 1941 until 1944.

5 There are opportunities for them to study in Hungarian at the Faculty of Philosophy, the Department for Hungarian Language and Literature the Teacher Training Faculty in the Hungarian Language in Subotica, the Academy of Arts, in a Hungarian group at the Department of Dramatic Arts and the Subotica Tech-College of Applied Sciences.

and continuing their studies in Hungarian in neighbouring/nearby EU states. If they choose to study in Serbia, they need to master the Serbian language as without a sufficient level of proficiency they will encounter a language barrier, making it difficult to participate in classes and examinations (Lendák-Kabók & Lendák, 2017). A recent study conducted to develop multilingual education in Vojvodina showed that ethnic minorities consider knowledge of their native language to be most important, followed by knowledge of the majority language. They assess their knowledge of their native language to be better than that of the Serbian majority language (Popov & Radović, 2015. In their struggle for better employment opportunities, higher salary and improved social status, approximately one-third of secondary school students from the analysed minorities decide to leave Serbia and study abroad, predominantly in Hungary (Takács, 2013). Public discourse in Serbia indicates that educational migration is not a unique characteristic of ethnic minority students in Vojvodina but that a few thousand students from Serbia opt to study abroad in Europe or the United States each year (Danas Online, 2021). However, Serbia lacks official data on the educational migration of its young people.

The brain drain of ethnic minority Hungarian students has been ongoing for several decades (Gábrity-Molnár, 2009). Meanwhile, the benefits reaped by Hungary from the arrival of qualified professionals with knowledge of Hungarian language and culture is not often recognised (Váradi, 2013, p. 97).

Previous research has identified that Hungarian national policy, with its associated instruments, is unable to fulfil its most important purpose, which is to safeguard the existence of an intellectual elite of the Hungarian minority community and help them sustain an adequate livelihood in their country of birth (Erőss et al., 2011, p. 4). In nationalising states, minorities may feel that they are living in a country/region that is structured and governed in favour of the majority and that their identity is under threat (Kemp, 2006, p. 111). For this reason, Hungarian minorities often choose to take advantage of their subordinate position as minority members in the nationalising state through educational migration that enables them to continue their studies in Hungary, which is a member of the EU (Lendák-Kabók, 2019). This act of educational migration to external national homelands or kin-states (Kemp, 2006), together with the ongoing problem of a low birth rate in Serbia, is causing the gradual decline of Hungarian minorities in their adopted country (Váradi, 2013). The goals of this paper are to study the educational policy of the NCHNM and the work of the Hungarian civil sector in empowering Hungarian higher education students and university teaching staff in Vojvodina. It also aims to analyse the reasons for educational migration, given that the migration of secondary school graduates has not been researched in detail since Hungary's accession to the EU. The research also shows the weak language competencies of Hungarian minority graduates in the majority language, which is partly a consequence of the state policy for learning Serbian.

Theoretical framework

Educational migration

The concept of educational migration implies that young people move from their homeland to another country in order to obtain a better education (Badikyan, 2011). They aspire to eventually achieve better career prospects, a higher salary, new professional experiences and contacts, motivating and interesting jobs and/or better training facilities (Stukalina et al.,

2018). Skill acquisition plays an important role at many stages of an individual's migration (Dustmann & Glitz, 2011). Some researchers argue that educational migration is unfavourable for the country of origin, as it produces a brain drain, which has economic and social impacts (Lien & Wang, 2005; Teferra, 2005; Tremblay, 2005). Others claim the opposite, highlighting the positive effects of brain circulation, which creates knowledge networks, enriching all involved parties (Özden & Schiff, 2006; Walker, 2010; Woolley et al., 2008).

Educational migration from Serbia to Hungary, particularly higher education, is one of the most significant types of migration, determined by both ethnic and economic factors (Takács et al., 2013, p. 78). Although the outcome of such transnational migration is considered to be open (resettlement, return, move to a third country, circulation), our research indicates that, in the majority of cases, educational motives constitute the first step towards permanently leaving the country of origin (Takács et al., 2013, p. 78). In Vojvodina, approximately one-third of ethnic minority secondary school graduates decide to leave Serbia and study abroad, predominantly in their ethnic homelands (Takács, 2013), causing a severe brain drain for Serbia, which has been ongoing for several decades (Gábrity-Molnár, 2009). Hungary profits as a result because it gains a potential workforce that already speaks the language of the state (Váradi, 2013, p. 97), which is not the case for most migrants in Europe. Hungary may be a temporary destination for some secondary school graduates from Vojvodina who, after completing their studies in Hungary, continue their journey to the countries of Western Europe (Takács, 2009).

Language barriers

Although linguistic diversity remains entrenched as one of the key values of the European project, the EU has relatively limited control over this issue (Kraus & Kazlauskaite-Gürbüz, 2014, p. 524). In this sense, every country deals autonomously with the issue of minority languages.

Language is of key importance for minority members, may be important to a particular group at a symbolic level (Jaspal, 2009, p. 18) and is strongly connected to ethnic identity. If language is separated from the cultural context, it does not remain a community language; only by functioning as such can its existence be assured (Dołowy-Rybińska, 2015, p. 260). Language is an important component of maintaining a separate ethnic identity. Attempting to establish a cohesive national identity may be detrimental to the identity of minority groups, since an important self-aspect, namely language, is often at stake (De Vos, 1995). The official language is bound to the state and to the 'integration into a single "linguistic community", which is a product of the political domination that is endlessly reproduced by institutions capable of imposing universal recognition of the dominant language' (Bourdieu, 1991, p. 46).

For minority groups, education in the native language is crucial to the preservation of national identity. It plays an important role in preserving the minority language because, in addition to the linguistic dimension, there is also an ethnic dimension: the 'imagined future of the community' that implies the use of the native language (Papp, 2015, p. 51). Therefore, national minorities tend to institutionalise education in the minority language and use it in schools as a means of preventing or reducing the assimilation of their community (Papp, 2015, p. 51). Minorities can form a cohesive group which builds a 'minority world' for itself in which an ethnic minority education is nurtured, or they can orient themselves towards their external homelands (or, ostensibly, towards the majority), in which case their interest in

a strong system of minority education is limited, even if they are relatively cohesive as a group (Kyriazi, 2018, p. 18). In addition to preserving the community, the importance of education in the native language is increasingly emphasised in multilingual regions, as research shows that native language teaching and learning improves educational outcomes in primary schools (Seid, 2016).

However, minority language education brings a certain future risk for students. Filipović et al. assess this issue in Serbia, stating that teaching all classes in primary and secondary education in a minority language, with only a few hours per week of Serbian as a majority language, creates generations of unbalanced bilinguals, characterised by a very low level of Serbian proficiency (Filipović et al., 2007). In addition to the low number of majority language classes in school, young people living in the north of Bačka, where the majority of Serbian-based Hungarians live, have not wanted to learn the state language ever since the crisis times[6] (Nađ, 2006, p. 448). Consequently, they face difficulties during their post-secondary education in Serbia and/or struggle to find satisfactory employment that, by default, requires knowledge of Serbian (Filipović et al., 2007). Ethnic minority students who do not speak the majority language sufficiently well first need to overcome the language barrier, i.e. learn Serbian when starting their studies, which requires time, effort and sacrifice (Lendák-Kabók, 2017). As they overcome the language barrier, the next problem they face is their cumulative grade point average (GPA) because, as Lendák-Kabók (2019) states, a high GPA is one of the key factors for determining success in prestigious professions such as university professor, judge and public prosecutor. Members of the Hungarian national minority are mostly unable to attain a high GPA at the beginning of their studies due to the language barrier and, therefore, have a much lower chance of being part of the highly educated elite or the judiciary. As such, there is no equal and fair representation for members of the Hungarian national minority within the society in which they live.[7]

Only recently has the Ministry of Education, Science and Technological Development begun to develop innovative curricula and programmes for learning the Serbian language, intended for members of national minorities. Two types of curriculum have been created: 'A' for students whose native language does not belong to the Slavic language group (such as Hungarian) and 'B' for those whose native language does belong to this group (Educational Gazette, 2018). However, there are currently no plans to increase the number of weekly classes.

After secondary school, Hungarian minority graduates have limited opportunities to continue their education in the Hungarian language in Serbia. Such opportunities are available at the Department of Hungarian Language and Literature (as a native language), the University of Novi Sad and Belgrade (where Hungarian is taught as a foreign language), a Hungarian group at the Faculty of Dramatic Arts in Novi Sad and the Teacher Training Faculty in the Hungarian Language in Subotica (part of the University of Novi Sad). A decreasing number of Hungarian-speaking professors teach a small number of subjects in Hungarian at the Faculty of Economics in Subotica (part of the University of Novi Sad) (Szalma, 2005). Classes are also held entirely or partially in Hungarian at the Subotica Tech-College of Applied Sciences and

6 With the start of the Yugoslav Wars a certain level of intolerance was introduced by refugees and majority nation towards substate national groups who were living in Vojvodina.

7 Since revealing national/ethnic identity is not obligatory according to Article 47 of the Constitution of Serbia, it is difficult to keep track of the proportion of ethnic minorities within state bodies. However, for example, it is an open secret that at the First Instance Court of Novi Sad there can be two judges who speak Hungarian but at the Second Instance Court there are none.

the private Educons University, as well as some non-accredited Hungarian higher education institutions that have campuses in northern Bácska in Vojvodina.[8]

The competences of the National Council in the field of education

The law on the protection of the rights and freedoms of national minorities was passed in 2009. It stipulates that the state may delegate certain rights to national councils for the effective protection of the rights and freedoms of national minorities.

In 2009 the law on national councils came into force, which had been the state intention since 2002. This law regulates in detail the foundation of national councils, the terms for the election of their members, their method of financing and their place in the political system of the country.

According to articles 11–15 of the same law, national councils have competences in the field of education. They may establish institutions of upbringing and education, standards for primary, secondary and higher education students and exercise the rights and obligations of the founder. A national council may establish the institutions by itself or with the Republic of Serbia, with the Autonomous Province of Vojvodina (APV), a local self-government unit or other legal entity in accordance with the law (article 11). As founders of institutions, the Republic, the APV and local self-government units may transfer, in whole or in part, the founding rights to the national council (article 11). It is important to mention that national councils are financed from the budgets of the Republic of Serbia and the APV and they may also receive donations from their ethnic homeland.

Hungarian National Council

The NCHNM implements a number of incentive measures concerning education in the Hungarian language. It offers scholarships to university students who have completed their primary and/or secondary school education in Hungarian[9] and are eligible to apply for the *Európa Kollégium*[10] (College of Europe) student dormitory. The eligibility criteria for the college are that students must: (1) meet the aforementioned requirements, (2) study at an accredited higher education institution, (3) commit themselves to working in Serbia for at least three years after graduation, (4) not have an address in Novi Sad and (5) have not previously violated any institutional policy.[11] Senior students are obliged to attend additional training courses organized in the dormitory, according to the NCHNM website (http://www.mnt.org.rs/). The student dormitory provides an opportunity for a larger number of ethnic minority

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8 Óbuda University has a Masters programme which realization is in the premises of the Hungarian Education, Research and Cultural Centre in Vojvodina (VM4K) in Subotica. Also, the Hungarian University of Agriculture and Life Sciences in Gödöllő has a campus in Senta (Zenta). Degrees awarded by these Hungarian universities undergo an official recognition procedure within the Ministry of Education, Science and Technological Development in Serbia.

9 In some cases, a special board can rescind this requirement, usually for Hungarian students living in very small communities who had no opportunity to attend primary or secondary school education in their native language.

10 *Európa Kollégium* opened its doors in Novi Sad in September 2015 with the aim of providing a home to Hungarian-speaking students studying in the provincial capital and is entirely financed by the Hungarian government.

11 This last condition applies to senior students.

students who speak Hungarian to study at the University of Novi Sad, as students usually need to have obtained a high cumulative GPA during their earlier studies in order to apply for dormitories at the university. Due to the language barrier, this is always a problem for most students of Hungarian nationality in Vojvodina.

Students have the opportunity to apply for three types of scholarship. The first is the Várady excellence scholarship for PhD students[12] (*Várady kiválósági ösztöndíj doktoranduszok részére*), which aims to provide financial aid to Hungarian PhD students living and studying in Serbia. The NCHNM has been awarding this scholarship since 2013. Initially, it was available only to first- and second-year doctoral students but it is now open to all doctoral students, regardless of their year of study. This change occurred because of the very low numbers of doctoral students of Hungarian nationality in SerbiaApplicants had to have completed their (primary and/or secondary school) studies in the Hungarian language and enrolled in PhD studies at one of the accredited higher education institutions. The amount of the scholarship is 160 euros per month (paid in dinars). A total of five scholarships are awarded each year, which are to be repaid after the completion of the PhD studies, according to the NCHNM website (http://www.mnt.org.rs/).

The Várady excellence scholarship for MSc students (*Várady kiválósági ösztöndíj mester hallgatók részére*) is the second option and has similar conditions as the PhD scholarship. It pays 11,741 dinars per month[13] over a ten-month period with ten scholarships being awarded in two rounds. The scholarship for MSc students started to be financedin 2016 with financial support from the Bethlen Gábor Fund[14] (*Bethlen Gábor Alap Zrt*) in Hungary. Undergraduate students may apply for the scholarship awarded by the NCHNM with financial support from the Bethlen Gábor Fund from Hungary. In order to be eligible for the scholarship, students need to declare that they will work in Serbia for at least three years after graduation, if possible in a position related to the qualification obtained during their studies. The monthly allowance is between 90 and 150 euros (paid in dinars), depending on the social situation of the students and the distance between their hometown and their place of study.[15] The scholarship is awarded for one year in the first instance but may be extended to a maximum of two more years. The NCHNM awards 150 scholarships in total each year and students studying subjects related to shortage professions are prioritised.

Third, there is a new scholarship for law students (from the 2021/22 academic year), which is financed by the Ministry of Justice of the Government of Hungary through the NCHNM. There are 10 four-year scholarships available, which cover the length of BSc law studies in Serbia.

There is also a demonstrator's scholarship (*Demonstrátori ösztöndíj*) for senior undergraduate students (second year and above) who have achieved 37 credit points in the previous year

12 Prof. Tibor Várady, a member of the Serbian Academy of Sciences and Arts donated 100,000 US dollars (approximately 85.000,00 Euros) for the foundation of the scholarship programme in 2013. The scholarship is also supported by the Bethlen Gábor Fund in Hungary (see footnote 16). It was originally designed as a student loan, but with the additional support of the Bethlen Gábor Fund, it ceased to be a loan, i.e. the amount received does not need to be repaid by the beneficiaries.

13 This amount is equal to approximately 100 euros.

14 The Bethlen Gábor Fund is a separate state fund designed to promote the goals and achievements of the Hungarian government's national strategy. Its primary task is to provide grants to support individual and community prosperity, material and spiritual growth in the homeland of the Hungarians from abroad and to preserve their culture.

15 Students who attend a faculty in their hometown receive less money.

(and who also have to fulfil the aforementioned requirements). The NCHNM awards 65 of these scholarships each year and successful applicants need to declare that they will work in Serbia for at least three years after graduation, if possible in a position related to the qualification obtained during their studies. The monthly allowance is between 70 and 140 euros (paid in dinars). If applicants are also eligible for the scholarship for undergraduate students at the same time, they will receive the basic amount of 70 euros (paid in dinars) for the demonstrator's scholarship.

Students who receive the demonstrator's scholarship are obliged to help first-year students become familiar with the higher education system. The scholarship encourages students to obtain the highest possible grades during their studies in order to receive monthly financial aid in return for mentoring a younger student. The Hungarian National Council offers a fast-learning Serbian course (*Szerb nyelvi felzárkóztató képzés elsőéves egyetemisták részére*), which is designed for students who need to improve their knowledge of the Serbian language, with the aim of helping them to encounter fewer language-difficulty challenges during their studies. However, the language course lasts only two weeks, which is, of course, insufficient for essential language acquisition.

These opportunities are intended to encourage students who speak Hungarian to study in Serbia and eventually succeed in the labour market. The aforementioned scholarships are financed either by the Hungarian government or by privately held funds (the Várady scholarship programmes).

The NCHNM states in its Strategy for the Advancement of Education 2016–2020 (NCHNM, n.d.) that it also encourages and supports pre-school education in the minority Hungarian language, promoting it among parents of young children. This is very important for parents in mixed marriages as education in the minority language ensures the proficiency of the minority language. The NCHNM, with the support of the Rákóczi Association Foundation (*Rákóczi Szövetség Alapítvány*), provides school supplies for first-year primary school students whose parents opt for them to be taught in the Hungarian language in Serbia (NCHNM, n.d.). The school bus programme is another important incentive: the NCHNM organises buses for children living in smaller villages, where there is no opportunity for native-language schooling, to take them to schools where they can receive instruction in Hungarian (NCHNM, n.d.).

Hungarian NGOs involved in minority education in Vojvodina

A variety of non-government organisations (NGOs) exist within the Hungarian national minority communities with the aim of addressing the problem of the lack of comprehensive higher education in the Hungarian language in Vojvodina.[16] Some specifically support or deal with higher education and/or research. The financing of these NGOs is mostly realised through comptetitive tendering process provided by the Hungarian government, except the Hungarian Academic Council of Vojvodina, which gets its funding on the basis of its subjective right as an external (across-border) committee of the Hungarian Academy of Sciences in Vojvodina.

16 From the early 2000s, the intellectual elite of the Hungarian national minority in Vojvodina planned to establish a university in Subotica with instruction given in Hungarian. However, due to lack of political will on the part of the leading Hungarian political party and the Serbian ruling political party, this plan was never realised.

There are four Hungarian civil societies which have responsibility for higher education, research, publications, and/or organising conferences.

The Hungarian Scientific Research Society (*Magyarságkutató Tudományos Társaság*) was founded in Vojvodina in 1991 with the aim of conducting research – sociological, psychological, demographical, ethnographical, legal, historical, sociological – and providing opportunities for professional forums and publications (Gábrity-Molnár et al., 2011).

The Hungarian Scientific Society in Vojvodina (*Vajdasági Magyar Tudományos Társaság*) was founded in 1999 with the aim of addressing a variety of scientific challenges faced by the Hungarian community in Vojvodina. It organises an annual conference (Gábrity-Molnár et al., 2011).

The Hungarian College for Higher Education in Vojvodina (*Vajdasági Magyar Felsőoktatási Kollégium*) was founded in 2001. It successfully supports young Hungarian students studying in the higher education system of Serbia through a special tutoring programme and it aims to provide higher education institutions in Serbia with young people. Students whose cumulative GPS is at least 8.00 during their first year of study can apply for the scholarship awarded by the college and are allocated a mentor who helps them conduct research and introduces them to the world of science. The college organizes the annual Hungarian Scientific Conference of Vojvodinian Students (*Vajdasági Magyar Tudományos Diákköri Konferencia*) (Gábrity-Molnár et al., 2011). It also introduced the Crystal Globe (*Kristálygömb*) annual reward in 2006, which is awarded to young Hungarian talent from Vojvodina for outstanding scientific–artistic results that are presented at the college's conference and elsewhere. The award, which is given to only one person per year, consists of a certificate, engraved crystal ball and a financial prize. It is presented each November at the certificate-giving ceremony at the Hungarian Scientific Conference of Vojvodinian Students *http://vmtdk.edu.rs/)*aforementioned conference.

The Hungarian Academic Council of Vojvodina (*Vajdasági Magyar Akadémiai Tanács*) was founded in 2008 with the goals of coordinating the activities of the scientific community, developing strategic research plans, setting priorities and creating a network of researchers and professors of Hungarian origin (Gábrity-Molnár et al., 2011). It has the highest number of members (over 300) and is considered the largest representative society for the Hungarian scientific elite in Vojvodina. The Hungarian Academic Council of Vojvodina has its own annual conference and in 2017 it introduced the Golden Owl (*Aranybagoly)* award, which is given to Hungarian researchers in Vojvodina who have already obtained their PhD and have demonstrated excellent academic achievements. It is awarded to two scholars per year, one in science, technology, engineering and mathematics (STEM) and the other in social sciences and humanities (SSH) studies. The award includes a monetary element according to the website of the Hungarian Academic Council of Vojvodina (https://vmat.rs/).

In 2009, amendments to 1994's Act 40 on the Hungarian Academy of Sciences stated that the Hungarian Ministry of Science and Technology would introduce the issue of cross-border Hungarian science in the following way: the Hungarian Academy of Sciences 'liaises with the experts of Hungarian scientific and linguistic research abroad and supports cross-border Hungarian science'. The public function of the Hungarian Academy of Sciences is to provide communication and support related to Hungarian science beyond the country's borders. The principal and conceptualising body of this dual-task system provided by law is the Chairmanship Committee of the Hungarian Science Foundation Abroad, which was established by the Academy in 1996 and assigned the status of the Administrative Secretariat

of the Hungarians Across the Border (https://mta.hu/) in 1999. The Hungarian Academy of Sciences donates annual funds to the aforementioned civil societies to cover their basic operations. There are also opportunities for them to apply for government-funded projects financed by Serbia and for projects funded by various foundations.

Method

In this section we present an overview of the data-collection and analysis methodology, as well as the ethical aspects of the research.

Sample and procedure

The total sample was determined using the quota sampling method (Biljan-August et al., 2009) and consisted of 1951 secondary school students from 22 schools: 995 females (51 per cent) and 956 males (49 per cent). The average age of the respondents was 18 years. The students were in their final year, a critical period for making decisions about their future, career choices and further education.

The sample was based in 12 municipalities of AP Vojvodina where there were sizeable communities of the analysed ethnic minorities: Ada, Bačka Topola, Bečej, Čoka, Kanjiža, Novi Kneževac, Novi Sad, Senta, Sombor, Subotica, Temerin and Zrenjanin.[17]

It should be noted that this research focused on only one specific group of secondary school students belonging to the Hungarian national minority, i.e. those completing their education in their native Hungarian language and not those attending schools in the Serbian majority language.

The entire population of ethnic minority Hungarian secondary school graduates in Vojvodina in the 2013/14 and 2014/15 academic years numbered 3069[18] students; therefore, the sample covered 63.57 per cent of the total number of students. The research was conducted in two consecutive school years, specifically in May 2014 and in April 2015, as these were the final months of the students' secondary education before their graduation in June. With the principals' approval, the researcher attended one class in each school, during which the students filled in the paper-based questionnaires. All three types of secondary school available in the languages of ethnic minorities were included in the research, namely three-year vocational, four-year vocational and four-year grammar.

Instruments

A questionnaire was constructed, consisting of 20 questions grouped into the following themes of interest:

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17 The names of the municipalities are given in the Serbian language; however, the ethnic minority students gave the names of the municipalities in their native language when completing the questionnaire.

18 Data provided by the Provincial Secretariat for Education, Regulations, Administration and National Minorities–National Communities, AP of Vojvodina are used only for the purpose of this research.

(1) demographic information consisting of gender, ethnicity, school and school year (i.e. third or fourth)
(2) mother tongue of the respondents, i.e. Hungarian
(3) self-assessed Serbian (majority) language-skill levels
(4) plans for continued (i.e. higher) education
(5) location of the chosen higher education institution (Hungary or Serbia)
(6) thoughts about the career choices women have in pedagogy and/or in technical fields.

There were 11 closed and 9 open questions. For the purposes of this paper, the following issues were analysed: the level of knowledge of the majority language, the frequency of use of the majority language, the choice of the country for continuing education and the reasons for leaving the country of origin.

The respondents were asked to complete the name of the chosen higher education institution. Self-assessed knowledge of the Serbian language was measured with a seven-point Likert scale, ranging from 'I do not speak or understand' to 'like my native language, and the frequency of use of the Serbian language with a five-point Likert scale ranging from 'less than once a week' to 'several times a day'.

Data analysis

The data analysis was performed using the IBM Statistical Package for the Social Sciences (SPSS) version 16 for Windows. Only descriptive statistics are presented in this paper.

Ethics

As stated earlier, the paper-based questionnaires were approved by the principals of each secondary school involved in this research. They were also approved by psychologists and schoolteachers consulted by the principal. The students were informed about the goals of the research and were given the choice to opt out. The questionnaires were anonymous, i.e. no student names, addresses or other personally identifiable information were recorded. Only the location and name and type of secondary school were noted, as they were relevant in the context of the research.

Results

In this section, we present an analysis of the results obtained. It should be noted that only those parts of the questionnaire that contained the answers to the questions asked were analysed. Some students did not answer certain questions and their answers were not included in the analysis of the knowledge of the majority language possessed by secondary school graduates belonging to the Hungarian national minority, the frequency of using the majority language, reasons for leaving Serbia, as well as in which country the graduates would continue their education.

Majority language use: proficiency and frequency

As already pointed out at the beginning of this paper, a high level of Serbian-language knowledge is a prerequisite for commencing studies at universities in Serbia (Lendák-Kabók & Lendák, 2017). For that reason, the level of majority-language knowledge at the end of secondary school greatly contributes to the future pathway of graduates belonging to the Hungarian national minority in Vojvodina.

The students were asked to measure their own proficiency level in the majority language (Table 1). The results show that 49.51 per cent of the respondents either do not speak the language at all, only understand it, only speak a few words or do not speak it well. The most popular response (29.91 per cent) was not speaking Serbian very well, while 22.28 per cent of students reported speaking Serbian very well or at the same level as their native language. It may be concluded that almost half of the students who complete their education in Hungarian do not possess a high knowledge of the Serbian language, so this problem needs to be solved structurally and at state level.

Table 1.

Proficiency level of the majority language

How well do students speak the majority language?	Frequency	Percentage
I do not speak	72	3.71
I do not speak, only understand	119	6.14
Only a few words	189	9.75
Not very well	580	29.91
Well	547	28.21
Very well	260	13.41
Like my native language	172	8.87
Total	1,939	100.00

Later, the students were asked about how often they speak Serbian (Table 2). We found that more than 30 per cent of our respondents used Serbian once a week or less. This means that some students manage to get by almost without ever using the majority language, which inevitably disadvantages them when choosing where to continue their studies. If they opt for the UNS, they will encounter a language barrier that will take time and huge effort to overcome, so instead of learning the course material, they will be learning the language (Lendák-Kabók, 2017).

This lack of Serbian-language proficiency might be partly explained by the Yugoslav Wars, which led to increased nationalism and segregation, even in Vojvodina, which was largely spared armed conflict apart from the NATO bombings from March to June 1999. Due to the aforementioned segregation, children from ethnic minorities often do not need to master the Serbian language before finishing their secondary education, especially in the municipalities where their ethnic minority is the majority.

Table 2.

Frequency of the majority language use

How often do students use the majority language?	Frequency	Percentage
Less than once a week	415	21.38
Once a week	253	13.03
Several times a week	527	27.15
Once a day	114	5.88
Several times a day	632	32.56
Total	1,941	100.00

Country of future education and reasons for leaving country of origin

The students were further asked to state the country in which they planned to complete their future education (Table 3). The results indicate that 40.55 per cent of the students will remain in Serbia and that 35.72 per cent will opt for Hungary. However, if we include students who state that they will try to pass the entrance exam in both countries but will continue their studies in Hungary if successful, then a total of 44.30 per cent of students wish to study in Hungary. This result confirms earlier research (Puja-Badesku, 2009; Šimonji Černak, 2009; Takács, 2013), which studied different ethnic minority groups and showed that approximately 30 per cent of secondary school graduates wish to leave their country of residence and study in the country of their national origin. Similar results were found from a study of Hungarians in Vojvodina in 2002 (Papp, 2015), which suggests that there has been no significant shift in the longer term. The rate was higher in the GeneZYs research conducted in 2015 but this covered the whole young generation studying at the time of the survey (Papp, 2017). In our survey, there was a fairly high percentage (15.15 per cent) of 'Do not know yet' responses, which indicates that many students feel uncertain about the decisions to be made.

Table 3.

Country of future education

Where do students intend to continue their education?	Frequency	Percentage
Serbia	605	40.55
Hungary	533	35.72
I will try in both countries but if I pass in Hungary, I will study there	128	8.58
Do not know yet	226	15.15
Total	1,492	100.00

The students were also asked about their reasons for intending to leave Serbia (Table 4). The results show that most of the students (38.10 per cent) choose to leave because of the EU diploma, which they cannot obtain in Serbia. Contrary to previous findings (Gábrity-Molnár, 2012; Takács, 2013; Takács et al., 2013), most students do not intend to leave because of the language barrier but because of the more promising social status that the EU diploma can provide. However, the second most popular response is the language barrier (18.64 per cent), which still exists as a major issue for ethnic minority Hungarian secondary school graduates and results in a major brain drain (Gábrity-Molnár, 2009). The third most popular reason for leaving Serbia is the intention to work in Hungary (11.84 per cent), which is also connected

to the country being part of the EU, as well as for economic reasons. After Hungary began granting dual citizenship to ethnic minority Hungarians in Vojvodina and to Vojvodinian inhabitants whose ancestors were born there before the 1920 Trianon Treaty and who speak Hungarian, ethnic minority Hungarians living in Vojvodina found it much easier to emigrate and find work. It should be pointed out that there is frequent emigration among members of the majority people, mainly for economic reasons, but they tend to emigrate after obtaining a university degree in Serbia. The fourth most popular stated reason for leaving was the scarce variety of educational profiles available in Serbia (7.07 per cent). This was previously noted by Takács (2013), who interviewed students and workers in Hungary who were originally ethnic minority Hungarians from Vojvodina and who stated that they had left Serbia because there were no educational profiles that appealed to them. In table 4 it can be observed that 16.46 per cent of the students opted for multiple answers, which shows that they had more than one reason for leaving their country of origin.

Table 4.

Reasons for leaving country of origin

Why do students leave their country of origin?	Frequency	Percentage
EU diploma	280	38.10
Insufficient knowledge of the majority language	137	18.64
They want to work in the country of their national origin	87	11.84
Educational profile which they want to study does not exist in Serbia	52	7.07
Other	58	7.89
Multiple answers	121	16.46
Total	735	100.00

Conclusion

The theoretical part of this paper first looked at the educational policy of the NCHNM, as well as the work of the Hungarian civil sector in the fields of science and higher education in Vojvodina, in order to present a comprehensive picture of scientific activities that take place in parallel with minority education at the state level. It then presented research, conducted at the end of the 2014 and 2015 academic years, related to secondary school graduates, members of the Hungarian national community who were completing their secondary education in their native Hungarian language. The research particularly focuses on the language level and higher education aspirations of the target group, as well as their preferred higher education destination (Serbia or Hungary). The study identified a significant brain drain affecting the Hungarian ethnic minority community in Vojvodina: the community is becoming smaller due to the permanent emigration of its members, namely, young people who remain in Hungary after finishing their studies or who continue their journey to a Western European country (Takács, 2009). This study indicates that the language barrier is no longer the most important driving force behind this decades-long educational migration. According to our findings, the most important reason for ethnic minority students leaving Serbia today is the attraction of a higher education degree acquired at an EU-based institution, which grants them immediate access to the EU's integrated labour

market and, hopefully, improved social status. It is important to mention that even though the language barrier is an ongoing problem, the adopted homeland of the Hungarian ethnic minority (Serbia) has not paid it much attention. This might change in the future as the Ministry of Education, Science and Technological Development has begun innovating the Serbian language learning curriculum for ethnic minority students, by creating two types of curriculum: 'A' for students whose native language is not one of the Slavic languages (like Hungarian) and 'B' for those whose native language is one of the Slavic languages. However, the number of classes per year has not yet been increased, remaining at 72.

Although students give various reasons for leaving the country in which they were born, all of them are linked to social status and empowerment. The respondents felt that obtaining a higher education degree in an EU-based institution might enable them to earn more and have a higher social status compared to their peers who were staying at home. Additionally, if they continued their studies in Serbia, the language barrier would place them in an inferior position compared to their Serbian peers. That disadvantage might even extend to their chances after graduation when entering the labour market in Serbia in which certain professions are reserved for well-integrated individuals with excellent Serbian-language skills. This raises the question of the cumulative GPA gained during studies because, as Lendák-Kabók (2019) states, this is one of the key factors in being successful in prestigious professions such as university professor, judge and public prosecutor. Candidates with a high GPA also have an advantage in other careers. In this way, members of the Hungarian national minority have a much lower chance of becoming part of the highly educated elite or the judiciary and, consequently, the representation of members of the Hungarian national minority in the society in which they live is neither equal nor fair.

When considering the activities of the NCHNM and the civil sector, incentives in the form of scholarships, the *Európa Kollégium* dormitory and language courses are really important for Hungarian students who remain in Serbia but they cannot compensate for the lack of knowledge of the majority language, nor compare with a degree obtained in the EU. The analysis of the NCHNM's educational strategy indicates a great need for consultation with the relevant civil society sectors in the field of higher education, which are quite numerous and active, and with which the NCHNM currently does not have any cooperation. This cooperation is necessary in order to develop a strategy based on scientific research, with the aim of reducing the brain drain and preserving the Hungarian national community in Serbia. It should be noted that the NCHNM conducts all its activities that are aimed at helping and supporting Hungarian students in Vojvodina with the help of the Hungarian government. There is a possibility that changes in the political climate in Hungary will result in a different attitude towards the diaspora and that financial assistance will be abolished, which would further aggravate the situation of members of the Hungarian national minority in Vojvodina.

Future research could repeat this study and update it as several years have passed since it was conducted and the educational policy of the NCHNM (which includes student scholarships and the opportunity to live in the *Európa Kollégium* dormitory) has become established practice and may have somewhat reduced the educational migration of Hungarian national minority graduates from Vojvodina.

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V.
Israel-Palestine and the Possibilities of Non-Territorial Autonomy

As'ad Ghanem

Collective unrest: In search of non-territorial autonomy for Palestinians, Israeli citizens

Introduction

This article addresses the issue of autonomy for Palestinians living in Israel, asks what sort of autonomy this should be and discusses the identity and culture of the Palestinians and majority–minority relations in the State of Israel. It is important to clarify the status of the Palestinian minority in Israel because the character of both this minority and the state it inhabits determine the minority's choice of options to solve its problems (Ghanem & Khatib, 2017). The Palestinian Arab minority in the State of Israel lives in a problematic and tense situation, since the state defines itself as Jewish. This causes the Palestinian national minority to feel discriminated against, alienated and estranged from the state it inhabits. The Palestinian Arab minority is a native population that sees itself as living under the hegemony of the Jewish immigrant and settler majority. Similar situations exist in other countries where tensions between immigrant majority populations and native minority groups persist and grow, in contrast to countries where a majority population rules over an immigrant minority (Ghanem & Mustafa, 2011).

Majority–minority relations are problematic anywhere, but especially in states defined as 'ethnocracies' – where the state is owned by the ethnic and national majority – rather than 'democracies' (Yiftachel, 2006; Yiftachel & Ghanem, 2004). There is no complete solution to the dilemmas that arise in these situations, and some scholars argue that there is a substantive contradiction between collective and pluralistic societies, where minorities enjoy collective rights, and the nation state and liberal and democratic principles. In any case, establishing reasonable harmony in majority–minority relations is a difficult task across all sectors of society that necessitates special effort by state institutions that represent the majority's hegemony to balance the vulnerability of the minority as a result of their structural inferiority (Ghanem, 2012). Minorities face a broad range of options and paths for development, from complete assimilation through integration, personal or territorial autonomy and irredentism and independence to appendage to another state (Ghanem & Ozacky-Lazar, 2003).

Several historical conditions have created a situation where the Palestinians in Israel wish to integrate with Israeli society whilst maintaining their national identity. In other words, Palestinians in Israel would prefer to influence from within rather than choose detachment or independence or join another state. For example, the Palestinian Liberation Organization (PLO)'s acceptance of the two-state solution at the Oslo Accord led Palestinians in Israel to feel that their problem is an internal Israeli problem and that their self-determination is independent from that of the Palestinians in the West Bank and Gaza. This raises several questions about how best to relieve the tension between Palestinian Arab national identity and Israeli citizenship. For most Israelis, the fact that the PLO accepted the principle of two states for two peoples means that they accept the construction of a Palestinian state alongside the Jewish

state, despite the principle being accepted by the Palestinian leadership without considering the views of the Palestinian citizens of Israel. In fact, the Oslo Accord does not even mention the Palestinian citizens of Israel (Al-Haj, 1993; Rouhana & Ghanem, 1998).

This oversight by the Palestinian Liberation Movement and by Israel meant that Palestinians in Israel and their leaders understood that they needed to decide their fate by themselves and that they had to shape a vision and national civil project of their own. The issues of nationality and citizenship are increasingly important to Palestinians in Israel not only because they directly affect their daily life experiences but also because Palestinians in Israel see their future as connected to the State of Israel even after the possible establishment of a Palestinian state (Rouhana & Ghanem, 1998).

What distinguishes the Palestinians in Israel from other Palestinians is their existence at the margins of Israeli society, as a minority in the Jewish state and as citizens of a state that they did not choose to join, a state that is not their state according to its definition, identity, laws and practices. A solution for the general Palestinian question will not necessarily address the difficulties of Palestinians in Israel; they will not be satisfied until their difficulties are recognised as a separate issue or distinct set of questions that need a suitable response (Rouhana & Ghanem, 1998).

Since the leaders of the Palestinian minority in Israel understood that the solution to the Palestinian issue and the establishment of a Palestinian state would not address their particular situation, they initiated an academic, political and social discussion to find solutions to the problems and tensions of their life within Israel. The efforts to resolve this tension were expressed, for example, in the Haifa Declaration published by Mada-al-Carmel and signed by dozens of the Palestinian elite in Israel, including political leaders and intellectuals. In the political dimension, they noted:

> Our national identity is grounded in human values and civilization, in the Arabic language and culture, and in a collective memory derived from our Palestinian and Arab history and Arab and Islamic civilization. It is an identity that grows ever more firm through active and continuous interaction with these values. It is continuously nourished by our uninterrupted relationship to our land and homeland, by the experience of our constant and mounting struggle to affirm our right to remain in our land and homeland and to safeguard them, and by our continued connection to the other sons and daughters of the Palestinian people and the Arab nation. (Mada-al-Carmel, 2007, pp. 7-8).

In looking for a solution, the authors also referenced the civil dimension, stating:

> Our vision for the future relations between Palestinian Arabs and Israeli Jews in this country is to create a democratic state founded on equality between the two national groups. This solution would guarantee the rights of the two groups in a just and equitable manner. This would require a change in the constitutional structure and a change in the definition of the State of Israel from a Jewish state to a democratic state established on national and civil equality between the two national groups, and enshrining the principles of banning discrimination and of equality between all of its citizens and residents. (Mada-al-Carmel, 2007, p. 16).

The fact that the Palestinian minority in Israel lacks real collective rights characterises and weakens its status. Official representatives of the State of Israel have clearly determined

full civil rights for each member of the Arab minority, but only as individuals. In contrast to other states whose legislative arrangements determine collective rights for their minorities, Israel has never granted such collective rights to the Palestinian minority. In practice, the most prominent collective rights enjoyed by the Palestinians in Israel are the recognition of Arabic as an 'official language' and the operation of a special education system for Arabs. Other collective rights granted to the Arab minority include their religious affiliations, such as the religious court system for matters of personal status and permission to have days of rest on religious holidays. However, these arrangements were primarily determined by practical considerations, specific to each case, with no anchoring of eligibility to collective rights as members of a different people. The state recognised the separate existence of the Arab sector – as a public that is not meant to assimilate within the majority society – but it did not create foundations for this separate existence (Orr Commission, 2003). The unique and acute situation of the Palestinians in Israel, including the stresses of daily life caused by their national and civil status, increases the importance of granting autonomy to this minority to ease the tension.

Non-territorial autonomy for the Palestinian minority in Israel

Various minorities choose autonomy as a means to protect their rights, their representation and their cultural uniqueness in return for waiving their right to seek self-determination, separation and independence. Native national minorities aspire to maintain their unique character and to establish their own public spaces. Hence, they demand that the state validate and support different forms of autonomy in internal spaces to realise their collective rights, what the political philosopher Will Kymlicka called their autonomous rights in the field of self-government (Kymlicka, 1995).

For this reason, in light of accumulated experience in other countries and considering their status as a minority, it has been suggested that Palestinians in Israel should be offered the option of non-territorial autonomy (Smooha, 1999). Such a solution could moderate the tension created by their existence as a national minority in a state defined as Jewish, allowing this national minority to attain full equality. Collective rights relating to the expression of unique culture, education, language and religion are evidence of the collective identity of a native national minority, and they are supposed to serve as a fertile bed for the continuous development and fostering of the minority's unique characteristics with respect and dignity (Jabareen, 2012).

The demand for institutional autonomy appeared in explicit form in *The Future Vision of the Palestinian Arabs in Israel*, published at the end of 2006 by the National Committee for the Heads of the Arab Local Authorities in Israel together with the High Follow-Up Committee of Arabs in Israel. The declaration demanded:

> The State should recognize the Palestinian Arabs in Israel as an indigenous national group (and as a minority within the international conventions) that has the right within their citizenship to choose its representatives directly and be responsible for their religious, educational and cultural affairs. This group should be given the chance to create its own national institutions relating to all living aspects and stop the policies of dividing between the different religious sects within the Palestinian Arabs in Israel. (National Committee, 2006, pp. . 10–11)

The legal section of the declaration stipulates that the state should 'Guarantee self-rule for Palestinian Arabs in the fields of education, religion, culture and media, and acknowledging their right to self-determination with respect to their collective uniqueness, in a manner that will complement their participation in the state's public sphere' (National Committee, 2006, p. 15).

The educational section requires state recognition of the right of the Palestinian Arabs in Israel – as natives in their homeland – to self-administer their educational system and self-determine their educational policy: 'Adoption of the Arab education objectives as drafted by the Follow-Up Committee for Arab Education after the 4th Arab Education Conference in 1994, taking into account the possibility of adjusting objectives according to current developments; empowering education for universal and unique values' (National Committee, 2006, p. 28). Collective political non-territorial autonomy would overcome any geographical obstacles, since autonomy of this kind does not require residence in a particular region. Arab citizens would thus enjoy autonomy throughout the state in different villages and towns, including mixed towns in which they reside as a minority.

Debate concerning the collective status of Palestinian citizens of Israel received an impetus following the 1st Palestinian Intifada towards the end of the 1990s, with the increased probability of the establishment of a Palestinian state adjacent to the Israeli state. In a paper published by Said Zeedani and Azmi Bishara (1990), the authors presented a demand for autonomy for the Palestinian minority. Later, Zeedani claimed that his demand for autonomy was not limited to the cultural field, rather it included an option for territorial autonomy. According to Zeedani, this autonomy would include an elected governing body with broad authority, including: responsibility for civil services, development of an internal police force, responsibility for security matters and for education, including the determination of educational goals and content. Zeedani explained that this autonomy would be part of a federal regime and would not contradict the need for equal citizenship (Ghanem & Ozacky-Lazar, 1990, pp. 7–8).

Bishara (1993) claimed that collective rights were essential for the Palestinian minority, given the fact that Israel is a Jewish state and the Palestinian community is a native minority. Bishara demanded the granting of personal cultural autonomy, autonomy that would ensure recognition of the Palestinians' national identity as distinct from that of the state, indicating that autonomy would ensure equal citizenship in terms of personal and collective rights. Bishara transmitted the same demand to the Tajamoa party, of which he was a senior member at its foundation in 1996. The party presented this demand for cultural autonomy in its platform as an attempt to integrate Palestinian Arab national identity with a democratic civil vision of Israel. Clause 2 of Tajamoa's political platform demands that the state 'should maintain the right of Palestinian citizens of Israel for self-government of their cultural and educational matters as part of the national rights of a native national minority living in its homeland' (Tajamoa platform' 1999, p.2). This is expressed on Tajamoa's platform:

> The legislation of a law regarding cultural autonomy that includes consideration of education, culture and the media. To establish an Arab university. To lead to the establishment of a television and radio broadcasting authority that would not only be Arab but also have Arab managers, connecting with the Internet and reflecting the unique character of the Arab minority. Improvement of cultural life through the establishment of theatres, cultural centres and youth centres. The termination of

> the Zionist government responsibility for Arab education and alteration of learning programmes(Tajamoa platform' 1999, p.2).According to Azmi Bishara, when he was chair of the Tajamoa party:
>
> No social economic and political reality can be consolidated within the State of Israel without the establishment of national institutes for the Arabs in Israel, which will choose the learning programmes of their schools and not just in Arab history and literature but also in geography and history … and there is no way to consolidate their national cultural identity without national institutions such as universities and self-government of culture. Why is this said? Because national culture is a result of national cultural institutions. (Bishara, 1999, p. 8)

On another occasion, Bishara added that the cultural autonomy that Tajamoa proposed represents an alternative to the prevalent opinion that Palestinians in Israel have only two paths open to them: assimilation or separation. Rather, he asserted that there must be something else because assimilation is impossible since Israel is not a nation of all its citizens and the political foundations on which it is founded define the state as Jewish. Assimilation causes an identity crisis and does not engender authentic equality in the state's relations towards its citizens. And with regard to the second option (separation), it too is impossible from a geographic, economic and political viewpoint. Thus, Tajamoa suggested full equality in a state of all its citizens and recognition of the Arabs in Israel as a national minority that deserves all the collective rights, including cultural autonomy (Bishara, 1993, 1999).

In fact, Bishara and the Tajamoa party were not the first to speak explicitly about non-territorial autonomy for Palestinians in Israel. The Progressive Movement, which operated during the 1980s and 1990s, was the political power that came closest to adopting the concept of collective political autonomy. The movement announced on its platform at the 3rd Conference in Acre, July, 1990:

> our Arab communities demand the realization of their rights as a national minority distinguished by our national and cultural ethos and by their social lifestyle. […] we should govern our own unique life through the establishment of cultural, social and political institutions, to manage the matters of our education and culture, to establish an Arab university to reinforce our Palestinian-Arab national identity, we should govern the 'waqef', and our welfare institutions.

Additionally, before it was legally banned (in mid 2016), the Islamic movement was ideologically not far from the Progressive Movement and Tajamoa party on this matter. Although the Islamic movement did not use the term 'autonomy' and the type of uniqueness it demanded had a religious rather than a national character, it also enthusiastically adopted the idea of cultural autonomy or self-government and aspired to attain full control of learning programmes in the education system and to imbibe religious values (Al-Atawneh & Ali, 2018).

Beyond these different party approaches to the matter of autonomy, several academics supported the concept of autonomy, such as Klein (1987) who proposed that the Arabs of Israel should have cultural autonomy administered by an elected governing body.

Smooha (1999) discussed the need to provide autonomy for minorities. He claimed that autonomy would allow the recognition of the Palestinians in Israel as a national minority, granting them the right to self-government, increasing their participation in the government, serving as a means to increase socio-economic equality between Jews and Arabs and including

a set of symbols, such as flag, anthem, that would satisfy the national yearning of Israel's Arab citizens. Autonomy would oblige the state to recognise the Arab minority by law as a national minority and to establish an autonomous authority that would represent them and govern their internal matters. In contrast to mere cultural autonomy, the minority would be able to govern their religions, education and culture. In contrast to institutional autonomy, the minority would be granted additional authority to govern economic matters, health, welfare, tourism and fundraising abroad. These areas of jurisdiction would be governed by an autonomous governing committee (Smooha, 1999, pp. 96–97, 107).

As Smooha envisaged it, autonomy would not necessitate a significant deviation from the structure of the Israeli regime as both a 'Jewish and democratic' state (Smooha, 1999, p.27). He argued that it is probable that non-territorial autonomy would increase equality between Arabs and Jews, and reduce the points of conflict between them, but noted that it also involves a risk of increased disintegration, disagreement, alienation and confrontation between Arabs and Jews. Nevertheless, the precedent of non-statutory autonomy given to Jewish religious and ultra-orthodox Jews could pave the way for provision of a similar status for the Arab minority. This would necessitate basic trust between Jews and Arabs, which is lacking today. However, Smooha added that if the Arabs' goal would be limited to attaining non-statutory autonomy and did not aspire to the annulment of the Jewish-Zionist character of the state, it would arouse less resistance from Jews. Thus, non-territorial autonomy may ameliorate the conflict between Jews and Arabs if it is part of a new social agreement between the two sides to increase equality and participation, but it may fail if it is performed as an alternative to such an agreement.

Saban (1999) tried to find the most preferable option for the Palestinian minority, which he called setting 'the limits of the Zionist paradigm'. (Saban, 1999, p. 80). If this option were realised, noted Saban, the minority would enjoy collective rights, in the form of (non-territorial) autonomy, and would be granted equality and protection in the general social dimension. This would include a declaration of basic statutory rights protecting the principle of equality, reinforcement of relatively 'neutral' state institutions of civil society and proportional representative participation of minority group members in government authorities for the entire society. In this option, the State of Israel would continue to have a clear affiliation with the Jewish community and would continue to be the most important collective expression of the Jewish nation. Equality for the Palestinian minority would be limited at the symbolic level and at the threshold of the Law of Return for Jews only. Furthermore, there would be no comprehensive transformation in the substance of the state and Israel would not become binational. The connection of the state to the Jewish people would continue to be expressed in government symbols, in the mission of the state as the national home for the Jewish people, in the Law of the Return and Citizenship Law and in the connection to 'national institutions'. Moreover, the dominance of the Jewish majority community would be maintained, and would continue to act to sustain its demographic majority. This option, according to Saban, is more severe for both sides in intercommunity relations in Israel. In particular, this is because the alternative options are a binational Israel–Palestine state within the borders of the former Mandate territories or a binational state within the Green Line.

In contrast to the options proposed by Smooha and Saban, Yiftachel (1993) felt that the grant of autonomy to Arab citizens would be a solution that would engender a substantial change in the state's character:

> The character of Israel as a bi-ethnic society, including two native communities, prevents ethnic control in the long run and is a potential option for political stability. It is more logical than a compromise approach and cooperation that permits a division of powers, cultural autonomy and a certain regional separation between Jews and Arab will advance Israel towards Jewish Arab coexistence in peace for the long run. (Yiftachel, 1993, p. 56)

Brunner and Peled (1996) assume a liberal approach, asserting that in a multicultural society in which there is no benefit for one of the partners, minorities cannot gain the public's respect or self-respect because they avoid competition or cannot compete in an equal manner to achieve it. Thus, true liberalism needs to recognise the minority's collective right to a community of its own with cultural autonomy.

Yoav Peled (1993) argues that, to understand the Palestinian demand for autonomy, it is first necessary to understand the civil status of Palestinians in Israel and whether they have the opportunity to alter this status. According to Peled there is a clear boundary line limiting the ability of Palestinian citizens to participate actively in the political process in Israel. This line divides political activity aimed at establishing Palestinian citizens' civil status with incumbent liberal rights from intervention in the definition of the common social good. Thus, according to Peled, Palestinian citizens' demand for autonomy within Israel is necessary because of Israel's inability to integrate its Palestinian citizens in society:

> Granting autonomy to the Palestinian minority would transform Israel from an ethnic democracy into a consensual democracy, founded by law from two ethnic communities who together and through negotiation define the common social good. […] The establishment of Israel as a consensual democracy would allow the solution of the existing tension between its existence as the state of the Jewish people and its commitment to democracy. In such a case, the Jewish character of Israel would be maintained as the state of the Jewish people, without harming the rights of Palestinian citizens or their ability to shape for themselves what is good for them culturally. (Peled, 1993, p. 150)

Barzilai (2004) presented a critical communitarian approach, demanding collective rights for minority groups to cope with intercommunity tensions. He claimed that failure to grant collective rights to minority groups is what puts the national sovereignty at risk. Granting collective rights reduces the disappointment of minority communities with respect to the state and can increase their loyalty to the state. Barzilai argues that the State of Israel has preferred to relate to the Palestinian minority as a religious population – entitled solely to specific restricted religious rights – in an attempt to exclude it, so that it does not recognise any other rights or aspects of this minority. Barzilai objects to the criticism that collective rights threaten the stability of the state and claims that there is much to be learned from the experiences of other states such as Lebanon and Yugoslavia, which grant collective rights to communities that are not part of the government. Barzilai stresses that giving collective rights to the Palestinian minority could prevent collapse of the Israeli state because, relying on the communitarian approach, collective rights would be given within the framework of the state and would not engender change and collapse of the regime. For these reasons Barzilai theorises that providing collective rights to the Palestinian minority is an essential step. He supports the granting of autonomy to this minority, claiming that recognising the Palestinian minority as a national minority and giving them collective rights, based on a communitarian approach rather than the liberal approach that has guided the state till now, would ensure their minority rights.

This debate has from time to time also appeared on the agendas of the Arab parties and leaders of the Palestinian minority. For example, the High Follow-Up Committee presented the document *Demands of the Arab citizens of Israel for equal rights* in its meeting with Prime Minister Netanyahu in 1996. This document demanded the establishment of institutions appropriate for the unique culture of Palestinians in Israel and demanded the realisation of the equality principle in education by establishing an Arab education administration in the Ministry of Education and Culture (High Follow-Up Committee, 1996). Thus, Azmi Bishara, leader of the Tajamoa party, presented in 1997 a proposal for different amendments relating to the unique culture of Palestinians in Israel. However, as expected, the Jewish establishment completely rejected these demands, as explained by the then minister for Arab affairs, Ehud Olmert: 'Whoever talks about autonomy is talking about thickening the foundations that would lead to the detachment of Israel's Arabs from the state' (cited in Ghanem & Ozacky-Lazar, 1990, p. 11).

In an article published recently by Said Zeedani, he notes:

> There are some who might say that the time for the idea of autonomy for Palestinian citizens in Israel has come and gone. On the contrary, it is especially important these days as those in power in Israel put more and more emphasis on the Jewish character of the state, and are advancing discriminatory and exclusionary legislation and policies. At the same time, although perhaps not at the same pace or intensity, representatives of the national-cultural minority are emphasizing their distinct collective identity. The result of these processes is not exactly conducive to integration – at least from the perspective of those in power. […] So as to avoid misunderstanding, the idea of autonomy was first introduced a generation ago, and is being proposed here again. […] autonomy, whether cultural or richer and fatter (as I argue), cannot be implemented unilaterally. Autonomy is not the same as isolation or separation; it can exist only with the agreement of the central government which must transfer authority on specific matters and for specific aims through legislation. […] The autonomous government must be democratically elected by the women and men of the concerned national or cultural minority, irrespective of where they reside. Such an agreement cannot be realized without a serious collective struggle that must be well organized, coordinated and ongoing – a struggle that emphasizes the sincere commitment to the values and principles of the democratic process. (Zeedani, 2017)

The discussion on this issue reflects what I consider as a 'collective unrest", it is significant since no one is satisfied with the present situation and there is an obvious need to look for alternatives until the Palestinian minority can live in a state that respects genuine universal values such as equality, democracy, peace and social justice. Academic inquiry can play a significant role in evaluating the options for the reciprocal relations between the two nations in Israel and in relation to political and social issues, especially when this involves such a complex and unique situation as the coexistence of Jews and Arabs in the State of Israel.

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Erella Shadmi

Tribes in modern Israel and possible non-territorial autonomy arrangements

In June 2015, Israel's President Reuven (Rubi) Rivlin delivered what is commonly referred to as the 'Four Tribes' speech. That reference was to his vision of a demographic transformation of Israeli society, which is currently composed of four increasingly equal-sized 'tribes' – secular, national-religious, ultra-Orthodox ('Haredi') and Arab. Rivlin expressed his concerns that two of those groups are not Zionist and that they are all characterised by a fear and hostility primarily constructed by the education system. He argued that such a transformation would require construction of:

> a new concept of partnership amongst the tribes founded on four elements: a sense of security – that the unique identity of all groups be safeguarded and preserved; that each tribe share responsibility for the security and prosperity of the entire society; that there be a fairer and more equitable distribution of resources and power, as the current gaps in budgets, infrastructure and land are untenable; and, finally, that there be a common foundation of 'Israeliness' (Office of the President, 2015).

The last element is the least comprehensible, but probably means 'the common good', that is, 'those facilities – whether material, cultural or institutional – that the members of a community provide to all members in order to fulfill a relational obligation they all have to care for certain interests that they have in common' (Waheed, 2018). The president's view of the state approaches the concept of 'a state of all its citizens', close even to the French understanding, which is notably divergent from the Zionist legacy and current Israeli ethos.

In another speech, Rivlin claimed that the army was no longer the 'melting pot'. In its place, he advocates public service, academia, the labour market, local authorities and the school system (Office of the President, 2016).

In the wake of that analysis, Rivlin began to work on developing and implementing what he calls the Israeli Hope programme in concert with two nongovernmental organisations, private funding and the Ministry of Education (Office of the President, n.d.).

Recognition of the existence of the four tribes is not new to scholars, activists, journalists and other social observers (Ben-David, 2019) . Nevertheless, the president's speech prompted a public debate on the issue that served to highlight some important demographic changes, particularly the mounting hostility between Israeli sociopolitical sectors – liberals, religious, and conservatives, especially of state-religion relations - citizen and non-citizen, the centre and the periphery, and between Jewish- and Palestinian-Israeli.

The riots that erupted throughout Israel in May 2021, the resistance of ultra-Orthodox Jews and Palestinian-Israelis to complying with the coronavirus pandemic directives, and the outrage that stirred up amongst other groups all reflect the deep divisions within Israeli society.

I wish therefore to examine the possibility of adopting a non-territorial autonomy (NTA) perspective for resolving the deep disputes and disagreements currently embedded in Israeli society. I believe that all tribes and groups wish to remain part of Israel. This, of course, does not include Palestinians in the Occupied Territories (I discuss that situation in another article). I add later matriarchal, gifting, indigenous arrangements (applied, for example, in Rojava – another example of an NTA arrangement), which seem to resolve some remaining difficulties. Thus, NTA and matriarchal, gifting, indigenous arrangements might offer a good solution to a groupist society.

Social changes in Israeli society

Before I turn to the NTA perspective, it is important to understand other recent changes in Israeli society that may have an impact on NTA arrangements.

First, I will mention the decline of the Ashkenazi (white) elite. White supremacy has waned, particularly in politics and to a lesser extent in culture and the arts. Mizrahi (non-white) Israelis and, to some extent, Palestinian-Israelis have entered the middle class, publicly and loudly revealing the racism that has accompanied Zionism and Ashkenazi elites since the earliest days of Zionism and the state of Israel. Professor Meir Amor, a respected Mizrahi scholar, also claims (personal communication, 17 June 2020) that partnership – as suggested by Rivlin and others – is inadequate as it does not transform the power structure of a divided Israeli society.

Second, the ultra-Orthodox and national-religious groups are gaining political power, increasing in number and receiving financial support from the state. Most notably, they are attempting to transform demographically and culturally towns in which Jews and Arabs live side by side (the so-called mixed cities). Together with gentrification processes, that leads to unrest and tension. It should be noted however that their, especially the younger generation's, openness to secular culture has also grown, including regarding more open relationships between the sexes and greater freedom for women (Malach & Cahaner, 2019). Changes in ultra-Orthodox society led to a sharp conflict over the roles of religion and the state, since religion has never been separated from the state, as has largely been the case in liberal democratic societies (Sheleg, 2007). It must also be emphasised that the ultra-Orthodox sector comprises more than a few subsectors, rabbinic courts and groups that often compete with each other over power and control over Halakhic [Jewish law] issues.

Third, neo-Zionism and the centrality of the state in national decision-making (Shadmi, 2007; Zubida & Nuriel, 2020) reflect the struggle of the white elite to preserve its status and its refusal to acknowledge responsibility for suppressing Mizrahi people and Palestinians, or at least to adopt a principle of distributive justice.

It is also important to acknowledge the crucial role played by capitalism, neoliberalism and of course colonialism, with their contiguous histories marked by the exploitation of workers, women, nature and the global south (including the south's representatives in Israel – Mizrahim, Ethiopians, Bedouins, Palestinians, refugees and labour migrants), as well as the values of individualism, self-interest and competition that they promote.

Fourth, localism, zoning, neighbourliness and community-building are all on the rise in Israel (Ben Rafael & Shemer, 2020; Dror, 2008; Leichman, 2018; Regev, 2006). This means that the sense of belonging is shifting from the state and global levels to local entities that

assume responsibility for local affairs. It also means that individual identity is shifting towards the local.

Thus, Israeli society is characterised by conflicts between groups with different needs and interests; groups that are competing with one another for a level of control over economic success, resources, culture and values that makes it difficult to achieve equity.

Moreover, those intersecting conflicts occur on at least two levels: the relationships of each group with the state and amongst themselves.

Integration and identity construction

Perhaps the main problem is the striving for integration itself. Integration efforts have characterised the Zionist movement from its beginning (explained further in the next paragraph). Zionism has fought hard to transform Jews dispersed all over the world in communities that do not have anything in common except their Jewishness into a public with shared features – especially language, culture, state and society. Splits amongst the various subcultures and identities within the country play a major role in society and culture, and they are used in politics to gain power. They became even more noticeable under the reign of Netanyahu, especially during the Covid-19 pandemic. To those crucial developments can be added the rise of multiculturalism and identity politics (Mautner, 2011). Thus, I believe that a new kind of relationship and partnership amongst the various groups is necessary. An NTA perspective is one way in which to address this issue.

The notion of changing identity and sense of belonging represents a crucial shift in identity construction in Israel (and perhaps elsewhere). It means that the search for a unified nationalist identity and the emphasis on the 'melting pot' (Zangwill, 1921) – the process advanced by Ashkenazi Zionists in the early years of the state of Israel to erase ethnic Jewish traditions while adopting the values and practices of the dominant group – are no longer acceptable in an age of multiculturalism and identity politics. People of all the sectors mentioned here not only wish to preserve their specific identity but also wish to participate directly in national decision-making and have their identity specificities respected while doing so. This shift means that Israel's many tribes – Mizrahi, Ashkenazi, Ethiopian, Palestinian, ultra-Orthodox, nationalist-religious, GLBTQ and women – all strive for their specificities, culture, identity and needs to be acknowledged and respected (Elson, 2017). Such a shift also has ramifications for NTA arrangements, as I discuss below.

The multiplicity of groups – ethnic, religious, gender, local and communal – also offers the possibility of developing a sense of belonging and identity beyond nationalism. In fact, such multiplicity poses a challenge to the nationalist identity: multiple identities and voices replace the one and only nationalism. Differences based on gender, ethnicity, race, class, sexuality, faith and age (sometimes even intention or idea – as in intentional communes) become prominent. The social construction of identities has also been changing, and their liquid and hybrid nature, advanced especially by a queer perspective, must be acknowledged. In the postmodern, neoliberal age, when social institutions like family, motherhood and sexuality are in continuous flux, the nationalist state is collapsing, losing its centrality and drawing criticism for its sexism and racism, while clashes persist between identity groups and nationalist sentiments, and family ties are shaken (Ramon, 2013).

Such developments seem, I suggest, to open the door to an alternative social order; one that recognises and respects the multiplicity of groups that comprise our society. Generation Y is changing the meaning of identity: increased fluidity of sexuality, as reflected by queer and transgender people; the flexibility of intimate relations, family and parenthood; work and career transformation; localised identity that undermines or replaces the nationalist identity (Almog & Almog, 2015). Adding to such developments are movements like 'Black Lives Matter', 'Me Too' and Ethiopian protests in Israel, with their demands that the specificities and experiences of African-Americans, women, Ethiopian Israelis and other disadvantaged groups play a central role in grouping considerations. This generation wants freedom of choice, including identity shaped by preference and open to change. The rigid, socially constructed identities of the past seem anachronistic to them by appearing to prevent personal expression and meaning. Nationalism (especially white male nationalism) is challenged, and the multiplicities and fluidity of identities, cultures, values and voices are being recognised.

NTA possibilities

Briefly, NTA is a collective-rights-based approach to dealing with national diversity within a country. It grants autonomous decision-making to an ethnically, linguistically or culturally defined national group. Regardless of their place of residence within the state, all members of such a group form a corporate body. They elect representatives who then autonomously manage defined areas of their national life, e.g. schools, cultural institutions and associations. With its emphasis on national affiliation as the key denominator of autonomous rights, NTA belongs to groupist approaches to minority protection.

The two alternative approaches to minority protection in European history attributed national rights either to the individual citizen or to autonomous territorial units. NTA traces its emergence in the late Habsburg Empire to its interwar spread in Central and Eastern Europe and through its continuities into present day European minority protection (University of Vienna, n.d.). Nimni (2015) elaborates:

> NTA is … a generic form of collective rights and collective representation which aims to share sovereignty between different communities. The modality develops forms of community representation across non-territorial lines, allowing for minority communities to be collectively represented in governance while sharing a territorial space with other communities that are equally represented. The idea emerges to remedy the limitations of the atomist-centralist characteristic of liberal democracies by which modalities of representation are only individually based.

NTA has increasingly become a diversity governance tool used to empower ethnocultural minority groups, reduce interethnic tensions within a state and accommodate the needs of different communities while preventing calls for separate statehood.

The term 'non-territorial autonomy' refers to a variety of practices of minority community autonomy where the community does not exert exclusive control over territory and its members reside in shared territorial spaces (Nimni, 2020). The NTA perspective acknowledges that the nation-state is not the only possibility, that there are more nations than states and that a nation-state situation fosters persisting conflict.

NTA is not a new phenomenon, but it seems to receive renewed attention amongst professionals and policymakers alike. Rekindled ethnic tensions and secessionist claims along with massive migrations, triggered by wars, economic deprivation or climate change, compel us to revise the existing models as well as to search for [a] new solution' (Dodovski, 2020). Israel is no exception.

State–group relations for Israel

NTA offers various models for constructing the relationship between the state and autonomous groups. Some are sufficiently sensitive to the conflicts between groups and the dangers of tyranny of the majority (such as the NTA model of Consociationalism).

I suggest however that the plurinational state model demonstrated by Bolivia may be a good starting point from which to restructure the political order, as described by Nimni (2015). That plurinational and communitarian approach, recognising the collective rights of all communities, as well as the human and civil rights of all individuals, stands at the heart of my proposal.

The totality of all kinds of people – whatever their ethnicity, colour, gender, sexuality, origin, location, language or group – constitutes the people. Here we have a definition of the people that is markedly different from the homogenising view of the traditional Israeli nation-state (or President Rivlin's proposal). The emphasis is then on the unity of the people within the plurality of community representation and the commonwealth. *Commonwealth* here means a highly interconnected world, where territories are shared by diverse demoi and territorial polities cannot be the basis for exclusive sovereignties. It affirms the democratic value of the collective governance of nations and cultural communities, and it creates democratic models that incorporate self-determining, constituent and autonomous communities with recognised rights for effective collective representation (Nimni, 2015).

Intercommunal relations

Aware of the vast diversity of groups in Israel and the deep controversies that divide them, it might seem that such an NTA arrangement would not be enough: NTA arrangements are concerned especially, though not exclusively, with relations between minorities and the state. The evolving new multiplicity of structures, groups and collectives striving for autonomy and their share in decision-making in Israel – perhaps like other societies – makes it necessary to give autonomy to all groups, be they small or large, local or national, ethnic, religious, sexual or intentional, in defining their identity, culture and faith. All without denying or oppressing any other group and ensuring equal representation in and shared sovereignty of the commonwealth.

Issues of ethics, conflict resolution, economic and political balance are more difficult to resolve; hence, the mutual arrangements amongst the groups must be further considered. That is especially important in today's Israel, since the tensions and controversies amongst some of those groups are often antagonistic and combative. The Rojava NTA model comes to mind.

Rojava is an autonomous region in north-eastern Syria consisting of self-governing subregions. It is a secular polity, applying direct democracy, gender equity, environmental

sustainability, cultural and political diversity, and an innovative justice approach that emphasises rehabilitation, empowerment and social care over retribution. The death penalty has been abolished (Allsopp & Van Wilgenburg, 2019).

Rojava's unique structure was developed primarily by its great leader and thinker, Abdullah Öcalan, who has devoted the many years spent in Turkish prison to learning not only about anarchism, socialism and feminism but also indigenous and matriarchal wisdom. Those uncommon sources opened his mind to the gift economy, matriarchal legacy and patriarchy (see Öcalan, 2013, pp. 7, 14–15, 19, 24–25, 39, 46). It comes as no surprise that the title of his book is *Liberating Life: Women's Revolution* and that he established connections with the Modern Matriarchal Studies Network and the Feminists for Maternal Gift Economy networks of which I am an active member.

Aware of the above-mentioned deep controversies in Israel and the path the Rojava NTA has taken, both of which have had an impact on my thinking, I wish to suggest that the indigenous, matriarchal and maternal gift philosophy embedded in the structure and culture of entities such as Rojava, the Sami in Scandinavian countries and the Chinese Mosuo be applied to these uneasy issues. Such philosophies also resolve the power structure issue embedded in western culture based on gender, sexuality, class, ethnicity, race and age. In addition, they offer ways in which to reach agreements without the need to agree on the common good and values – which is President Rivlin's main concern. The following arrangements can address some of those concerns.

Ethics of gift-giving and Ubuntu

Instead of an ethic based on self-interest, individualism and competition, this ethic views human beings as *Homo Donnas* and recognises the interconnectedness of all human beings.

Genevieve Vaughan,[1] an independent, innovative scholar, identifies mothering as free giving in response to needs and, therefore, as an alternative economy. The motherly principle occurs in many aspects of our lives – from gifts of nature (sun, light, air, water and resources) through human gifts of ideas, knowledge and friendship, to blood banks, the Time Bank, organ transplants, volunteerism, solidarity networks and many other free gifting practices that keep expanding. Thus, the gift economy continually operates alongside the market's exchange economy. However, the capitalist-patriarchal market silences, denies and exploits the gift economy, despite the market economy being contingent and dependent on it. The gift economy promotes relationships, bonding, sharing, other- instead of ego-orientation, and need-orientation.

Ubuntu is a South African concept that appears under different names in many indigenous societies. According to Muthien (2008), "Ubuntu essentially refers to an African community spirit that postulates, 'I am because I belong, my humanity is inextricably connected with the humanity of others'" (Muthien, 2008, p.28).

Ubuntu and the motherly gift economy may be a better standpoint from which to continue thinking about what it means to be a human being, as well as how to conceive of the integral interconnection that human beings all have with one another. Both concepts advocate sharing and bonding that connects all humanity and may be able to connect all Israeli groups.

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1 See Vaughan's books and articles at http://gift-economy.com/, which also contain articles on the gift economy published by numerous writers and scholars.

Regionalism

The region – a network of local communities – becomes a central element of the society. No wonder that the Israeli government is also promoting it under the zoning plan being instituted in the north of the country (Forum of Zoning Experts, 2018). Goettner-Abendroth (2021) clarifies:

> Bigger is not necessarily better. The smaller units of society, responsible for engendering person-to-person and transparent politics, are given preference. They must not become so big that people cannot see through them and cannot participate in their decisions, as is the case in so many of today's governments and superpowers. But they must be big enough to safeguard their self-sufficiency and the diversity of their handiwork, services, technologies and arts. The ideal dimension is that of the region…
>
> The borders of a region are not random, like national borders are; rather they have developed out of the conditions of the landscape and out of cultural traditions. Regional borders are formed by the decisions of the people themselves who want to live together on the basis of common cultural and spiritual traditions (Goettner-Abendroth 2021, pp. 22–23).

The necessity of a central government may therefore be reconsidered. At least, the state may be restructured: it will no longer be an institution with its own interests and ideology; its only role will be the implementation of consensual decisions.

Transparent, consensual decision-making on all levels

All decisions of local communities, regions and state will be reached through consensus, with representatives of local communities and regions included in the decisions made by regions and central governance, respectively. That will provide an enhanced democracy, superior to the western perception of democracy, which relies on voting and numbers (today, the internet allows for a relatively easy implementation of this). It is important to emphasise this multilevel decision-making. States, especially under the influence of the corporate regime, tend to make decisions with little or no consideration of people's needs. As Emma Goldman allegedly warned a century ago, 'If voting changed anything, they'd make it illegal.' In her essay 'Minorities versus Majorities' (1917), Goldman observed that voting changes nothing. Consequently, only a social order built on a network of communities and regions may ensure that decisions will be made according to the needs of the people.

Resource and relationship balance

Society will be layered with relationships linking all communities through, for example, multiple affiliations (thereby consciously connecting different communities), the gift economy and knowledge production that may be developed by collectives or individuals and shared with other communities and regions. Agreed-upon, centralised control over natural resources is also optional. Joint control over resources combined with decision-making by consensus together guarantee that [electric, water, etc.] power is cooperatively shared.

Economic balance

First, in a gift economy, products and services are shared with other groups in need. A system of multiple economies will also be practiced – different segments will implement different economic rationales (Richards, 2011; Negru, 2009). This practice will emphasise sustainability and sharing. Every community will live within its means, refrain from overexploiting its human and natural resources, avoid accumulation, ensure the maximal fulfilment of its residents' human needs, act to produce food locally and work to establish a local collective economy, and maintain mutual help, partnership, communal life and cooperatives. This non-capitalist system will include economies of generosity, nonprofit businesses, worker collectives and alternative capitalist enterprises impelled by a social or environmental ethic (Cameron & Gibson-Graham, 2003).

Gar Alperovitz (2017) calls it a 'Pluralist Commonwealth', which, at its heart, is a way to think about a different system for ownership of the economic institutions underlying society. Contrary to both the corporate capitalist vision extolling private ownership above all else and the state socialist vision focused on bureaucratic centralised forms of public ownership, the pluralist vision sees multiple forms of public, private, cooperative and common ownership structured at different scales and in different sectors to create the kind of future we want. The vision begins and ends with the challenge of community. It also requires changing the underlying economic dynamic – rejecting expansion and growth as inevitable. The local level will contain a variety of new forms of ecologically oriented, democratised ownership – worker cooperatives, small local businesses and the like. For larger-scale local industry, there will be some form of public ownership with an inclusive, community-wide structure. Some form of planning at the national level is also required to ensure stability and ecological sustainability. Finally, though markets may be useful in some cases, if we are to move towards a reduced-growth or non growth systemic design that also promotes greater equity, we will need to make some major and coordinated decisions on investment, infrastructure, research, monetary policy and more, while replacing government mechanisms and antidemocratic corporate processes with a democratic and accountable process that creates material possibilities for the values we want the system to express.

In closing: transition is possible

I am well aware that such NTA and matriarchal, gifting, andindigenous practices are not common in a western-style society like Israel. However, those arrangements can become a reality for at least four reasons.

First, increasing numbers of activists, scholars, liberal politicians and ordinary people understand that the existing order does not serve them well and is rapidly deteriorating ever closer to the point of collapse. They also understand that the remedies offered by governments and international institutions do not sufficiently respond to that decline. Many are engaged in advancing new ways of thinking, being and doing, developing postcapitalist economies (including the gift economy), critiquing nation-states (including NTA arrangements) and finding new ways to organise and govern. Sharing, giving, spirituality, other orientations and ecological imperatives are amongst the values that are paramount for them (Hawken, 2007; Klein, 2019; Mason, 2015; Raworth, 2017; Tronto, 2013; Varoufakis, 2011). Second, indigenous cultures and practices permeate our lives in the west as a real alternative: restorative

justice, truth commissions, spirituality and alternative healing are spreading. Scientists are turning to the knowledge of traditional people for a deeper understanding of the natural world. It seems that 'there is a recognition that indigenous culture and traditions are the key to vitality and survival of the species', notes Peggy Rivage-Seul (2005).

Third, a major feature of some parts of the global movement for change is their new strategy. Some activists, especially Generation Y, seem to have stopped fighting the system; rather, they prefer to disengage and build new institutions from below, including gift economy practices, cooperatives, familial communities, ecovillages, independent knowledge centres and the like. Thus, unknowingly, they are implementing the new social, political and economic patterns proposed here (Hawken, 2007; Shadmi, 2019).

Fourth, besides Rojava, I believe that the communal state of Venezuela – despite western efforts to destroy it – seems to present a working example:

> The particular character of what Hugo Chávez called the Bolivarian process lies in the understanding that social transformation can be constructed from two directions, 'from above' and 'from below'. Bolivarianism – or Chavismo – includes amongst its participants both traditional organisations and new autonomous groups; it encompasses both state-centric and antisystemic currents. The process thus differs from traditional Leninist or social democratic approaches, both of which see the state as the central agent of change; it differs as well from movement-based approaches that conceive of no role whatsoever for the state in a process of revolutionary change… The main idea was to form council structures of all kinds (communal councils, communes and communal cities, for example), as bottom-up structures of self-administration. Councils of workers, students, peasants and women, amongst others, would then have to cooperate and coordinate on a higher level in order to gradually replace the bourgeois state with a communal state…Since sovereignty resides absolutely in the people, the people can itself direct the state, without needing to delegate its sovereignty as it does in indirect or representative democracy (Azzellini, 2013).

The evolvement of new communes and cooperatives in recent years alongside the governmental zoning initiative in Israel may be a good starting point for a move towards adopting NTA arrangements. The growing understanding of large segments of Israeli society during the Covid-19 pandemic that capitalism and some state institutions failed to cope with both the medical and economic challenges has driven many, especially young people, in search of alternative economic and political structures – outside capitalism, socialism and patriarchy (Van Leer Jerusalem Institute, 2021). Some leftist groups seem open to endorsing South American political ways.

No, the transition is not yet here. Nevertheless, it is on the way.

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Meital Pinto

Non-territorial group rights versus semi-territorial group rights for the Palestinian-Arab minority in Israel

Introduction

Before presenting the gist of the arguments put forward in this article, two disclaimers are in order. First, the article does not concern the rights or status of Palestinian-Arabs who reside in the territory of Gaza and the Palestinian Authority, who are not citizens of the State of Israel. Second, the article does not attempt to address the complexities surrounding the Israeli-Palestinian conflict. As a legal scholar who specialises in the constitutional law of the State of Israel, the aim of my article is much less ambitious. Primarily, it aims to analyse the prevalent social attitude of Jewish Israelis towards group rights that protect the cultural identity of Palestinian-Arabs who are citizens of the State of Israel. It then suggests that the best way to understand this attitude is by distinguishing between semi-territorial group rights, which are less controversial, and non-territorial group rights, which are highly controversial.

Group rights for the Palestinian-Arab minority are commonly considered in Israeli Jewish society as undermining Israel's Jewish character. In light of this hostility, an important question arises: why is there de facto recognition of several group rights which protect and enhance Palestinian-Arab culture in Israel? I will argue that in order to answer this question, a distinction should be drawn between the non-territorial group rights and the semi-territorial group rights that protect Palestinian-Arab minority culture. When group rights that protect the Palestinian-Arab minority's culture are exercised in a non-territorial sphere, in a space which is shared by both Jews and Palestinian-Arabs, Jews are more likely to resist them. However, when group rights that protect the Palestinian-Arab minority's culture are limited to a specific semi-territory, such as schools in which the teaching language is Arabic, or Sharia courts that bind only Muslims, they tend to be much less controversial.

The best example of non-territorial group rights relates to comprehensive language rights. That is, language rights that make Arabic visible in public spaces common to both Jews and Arabs, such as streets, roads, bus stops, municipal symbols, government websites and trains. In contrast to the prevailing opinion among Israeli Jews, I will stress that not only do non-territorial group rights not represent a risk to Israel's Jewish character, but that they also strengthen Israel's democratic character. Comprehensive language rights for the Palestinian-Arab minority, for example, have never risked the dominant status of Hebrew. They therefore do not pose any risk to Israel's Jewish character. On the positive side, comprehensive language rights for the Palestinian-Arab minority have the potential to reinforce Israel's democratic character. This is because comprehensive language rights enhance the civic status of Palestinian-Arabs in Israel, which is currently vulnerable. They thus have the potential to mitigate Arabs' exclusion from the Israeli public sphere.

This paper is structured as follows: section 1 offers a definition of group rights, as I understand them. Section 2 proposes a distinction between the non-territorial group rights and the semi-territorial group rights that protect the cultural identity of the Palestinian-Arab minority. It points out the willingness of Israeli law, expressed in both case law and literature, to recognise semi-territorial group rights, and to shy away from recognising non-territorial group rights, and to understand them as threatening the Jewish character of Israel. Section 3 argues that non-territorial group rights do not threaten the Jewish image of the State of Israel, and that they in fact strengthen its democratic character. Section 4 explains why the recognition of semi-territorial group rights for the Palestinian-Arab minority harms women, who constitute a minority within a minority, and therefore poses a great danger to Israel's democratic character. Section 5 argues that due to this danger, courts should be more involved in issues related to semi-territorial group rights. I will highlight a particular case ruling as a positive example of such an intervention.

What are group rights?

This article distinguishes between the non-territorial group rights and the semi-territorial group rights that protect the Palestinian-Arab minority's cultural identity. This distinction is based on a certain conception of group rights, which is applicable for all group rights. In Israeli law, group rights are understood as rights that protect an individual as a member of a group, whereas individual rights are understood as protecting individuals *qua* individuals (Saban, 2003; Segal, 2010). Group rights are understood as rights that protect a culture because it is part of the personal identity of individuals (Pinto, 2014; Réaume, 2000, 2003; Sapir, 1999; Taylor, 1994), and because it constitutes a context in which individuals make their choices (Kymlicka, 1995). Group rights are dedicated to the protection of minority cultures because minorities are in greater need of protection against assimilation into the dominant majority culture. Majority group members do not require special protection of their culture, as they are in a position to ensure the continued existence of their culture (Pinto, 2014; Réaume, 1991).

This definition of group rights, which focuses on their holders (individuals as group members), their justifications (identity and autonomy) and the type of groups they protect (minority groups), is not sufficient in my opinion. Further clarification is required in order to understand another difference between individual rights and group rights, and to understand the nature of group rights, which is inherently related to the role played by minority group members who are protected by group rights. Group rights differ from individual rights, primarily, in that they protect participatory goods or participatory interests. The goods are minority cultures, which are produced by the participation of the individuals who make up minority groups and create their joint culture. A culture can be produced and valued only when a group of individuals is involved in its creation and consumption. It changes according to the changes that the individuals who take part in its design undergo. A single individual cannot produce a participatory good and cannot benefit from it (Pinto, 2014; Réaume, 1988).

Group rights belong to all members of minority groups and protect their rights to take part in the creation of minority cultures, in changing them and adapting them to the views of the group members. Individuals share a common culture when they are exposed to a common value system that shapes, in varying intensities and scopes, their social world. Thus, for example, religion is understood in this context not only as an individual belief, but also as a way of

life that individuals jointly produce and enjoy. Since religion is understood as a cultural framework, I will not treat it as a different framework from comprehensive non-religious cultural frameworks. For the same reason, the right to freedom of religion is understood in this article, in some contexts, as a group right.

Understanding minority cultures as participatory goods, which are protected by group rights, is important not only at the conceptual level, but also at the normative level, especially when it comes to the rights of minorities within minorities. The term 'minority within a minority' refers to individuals or groups within a minority group, such as women, gays and lesbians, or poor minority members who are considered weak in terms of their political power over most other minority group members (Eisenberg & Spinner-Halev, 2005; Okin, 1999; Perez, 2010; Phillips, 2007; Pinto, 2015b). Minority members within minorities strive to change from within the practices that govern the minority culture to which they belong, or alternatively 'exit' from it into the majority culture.

The definition of group rights as rights that protect cultures, which constitute participatory goods, presupposes change and development. Minority cultures are protected by legal rights, not because they are fixed objects of aesthetic value to all of humanity, but because of their importance in the eyes of the specific individuals who identify and identified with them (Ben-Shemesh, 2007; Raz, 1994; Réaume, 1995; Shachar, 2000; Sunder, 2001). If culture is a participatory good, produced and valued only by a group of individuals, the assumption is that culture changes according to the changes that the individuals who produce and enjoy the culture undergo. That is, at the core of the protection of group rights is the assumption that each member of the minority can influence the contents of the culture and its dominant practices. Therefore, it can be assumed that members of cultural minority groups are entitled to the protection of group rights, even if they seek to change or challenge the dominant norms and values in their culture (Pinto, 2015b).

The definition of group rights that protect cultures as participatory, dynamic goods, subject to change by all members of the minority group, is important for the discussion in section 4 about the desired role that the judicial system must play in intervening for the benefit of minority members within the minority.

Non-territorial group rights

Group rights of the Palestinian-Arab minority in Israel are usually discussed by noting differences between them at the level of the subjects they relate to (education, language, religion, marriage and divorce, exemption from military service, and representation in public institutions) (Saban, 2005), and at the level of the nature of the demand for a group right (a demand that is consistent with liberal principles or with non-liberal principles) (Rubinstein, 2017; Stopler, 2003). I seek to focus on another difference between the group rights of the Arab minority concerning the space in which they are realised. In my opinion, the more the exercise of group rights are non-territorial, the greater the opposition to the recognition of such rights. Non-territorial group rights are not exercised in a particular territory that is designated to the Palestinian-Arab minority group. Non-territorial group rights take place, or are intended to take place, in every place in Israel, including the common space for Jews and Arabs.

The common space for Jews and Arabs refers to a geographical space, common to all residents of Israel, and not limited to cities or local authorities inhabited mostly by Arabs.

Common space for Jews and Arabs also refers to a symbolic space, which includes the symbols of the state and the language used by the state and bodies representing it.

The most obvious example of non-territorial group rights relating to the common space for Jews and Arabs are language rights that protect the Arabic language. Language rights are rights that protect linguistic minorities. The assumption underlying the definition of language rights is that in a heterogeneous society that has a strong majority group and weak minority groups, the majority language does not need special protection of its language rights, since in any case it enjoys a strong and preferential status compared to other minority languages. Members of the linguistic minority group are often under pressure to abandon their mother tongue in favour of the language of the majority group, and therefore need special legal protection for their language (Pinto, 2014).

Comprehensive language rights that protect a minority language are a clear example, and perhaps even the only example, of non-territorial group rights in a common space belonging to the majority and the minority groups. Unlike basic language rights, such as the right to freedom of speech or language, which primarily allows any person the passive freedom to speak their preferred language, comprehensive language rights impose an active duty on the state to positively support a particular language in its activities. Comprehensive language rights impose, for example, a duty on the state to publish the laws of the state also in the minority language, to add the minority language to street signs and other direction signs, to employ officials who speak the minority language in various government ministries (such as the ministry of social security, income tax), in real estate bureaus, etc. (Pinto, 2014).

Comprehensive language rights are a clear example of non-territorial group rights in the common space of the majority and the minority groups, because unlike other group rights, such as those concerning, for example, the religious sphere, comprehensive language rights go beyond the defined sphere of the minority group, and impose a certain burden on the majority group. Elsewhere, I call this a 'cultural burden'. When comprehensive language rights are exercised, at least some members of the majority group should learn the minority language and be proficient in it (Pinto, 2014). Thus, for example, when comprehensive language rights are exercised in the public sphere, they impose an obligation on state authorities to communicate in Arabic. Every administrative authority should allocate and train personnel who can speak the Arabic language with citizens. In this way, the majority members belong or are identified, at least to some extent, with the minority culture. Broad support for a minority language makes it present in the public sphere of the country and as part of the lives of members of the majority group, regardless of whether they want this or not. Comprehensive language rights therefore intrinsically have a rather 'eruptive' character, which penetrates the space of the majority members, who become a captive audience, at least when they are in the public space. Comprehensive language rights promote bilingualism in the public sphere (Gruben, 2008). They are more noticeable and it is harder for majority members to ignore their influence. Comprehensive language rights thus cause at least some of the majority members to take part in the minority culture.

So far, I have described the presence of a minority language in the common space of the majority and the minority groups when the minority language is protected by comprehensive language rights. I will now focus specifically on the Israeli case of language rights that protect the Arabic language. Israeli law, like other legal systems in the world, includes various legal provisions regarding the use of the languages of linguistic minorities. Under the heading 'Official languages', Article 82 of the Palestine Order in Council states that the orders, official

notices and official forms of the government and local authorities in areas determined by the government will be published in Hebrew and Arabic, and that both languages may be used in government ministries and courts. Other laws and by-laws impose an obligation on public authorities to use the Arabic language, which in fact constitutes language rights because they protect the use of a specific language – the mother tongue of members of the Palestinian-Arab minority (Saban & Amara, 2002).

Article 82 may give the wrong impression that the protection afforded to the Arabic language in Israel should be classified under the category of comprehensive language rights. However, the reality in Israel is very far from that (Saban & Amara, 2002). The situation in Israel today is that Arabic does not have a strong presence in the public space shared by Jews and Arabs. The Arabic language is almost non-existent in the various institutions of the Israeli Academy, in the symbols of municipalities (even when there is a significant presence of Arab residents), in the health system (in clinics and hospitals, in emergency and mental health services), in the courts, in district planning and building committees, in the ministry of the interior, in publications of Israel's Government Advertising Agency, in the post office, in the prison service, and on buses and trains in Israel (Pinto, in press-b). The Arabic language is almost non-existent in these institutions, even though they are supposed to serve the general public in Israel. Even legislation in Israel is not regularly translated into Arabic, despite the relative ease with which it can be done in today's internet age. The protection afforded to the Arabic language is so weak that there are those who claim that it is not an official language at all, and that it should no longer be treated as such.

Not only is the presence of the Arabic language very weak, but almost every time that Arabic 'erupts' into the common public space of Jews and Arabs, there is an outcry from people in the Jewish public, who see it as threatening the public space in general, and the Jewish space in particular. There is no shortage of examples of the threat that the Jewish public sees in the Arabic language. It is enough to see the angry reactions to the broadcast of one television commercial in Arabic (which of course included a Hebrew translation), or the angry reactions that led to the cancellation of announcements in Arabic on bus lines in the city of Be'er Sheva, in order to understand the reluctance of the Jewish public when Arabic infiltrates the common public space. The peak of negative reactions to the presence of the Arabic language in the common space for Jews and Arabs was recorded following the advertising campaign of the 'Fauda' television series, which included billboards in Arabic only. Following the installation of the signs, dozens of Jewish residents, who did not understand the meaning of the campaign, complained to the Israel Police. As a result, many signs were removed in the cities of Kiryat Gat and Nesher (Pinto, in press-b).

A strong presence of Arabic in the public space shared by Jews and Arabs is often perceived as a threat to members of the Jewish majority, as a kind of 'victory' of the minority culture over the majority culture. The negative image of the Arabic language among Jews is of course influenced by the fact that it is perceived as the 'language of the enemy' (Amara, 2017; Mendel, 2014), and by the fact that it is the language of Jews from Arab countries who were considered inferior for many years (Shenhav, 2006). Only the so-called threat that the Arabic language poses to the Jewish public can explain the abundance of legislative proposals on the subject, as well as the abolition of the status of the Arabic language as an official language in the 'Basic Law: Israel – The Nation State of the Jewish People'. These proposals appeared in the early years of the State of Israel. Thus, for example, in 1955 M.K. Naor of the Herut movement sought to abolish the official status of Arabic in the country and make Israel

a monolingual state, without Arabic representation in its symbols and laws (Kretzmer, 1990). This trend has intensified in recent decades.

In 2001, a bill by M.K. Kleiner of the National Union Party to abolish Arabic's official status and retain Hebrew as Israel's only official language came up for discussion in the Knesset. Kleiner presented attempts by Arab organisations to enforce the official status of Arabic as attempts at segregation by representatives of the Arab sector (Saban & Amara, 2002). In 2005, M.K. Aryeh Eldad, also from the National Union Party, introduced a bill calling for the abolition of the status of the Arabic language in Israel, and proposed that signage in Israel in most parts of the country be in Hebrew only (Pinto, in press-a).

In 2006–2007, as part of the 16th Knesset's activities to promote constitutional legislation that would also address linguistic arrangements, four detailed proposals were presented to the Constitution, Law and Justice Committee. Two of the proposals demanded the granting of a higher status to the Hebrew language and a formal hierarchy between Hebrew and Arabic (Yitzhaki, 2013). The deliberations of the Constitution, Law and Justice Committee were not exhausted, but the issue remained on the Knesset's agenda. In 2009, M.K. Robert Tibiev of the Kadima party introduced a bill according to which Hebrew would remain an official language, while Arabic would become a 'secondary official language' alongside Russian and English. Following this, M.K. Eldad of the National Union Party proposed that Hebrew should be given the status of 'state language', and that Arabic speakers should be given 'special attention', which would be mainly functional and would be expressed, among other things, in making messages concerning the Arab population accessible. In 2014, M.K. Ohayon of the Yisrael Beiteinu party proposed a law that repeals Article 82 and establishes the Hebrew language as the only official language in Israel (Pinto, in press-a).

As of 2011, discussions began in the form of a 'Basic Bill: Israel – The Nation State of the Jewish People'. The first version of the bill was promoted by M.K. Avi Dichter of the Kadima party. The bill states that the official status of the Arabic language would be changed to having a 'special status', of a functional nature that ensures 'linguistic access to state services'. Subsequently, in 2017, the Ministerial Committee discussed a softened version of Avi Dichter's original bill. According to the wording submitted to the committee, the official status of the Arabic language would be revoked and would be declared to be 'of special status'. Indeed, on 19 July, 2018, the Knesset Plenum approved the 'Basic Law: Israel – The Nation State of the Jewish People'. The final wording defines the Arabic language as 'having a special status", without detailing the nature of this status, except for the legislature's authority to regulate the use of Arabic in dealing with state institutions. In addition, the law perpetuates the status given to the actual Arabic language prior to its enactment (Pinto, in press-b).

We therefore see a strong tendency among the Jewish public to identify comprehensive protection of the Arabic language as a step that weakens the Hebrew language and the Jewish image of the State of Israel. This trend is also reflected in the minority opinion of Justice Cheshin in the Israeli High Court of Justice's ruling on bilingual signage in mixed cities (*Adalah et al. v. The Municipality of Tel-Aviv-Jaffa*, 2002). In this judgement, the High Court discussed the petitioners' request to oblige municipalities with a mixed population of Jews and Arabs in their jurisdiction to add a caption in Arabic to all municipal signage. In the majority opinion of President Barak and Justice Dorner, and in the face of the minority opinion of Justice Cheshin, the court decided to accept the petitioners' request and oblige the respondents to add Arabic captions to street signs. Judge Dorner based her ruling on Article 82 and stated that it constituted a sufficient normative source, which required acceptance of the petition.

Like other judgements on the issue of the Arabic language in Israel, which were not directly based on the official status of the Arabic language in Israel, President Barak's judgement also focused on the right to freedom of speech and equality, and not on the official status of the Arabic language. President Barak discussed the right to freedom of language and the right to equality in their positive dimensions, which imposes an obligation on municipalities to ensure that all residents have access to the information they publish. The balance between the principle of equality and the various purposes of protecting the Arabic language (the importance of receiving information in Arabic and the cultural connection of the Palestinian-Arab minority in Israel to the Arabic language) and the status of the Hebrew language in Israel led President Barak to conclude that signage in Arabic in mixed cities does not harm the status of the Hebrew language (*Adalah et al. v. The Municipality of Tel-Aviv-Jaffa*, 2002).

Judge Cheshin's minority opinion held that the petition should be dismissed. His ruling was based on a number of arguments. In this article, I will focus on just one of them. Justice Cheshin argued that a narrow interpretation should be given to Article 82, according to which the municipalities involved are not required to add an Arabic caption to the municipal signage. Justice Cheshin stressed that this is a question of great political sensitivity, related to the history of the country, to its national and Jewish character, and to domestic political questions (Pinto, 2009).

The argument of the political issue, which has far-reaching implications for the Jewish image of the State of Israel and which was emphasised in Justice Cheshin's ruling, was not answered in President Barak's ruling or in Justice Dorner's ruling. Moreover, both President Barak and Justice Dorner make it clear in their rulings that the Arabic language is not equal to the Hebrew language, that the Hebrew language is the 'senior sister' of the Arabic language, and that the Jewish character of the State of Israel requires that the Hebrew language be the primary language (*Adalah et al. v. The Municipality of Tel-Aviv-Jaffa*, 2002).

Reference was made to Judge Cheshin's judgement in the Adalah case scarcely a decade later in Judges Jubran and Rubinstein's judgement in the Nashef case (*Nashef v. The Governmental Authority for Water and Sewage*, 2013). The Nashef ruling dealt with the right to voice an argument established in Israel's Water Law, which requires the Minister of National Infrastructure and the Water Council to hear the claims of water producers and water consumers before determining the amount of water levies paid by water producers to the state treasury. The right to voice an argument can be exercised only after the Minister and the Council inform the public of the determination of the expected levy and issue an invitation to make claims against it. The appellants in the Nashef case claimed that their right to voice an argument was violated, since the invitation to make claims was published only in the Hebrew press. Since the Water Law did not mention a specific way of publishing the invitation to make claims, the legal question that arose was whether the right to voice an argument provided by the law obliges the Minister and the Council to publish the invitation to make claims in Arabic as well. The Supreme Court answered this question in the affirmative. Judge Jubran stated that this answer stems both from Article 82, which imposes a duty to use Hebrew and Arabic in all official government notices, and from the violation of the principle of equal accessibility to administrative services as a result of the non-publication of the invitation to voice arguments in Arabic (*Nashef v. The Governmental Authority for Water and Sewage*, 2013). Justice Jubran referred to the ruling of the three judges in the Adalah case and noted that he did not accept Justice Cheshin's opinion that issues related to the status of the Arabic language are a matter to be left to the political system. According to Justice Jubran, both the

Adalah case and the Nashef case ask the court to interpret legislation and not to intervene in a political matter (*Nashef v. The Governmental Authority for Water and Sewage*, 2013). Justice Rubinstein also referred to Justice Cheshin's remarks in the Adalah case. According to Justice Rubinstein, the sensitivity and explosiveness of the issue of the status of the Arabic language in Israel cannot be denied. At the same time, however, the correct approach in Judge Rubinstein's view is to distance the Arabic language from the political arena and to support it as much as possible. Supporting the Arabic language, according to Justice Rubinstein, will not harm the Jewish image of the State of Israel; rather, it will serve to strengthen the relations between Jews and Arabs (*Nashef v. The Governmental Authority for Water and Sewage*, 2013). The Nashef ruling is therefore an important milestone in the protection of comprehensive non-territorial language rights in the common space for Jews and Arabs.

The positive democratic potential inherent in group rights in the common space

Non-territorial group rights in the common space for Jews and Palestinian-Arabs provoke much controversy among the Jewish public in Israel. I believe that this is a big fuss about nothing. There is intense controversy over the meaning of the term 'Jewish state'. Among those who claim that Judaism is a national-cultural affiliation, and not a religious affiliation, there is agreement that a Jewish state is a nation-state in which Jews exercise their right to self-determination (Gavison, 1999). If we return to the issue of non-territorial group rights and focus on the example of comprehensive language rights that protect the Arabic language, it is important to understand that their existence does not challenge the Jewish image of the State of Israel at all. None of those who support the strengthening of the Arabic language in the public space shared by Jews and Arabs argues that Arabic should take the place of Hebrew or reduce its visibility from the public space in some way. In the most optimistic case of full realisation of non-territorial comprehensive language rights in the common space for Jews and Arabs, it is a matter of creating a bilingual Israeli society. Even if we proceed from the hypothetical assumption that full exercise of comprehensive language rights will lead Israel to become a bilingual state, we cannot conclude that Israel will become a bi-national state. A bilingual state (Ghanem, 2009; Hermann, 2005) is not necessarily a bi-national state or a liberal neutral state that does not actively support any religion or culture.

Not only do non-territorial comprehensive language rights not harm Israel's Jewish image, but they also have tremendous potential for strengthening its democratic image. In Israel, there is a Jewish majority and a Palestinian-Arab minority. The common denominator between the two groups, if there is any at all, is limited and very shaky. Most Arab citizens in Israel live in municipalities where there are no Jews; most of them study in a separate education system (Agbaria, 2018), do not serve in the army and do not establish families with Jewish partners. Representatives of the Arab parties are regularly excluded from coalition negotiations and are not considered potential partners in the formation of government (Jabareen, 2015). As noted by Michael Karayanni, the common denominator between Arabs and Jews in Israel is limited to very basic citizenship data, such as carrying a passport and identity card, and voting in elections (Karayanni, 2012, 2018). Whereas in other countries, minority groups fight for group rights in order to maintain a distinct identity, in Israel the Palestinian-Arab minority is not required to fight for its distinct identity. Whether as a result

of a deliberate government policy or a communal desire among the Palestinian-Arab minority in Israel to strengthen their national and cultural identity, the result is that today the distinct identity of the Palestinian-Arab minority is very prominent (Karayanni, 2018). The main problem of the Palestinian-Arab minority has never been maintaining a distinct identity, but rather the lack of a common denominator with the Jewish majority group, which means that the Arab minority has never fully integrated into Israeli society. Not only is there no common denominator between Jews and Arabs in Israel, but there is also no basic civic solidarity between Jews and Arabs (Hostovsky-Brandes, 2020). In one of the most well-known rulings in recent years, the Supreme Court officially confirmed that there may be no point in ensuring solidarity between Arabs and Jews, since in any case there is no Israeli nation in which the two groups can find a common denominator and a taste for solidarity (Hostovsky-Brandes, 2018; *Ornan v. Ministry of Interior*, 2013).

Non-territorial comprehensive language rights that protect the Arabic language could be the beginning of solidarity between Jews and Arabs in Israel. Their full realisation could lead to a bilingual public space in Israel where both Jews and Arabs have a place. It is to be hoped that if the Arabic language gains a strong presence in the public sphere, and if both Jews and Arabs speak it as they speak Hebrew, the solidarity between Jews and Arabs will be strengthened. Such a space would constitute a common multicultural framework for Jews and Arabs in Israel. It would also allow Arabs in Israel to identify with the state and belong to it as equal citizens, whose cultural identity is not forgotten or restricted to a limited sphere, but which occupies a place of honour alongside Jewish identity.

A public space with which all Israeli citizens can identify is in the clear public and national interest of Jews and Arabs, since, in the end, we all live under the national framework of the same state. We all need a common sense of solidarity with the country in which we live. A public space where non-territorial comprehensive group rights can be exercised is a potential source of solidarity between Jews and Arabs in Israel.

The negative democratic potential inherent in group rights in a space limited to the Arab population

So far, I have discussed the matter of comprehensive language rights that protect the Arabic language, which constitute a clear example of non-territorial group rights in the common space for Jews and Arabs. I will now focus on semi-territorial group rights of the Palestinian-Arab minority limited to the Arab space only. These rights include a separate education system and a separate system of religious courts. I classify them under the category of semi-territorial group rights, because both a separate Arab education system conducted in the Arabic language and a separate system of religious courts involve the establishment and preservation of separate institutions for Arabs, in which Jews have no direct participation. For example, the Ministry of Education, which is mostly staffed by Jews, oversees the Arab education system, but there are no Jewish students in Arab schools. In the same way, the religious courts are supervised by the Ministry of Religions and the Ministry of Justice, but Jews do not come through these courts. In fact, it can be said with a high degree of certainty that the vast majority of Jews in Israel have never entered the gates of an Arab school or the gates of a religious tribunal serving the Arab population.

Semi-territorial group rights limited to the Arab space alone are not a particularly controversial subject in the context of the Jewish character of Israel. There is a consensus that they are necessary to protect Arab culture, and that they do not cause any problems for the Jewish population. However, the acceptance of these group rights is puzzling, since they potentially pose a high degree of threat to the democratic character of the State of Israel. The literature on the meaning of the phrase 'democratic' in combination with 'Jewish and democratic' is extensive and includes various interpretations (Masri, 2017). The accepted interpretation distinguishes between formal democracy and substantive democracy. Formal democracy, also known as 'procedural democracy', is limited to describing a particular regime structure that is committed to certain procedures, also called the 'democratic rules of the game'. These rules usually include the principle of majority rule, the separation of powers, and the principle that the legitimacy of government is based on the consent of the governed. This consent is guaranteed, inter alia, through the observance of basic universal rights, such as the right to vote and to be elected, the right to freedom of expression and the right to form an association (Barak, 1998). Substantial democracy adds to the basic democratic rules of the game more substantial ideological content to which a democratic regime is committed. The controversy over this content ranges from various comprehensive ideologies such as socialism or ideological liberalism (as opposed to procedural liberalism). There is no dispute, however, that the common and limited denominator for all interpretations of substantive democracy, which is not committed to a particular comprehensive ideology, is that the meaning of a democratic state is a state that preserves human rights (Barak, 1998, 2009; Roznai, 2020).

Semi-territorial group rights in the space restricted to Arabs pose a risk to Israel's democratic character, because the interfaith regime in Israel, in which group rights are exercised in the Arab space, includes quite a bit of what Will Kimlicka calls 'internal restrictions'. These are powers given to the minority group by the majority group, which allow members of the majority group within the minority group to restrict the rights of the weaker minority group members, also known as 'minorities within minorities'. These include mainly women, children, particularly poor minority members and minority members who belong to the LGBT community (Kymlicka, 1995).

Most scholars who study group rights in multicultural countries are in one way or another opposed to group rights that allow restrictions imposed by members of the majority within the minority on members of the minority within the minority (Margalit & Halbertal, 2004; Raz, 1998; Rubinstein, 2017). Scholars such as Chandran Kokatas, who believe that minorities should be allowed group rights of this kind, also argue that they should be recognised only when minorities within minorities have the option to 'exit' from the minority group to the majority group (Kukathas, 1992).

Semi-territorial group rights that are limited to an area which includes only or mainly Arabs are particularly dangerous for Israeli democracy, because there is no common civic space in Israel that allows an 'exit' to the Jewish majority culture for Arabs who are interested in doing so (Karayanni, 2018). Although the internal Jewish public discourse is well aware of internal restrictions for minority members within religious and ultra-Orthodox Jewish minorities (Cohen-Almagor, 2018; Raday, 2007; Stopler, 2013; Tirosh, 2020; Triger, 2013), it is very much lacking in its discussion of internal restrictions imposed on minority members within the Arab minority. In fact, the discourse on semi-territorial group rights restricted to the Arab space is so far removed from the Jewish eye that some of the exercise of these rights is hardly regulated at all by the official institutions of the State of Israel. Michael Karayanni

points out, for example, that there is no law in Israel that establishes a mechanism for appointing judges to ecclesiastical courts, and that many of the senior judges in these courts are not local residents and are not fluent in the Arabic language (Karayanni, 2018).

Some argue that the relatively weak regulation of semi-territorial group rights stems from a fear of harming the status quo in relation to the Arab population, which might be interpreted as an attempt by the Jewish state to harm the Arab cultural identity. This is especially so in light of the fact that there are not many voices among the Arab population who support a comprehensive regulation of these semi-territorial group rights. However, arguments of this kind are clearly inconsistent with attempts to weaken non-territorial group rights in the public space shared by Jews and Arabs. Doesn't weakening non-territorial group rights of this kind also mean harming the Palestinian-Arab cultural identity?

Michael Karayanni is one of the few Israeli scholars dealing with the issue of minorities within the Palestinian-Arab minority in Israel. This article seeks to follow Karayanni's work and develop another discussion on the role of the court in the protection of minorities within the Palestinian-Arab minority in Israel. As Karayanni rightly points out, the position that is willing to assume the exercise of semi-territorial group rights for the sake of Arabs alone is inconsistent with the general ideological basis that supports group rights for minorities. This conceptual basis includes values such as pluralism and tolerance for a minority culture and individuals who identify with it. Pluralism and tolerance usually come from the school of democratic regimes, and these regimes cannot afford to remain indifferent to the fate of weak groups within the minority groups, which constitute minorities within minorities (Karayanni, 2018).

In the next section of this article, I will discuss the Plonit ruling (*Plonit v. The Shari'a Court of Appeal*, 2013), which in my opinion demonstrates the negative democratic potential inherent in the segregation of semi-territorial group rights into a space limited to the Arab population only. The Plonit ruling, which deals with the issue of appointing a woman as an arbitrator in the Sharia court, illustrates the need for the intervention and regulation of the powers given to the majority members in the minority group within the framework of semi-territorial group rights. In addition, I will emphasise that although the court chose to justify its intervention based on individual liberal principles restricting semi-territorial group rights, it could also have understood the petitioner's claim as a claim to change the culture of the minority within the minority. This is because every minority member is part of the minority group and can take part in creating and changing the participatory good – the culture of the minority group.

The ruling on the arbitrator in the Sharia court: An example of positive intervention in semi-territorial group rights limited to the Arab space

At the centre of the judgement in the Plonit case is a petitioner who was in the process of dissolving her marriage with her husband. The husband had filed an arbitration suit with the Sharia court in Taibeh. The tribunal granted the spouse's request and ordered that each party appoint an arbitrator on its behalf in accordance with sections 130 and 131 of the Ottoman Family Law. Section 130 of the Ottoman Family Law instructs the Sharia court to appoint arbitrators to a dispute between spouses who are in the process of dissolving a marriage. The role of the arbitrators is to try to assist in a reconciliation between the spouses, or, alternatively, to decide on the dissolution of the marriage and the amount of the Mohar payment due to

the wife. The petitioner submitted a notice to the Sharia court regarding the appointment of Hajaja Rudina Amasha from Taibeh as an arbitrator on her behalf. The Sharia court rejected her statement and ruled that the arbitrators should be men, according to the words of the Shafa'i and Malachi streams of Islam. Subsequently, the court ordered the petitioner to appoint a male arbitrator. The petitioner appealed against this decision to the Sharia Court of Appeals. The Sharia Court of Appeals dismissed her appeal and ruled that section 130 of the Family Law is based on the Malachi interpretation, and since the Malachs demanded that arbitrators be men, a woman could not be appointed as an arbitrator.

The petitioner then petitioned the High Court of Justice. The ruling in the High Court of Justice dealt with the question of principle, which is whether women are entitled to serve as arbitrators in the process of dissolution of marriage in the Sharia court. The petitioner based her petition on four main arguments (Pinto, 2015a). According to the first argument, the Sharia court should interpret the Ottoman Family Law as it is customary to interpret other civil laws, and not according to interpretations that were accepted by clerics in the period prior to the enactment of the law. According to the civil interpretation, section 130 of the law must be interpreted as allowing for the appointment of an arbitrator also on the basis of a comparison with the provisions of the Magala that deal with arbitration, and give the parties the freedom to choose the arbitrator acceptable to them.

According to the second argument, even if one accepts the position that the Ottoman Family Law is a religious law, it should be interpreted according to other schools of Islam, which allow the appointment of a woman to the position of arbitrator. The petitioner emphasised in this context that the Ottoman legislature that enacted the Family Law had not always adopted the Malachic interpretation in the past, and had allowed the setting of norms that differed from this school of Islam. It was further argued that the Magala was based on the Hanafi school, and that this had been the practice of the inhabitants of the land for many years, and therefore the laws of the Malachi school should not be imposed on them now. The petitioner also referred to religious institutions in the Palestinian Authority and in Muslim countries, such as Jordan, Egypt and Morocco, where in recent years women have also been appointed to serve in the role of Qadi.

The third argument of the petitioner was that the decisions of the Sharia courts regarding the petitioner's request to appoint an arbitrator should be annulled, since they are contrary to the Women's Equal Rights Law, which requires the same law to apply for every man and woman in all legal actions. The fourth argument presented in the petition by the feminist organisation Kian was that the appointment of women to arbitration would contribute towards mitigating the vulnerable status of women within the Muslim minority community. The appointment of women to arbitration would allow Muslim women greater access to Sharia courts and would contribute to their voices being heard.

The High Court decided to accept the petition and overturn the decision of the Sharia court. It was determined that the hearing should be returned to the Sharia court for the continuation of the arbitration procedure, while allowing the petitioner to choose a woman arbitrator on her behalf. The main decision was written by Judge Arbel. The vast majority of the judgement deals with the questions as to whether the decision of the Sharia Court to reject the petitioner's request to appoint an arbitrator on her behalf constitutes discrimination, and whether it is contrary to the provisions of the Women's Equal Rights Law. Judge Arbel devotes several passages from the judgement to writing about the importance of the principle of equality in general, and the importance of equality towards women in particular. Judge Arbel

emphasises that maintaining the principle of equality is especially important when it comes to the status of women within religious institutions, where there is often built-in inequality against women.

Since the purpose of the Women's Equal Rights Law is to promote the equality of women in Israeli society, Judge Arbel concludes that the applicability of the law should be interpreted broadly and the exceptions of the law narrowly. One of the exceptions in the Women's Equal Rights Law is reflected in section 7(c) of the law, which states that 'the provisions of this law shall not apply to the appointment to a religious position in accordance with religious law, including the appointment of rabbis and judicial officials in religious courts'. Judge Arbel ruled that the exception does not apply because an arbitrator does not have religious roles. Relying on Moussa Abou Ramadan's article (Abou Ramadan, 2006), Arbel emphasised that,

> the arbitrators ... are not required to have any recognition of religious law, qualifications, understanding or certification in this law. They have no professionalism or skill in exercising religious law ... Moreover, the arbitrators are not required to exercise religious law in the course of their duties. All they have to do is act in accordance with the provisions of the section – try to bring the couple to reconciliation, and if they cannot do so, they must rule on divorce while determining which side is to blame, and what the amount of the mohar will be accordingly. When they encounter any problem, they should seek instructions from the Sharia court.

I welcome the result of the Plonit decision. The court does not leave the matter of the Muslim minority out of sight; nor does it abandon the rights of Muslim women, who are in an inferior position to men when it comes to religious matters and matters of personal status, and therefore constitute a clear example of a minority within a minority group. The main rationale of the judgement stems from individual liberal principles that also support the protection of a minority within a minority. The court is in fact unwilling to give a helping hand to the practice of the exclusion of women within a religious minority community. The ruling in the arbitration case is similar in this sense to other rulings in which the court has intervened in favour of women who argued against various exclusionary practices within their religious community or within religious institutions. However, the ruling is exceptional, as in this case, it is not a ruling against the exclusion of Jewish women, but against the exclusion of Muslim women, who belong to a minority group, whose religious affairs are usually presented as an issue in which it is better not to interfere.

The petitioner in the Plonit case clearly went against the one-dimensional perception of the Muslim minority that all of its members would want a male arbitrator, or at least would agree that the Sharia required it. Plonit's struggle is thus similar to other struggles of minorities within minorities struggling to change and define the norms and values within their minority culture. These struggles emphasise that the interpretation of the religious and cultural norms of minority communities is not uniform, and that the position presented by the majority group within the minority group is not necessarily the agreed position of all the group members.

As I noted above, semi-territorial group rights in the religious sphere, which are not present in the common space for Arabs and Jews, have a high potential for harm to minorities within minorities, which ultimately leads to harm to the democratic values of the State of Israel. Therefore, the court that intervened in the Plonit case in favour of the minority within the minority did well. The court chose in the Plonit case to intervene by virtue of the right to equality. However, since the subject of this article is group rights, I would like to point out

that intervention by virtue of the right to equality is not the only option available to the court in such cases where minorities within minorities challenge dominant cultural practices within their minority group. The case of Plonit concerned a religious Muslim woman who did not deny the authority of the Sharia court but favoured a less common interpretation of religious practice. Therefore, as I have argued elsewhere (Pinto, 2015a), the court could have reached the same conclusion if it understood Plonit's claim not only in terms of individual equality, but also in terms of the right to culture of the minority within the minority. As I explained in Section 2 of this article, group rights differ from individual rights in that they protect a participatory good, which can be produced and enjoyed only by a group of individuals. The participatory good is the minority culture, which is produced by the individuals who make up the minority group and which they jointly enjoy. Understanding minority culture as a participatory good, which is protected by group rights, is especially important when it comes to the rights of minorities within minorities, who seek to change the practices that govern the minority culture to which they belong.

The petition by Plonit against the Sharia court is a clear example of a minority within a minority's claim seeking to challenge and change cultural practices within the minority group. If culture is a participatory good, produced only by a group of individuals and with a value derived from it only by that group of individuals, it is assumed that each member of the minority can influence the content of the culture and its dominant practices. Therefore, the court could also have protected Plonit by virtue of her right to culture, since Plonit was entitled to this protection when she sought to change the dominant norms and values in her culture. Her request to appoint an arbitrator on her behalf is in fact a request to change the accepted practice among the members of the minority group to which she belongs, so that it also reflects the unique values and needs of women. The petitioner therefore did not seek to 'leave' or disengage from the minority group to which she belongs. She sought to change and adapt the culture of the minority, so that it would also include the worldview and needs of women. That is, the petitioner in the Plonit case claimed her right to protect the participatory good of the minority culture, as she understands it (Pinto, 2015a).

Therefore, in legal cases of the type of the Plonit case, it is also possible to understand the claims of minorities within minorities in terms of the right to culture – the same culture that constitutes a participatory good that they create and share together with members of the majority group within the minority. In other words, although the petitioner's argument contradicts the claims of the Sharia court, the claims of both parties deserve to be considered within the framework of the right to culture, because this right protects the Muslim culture belonging to the petitioner, just as it belongs to the Sharia court and the majority members of the Muslim minority group. Therefore, the right to culture should not be balanced only against the petitioner's right to equality, because the minority culture, which the right to culture protects, belongs to the petitioner just as it belongs to the respondents.

Balancing the right to culture of the petitioner against the right to culture of the Sharia court, which represents the majority group within the minority, is not an easy task. Such a balance requires the court to examine the sincerity of the religious practice that excludes the minority within the minority, and to that end to discuss difficult questions, such as whether this is a practice that is an integral part of culture or religion. Is it a religious imperative or a different kind of norm? Are there proponents of a different interpretation of the practice among the minority group? And so on.

It is possible that the court in the Plonit case deliberately tried to avoid taking a decision on these questions, and therefore preferred to conceptualise the petitioner's arguments in terms of her individual right to equality. The court's intervention in the cultural autonomy of a minority group is perceived as problematic for several main reasons. First, the judges of the court are often identified with the elite of the majority group, and therefore a judgement regarding the cultural practices of a minority group is perceived as a paternalistic act of the majority group towards the minority group. Thus, for example, President Grunis and Justices Amit and Handel refused to invalidate a law that exempted ultra-Orthodox students in small yeshivas from core studies (*Rubinstein v. The Knesset*, 2014). According to them, the disqualification of the law would constitute a paternalistic intervention, since the petitioners, who were not ultra-Orthodox, claimed to determine for the ultra-Orthodox what is good for them.

The paternalistic argument becomes stronger when the court, representing the majority group, is identified with an ideological position opposed to the dominant ideological position among the minority group. In such a situation, the minority group that 'loses' in the judicial process may identify the court as holding polar opposite positions and lose faith in the entire judicial system. Similarly, when the High Court, staffed mostly by Jewish judges, intervenes in the decision of the Sharia court, it may be perceived as paternalistic – as an institution that knows what is better for the Muslim minority group. Second, there are those who believe that the court should avoid or at least moderate its intervention in the religious and cultural affairs of minority groups, since such intervention may be accompanied by cultural misunderstandings. The idea is that every culture is made up of different categories, contexts and meanings. The great differences between cultures can lead to one group's misinterpretation of another group's religious or cultural practices.

I do not underestimate the above difficulties. However, there are cases in which the Supreme Court has overcome at least some of the difficulties inherent in intervening in the cultural and religious autonomy of minority groups, when it discusses such questions on issues related to the exclusion of Jewish women for religious reasons. Therefore, one can only hope that it will work in the same way when it comes to the exclusionary practices of women in non-Jewish minority groups.

Regardless of whether the court intervenes in practices that oppress minorities within minorities based on the individual right to equality, or whether it intervenes on the basis of the right to culture, these actions should be welcomed. It is to be hoped that the ruling in the Plonit case marks the beginning of a new approach that sees semi-territorial group rights limited to the Arab space as an issue where it is possible to intervene, especially in cases where such intervention is required for the benefit of minorities within minorities. Such intervention should be understood as an integral part of the democratic nature of the State of Israel.

Conclusion

Group rights are a controversial issue in general, and in Israel in particular. One of the aims of this article was to encourage a reappraisal of group rights, not as one issue, but according to two different categories: non-territorial group rights in the common public space for Jews and Palestinian-Arabs, and semi-territorial group rights in a space that includes only Arabs. In my opinion, when combining the discussion of these two categories with the academic discussion on the categories of 'Jewish' and 'democratic', a clear conclusion is required, which is not

sufficiently emphasised in the current available literature. Non-territorial group rights in the common space for Jews and Arabs, which supposedly pose a threat to the Jewish character of the State of Israel, do not in reality endanger it. In addition to the fact that they do not threaten the Jewish character of the State of Israel, they also have the potential to make a significant contribution towards civic solidarity between Jews and Arabs, which would strengthen the democratic character of Israel. In contrast, semi-territorial group rights in a space limited to Arabs only, which generally do not provoke controversy among the Jewish public in Israel, are very dangerous for the rights of minorities within minorities, and therefore post a risk to the democratic nature of Israel. Hence, I recommend that the Israeli legal system, including the Israeli courts, should strengthen non-territorial group rights in the common area for Jews and Arabs, and reduce semi-territorial group rights in the area limited to Arabs only.

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VI.
Identifications and Group Boundaries within Non-Territorial Autonomies

András L. Pap

Groupism, groupness, human rights and minority rights: recognition and identity in the case of Roma non-territorial autonomy in Hungary

Introduction

This paper focuses on how Hungarian legislators have conceptualised the Roma as a national minority within the unique institution of minority self-governments, a non-territorial design for cultural autonomy. Besides an analysis of the development of the legislative framework since the 1989 political transition (Section 3.), in order to contextualise this project, the paper outlines the conceptual framework in which the terminology of national/ethnic/racial minorities can best be understood (Section 2.). The study argues that the conceptualisation of 'what the Roma are' and how Roma policies should be designed and targeted will be completely different depending on whether one is referencing rights holders for minority (cultural) rights, beneficiaries of social inclusion policies or victims of discrimination. It also argues that while the terminology used in legislative and policy documents is not a reliable signifier for policy frameworks, it might reveal contradictory group conceptualisations and inconsistent policy-making. In assessing the Hungarian minority-rights framework (Section 4.), the paper claims that the inconsistent labelling of the Roma as an ethnic, racial or national minority reflects the lack of consistent conceptualisation and the determination of whether social inclusion, anti-discrimination or a cultural rights-oriented approach should dominate policies.

In terms of methodological framing, the analysis follows a top-down perspective and focuses on legislative policies conceptualising the Roma as an ethnonational minority. The two major legislative instruments, the 1993 and 2011 laws on the rights of national and ethnic minorities and nationalities, are analysed in detail as these are core legal documents that provide an authentic interpretation of how the Hungarian political elite and the state have conceptualised the Roma. The analysis is carried out through scrutiny of the legal texts supported and provided by international and non-governmental organisations as well as academic texts and secondary literature.

Race, ethnicity and nationality: clusters for conceptualising groups

A question that often arises concerning the term 'Roma' is does it refer to a social class, a race, an ethnicity or a national minority? In social sciences and law, the purpose of typologies and classification is to help us understand the internal logic and substance of concepts and institutions. Although the discourses on minority rights and corresponding policy frameworks are essentially law-based, most international and domestic documents on minority rights, human rights and social rights provide only vague descriptions of race, ethnicity and nationality.

In order to evaluate and contextualise the potential policy ramifications of different conceptualisations of 'the Roma', the following subsection provides an overview of what race, ethnicity and nationality may mean in reference to this unique, transnational and multifaceted group that has a diverse set of needs and demands within a complex sociopolitical environment.

Race and ethnicity: vague categories and inconsistent application

Race is a controversial category. It is generally not considered to be a fruitful analytical concept in the social sciences, where it is widely understood to be a social construct rather than a biological trait (in the biological sense, the entirety of humanity constitutes one single race) without a theoretically or politically uniform definition (see, e.g. Tajfel, 1981). For a legal analysis, however, there are calls for some sort of definition, conceptualisation and analysis because countless domestic and international legal documents apply the term either in conjunction with 'ethnicity' or alone when outlining the prohibition of discrimination, genocide, hate crimes and other forms of persecution and marginalisation. Hence, conceptualisation of the term would appear to be inevitable. The aforementioned legal instruments mostly identify race with physical appearance and they focus on perception and external classifications when prohibiting discrimination or violence (on *racial* grounds). In this respect, race is rarely distinguished from *ethnicity* and the two terms are often used interchangeably by lawmakers (and drafters of international documents) and, predominantly, by judicial bodies.

It can be argued that in order to grasp the substance of these definitions, we must recognise that there is a common element shared by racial and ethnic minorities – the need to be protected from maltreatment, including discrimination, hate crime, hate speech and physical violence. Reflecting an anti-discrimination logic, the groups need to be defined by following the perpetrators' and the discriminators' methodology – basing the definition of the group on the perception of either biologically determined characteristics or cultural attributes.

In a sense, however, ethnic minorities are multifaceted groups. While many of their claims are grounded in the anti-discrimination rhetoric employed by racial minorities, some 'ethnically defined' groups, such as the Roma, might also have similar cultural claims (and protections) to national minority groups. International legal terminology habitually differentiates between the two groups on the grounds that ethnic minorities are different from national minorities in the sense that they do not have nation states as national homelands (Hannum, 2000). In this way, ethnic minorities are a sort of hybrid categorisation, blending, and often mirroring, the claims made by racial and national groups.

When it comes to defining national minorities, this paper proposes settling with a definition that these are groups that, based on their claims for collective rights, bypass the anti-discriminatory logic and seek recognition of cultural and political rights, especially autonomy and the toleration of various cultural practices that differ from the majority and which often require formal exceptions from generally applicable norms and regulations. In this case, we are considering claims for preferential treatment. According to Kymlicka (2001), cultural minorities can be divided into nations and ethnicities. The former is a historical community, more or less institutionally complete, occupying a given territory or homeland and sharing a distinct language or culture, while the latter is a group with common cultural origins but whose members do not constitute an institutionally complete society concentrated in one territory.

Means to an end: concepts of justice and social policy

These issues cannot be separated from discussions concerning which concept of social justice and equality decision-makers are endorsing in regard to a given community. Fraser (1995) points to the difference between *redistribution* and *recognition* goals (and the importance of both in the long run) and McCrudden (2005) suggests that there are at least four different meanings of equality and what might be suitable in one context might not be appropriate in another. First, what he calls the 'individual justice model' focuses on merit, efficiency and achievement and aims to *reduce discrimination*. Second, the 'group justice model' concentrates on outcomes and the improvement of the relative positions of particular groups, with *redistribution* and economic empowerment at its core. Equality as the *recognition* of diverse identities is the third dimension as the failure to accord diversity is itself a form of oppression and inequality. Finally, the fourth conception of equality includes social dialogue and *representation*, in other words, the meaningful articulation of group priorities and perspectives (McCrudden, 2005). Each of these conceptions of equality also has a different concept at its core, corresponding respectively to direct discrimination; indirect discrimination and group-level marginalisation and oppression; cultural and linguistic rights; and participation in political and public policy decisions.

A useful set of terminology would therefore centre on the substance of legal and policy claims and frameworks. Under this approach, there are three clusters. First, *minority rights* focus on the recognition and accommodation of cultural claims of both groups and individuals, as well as identity politics. The second array of legal and policy frameworks is oriented towards individual rights and centres on *anti-discrimination*, which should be understood in the broad sense, which includes protection from hate crimes, or even hate speech, and several other related individual-based human-rights claims. The third batch includes those various and diverse *social inclusion measures* that 'ethnicise' social policies or, by endorsing multiculturalism, include the recognition of other forms of group-based, collective claims. 'National minorities' and 'nationalities' are adequate terminologies for the first cluster, 'racial' and 'ethnic' minorities are adequate for the second and the third approach institutionalises a curious mix of all three.

It needs to be emphasised, however, that the recognition of ethnocultural claims and policies for enhancing certain groups' capabilities for participating in cultural and public life, and preserving their identities, needs to be differentiated from measures providing equal treatment or presenting group-conscious social policies. Due to the uniquely complex situation of the Roma, our Hungarian case study will show that Roma policies are the chaotic application of all of the above.

The Hungarian minority-rights legislative framework

In 1993 Hungary adopted a comprehensive law on the rights of national and ethnic minorities, which were defined as groups that have been present in the territory of Hungary for over 100 years and that:

> … constitute a numerical minority within the population of the country, whose members hold Hungarian citizenship and differ from the rest of the population in terms of their own tongue,

> cultures and traditions, and who prove to be aware of the cohesion, national or ethnic, which is to aim at preserving all these and at articulating and safeguarding the interests of their respective historically developed communities.[1]

The law also listed 13 recognised minorities: Armenian, Bulgarian, Croatian, German, Greek, Polish, Romanian, Ruthenian, Serb, Slovak, Slovenian, Ukrainian and Roma. A complicated procedure was expounded to extend the list, which would involve a popular initiative, an advisory opinion from the Hungarian Academy of Sciences and a vote in parliament to amend the Act. No such initiatives have been successful so far. The Act guarantees cultural and linguistic rights for the identified groups, contains provisions on the establishment and maintenance of minority education and establishes a unique Hungarian institution – minority self-governments (MSGs). Funded by the local authorities or by the state when national-level bodies are concerned, MSGs are elected bodies that operate at local, regional and national levels and that have special competences for protecting cultural heritage and language use, fixing the calendar for festivals and celebrations, fostering the preservation of traditions, participating in public education, managing public theatres, libraries and science and arts institutions, awarding study grants and providing services for the community (legal aid in particular) (Darquennes et al., 2012).

The function and design of MSGs is quite ambiguous: political representation and empowerment, cultural competences and a vague promise of social integration potential are bundled together. In 2006, funded by the Office for Democratic Institutions and Human Rights of the Organization for Security and Co-operation in Europe, the National Democratic Institute for International Affairs (National Democratic Institute for International Affairs [NDI], 2006) published a detailed report and pointed to many problems with the system.[2] These included unclear competencies, the lack of differentiation between various minority needs, deficiencies in financing and voter enfranchisement regardless of ethnic affiliation.

According to the National Democratic Institute Assessment Report report, the institution of MSGs is

> […] tinkered with a fundamentally flawed concept that offers the illusion of political power rather than genuine inclusion […] The MSG system […] functions more like NGOs than elected governing bodies. The […] term 'self-gove[3]rnment' […] raises unrealistic expectations [and] the very design of the system prevents it from having a significant impact on issues of greatest concern to most. (NDI, 2006, pp. 4–7)

The National Democratic Institute Assessment Report also points to flaws in funding, claiming that financial support is inadequate to carry out sociocultural projects and that most MSGs cannot even cover a modest salary for a part-time employee.

Another controversial element of the legal framework relates to what is commonly known as 'ethnobusiness' or 'ethnocorruption'. Deets (2002) documents how school officials pressurise parents of 'Hungarian' students to identify their children as 'German': 'According to Hungarian government statistics, in 1998, almost 45,000 primary school students were

1 Act LXXVII of 1993. Article 1.

2 For more, see Pap (2001, 2003, 2018).

3 The paper was prepared under the auspices of the 134962. Hungarian National Research and Innovation Office Grant.

enrolled in German-minority programmes, which, by the census, was about 8,000 more than the number of ethnic Germans who are even in Hungary.' The minority rights ombudsman highlighted that in the 2001 census 62,233 people claimed to be German while there were 46,693 students enrolled in the German minority education scheme (Minority Rights Ombudsman, 2011, p. 39). Also, there was German minority education in several municipalities where neither the 2001 nor the 1944 census (which predated the mass expulsion of some 380,000 ethnic Germans from Hungary indicated the presence of a German community. Sometimes, educational segregation is achieved by pressurising Roma parents to request specialised minority education, aimed originally at safeguarding Roma culture (Balogh, 2012a, 2012b; Balogh et al., 2013). The result is that Roma children are taught low-quality Roma folklore classes once a week, but are kept in separate, segregated classes with inferior conditions.[4]

MSG elections have provided constant opportunities for fraud as the right to vote at these elections has not been restricted. After repeated reports of frequent abuse of the electoral scheme, in 2005 a 'soft' form of registration was implemented, whereby minority voters need to sign up to a special register, but no objective criteria or formal requirements for affiliation have been stipulated. This also enables members of the majority to abuse the system by taking over the MSGs.

Prime Minister Viktor Orbán's Fidesz party gained a supermajority in 2010, allowing him to reformulate the constitutional and public law landscape, and a new minority law was adopted. Act CLXXIX of 2011 on the Rights of Nationalities basically preserved the earlier institutional and conceptual framework but introduced a peculiar change in terminology, which might be expected if reconceptualisation is taking place in the background. The term 'national and ethnic minorities' – the subjects and 'objects' of the old law – was changed to 'nationalities' and 'nationality self-government' replaced the old term 'minority self-government'. There is no evidence (for example, in parliamentary debates or government documents) that this shift in terminology was based on overarching theoretical or conceptual reasoning or that it has been accompanied by systematic political commitment.

An important provision of the new law concerns *sui generis* parliamentary representation for the recognised minorities, an issue that has been on the agenda of Hungarian politics and legislation since the 1989 political transition. The 13 recognised minorities are now entitled to one preferential seat per community in the 199-seat parliament and nomination of candidates is the prerogative of the national-level self-governments. Citizens can choose to vote either for a party or for their respective minority list. It takes a relatively small number of votes, approximately 20,000–25,000, to gain a preferential mandate, but given the demographics of minorities in Hungary, only the Roma and German groups have any chance of successfully passing this threshold. Given the ongoing tradition of ethnocorruption and the Orbán government's well-documented gerrymandering efforts, some critics argue that this might have been a motivation for the legislation (Pap, 2018). In the 2014 elections, no minority representatives were elected and in 2018 only a single German, who happens to be a member of Orbán's Fidesz Party, was elected. (The new legislation also introduced the institution of the

4 See the reports of the Parliamentary Commissioner for National and Ethnic Minority Rights (Kállai, 2011a, 2011b) and the report of the Parliamentary Commissioner for Fundamental Rights and of the Deputy Commissioner for the Protection of the Rights of Nationalities Living in Hungary (Szalayné Sándor & Székely, 2014).

nationality advocate, a non-voting member of parliament who can submit bills and address the floor on behalf of those minorities that failed to elect an MP.).

Having outlined the general features of the Hungarian legal framework to accommodate multiculturalism (at least in relation to the minority law's target communities), this paper now turns its attention to the nation's only ethnic minority.

Roma in the Hungarian minority-rights legislative framework

The Roma in Hungary

Roma are the only sizeable visible 'ethnic' community in Hungary. According to the Council of Europe, the cultural rights and situations of new minorities (immigrants) is a marginal issue in the country. Immigration figures are very low and the overwhelming majority of immigrants are ethnic Hungarians from neighbouring states who do not constitute a cultural minority. In 2018, the number of foreign nationals residing legally and permanently in Hungary was 156,000, 1.6% of the country's population, this number increased in 2020 to 200,150. 65% of the foreigners living in Hungary has come from Europe, mainly from the surrounding countries, such as Ukraine (15.41%), Romania (11%), Germany (9.14%) and Slovakia (5.2%). 26% is from Asia, 3% from Africa and 3.79% from the continent of America. (European Commission: Hungary, Population: Demographic Situation, Languages and Religions, 2021.

In the 2011 census, 6.5% of the population declared that they belong to one of the minority groups. In the 2011 population census, about 3.2% of the population – 308,957 people – identified as Roma (Hungarian Central Statistical Office, 2013), but the Council of Europe suggests that the actual number might 700,000[5] The Roma are the largest and only visible minority in Hungary and have been present for centuries. They are linguistically assimilated – practically all speak Hungarian, with some only speaking Hungarian and others being bilingual – and they do not differ significantly from the majority in terms of religious affiliation. They are mostly sedentary – unlike some Roma communities in Europe – with only a very small group of Sinti (estimated to be less than 1% of the Roma population – some operating travelling carnivals/carousels) being semi-sedentary (Szuhay, 2003).

The Hungarian Roma population consists of three main groups (and several subgroups) in terms of cultural and linguistic characteristics. These include the Romungros, who are linguistically assimilated and speak Hungarian as their first language, the Boiash, many of whom speak a language that is based on an ancient version of Romanian, and those who also speak different dialects of the Romani language (the most widespread group being the Lovari) (Janky & Kemény, 2003). The Hungarian Roma community is extremely diverse and heterogeneous and is unified only by the 'othering' of the majority and by the political concept of the Roma as constituted by state policies and to a very limited degree by the international Romani movement (see, for example, Fosztó, 2003).

5 https://ec.europa.eu/info/policies/justice-and-fundamental-rights/combatting-discrimination/roma-eu/roma-inclusion-eu-country/roma-inclusion-hungary_en

The 1993 framework

The function and the design of the MSGs concerning the Roma is fairly controversial. Generally, while acknowledging that the MSG system serves as a 'training school' for up-and-coming Romani politicians, equipping them with skills that they can use in the mainstream political arena, observers are critical of the institutional design. As Ram notes:

> [the MSG system], which at times has been touted as a possible
> model for other countries, has not brought a substantial improvement in Roma lives. While it has increased participation of Roma to some extent, it has hardly enhanced social inclusion of Roma, largely because its mandate is limited to cultural autonomy: basic education, media, language and promotion of culture. The language provisions are simply not so helpful for a community that largely speaks Hungarian at home, and local self-governments do nothing to directly address either discrimination or socioeconomic inequalities (Ram, 2014, p. 31).

According to the National Democratic Institute Assessment Report:

> […] the MSGs tend to marginalise Romani issues by depositing them in a parallel, fairly powerless, quasi-governmental structure rather than addressing them through established governing bodies (NDI, 2006, p. 6).

> […] Roma often approach their MSG expecting assistance related to a broad number of issues including housing, employment, discrimination and utility services […] in areas where the MSG has no mandate. […] This lack of authority leaves MSGs as a 'half-way house' between a government institution and an NGO, with an undefined, under-funded mandate. […] As consultative bodies, the MSGs have not proven to be effective in promoting Romani interests on a broad array of mainstream policy debates (NDI, 2006, p. 22).

> […] While other minorities are primarily concerned with protection of cultural and linguistic autonomy, the Roma population faces an almost opposite challenge, needing more integration to combat segregated education, discrimination, unemployment and problems with housing and healthcare (NDI, 2006, p. 5).

Hungarian Roma leaders repeatedly call for a redistribution-oriented, rather than a recognition-oriented, minority policy. According to Molnár and Schaft:

> Roma self-governments see as their main objective the improvement of social conditions in their community rather than the preservation of minority culture and the strengthening of minority identity. The ambitions of local Roma leaders are influenced primarily by the marginalisation of their community, while the protection of Roma identity remains secondary (Molnár & Schaft, 2003, p. 41).

To be fair, as Vizi (2013) points out, despite all its flaws, the 1993 law formally recognised the Roma as a group with legitimate claims for a separate identity for the first time in Hungarian history. Admittedly, the law facilitated a peculiar nation-building project (see, for example, Fosztó, 2003) by conceptualising a Roma national minority as a distinct political

group and incorporating all of its diverse subgroups. Also, to a certain degree, the law successfully endorsed cultural aspirations of certain Roma communities and created a Roma political elite (Bíró, 2013). However, its declaration on the prohibition of discrimination, a daily experience of Roma in Hungary in all facets of life, received very little attention. For example, the first comprehensive anti-discrimination law was adopted only in 2003, 10 years after the minority-rights law, and was necessitated by EU-accession obligations, while only three years earlier, in 2000, the Constitutional Court had rejected complaints pertaining to the lack of such legislation (Hungary: Decision No. 45/2000 (XII. 8.), 2000). Thus, it is not surprising that the law was unfit to meet the dire need for social inclusion among Roma communities. Despite the shockwave of the market economy that hit the impoverished Roma the hardest, during the first decade or so after the political transition there were no serious attempts to institutionalise social inclusion measures targeting Roma. This was because Hungarian legislators prioritised the enhancement of exportable cultural identities for national minorities even though this particular piece of legislation had no such aspirations.

Another important observation needs to be made in defence of the 1993 framework. As controversial as it might have been to conceptualise the Roma as a national minority (especially because of the lack of a massive grassroots Roma 'nationalist' cultural and political elite at the time), it would have been politically and morally unacceptable to exclude them from the communities that the minority-rights Act was to detail and address. It is also important to note that, as Sansum Molnár (Sansum Molnár, 2017, p. 186) points out, 'Roma' was the most commonly used word in the almost year-long debate over the 1993 bill, appearing almost twice as often as 'German' or 'Slovak', which were the next most common.

From ethnic to national minorities: the post-2010 framework

The new 2011 Hungarian Constitution and the subsequently adopted new Act on the Rights of Nationalities (i.e. minorities) (Hungary: Act CLXXIX/2011 on the Rights of Nationalities, 2011) relabelled Hungarian minorities from 'national and ethnic minorities' ('*nemzeti* és *etnikai kisebbségek*') to 'nationalities' ('*nemzetiség*') and officially replaced the term '*cigány*' with '*roma*'. Otherwise, the new law brought no significant changes in conceptualisation, or even legislative text, concerning the recognised groups.

There is no indication in parliamentary debates and government documents that abandoned the 'ethnic' and 'minority' terms had the Roma or Roma policies in focus. During the drafting of the new constitution in 2011, the Croatian and the Ruthenian national MSGs welcomed the change in terminology, which was also recommended by the minority rights ombudsman. The Roma MSG remained silent. (Pap 2018)

It can be argued that to (re)label legislation that focuses on collective (national) minority rights to be solely on nationalities makes it conceptually solid and more coherent, leaving claims and policies that relate to other ethnic minorities to other legislative endeavours. However, there has been an interesting development concerning only the Roma MSGs, which have formally been involved in social inclusion measures, creating an even more confusing hybrid, mutant model. As Annex 2 to the first version of the National Social Inclusion Strategy (Ministry of Public Administration and Justice of Hungary, 2011), the government signed a framework agreement with the National Roma Self-Government and competences such as supervising schools, developing new employment schemes and monitoring programmes were

assigned to it. In fact, the Roma self-government is one of the core implementing bodies of the strategy.

On the one hand, the most recent legislation clearly signals that the legislature conceptualises Roma issues, first and foremost, as matters of identity politics. On the other hand, government rhetoric and initiatives use cultural identity as a tool for social integration and present it in a simplified, essentialist manner. For example, the updated version of the integration plan (Ministry of Public Administration and Justice of Hungary, 2014) under the auspices of the Hungarian National Social Inclusion Strategy (Ministry of Public Administration and Justice of Hungary, 2011), which was adopted in order to reflect policy aims outlined by the European Framework for National Roma Integration, calls for the integration of a social-inclusion approach to Roma educational and cultural programmes (Dinók, 2012).

Flaws in the strategy and its policy environment have been thoroughly criticised in the monitoring report commissioned by the Decade of Roma Inclusion initiative and compiled by a coalition of most of the relevant NGOs in Hungary (Balogh et al., 2013). For example, the report points out that:

> […] some of the missing policies are closely connected with anti-discrimination and equal opportunities policies. […] Abolishing the institution of the Parliamentary Commissioner for the Rights of National and Ethnic Minorities [… has] resulted in far less powerful institutional tools for combating discrimination. Hungarian authorities do little to sanction hate speech, and criminal law provisions designed to protect groups facing bias are more often applied by the authorities to sanction Roma rather than non-Roma. In [the] case of most hate crimes, no proper criminal procedure is launched. Romani women and children suffer extreme forms of exclusion, too. At the local level, the powerless position of minority self-governments has been further weakened: their consent is not obligatory any longer to decide on matters affecting the local Romani community (Balogh et al., 2013, p. 9–10).

Also:

> […] the circumstance that public security measures are connected with the measures aimed at Roma inclusion is quite problematic, since this gives the impression that ethnic origin is connected to criminality (Balogh et al., 2013, p. 37).

Again, to be fair to the Hungarian legislature, the following points need to be made. First, the *minority rights* framework cannot be blamed for failing to achieve aims that were not part of its remit. It does not claim to be the materialisation of a holistic project for all minority and Roma-related issues but is a piece of legislation focused on culture-centred collective rights. Second, it would have been politically impossible not to include the Roma in the list of recognised minority communities unless they had explicitly requested this exclusion themselves as was the case with the Jewish community (the representatives of which clearly expressed their desire to be left out of the 1993 framework). While the 2011 relabelling arguably only clarified the existing scenario, an overall valid criticism of conceptualising the Roma as, first and foremost, a national minority is that it derails public and political discussion and perception, weakens problem sensitivity and shifts the focus from other, arguably more, pressing issues.

Concluding remarks

How can the 1993 and 2011 Hungarian legislative approach, conceptualising the Roma as a nationality (a national minority with a principally identity-politics-oriented, cultural-rights framework) be viewed? There are four main criticisms: (i) this approach and legal framework fails to comprehend the complexity of Roma-related issues, or even the essential differences that the various policy models (minority rights, anti-discrimination, social inclusion) convey and require; (ii) this collectivist approach neglects individual, justice-based, anti-discrimination-oriented methods and anti-discrimination and equal opportunities policies are inadequate; (iii) the Roma may be used as bargaining tool for diaspora politics; and (iv) (at least in 1993) the entire Roma nation-building project was an essentially colonialist/patriarchal endeavour, lacking genuine grassroots initiatives.

To further accentuate the context of this paper, it needs to be emphasised that choices between 'ethnic' and 'national minority' conceptualisations have multilayered political and policy implications. Positioning the Roma as an historically rooted 'national minority' can be linked to and abused as a tool for racialising, essentialising, othering, marginalising and scapegoating discourses, where cultural specificities are used to explain criminality and poverty, which in turn enable securitised policies, blatant 'correctional' segregation and paternalistic and patronising rhetoric and policies. This paper does not argue that either of the conceptualisations is right and the other is wrong, nor that a choice is inevitable or even possible in certain cases. However, and this illustrates the broader relevance of the Hungarian case, it shows that confusing terminology (in our case concerning ethnic and national minorities and nationalities) reflects and reveals a confused conceptualisation and a lack of clearly defined political and policy objectives. The Hungarian case serves as a litmus test for showing that labelling does not necessarily involve tailor-made conceptualisations and that terminology does not automatically determine policy instruments.

While the 2011 law arguably clarifies that the legislator conceptualizes the Roma are, first and foremost, as a national minority, this not only creates a potential for derailing public and political discussion and perception but also raises the general question of whether not only old, historical and traditional groups but also new, immigrant and ethno-racial communities can seek recognition as national minorities.

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Konstantinos Tsitselikis

A multifaceted case of (non-)territorial autonomy: Old and New Islam in Greece

Introduction

Historically, minority protection in Europe has attributed special rights either to individual citizens or collectively to persons living within certain territorial units (Thornberry, 1993). However, minority protection can also be achieved through personal autonomy or non-territorial autonomy (NTA). NTA is a collective-rights-based concept that aims to address national cultural diversity within a country. It also refers to the autonomous decision-making of an ethnically, linguistically or culturally defined national group. Irrespective of their place of residence within the state, all members of such a group form a corporate body. NTA proposes a political idea, applied policies and law whereby autonomous decision-making on limited and defined matters is granted to a minority group as a corporate body (Héraud, 1993; Kymlicka, 2007; Malloy, 2015; Nimni, 2013; Osipov, 2011). Special rights or a minority protection regime can determine and institutionalise the internal affairs of the group. In such a case, the members of the minority group could benefit by addressing their own institutions or administrations (schools, associations, public and religious bodies, etc.) in those domains. NTA has strong associations with collective rights, which must be considered together with the individual rights of minorities. Personal status and ethnic affiliation must be a matter of individual choice and must not lead to segregation. One of the major concerns about contemporary multilateral minority protection legal instruments in Europe (e.g. the Framework Convention for the Protection of National Minorities, 1994) is that none of them explicitly mention NTA, although they refer to collectively implemented individual rights, implying minority self-administration in culture, education and identity.

The *millet* system of the late Ottoman Empire (late 19th–early 20th century) accommodated ethnoreligious differences (for Christians and Jews) at different levels and stages (Barkey, 2008). The legacy of millets – NTA-like arrangements – played a key role in the formation of the legal framework dealing with Muslim minorities in the Christian states established after the Ottoman Empire withdrew from its Balkan territories, its subsequent collapse and the emergence of the Republic of Turkey in 1923. As regards Greece, personal autonomy and territoriality were mixed before and after the population exchange that took place between Greece and Turkey in the aftermath of the 1919–1922 war, when 450,000 Muslims left Greece for Turkey. As regards the Muslim minority of Thrace, millet-style regulations were revised into a 'neo-millet' framework for the protection of minorities (Tsitselikis, 2012). Here, legal protection is founded on the Treaty of Lausanne (1923) and still applies to the Turkish Muslim minority. It is a hybrid NTA combining personal autonomy (e.g. special schools, special jurisdiction on personal matters, special community property) with a specific territory (Thrace). However, Muslims outside Thrace – including Greek citizens and immigrant Muslims – do not enjoy special rights but only rights related to religious freedom. However,

Muslims of the Dodecanese islands enjoy special, albeit limited, community rights. In sum, Muslims in Greece are subject to overlapping legal statuses, an amalgam of special minority rights (granted to some extent on a territorial basis) and general human rights (related to citizenship).

This essay attempts to clarify the modalities of NTA arrangements with reference to Muslims in Greece. Legally,[1] territoriality is a changeable factor determining the applicability of minority rights and personal autonomy. Minority status is therefore dependent on the legal clause covering territoriality and the content and resilience of the special rights pertaining to personal autonomy.

History matters: Special status for Old Islam in Greece

In 1830, when the Greek state was first established, Muslims constituted a very small group (in Halkida) within the then borders of Greece with almost no special institutional protection. In 1881, with the annexation of Thessalia-Arta, Muslim communities, in which about 40,000 persons lived at the time, acquired protection as a minority by the Treaty of Constantinople concluded in 1881 between the Greek Kingdom and the Ottoman Empire.[2] In effect, the Ottoman millet system, namely the ethnoreligious communal institutional autonomy, was preserved within the Greek legal order. The local muftis[3] acquired quasi-judicial authority in matters of personal status, and the Muslim schools and religious foundations (*vakif/vakoufia*)[4] were administered by local Muslim community councils. By the end of the Balkan Wars (1912–1913) and with the annexation of the New Territories[5] by Greece, the same legal status was extended to more than 500,000 Muslims who became Greek citizens. With the Treaty of Athens, signed between Greece and the Ottoman Empire in 1913, the Muslim communities were once again retained as legal entities with institutional autonomy. Community schools and the *vakifs* were kept under the muftis' authority, who acquired jurisdiction on personal matters, dealing with family and inheritance law. It is worth noting that Crete, before its union with the Greek Kingdom in 1913 and during its quasi-independence (Cretan state),[6] also offered a sophisticated legal framework to the Muslim community of the island, which was elaborated mostly by Eleftherios Venizelos who subsequently became a predominant figure in Greek politics.

According to the Treaty of Lausanne mentioned earlier, 92,000 Muslims of Western Thrace (Turkish speakers and Bulgarian speakers or Pomaks) were exempt from the population

1 Legal regulations are applicable only within the borders of a specific territorial area.

2 For all international treaties dealing with Muslims in Greece (1881–1923), the State of Crete (1898–1913) and their legal content and political implementation, see Tsitselikis (2012).

3 A mufti is a Muslim jurist qualified to issue a nonbinding opinion on a point of Islamic law (*sharia*).

4 *Vakif* (or waqf) properties or community foundations (both community and private) also exist in the Dodecanese islands, governed by a special law not linked to the Treaty of Lausanne. Two more groups of *vakif* exist in Greece: the Egyptian government owns *vakif* properties in Kavala and on the island of Thasos, and a *vakif* once owned by Albanian Muslims in Thessalia is under sequestration (Tsitselikis, 2012, 327–365).

5 'New Territories' is the term used to define the annexed territories after the Balkan Wars (1913), namely Macedonia, Epirus and the islands of the Eastern Aegean and Crete.

6 Crete was granted quasi-independence by the Powers (Italy, England, France and Russia). The implementation of its constitution, based on elements of bi-communitarianism, was put under the auspices of Greece (1898–1912).

exchange as a counterweight to the Greek Orthodox population of Istanbul, Imvros and Tenedos who were also exempt from the exchange. Another 25,000 Albanian-speaking Muslims in Epirus and Macedonia were also exempt from the mandatory emigration, according to a decision made by the Greek government in 1925. Guerrillas subsequently forced the Muslims of Epirus (Chams) to move to Albania in 1944–1945 because they had been Italian and German sympathisers in 1940.

In 1947, when the Dodecanese islands were annexed by Greece, a population of about 12,000 Muslims (Greek and Turkish speaking) living in Rhodes and the Kos islands became Greek citizens. This was the last territorial expansion of Greece that resulted in acquiring a Muslim population. Then, the courts and the government decided that the Treaty of Lausanne should apply only to the Muslims of Thrace and not the Muslims of the Dodecanese. Concerns about historical disagreements meant the government wanted to limit as much as possible the special status of minority rights: even the term 'minority' would give a *droit de regard*[7] to Turkey to act as a kin-state. Hence, Greece attempted to avoid a new bilateral treaty, as had been the case in the late 19th–early 20th century.

A fragmented overview

Today, Muslims with Greek citizenship in Thrace (approximately 90,000)[8] are the only recognised minority in Greece. They are mostly Turkish speakers and express Turkish national sentiment. About 20,000 of them speak Pomak (a Bulgarian dialect) as their mother tongue, partly express an ethnic Pomak identity – often with a Turkish (national) identity – and about 5,000 speak Romany (partly expressing an ethnic Roma identity) although most of the Muslim Roma are monolingual Turkish speakers (Trumbeta, 2001).

As questions on religion and mother tongue ceased to be included in the national census from 1951, the above figures are estimates. As far as places of worship are concerned, there are enough mosques in Thrace (more than 250, and another 4 on the Dodecanese islands) for daily ritual needs. Muslim cemeteries are also operational in Thrace and the Dodecanese islands. Stemming from the above-mentioned legal framework set by the Treaty of Lausanne, the Muslim minority in Thrace enjoys a certain degree of autonomy in three fields: education (minority schools), religious leaders and special courts, and community property (management boards of community real estate).

Minority Muslims are Sunni, except for 2,000–3,000 who are Bektashi or Alevi. Muslims from Thrace also live in Athens (13,000) and Thessaloniki (3,000), where they have been migrating for economic reasons since the 1980s. About 2,000 Greek- and Turkish-speaking Muslims live on the Dodecanese islands of Rhodes and Kos.

New Islam describes a more recent group of Muslims who began migrating to Greece in the 1980s and early 1990s.[9] New Islam includes Muslim refugees from the Middle East, Asia

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7 *Droit de regard* means that the kin-state of a minority has the right to act as a legitimate supervisor of the other state's minority protection commitments.

8 This figure is based on the Muslim school pupil population (7,500) living in Thrace.

9 'New Islam' refers to Muslim immigrant communities, most of whose members have not acquired Greek citizenship. There are no real fields of contact between New and Old Islam, namely Muslim minorities whose ancestors acquired Greek citizenship along with all inhabitants of a territory annexed by Greece (like Thrace in 1920, or the Dodecanese islands in 1947).

or Africa: as long as they express religious feelings, they are regarded as belonging simultaneously to their respective national communities and the wider Islamic community.[10] There is no special law applying to Muslims in Greece in general. In practice, Greek law does not constitute the specific characteristics of immigrant Muslims as a minority. With the exception of a few individual cases of naturalisation, the bulk of immigrant Muslims do not hold Greek citizenship. Therefore, New Islam does not enjoy special minority protection rights. In contrast, *Old Islam* is to be understood on a mixed NTA (personal status) and territoriality principle: Thrace is the only territory where special rights for the Muslim minority are implemented (see also next section).

Special rights (on religious institutions, minority schools, community properties) and personal autonomy are not available to Muslims who leave Thrace, and it is becoming increasingly difficult to conduct religious ceremonies. Hence, Muslim wedding ceremonies taking place outside Thrace cannot be registered as long as Muslim religious ministers are not acknowledged by the state authorities in Athens or Thessaloniki. In short, Muslims with Greek citizenship and migrant Muslims who live outside Thrace enjoy general human rights and freedom of religion in the same way as any other citizen, but they do not have access to the special rights. Muslims on Rhodes and Kos had special schools until 1971, up-to-date mosques and cemeteries as well as community properties (*vakif*). The only mosque in Athens was erected in late 2020. In Athens, Thessaloniki and some other towns, about 100 prayer halls (*mestjits)* are operated by immigrant Muslim communities, mostly without official permits. The unavailability of a Muslim cemetery outside Thrace, Rhodes and Kos adds another dimension to the bi-zonal legal framework (in or out of Thrace) that applies to Muslims in Greece (Tsitselikis & Sakellariou, 2019). Table 1 gives an overview of Muslims in Greece and their access to rights.

Table 1.

Muslims and access to rights

	Access to mosques and cemeteries	*Special schools*	*Community properties (vakif)*	*Sharia law, family and inheritance disputes*	*Registration of Muslim marriages*
Muslims of Thrace (Greek citizens)	Y	Y	Y	Y	Y
Muslims of Dodecanese (Greek citizens)	Y	**N**[1]	Y	N	Y
Muslims elsewhere in Greece (Greek citizens)	Y[2]	N	N	N	N
Migrant Muslims (aliens)	Y[2]	N	N	N	N
Refugee Muslims (aliens)	N[3]	N	N	N	N

Notes: territoriality shown in bold, otherwise non-territoriality; 1 Y up to 1972; 2 only in private prayer houses; 3 very limited.
Source: based on Tsitselikis (2019a, p. 69).

10 Muslim Albanians – who would constitute the overwhelming majority of New Islam – have little or no active expression of religiousness. Afghans, Egyptians, Syrians, Pakistanis, Bangladeshis, Sudanese, Indians, Nigerians, Moroccans and others form Islamic communities of uncertain and fluid numbers, approximately 250,000 in total at the time of writing . See also: Kostopoulou, 2016.

The legal basis of personal autonomy within territory

There is no direct institutional link between the state administrative bodies and local authorities of Thrace and the minority legal framework. Minority rights, according to the Treaty of Lausanne, are attributed through religion to Muslim Greek citizens who are residents of Thrace. At the time of writing, minority protection consists of personal autonomy with strong elements of territoriality:

- Territorial limitation (namely in Thrace) is a sine qua non for the implementation of minority status, as set by legal instruments on minority protection. Special minority rights are granted only within the region of Thrace for Muslim residents.
- Not all Muslims in Thrace enjoy this special status: only those descended from the Muslims of Thrace who were exempt from the Greek–Turkish population exchange of 1923. In a case adjudicated by the high administrative court, the ruling was based on consideration of the biological 'origin' of the plaintiff. In the case, the court ruled that a provision regarding quotas for third-level education were relevant only for Muslims descended from those exempted from the population exchange of 1923, such as the Muslims inhabitants of Western Thrace after 1923.[11]

Religion played a key role for minorities in the consolidation of a respective national identity (Turkish for the Muslims in Greece, Greek for the Greek Orthodox in Turkey, etc.). Therefore, religious rights were deemed to be the core of minority protection, according to the Treaty of Lausanne. However, recognition of these minorities strictly on the basis of their religious character precluded their members from freely expressing their ethnic affiliation. In times of tension, minorities would be seen as an *enemy within*.[12]

Members of the Muslim minority of Thrace are subject to the Greek Constitution and international human rights treaties in the same way as any other Greek citizen. Beyond that legal nexus, the minority of Thrace has since 1923 been governed by the chapter of the Treaty of Lausanne on minority protection (arts. 37–45), which creates mirror obligations for Turkey and Greece regarding non-Muslims and Muslims respectively. This legal protection system reflects once again a millet-like or neo-millet precept regarding the attribution of religious and linguistic rights through religion. However, the Lausanne system survived unchanged after the new era brought by the United Nations system for minority protection and establishment of the post-1991 multilateral minority protection system in Europe.

Members of the community have the right to preserve their identity and participate in their own institutions: community schools, community administration and community property. At the same time, the clause covering non-discrimination and equality for all citizens facilitates their participation in the social and socio-economic life of broader society. The rights of the minority and the concomitant obligations of the state are as follows:

- Equality without any discrimination (art. 38.1)
- Freedom of worship (art. 38.2)

11 The high administrative court of Greece (*Symvoulio tis Epikrateias*, judgment 290/2002). A Muslim of Greek citizenship and resident of Alexandroupolis (Thrace) was denied the right to use this special quota as he was not 'descended from the Muslims of Thrace'. He was the son of a Greek woman from Thessaloniki who converted to Islam and a Jordanian immigrant. The special quota for the Muslim students was initially by Act 2341/1995.

12 This was the main concern that the international treaties for the protection of minorities would accommodate during the interwar period (see, for example, Thornberry, 1991). Sporadic Greek–Turkish tensions put reciprocal minorities in a vulnerable position.

- Freedom to exercise civil and political rights (art. 39.3)
- Limitation of the state to impose restrictions on the free use of any language in publications or in private or public meetings (art. 39.4)
- The right to use their own language in oral proceedings in court (art. 39.5)
- The right to found private educational, pious and religious institutions with free use of the minority language (art. 40)
- State obligation to support public minority schools, and permit pious and religious institutions (art. 41)
- The Greek language to be taught as a language subject in public minority schools (art. 41.1)
- The right to enjoy matters of personal and family character according to the traditions of the minority (art. 42.1)
- Government obligation to provide support to any religious foundation (art. 42.3)
- Non-performance of acts contrary to Muslims' religious beliefs or customs (art. 43.1)

Whilst the question of the national affiliation of Muslims in Greece with their cultural diversity was not dealt with by the law, one of the major issues was whether the minority would be considered as national or religious. A second issue regarded the implementation of the special minority protection regime: should it be applicable with or without the consent of each of the minority members? Ultimately, as the European Court of Human Rights (ECtHR) stated in *Molla Sali v Greece*,[13]

> "no disadvantage shall result from this choice or from the exercise of the rights which are connected to that choice". The right to free self-identification […] applies especially to the negative aspect of the right: no bilateral or multilateral treaty or other instrument requires anyone to submit against his or her wishes to a special regime in terms of protection of minorities. (paras. 157, with reference to art. 3.1 of the Framework Convention for the Protection of National Minorities).

Minority institutions in Thrace

As mentioned, the status of the Turkish Muslim minority of Thrace encompasses specific minority rights regarding religious freedom and linguistic rights in parallel with the nexus of rights that (Greek) citizenship entails. There are three domains in which minority rights result in distinct bodies or institutions: the mufti, minority schools and Muslim community property.

The mufti as religious leader and judge. Three muftis appointed by the government are based in Thrace. Muftis are the religious authority in their respective region and exert special

13 *Molla Sali v. Greece* raised legal questions regarding the validity of a public will drafted by a Muslim Greek citizen and the right of his heir to enjoy the right to property. The Greek Court of Cassation (Areios Pagos 1862/2013) upheld that a public will drafted by a Muslim Greek citizen is not valid, as sharia law is *mandatorily* applicable. The Court of Cassation deprived the testator of his right to draft a will and to dispose his property to his wife. By the same judgment, the Court of Cassation denied to his wife (the applicant) access to civil law. The Court of Cassation declined to apply the relevant universal civil law, which is (or should be) applicable to all: according to art. 20, para. 1 of the Constitution, anyone has the right to 'legal protection' by the courts, and according to art. 94, para. 3 'civil disputes are submitted to the civil courts'.

jurisdiction over Muslims on family and inheritance matters. The selection of the muftis, who are not only religious leaders but also influential political figures, since 1989 became an issue of major importance and the subject of national (Greek–Turkish) confrontation and legal controversy. Two more muftis were elected by Muslims, with no official authority (Tsitselikis, 2012, pp. 417–426). In Xanthi and Komotini, there are official muftis appointed by the government and unofficial muftis elected by a group of Muslims. Their offices function in parallel and this situation reflects the Greek–Turkish antagonism over the organisational structures of the minority. An additional mufti is appointed by the government in Dydimoteiho. The muftis appointed by the government keep a low profile on national ethnic issues, whilst the elected muftis voice strong national Turkish feelings.

The officially recognised muftis are granted special jurisdiction on family and inheritance law disputes amongst Muslims of Thrace (Ktistakis, 2013; Tsitselikis, 2019a). These aspects of sharia law applied by the muftis of Thrace contravene a series of substantial (equality of sexes) and procedural (lack of right to appeal) norms and therefore need comprehensive reform. The questions they raise are multifaceted: Through what process could a reform of the applicable sharia norms reconcile both sharia and human rights for members of the Muslim minority? What would be the nature of a reform that tackles the substance of sharia? Would the abolition of Islamic law be the only way to satisfy European and Greek legal orders? Changes to the law should be initiated and supported from within the community by its leaders, civil society and government. An alternative, culturally accommodating structure of adjudication could then be proposed as a democratic paradigm (Tsitselikis, 2019b).

Molla Sali v Greece, adjudicated by the ECtHR, triggered a series of changes dealing with the sharia courts of Thrace (ensuring the right to opt out) and a series of procedural regulations. The ECtHR found that there was a violation of the applicant's right to the property in conjunction with the prohibition of 'discrimination by association' on the basis of the religion of the deceased husband. The court indicated that the right to self-identification of a minority member also affords the right to opt out of that minority's protection framework: 'Refusing members of a religious minority the right to voluntarily opt for and benefit from ordinary law amounts not only to discriminatory treatment but also to a breach of a right of cardinal importance in the field of protection of minorities, that is to say the right to free self-identification.' (*Molla Sali v. Greece*, 2018, para. 157).

Minority schools offer bilingual education to Muslim students. Christian teachers teach the Greek-language curriculum and Muslim teachers teach the Turkish-language curriculum. Muslim students also attend Greek public school.

Minority education refers mainly to education in primary schools. In 2019, there were 115 minority elementary schools. In total, about 5,000 pupils attended these schools in 2018 (Tsitselikis & Mavrommatis, 2019). Since 2010, 65 elementary minority schools have closed as the number of pupils fell below the minimum threshold of nine per school. This threshold was set in all schools in Greece to minimise operational costs (Verhás, 2020, p. 21).

Muslim community property (*vakif/vakoufia*) is administered by councils, which are not elected but have been appointed by the government since the times of the junta in 1967.

As the communal foundations of Thrace, the *vakifs* were inherited by Greece from Ottoman law. These are pious institutions, the income of which is attributable to the religious or minority communities and therefore to the members of these minorities. Their real estate property comes from donations (to the *vakif*, namely the school or the mosque for instance), which can be accumulated. Their income returns to the *vakif* for its maintenance and for

social purposes in favour of the members of the community. Article 40 of the Treaty of Lausanne guarantees, for the members of the minorities, that they will enjoy the 'equal right to establish, manage and control at their own expense, any charitable, religious and social institutions, any schools and other establishments for instruction and education, with the right to use their own language and to exercise their own religion freely therein'.

Greek law governing the Muslim community properties of Thrace has not been implemented for decades (Kurban & Tsitselikis, 2010). The members of the minority foundation management boards have been appointed by the government since 1964. Appointment rather than election was imposed as a countermeasure when the Turkish government expelled all Greek citizens from the country and fully controlled the boards of the Greek Orthodox foundations, the property estates having not been registered. The latest law (Act 3647/2008)[14] on the Muslim *vakif* has also not been implemented as the management committees are still appointed by the government.

Other community organisational structures or prerogatives pertaining to the Muslim minority of Thrace have faded out over time, such as the election of community councils (held until the 1950s), or have been abolished by law, such as special quotas for political representation to the parliament (applied until 1932) or exemption from military service (until the 1920s). Furthermore, minority communities have gradually lost their legal personality and internal administrative bodies. Over time, institutional autonomy modalities, initially forged within the Ottoman Empire, have been transformed into a minority protection scheme.

Political representation

There are no elected representatives of the minority as such. However, Muslims of Thrace elected in local authority bodies and the parliament often act as political representatives of the whole Turkish Muslim minority. Muslim deputies and mayors, as well as members of the councils of the local authority bodies, are seen as having a special intermediate position between the minority and the government or the local authorities. There are three municipalities with a majority Muslim population where Muslim mayors are elected. Furthermore, Muslims participate in the elected bodies of local authorities throughout Thrace. In most of the cases, they also express national Turkish affiliation. Usually, one to three (and, rarely, four) Muslim MPs are elected in Xanthi and Rodopi as candidates through the major political parties of Greece.[15]

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14 The main characteristics of the act are: 1) it reiterates the basic regulations of the previous act of 1980 and acknowledges the de facto division of the community property into three groups of *vakıf*, in the cities of Komotini, Xanthi and Dydimoteiho, where the *vakıf* are centrally managed. The scattered *vakıf* property of the villages is locally managed; 2) it reflects the will of the government to hold elections for the *vakıf* management committees; 3) the *vakıf* are expressly deemed to be legal entities of private law; 4) the *vakıf* that belonged to communities that have ceased to exist are put under the management of the most proximate management committee so they do not risk losing their legal autonomy; 5) school *vakıfs* are separated from the main group of *vakıf*; 6) enumeration of the management committee's scope for disposing of *vakıf* income does not include payment of employees, research fees or other staff, grants or scholarships, or many other activities that could cater to the *vakıf*; and 7) the election process is determined by strict rules that echo the norms regarding the municipal elections.

15 In the 2019 parliamentary elections, three Muslim MPs were elected, two on the 'Movement of Change' (KINAL) ticket and one on the 'Coalition of the Radical Left – Progressive Alliance' (SYRIZA) ticket.

Political representation became a contentious issue when minority MPs revealed their Turkish national identity. Following political turmoil surrounding the independent political representation of minorities that began in 1989, the government in 1993 passed a law indirectly blocking minority political parties by providing, as a matter of common electoral law, a 3% of registered votes threshold for any party to be represented in parliament. The only minority political party that has subsequently survived is the Friendship-Equality-Peace Party (*Dostluk-Eşitlik-Bariş Partisi*), founded in 1994 (Aarbakke, 2000, pp. 357–500). Since then, this independent minority political party has participated in local elections and European Parliament elections. In the May 2019 European Parliament elections, it got 42,792 votes, representing the majority of the Muslim votes in Thrace, or 0.75% at the national level.

Citizenship and minority rights

Equality before the law and the principle of non-discrimination are pillars of democracy and the rule of law. A pluralistic society also demands special treatment of those who have special needs, without discrimination. This is essential for the whole political programme that civic citizenship entails, namely the equality of all citizens before the law, beyond origin or religion (Christopoulos, 2011). Minority rights are granted when minority characteristics, such as language, national belonging or religion, are not just tolerated but need positive action from state authorities. Two major conditions were not observed in the case of the Muslims of Thrace: a) that the enjoyment of minority rights should not contravene the content of general human rights, and b) that interstate reciprocal antagonisms should not harm the content of citizenship.

Dependencies and interdependencies, interferences and manipulations overshadowed the rare occasions of cooperation between the two kin-states with regard to the Turkish Muslim minority of Thrace. Language, religion and national affiliation became the basis upon which the Greek state implemented its policies following the Treaty of Lausanne. However, behind the conventional legal justification of *droit de regard* in both Greece and Turkey, invocation of ties of *common blood*, *common ethnic descent* or *religion* underpins ideological and political agendas. These ties substitute citizenship with special *invisible* qualities and rights extended to members of the respective minorities under the unilateral control of the granting state. Here, one can observe a double exception to egalitarianism. Both Greece and Turkey attempt to favour their kin minority and both tend to undermine equality through citizenship to their *hosted* minorities (Özgüneş & Tsitselikis, 2019). This practice of exception is justified in the name of national security and national interests. Thus, interventionist policies overlap: one stemming from the kin-state and the other from the home state. Frequently, members of the two minorities are not considered as citizens but rather as hostages: 'Unfortunately [this] is true for both Turkey and Greece reciprocally' (Oran, 2002).

Minority rights are contained within this legal order to the extent that there is no breach of fundamental rights granted to all, with no discrimination. As Thomas Hammarberg, Commissioner for Human Rights, put it in 2009: 'any obligations that may arise out of the 1923 Lausanne Peace Treaty, or any other early 20th century treaty, should be viewed and interpreted in full and effective compliance with the subsequent obligations undertaken by the ratification of European and international human rights instruments' (Hammarberg, 2009, para. 41). The prevailing judicial practice that breaches the human rights of the members of

the Muslim minority in Thrace (see equality of sexes) and the case of associations (right to self-identification) fragments uniform civic citizenship and undermines and frustrates the legitimate expectation that fundamental norms of rule of law are universally applicable.

General human rights for Muslims: Establishing associations

The most controversial right is the right to set up associations, according to civil law and the constitution, without territorial constraints. Establishing associations by the members of the minority of Thrace was loaded with political animosity after the Turkish invasion of Cyprus in 1974 and especially after the self-proclamation of occupied Northern Cyprus as a Turkish Republic in 1983.[16] Since then, the Turkish Muslim minority has become the field for an unorthodox conflict: the 'war of names'[17] has taken on the proportions of a major problem as Greece and Turkey insist on a religious or ethnic character of the minority in a totally static way. The obvious manifestation of national, Turkish, sentiments by the greatest part of the minority members has been ignored by successive Greek governments. However, in the 1930s and the 1950s, the minority was named 'Turkish'. The frequent switching between *Turkish* and *Muslim* in the official appellation of the Muslim Turkish minority of Thrace in the 1920s, 1950s, 1970s and today, reveals the capacity for amnesia of a national rhetoric, which claims to serve *national interests* in a *state of necessity*. In 1955 – just before the pogrom against the Greek Orthodox population of Istanbul – in the context of a rapprochement between Greece and Turkey, Greek authorities themselves called the minority Turkish. However, during Greek military rule (1967–1974), and currently, the very same term has been demonised.

The transfer of the diplomatic controversy into the courtroom is symptomatic of the situation, which ideologises use of the terms Turk and Turkish: Greek courts have denied permission for minority associations to use 'Turkish' in their title (Tsitselikis, 2012, pp. 227–252). Associations, such as the Union of the Turkish Youth of Komotini, the Union of Turkish Teachers of Western Thrace, the Turkish Union of Xanthi and the Turkish Women's Association, have claimed their rights before Greek courts unsuccessfully. Some brought their case before the ECtHR and won (see, for example, *Tourkiki Enosi Xanthis and Others v. Greece*, 2008; *Emin and Others v. Greece*, 2008): as the court mentioned, there was no excuse for the Greek judge to ban the associations just because they were referring to the Turkish affiliation of their members. The ECtHR unanimously condemned Greece for violation of articles 11 and 6 (right to association, right to a fair hearing within a reasonable amount of time) of the European Convention on Human Rights. The court observed that even if the real aim of the applicant association had been to promote the idea that there was an ethnic minority in Greece, this could not be said to constitute a threat to a democratic society. The court reiterated that the existence of minorities and different cultures in a country was a historical fact that a democratic society had to tolerate and even protect and support according to the principles of international law. The court considered that freedom of association involved the right of everyone to express, in a lawful context, their beliefs about their ethnic identity. However shocking and unacceptable certain views or words used might appear to the authorities, their

16 The Turkish invasion of Cyprus, the military occupation of a large part of the island and the proclamation of a non-recognised Turkish state have undermined all levels of Greek–Turkish relations to date.

17 The 'war of names' pertains to the names of associations formed by Muslims, and the reaction of successive Greek governments to the names indicating Turkish national affiliation.

dissemination should not automatically be regarded as a threat to public policy or to the territorial integrity of a country. (*Tourkiki Enosi Xanthis and Others v. Greece*, 2008, paras. 55–56).

In contrast, immigrant Muslims face no constraints in establishing associations, which in many cases are based on ethnicity (Pakistani Community of Greece, Cultural Association of Bangladeshis of Greece, etc.).

Conclusion

The era after the Greek–Turkish population exchange of 1923 was marked by the drastic reduction of the Muslim population in Greece and the minorisation of the Muslims of Thrace. A combination of personal autonomy regulations (or minority protection regime), which apply to minority educational and religious institutions, and territoriality (minority protection only in Thrace) led to implementation of the 1923 Treaty of Lausanne. After 1947, the Muslims of the then annexed Dodecanese islands were also minorised, but not subject to the Treaty of Lausanne: they were awarded a special status of protection (retaining community properties), which afforded less minority protection than stipulated in the Treaty of Lausanne but more than the basic human rights granted to any Greek citizen. Immigrant and refugee Muslims dwelling in Greece after 2000, who have not yet acquired Greek citizenship, are able to enjoy fundamental human rights. No special statuses have subsequently been awarded by Greek governments, with the exception of establishing a mosque in Athens that has been operational since 2020.

Territoriality for minority rights has been granted de facto to the Turkish Muslim minority of Thrace as recompense for historical events. However, attribution of these rights has been de jure on a personal basis. The case of the Muslims of the Dodecanese islands also shows that territoriality has to some extent been applied de facto. History matters in both cases: Greek governments, the lawmakers and the judiciary have attributed specific minority rights to Muslims of Greek citizenship only when dwelling in their ancestors' region (Thrace). Muslims of Thrace who move out of the region lose their minority rights.

Legal accommodation of Islam in Greece attempts to balance personal autonomy with territoriality on the basis of citizenship (Greek citizens vs resident aliens) in asymmetric schemes. Aspects of general religious rights for all Muslims in Greece, and territorial minority protection concerning the Muslims of Thrace and to some extent Muslims on the islands of Rhodes and Kos, coexist with elements of NTA. On this political-legal canvas, ideological antagonism between the *community of citizens* and the *community of the nation* affects the position of Muslims in Greece in a fragmented and incoherent way. The challenge for law and policy now is to consolidate a global approach for the treatment of multifaceted Muslim communities on the basis of justice.

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Antonia M. Mora-Luna

Two cultural identities? Two languages, two literatures? Non-territorial autonomy as a mechanism for a plurinational cohesion in Catalonia

One language, one nation? The problems of linguistic coexistence

Article 3 of the 1978 Spanish Constitution specifies that Castilian Spanish is the official language of the state and that all Spaniards have an obligation to know it and it's correct usage. The same article states that the other languages of the Spanish state (Galician, Basque and Catalan) are official in their respective Autonomous Communities. This linguistic richness and variety contribute to the fascinating cultural heritage of the country and its people, the Constitution adds, and should be given special protection and treated with respect (Spanish Const. art. 3).

However, these considerations unfortunately have not yet been implemented in the sphere of state administration, nor in state institutions and bodies governed by public law. This situation has resulted in heated debates and confrontations in the Congress of Deputies, Spain's parliament. A salient example came in February 2005, when the then president of the Congress, Manuel Marín, introduced a criterion for the use of co-official languages that allowed deputies to use their mother tongue when introducing their speeches, provided that a translation into Castilian Spanish followed. He revoked the decision just a few days later (Brunet, 2005).

In November 2018, the *Official Gazette of the General Courts* (Spanish parliament) published the proposal for an Organic Law for the protection, promotion, and declaration of the official status of Spanish languages other than Castilian Spanish. The proposal, which had come from the Catalan parliamentary party Esquerra Republicana (Republican Left Party), including Catalan, Basque, Occitan (or Aranese) as official state languages. The proposed law claimed the presence of all these non-Castilian languages in common institutions and committed the state to undertake the necessary actions for the recognition of the official status of Catalan, Basque, Galician and Occitan in the European Union and their use by international organisations.

These events reflect the political conflict that has been raging in Spanish public life since the 1980s. Catalan nationalism and Spanish national culture do not seem able to find a comfortable state of coexistence because Spain defines itself as a single nation state, but several nations inhabit its territory. However, balance could be achieved if the organs of the state, in addition to recognizing its multilingualism, considered plurinationalism as a way to ensure better coexistence among its citizens.

Clearly, it is absurd to expect that Catalan independentism will embrace the Castilian culture. If the Spanish state's national culture does not accept the cultural and linguistic

differences present in its territory as valuable to the symbolic heritage of all its citizens, the conflict will linger on with unpredictable consequences.

The problem is not only generated by state institutions, however. Importantly, in the struggle for Catalan hegemony, the use of symbols and memories for the construction of a Catalan cultural identity has been associated with Catalan monolingualism, which is uncomfortable for both Castilian-speaking Catalans and for those who participate in both linguistic traditions and are not in favour of cultural or political separatism. The well-known Barcelona novelist Juan Marsé – considered one of the best storytellers in the Spanish language of the second half of the 20th century – exemplifies the issues at stake. Marsé regretted that, as a writer, he had to give justifications for writing in Spanish. As far as he was concerned, Catalan culture could also be expressed in the Spanish language. 'I think there is only one Catalan culture,' he pointed out in one of his interviews, 'the one developed in Catalan and in Spanish, the one developed by the citizens of Catalonia' (Segarra, 2015).

This conflict was further emphasised after his death in 2020:

> He was identified by Catalan independentism as an obstacle in the process of building the ideal Catalonia – a party, a language, a religion – where his Castilian [and his works] were considered […] satanic verses. [...] A lack of institutional recognition [...] and his absence in the curricula with which the Generalitat [the Catalan provincial parliament] has been shaping its youth, gave Marsé the wonderful attraction of the cursed writer (Ellakuria, 2020).

Contrast the opinion of Quim Torra, former President of the Catalan Generalitat:

> It is not natural to speak Spanish in Catalonia. Not speaking the language of the country [Catalan] is an uprooting provincialisation, the persistent will not to assume the hallmarks of the space where you live. [...] without a language there is no country. And when you decide not to speak Catalan, you are deciding to turn your back on Catalonia (Torra, 2012a).

Given the intention of building the Catalan identity based on a differentiated language, schooling takes on capital importance. The Pujolista government[1] put Catalan schooling at the service of the Catalan independentist cause during the last third of the 20th century. To prevent 'the nation from falling apart like a lump of sugar in a glass of milk, caught between the immigrant avalanche, the monstrous tax plunder and a globalization that only treats [...] states with respect' (Torra, 2012b), Catalan governments have used the autonomy offered by the educational decentralisation of the Spanish nation state (to the Autonomous Communities within it) to defend their idea of nationhood.

School at the service of national monocultures

If we want to prove the intentional significance and ideological commitment of school curricula, it is necessary to understand teaching as a mechanism of development and social control.

1 Jordi Pujol is a charismatic Catalan politician, now retired, considered the founding father of contemporary Catalan nationalism and one of its main leaders. He held office as president of the Generalitat and was accused of corruption. He was the founder and first leader of Convergència i Unió, an alliance of Catalan nationalist parties that was hegemonic in Catalonia for many years.

Michael W. Apple (1986) affirms that education in general and the school curriculum in particular are essential elements in the conservation of the knowledge, interests and social privileges of a segment of the population.

The social control of the modern state exists as an implicit objective – in a conscious and deliberate way – in political and social programmes. These programmes also refer to the desired educational policies, sometimes to provide stability and impose order, and – at other times – to promote the cohesion indispensable in the construction of coherent nation states (Althusser, 1975; Even-Zohar, 1994).

In the modern nation state, the school is designed to teach the essential knowledge for the construction of a cohesive community. It is well known that traditions, created and felt as collective, are nothing more than the product of identifiable social and economic ideological trends. The conventions that we respect, and share make us see the world from a given perspective, the point of view that we were taught.

The way of classifying, distributing, transmitting, and evaluating the educational knowledge that a society considers fundamental offers, according to Bernstein (1975), a way of controlling that society, as well as the distribution of power that is made. The tasks of legitimation, reproduction, classification and control are assigned by modern nation states to their educational systems.

Considering the theoretical assumptions outlined above, we refer to a report made by the Assembly for a Bilingual School in Catalonia in 2019. This report affirms that compulsory linguistic immersion in the Catalan public educational system 'is a tool for the Catalan national construction, which it lacks pedagogical objectives and it aims to exclude Castilian from the educational system.' (Assembly for a Bilingual School in Catalonia, 2019, p. 54).

Article 11 of the Catalan Education Law of 2009 states that:

> Catalan, as the language of Catalonia, is the language normally used as a transmission vehicle and learning language in the educational system. […] educational activities […], teaching materials, textbooks, and the evaluation activities […] must be in Catalan, except in the case of Spanish language, Spanish literature, and foreign language (Catalan Education Law, 2009).

The law continues: 'students cannot be separated into different class groups because of their habitual language' and, when students begin their education, 'the mothers, fathers or guardians of students whose usual language is Spanish can request [...] their children to receive individualised linguistic attention in that language' (Catalan Education Law, 2009, art. 11). After analysing 2,214 of the 2,325 public educational centres in Catalonia (representing a sample of 95.2%), the Assembly for a Bilingual School in Catalonia concludes that Catalan public education centres do not respect the model of linguistic conjunction envisaged by the Spanish Constitution of 1978 (Assembly for a Bilingual School in Catalonia, 2019).

The current Catalan Education Law is based on Article 6.1 of the reformed Statute of Autonomy of Catalonia, published in 2006. It specifies that 'the proper language of Catalonia is Catalan' and that 'Catalan is the language of normal and preferential use by the public administrations and the public media of Catalonia, and it is also the language normally used as a communication tool and for learning in teaching' (Organic Law of Reform of the Statute of Autonomy of Catalonia, 2006, art. 6).

This document also recognises that Spanish is an official language in Catalonia, as well as Aranese or Occitan, although the treatment that Castilian and Catalan receive in actual

classroom practice is far from equitable, and the two cultural identities seem increasingly irreconcilable. The Statute of Autonomy of Catalonia, approved in 1979, legislated that the Catalan administration should guarantee 'the normal and official use of the two languages', adopting 'the necessary measures to ensure their knowledge' and creating conditions that would allow full equality to be achieved as regards the rights and duties of the citizens of Catalonia (Organic Law of the Statute of Autonomy of Catalonia, 1979, art. 3).

The Law of Linguistic Normalisation of 1983 highlighted the precarious situation of the Catalan language. Its scarce presence in the fields of official use, education and social communication media seems to justify, in the opinion of the Catalan ruling class, the compulsory catalan immersion that has been practised in educational centres, without considering the sociolinguistic context.

Curiously, the actions discussed in Catalonia in the 1980s and 1990s could be understood as efforts to overcome the linguistic inequality that the Catalan language had suffered, following the promotion of Castilian Spanish since the 18th century, aggravated by the prohibitions and persecutions during the Franco dictatorship and modified by the demographic changes of recent decades (Law of Linguistic Policy, 1998). Paradoxically, these efforts became counterproductive: although they claimed a legitimate linguistic place for Catalan, as was needed, this initially reasonable defence meant that linguistic and cultural plurality – which should have been encouraged in classrooms – began to be ignored and repressed (at least as far as education is concerned).

At the end of the 1990s, the Law of Linguistic Policy guaranteed the official use of both languages to ensure participation in public life for all citizens (1998, art. 1). For this reason, teaching had to consolidate the knowledge of both languages and methods of social communication had to offer a balance between them. All of this would help eradicate any discrimination on linguistic grounds (Law of Linguistic Normalisation, 1983, art. 3).

Despite these efforts, Castilian Spanish still suffers from discrimination in Catalonia today. The linguistic adaptation of teaching to the pluralist Catalan sociocultural reality is the responsibility of educational centres, under the auspices of the Department of Education of the Generalitat, the body responsible for the Catalan educational system. According to Article 14 of the current Catalan Education Law, it is the responsibility of public centres and private centres supported by public funds to develop their own linguistic policies that outline the treatment of each language, considering their own context. However, little or no adaptation was observed by the Assembly for a Bilingual School in Catalonia when analysing the different linguistic policies. Only the centres that were reported to the Superior Court of Justice for failing to comply with the law made any adaptations.

We do not doubt that the Catalan language is a fundamental element in the formation and national personality of Catalonia, but it is not the only one that makes up the identity of this Spanish Autonomous Community.

NTA and the clash of languages and literary traditions

Since the 16th century, the humanists and scholars who mould the profiles of the Spanish literary institutions have been divided into two conflicting groups: those who take into account only texts written in Castilian Spanish and those who consider the linguistic diversity of the territory now called Spain.

Considering educational institutions and programmes, and the multitude of edited textbooks, we can see how these contrasting traditions have been articulated according to the political and ideological interests of the dominant groups. From 1970 to 1990, the ambiguous and rather limited curricular prescriptions led publishers and teachers to interpret the educational curriculum freely in accordance with their own points of view (Mora-Luna, 2013, 2015, 2019, 2020).

After the Franco dictatorship (1939-1975), a new Spanish Constitution was approved (1978). At this point, responsibility for key educational policy was transferred to the 17 newly created Autonomous Communities: the new Constitution devolved rights and obligations with regard to the definition of school curricula to the autonomous communities. Each of the three Autonomous Communities whose vernacular language was not Castilian Spanish had to impart their teaching in their vernacular language and highlight the milestones of their own literary tradition. Therefore, two parallel national literary histories were created in each community: Castilian and Catalan in Catalonia; Castilian and Basque in the Basque Country; and Castilian and Galician in Galicia. However, in the other 14 Autonomous Communities, the literary history of the non-Castilian communities was rarely taught, creating a culture of ignorance of these groups' literature.

Thus, the interpretation of this new democratic Constitution, in conjunction with the rise of Catalan nationalism, paradoxically planted the seeds of the linguistic conflict that threatens to destroy the unity of the Spanish state. Just as the educational authorities in Catalonia showed a discriminatory attitude in relation to their Castilian-speaking minorities, the educational authorities in the majority Castilian-speaking regions simply ignored the prolific literature and culture of non-Castilian communities, thus creating an attitude of ignorance and disdain for the culture and traditions of their fellow non-Castilian-speaking citizens.

Through a policy of monolingualism, there was no true inclusion or linguistic and literary recognition of minority languages at the Spanish state level. Educational authorities did not foster the knowledge and recognition of other vernacular cultures. The words of Spanish writer Joan Fuster, regarding the scarcity of Catalan literature in state study plans, serve to illustrate this point:

> The official topic is in Spanish. Those of us who speak differently – my case is that of Catalan speakers – have to put up with it. [...] But at least, in the territories where Catalan is a living and literary language, let Catalan (language and literature) be regularly learned. […] Another topic is that of 'Hispanic coexistence'. In this context, it would be beneficial for the other students to find out, with the proper exhortations, that Catalan 'exists': that it is the language of a notable percentage of subjects of the Spanish State, and that it has been written and recited in a considerable portion of literature [...]. There are a thousand years of language and literature, and a people that have not renounced them. The systematic concealment that has been made of this reality has had obscenely vicious consequences at all public levels. To correct, to begin to correct the nonsense would be a very fruitful collective hygiene operation. And the same with Galician: the Portuguese of the Galicians. And Basque (Fuster, 1974, pp. 241–242).

The literary education transmitted by most of the national manuals for the teaching of "Castilian" and "its literature" is a national-Castilian education. Likewise, the literary training that is observed in the manuals published for the teaching of the native language in the bilingual Autonomous Communities is a nationalist teaching as marginalized as the one we have

just mentioned. Furthermore, following the example of the 'historical communities' – namely, those Autonomous Communities that have a language other than Castilian Spanish – they try to artificially incorporate the idea of a particular cultural heritage that differentiates them from their peers.

The promotion of these exclusionary principles creates artificial borders, which deprive students and citizens of a broad educational and cultural panorama. Why should the teaching of rich multicultural literature be limited by artificial territorial borders?

Since the 1970s, almost obsessive attention has been paid to the memorization of authors and dates typical of the historical-positivist method. Despite the desire to apply new ways of approaching and teaching literary texts, the canon inherited from the literary historiography of the 19th century has not been revised or even questioned: 'If in the last two centuries the study of literature in our country has been limited to reading the Spanish classics, this was conditioned by the ultimate goal that was granted to education: that of forming a national conscience affirming one's own Castilian Spanish identity' (Jover, 2003, p. 89).

Therefore, a clash of vernacular languages is observed that implies an artificial differentiation of literary traditions. Both nationalisms want to establish a linguistic and literary hegemony that is impossible in a plurinational and multicultural state.

The conflicting demands of parastatal nationalisms lead to the promotion of one language at the cost of the other at the state level and in the literary field – a clear case of a zero-sum situation. In these circumstances, educational and literary systems are used by nationalists and independentists as weapons in a battle for the protection of one language, which always results in the banishment of the other. As we have seen, Catalan is not allowed in the Congress, and Castilian Spanish is not taught in Catalonia.

Faced with this impasse, the non-territorial autonomy (NTA) model creates mechanisms that allow the autonomy and coexistence of vernacular languages in a multicultural and pluriethnic educational system. The development of educational and literary mechanisms that lead to a better knowledge of others will favour coexistence based on respect for difference. As Nimni (2011, p. 110) explains, 'equality ceases to be the coincidence of identity [...] and becomes the recognition of difference.'

All the languages used in the Spanish state have a cultural and educational background, which, if studied by young people of other ethnic groups, would lead to an important advance in mutual recognition and an attitude of mutual respect and tolerance. The vernacular languages of each area should be taught alongside all the other languages, to foster a greater understanding of the multicultural richness of Spain. And perhaps we should not add nationalist adjectives (Spanish, Castilian, Catalan, Vasque, Galician, etc.) to the term 'literature' to think the literary from a broader perspective and consequently make it richer and more appealing. Goethe said as much back in 1827: if we thought of the literary and linguistic disciplines from a global perspective, it would save us a lot of trouble. We must think in terms of creating what Goethe called a *Weltliteratur* (Eckermann, 2018) to advance in the direction of reconciliation.

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